

SB101 ENGROSSED



1 XQ8T7E-2

2 By Senators Orr, Chesteen, Price, Albritton, Roberts, Kelley,

3 Jones, Stutts, Butler, Melson

4 RFD: Finance and Taxation Education

5 First Read: 21-Mar-23

6

7 2023 Regular Session



SB101 Engrossed

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A BILL
TO BE ENTITLED
AN ACT

To amend Sections 29-9-2, 29-9-3, and 29-9-4, Code of Alabama 1975, as last amended by Acts 2022-139 and 2022-358 of the 2022 Regular Session, relating to the Education Trust Fund Rolling Reserve Act, to provide additional definitions; to provide further for annual Education Trust Fund appropriations; to provide further for the distribution of revenues received in excess of appropriations; to create the Educational Opportunities Reserve Fund and provide for the funding and appropriations from the fund; and to repeal obsolete Section 29-9-2.1 of the Code of Alabama of 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 29-9-2, 29-9-3, and 29-9-4, Code of Alabama 1975, as last amended by Acts 2022-139 and 2022-538 of the 2022 Regular Session, are hereby amended to read as follows:

"§29-9-2

For the purposes of this chapter, the following terms have the following meanings:

(1) ALABAMA TRUST FUND. The Alabama Trust Fund created by Amendment No. 450 to the Constitution of Alabama of 1901.



SB101 Engrossed

29 (2) EDUCATION TRUST FUND. An account in the State
30 Treasury into which are deposited certain revenues paid to the
31 State of Alabama that are earmarked or set aside for
32 appropriation for public educational purposes.

33 (3) EDUCATION TRUST FUND BASE APPROPRIATIONS. The
34 Education Trust Fund appropriations for the current fiscal
35 year that were enacted in a prior legislative session,
36 excluding reversions reappropriated and any supplemental
37 appropriations.

38 ~~(3)~~ (4) EDUCATION TRUST FUND RAINY DAY ACCOUNT. The
39 special account created within the Alabama Trust Fund by
40 ~~Amendment No. 803 to the Constitution of Alabama of 1901~~
41 Section 260.02 of the Constitution of Alabama of 2022.

42 (5) EDUCATION TRUST FUND TOTAL APPROPRIATIONS. The
43 total amount of funds appropriated from the Education Trust
44 Fund for a fiscal year, including reversions reappropriated
45 and supplemental appropriations.

46 (6) EXCESS REVENUES. The difference in the total amount
47 of revenue deposited in the Education Trust Fund in the
48 immediately preceding fiscal year, including nonrecurring
49 revenue, less the Education Trust Fund Total Appropriations
50 for the same fiscal year.

51 ~~(4)~~ (7) FISCAL YEAR. The fiscal year of the State of
52 Alabama that begins on October 1 and ends on September 30.

53 ~~(5)~~ (8) FISCAL YEAR APPROPRIATION CAP. The maximum
54 amount of appropriations that may be made from the Education
55 Trust Fund for any fiscal year under certain conditions
56 pursuant to this chapter.



SB101 Engrossed

57 ~~(6)~~ (9) NEW RECURRING REVENUE. Revenue of any kind or
58 type constituting a new annual source of money that has been
59 enacted, established, or provided for prior to the first day
60 of the fiscal year of which it is to first be included in the
61 calculation of the Fiscal Year Appropriation Cap for the
62 Education Trust Fund.

63 ~~(7)~~ (10) NONRECURRING REVENUE. Revenue of any kind or
64 type that is deposited into or causes one-time abnormal
65 revenue impacts on the Education Trust Fund and that is not
66 recurring revenue, including one-time enhancements to revenues
67 resulting from one-time assistance to individuals or
68 businesses provided by the federal government. Any balance
69 remaining in the Education Trust Fund at the end of any fiscal
70 year, and transfers from ~~the Education Trust Fund Proration~~
71 ~~Prevention Account~~, the Education Trust Fund Rainy Day
72 Account, and the Education Trust Fund Budget Stabilization
73 Fund shall be nonrecurring revenue.

74 ~~(8)~~ (11) RECURRING REVENUE. Any permanent and continuing
75 source of revenue of any kind or type that has been enacted,
76 established, or provided for in fiscal years prior to the
77 fiscal year for which it is to be included in the calculation
78 of the fiscal year appropriation cap for the Education Trust
79 Fund. Recurring revenue shall not include any balance
80 remaining in the Education Trust Fund at the end of any fiscal
81 year. Once a new recurring revenue produces a source of
82 revenue for one complete fiscal year, it becomes a recurring
83 revenue.

84 (12) SECONDARY SPENDING LIMIT. An amount equal to 106.5



SB101 Engrossed

85 percent of the Education Trust Fund Base Appropriations for
86 the fiscal year ending September 30, 2024; 106 percent of
87 Education Trust Fund Base Appropriations for the fiscal year
88 ending September 30, 2025; 105.5 percent of the Education
89 Trust Fund Base Appropriations for the fiscal year ending
90 September 30, 2026; and 105 percent of the Education Trust
91 Fund Base Appropriations for the fiscal year ending September
92 30, 2027 and each fiscal year thereafter."

93 "§29-9-3

94 (a) Notwithstanding any other provision of law to the
95 contrary, beginning with appropriations made for the fiscal
96 year ending September 30, ~~2013~~2024, appropriations from the
97 Education Trust Fund shall not exceed the fiscal year
98 appropriation cap, or the secondary spending limit, whichever
99 is less.

100 (b) The fiscal year appropriation cap for the Education
101 Trust Fund shall be equal to the sum of all of the following:

102 (1) The total of recurring revenues deposited into the
103 Education Trust Fund in the last completed fiscal year
104 preceding the date on which the fiscal year appropriation cap
105 is calculated.

106 (2) An amount equal to the amount in subdivision (1)
107 multiplied by the average annual percent of change in the
108 recurring revenues deposited into the Education Trust Fund for
109 ~~the 14 highest of~~ the 15 most recently completed fiscal years
110 preceding the date on which the fiscal year appropriation cap
111 is calculated, excluding the highest and lowest years from the
112 calculation.



SB101 Engrossed

113 (3) If new recurring revenue measures are enacted that
114 will be deposited into the Education Trust Fund, or if
115 existing revenue sources are amended to increase the amount of
116 money deposited into the Education Trust Fund, for the first
117 time during the year for which the fiscal year appropriation
118 cap is being calculated, then 95 percent of the amount
119 projected in the enacted fiscal note accompanying the
120 legislative act creating the new recurring revenue shall be
121 added or subtracted as a part of the fiscal year appropriation
122 cap. If a recurring revenue source to the Education Trust Fund
123 is removed or reduced during the year for which the fiscal
124 year appropriation cap is being calculated, the negative
125 impact, based on the enacted fiscal note, of the removal or
126 reduction of the recurring revenue shall be included in the
127 calculation of the fiscal year appropriation cap.

128 (4) Nonrecurring revenue shall be added or subtracted
129 as a part of the fiscal year appropriation cap for the fiscal
130 year in which the nonrecurring revenue is deposited into the
131 Education Trust Fund.

132 (c) The Director of Finance and the Legislative Fiscal
133 Officer shall certify their computation of the fiscal year
134 appropriation cap and secondary spending limit at the same
135 time as the certification required by ~~Amendment No. 803 to the~~
136 ~~Constitution of Alabama of 1901~~ Section 260.02 of the
137 Constitution of Alabama of 2022. ~~If the computation results in~~
138 ~~a fiscal year appropriation cap that is less than the total~~
139 ~~appropriations from the Education Trust Fund for the fiscal~~
140 ~~year immediately preceding the fiscal year for which the~~



SB101 Engrossed

141 ~~fiscal year appropriation cap is being calculated, the~~
142 ~~Legislature may appropriate from the Education Trust Fund~~
143 ~~Budget Stabilization Fund created in this chapter an amount~~
144 ~~equal to the difference between the preceding fiscal year's~~
145 ~~total appropriations from the Education Trust Fund and the~~
146 ~~fiscal year appropriation cap, provided that any such amount~~
147 ~~shall be in the determination of the Legislature not to~~
148 ~~compromise the fiscal integrity of the fund to offset any~~
149 ~~future proration of the Education Trust Fund.~~

150 (d) ~~Amendment No. 803 to the Constitution of 1901~~
151 Section 260.02 of the Constitution of Alabama of 2022,
152 requires an estimate of available revenue for the Education
153 Trust Fund which is to be certified by the Finance Director
154 and the Legislative Fiscal Officer prior to the third
155 legislative day of each regular session. If, however, the
156 average of the estimated available revenue is less than the
157 fiscal year appropriation cap calculated in subsection (b) or
158 the secondary spending limit, the Legislature shall
159 appropriate no more than the lesser amount of the average of
160 the estimated available revenue or the fiscal year
161 appropriation cap or secondary spending limit as required to
162 be determined by this section."

163 "§29-9-4

164 (a) There is hereby created in the State Treasury an
165 Education Trust Fund Budget Stabilization Fund and an
166 Education Trust Fund Advancement and Technology Fund. Any
167 monetary interest which accrues in the Education Trust Fund
168 Budget Stabilization Fund shall be retained in the fund from



SB101 Engrossed

169 year to year and shall be subject only to the provisions of
170 this chapter. If total revenues deposited into the Education
171 Trust Fund during the immediately preceding fiscal year exceed
172 the fiscal year appropriation cap for the immediately
173 preceding fiscal year, and total Education Trust Fund
174 appropriations for the immediately preceding fiscal year are
175 less than the fiscal year appropriation cap for the
176 immediately preceding fiscal year, the excess revenues shall
177 remain in the Education Trust Fund as nonrecurring revenue. On
178 or before May 31 of each fiscal year through the fiscal year
179 ending September 30, 2023, if the total revenues deposited
180 into the Education Trust Fund during the immediately preceding
181 fiscal year exceed the fiscal year appropriation cap for the
182 immediately preceding fiscal year, and Education Trust Fund
183 appropriations for the immediately preceding fiscal year were
184 equal to the fiscal year appropriation cap, the excess
185 revenues shall be transferred to the Education Trust Fund
186 Rainy Day Account until the account has been repaid in full.
187 If the account has been repaid in full, any excess revenues
188 remaining shall be transferred to the Education Trust Fund
189 Budget Stabilization Fund and the Education Trust Fund
190 Advancement and Technology Fund created in this chapter. The
191 transfers to the Education Trust Fund Budget Stabilization
192 Fund and the Education Trust Fund Advancement and Technology
193 Fund shall be made annually as follows:

194 (1) ~~Any excess revenues remaining for any fiscal year~~
195 ~~shall be transferred to~~ To the Education Trust Fund Budget
196 Stabilization Fund in an amount up to one percent of the



SB101 Engrossed

197 previous year's Education Trust Fund total appropriations
198 until the fund reaches seven and one-half percent of the
199 previous year's appropriations from the Education Trust Fund.

200 (2) ~~Revenues~~ a. Any excess revenues remaining after ~~in~~
201 ~~excess of~~ those transferred in subdivision (1) shall be
202 transferred to the Education Trust Fund Advancement and
203 Technology Fund each year. Any amount of the available balance
204 in the Education Trust Fund Advancement and Technology Fund
205 may be available for appropriation only by and through an
206 independent supplemental appropriation bill for the following
207 nonrecurring expenses: repairs or deferred maintenance of
208 facilities for public education purposes in the state, capital
209 outlay, for classroom instructional support as provided in
210 Section 16-13-231(b)(2)c. and Section 16-13-231.3, for
211 insuring facilities, for transportation as provided in Section
212 16-13-233, for school security measures, and for the
213 acquisition or purchase of education technology and equipment,
214 or both. These funds, however, shall not be used as a pledge
215 for the issuance or payment of debt service. No funds shall be
216 appropriated in years when the balance of the Education Trust
217 Fund Advancement and Technology Fund at the end of the
218 previous fiscal year is less than ten million dollars
219 (\$10,000,000). Amounts in the Education Trust Fund Advancement
220 and Technology Fund shall be budgeted and allotted in
221 accordance with Sections 41-4-80 through 41-4-96 and Sections
222 41-19-1 through 41-19-12, but shall not be limited by the
223 fiscal year appropriation cap.

224 ~~(3)~~ b. The annual appropriation of ~~these~~ funds from the



SB101 Engrossed

225 Education Trust Fund Advancement and Technology Fund shall be
226 divided between the public schools and institutions of higher
227 education in the state in accordance with the percentage
228 split, based on the fiscal year in which an appropriation is
229 made, between these two sectors of education as certified by
230 the Legislative Fiscal Officer at the end of the preceding
231 fiscal year. Public schools shall be interpreted to include
232 any public school in operation for the current fiscal year,
233 the Alabama School of Math and Science, the Alabama School of
234 Fine Arts, the Alabama School of Cyber Technology and
235 Engineering, the portion of the Alabama Institute for Deaf and
236 Blind providing appropriate elementary/secondary instruction,
237 and may include the Department of Youth Services School
238 District.

239 (b) There is hereby created within the State Treasury
240 the Educational Opportunities Reserve Fund into which monies
241 shall be deposited as provided in this chapter and as
242 appropriated by the Legislature. Any monetary interest that
243 accrues to the Educational Opportunities Reserve Fund shall be
244 retained in the fund from year to year and shall be subject
245 only to this chapter.

246 (c) On or before May 31 of each fiscal year beginning
247 with the fiscal year ending September 30, 2024, if the total
248 available revenues in the Education Trust Fund during the
249 immediately preceding fiscal year exceed Education Trust Fund
250 total appropriations for the immediately preceding fiscal
251 year, and there is an unpaid balance owed to the Education
252 Trust Fund Rainy Day Account, the excess revenues shall be

SB101 Engrossed



253 transferred to the Education Trust Fund Rainy Day Account
254 until the account has been repaid in full. If the account has
255 been repaid in full, any excess revenues remaining shall be
256 transferred to the Education Trust Fund Budget Stabilization
257 Fund, the Education Trust Fund Advancement and Technology
258 Fund, and the Educational Opportunities Reserve Fund created
259 in this chapter. The transfers to the Education Trust Fund
260 Budget Stabilization Fund, the Education Trust Fund
261 Advancement and Technology Fund, and the Educational
262 Opportunities Reserve Fund shall be made annually as follows:

263 (1) To the Education Trust Fund Budget Stabilization
264 Fund in an amount up to one percent of the previous year's
265 Education Trust Fund total appropriations until the fund
266 reaches 10 percent of the previous year's appropriations from
267 the Education Trust Fund.

268 (2)a. Fifty percent of the excess revenues remaining
269 after those transferred in subdivision (1) shall be
270 transferred to the Education Trust Fund Advancement and
271 Technology Fund each year, not to exceed one billion dollars
272 in any fiscal year. Any amount of the available balance in the
273 Education Trust Fund Advancement and Technology Fund may be
274 available for appropriation only by and through an independent
275 supplemental appropriation bill for the following nonrecurring
276 expenses: repairs or deferred maintenance of facilities for
277 public education purposes in the state, capital outlay, for
278 classroom instructional support as provided in Section
279 16-13-231(b) (2)c. and Section 16-13-231.3, for insuring
280 facilities, for transportation as provided in Section

SB101 Engrossed



281 16-13-233, for school security measures, and for the
282 acquisition or purchase of education technology and equipment,
283 or both. These funds, however, shall not be used as a pledge
284 for the issuance or payment of debt service. No funds shall be
285 appropriated in years when the balance of the Education Trust
286 Fund Advancement and Technology Fund at the end of the
287 previous fiscal year is less than ten million dollars
288 (\$10,000,000). Amounts in the Education Trust Fund Advancement
289 and Technology Fund shall be budgeted and allotted in
290 accordance with Sections 41-4-80 through 41-4-96 and Sections
291 41-19-1 through 41-19-12, but shall not be limited by the
292 fiscal year appropriation cap.

293 b. The annual appropriation of funds from the Education
294 Trust Fund Advancement and Technology Fund shall be divided
295 between the public schools and institutions of higher
296 education in the state in accordance with the percentage
297 split, based on the fiscal year in which an appropriation is
298 made, between these two sectors of education as certified by
299 the Legislative Fiscal Officer at the end of the preceding
300 fiscal year. Public schools shall be interpreted to include
301 any public school in operation for the current fiscal year,
302 the Alabama School of Math and Science, the Alabama School of
303 Fine Arts, the Alabama School of Cyber Technology and
304 Engineering, the portion of the Alabama Institute for Deaf and
305 Blind providing appropriate elementary/secondary instruction,
306 and may include the Department of Youth Services School
307 District.

308 (3) a. Twenty percent of the excess revenues remaining



SB101 Engrossed

309 after those transferred in subdivision (1) shall be
310 transferred to the Educational Opportunities Reserve Fund.
311 Amounts in the Educational Opportunities Reserve Fund may be
312 withdrawn by and through an independent supplemental
313 appropriation bill to provide one-time funding for the
314 following purposes only: to offset a reduction in estimated
315 revenues of at least 2 percent to the Education Trust Fund for
316 the current fiscal year as certified by the Director of
317 Finance and the Legislative Fiscal Officer, to provide funding
318 ~~for unanticipated obligations, and for start-up or~~ for existing
319 obligations paid from the Education Trust Fund, and for start
320 up or transitional support for initiatives that provide access
321 to enhanced educational opportunities to all public K-12 or
322 higher education students in the state, or both. Amounts in
323 the Educational Opportunities Reserve Fund shall not be
324 appropriated for any of the following purposes: repairs or
325 deferred maintenance for facilities, capital outlay, pay
326 raises or bonuses for educational personnel or retirees, or to
327 ~~provide additional support or supplant existing funding for~~
328 ~~ongoing expenditures.~~ provide additional support for ongoing
329 expenditures. Provided, however, funds may be appropriated to
330 maintain Foundation Program state funding in extraordinary
331 situations.

332 b. No funds may be appropriated until the balance of
333 the Educational Opportunities Reserve Fund at the end of the
334 previous fiscal year equals or exceeds three hundred million
335 dollars (\$300,000,000). Once this threshold is attained, any
336 amount of the available balance may be appropriated for the



SB101 Engrossed

337 purposes specified in this subsection. Amounts in the
338 Educational Opportunities Reserve Fund shall be budgeted and
339 allotted in accordance with Sections 41-4-80 through 41-4-96
340 and Sections 41-19-1 through 41-19-12.

341 (4) Any remaining excess revenues after the transfers
342 in subdivisions (1) through (3) shall remain in the Education
343 Trust Fund as nonrecurring revenue."

344 Section 2. Section 29-9-2.1, Code of Alabama 1975, is
345 hereby repealed.

346 Section 3. This act shall become effective on the first
347 day of the third month following its passage and approval by
348 the Governor, or its otherwise becoming law.



SB101 Engrossed

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351 Senate

352 Read for the first time and referred21-Mar-23
353 to the Senate committee on Finance
354 and Taxation Education
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356 Read for the second time and placed03-May-23
357 on the calendar:
358 1 amendment
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360 Read for the third time and passed04-May-23
361 as amended
362 Yeas 32
363 Nays 0
364 Abstains 1
365
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Patrick Harris,
Secretary.

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