

## HB0331S05 compared with HB0331S03

~~deleted text~~ shows text that was in HB0331S03 but was deleted in HB0331S05.

inserted text shows text that was not in HB0331S03 but was inserted into HB0331S05.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Candice B. Pierucci proposes the following substitute bill:

### HOPE SCHOLARSHIP PROGRAM

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Candice B. Pierucci**

Senate Sponsor: Kirk A. Cullimore

---

#### LONG TITLE

##### General Description:

This bill creates the Hope Scholarship Program.

##### Highlighted Provisions:

This bill:

- ▶ requires a scholarship granting organization and the state auditor to submit reports on the Hope Scholarship Program (program);
- ▶ defines terms;
- ▶ authorizes a scholarship granting organization to establish scholarship accounts on behalf of eligible students to pay for private education goods and services starting in the 2023-24 school year;
- ▶ requires the State Board of Education to contract with, no later than October 1, 2022, a scholarship granting organization to administer the program;

## **HB0331S05 compared with HB0331S03**

- ▶ prohibits a scholarship granting organization from accepting scholarship funds in certain circumstances;
- ▶ requires private schools and service providers to meet certain standards to be eligible to receive scholarship funds;
- ▶ authorizes a scholarship granting organization to receive donations to the program;
- ▶ requires the scholarship granting organization to conduct audits;
- ▶ prohibits certain regulations of eligible schools and eligible service providers;
- ▶ requires background checks for employees and officers of a scholarship granting organization;
- ▶ enacts program funding provisions;
- ▶ classifies scholarship student's and scholarship account information as a protected record; and
- ▶ repeals a provision codifying a chapter title.

### **Money Appropriated in this Bill:**

This bill appropriates in fiscal year 2023:

- ▶ to State Board of Education -- Contracted Initiatives and Grants -- Hope Scholarship Program, as an appropriation:
  - from Education Fund, ongoing \$36,000,000; and
  - from Education Fund, one-time (\$34,000,000), leaving \$2,000,000 for Fiscal Year 2023.

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**53F-4-505**, as last amended by Laws of Utah 2021, Chapter 362

**63G-2-305**, as last amended by Laws of Utah 2021, Chapters 148, 179, 231, 353, 373, and 382

ENACTS:

**53E-1-202.3**, Utah Code Annotated 1953

**53F-6-401**, Utah Code Annotated 1953

**53F-6-402**, Utah Code Annotated 1953

## HB0331S05 compared with HB0331S03

53F-6-403, Utah Code Annotated 1953  
53F-6-404, Utah Code Annotated 1953  
53F-6-405, Utah Code Annotated 1953  
53F-6-406, Utah Code Annotated 1953  
53F-6-407, Utah Code Annotated 1953  
53F-6-408, Utah Code Annotated 1953  
53F-6-409, Utah Code Annotated 1953  
53F-6-410, Utah Code Annotated 1953  
53F-6-411, Utah Code Annotated 1953

REPEALS:

53F-6-101, as enacted by Laws of Utah 2018, Chapter 2

---

---

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

Section 1. Section **53E-1-202.3** is enacted to read:

**53E-1-202.3. Report to the Public Education Appropriations Subcommittee on the Hope Scholarship Program.**

Beginning in 2024, a scholarship granting organization, as defined in Section 53F-6-401, and the state auditor, shall, in accordance with Section 68-3-14, annually submit the respective reports described in Section 53F-6-411 to the Public Education Appropriations Subcommittee.

Section 2. Section **53F-4-505** is amended to read:

**53F-4-505. Payment for an online course.**

(1) For the 2012-13 school year, the fee for a .5 credit online course or .5 credit of a 1 credit online course is:

(a) \$200 for the following courses, except a concurrent enrollment course:

(i) financial literacy;

(ii) health;

(iii) fitness for life; and

(iv) computer literacy;

(b) \$200 for driver education;

(c) \$250 for a course that meets core standards for Utah public schools in fine arts or

## HB0331S05 compared with HB0331S03

career and technical education, except a concurrent enrollment course;

(d) \$300 for the following courses:

(i) a course that meets core standards for Utah public schools requirements in social studies, except a concurrent enrollment course; and

(ii) a world language course, except a concurrent enrollment course;

(e) \$350 for the following courses:

(i) a course that meets core standards for Utah public schools requirements for language arts, mathematics, or science; and

(ii) a concurrent enrollment course; and

(f) \$250 for a course not described in Subsections (1)(a) through (e).

(2) If a course meets the requirements of more than one course fee category described in Subsection (1), the course fee shall be the lowest of the applicable course fee categories.

(3) Beginning with the 2013-14 school year, the online course fees described in Subsection (1) shall be adjusted each school year in accordance with the percentage change in value of the weighted pupil unit from the previous school year.

(4) An online learning provider shall receive payment for an online course as follows:

(a) for a .5 credit online course, 50% of the online course fee after the withdrawal period described in Section 53F-4-506;

(b) for a 1 credit online course, 25% of the online course fee after the withdrawal period described in Section 53F-4-506 and 25% of the online course fee upon the beginning of the second .5 credit of the online course; and

(c) if a student completes a 1 credit online course within 12 months or a .5 credit course within nine weeks following the end of a traditional semester, 50% of the online course fee.

(5) (a) If a student fails to complete a 1 credit course within 12 months or a .5 credit course within nine weeks following the end of a traditional semester, the student may continue to be enrolled in the course until the student graduates from high school.

(b) To encourage an online course provider to provide remediation to a student who remains enrolled in an online course pursuant to Subsection (5)(a) and avoid the need for credit recovery, an online course provider shall receive a payment equal to 30% of the online course fee if the student completes the online course:

## HB0331S05 compared with HB0331S03

- (i) for a high school online course, before the student graduates from high school; or
- (ii) for a middle school online course, before the student completes middle school.

(6) Notwithstanding the online course fees prescribed in Subsections (1) through (3), a school district or charter school may:

(a) negotiate a fee with an online course provider for an amount up to the amount prescribed in Subsections (1) through (3); and

(b) pay the negotiated fee instead of the fee prescribed in Subsections (1) through (3).

(7) An online course provider who contracts with a vendor for the acquisition of online course content or online course instruction may negotiate the payment for the vendor's service independent of the fees specified in Subsections (1) through (3).

(8) A scholarship student, as defined in Section 53F-6-401, shall pay for an online course with scholarship funds, as defined in Section 53F-6-401, or with the student's personal funds.

Section 3. Section **53F-6-401** is enacted to read:

### **CHAPTER 6. STATE FUNDING -- PROGRAMS ADMINISTERED BY OTHER ENTITIES**

#### **Part 4. Hope Scholarship Program**

##### **53F-6-401. Definitions.**

(1) "Bullying" means the same as that term is defined in Section 53G-9-602.

(2) "Cyber-bullying" means the same as that term is defined in Section 53G-9-602.

(3) (a) "Eligible school" means a private school that:

(i) provides kindergarten, elementary, or secondary education; and

(ii) meets the requirements of and is approved by a scholarship granting organization under Section 53F-6-408.

(b) "Eligible school" does not include an eligible service provider.

(4) "Eligible student" means a student who:

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

(b) is a resident of the state; and

(c) during the school year for which the student is applying for a scholarship, account is not:

(i) a student who receives a scholarship under the Carson Smith Scholarship Program

## HB0331S05 compared with HB0331S03

created in Section 53F-4-302;

(ii) a student who receives a scholarship under the Special Needs Opportunity Scholarship Program established in Section 53E-7-402; or

(iii) enrolled in an LEA.

(5) (a) "Eligible service provider" means a private program or service that:

(i) provides educational services; and

(ii) meets the requirements of and is approved by a scholarship granting organization under Section 53F-6-409.

(b) "Eligible service provider" does not include:

(i) an eligible school; or

(ii) a retailer or other private business that provides goods for a one-time purchase or rental.

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

(7) "Hazing" means the same as that term is defined in Section 53G-9-601.

(8) "Hope Scholarship Program" or "program" means the scholarship program created in Section 53F-6-402.

(9) "Officer" means:

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

(b) the chief administrative officer of a scholarship granting organization.

(10) "Program donation" means a donation to the program described in Section 53F-6-405.

(11) "Qualifying service provider" means:

(a) an eligible school approved by the scholarship granting organization in accordance with Section 53F-6-408; or

(b) an eligible service provider approved by the scholarship granting organization in accordance with Section 53F-6-409.

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

## HB0331S05 compared with HB0331S03

(13) "Scholarship account" means an account established and maintained by a scholarship granting organization on behalf of a scholarship student for the purpose of paying for a scholarship expense with scholarship funds.

(14) "Scholarship expense" means an expense incurred in the education of a scholarship student as described in Section 53F-6-402 for:

(a) a service provided by a qualifying service provider; or

(b) goods.

(15) "Scholarship funds" means funds:

(a) appropriated by the Legislature for the program; or

(b) donated under Section 53F-6-405.

(16) "Scholarship granting organization" means an organization that is:

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

(b) recognized through an agreement with the state board as a scholarship granting organization, as described in Section 53F-6-404.

(17) (a) "Scholarship employee" means an individual working in a position in which the individual's salary, wages, pay, or compensation, including as a contractor, is paid from scholarship funds.

(b) "Scholarship employee" does not include an individual who volunteers at a scholarship granting organization or qualifying service provider.

(18) "Scholarship student" means an eligible student for whom a scholarship account is established and maintained in accordance with this part.

Section 4. Section **53F-6-402** is enacted to read:

**53F-6-402. Hope Scholarship Program -- Scholarship account application -- Scholarship expenses -- Assessment -- Program information.**

(1) There is established the Hope Scholarship Program under which, beginning in the 2023-24 school year, a parent may apply to a scholarship granting organization on behalf of the parent's student to establish and maintain a scholarship account to cover the cost of a scholarship expense.

(2) (a) The scholarship granting organization shall establish and maintain, in accordance with this part, a scholarship account for an eligible student.

(b) The scholarship granting organization shall:

## HB0331S05 compared with HB0331S03

(i) determine that a student meets the requirements to be an eligible student; and  
(ii) subject to Subsection (2)(c), each year the student is an eligible student, maintain a scholarship account for the scholarship student to pay for the cost of one or more scholarship expenses incurred by the student.

(c) Each year, subject to this part, an eligible student is eligible for no more than:

(i) for an eligible student in grades 1 through 12 whose family income is:

(A) at or below 200% of the federal poverty level, an amount equivalent to the value of the weighted pupil unit multiplied by 2;

(B) between 200% and 370% of the federal poverty level, an amount equivalent to the value of the weighted pupil unit multiplied by 1.5; and

(C) between 370% and 555% of the federal poverty level, an amount equivalent to the value of the weighted pupil unit multiplied by 1; and

(ii) for an eligible student in kindergarten whose family income is:

(A) at or below 200% of the federal poverty level, an amount equivalent to the value of the weighted pupil unit multiplied by 1;

(B) between 200% and 370% of the federal poverty level, an amount equivalent to the value of the weighted pupil unit multiplied by 0.75; and

(C) between 370% and 555% of the federal poverty level, an amount equivalent to the value of the weighted pupil unit multiplied by 0.5.

(d) Any increase in the value of the weighted pupil unit shall be reflected in funds available for the scholarship student in the student's scholarship account during the time that the student is a scholarship student.

(3) (a) A scholarship granting organization shall establish a scholarship account on behalf of an eligible student who submits a timely application, unless the number of applications exceed available scholarship funds for the school year and except as provided in Subsection (3)(d).

(b) If the number of applications exceeds the available scholarship funds for a school year, the scholarship granting organization shall select students on a random basis, except as provided in Subsection (6).

(c) An eligible student shall submit an application for each school year that the student intends to receive scholarship funds.



## HB0331S05 compared with HB0331S03

(d) A scholarship granting organization may not approve an application by or establish a scholarship account on behalf of a student whose family income is at or above 555% of the federal poverty level.

(e) The LEA in which a scholarship student ~~resides~~ was enrolled immediately before the student received a scholarship under this part, shall continue to count the student in the LEA's pupil in average daily membership in accordance with Section 53F-2-102, for as long as the student is receiving a scholarship under this part.

(4) (a) An application for a scholarship account shall contain an acknowledgment by the student's parent that the qualifying service provider selected by the parent for the student to enroll in or engage is capable of providing education services appropriate for the student.

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

"I acknowledge that: A private education service provider may not provide the same level of disability services that are provided in a public school;

(1) I will assume full financial responsibility for the education of my scholarship recipient if I agree to this scholarship account;

(2) Agreeing to establish this scholarship account has the same effect as a parental refusal to consent to services as described in 34 C.F.R. Sec. 300.300, issued under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and

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

(c) Upon agreeing to establish a scholarship account, the parent assumes full financial responsibility for the education of the scholarship student, including the balance of any expense incurred at a qualifying service provider or for goods that are not paid for by the scholarship student's scholarship account.

(d) Agreeing to establish a scholarship account has the same effect as a parental refusal to consent to services as described in 34 C.F.R. Sec. 300.300, issued under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(e) The creation of the program or establishment of a scholarship account on behalf of a student does not:

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

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

## HB0331S05 compared with HB0331S03

(5) A scholarship granting organization may not charge a scholarship account application fee.

(6) A scholarship granting organization:

(a) shall give an enrollment preference to an eligible student:

(i) whose family income is at or below 200% of the federal poverty level; or

(ii) who demonstrates that:

(A) the eligible student has experienced bullying, cyber-bullying, or hazing in violation of Section 53G-9-602; and

(B) the bullying, cyber-bullying, or hazing was reported, documented, and investigated by the student's school or law enforcement; and

(b) may give an enrollment preference to the following eligible students:

(i) an eligible student who in the previous school year used a scholarship account; or

(ii) a sibling of an eligible student who:

(A) is receiving scholarship funds from a scholarship account at the time the sibling applies for a scholarship account; or

(B) received scholarship funds in the school year immediately preceding the school year for which the sibling is applying for a scholarship account.

(7) (a) In making the demonstration described in Subsection (6)(a)(ii), a student shall provide any documentation the scholarship organization requests.

(b) A scholarship granting organization shall make a determination about whether a student has fulfilled the requirements of Subsection (6)(a)(ii) based on the facts documented.

(~~7~~8) (a) Subject to Subsections (~~7~~8)(c) and (d), a scholarship account may be used to pay for an expense:

(i) incurred in the education of a scholarship student; and

(ii) approved by the scholarship granting organization.

(b) An approved scholarship expense includes:

(i) tuition, fees, textbooks, or other curricular or extracurricular materials, including supplemental materials or associated online instruction required by a curriculum;

(ii) tutoring services;

(iii) fees associated with standardized assessments, advanced placement examinations, a state-recognized industry certification examination, or any examination related to college or

## HB0331S05 compared with HB0331S03

university admission;

(iv) fees for a preparatory course for an exam described in Subsection (~~f7~~8)(b)(iii);

(v) fees for after-school or summer education programs;

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

(vii) fees for transportation paid to a fee-for-service transportation provider for a scholarship student to travel to and from a qualifying service provider;

(viii) an expense incurred for participation in an LEA activity or service; and

(ix) any other expense for a good or service incurred in the education of a scholarship student and approved by the scholarship granting organization.

(c) A scholarship account may not be used for an expense that is not incurred in advancing an eligible student's education, including:

(i) a rehabilitation program that is not primarily for education purposes; or

(ii) a travel expense other than the expense described in Subsection (~~f7~~8)(b)(vii).

(d) If a scholarship expense is:

(i) for a service provided by a qualifying service provider, the scholarship granting organization may not approve the scholarship expense unless the scholarship granting organization determines that the expense is incurred in the education of the scholarship student;  
or

(ii) for a service provided by a provider other than a qualifying service provider or good, the scholarship granting organization may not reimburse the scholarship expense unless:

(A) the scholarship student submits a receipt showing the cost and type of service or good and name of provider; and

(B) the scholarship granting organization determines that the expense is incurred in the education of the scholarship student.

(e) The parent of a scholarship student may not receive scholarship funds as payment for the parent's time spent educating the parent's child.

(~~f8~~9) Funds disbursed under this part to a scholarship account on behalf of a scholarship student do not constitute state taxable income to the parent of the scholarship student.

## HB0331S05 compared with HB0331S03

(~~9~~10) (a) For each school year that a scholarship student receives scholarship funds, the scholarship student shall report the score of a norm-referenced assessment approved and administered by the scholarship granting organization measuring the scholarship student's academic progress to the scholarship granting organization.

(b) In accordance with Section 53F-6-411, the scholarship granting organization shall report, in the aggregate, assessment scores described in Subsection (~~9~~10)(a).

(c) (i) Notwithstanding Subsection (~~9~~10)(a), a scholarship student may select to opt-out of an assessment described in Subsection (~~9~~10)(a) by notifying the scholarship granting organization each year the student intends to opt-out.

(ii) The scholarship granting organization shall keep a record of students who opt-out of an assessment as described in subsection (10)(c)(i).

(~~10~~11) The scholarship granting organization shall prepare and disseminate to a parent applying for a scholarship account on behalf of a student:

(a) information on the program; and

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

(~~11~~12) The state board shall provide information on the state board's website, including scholarship account information, the scholarship granting organization's contact information, and an overview of the program.

Section 5. Section **53F-6-403** is enacted to read:

### **53F-6-403. Qualifying service providers.**

(1) Before the beginning of the school year immediately following a school year in which a qualifying service provider receives scholarship funds equal to or more than \$250,000, the qualifying service provider shall file with the scholarship granting organization:

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

(b) financial information that demonstrates the financial viability of the qualifying service provider, as required by the scholarship granting organization.

(2) If a scholarship granting organization determines that a qualifying service provider has violated a provision of this part, the scholarship granting organization may interrupt disbursement of or withhold scholarship funds from the qualifying service provider.

(3) (a) If the scholarship granting organization determines that a qualifying service

## HB0331S05 compared with HB0331S03

provider no longer meets the eligibility requirements described in this part, the scholarship granting organization may withdraw the organization's approval of the qualifying service provider.

(b) A person that does not have the scholarship granting organization's approval under Section 53F-6-408 or Section 53F-6-409, respectively, may not accept scholarship funds for services under this part.

~~{ (4) A qualifying service provider shall, when administering an annual assessment required under Section 53F-6-408, ensure that the qualifying service provider uses a norm-referenced assessment.~~

‡ Section 6. Section **53F-6-404** is enacted to read:

**53F-6-404. State board procurement and review of scholarship granting organization -- Failure to comply.**

(1) (a) In accordance with Subsection (2) and Title 63G, Chapter 6a, Utah Procurement Code, the state board shall issue a request for proposals and enter an agreement with no more than one organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue Code, to be recognized by the state board as a scholarship granting organization.

(b) An organization that responds to a request for proposals described in Subsection (1)(a) shall submit the following information in the organization's response:

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

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

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

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

(2) The state board shall enter into an agreement described in Subsection (1)(a) on or before October 1, 2022.

(3) The state board may regulate and take enforcement action as necessary against a scholarship granting organization in accordance with Section 53E-3-401.

(4) (a) If the state board determines that a scholarship granting organization has

## HB0331S05 compared with HB0331S03

violated a provision of this part or state board rule, the state board shall send written notice to the scholarship granting organization explaining the violation and the remedial action required to correct the violation.

(b) A scholarship granting organization that receives a notice described in Subsection (4)(a) shall, no later than 60 days after the day on which the scholarship granting organization receives the notice, correct the violation and report the correction to the state board.

(c) (i) If a scholarship granting organization that receives a notice described in Subsection (4)(a) fails to correct a violation in the time period described in Subsection (4)(b), the state board may bar the scholarship granting organization from further participation in the program.

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

(d) A scholarship granting organization may not accept program donations or state funds while the scholarship granting organization:

(i) is barred from participating in the program under Subsection (4)(c)(i); or

(ii) has an appeal pending under Subsection (4)(c)(ii).

(e) A scholarship granting organization that has an appeal pending under Subsection (4)(c)(ii) may continue to administer scholarship accounts from previously donated program donations during the pending appeal.

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

(6) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act for:

(a) subject to Subsection (7), the administration of scholarship accounts and disbursement of scholarship funds if a scholarship granting organization is barred from participating in the program under Subsection (4)(c)(i); and

(b) audit and report requirements as described in Section 53F-7-405.

(7) The state board shall include in a rule made under Subsection (6)(a) measures, which may include entering a new contract with an alternative scholarship granting organization under this section, to ensure that the establishment and maintenance of

## HB0331S05 compared with HB0331S03

scholarship accounts and enrollment in the program are not disrupted if the scholarship granting organization is barred from participating in the program.

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

### **53F-6-405. Scholarship granting organization duties -- Program donations --**

#### **Audit -- Prohibitions.**

(1) A scholarship granting organization shall:

(a) review applications from and determine if a person is:

(i) an eligible school under Section 53F-6-408; or

(ii) an eligible service provider under Section 53F-6-409;

(b) accept program donations;

(c) adopt an application process, including application deadlines, in accordance with Section 53F-6-402;

(d) review and approve an application for a scholarship account;

(e) disburse through each scholarship account scholarship funds on the parent's behalf to a qualifying service provider in which the parent's scholarship student is enrolled or has engaged;

(f) adopt a process that allows a parent to use a scholarship account to receive a reimbursement for a good that is a scholarship expense;

(g) ensure that all revenue from program donations' interest or investments is spent on scholarship expenses;

(h) prohibit a scholarship granting organization scholarship employee or officer from handling, managing, or processing scholarship funds, if, based on a criminal background check conducted by the state board in accordance with Section 53F-6-407, the state board identifies the scholarship granting organization scholarship employee or officer as posing a risk to the appropriate use of scholarship funds;

(i) ensure that scholarship funds in a scholarship account are readily available to a scholarship student;

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

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

(ii) the total number and total dollar amount of program donations that the scholarship

## HB0331S05 compared with HB0331S03

granting organization received during the previous calendar year; and

(iii) the total number and total dollar amount of scholarship funds disbursed during the previous calendar year;

(k) (i) require a parent to notify the scholarship granting organization if the parent's scholarship student:

(A) receives scholarship funds to pay for a service that is provided to the scholarship student for an entire school year; and

(B) is no longer enrolled in or engaging the service described in Subsection (1)(k)(i)(A); and

(ii) obtain reimbursement of scholarship funds from the qualifying service provider in which the scholarship student is no longer enrolled or engaging; and

(l) provide an online portal for the parent of a scholarship student to access the scholarship student's account.

(2) A scholarship granting organization shall demonstrate the scholarship granting organization's financial accountability by annually submitting to the state board a financial information report that is prepared by a certified public accountant.

(3) (a) The scholarship granting organization shall:

(i) contract for an annual and random audits on scholarship accounts, conducted by a certified public accountant who is independent from:

(A) the scholarship granting organization; and

(B) the scholarship granting organization's accounts and records pertaining to scholarship funds; and

(ii) in accordance with Subsection (3)(b), report the results of the audit to the state board for review.

(b) For the report described in Subsection (3)(a)(ii), the scholarship granting organization shall:

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

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

(c) The certified public accountant shall conduct an audit described in Subsection



## HB0331S05 compared with HB0331S03

(3)(a)(i) in accordance with generally accepted auditing standards.

(d) (i) The state board shall review a report submitted under this section and may request that the scholarship granting organization revise or supplement the report if the report is not in compliance with the provisions of this Subsection (3).

(ii) A scholarship granting organization shall provide a revised report or supplement to the report no later than 45 days after the day on which the state board makes a request described in Subsection (3)(d)(i).

(4) (a) A scholarship granting organization may not:

(i) disburse scholarship funds to a qualifying service provider or allow a qualifying service provider to use scholarship funds if:

(A) the scholarship granting organization determines that the qualifying service provider intentionally or substantially misrepresented information on overpayment;

(B) the qualifying service provider fails to refund an overpayment in a timely manner;

or

(C) the qualifying service provider routinely fails to provide scholarship students with promised educational services; or

(ii) reimburse with scholarship funds an individual for the purchase of a good or service if the scholarship granting organization determines that:

(A) the scholarship student, or parent of the scholarship student, requesting reimbursement intentionally or substantially misrepresented the cost or educational purpose of the good; or

(B) the good was not used exclusively by the scholarship student seeking reimbursement.

(b) A scholarship granting organization shall notify a scholarship student if the scholarship granting organization stops disbursement of the scholarship student's scholarship funds to a qualifying service provider under Subsection (4)(a)(i) or refuses reimbursement under Subsection (4)(a)(ii).

(5) (a) At any time, a scholarship student may change the qualifying service provider to whom the scholarship student's scholarship account makes distributions.

(b) If a scholarship student changes during the school year the student's enrollment in or engagement with a qualifying service provider to another qualifying service provider, the

## HB0331S05 compared with HB0331S03

scholarship granting organization may prorate scholarship funds between the qualifying service providers based on the time the scholarship student was enrolled with, or the goods or services were received by, the scholarship student.

(6) A scholarship granting organization may not:

(a) establish a scholarship account on behalf of a relative of the scholarship granting organization's officer; or

(b) disburse scholarship funds to a qualifying service provider at which the scholarship student has a relative who is an officer.

(7) A scholarship granting organization may contract with a software provider to facilitate establishing scholarship accounts and distribution of scholarship funds.

Section 8. Section **53F-6-406** is enacted to read:

**53F-6-406. Qualifying service provider regulation -- Student records -- Status of scholarship student.**

(1) Nothing in this part:

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

(b) expands the regulatory authority of the state, a state office holder, or a local school district to impose any additional regulation of a qualifying service provider beyond those necessary to enforce the requirements of this part.

(2) A qualifying service provider shall be given the maximum freedom to provide for the educational needs of a scholarship student who attends or engages with the qualifying service provider without unlawful governmental control.

(3) Except as provided in Section ~~53F-7-403~~53F-6-403 and, respectively, Section 53F-6-408 or 53F-6-409, a qualifying service provider may not be required to alter the qualifying service provider's creed, practices, admission policy, or curriculum in order to accept scholarship funds.

(4) A local education agency or school in a local education agency in which a scholarship student was previously enrolled shall provide to a qualifying service provider in which the scholarship student is currently enrolled or engaging a copy of all requested school records relating to the scholarship student, subject to:

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

## HB0331S05 compared with HB0331S03

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

(5) A scholarship student is not:

(a) enrolled in the public education system; or

(b) subject to state statute, state administrative rules, or other state regulations that govern the attendance and education of a student enrolled in the public education system unless otherwise explicitly provided in state statute.

Section 9. Section **53F-6-407** is enacted to read:

**53F-6-407. Background checks for scholarship granting organization -- Bureau responsibilities -- Fees.**

(1) As used in this section:

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

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

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

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

(e) "Personal identifying information" means:

(i) current name;

(ii) former names;

(iii) nicknames;

(iv) aliases;

(v) date of birth;

(vi) address;

(vii) telephone number;

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

(ix) social security number; and

(x) fingerprints.

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

(g) "WIN Database" means the Western Identification Network Database that consists

## HB0331S05 compared with HB0331S03

of eight western states sharing one electronic fingerprint database.

(2) The scholarship granting organization shall:

(a) require an applicant to submit to a criminal background check and ongoing monitoring;

(b) collect the following from an applicant:

(i) personal identifying information;

(ii) a fee described in Subsection (4); and

(iii) consent, on a form specified by the scholarship granting organization, for:

(A) an initial fingerprint-based background check by the bureau;

(B) retention of personal identifying information for ongoing monitoring through registration with the systems described in Subsection (3); and

(C) disclosure of any criminal history information to the scholarship granting organization;

(c) submit an applicant's personal identifying information to the bureau for:

(i) an initial fingerprint-based background check by the bureau; and

(ii) ongoing monitoring through registration with the systems described in Subsection (3) if the results of the initial background check do not contain disqualifying criminal history information as determined by the scholarship granting organization;

(d) identify the appropriate privacy risk mitigation strategy that will be used to ensure that the scholarship granting organization only receives notifications for individuals with whom the scholarship granting organization maintains an authorizing relationship; and

(e) submit the information to the bureau for ongoing monitoring through registration with the systems described in Subsection (3)(a).

(3) The bureau shall:

(a) upon request from the scholarship granting organization, register the fingerprints submitted by the scholarship granting organization as part of a background check with the WIN Database rap back system, or any successor system;

(b) notify the scholarship granting organization when a new entry is made against an individual whose fingerprints are registered with the WIN database rap back regarding:

(i) an alleged offense; or

(ii) a conviction, including a plea in abeyance;

## HB0331S05 compared with HB0331S03

(c) assist the scholarship granting organization to identify the appropriate privacy risk mitigation strategy that is to be used to ensure that the scholarship granting organization only receives notifications for individuals with whom the authorized entity maintains an authorizing relationship; and

(d) collaborate with the scholarship granting organization to provide training to appropriate scholarship granting organization employees on the notification procedures and privacy risk mitigation strategies described in this section.

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

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

Section 10. Section **53F-6-408** is enacted to read:

### **53F-6-408. Eligible schools.**

(1) To be an eligible school to receive scholarship funds on behalf of a scholarship student, a private school with 150 or more enrolled students shall:

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

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

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

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

(ii) submit the audit report or report of the agreed upon procedure to the scholarship granting organization when the private school applies to receive scholarship funds;

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

(c) provide a written disclosure to the parent of each prospective scholarship student, before the student is enrolled, of:

(i) the education services that will be provided to the scholarship student, including the

## HB0331S05 compared with HB0331S03

cost of those services:

(ii) tuition costs;

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

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

~~{ (d) (i) administer an annual assessment of each scholarship student's academic progress unless the scholarship student selects to opt-out of the assessment in accordance with Section 53F-6-402; and~~

~~— (ii) report the results of the assessment described in Subsection (1)(d)(i) to the scholarship student's parent;~~

~~‡ (f) (d) employ or contract with teachers who:~~

(i) hold baccalaureate or higher degrees;

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

(iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to provide instruction in the subject or subjects taught;

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

(i) an employee who does not hold:

(A) a current Utah educator license issued by the state board under Title 53E, Chapter 6, Education Professional Licensure; or

(B) if the private school is not physically located in Utah, a current educator license in the state where the private school is physically located; and

(ii) a contract employee; and

(g) (f) provide to the parent of a scholarship student the relevant credentials of the teachers who will be teaching the scholarship student.

(2) A private school described in Subsection (1) is not eligible to receive scholarship funds if:

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

## HB0331S05 compared with HB0331S03

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

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

(3) A private school with fewer than 150 enrolled students shall:

(a) meet the requirements set forth in Subsections (2)(a), (5), and (7); and

(b) meet the same requirements set forth for an eligible service provider as described in Subsection 53F-6-409(1).

(4) Residential treatment facilities licensed by the state are not eligible to receive scholarship funds.

(5) A private school intending to receive scholarship funds shall submit an application to the scholarship granting organization.

(6) The scholarship granting organization shall:

(a) if the private school meets the eligibility requirements of this section, recognize the private school as an eligible school and approve the private school's application; and

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

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

(a) submit a new application to the scholarship granting organization; and

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

Section 11. Section **53F-6-409** is enacted to read:

### **53F-6-409. Eligible service providers.**

(1) To be an eligible service provider, a private program or service shall:

(a) provide to the scholarship granting organization:

(i) a federal employer identification number;

(ii) the provider's address and contact information;

(iii) a description of each program or service the provider proposes to offer a scholarship student; and

(iv) subject to Subsection (2), any other information as required by the scholarship granting organization; and

## HB0331S05 compared with HB0331S03

(b) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d.

(2) The scholarship granting organization shall adopt policies that maximize the number of eligible service providers while ensuring education programs or services provided through the program meet student needs and otherwise comply with this part.

(3) A private program or service intending to receive scholarship funds shall submit an application to the scholarship granting organization.

(4) The scholarship granting organization shall:

(a) if the private program or service meets the eligibility requirements of this section, recognize the private program or service as an eligible service provider and approve a private program or service's application to receive scholarship funds on behalf of a scholarship student; and

(b) make available to the public a list of eligible service providers approved under this section.

(5) A private program or service approved under this section that changes ownership shall:

(a) submit a new application to the scholarship granting organization; and

(b) demonstrate that the private program or service continues to meet the eligibility requirements of this section.

Section 12. Section **53F-6-410** is enacted to read:

### **53F-6-410. Program funding.**

(1) Subject to budget constraints, beginning in a fiscal year that starts July 1, 2025, the Legislature shall appropriate to the program:

(a) an amount equal to the amount appropriated to the program in the previous fiscal year; and

(b) a sum equal to:

(i) the amount appropriated in the previous fiscal year; and

(ii) the annual inflation adjustment as described in Subsection 53F-2-208(1)(a).

(2) For each fiscal year, the state board shall distribute to the scholarship granting organization:

(a) no later than August 1, 50% of available appropriated state funds;

(b) no later than November 1, the next 25% of available appropriated state funds; and



## **HB0331S05 compared with HB0331S03**

(c) no later than February 1, any remaining appropriated state funds.

(3) If during the school year a scholarship student enters or reenters the public education system:

(a) no later than five business days after the student withdraws from the program, the scholarship granting organization shall immediately remit the balance in the scholarship student's scholarship account to the state board;

(b) no later than five business days upon receiving the payment described in Subsection (3)(a), the state board shall forward the balance to the LEA in which the student is enrolled; and

(c) the state board may not distribute any remaining state funds under Subsection (2) to the scholarship granting organization for the student who enters or reenters the public education system.

(4) At the end of a school year, a scholarship granting organization shall withdraw any remaining scholarship funds in a scholarship account and retain the scholarship funds for disbursement in the following year.

(5) (a) The scholarship granting organization may use for administration of the program up to 5 percent of funds appropriated by the Legislature.

(b) Subject to Subsection (5)(c), funds the scholarship granting organization receives for administration of the program are nonlapsing.

(c) The scholarship granting organization may not retain administrative cost balances in excess of 25% of total administrative costs in any fiscal year.

Section 13. Section **53F-6-411** is enacted to read:

### **53F-6-411. Reports.**

(1) Subject to Subsection (2), and in accordance with Section 53E-1-202.3 and the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, a scholarship granting organization shall, beginning in 2024, annually submit a report on the program to the Public Education Appropriations Subcommittee no later than September 1 that includes:

(a) the total amount of tuition and fees qualifying service providers charged for the current year and previous two years;

(b) the total amount of goods paid for with scholarship funds in the previous year and a general characterization of the types of goods;

## HB0331S05 compared with HB0331S03

(c) administrative costs of the program;

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

(e) the percentage of first-time scholarship students who were enrolled in a public school during the previous school year or who entered kindergarten or a higher grade for the first time in Utah;

(f) methods used by the scholarship granting organization to determine whether a student is an eligible student;

(g) the scholarship granting organization strategy and outreach efforts to reach eligible students whose family income is at or below 200% of the federal poverty level and obstacles to enrolling those eligible students;

(h) the scores, in the aggregate, of a scholarship student on a norm-referenced assessment approved by the scholarship granting organization; and

(i) any other information requested by the subcommittee.

(2) The scholarship granting organization shall include in the report submitted in 2024 information on steps the scholarship granting organization has taken and processes adopted to implement the program.

(3) In accordance with Section 53E-1-202.3 and the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, the state auditor shall, beginning in 2024, annually submit a report on the cost-effectiveness of the program to the Public Education Appropriations Subcommittee no later than September 1.

Section 14. Section **63G-2-305** is amended to read:

### **63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access

## HB0331S05 compared with HB0331S03

than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (i) an invitation for bids;
- (ii) a request for proposals;
- (iii) a request for quotes;
- (iv) a grant; or
- (v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the

## HB0331S05 compared with HB0331S03

subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

## **HB0331S05 compared with HB0331S03**

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

## HB0331S05 compared with HB0331S03

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that

## **HB0331S05 compared with HB0331S03**

may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from

## HB0331S05 compared with HB0331S03

disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:



## HB0331S05 compared with HB0331S03

- (i) unpublished lecture notes;
- (ii) unpublished notes, data, and information:
  - (A) relating to research; and
  - (B) of:
    - (I) the institution within the state system of higher education defined in Section 53B-1-102; or
    - (II) a sponsor of sponsored research;
  - (iii) unpublished manuscripts;
  - (iv) creative works in process;
  - (v) scholarly correspondence; and
  - (vi) confidential information contained in research proposals;
- (b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- (41) (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and
  - (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;
- (42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:
  - (a) a production facility; or
  - (b) a magazine;
- (43) information:
  - (a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or
  - (b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

## HB0331S05 compared with HB0331S03

(44) information contained in the Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or

## HB0331S05 compared with HB0331S03

personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge including information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

## HB0331S05 compared with HB0331S03

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

## HB0331S05 compared with HB0331S03

(61) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

(62) a record described in Section 63G-12-210;

(63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;

(64) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

(65) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

(66) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;

(67) an audio recording that is:

## **HB0331S05 compared with HB0331S03**

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

(68) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(69) work papers as defined in Section 31A-2-204;

(70) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(71) a record submitted to the Insurance Department in accordance with Section 31A-37-201;

(72) a record described in Section 31A-37-503;

(73) any record created by the Division of Occupational and Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

(74) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;

(75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

(c) Title 17B, Limited Purpose Local Government Entities - Local Districts;

## HB0331S05 compared with HB0331S03

(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

(e) Title 20A, Election Code;

(76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

(78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(79) a record submitted to the Insurance Department under Subsection 31A-48-103(1)(b);

(80) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;

(81) (a) an image taken of an individual during the process of booking the individual into jail, unless:

(i) the individual is convicted of a criminal offense based upon the conduct for which the individual was incarcerated at the time the image was taken;

(ii) a law enforcement agency releases or disseminates the image after determining that:

(A) the individual is a fugitive or an imminent threat to an individual or to public safety; and

(B) releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or

(iii) a judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest[-];

(82) a record:

(a) concerning an interstate claim to the use of waters in the Colorado River system;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and

(c) the disclosure of which would:

## HB0331S05 compared with HB0331S03

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system; [~~and~~]

(83) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (83) may not be used to restrict access to a record evidencing a final contract or approval decision[-]; and

(84) any part of an application for a scholarship account as described in Section 53F-6-402 or other information identifying a scholarship student as defined in Section 53F-6-401.

### Section 15. **Repealer.**

This bill repeals:

Section **53F-6-101, Title.**

### Section 16. **Appropriation.**

The following sums of money are appropriated for the fiscal year beginning July 1, 2022, and ending June 30, 2023. These are additions to amounts previously appropriated for fiscal year 2023. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

### ITEM 1

#### To State Board of Education -- Contracted Initiatives and Grants

<u>From Education Fund</u>	<u>\$36,000,000</u>
----------------------------	---------------------

<u>From Education Fund, One-time</u>	<u>(\$34,000,000)</u>
--------------------------------------	-----------------------

#### Schedule of Programs:

<u>Hope Scholarship Program</u>	<u>\$2,000,000</u>
---------------------------------	--------------------

The Legislature intends that, in fiscal year 2023, the State Board of Education may provide up to \$2,000,000 to a scholarship granting organization contracted with the State



## **HB0331S05 compared with HB0331S03**

Board of Education in accordance with Section 53F-6-404 for start-up, marketing, and other costs with initiating the Hope Scholarship Program created in Section 53F-6-402.