

HB0215S07 compared with HB0215S06

~~{deleted text}~~ shows text that was in HB0215S06 but was deleted in HB0215S07.

inserted text shows text that was not in HB0215S06 but was inserted into HB0215S07.

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

~~{Representative Angela Romero}~~Senator Karen Kwan proposes the following substitute bill:

FUNDING FOR~~{TEACHER SALARIES AND}~~ OPTIONAL EDUCATION

OPPORTUNITIES

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill establishes the Utah Fits All Scholarship Program and provides funding for the program ~~{and a doubling of an educator salary adjustment}~~.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes the Utah Fits All Scholarship Program (program);
- ▶ requires the state board to contract with, no later than September 1, 2023, a program manager to administer the program;

HB0215S07 compared with HB0215S06

- ▶ authorizes the program manager to establish scholarship accounts on behalf of eligible students to pay for approved education goods and services starting in the 2024-2025 school year;
- ▶ prohibits a program manager from accepting scholarship funds in certain circumstances and requires other fiscal safeguards, auditing, and accountability measures;
- ▶ requires eligible schools and service providers to meet certain standards to be eligible to receive scholarship funds;
- ▶ establishes an annual and private portfolio submission to the program manager as an eligibility qualification;
- ▶ allows for a scholarship student to receive a prorated scholarship award if the student participates part-time in a local education agency;
- ▶ authorizes the program manager to administer the program and distribute scholarship funds;
- ▶ requires the state board to provide limited oversight of the program manager, including an appeal process for the program manager's administrative decisions;
- ▶ prohibits certain regulations of eligible schools and eligible service providers;
- ▶ requires background checks for employees and officers of a program manager;
- ▶ enacts program funding provisions;
- ▶ requires a program manager and the State Board of Education (state board) to submit reports on the program to the Public Education Interim Committee;
- ▶ classifies scholarship student's and scholarship account information as protected records; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

~~{This bill appropriates in fiscal year 2024:~~

~~— to State Board of Education -- Contracted Initiatives and Grants -- Utah Fits All Scholarship Program, as an appropriation:~~

~~• from Income Tax Fund, ongoing \$42,500,000; and~~

~~• from Income Tax Fund, one-time (\$41,500,000), leaving \$1,000,000 for Fiscal Year 2024.} None~~

HB0215S07 compared with HB0215S06

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53E-1-201, as last amended by Laws of Utah 2022, Chapters 147, 229, 274, 285, 291, 354, and 461

63G-2-305, as last amended by Laws of Utah 2022, Chapters 11, 109, 198, 201, 303, 335, 388, 391, and 415

ENACTS:

53F-6-401, Utah Code Annotated 1953

53F-6-402, Utah Code Annotated 1953

53F-6-403, Utah Code Annotated 1953

53F-6-404, Utah Code Annotated 1953

53F-6-405, Utah Code Annotated 1953

53F-6-406, Utah Code Annotated 1953

53F-6-407, Utah Code Annotated 1953

53F-6-408, Utah Code Annotated 1953

53F-6-409, Utah Code Annotated 1953

53F-6-410, Utah Code Annotated 1953

53F-6-411, Utah Code Annotated 1953

53F-6-412, Utah Code Annotated 1953

53F-6-413, Utah Code Annotated 1953

53F-6-414, Utah Code Annotated 1953

REPEALS:

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

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

Section 1. Section **53E-1-201** is amended to read:

53E-1-201. Reports to and action required of the Education Interim Committee.

(1) In accordance with applicable provisions and Section 68-3-14, the following recurring reports are due to the Education Interim Committee:

HB0215S07 compared with HB0215S06

(a) the report described in Section 9-22-109 by the STEM Action Center Board, including the information described in Section 9-22-113 on the status of the computer science initiative and Section 9-22-114 on the Computing Partnerships Grants Program;

(b) the prioritized list of data research described in Section 53B-33-302 and the report on research and activities described in Section 53B-33-304 by the Utah Data Research Center;

(c) the report described in Section 35A-15-303 by the State Board of Education on preschool programs;

(d) the report described in Section 53B-1-402 by the Utah Board of Higher Education on career and technical education issues and addressing workforce needs;

(e) the annual report of the Utah Board of Higher Education described in Section 53B-1-402;

(f) the reports described in Section 53B-28-401 by the Utah Board of Higher Education regarding activities related to campus safety;

(g) the State Superintendent's Annual Report by the state board described in Section 53E-1-203;

(h) the annual report described in Section 53E-2-202 by the state board on the strategic plan to improve student outcomes;

(i) the report described in Section 53E-8-204 by the state board on the Utah Schools for the Deaf and the Blind;

(j) the report described in Section 53E-10-703 by the Utah Leading through Effective, Actionable, and Dynamic Education director on research and other activities;

(k) the report described in Section 53F-2-522 regarding mental health screening programs;

(l) the report described in Section 53F-4-203 by the state board and the independent evaluator on an evaluation of early interactive reading software;

(m) the report described in Section 53F-4-407 by the state board on UPSTART;

(n) the reports described in Sections 53F-5-214 and 53F-5-215 by the state board related to grants for professional learning and grants for an elementary teacher preparation assessment;

(o) upon request, the report described in Section 53F-5-219 by the state board on the Local Innovations Civics Education Pilot Program;

HB0215S07 compared with HB0215S06

(p) the report described in Section 53F-5-405 by the State Board of Education regarding an evaluation of a partnership that receives a grant to improve educational outcomes for students who are low income;

(q) the report described in Section 53B-35-202 regarding the Higher Education and Corrections Council;

(r) the report described in Section 53G-7-221 by the State Board of Education regarding innovation plans; ~~and~~

(s) the annual report described in Section 63A-2-502 by the Educational Interpretation and Translation Service Procurement Advisory Council[-]; and

(t) the reports described in Section 53F-6-412 regarding the Utah Fits All Scholarship Program.

(2) In accordance with applicable provisions and Section 68-3-14, the following occasional reports are due to the Education Interim Committee:

(a) the report described in Section 35A-15-303 by the School Readiness Board by November 30, 2020, on benchmarks for certain preschool programs;

(b) the report described in Section 53B-28-402 by the Utah Board of Higher Education on or before the Education Interim Committee's November 2021 meeting;

(c) if required, the report described in Section 53E-4-309 by the state board explaining the reasons for changing the grade level specification for the administration of specific assessments;

(d) if required, the report described in Section 53E-5-210 by the state board of an adjustment to the minimum level that demonstrates proficiency for each statewide assessment;

(e) in 2022 and in 2023, on or before November 30, the report described in Subsection 53E-10-309(7) related to the PRIME pilot program;

(f) the report described in Section 53E-10-702 by Utah Leading through Effective, Actionable, and Dynamic Education;

(g) if required, the report described in Section 53F-2-513 by the state board evaluating the effects of salary bonuses on the recruitment and retention of effective teachers in high poverty schools;

(h) the report described in Section 53F-5-210 by the state board on the Educational Improvement Opportunities Outside of the Regular School Day Grant Program;

HB0215S07 compared with HB0215S06

- (i) upon request, a report described in Section 53G-7-222 by an LEA regarding expenditure of a percentage of state restricted funds to support an innovative education program;
- (j) the report described in Section 53G-7-503 by the state board regarding fees that LEAs charge during the 2020-2021 school year;
- (k) the reports described in Section 53G-11-304 by the state board regarding proposed rules and results related to educator exit surveys; and
- (l) the report described in Section 62A-15-117 by the Division of Substance Abuse and Mental Health, the State Board of Education, and the Department of Health regarding recommendations related to Medicaid reimbursement for school-based health services.

Section 2. Section **53F-6-401** is enacted to read:

Part 4. Utah Fits All Scholarship Program

53F-6-401. Definitions.

As used in this part:

(1) "Eligible student" means a student:

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

(b) who is a resident of the state;

(c) who, during the school year for which the student is applying for a scholarship account:

(i) does not receive a scholarship under:

(A) the Carson Smith Scholarship Program established in Section 53F-4-302; or

(B) the Special Needs Opportunity Scholarship Program established in Section 53E-7-402; and

(ii) except for a student who is enrolled part-time in accordance with Section 53G-6-702, is not enrolled in an LEA upon receiving the scholarship;

(d) whose eligibility is not suspended or disqualified under Section 53F-6-401; and

(e) who completes, to maintain eligibility, the portfolio requirement described in Subsection 53F-6-402(3)(d).

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

HB0215S07 compared with HB0215S06

Health and Human Services in the Federal Register.

(3) (a) "Home-based scholarship student" means a student who:

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

(ii) is excused from enrollment in an LEA in accordance with Section 53G-6-204 to attend a home school; and

(iii) receives a benefit of scholarship funds.

(b) "Home-based scholarship student" does not mean a home school student who does not receive a scholarship under the program.

(4) "Program manager" means an organization that:

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

(b) is not affiliated with any international organization;

(c) does not harvest data for the purpose of reproducing or distributing the data to other entities;

(d) has no involvement in guiding or directing any curriculum or curriculum standards;

(e) does not manage or otherwise administer a scholarship under:

(i) the Carson Smith Scholarship Program established in Section 53F-4-302; or

(ii) the Special Needs Opportunity Scholarship Program established in Section 53E-7-402; and

(f) an agreement with the state board recognizes as a program manager, in accordance with this part.

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

(b) "Program manager employee" does not include:

(i) an individual who volunteers for the program manager or for a qualifying provider;

(ii) an individual who works for a qualifying provider; or

(iii) a qualifying provider.

(6) "Program manager officer" means:

(a) a member of the board of a program manager; or

(b) the chief administrative officer of a program manager.

(7) "Qualifying provider" means one of the following entities that is not a public school

HB0215S07 compared with HB0215S06

and is autonomous and not an agent of the state, in accordance with Section 53F-6-406:

(a) an eligible school that the program manager approves in accordance with Section 53F-6-408; or

(b) an eligible service provider that the program manager approves in accordance with Section 53F-6-409.

(8) "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) "Scholarship account" means the account to which a program manager allocates funds for the payment of approved scholarship expenses in accordance with this part.

(10) "Scholarship expense" means an expense described in Section 53F-6-402 that a parent or scholarship student incurs in the education of the scholarship student for a service or goods that a qualifying provider provides, including:

(a) tuition and fees of a qualifying provider;

(b) fees and instructional materials at a technical college;

(c) tutoring services;

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

(e) textbooks, curricula, or other instructional materials, including any supplemental materials or associated online instruction that a curriculum or a qualifying provider recommends;

(f) educational software and applications;

(g) supplies or other equipment related to a scholarship student's educational needs;

(h) computer hardware or other technological devices that are intended primarily for a scholarship student's educational needs;

(i) fees for the following examinations, or for a preparation course for the following examinations, that the program manager approves:

(i) a national norm-referenced or standardized assessment described in Section 53F-6-410, an advanced placement examination, or another similar assessment;

(ii) a state-recognized industry certification examination; and

(iii) an examination related to college or university admission;

(j) educational services for students with disabilities from a licensed or accredited

HB0215S07 compared with HB0215S06

practitioner or provider, including occupational, behavioral, physical, audiology, or speech-language therapies;

(k) contracted services that the program manager approves and that an LEA provides, including individual classes, after-school tutoring services, transportation, or fees or costs associated with participation in extracurricular activities;

(l) ride fees or fares for a fee-for-service transportation provider to transport the scholarship student to and from a qualifying provider, not to exceed \$750 in a given school year;

(m) expenses related to extra-curricular activities, field trips, educational supplements, and other educational experiences; or

(n) any other expense for a good or service that:

(i) a parent or scholarship student incurs in the education of the scholarship student;

and

(ii) the program manager approves, in accordance with Subsection (4)(d).

(11) "Scholarship funds" means:

(a) funds that the Legislature appropriates for the program; and

(b) interest that scholarship funds accrue.

(12) (a) "Scholarship student" means an eligible student, including a home-based scholarship student, for whom the program manager establishes and maintains a scholarship account in accordance with this part.

(b) "Scholarship student" does not include a home school student who does not receive a scholarship award under the program.

(13) "Utah Fits All Scholarship Program" or "program" means the scholarship program established in Section 53F-6-402.

Section 3. Section **53F-6-402** is enacted to read:

53F-6-402. Utah Fits All Scholarship Program -- Scholarship account application -- Scholarship expenses -- Program information.

(1) There is established the Utah Fits All Scholarship Program under which, beginning March 1, 2024, a parent may apply to a program manager on behalf of the parent's student to establish and maintain a scholarship account to cover the cost of a scholarship expense.

(2) (a) The program manager shall establish and maintain, in accordance with this part,

HB0215S07 compared with HB0215S06

scholarship accounts for eligible students.

(b) The program manager shall:

(i) determine that a student meets the requirements to be an eligible student; and

(ii) subject to Subsection (2)(c), each year the student is an eligible student, maintain a scholarship account for the scholarship student to pay for the cost of one or more scholarship expenses that the student or student's parent incurs in the student's education.

(c) Except as provided in Subsection (2)(d), each year, subject to this part and legislative appropriations, a scholarship student is eligible for no more than:

(i) for the 2024-2025 school year, \$8,000; and

(ii) for each school year following the 2024-2025 school year, the maximum allowed amount under this Subsection (2)(c) in the previous year plus a percentage increase that is equal to the five-year rolling average inflationary factor described in Section 53F-2-405.

(d) If a scholarship student enrolls in an LEA part-time in accordance with Section 53G-6-702, the program manager shall prorate the amount of the award described in Subsection (2)(c) in proportion to the extent of the scholarship student's partial enrollment in the LEA.

(3) (a) A program manager shall establish a scholarship account on behalf of an eligible student who submits a timely application, unless the number of applications exceed available scholarship funds for the school year.

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

(c) An eligible student or a public education student shall submit an application for an initial scholarship or renewal for each school year that the student intends to receive scholarship funds.

(d) (i) To maintain eligibility, a scholarship student or the scholarship student's parent shall annually complete and deliver to the program manager a portfolio describing the scholarship student's educational opportunities and achievements under the program for the given year.

(ii) The program manager may not disclose the content of a given scholarship student's portfolio except to the scholarship student's parent.

HB0215S07 compared with HB0215S06

(4) (a) An application for a scholarship account shall contain an acknowledgment by the student's parent that the qualifying provider selected by the parent for the student's enrollment or engagement is capable of providing education services for the student.

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

"I acknowledge that:

(1) ~~+~~A qualifying provider 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 agree to this scholarship account;

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

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

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

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

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

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

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

(5) A program manager may not charge a scholarship account application fee.

(6) A program manager shall give an enrollment preference based on the following order of preference:

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

(b) to an eligible student:

(i) who did not use a scholarship account in the previous school year; and

HB0215S07 compared with HB0215S06

(ii) with a family income at or below 200% of the federal poverty level;

(c) to an eligible student who is a sibling of an eligible student who:

(i) uses a scholarship account at the time the sibling applies for a scholarship account;

or

(ii) used a scholarship account in the school year immediately preceding the school year for which the sibling is applying for a scholarship account; and

(d) to an eligible student:

(i) who did not use a scholarship account in the previous school year; and

(ii) with a family income between 200% and 555% of the federal poverty level.

(7) (a) Subject to Subsections (7)(b) through (e), a parent may use a scholarship account to pay for a scholarship expense that a parent or scholarship student incurs in the education of the scholarship student.

(b) A scholarship student or the scholarship student's parent may not use a scholarship account for an expense that the student or parent does not incur in the education of the scholarship student, including:

(i) a rehabilitation program that is not primarily designed for an educational purpose;

or

(ii) a travel expense other than a transportation expense described in Section 53F-6-401.

(c) The program manager may not:

(i) approve a scholarship expense for a service that a qualifying provider provides unless the program manager determines that the scholarship student or the scholarship student's parent incurred the expense in the education of the scholarship student; or

(ii) reimburse a scholarship expense for a service or good that a provider that is not a qualifying provider provides unless:

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

(B) the program manager determines that the parent or scholarship student incurred the expense in the education of the scholarship student.

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

HB0215S07 compared with HB0215S06

(e) Except for cases in which a scholarship student or the scholarship student's parent is convicted of fraud in relation to scholarship funds, if a qualifying provider, scholarship student, or scholarship student's parent repays an expenditure from a scholarship account for an expense that is not approved under this Subsection (7), the program manager shall credit the repaid amount back to the scholarship account balance within 30 days after the day on which the program manager receives the repayment.

(8) Notwithstanding any other provision of law, funds that the program manager disburses under this part to a scholarship account on behalf of a scholarship student do not constitute state taxable income to the parent of the scholarship student.

(9) The program manager shall prepare and disseminate information on the program to a parent applying for a scholarship account on behalf of a student, including the information that the program manager provides in accordance with Section 53F-6-405.

(10) On or before September 1, 2023, and as frequently as necessary to maintain the information, the state board shall provide information on the state board's website, including:

(a) scholarship account information;

(b) information on the program manager, including the program manager's contact information; and

(c) an overview of the program.

Section 4. Section **53F-6-403** is enacted to read:

53F-6-403. Qualifying providers.

(1) Before the beginning of the school year immediately following a school year in which a qualifying provider receives scholarship funds equal to or more than \$500,000, the qualifying provider shall file with the program manager a surety bond payable to the program manager in an amount equal to the aggregate amount of scholarship funds expected to be received during the school year.

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

(3) (a) If the program manager determines that a qualifying provider no longer meets the eligibility requirements described in this part, the program manager may withdraw the organization's approval of the qualifying provider.

HB0215S07 compared with HB0215S06

(b) A provider or person that does not have the approval of the program manager in accordance with the following may not accept scholarship funds for services under this part:

(i) Section 53F-6-408 regarding eligible schools; or

(ii) Section 53F-6-409 regarding eligible service providers.

(4) If a qualifying provider requires partial payment of tuition or fees before the beginning of the academic year to reserve space for a scholarship student who has been admitted to the qualifying provider, the program manager may:

(a) pay the partial payment before the beginning of the school year in which the scholarship funds are awarded; and

(b) deduct the amount of the partial payment from subsequent scholarship fund deposits in an equitable manner that provides the best availability of scholarship funds to the student throughout the remainder of the school year.

(5) If a scholarship student described in Subsection (4)(a) chooses to withdraw from or otherwise not engage with the qualifying provider before the beginning of the school year:

(a) the qualifying provider shall remit the partial payment described in Subsection (4)(a) to the program manager; and

(b) the program manager shall credit the remitted partial payment to the scholarship student's scholarship account.

Section 5. Section **53F-6-404** is enacted to read:

53F-6-404. State board procurement and review of program manager -- Failure to comply.

(1) (a) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the state board shall issue a request for proposals, on or before June 15, 2023, and enter an agreement with no more than one organization that qualifies as tax exempt under Section 501(c)(3), Internal Revenue Code, for the state board to recognize as the program manager, on or before September 1, 2023.

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

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

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

HB0215S07 compared with HB0215S06

Code:

(iii) a description of the methodology the organization will use to verify a student's eligibility under this part;

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

(v) an affidavit or other evidence that the organization:

(A) is not affiliated with any international organization;

(B) does not harvest data for the purpose of reproducing or distributing the data to another entity; and

(C) has no involvement in guiding or directing any curriculum standards.

(c) The state board shall ensure that the agreement described in Subsection (1)(a):

(i) ensures the efficiency and success of the program; and

(ii) does not impose any requirements on the program manager that:

(A) are not essential to the basic administration of the program; or

(B) create restrictions, directions, or mandates regarding instructional content or curriculum.

(2) The state board may regulate and take enforcement action as necessary against a program manager in accordance with the provisions of the state board's agreement with the program manager.

(3) (a) If the state board determines that a program manager has violated a provision of this part or a provision of the state board's agreement with the program manager, the state board shall send written notice to the program manager explaining the violation and the remedial action required to correct the violation.

(b) A program manager that receives a notice described in Subsection (3)(a) shall, no later than 60 days after the day on which the program manager receives the notice, correct the violation and report the correction to the state board.

(c) (i) If a program manager that receives a notice described in Subsection (3)(a) fails to correct a violation in the time period described in Subsection (3)(b), the state board may bar the program manager from further participation in the program.

(ii) A program manager may appeal a decision of the state board under Subsection (3)(c)(i) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

HB0215S07 compared with HB0215S06

(d) A program manager may not accept state funds while the program manager:

(i) is barred from participating in the program under Subsection (3)(c)(i); or

(ii) has an appeal pending under Subsection (3)(c)(ii).

(e) A program manager that has an appeal pending under Subsection (3)(c)(ii) may continue to administer scholarship accounts during the pending appeal.

(4) The state board shall establish a process for a program manager to report the information the program manager is required to report to the state board under Section 53F-6-405.

(5) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and include provisions in the state board's agreement with the scholarship organization for:

(a) subject to Subsection (6), the administration of scholarship accounts and disbursement of scholarship funds if a program manager is barred from participating in the program under Subsection (3)(c)(i); and

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

(6) (a) The state board shall include in the rules and provisions described in Subsection (5)(a) measures to ensure that the establishment and maintenance of scholarship accounts and enrollment in the program are not disrupted if the program manager is barred from participating in the program.

(b) The state board may, if the program manager is barred from participating in the program, issue a new request for proposals and enter into a new agreement with an alternative program manager in accordance with this section.

(7) (a) On or before January 1, 2024, the state board shall:

(i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a process for a scholarship student or a scholarship student's parent to appeal any administrative decision of the program manager for state board resolution within 30 days after the day of the appeal, including:

(A) scholarship expense denials; and

(B) determinations regarding enrollment eligibility or suspension or disqualification under Section 53F-6-405; and

(ii) make information available regarding the appeals process on the state board's

HB0215S07 compared with HB0215S06

website and on the scholarship application.

(b) If the state board stays or reverses an administrative decision of the program manager on appeal, the program manager may not withhold scholarship funds or application approval for the scholarship student on account of the appealed administrative decision unless as the state board expressly allows.

(8) The state board may not include a provision in any rule that creates or implies a restriction, direction, or mandate regarding instructional content or curriculum.

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

53F-6-405. Program manager duties -- Audit -- Prohibitions.

(1) The program manager shall administer the program, including:

(a) maintaining an application website that includes information on enrollment, relevant application dates, and dates for notification of acceptance;

(b) reviewing applications from and determining if a person is:

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

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

(c) establishing an application process, including application dates opening before March 1, 2024, in accordance with Section 53F-6-402;

(d) reviewing and granting or denying applications for a scholarship account;

(e) providing an online portal for the parent of a scholarship student to access the scholarship student's account;

(f) ensuring that scholarship funds in a scholarship account are readily available to a scholarship student;

(g) requiring a parent to notify the program manager if the parent's scholarship student is no longer enrolled in or engaging a service:

(i) for which the scholarship student receives scholarship funds; and

(ii) that is provided to the scholarship student for an entire school year;

(h) obtaining reimbursement of scholarship funds from a qualifying provider that provides the services in which a scholarship student is no longer enrolled or with which the scholarship student is no longer engaged;

(i) expending all revenue from interest on scholarship funds or investments on scholarship expenses;

HB0215S07 compared with HB0215S06

(j) each time the program manager makes an administrative decision that is adverse to a scholarship student or the scholarship student's parent, informing the scholarship student and the scholarship student's parent of the opportunity and process to appeal an administrative decision of the program manager to the state board in accordance with the process described in Section 53F-6-404;

(k) maintaining a protected internal waitlist of all eligible students who have applied to the program and are not yet scholarship students, including any student who removed the student's application from the waitlist; and

(l) providing aggregate data regarding the number of scholarship students and the number of eligible students on the waitlist described in Subsection (1)(l).

(2) The program manager shall:

(a) contract with one or more private entities to develop and implement a commercially viable, cost-effective, and parent-friendly system to:

(i) establish scholarship accounts;

(ii) maximize payment flexibility by allowing:

(A) for payment of services to qualifying providers using scholarship funds by electronic or online funds transfer; and

(B) pre-approval of a reimbursement to a parent for a good that is a scholarship expense; and

(iii) allow scholarship students and scholarship student's parents to publicly rate, review, and share information about qualifying providers; and

(b) ensure that the system complies with industry standards for data privacy and cybersecurity, including ensuring compliance with the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(3) In advance of the program manager accepting applications in accordance with Section 53F-6-402 and as regularly as information develops, the program manager shall provide information regarding the program by publishing a program handbook online for scholarship applicants, scholarship students, parents, service providers seeking to become qualifying providers and qualifying providers, that includes information regarding:

(a) the policies and processes of the program;

(b) approved scholarship expenses and qualifying providers;

HB0215S07 compared with HB0215S06

(c) the responsibilities of parents regarding the program and scholarship funds;

(d) the duties of the program manager;

(e) the opportunity and process to appeal an administrative decision of the program manager to the state board in accordance with the process described in Section 53F-6-404; and

(f) the role of any private financial management firms or other private organizations with which the program manager may contract to administer any aspect of the program.

(4) To ensure the fiscal security and compliance of the program, the program manager shall:

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

(b) establish procedures to ensure a fair process to:

(i) suspend scholarship student's eligibility for the program in the event of the scholarship student's or scholarship student's parent's:

(A) intentional or substantial misuse of scholarship funds; or

(B) violation of this part or the terms of the program; and

(ii) if the program manager obtains evidence of fraudulent use of scholarship funds, refer the case to the attorney general for collection or criminal investigation;

(iii) ensure that a scholarship student whose eligibility is suspended or disqualified under this Subsection (4)(b) or Subsection (4)(c) based on the actions of the student's parent regains eligibility if the student is placed with a different parent or otherwise no longer resides with the parent related to the suspension or disqualification;

(c) notify the state board, scholarship student, and scholarship student's parent in writing:

(i) of the suspension described in Subsection (4)(b)(i);

(ii) that no further transactions, disbursements, or reimbursements are allowed;

(iii) that the scholarship student or scholarship student's parent may take corrective action within 10 business days of the day on which the program manager provides the notification; and

HB0215S07 compared with HB0215S06

(iv) that without taking the corrective action within the time period described in Subsection (4)(c)(iii), the program manager may disqualify the student's eligibility.

(5) (a) A program manager may not:

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

(A) the program manager determines that the qualifying provider intentionally or substantially misrepresented information on overpayment;

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

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

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

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

(B) the relevant scholarship student was not the exclusive user of the good or service.

(b) A program manager shall notify a scholarship student if the program manager:

(i) stops disbursement of the scholarship student's scholarship funds to a qualifying provider under Subsection (5)(a)(i); or

(ii) refuses reimbursement under Subsection (5)(a)(ii).

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

(b) If, during the school year, a scholarship student changes the student's enrollment in or engagement with a qualifying provider to another qualifying provider, the program manager may prorate scholarship funds between the qualifying providers based on the time the scholarship student received the goods or services or was enrolled.

(7) A program manager may not subvert the enrollment preferences required under Section 53F-6-402 or other provisions of this part to establish a scholarship account on behalf of a relative of a program manager officer.

(8) The program manager shall:

(a) contract for annual and random audits on scholarship accounts conducted:

HB0215S07 compared with HB0215S06

(i) by a certified public accountant who is independent from:

(A) the program manager;

(B) the state board; and

(C) the program manager's accounts and records pertaining to scholarship funds; and

(ii) in accordance with generally accepted auditing standards;

(b) demonstrate the program manager's financial accountability by annually submitting to the state board the following:

(i) a financial information report that a certified public accountant prepares and that includes the total number and total dollar amount of scholarship funds disbursed during the previous calendar year; and

(ii) no later than 180 days after the last day of the program manager's fiscal year, the results of the audits described in Subsection (8)(a), including the program manager's financial statements in a format that meets generally accepted accounting principles.

(9) (a) The state board:

(i) shall review a report described in this section; and

(ii) may request that the program manager revise or supplement the report if the report does not fully comply with this section.

(b) The program manager shall provide to the state board a revised report or a supplement to the report no later than 45 days after the day on which the state board makes a request described in Subsection (9)(a).

Section 7. Section **53F-6-406** is enacted to read:

53F-6-406. Qualifying provider regulatory autonomy -- Home school autonomy -- Student records -- Scholarship student status.

(1) Nothing in this part:

(a) except as expressly described in this part, grants additional authority to any state agency or LEA to regulate or control:

(i) a private school, qualifying provider, or home school;

(ii) students receiving education from a private school, qualifying provider, or home school;

(b) applies to or otherwise affects the freedom of choice of a home school student, including the curriculum, resources, developmental planning, or any other aspect of the home

HB0215S07 compared with HB0215S06

school student's education; or

(c) expands the regulatory authority of the state, a state office holder, or an LEA to impose any additional regulation of a qualifying provider beyond any regulation necessary to administer this part.

(2) A qualifying provider:

(a) has a right to maximum freedom from unlawful governmental control in providing for the educational needs of a scholarship student who attends or engages with the qualifying provider; and

(b) is not an agent of the state by virtue of the provider's acceptance of payment from a scholarship account in accordance with this part.

(3) Except as provided in Section 53F-6-403 regarding qualifying providers, Section 53F-6-408 regarding eligible schools, or Section 53F-6-409 regarding eligible service providers, a program manager may not require a qualifying provider to alter the qualifying provider's creed, practices, admissions policies, hiring practices, or curricula in order to accept scholarship funds.

(4) An LEA or a school in an LEA in which a scholarship student was previously enrolled shall provide to the scholarship student's parent a copy of all school records relating to the student that the LEA possesses within 30 days after the day on which the LEA or school receives the parent's request for the student's records, subject to:

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

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

(5) By virtue of a scholarship student's involvement in the program and unless otherwise expressly provided in statute, a scholarship student is not:

(a) enrolled in the public education system; or

(b) otherwise subject to statute, administrative rules, or other state regulations as if the student was enrolled in the public education system.

Section 8. Section **53F-6-407** is enacted to read:

53F-6-407. Background checks for program manager -- Bureau responsibilities -- Fees.

(1) As used in this section:

(a) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201

HB0215S07 compared with HB0215S06

within the Department of Public Safety.

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

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

(d) "Personal identifying information" means:

(i) current name;

(ii) former names;

(iii) nicknames;

(iv) aliases;

(v) date of birth;

(vi) address;

(vii) telephone number;

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

(ix) social security number; and

(x) fingerprints.

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

(f) "WIN Database" means the Western Identification Network Database that consists of eight western states sharing one electronic fingerprint database.

(2) The program manager shall:

(a) require an employee or officer of the program manager to submit to a criminal background check and ongoing monitoring;

(b) collect the following from an employee or officer of the program manager:

(i) personal identifying information;

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

(iii) consent, on a form specified by the program manager, for:

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

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

(C) disclosure of any criminal history information to the program manager;

HB0215S07 compared with HB0215S06

(c) submit the personal identifying information of an employee or officer of the program manager to the bureau for:

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

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

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

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

(3) The bureau shall:

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

(b) notify the program manager when a new entry is made against an individual whose fingerprints are registered with the WIN Database rap back system regarding:

(i) an alleged offense; or

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

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

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

(4) (a) The division shall impose fees that the division sets in accordance with Section 63J-1-504 for the fingerprint card of an employee or officer of the program manager, for a name check, and to register fingerprints under this section.

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

Section 9. Section **53F-6-408** is enacted to read:

HB0215S07 compared with HB0215S06

53F-6-408. Eligible schools.

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

(a) (i) contract with an independent licensed certified public accountant to conduct an agreed upon procedures engagement as the state board adopts, or obtain an audit and report that:

(A) a licensed independent certified public accountant conducts in accordance with generally accepted auditing standards;

(B) presents the financial statements in accordance with generally accepted accounting principles; and

(C) audits financial statements from within the 12 months immediately preceding the audit; and

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

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

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

(i) the education services that the school will provide to the scholarship student, including the cost of the provided services;

(ii) tuition costs;

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

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

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

(i) an employee who does not hold:

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

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

HB0215S07 compared with HB0215S06

the state where the private school is physically located; and

(ii) a contract employee.

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

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

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

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

(3) To be eligible to receive scholarship funds on behalf of a scholarship student as an eligible school, a private school with fewer than 150 enrolled students shall:

(a) provide to the program manager:

(i) a federal employer identification number;

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

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

(iv) any other information as required by the program manager; and

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

(4) A private school described in Subsection (3) is not eligible to receive scholarship funds if the private school requires a scholarship student to sign a contract waiving the student's rights to transfer to another qualifying provider during the school year.

(5) To be eligible to receive scholarship funds on behalf of a scholarship student as an eligible school, an LEA shall:

(a) provide to the program manager:

(i) a federal employer identification number;

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

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

(iv) any other information as required by the program manager;

HB0215S07 compared with HB0215S06

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

(c) enter into an agreement with the program manager regarding the provision of services to a scholarship student through which:

(i) the scholarship student does not enroll in the LEA;

(ii) in accordance with Subsection 53F-2-302(2), the LEA does not receive WPU funding related to the student's participation with the LEA; and

(iii) the LEA and program manager ensure that a scholarship student does not participate in a course or program at the LEA except in accordance with the agreement described in this Subsection (5)(c) under the program.

(6) An LEA described in Subsection (5) is not eligible to receive scholarship funds if:

(a) the LEA requires a public education system scholarship student to sign a contract waiving the student's rights to transfer to another qualifying provider during the school year; or

(b) the LEA refuses to offer services that do not require LEA enrollment to scholarship students under the program.

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

(8) A private school or LEA intending to receive scholarship funds shall:

(a) submit an application to the program manager; and

(b) agree to not refund, rebate, or share scholarship funds with scholarship students or scholarship student's parents in any manner except remittances or refunds to a scholarship account in accordance with this part and procedures that the program manager establishes.

(9) The program manager shall:

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

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

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

(a) cease operation as an eligible school until:

(i) the school submits a new application to the program manager; and

(ii) the program manager approves the new application; and

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

HB0215S07 compared with HB0215S06

Section 10. Section **53F-6-409** is enacted to read:

53F-6-409. Eligible service providers.

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

(a) shall provide to the program manager:

(i) a federal employer identification number;

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

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

(iv) subject to Subsection (2), any other information as required by the program manager;

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

(c) may not act as a consultant, clearing house, or intermediary that connects a scholarship student with or otherwise facilitates the student's engagement with a program or service that another entity provides.

(2) The program manager shall adopt policies that maximize the number of eligible service providers, including accepting new providers throughout the school year, while ensuring education programs or services provided through the program meet student needs and otherwise comply with this part.

(3) A private program or service intending to receive scholarship funds shall:

(a) submit an application to the program manager; and

(b) agree to not refund, rebate, or share scholarship funds with scholarship students or scholarship students' parents in any manner except remittances or refunds to a scholarship account in accordance with this part and procedures that the program manager establishes.

(4) The program manager shall:

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

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

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

HB0215S07 compared with HB0215S06

shall:

- (a) cease operation as an eligible service provider until:
 - (i) the program or service submits a new application to the program manager; and
 - (ii) the program manager approves the new application; and
- (b) demonstrate that the private program or service continues to meet the eligibility requirements of this section.

Section 11. Section **53F-6-410** is enacted to read:

53F-6-410. Parental rights -- Optional assessment.

(1) In accordance with Section 53G-6-803 regarding a parent's right to academic accommodations, nothing in this chapter restricts or affects a parent's interests and role in the care, custody, and control of the parent's child, including the duty and right to nurture and direct the child's upbringing and education.

(2) (a) A parent may request that the program manager facilitate one of the following assessments of the parent's scholarship student:

- (i) a standards assessment described in Section 53E-4-303;
- (ii) a high school assessment described in Section 53E-4-304;
- (iii) a college readiness assessment described in Section 53E-4-305;
- (iv) an assessment of students in grade 3 to measure reading grade level described in Section 53E-4-307; or
- (v) a nationally norm-referenced assessment.

(b) (i) Notwithstanding any other provision of law, the entity administering an assessment described in Subsection (2)(a) to a scholarship student in accordance with this section may not report the result of or any other data pertaining to the assessment or scholarship student to a person other than the program manager, the scholarship student, or the scholarship student's parent.

(ii) The program manager may not report or communicate the result or data described in Subsection (2)(b)(i) to a person other than the relevant scholarship student and the scholarship student's parent unless the result or data is included in a de-identified compilation of data related to all scholarship students.

(c) In any communication from the program manager regarding an assessment described in this Subsection (2), the program manager shall include a disclaimer that no

HB0215S07 compared with HB0215S06

assessment is required.

(d) The completion of an optional assessment under this section satisfies the portfolio eligibility qualification described in Subsection 53F-6-402(3)(d).

Section 12. Section **53F-6-411** is enacted to read:

53F-6-411. Program funding.

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

(a) no later than five business days after the day on which the student enters or reenters the public education system, the program manager shall immediately remove the balance in the scholarship student's scholarship account for other use within the program;

(b) the state board may not distribute any remaining state funds to the program manager for the student; and

(c) the program manager may use the balance described in Subsection (1)(a) for another scholarship student.

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

(3) (a) To administer the program, the program manager may use up to the lesser of 5% or \$2,500,000 of the funds the Legislature appropriates for the program.

(b) Subject to Subsection (3)(a), the funds for program administration described in Subsection (3)(a) are nonlapsing.

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

Section 13. Section **53F-6-412** is enacted to read:

53F-6-412. Reports

Beginning in 2025 and in accordance with Section 68-3-14 and the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g:

(1) the program manager shall submit a report on the program to the Education Interim Committee no later than September 1 of each year that includes:

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

HB0215S07 compared with HB0215S06

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

(c) administrative costs of the program;

(d) the number of scholarship students from each county and the aggregate number of eligible students on the waitlist described in Section 53F-6-405;

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

(f) the program manager's strategy and outreach efforts to reach eligible students whose family income is at or below 200% of the federal poverty level and related obstacles to enrollments;

(g) in the report that the program manager submits in 2025, information on steps the program manager has taken and processes the program manager has adopted to implement the program; and

(h) any other information regarding the program and the program's implementation that the committee requests; and

(2) the state board shall submit a report on the cost-effectiveness of the program to the Education Interim Committee no later than September 1 of each year.

Section 14. Section **53F-6-413** is enacted to read:

53F-6-413. Legal proceedings.

(1) In any legal proceeding against the state in which a qualifying provider challenges the application of this part to the qualifying provider, the state shall bear the burden of establishing that the law:

(a) is necessary; and

(b) does not impose an undue burden on the qualifying provider.

(2) The following bear no liability based on the award or use of scholarship funds under this part:

(a) the state;

(b) the state board;

(c) the program manager; or

(d) an LEA.

HB0215S07 compared with HB0215S06

(3) If any provision of this part is the subject of a state or federal constitutional challenge in a state court, scholarship students and scholarship students' parents may intervene as a matter of right to defend the program's constitutionality, subject to any court order that all defending parents and scholarship students intervene jointly.

Section 15. Section **53F-6-414** is enacted to read:

53F-6-414. Severability.

(1) If any provision of this part or the application of any provision of this part to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remaining provisions of this part remain effective without the invalidated provision or application.

(2) The provisions of this part are severable.

Section 16. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

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

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

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

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

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

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

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

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as

HB0215S07 compared with HB0215S06

defined in Subsection 11-13-103(4);

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

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

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

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

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

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

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

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

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

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

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

(b) the information has already been disclosed to persons not employed by or under a

HB0215S07 compared with HB0215S06

duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

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

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

HB0215S07 compared with HB0215S06

government if disclosure would compromise the source; or

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

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

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

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

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

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

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

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

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

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

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

(b) (i) an internal communication that is part of the deliberative process in connection

HB0215S07 compared with HB0215S06

with the preparation of legislation between:

- (A) members of a legislative body;
- (B) a member of a legislative body and a member of the legislative body's staff; or
- (C) members of a legislative body's staff; and

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

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

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

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

(22) drafts, unless otherwise classified as public;

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

- (a) collective bargaining; or
- (b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

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

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

(27) records of independent state agencies if the disclosure of the records would

HB0215S07 compared with HB0215S06

conflict with the fiduciary obligations of the agency;

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

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

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

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

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

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

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

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

HB0215S07 compared with HB0215S06

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

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

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

HB0215S07 compared with HB0215S06

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child Welfare Services;

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

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

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

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

HB0215S07 compared with HB0215S06

which would jeopardize:

- (a) the safety of the general public; or
- (b) the security of:
 - (i) governmental property;
 - (ii) governmental programs; or
 - (iii) the property of a private person who provides the Division of Emergency

Management information;

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

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

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

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

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

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

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

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

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

- (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,

HB0215S07 compared with HB0215S06

described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

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

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

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

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

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote, in relation to whether a judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and information disclosed under Subsection 78A-12-203(5)(e);

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

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

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

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

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

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

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

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or

HB0215S07 compared with HB0215S06

allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

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

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

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

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

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

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

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

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

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

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

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

(c) any administrative notes or records made or created for the purpose of, or used to,

HB0215S07 compared with HB0215S06

evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

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

(a) depict the commission of an alleged crime;

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

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

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

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

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

(67) an audio recording that is:

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

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

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

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

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

HB0215S07 compared with HB0215S06

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

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

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

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

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

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

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

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

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

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

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

(e) Title 20A, Election Code;

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

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

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

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

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

HB0215S07 compared with HB0215S06

prohibited under Section 63G-26-103;

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

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

(b) a law enforcement agency releases or disseminates the image:

(i) after determining that the individual is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or

(ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal investigation or criminal proceeding for the purpose of identifying or locating an individual in connection with the criminal investigation or criminal proceeding; or

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

(82) a record:

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

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

(c) the disclosure of which would:

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

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

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

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

HB0215S07 compared with HB0215S06

(84) the following records of a drinking water or wastewater facility:

(a) an engineering or architectural drawing of the drinking water or wastewater facility;

and

(b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (84)(a); ~~and~~

(85) a statement that an employee of a governmental entity provides to the governmental entity as part of the governmental entity's personnel or administrative investigation into potential misconduct involving the employee if the governmental entity:

(a) requires the statement under threat of employment disciplinary action, including possible termination of employment, for the employee's refusal to provide the statement; and

(b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding~~[-]{}; and~~

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

Section 17. **Repealer.**

This bill repeals:

Section **53F-6-101**, ~~{} Title.~~

~~{} Section 18. **Appropriation:**~~

~~The following sums of money are appropriated for the fiscal year beginning July 1, 2023, and ending June 30, 2024. These are additions to amounts previously appropriated for fiscal year 2024. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.~~

~~ITEM 1~~

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

~~From Income Tax Fund 42,500,000~~

~~From Income Tax Fund, One-time (41,500,000)~~

~~Schedule of Programs:~~

~~Utah Fits All Scholarship Program 1,000,000~~

HB0215S07 compared with HB0215S06

~~————The Legislature intends that in fiscal year 2024, the State Board of Education may provide up to \$1,000,000 to a program manager with which the State Board of Education contracts in accordance with Section 53F-6-404 for start-up, marketing, and other costs associated with initiating the Utah Fits All Scholarship Program created in Section 53F-6-402.~~

†