

EDUCATION DEADLINE AND FISCAL FLEXIBILITY

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Jefferson Moss

LONG TITLE

General Description:

This bill extends or provides flexibility regarding certain education deadlines and spending restrictions.

Highlighted Provisions:

This bill:

- delays the date after which the State Board of Education may enter into an agreement with additional scholarship granting organizations;
- allows a local education agency (LEA) to transfer a portion of state restricted funds in the LEA's general fund to be used without the state restrictions under certain conditions;
- extends certain expenditure deadlines by one fiscal year;
- delays by one year a requirement that a student fee be equal to or less than the cost to the LEA of providing an activity, course, or program;
- establishes a repeal date; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53E-7-404, as enacted by Laws of Utah 2020, Fourth Special Session, Chapter 3

30 **53G-7-503**, as last amended by Laws of Utah 2020, Chapters 51 and 408
31 **63I-2-253**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 13
32 ENACTS:
33 **53F-2-209**, Utah Code Annotated 1953

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

36 Section 1. Section **53E-7-404** is amended to read:

37 **53E-7-404. State board to administer the program.**

38 (1) The state board shall administer the program.

39 (2) The state board shall:

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

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

44 (ii) the date of the donation;

45 (iii) the amount of the donation;

46 (iv) the amount of the tax credit; and

47 (v) any other relevant information;

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

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

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

54 (e) annually calculate the amount of the program donations cap described in Section
55 **53E-7-407**; and

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

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

(ii) administrative costs of the program;

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

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

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

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

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

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

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

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

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

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

(b) The state board may enter into an agreement described in Subsection (3)(a) with additional scholarship granting organizations after January 1, ~~2022~~ 2023, if the state board makes rules regarding how multiple scholarship granting organizations may issue tax credit certificates in accordance with Section ~~53E-7-407~~.

(c) (i) No later than 10 days after the day on which the state board enters into an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) requiring the scholarship granting organization to:

(A) notify the state board; and

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

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

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

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

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

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

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

(iv) any other information requested by the state board for the purpose of completing the annual report described in Section 53E-1-202.1.

Section 2. Section **53F-2-209** is enacted to read:

53F-2-209. Limited LEA budgetary flexibility.

(1) Notwithstanding any other provision of the Utah Code, for fiscal year 2021:

(a) except as provided in Subsection (1)(b), an LEA may:

(i) use up to 35% of the LEA's state restricted funding for each formula-based program to flexibly and without restriction respond to changing circumstances and student needs resulting from the COVID-19 emergency, as that term is defined in Section [53-2c-102](#);

(ii) transfer fund balances between funds as necessary to flexibly expend funds as described in Subsection (1)(a)(i); and

(b) an LEA may not:

(i) transfer funds under Subsection (1)(a)(i) related to the school LAND Trust Program, established in Section [53G-7-1206](#), or a qualified grant program; or

(ii) expend the transferred funds for capital projects or improvements.

(2) Notwithstanding any other provision of the Utah Code, for any funds for which the state imposes restrictions on the use of the funds:

(a) any expenditure that would have been required to be made before the end of fiscal year 2021 without the application of this section is extended to fiscal year 2022; and

(b) any expenditure that would have been required to be made before the end of fiscal year 2022 without the application of this section is extended to fiscal year 2023.

(3) (a) Nothing in this section authorizes an LEA to violate federal law or federal restrictions on the LEA's funds.

(b) An LEA that takes an action that this section authorizes shall ensure that the LEA continues to meet federal maintenance of effort requirements.

Section 3. Section **53G-7-503** is amended to read:

53G-7-503. Fees -- Prohibitions -- Voluntary supplies -- Enforcement -- Reporting.

(1) An LEA may only charge a fee if the fee is authorized and noticed by the LEA governing board in accordance with Section [53G-7-505](#).

(2) (a) An LEA may not require a fee for elementary school activities that are part of the regular school day or for supplies used during the regular school day.

(b) An elementary school or elementary school teacher may compile and provide to a student's parent a suggested list of supplies for use during the regular school day so that a parent may furnish on a voluntary basis those supplies for student use.

(c) A list provided to an elementary student's parent in accordance with Subsection (2)(b) shall include and be preceded by the following language:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

(3) (a) Beginning with or after the ~~[2021-2022]~~ 2022-2023 school year, if an LEA imposes a fee, the fee shall be equal to or less than the expense incurred by the LEA in providing for a student the activity, course, or program for which the LEA imposes the fee.

(b) An LEA may not impose an additional fee or increase a fee to supplant or subsidize another fee.

(4) (a) Beginning with or after the 2021-2022 school year, and notwithstanding Section [53E-3-401](#), if the state board finds that an LEA has violated a provision of this part or Part 6, Textbook Fees, the state board shall impose corrective action against the LEA, which may include:

- (i) requiring an LEA to repay improperly charged fees;
- (ii) withholding state funds; and
- (iii) suspending the LEA's authority to charge fees for an amount of time specified by the state board.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state board shall make rules:

- (i) that require notice and an opportunity to be heard for an LEA affected by a state board action described in Subsection (4)(a); and
- (ii) to administer this Subsection (4).

(5) (a) For each fee on an LEA's fee schedule described in Section 53G-7-505, the LEA shall:

(i) by July 1, 2020, determine whether the fee is curricular, co-curricular, or extracurricular;

(ii) for the 2020-2021 school year, measure the total number of:

(A) students who pay each fee; and

(B) money received for each fee;

(iii) for the 2020-2021 school year, measure the total:

(A) number of students who receive a fee waiver; and

(B) value of each waiver for each waived fee; and

(iv) by July 1, 2021, report the separate categories of data gathered under Subsections (5)(a)(ii) and (iii) to the state board.

(b) The state board shall report on the data the board receives under Subsection (5)(a) to the Education Interim Committee on or before the date of the November interim meeting in 2021.

Section 4. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53 through 53G.

(1) (a) Section 53-2a-217, regarding procurement during an epidemic or pandemic emergency, is repealed on December 31, 2021.

(b) When repealing Section 53-2a-217, the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

(2) Section 53B-2a-103 is repealed July 1, 2021.

(3) Section 53B-2a-104 is repealed July 1, 2021.

(4) (a) Subsection 53B-2a-108(5), regarding exceptions to the composition of a technical college board of trustees, is repealed July 1, 2022.

(b) When repealing Subsection 53B-2a-108(5), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make

226 necessary changes to subsection numbering and cross references.

227 (5) Section 53B-6-105.7 is repealed July 1, 2024.

228 (6) (a) Subsection 53B-7-705(6)(b)(ii)(A), the language that states "Except as provided
229 in Subsection (6)(b)(ii)(B)," is repealed July 1, 2021.

230 (b) Subsection 53B-7-705(6)(b)(ii)(B), regarding comparing a technical college's
231 change in performance with the technical college's average performance, is repealed July 1,
232 2021.

233 (7) (a) Subsection 53B-7-707(3)(a)(ii), the language that states "Except as provided in
234 Subsection (3)(b)," is repealed July 1, 2021.

235 (b) Subsection 53B-7-707(3)(b), regarding performance data of a technical college
236 during a fiscal year before fiscal year 2020, is repealed July 1, 2021.

237 (8) Section 53B-8-114 is repealed July 1, 2024.

238 (9) (a) The following sections, regarding the Regents' scholarship program, are
239 repealed on July 1, 2023:

240 (i) Section 53B-8-202;

241 (ii) Section 53B-8-203;

242 (iii) Section 53B-8-204; and

243 (iv) Section 53B-8-205.

244 (b) (i) Subsection 53B-8-201(2), regarding the Regents' scholarship program for
245 students who graduate from high school before fiscal year 2019, is repealed on July 1, 2023.

246 (ii) When repealing Subsection 53B-8-201(2), the Office of Legislative Research and
247 General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make
248 necessary changes to subsection numbering and cross references.

249 (10) Section 53B-10-101 is repealed on July 1, 2027.

250 (11) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is
251 repealed July 1, 2023.

252 (12) Section 53E-3-519 regarding school counselor services is repealed July 1, 2020.

253 (13) Section 53E-3-520 is repealed July 1, 2021.

(14) Subsection [53E-5-306](#)(3)(b)(ii)(B), related to improving school performance and continued funding relating to the School Recognition and Reward Program, is repealed July 1, 2020.

(15) Section [53E-5-307](#) is repealed July 1, 2020.

(16) Subsection [53E-10-309](#)(7), related to the PRIME pilot program, is repealed July 1, 2024.

(17) In Subsections [53F-2-205](#)(4) and (5), regarding the State Board of Education's duties if contributions from the minimum basic tax rate are overestimated or underestimated, the language that states "or [53F-2-301.5](#), as applicable" is repealed July 1, 2023.

(18) Section [53F-2-209](#), regarding local education agency budgetary flexibility, is repealed July 1, 2024.

~~[(18)]~~ (19) Subsection [53F-2-301](#)(1), relating to the years the section is not in effect, is repealed July 1, 2023.

~~[(19)]~~ (20) In Subsection [53F-2-515](#)(1), the language that states "or [53F-2-301.5](#), as applicable" is repealed July 1, 2023.

~~[(20)]~~ (21) Section [53F-4-207](#) is repealed July 1, 2022.

~~[(21)]~~ (22) In Subsection [53F-9-302](#)(3), the language that states "or [53F-2-301.5](#), as applicable" is repealed July 1, 2023.

~~[(22)]~~ (23) In Subsection [53F-9-305](#)(3)(a), the language that states "or [53F-2-301.5](#), as applicable" is repealed July 1, 2023.

~~[(23)]~~ (24) In Subsection [53F-9-306](#)(3)(a), the language that states "or [53F-2-301.5](#), as applicable" is repealed July 1, 2023.

~~[(24)]~~ (25) In Subsection [53G-3-304](#)(1)(c)(i), the language that states "or [53F-2-301.5](#), as applicable" is repealed July 1, 2023.

~~[(25)]~~ (26) Subsections [53G-10-204](#)(1)(c) through (e), and Subsection [53G-10-204](#)(7), related to the civics engagement pilot program, are repealed on July 1, 2023.

~~[(26)]~~ (27) On July 1, 2023, when making changes in this section, the Office of Legislative Research and General Counsel shall, in addition to the office's authority under

282 Subsection 36-12-12(3), make corrections necessary to ensure that sections and subsections
283 identified in this section are complete sentences and accurately reflect the office's perception of
284 the Legislature's intent.