

The Parent Choice in Education Act

text of H.B. 148 with amendments from H.B. 174

1 **EDUCATION VOUCHERS**
2 2007 GENERAL SESSION
3 STATE OF UTAH

4 **HB 148 Chief Sponsor: Stephen H. Urquhart**
5 HB 148 Senate Sponsor: Curtis S. Bramble

4 **HB 174 Chief Sponsor: Bradley G. Last**
5 HB 174 Senate Sponsor: Peter C. Knudson
6

7 **LONG TITLE**

8 **General Description:**

9 This bill creates a program to award scholarships to students to attend a private school.

10 **Highlighted Provisions:**

11 This bill:

- 12 < specifies criteria for qualifying for a scholarship;
- 13 < specifies criteria for private schools to enroll scholarship students;
- 14 < specifies the amount, timing, and form of scholarship payments;
- 15 < requires the State Board of Education to make rules;
- 16 < gives the State Board of Education enforcement authority;
- 17 < requires the Legislature to annually appropriate money from the General Fund for
- 18 scholarship payments; and
- 19 < allows a school district to retain in enrollment a student that transfers to a private
- 20 school for a period of five years, with a deduction equal to the average scholarship
- 21 amount.

22 **Monies Appropriated in HB 148:**

23 This bill appropriates:

- 24 < as an ongoing appropriation subject to future budget constraints, \$100,000 from the
- 25 General Fund for fiscal year 2006-07 to the State Board of Education.

6 **Monies Appropriated in HB 174:**

7 This bill appropriates:

- 8 < as an ongoing appropriation subject to future budget constraints, \$100,000 from the
- 9 General Fund for fiscal year 2007-08 to the State Board of Education.

10 **Other Special Clauses (HB 174):**

11 This bill coordinates with H.B. 148, Education Vouchers, by providing substantively
12 superseding amendments.

28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 **53A-1a-801** (HB 148), Utah Code Annotated 1953
- 31 **53A-1a-802** (HB 148), Utah Code Annotated 1953
- 32 **53A-1a-803** (HB 148), Utah Code Annotated 1953
- 33 **53A-1a-804** (HB 174), Utah Code Annotated 1953
- 34 **53A-1a-805** (HB 174), Utah Code Annotated 1953
- 35 **53A-1a-806** (HB 174), Utah Code Annotated 1953
- 36 **53A-1a-807** (HB 148), Utah Code Annotated 1953
- 37 **53A-1a-808** (HB 174), Utah Code Annotated 1953
- 38 **53A-1a-809** (HB 148), Utah Code Annotated 1953
- 39 **53A-1a-810** (HB 148), Utah Code Annotated 1953
- 40 **53A-1a-811** (HB 174), Utah Code Annotated 1953

41

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

HB 148

43 Section 1. Section **53A-1a-801** is enacted to read:

44 **Part 8. Parent Choice in Education Act**

45 **53A-1a-801. Title.**

46 This part is known as the "Parent Choice in Education Act."

HB 148

47 Section 2. Section **53A-1a-802** is enacted to read:

48 **53A-1a-802. Findings and purpose.**

49 The Legislature finds that:

50 (1) parents are presumed best informed to make decisions for their children, including
51 the educational setting that will best serve their children's interests and educational needs;

52 (2) the establishment of this choice in education program is justified on the basis of
53 funding the educational needs of school-age children as determined by their parents;

54 (3) school-age children are the primary beneficiaries of the choice in education
55 program authorized in this part, and any benefit to private schools, whether sectarian or secular,
56 is indirect and incidental;

57 (4) the choice in education program authorized by this part is available to the parents of
58 school-age children, solely on the basis of income level for the year immediately preceding the
59 year for which a scholarship is sought, and not on the basis of sex, race, religion, national
60 origin, or any other criteria; and

61 (5) the choice in education program authorized in this part is:

62 (a) enacted for the valid secular purpose of tailoring a child's education to that child's
63 specific needs as determined by the parent;

64 (b) neutral with respect to religion; and

65 (c) limited in its assistance to a parent, who may choose to use the scholarship to offset
66 tuition or fees charged by a private school, either sectarian or secular, in which enrollment of
67 the parent's child is sought, solely as a result of the parent's genuine and independent private
68 choices.

HB 148

69 Section 3. Section **53A-1a-803** is enacted to read:

70 **53A-1a-803. Definitions.**

71 As used in this part:

72 (1) "Board" means the State Board of Education.

73 (2) "Eligible private school" means a private school that meets the requirements of
74 Section 53A-1a-805.

75 (3) "Income eligibility guideline" means the maximum annual income allowed to
76 qualify for reduced price meals for the applicable household size as published by the U.S.
77 Department of Agriculture by notice in the Federal Register.

78 (4) "Parent" includes a legal guardian.

79 (5) "Scholarship student" means a student who receives a scholarship under this part.

80 (6) "Tuition" means amounts charged for attending a private school, excluding fees for
81 extracurricular activities or transportation to the private school.

HB 174

32 Section 1. Section **53A-1a-804** is enacted to read:

33 **53A-1a-804. Scholarship program created -- Qualifications -- Application.**

34 (1) The Parent Choice in Education Program is created to award scholarships to
35 students to attend a private school.

36 (2) To qualify for a scholarship under this part:

- 37 (a) the student's custodial parent or legal guardian shall reside within Utah;
38 (b) the student shall be at least five years of age before September 2 of the year in
39 which admission to a private school is sought and under 19 years of age on the last day of the
40 school year as determined by the private school, or, if the individual has not graduated from
41 high school, will be under 22 years of age on the last day of the school year as determined by
42 the private school;
43 (c) the student shall meet one or more of the following criteria:
44 (i) the student was born after September 1, 2001;
45 (ii) the student was enrolled as a full-time student in a Utah public school on January 1,
46 2007;
47 (iii) the individual was not a Utah resident on January 1, 2007; or
48 (iv) the student's parents had an annual income less than or equal to 100% of the
49 income eligibility guideline in the calendar year immediately preceding the school year for which
50 a scholarship is sought; and
51 (d) the student may not be a recipient of a scholarship awarded under Chapter 1a, Part
52 7, Carson Smith Scholarships for Students with Special Needs Act.
53 (3)(a) To receive a scholarship, the parent of a student shall submit an application for
54 the scholarship to the board by the June 1 preceding the school year for which a scholarship is
55 sought, except the deadline for submitting an application for the 2007-08 school year is July 15,
56 2007. Along with the application, the student's parent shall submit documentation verifying
57 income as required by board rule.
58 (b) The board may waive the application deadline.
59 (4) The board shall award scholarships by the July 1 preceding the school year for
60 which a scholarship is sought, except the deadline for awarding scholarships for the 2007-08
61 school year is August 15, 2007.
62 (5)(a) The scholarship application form shall contain the following statement:
63 "I acknowledge that:
64 (1) A private school may not provide the same level of services that are provided in a
65 public school.
66 (2) The private school in which I have chosen to enroll my child has disclosed to me the
67 teaching credentials of the school's teachers and the school's accreditation status.
68 (3) I will assume full financial responsibility for the education of my scholarship student
69 if I accept this scholarship.
70 (4) Acceptance of this scholarship has the same effect as a parental refusal to consent to
71 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
72 U.S.C. Sec. 1400 et seq."
73 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
74 for the education of the scholarship student for the period in which the student receives the
75 scholarship, including costs associated with transportation.
76 (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to
77 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
78 U.S.C. Sec. 1400 et seq.
79 (6) A student's parent, at any time, may remove the student from a private school and
80 place the student in another eligible private school and retain the scholarship.

HB 174

81 Section 2. Section **53A-1a-805** is enacted to read:

82 **53A-1a-805. Eligible private schools.**

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

- 84 (a) have a physical location in Utah where the scholarship students attend classes and
85 have direct contact with the school's teachers;
86 (b) contract with an independent certified public accountant to perform the agreed upon
87 procedures specified in Subsection (2) and produce a report of the results which shall be
88 submitted to the board at the times specified in Subsection (2);
89 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;
90 (d) meet state and local health and safety laws and codes;

- 91 (e) disclose to the parent of each prospective student, before the student is enrolled, the
 92 special education services that will be provided to the student, if any, including the cost of those
 93 services;
- 94 (f)(i) annually assess the achievement of each student by administering:
 95 (A) a norm-referenced test scored by an independent party that provides a comparison
 96 of the student's academic performance to other students on a national basis; or
 97 (B) an alternative assessment of the student's achievement, if the student:
 98 (I) has a disability or limited English proficiency; and
 99 (II) would be exempt from taking a nationally norm-referenced achievement test if
 100 enrolled in a Utah public school;
- 101 (ii) report the test results to the student's parents; and
 102 (iii) upon request, make test results available to other persons, in a manner that does not
 103 reveal the identity of any student;
- 104 (g) employ or contract with teachers who have completed a criminal background check
 105 that complies with the requirements of Section 53A-3-410 and:
 106 (i) hold baccalaureate or higher degrees; or
 107 (ii) have special skills, knowledge, or expertise that qualifies them to provide instruction
 108 in the subjects taught;
- 109 (h) provide to parents the teaching credentials of the school's teachers; and
 110 (i) provide, upon request to any person, a statement indicating which, if any,
 111 organizations have accredited the private school.
- 112 (2)(a) The agreed upon procedures to be performed pursuant to Subsection (1)(b) are
 113 as follows:
 114 (i)(A) determine that working capital is at least 80% of average quarterly expenditures
 115 by taking total expenditures for a year and dividing it by four and then dividing average
 116 quarterly expenditures into working capital; and
 117 (B) for a school in the first year of operations, use the estimated budget to estimate
 118 average quarterly expenditures;
- 119 (ii)(A) determine that scholarship payments are accounted for separately and reconciled
 120 to student records; and
 121 (B) for the first year of operations, determine that procedures are in place for this
 122 accounting; and
 123 (iii)(A) determine that expenditure of scholarship funds have been made for education
 124 expenses and is consistent with other tuition expenditures; and
 125 (B) for the first year of operations, determine that procedures are in place for this
 126 accounting.
- 127 (b)(i) The independent certified public accountant's report on the agreed upon
 128 procedures specified in Subsection (2)(a) shall be submitted to the board when the private
 129 school applies to accept scholarship students and every four years thereafter, except as provided
 130 in Subsection (2)(b)(ii).
 131 (ii) The board may, by rule, delay the date when the independent certified public
 132 accountant's report shall be submitted for private schools applying to accept scholarship
 133 students in the 2007-08 school year.
- 134 (3) The following are not eligible to enroll scholarship students:
 135 (a) a school with an enrollment of fewer than 40 students;
 136 (b) a school that operates in a residence;
 137 (c) a school that encourages illegal conduct; or
 138 (d) a residential treatment facility licensed by the state.
- 139 (4)(a) Except as provided in Subsection (4)(b), a private school intending to enroll
 140 scholarship students shall submit an application to the board by April 1 of the school year
 141 preceding the school year in which it intends to enroll scholarship students.
 142 (b) A private school intending to enroll scholarship students in the 2007-08 school year
 143 shall submit an application by June 15, 2007.
- 144 (5) The board shall:
 145 (a) approve a private school's application to enroll scholarship students if the private
 146 school meets the eligibility requirements of this section; and
 147 (b) make available to the public a list of the eligible private schools:

- 148 (i) for the 2008-09 school year and each school year thereafter, by the April 30
- 149 preceding the school year; and
- 150 (ii) for the 2007-08 school year, by July 1, 2007.

HB 174

151 Section 3. Section **53A-1a-806** is enacted to read:

152 **53A-1a-806. Scholarship payments.**

153 (1)(a) Scholarships shall be awarded by the board subject to the availability of money
 154 appropriated by the Legislature for that purpose.

155 (b) The Legislature shall annually appropriate money to the board from the General
 156 Fund to make scholarship payments for all students projected to apply for scholarships.

157 (c)(i) If monies are not available to pay for all scholarships requested, the scholarships
 158 shall be allocated on a random basis except that preference shall be given to students who
 159 received scholarships in the previous year.

160 (ii) If monies are insufficient in a school year to pay for all the continuing scholarships:

161 (A) new scholarships may not be awarded during that school year;

162 (B) the monies available for scholarships shall be prorated among the eligible students
 163 who received scholarships in the previous year; and

164 (C) the board shall request a supplemental appropriation from the Legislature to make
 165 full scholarship payments as provided in Subsection (4) or (5).

166 (2)(a) Scholarships shall be awarded based upon the income of a scholarship student's
 167 parents in the calendar year immediately preceding the school year for which a scholarship is
 168 sought.

169 (b)(i) The board shall make rules specifying how the income of a prospective
 170 scholarship student's parents shall be determined and verified.

171 (ii) The rules shall provide that the scholarship shall be based upon parental income as
 172 follows:

173 (A) if the parents are married, the income of both parents;

174 (B) if a parent is widowed, the income of the widowed parent;

175 (C) if a parent is widowed and has remarried, the income of the parent and stepparent;

176 (D) if the parents are divorced, the income of the parent with whom the scholarship
 177 student resided for the greatest amount of time during the past 12 months;

178 (E) if the parents are divorced and the scholarship student resided with each parent an
 179 equal amount of time, the income of the parent who provided more financial support during the
 180 past 12 months;

181 (F) if the divorced parent with whom the scholarship student resided for the greatest
 182 amount of time or who provided the greatest financial support has remarried, the income of the
 183 parent and stepparent; and

184 (G) if the scholarship student resides with a guardian, the income of the guardian,
 185 unless the guardian's income is exempt by board rule.

186 (iii) The rules shall provide that:

187 (A) if a parent filed federal or state income tax forms, income shall be based upon
 188 adjusted gross income as listed on the income tax forms;

189 (B) if a parent was exempt from filing federal and state income tax forms, income shall
 190 be based on income earned from work; and

191 (C) a parent shall submit documentation verifying income.

192 (3)(a) The board shall compare the income of a scholarship student's parents to the
 193 maximum annual incomes listed in the income eligibility guideline as defined in Section
 194 53A-1a-803 to set the scholarship amount.

195 (b) In determining scholarship amounts, the board shall use:

196 (i) the income eligibility guideline in effect for the school year immediately preceding
 197 the school year for which a scholarship is sought; and

198 (ii) the scholarship student's household size as the applicable household size for the
 199 purpose of determining maximum annual income under the income eligibility guideline.

200

201 (4) Full-year scholarships shall be awarded in the amounts shown in the following table,
or for the amount of tuition for a full year, whichever is less.

202	If the annual income of a scholarship	
203	student's parents is:	The full-year scholarship amount is:
204	Less than or equal to 100% of the	
205	income eligibility guideline	\$3,000
206	Greater than 100% but less than or equal	
207	to 125% of the income eligibility guideline	\$2,750
208	Greater than 125% but less than or equal to	
209	150% of the income eligibility guideline	\$2,500
210	Greater than 150% but less than or equal to	
211	175% of the income eligibility guideline	\$2,250
212	Greater than 175% but less than or equal to	
213	200% of the income eligibility guideline	\$2,000
214	Greater than 200% but less than or equal to	
215	225% of the income eligibility guideline	\$1,750
216	Greater than 225% but less than or equal to	
217	250% of the income eligibility guideline	\$1,000
218	Greater than 250% of the income eligibility guideline	\$500

219 (5) The full-year scholarship amounts shown in the table in Subsection (4) apply to
220 scholarships for all grades except kindergarten. The full-year scholarship amount for
221 kindergarten shall be .55 times the amounts shown in the table in Subsection (4).

222 (6) The board shall annually increase the full-year scholarship amounts shown in the
223 table in Subsection (4) by the same percentage annual increase in the value of the weighted
224 pupil unit established in Section 53A-17a-103.

225 (7)(a) Except as provided in Subsection (7)(b), upon review and receipt of
226 documentation that verifies a student's admission to, or continuing enrollment and attendance at,
227 a private school, the board shall make scholarship payments in four equal amounts no later than
228 September 1, November 1, February 1, and April 15 of each school year in which a scholarship
229 is in force.

230 (b) In accordance with board rule, the board shall make a scholarship payment before
231 the first quarterly payment of the school year, if a private school requires partial payment of
232 tuition before the start of the school year to reserve space for a student admitted to the school.

233 (8) A parent of a scholarship student and the student's private school shall notify the
234 board if the student does not have continuing enrollment and attendance at the private school.

235 (9) Before scholarship payments are made, the board shall cross-check enrollment lists
236 of scholarship students, school districts, and youth in custody to ensure that scholarship
237 payments are not erroneously made.

238 (10)(a) Scholarship payments shall be made by the board by individual warrant made
239 payable to the student's parent and mailed by the board to the private school. The parent shall
240 restrictively endorse the warrant to the private school for deposit into the account of the private
241 school.

242 (b) A person, on behalf of a private school, may not accept a power of attorney from a
243 parent to sign a warrant referred to in Subsection (10)(a), and a parent of a scholarship student
244 may not give a power of attorney designating a person, on behalf of a private school, as the
245 parent's attorney in fact.

HB 148

294 Section 7. Section **53A-1a-807** is enacted to read:

295 **53A-1a-807. Mitigation monies.**

296 (1) As provided in this section, a school district shall receive monies to mitigate
297 potential impacts due to the unplanned reduction in revenues resulting from the transfer of
298 scholarship students from the district to a private school.

299 (2) A school district shall retain in enrollment for purposes of receiving funds under
300 the minimum school program each scholarship student that:

301 (a) transfers from the school district to a private school; and

302 (b) resides within the boundaries of the school district.

303 (3) Each transferred scholarship student meeting the criteria of Subsection (2) shall be
304 retained in enrollment:

305 (a) for five years following the transfer or until the student would have graduated from
306 high school if within five years of the date of transfer; or

307 (b) until the student transfers back to the school district, if the student transfers back to
308 the school district within five years.

309 (4) For each year a school district retains in enrollment transferred scholarship students
310 as provided in this section, the board shall deduct from minimum school program funds
311 distributed to the school district an amount equal to the number of transferred scholarship
312 students retained in enrollment times the average scholarship amount for scholarship students
313 statewide.

314 (5) The monies deducted from a school district's minimum school program funds as
315 provided in Subsection (4) shall be deposited into the Uniform School Fund.

HB 174

246 Section 4. Section **53A-1a-808** is enacted to read:

247 **53A-1a-808. Board to make rules.**

248 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
249 board shall make rules consistent with this part:

250 (a) establishing the application process for the scholarship program, including
251 procedures to allow a parent to apply for a scholarship online;

252 (b) establishing how the income of a scholarship student's parents shall be determined
253 and verified; and

254 (c) implementing Section 53A-1a-807.

255 (2) By May 15, 2007, the board shall adopt rules establishing:

256 (a) the application process for private schools and scholarship students; and

257 (b) how the income of a scholarship student's parents shall be determined.

HB 148

328 Section 9. Section **53A-1a-809** is enacted to read:

329 **53A-1a-809. Enforcement and penalties.**

330 (1)(a) The board shall require private schools to submit signed affidavits assuring the
331 private school will comply with the requirements of this part.

332 (b) If a school fails to submit a signed affidavit after having an opportunity to provide
333 explanations and request delays, the board may:

334 (i) deny the private school permission to enroll scholarship students; and

335 (ii) interrupt disbursement of or withhold scholarship payments.

336 (2) The board may investigate complaints and convene administrative hearings for an
337 alleged violation of this part.

338 (3) Upon a finding that this part was violated, the board may:

339 (a) deny a private school permission to enroll scholarship students;

340 (b) interrupt disbursement of or withhold scholarship payments; or

341 (c) issue an order for repayment of scholarship payments fraudulently obtained.

HB 148

342 Section 10. Section **53A-1a-810** is enacted to read:

343 **53A-1a-810. Limitation on regulation of private schools.**

344 Nothing in this part grants additional authority to any state agency or school district to

345 regulate private schools except as expressly set forth in this part.

HB 174

258 Section 5. Section **53A-1a-811** is enacted to read:

259 **53A-1a-811. Review by legislative auditor general.**

260 The legislative auditor general shall conduct a review and issue a report on the Parent

261 Choice in Education Program after the conclusion of the 2011-12 school year.

HB 148

350 Section 12. **Appropriation.**

351 As an ongoing appropriation subject to future budget constraints, \$100,000 is

352 appropriated from the General Fund for fiscal year 2006-07 to the State Board of Education for

353 the administration of the Parent Choice in Education Act created in Title 53A, Chapter 1a, Part

354 8.

HB 174

262 Section 6. **Appropriation.**

263 As an ongoing appropriation subject to future budget constraints, there is appropriated

264 from the General Fund for fiscal year 2007-08, \$100,000 to the State Board of Education for

265 the administration of the Parent Choice in Education Act created in Title 53A, Chapter 1a, Part

266 8.

HB 174

267 Section 7. **Coordinating H.B. 174 with H.B. 148 -- Substantively superseding**
268 **amendments.**

269 If this H.B. 174 and H.B. 148, Education Vouchers, both pass, it is the intent of the

270 Legislature that the amendments to the sections in this bill supersede the amendments to the

271 same numbered sections in H.B. 148 when the Office of Legislative Research and General

272 Counsel prepares the Utah Code database for publication.

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