

**Senator Luz Escamilla** proposes the following substitute bill:

1                   **SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM**

2                                   **AMENDMENTS**

3   2022 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Lincoln Fillmore**

6                                   House Sponsor: \_\_\_\_\_

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the Special Needs Opportunity Scholarship Program (the program).

11                   **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ modifies the duties and rulemaking authority of the State Board of Education in
- 14 relation to the program;
- 15                   ▶ provides that eligibility for a scholarship does not effect eligibility for an
- 16 individualized education program;
- 17                   ▶ authorizes the scholarship granting organizations to prepare and distribute
- 18 information about the program to parents who apply for a scholarship under the
- 19 program;
- 20                   ▶ clarifies what constitutes a fiscal year for purposes of reporting and administering
- 21 the program;
- 22                   ▶ modifies a scholarship granting organization's reporting deadline;
- 23                   ▶ allows a person that makes a donation to direct a donation to a particular school to
- 24 which a scholarship will be offered;
- 25                   ▶ provides for a one-year carry back of the income tax credit for making a donation to



26 the program; and  
27       ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29       None

30 **Other Special Clauses:**

31       This bill provides retrospective operation.

32 **Utah Code Sections Affected:**

33 AMENDS:

- 34       **53E-7-401**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 35       **53E-7-402**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 36       **53E-7-404**, as last amended by Laws of Utah 2021, Chapter 341
- 37       **53E-7-405**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 38       **53E-7-407**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 39       **53E-7-408**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 40       **59-7-625**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3
- 41       **59-10-1041**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

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

44       Section 1. Section **53E-7-401** is amended to read:

45       **53E-7-401. Definitions.**

46       As used in this part:

- 47       (1) "Eligible student" means a student who:
  - 48       (a) is eligible to participate in public school, in kindergarten or grades 1 through 12;
  - 49       (b) is a resident of the state;
  - 50       (c) (i) has an IEP; or
  - 51       (ii) is determined by a multidisciplinary evaluation team to be eligible for services
  - 52       under selected elements of the Individuals with Disabilities Education Act, Subchapter II, 20
  - 53       U.S.C. Secs. 1400 to 1419; and
  - 54       (d) during the school year for which the student is applying for the scholarship, is not:
    - 55       (i) a student who receives a scholarship under the Carson Smith Scholarship Program
    - 56       created in Section **53F-4-302**; or

57 (ii) a public school student.

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

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

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

63 (b) "Employee" does not include an individual who volunteers at the scholarship  
64 granting organization or qualifying school.

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

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

70 (5) "Multidisciplinary evaluation team" means one or more individuals:

71 (a) who are qualified in two or more separate disciplines or professions; and

72 (b) who evaluate a child.

73 [~~5~~] (6) "Officer" means:

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

75 or

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

78 [~~6~~] (7) "Program [~~donations~~] donation" means [~~donations~~] a donation to the program  
79 under Section 53E-7-405.

80 [~~7~~] (8) "Qualifying school" means a private school that:

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

82 (b) is approved by the state board under Section 53E-7-408; and

83 (c) meets the requirements described in Section 53E-7-403.

84 [~~8~~] (9) "Relative" means a father, mother, husband, wife, son, daughter, sister,  
85 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
86 sister-in-law, son-in-law, or daughter-in-law.

87 [~~9~~] (10) "Scholarship" means a grant awarded to an eligible student:

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

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

90 ~~[(10)]~~ (11) "Scholarship expense" means:

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

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

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

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

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

100 ~~[(11)]~~ (12) "Scholarship granting organization" means an organization that is:

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

102 (b) recognized through an agreement with the state board as a scholarship granting  
103 organization, as described in Section 53E-7-404.

104 ~~[(12)]~~ (13) "Scholarship student" means an eligible student who receives a scholarship  
105 under this part.

106 ~~[(13)]~~ (14) "Special Needs Opportunity Scholarship Program" or "program" means the  
107 program established in Section 53E-7-402.

108 ~~[(14)]~~ (15) "Value of the weighted pupil unit" means the amount established each year  
109 in the enacted public education budget that is multiplied by the number of weighted pupil units  
110 to yield the funding level for the basic state-supported school program.

111 Section 2. Section 53E-7-402 is amended to read:

112 **53E-7-402. Special Needs Opportunity Scholarship Program.**

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

116 (2) A scholarship granting organization shall:

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

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

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

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

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

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

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

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

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

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

134 (4) Eligibility for a scholarship as determined by a multidisciplinary evaluation team  
135 under this program does not establish eligibility for an IEP under the Individuals with  
136 Disabilities Education Act, Subchapter II, 20 U.S.C. Secs. 1400 to 1419, and is not binding on  
137 any LEA that is required to provide an IEP under the Individuals with Disabilities Education  
138 Act.

139 [~~(4)~~] (5) The [state board shall prepare and disseminate to a scholarship granting  
140 organization for distribution] scholarship granting organizations shall prepare and disseminate  
141 information on the program to a parent applying for a scholarship on behalf of a student[?].

142 [~~(a) information on the program; and~~]

143 [~~(b) information on how a parent may enroll the parent's child in a public school.]~~

144 [~~(5) A scholarship granting organization shall distribute the information described in~~  
145 ~~Subsection (4) to a parent who applies to the scholarship granting organization for a~~  
146 ~~scholarship on behalf of the parent's student.]~~

147 Section 3. Section **53E-7-404** is amended to read:

148 **53E-7-404. State board duties.**

149 [~~(1) The state board shall administer the program.]~~

- 150           (1) Nothing in this part:
- 151           (a) grants additional authority to the state board to regulate a scholarship granting  
152 organization except as expressly described in this part; or
- 153           (b) expands the regulatory authority of the state board to impose any additional  
154 regulation beyond the regulations necessary to enforce the requirements of the program.
- 155           (2) The state board shall:
- 156           ~~[(a) provide a tax credit certificate form, for use by a scholarship granting organization~~  
157 ~~as described in Section 53E-7-407, that includes:]~~
- 158           ~~[(i) the name, address, and social security number or federal employer identification~~  
159 ~~number of the person that makes a donation under Section 53E-7-405;]~~
- 160           ~~[(ii) the date of the donation;]~~
- 161           ~~[(iii) the amount of the donation;]~~
- 162           ~~[(iv) the amount of the tax credit, and]~~
- 163           ~~[(v) any other relevant information;]~~
- 164           (a) publish on the state board's website:
- 165           (i) information about the program; and
- 166           (ii) information about each scholarship granting organization;
- 167           (b) conduct a financial review or audit of a scholarship granting organization, if the  
168 state board receives evidence of fraudulent practice by the scholarship granting organization;
- 169           (c) conduct a criminal background check on each scholarship granting organization  
170 employee and scholarship granting organization officer;
- 171           (d) establish uniform financial accounting standards for scholarship granting  
172 organizations;
- 173           (e) annually calculate the amount of the program donations cap described in Section  
174 53E-7-407; and
- 175           (f) ~~[beginning in 2021,]~~ in accordance with Section 53E-1-202.1, annually submit a  
176 report on the program to the Public Education Appropriations Subcommittee that includes:
- 177           (i) for the 2020-21, 2021-22, 2022-23, and 2023-24 school years, the amount of tuition  
178 and fees a qualifying school charges;
- 179           (ii) administrative costs of the program;
- 180           (iii) the number of scholarship students from each school district;

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

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

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

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

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

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

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

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

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

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

204 (c) Any agreement entered into or amended under this Subsection (3) after May 4,  
205 2022, shall:

206 (i) be limited to memorializing the items required by this part; and

207 (ii) not impose additional regulations on a scholarship granting organization.

208 ~~[(c)]~~ (d) (i) No later than 10 days after the day on which the state board enters into an  
209 agreement with a scholarship granting organization, the state board shall forward the name and  
210 contact information of the scholarship granting organization to the State Tax Commission.

211 (ii) If, under Subsection (5)(c)(i), the state board bars a scholarship granting

212 organization from further participation in the program, the state board shall, no later than 10  
213 days after the day on which the state board bars the scholarship granting organization, forward  
214 the name and contact information of the barred scholarship granting organization to the State  
215 Tax Commission.

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

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

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

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

230 (d) A scholarship granting organization may not accept program donations while the  
231 scholarship granting organization:

- 232 (i) is barred from participating in the program under Subsection (5)(c)(i); or
- 233 (ii) has an appeal pending under Subsection (5)(c)(ii).

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

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

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

241 [~~(a) a scholarship granting organization's acceptance of program donations;~~]

242 [~~(b)~~] (a) the administration of scholarships to a qualifying school receiving scholarship



243 money from a scholarship granting organization that is barred from participating in the  
244 program under Subsection (5)(c)(i);

245 ~~[(c) payment of scholarship money to qualifying schools by a scholarship granting~~  
246 ~~organization;]~~

247 ~~[(d) granting scholarship awards and disbursing scholarship money for nontuition~~  
248 ~~scholarship expenses by a scholarship granting organization;]~~

249 ~~[(e)]~~ (b) when an eligible student does not continue in enrollment at a qualifying  
250 school:

251 (i) requiring the scholarship granting organization to:

252 (A) notify the state board; and

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

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

257 ~~[(f)]~~ (c) audit and report requirements as described in Section 53E-7-405; and

258 ~~[(g)]~~ (d) requiring the scholarship granting organization, in accordance with the Family  
259 Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, to submit to the state board:

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

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

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

264 (iv) any other information requested by the ~~[state board for the purpose of completing]~~

265 Public Education Appropriations Subcommittee for the state board to include in the annual  
266 report described in Section 53E-1-202.1.

267 Section 4. Section 53E-7-405 is amended to read:

268 **53E-7-405. Program donations -- Scholarship granting organization**  
269 **requirements.**

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

273 (2) In accordance with Section 53E-7-404, an organization may enter into an

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

275 (3) A scholarship granting organization shall:

276 (a) accept program donations and allow a person that makes a program donation to

277 designate a qualifying school to which the donation shall be directed for scholarships;

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

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

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

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

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

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

284 (f) ensure that during the state fiscal year:

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

286 donations is spent on scholarships;

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

288 donations is spent on administration of the program;

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

290 donations is spent on marketing and fundraising costs; and

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

292 scholarships;

293 (g) carry forward no more than 40% of the scholarship granting organization's program

294 donations from the state fiscal year in which the scholarship granting organization received the

295 program donations to the following state fiscal year;

296 (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater

297 than the amount described in Subsection (3)(g);

298 (i) prohibit a scholarship granting organization employee or officer from handling,

299 managing, or processing program donations, if, based on a criminal background check

300 conducted by the state board in accordance with Section [53E-7-404](#), the state board identifies

301 the employee or officer as posing a risk to the appropriate use of program donations;

302 (j) ensure that a scholarship can be transferred during the school year to a different

303 qualifying school that accepts the scholarship student;

304 (k) report to the state board on or before [~~June~~] October 1 of each year the following

305 information, prepared by a certified public accountant:

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

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

309 (iii) the total number and total dollar amount of scholarships the scholarship granting  
310 organization awarded during the previous [calendar] state fiscal year; and

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

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

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

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

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

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

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

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

326 "I acknowledge that:

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

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

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

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

335 (c) Upon acceptance of a scholarship, the parent assumes full financial responsibility

336 for the education of the scholarship recipient.

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

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

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

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

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

347 (a) complies with the uniform financial accounting standards described in Section  
348 [53E-7-404](#); and

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

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

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

354 (A) the scholarship granting organization; and

355 (B) the scholarship granting organization's accounts and records pertaining to program  
356 donations; and

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

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

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

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

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

367 board.

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

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

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

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

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

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

382 (b) A scholarship granting organization shall notify a scholarship recipient if the  
383 scholarship granting organization stops allocation of the recipient's scholarship money to a  
384 qualifying school under Subsection (8)(a).

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

388 (10) A scholarship granting organization may not:

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

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

393 Section 5. Section **53E-7-407** is amended to read:

394 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

395 (1) In accordance with this section and subject to Subsection (3), a scholarship granting  
396 organization shall provide a tax credit certificate, on a form provided by the State Tax  
397 Commission, to a person that makes a donation as described in Section **53E-7-405**.

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

400           ~~[(b)]~~ (2) (a) The scholarship granting organization shall provide the information from a  
401 completed tax credit certificate to the State Tax Commission electronically and in a manner  
402 prescribed by the State Tax Commission.

403           ~~[(c)]~~ (b) A scholarship granting organization shall issue a tax credit certificate within  
404 30 days after the day on which a person makes a donation to the program.

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

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

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

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

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

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

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

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

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

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

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

428           (i) if the total program donations for the previous calendar year exceed 90% of the cap

429 amount for that calendar year, the cap for the current calendar year is the cap amount for the  
430 previous calendar year increased by 10%; or

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

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

437 Section 6. Section 53E-7-408 is amended to read:

438 **53E-7-408. Eligible private schools.**

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

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

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

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

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

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

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

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

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

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

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

- 460 (ii) tuition costs;
- 461 (iii) additional fees a parent will be required to pay during the school year; and
- 462 (iv) the skill or grade level of the curriculum in which the prospective student will
- 463 participate;
- 464 (f) (i) administer an annual assessment of each scholarship student's academic
- 465 progress; and
- 466 (ii) report the results of the assessment described in Subsection (1)(f)(i) to the
- 467 scholarship student's parent;
- 468 (g) employ or contract with teachers who:
- 469 (i) hold baccalaureate or higher degrees;
- 470 (ii) have at least three years of teaching experience in public or private schools; or
- 471 (iii) have the necessary skills, knowledge, or expertise that qualifies the teacher to
- 472 provide instruction:
- 473 (A) in the subject or subjects taught; and
- 474 (B) to the special needs students taught;
- 475 (h) maintain documentation demonstrating that teachers at the private school meet the
- 476 qualifications described in Subsection (1)(g);
- 477 (i) require the following individuals to submit to a nationwide, fingerprint-based
- 478 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),
- 479 as a condition for employment or appointment, as authorized by the Adam Walsh Child
- 480 Protection and Safety Act of 2006, Pub. L. No. 109-248:
- 481 (i) an employee who does not hold a current Utah educator license issued by the state
- 482 board under Chapter 6, Education Professional Licensure;
- 483 (ii) a contract employee; and
- 484 (iii) a volunteer who is given significant unsupervised access to a student in connection
- 485 with the volunteer's assignment; and
- 486 (j) provide to the parent of a scholarship student the relevant credentials of the teachers
- 487 who will be teaching the scholarship student.
- 488 (2) A private school is not eligible to enroll scholarship students if:
- 489 (a) the private school requires a student to sign a contract waiving the student's rights
- 490 to transfer to another qualifying school during the school year;



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

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

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

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

499 (5) A private school intending to enroll scholarship students shall submit an application  
500 to the state board [~~by May 1 of the school year preceding the school year in which the private~~  
501 ~~school intends to enroll scholarship students~~].

502 (6) The state board shall:

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

505 (b) [~~make available to the public~~] publish on the state board's website, a list of private  
506 schools approved under this section.

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

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

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

511 Section 7. Section **59-7-625** is amended to read:

512 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**  
513 **Scholarship Program.**

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

517 (2) [~~(a)~~] If the amount of a tax credit listed on the tax credit certificate exceeds a  
518 taxpayer's liability under this chapter for a taxable year, the taxpayer:

519 (a) may carry forward the amount of the tax credit exceeding the liability for a period  
520 that does not exceed the next three taxable years[-]; and

521 (b) [~~A taxpayer may not~~] may carry back the amount of the tax credit that exceeds the

522 taxpayer's tax liability [~~for the~~] to the previous taxable year.

523 Section 8. Section **59-10-1041** is amended to read:

524 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**  
525 **Scholarship Program.**

526 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a  
527 donation to the Special Needs Opportunity Scholarship Program established in Section  
528 [53E-7-402](#)[;] may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax  
529 credit certificate issued in accordance with Section 53E-7-407.

530 (2) [~~(a)~~] If the amount of a tax credit listed on the tax credit certificate exceeds a  
531 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,  
532 estate, or trust:

533 (a) may carry forward the amount of the tax credit exceeding the liability for a period  
534 that does not exceed the next three taxable years[;]; and

535 (b) [~~A claimant, estate, or trust may not~~] may carry back the amount of the tax credit  
536 that exceeds the claimant's, estate's, or trust's tax liability [~~for the~~] to the previous taxable year.

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

541 Section 9. **Retrospective operation.**

542 The changes to the following sections have retrospective operation for a taxable year  
543 beginning on or after January 1, 2022:

544 (1) Section [59-7-625](#); and

545 (2) Section [59-10-1041](#).