

## SB0062S04 compared with SB0062S03

~~text~~ shows text that was in SB0062S03 but was deleted in SB0062S04.

text shows text that was not in SB0062S03 but was inserted into SB0062S04.

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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: \_\_\_\_\_

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#### 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;

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- ▶ 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 which a scholarship will be offered;
- ▶ provides for a one-year carry back of the income tax credit for making a donation to the program; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides retrospective operation.

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

As used in this part:

(1) "Eligible student" means:

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(a) a student who:

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

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

~~(c)~~ (i) (iii) (A) has an IEP; or

~~(ii)~~ (B) is determined by a multidisciplinary evaluation team to be eligible for services under ~~[the Individuals with Disabilities Education Act, Subchapter H, 20 U.S.C. Secs. 1400 to 1419]~~ 20 U.S.C. Sec. 1401(3); and

~~(d)~~ (iv) during the school year for which the student is applying for the scholarship, is not:

~~(i)~~ (A) a student who receives a scholarship under the Carson Smith Scholarship Program created in Section 53F-4-302; or

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

(b) a student who:

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

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

Subsection (1)(a) if:

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

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

(2) (a) "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:

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

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

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

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

(4) "Federal poverty level" means the poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and

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Human Services in the Federal Register.

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

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

(b) who evaluate a child.

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

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

or

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

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

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

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

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

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

~~[(8)]~~ (9) "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.

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

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

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

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

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

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

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

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

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

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~~[(11)]~~ (12) "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 53E-7-404.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(a) for an eligible student described in Subsection 53E-7-401(1)(a) who is:

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

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

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

[(+)] (C) above 555% of the federal poverty level, the value of the weighted pupil unit multiplied by 1.5;

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

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

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

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

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

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

[(a) information on the program; and]

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

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

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

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

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

~~[(2) (1) Nothing in this part.]~~

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

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

~~— (2) The state board shall:~~

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

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

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

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

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

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

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

~~(i) information about the program; and~~

~~(ii) information about each scholarship granting organization;~~

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

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

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

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

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

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

~~(ii) administrative costs of the program;~~

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

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

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

~~[(3)]~~1(2) (a) In accordance with Subsection ~~[(4)]~~1(3) and Title 63G, Chapter 6a, Utah Procurement Code, the state board shall issue a request for proposals and enter into at least one agreement with an 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 ~~[(3)]~~1(2)(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 application process.

~~[(4)]~~1(3) (a) The state board shall enter into an agreement described in Subsection ~~[(3)]~~1(2)(a) with one scholarship granting organization on or before January 1, 2021.

(b) The state board may enter into an agreement described in Subsection ~~[(3)]~~1(2)(a) with additional scholarship granting organizations after January 1, 2023, if the state board makes rules regarding how multiple scholarship granting organizations may issue tax credit certificates in accordance with Section 53E-7-407.

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

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

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

~~}~~ ~~{(c)}~~1(d) (i) No later than 10 days after the day on which the state board enters into



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

(ii) If, under Subsection ~~[(5)](4)(c)(i)~~, the state board bars a scholarship granting organization from further participation in the program, the state board shall, no later than 10 days after the day on which the state board bars the scholarship granting organization, forward the name and contact information of the barred scholarship granting organization to the State Tax Commission.

~~[(5)](4)~~ (a) If the state board determines that a scholarship granting organization has 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 ~~[(5)](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 ~~[(5)](4)(a)~~ fails to correct a violation in the time period described in Subsection ~~[(5)](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 ~~[(5)](4)(c)(i)~~ in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

- (i) is barred from participating in the program under Subsection ~~[(5)](4)(c)(i)~~; or
- (ii) has an appeal pending under Subsection ~~[(5)](4)(c)(ii)~~.

(e) A scholarship granting organization that has an appeal pending under Subsection ~~[(5)](4)(c)(ii)~~ may continue to administer scholarships from previously donated program donations during the pending appeal.

~~[(6)](5)~~ The state board shall provide for a process for a scholarship granting organization to report information as required under Section 53E-7-405.

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~~[(7)]~~ [(6)] The state board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the program, including rules for:

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

~~[(b)]~~ [(a)] the administration of scholarships to a qualifying school receiving scholarship money from a scholarship granting organization that is barred from participating in the program under Subsection ~~[(5)]~~ [(4)](c)(i);

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

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

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

(i) requiring the scholarship granting organization to:

(A) notify the state board; and

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

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

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

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

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

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

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

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

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

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### 53E-7-405. Program donations -- Scholarship granting organization requirements.

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

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

(3) A scholarship granting organization shall:

(a) accept program donations and allow a person that makes a program donation to designate a qualifying school to which the donation shall be directed for scholarships;

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

(c) review scholarship applications and determine scholarship awards;

(d) allocate scholarship money to a scholarship student's parent or, on the parent's behalf, to a qualifying school in which the scholarship student is enrolled;

(e) adopt a process, with state board approval, that allows a parent to use a scholarship to pay for a nontuition scholarship expense for the scholarship student;

(f) ensure that during the state fiscal year:

(i) at least 92% of the scholarship granting organization's revenue from program donations is spent on scholarships;

(ii) up to 5% of the scholarship granting organization's revenue from program donations is spent on administration of the program;

(iii) up to 3% of the scholarship granting organization's revenue from program donations is spent on marketing and fundraising costs; and

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

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

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

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

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managing, or processing program donations, if, based on a criminal background check conducted by the state board in accordance with Section 53E-7-404, the state board identifies the employee or officer as posing a risk to the appropriate use of program donations;

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

(k) report to the state board on or before [~~June~~] October 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 granting organization received during the previous calendar year;

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

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

(iv) the percentage of first-time scholarship recipients 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;

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

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

(i) receives scholarship money for tuition expenses; and

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

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

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

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

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"I acknowledge that:

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

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

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

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

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

(d) Acceptance of a scholarship has the same effect as a parental refusal to consent to services as described in 24 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 granting of a scholarship 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.

(6) 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:

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

(b) is prepared by a certified public accountant.

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

(i) contract for an annual audit, 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 program donations; and

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

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

(i) include the scholarship granting organization's financial statements in a format that meets generally accepted accounting standards; 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 (7)(a)(i) in accordance with generally accepted auditing standards and rules made by the state board.

(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 (7) or rules adopted by the state board.

(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 (7)(d)(i).

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

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

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

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

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

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

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(10) A scholarship granting organization may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) track the total amount of program donations received during the year as

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corresponding tax credit certificates are issued.

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

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

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

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

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

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

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

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

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

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

(b) (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



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(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 state board when the private school applies to accept scholarship students;

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

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

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

(i) the special education services that will be provided to the student, including the 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 student will participate;

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

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

(g) 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:

(A) in the subject or subjects taught; and

(B) to the special needs students taught;

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

(i) 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:

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- (i) an employee who does not hold a current Utah educator license issued by the state board under Chapter 6, Education Professional Licensure;
  - (ii) a contract employee; and
  - (iii) a volunteer who is given significant unsupervised access to a student in connection with the volunteer's assignment; and
  - (j) 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 is not eligible to enroll scholarship students if:
- (a) the private school requires a student to sign a contract waiving the student's rights to transfer to another qualifying school during the school year;
  - (b) the audit report submitted under Subsection (1)(b) contains a going concern explanatory paragraph; or
  - (c) the report of the agreed upon procedures submitted under Subsection (1)(b) shows that the private school does not have adequate working capital to maintain operations for the first full year, as determined under Subsection (1)(b).
- (3) A home school is not eligible to enroll scholarship students.
- (4) Residential treatment facilities licensed by the state are not eligible to enroll scholarship students.
- (5) A private school intending to enroll scholarship students shall submit an application to the state board [~~by May 1 of the school year preceding the school year in which the private school intends to enroll scholarship students~~].
- (6) The state board shall:
- (a) approve a private school's application to enroll scholarship students, if the private school meets the eligibility requirements of this section; and
  - (b) [~~make available to the public~~] publish on the state board's website, a list of private schools approved under this section.
- (7) A private school approved under this section that changes ownership shall:
- (a) submit a new application to the state board; and
  - (b) demonstrate that the private school continues to meet the eligibility requirements of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. **Retrospective operation.**

The changes to the following sections have retrospective operation for a taxable year

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beginning on or after January 1, 2022:

- (1) Section 59-7-625; and
- (2) Section 59-10-1041.