

Senator Lincoln Fillmore proposes the following substitute bill:

SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM

AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ expands eligibility for the program to include siblings of scholarship students under certain circumstances;
- ▶ modifies the duties and rulemaking authority of the State Board of Education in relation to the program;
- ▶ provides that eligibility for a scholarship does not affect eligibility for an individualized education program;
- ▶ authorizes the scholarship granting organizations to prepare and distribute information about the program to parents who apply for a scholarship under the program;
- ▶ clarifies what constitutes a fiscal year for purposes of reporting and administering the program;
- ▶ modifies a scholarship granting organization's reporting deadline;
- ▶ allows a person that makes a donation to direct a donation to a particular school to



26 which a scholarship will be offered;

27 ▶ provides for a one-year carry back of the income tax credit for making a donation to
28 the program; and

29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides retrospective operation.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **53E-7-401**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

37 **53E-7-402**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

38 **53E-7-404**, as last amended by Laws of Utah 2021, Chapter 341

39 **53E-7-405**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

40 **53E-7-407**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

41 **53E-7-408**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

42 **59-7-625**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

43 **59-10-1041**, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3



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

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

47 **53E-7-401. Definitions.**

48 As used in this part:

49 (1) "Eligible student" means:

50 (a) a student who:

51 ~~[(a)]~~ (i) is eligible to participate in public school, in kindergarten or grades 1 through
52 12;

53 ~~[(b)]~~ (ii) is a resident of the state;

54 ~~[(c)-(i)]~~ (iii) (A) has an IEP; or

55 ~~[(ii)]~~ (B) is determined by a multidisciplinary evaluation team to be eligible for

56 services under ~~[the Individuals with Disabilities Education Act, Subchapter H, 20 U.S.C. Secs.~~

57 ~~1400 to 1419]~~ 20 U.S.C. Sec. 1401(3); and

58 ~~[(iv)]~~ (iv) during the school year for which the student is applying for the scholarship, is
59 not:

60 ~~[(i)]~~ (A) a student who receives a scholarship under the Carson Smith Scholarship

61 Program created in Section 53F-4-302; or

62 ~~[(ii)]~~ (B) a public school student~~[-]; or~~

63 (b) a student who:

64 (i) meets the requirement of Subsections (1)(a)(i) and (ii); and

65 (ii) is a sibling of and resides in the same household as a student described in

66 Subsection (1)(a) if:

67 (A) the student described in Subsection (1)(a) is a scholarship student and has verified
68 enrollment or intent to enroll at a qualifying school; and

69 (B) the sibling is applying for a scholarship to attend the same qualifying school.

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

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

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

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

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

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

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

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

84 (b) who evaluate a child.

85 ~~[(5)]~~ (6) "Officer" means:

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

87 or

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

90 ~~[(6)]~~ (7) "Program ~~[donations]~~ donation" means ~~[donations]~~ a donation to the program
91 under Section [53E-7-405](#).

92 ~~[(7)]~~ (8) "Qualifying school" means a private school that:

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

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

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

96 ~~[(8)]~~ (9) "Relative" means a father, mother, husband, wife, son, daughter, sister,
97 brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
98 sister-in-law, son-in-law, or daughter-in-law.

99 ~~[(9)]~~ (10) "Scholarship" means a grant awarded to an eligible student:

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

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

102 ~~[(10)]~~ (11) "Scholarship expense" means:

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

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

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

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

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

112 ~~[(11)]~~ (12) "Scholarship granting organization" means an organization that is:

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

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

116 ~~[(12)]~~ (13) "Scholarship student" means an eligible student who receives a scholarship
117 under this part.

118 ~~[(13)]~~ (14) "Special Needs Opportunity Scholarship Program" or "program" means the

119 program established in Section [53E-7-402](#).

120 ~~[(14)]~~ (15) "Value of the weighted pupil unit" means the amount established each year
 121 in the enacted public education budget that is multiplied by the number of weighted pupil units
 122 to yield the funding level for the basic state-supported school program.

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

124 **53E-7-402. Special Needs Opportunity Scholarship Program.**

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

128 (2) (a) A scholarship granting organization shall:

129 ~~[(a)]~~ (i) award, in accordance with this part, scholarships to eligible students; and

130 ~~[(b)]~~ (ii) determine the amount of a scholarship in accordance with Subsection (3).

131 (b) In awarding scholarships, a scholarship granting organization shall give priority to
 132 an eligible student described in Subsection [53E-7-401\(1\)\(a\)](#) by:

133 (i) establishing an August 10 deadline for an eligible student described in Subsection
 134 [53E-7-401\(1\)\(b\)](#) to apply for a scholarship; and

135 (ii) awarding a scholarship to an eligible student described in Subsection
 136 [53E-7-401\(1\)\(b\)](#) only if funds exist after awarding scholarships to all eligible students
 137 described in Subsection [53E-7-401\(1\)\(a\)](#) who have applied and qualify.

138 (c) Subject to available funds, a scholarship awarded to an eligible student described in
 139 Subsection [53E-7-401\(1\)\(b\)](#) shall be for a similar term as a scholarship awarded to the eligible
 140 student's sibling.

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

143 (a) for an eligible student described in Subsection [53E-7-401\(1\)\(a\)](#) who is:

144 (i) in grades 1 through 12 with an IEP[;] and whose family income is:

145 ~~[(i)]~~ (A) at or below 185% of the federal poverty level, the value of the weighted pupil
 146 unit multiplied by 2.5;

147 ~~[(ii)]~~ (B) between 185% and 555% of the federal poverty level, the value of the
 148 weighted pupil unit multiplied by two; or

149 ~~[(iii)]~~ (C) above 555% of the federal poverty level, the value of the weighted pupil unit

150 multiplied by 1.5;

151 ~~[(b) for an eligible student]~~ (ii) in grades 1 through 12 and who does not have an IEP,
152 the value of the weighted pupil unit;

153 ~~[(c) for an eligible student]~~ (iii) in kindergarten with an IEP, the value of the weighted
154 pupil unit; or

155 ~~[(d) for an eligible student]~~ (iv) in kindergarten and who does not have an IEP, half the
156 value of the weighted pupil unit~~[-]; or~~

157 (b) for an eligible student described in Subsection 53E-7-401(1)(b), half the value of
158 the weighted pupil unit.

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

164 ~~[(4)]~~ (5) The ~~[state board shall prepare and disseminate to a scholarship granting~~
165 ~~organization for distribution]~~ scholarship granting organizations shall prepare and disseminate
166 information on the program to a parent applying for a scholarship on behalf of a student~~[-].~~

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

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

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

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

173 **53E-7-404. State board duties.**

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

175 (1) Nothing in this part:

176 (a) grants additional authority to the state board to regulate a scholarship granting
177 organization except as expressly described in this part; or

178 (b) expands the regulatory authority of the state board to impose any additional
179 regulation beyond the regulations necessary to enforce the requirements of the program.

180 (2) The state board shall:

181 ~~[(a) provide a tax credit certificate form, for use by a scholarship granting organization~~
182 ~~as described in Section 53E-7-407, that includes:]~~

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

185 ~~[(ii) the date of the donation;]~~

186 ~~[(iii) the amount of the donation;]~~

187 ~~[(iv) the amount of the tax credit; and]~~

188 ~~[(v) any other relevant information;]~~

189 (a) publish on the state board's website:

190 (i) information about the program; and

191 (ii) information about each scholarship granting organization;

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

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

196 (d) establish uniform financial accounting standards for scholarship granting
197 organizations;

198 (e) annually calculate the amount of the program donations cap described in Section
199 53E-7-407; and

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

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

204 (ii) administrative costs of the program;

205 (iii) the number of scholarship students that are eligible students described in
206 Subsection 53E-7-401(1)(a) and the number of scholarship students that are eligible students
207 described in Subsection 53E-7-401(1)(b) from each school district;

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

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

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

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

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

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

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

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

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

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

231 (c) Any agreement entered into or amended under this Subsection (3) after May 4,
232 2022, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

278 (i) requiring the scholarship granting organization to:

279 (A) notify the state board; and

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

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

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

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

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

289 (ii) the number of scholarship students that are eligible students described in
290 Subsection 53E-7-401(1)(a) and the number of scholarship students that are eligible students
291 described in Subsection 53E-7-401(1)(b) from each school district;

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

293 (iv) any other information requested by the ~~[state board for the purpose of completing]~~
294 Public Education Appropriations Subcommittee for the state board to include in the annual
295 report described in Section 53E-1-202.1.

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

297 **53E-7-405. Program donations -- Scholarship granting organization**
298 **requirements.**

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

302 (2) In accordance with Section 53E-7-404, an organization may enter into an
303 agreement with the state board to be a scholarship granting organization.

304 (3) A scholarship granting organization shall:

- 305 (a) accept program donations and allow a person that makes a program donation to
306 designate a qualifying school to which the donation shall be directed for scholarships;
- 307 (b) adopt an application process in accordance with Subsection (5);
- 308 (c) review scholarship applications and determine scholarship awards;
- 309 (d) allocate scholarship money to a scholarship student's parent or, on the parent's
310 behalf, to a qualifying school in which the scholarship student is enrolled;
- 311 (e) adopt a process, with state board approval, that allows a parent to use a scholarship
312 to pay for a nontuition scholarship expense for the scholarship student;
- 313 (f) ensure that during the state fiscal year:
- 314 (i) at least 92% of the scholarship granting organization's revenue from program
315 donations is spent on scholarships;
- 316 (ii) up to 5% of the scholarship granting organization's revenue from program
317 donations is spent on administration of the program;
- 318 (iii) up to 3% of the scholarship granting organization's revenue from program
319 donations is spent on marketing and fundraising costs; and
- 320 (iv) all revenue from program donations' interest or investments is spent on
321 scholarships;
- 322 (g) carry forward no more than 40% of the scholarship granting organization's program
323 donations from the state fiscal year in which the scholarship granting organization received the
324 program donations to the following state fiscal year;
- 325 (h) at the end of a state fiscal year, remit to the state treasurer donation amounts greater
326 than the amount described in Subsection (3)(g);
- 327 (i) prohibit a scholarship granting organization employee or officer from handling,
328 managing, or processing program donations, if, based on a criminal background check
329 conducted by the state board in accordance with Section 53E-7-404, the state board identifies
330 the employee or officer as posing a risk to the appropriate use of program donations;
- 331 (j) ensure that a scholarship can be transferred during the school year to a different
332 qualifying school that accepts the scholarship student;
- 333 (k) report to the state board on or before [~~June~~] October 1 of each year the following
334 information, prepared by a certified public accountant:
- 335 (i) the name and address of the scholarship granting organization;

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

338 (iii) (A) the total number and total dollar amount of scholarships the scholarship
339 granting organization awarded during the previous [~~calendar year, and~~] state fiscal year to
340 eligible students described in Subsection 53E-7-401(1)(a); and

341 (B) the total number and total dollar amount of scholarships the scholarship granting
342 organization awarded during the previous state fiscal year to eligible students described in
343 Subsection 53E-7-401(1)(b); and

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

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

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

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

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

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

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

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

359 "I acknowledge that:

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

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

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

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

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

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

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

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

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

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

380 (a) complies with the uniform financial accounting standards described in Section
381 [53E-7-404](#); and

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

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

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

387 (A) the scholarship granting organization; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

421 (10) A scholarship granting organization may not:

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

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

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

427 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

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

429 organization shall provide a tax credit certificate, on a form provided by the State Tax
430 Commission, to a person that makes a donation as described in Section 53E-7-405.

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

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

436 ~~[(c)]~~ (b) A scholarship granting organization shall issue a tax credit certificate within
437 30 days after the day on which a person makes a donation to the program.

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

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

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

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

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

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

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

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

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

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

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

460 cap as follows:

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

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

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

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

471 **53E-7-408. Eligible private schools.**

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

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

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

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

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

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

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

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

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

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

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

493 (ii) tuition costs;

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

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

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

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

501 (g) employ or contract with teachers who:

502 (i) hold baccalaureate or higher degrees;

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

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

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

507 (B) to the special needs students taught;

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

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

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

516 (ii) a contract employee; and

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

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

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

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

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

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

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

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

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

535 (6) The state board shall:

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

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

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

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

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

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

545 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**
546 **Scholarship Program.**

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

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

552 (a) may carry forward the amount of the tax credit exceeding the liability for a period

553 that does not exceed the next three taxable years[-]; and

554 (b) [~~A taxpayer may not~~] may carry back the amount of the tax credit that exceeds the
555 taxpayer's tax liability [~~for the~~] to the previous taxable year.

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

557 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**
558 **Scholarship Program.**

559 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a
560 donation to the Special Needs Opportunity Scholarship Program established in Section
561 [53E-7-402](#)[-] may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax
562 credit certificate issued in accordance with Section 53E-7-407.

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

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

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

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

574 Section 9. **Retrospective operation.**

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

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

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