

## HB0398S01 compared with HB0398

{deleted text} shows text that was in HB0398 but was deleted in HB0398S01.

inserted text shows text that was not in HB0398 but was inserted into HB0398S01.

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Representative Nelson T. Abbott proposes the following substitute bill:

### SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM

#### AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Nelson T. Abbott**

Senate Sponsor: {—————} Lincoln Fillmore

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#### LONG TITLE

##### General Description:

This bill amends provisions related to the Special Needs Opportunity Scholarship Program.

##### Highlighted Provisions:

This bill:

- ▶ modifies defined terms;
- ▶ expands the expenses for which a scholarship recipient may use a scholarship award;
- ▶ amends the formula for calculating a scholarship amount for an eligible student;
- ▶ allows a scholarship granting organization to prorate a scholarship award under

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certain circumstances;

- ▶ increases the amount of donations a scholarship granting organization may carry forward in a fiscal year; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**53E-7-401**, as last amended by Laws of Utah 2022, Chapter 262

**53E-7-402**, as last amended by Laws of Utah 2022, Chapter 262

**53E-7-405**, as last amended by Laws of Utah 2022, Chapters 262, 456

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

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

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

As used in this part:

(1) "Eligible student" means:

(a) a student who:

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

(ii) is a resident of the state;

(iii) (A) has an IEP; or

(B) is determined by a multidisciplinary evaluation team to be eligible for services

under 20 U.S.C. Sec. 1401(3); and

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

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

(B) enrolled as a public school student; or

(b) a student who:

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

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(ii) is a sibling of and resides in the same household as a student described in Subsection (1)(a) if:

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

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

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

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

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

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

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

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

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

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

(b) who evaluate a child.

(6) "Officer" means:

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

or

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

(7) "Program donation" means a donation to the program under Section 53E-7-405.

(8) "Qualifying school" means a private school that:

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

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

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

(9) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,

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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.

(10) "Scholarship" means a grant awarded to an eligible student:

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

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

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

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

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

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

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

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

(11) "Scholarship expense" means an expense that a parent or eligible student incurs in the education of the eligible student for goods or a service that a qualifying school provides or facilitates, including:

(a) tuition and fees of a qualifying school;

(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 school recommends;

(f) educational software and applications;

(g) supplies or other equipment related to an eligible student's educational needs;

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

(i) fees for the following examinations, or for a preparation course for the following examinations, that the scholarship granting organization approves:

(i) a national norm-referenced or standardized assessment described in Section

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

(k) contracted services that the scholarship granting organization 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 school, 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) the scholarship granting organization approves in accordance with Subsection 53E-7-405(3).

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

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

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

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

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

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

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

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

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

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(2) (a) A scholarship granting organization shall ~~[(b)]~~

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

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

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

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

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

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

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

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

~~[(b)]~~(i) in ~~grades 1~~ kindergarten through grade 12 ~~[with an IEP]~~ and whose family income is: ~~[(b)]~~

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

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

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

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

~~[(iii) in kindergarten with an IEP, the value of the weighted pupil unit; or]~~

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

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

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~~(3) (a) Beginning with the 2022-23 school year, no later than July 31 after each school year, the state auditor shall publish the average LEA spending for a student who has an IEP or is determined by a multidisciplinary evaluation team to be eligible for services under 20 U.S.C. Sec. 1401(3):~~

~~(b) The state auditor shall calculate the average spending described in Subsection (3)(a) by averaging the direct and indirect costs of educational and student support services provided to a student who has an IEP or is determined by a multidisciplinary evaluation team to be eligible for services under 20 U.S.C. Sec. 1401(3):~~

~~(4) Beginning with the 2023-24 school year, a scholarship granting organization:~~

~~(a) shall grant each full-year scholarship award in an amount equal to the amount calculated under Subsection (3); and~~

~~(b) may prorate the amount of a scholarship award for a student who becomes an eligible student during the school year.~~

~~[(4)] (5)~~

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

~~[(5)] (6)~~ The scholarship granting organizations shall prepare and disseminate information on the program to a parent applying for a scholarship on behalf of a student.

Section 3. Section **53E-7-405** is amended to read:

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

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

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

(3) A scholarship granting organization shall:

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

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

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

(c) review scholarship applications and determine scholarship awards;

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

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

(f) ensure that during the state fiscal year:

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

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

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

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

(g) carry forward no more than ~~[40]~~ 60% of the scholarship granting organization's program donations, less funds for a scholarship that has been awarded, and funds expended for administration and marketing, from the state fiscal year in which the scholarship granting organization received the program donations to the following state fiscal year;

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

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

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

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

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

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

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

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

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

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

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

(i) receives scholarship money for tuition expenses; and

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

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

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

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

"I acknowledge that:

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

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

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

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

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

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

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

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

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

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

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

(b) is prepared by a certified public accountant.

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

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

(A) the scholarship granting organization; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) A scholarship granting organization may not:

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

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