SB101 ENROLLED

1 XQ8T7E-3
2 By Senators Orr, Chesteen, Price, Albritton, Roberts, Kelley,
3 Jones, Stutts, Butler, Melson
4 RFD: Conference Committee on SB101
5 First Read: 21-Mar-23
6 2023 Regular Session
Enrolled, 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, and Sections 29-9-5, Code of Alabama 1975, 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; to revise the allowable uses of withdrawals from the Budget Stabilization Fund to eliminate temporary loans for repairs; 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, and Section 29-9-5, Code of Alabama 1975, 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 Section 219.02 to the Constitution of Alabama of 1901.

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

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

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

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

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

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

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

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

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

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

(12) SECONDARY SPENDING LIMIT. An amount equal to 106.5
percent of the Education Trust Fund Base Appropriations for the fiscal year ending September 30, 2024; 106.25 percent of Education Trust Fund Base Appropriations for the fiscal year ending September 30, 2025; 106 percent of the Education Trust Fund Base Appropriations for the fiscal year ending September 30, 2026; and 105.75 percent of the Education Trust Fund Base Appropriations for the fiscal year ending September 30, 2027 and each fiscal year thereafter."

"§29-9-3

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

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

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

(2) An amount equal to the amount in subdivision (1) multiplied by the average annual percent of change in the recurring revenues deposited into the Education Trust Fund for the 14 highest of the 15 most recently completed fiscal years preceding the date on which the fiscal year appropriation cap is calculated, excluding the highest and lowest years from the
(3) If new recurring revenue measures are enacted that will be deposited into the Education Trust Fund, or if existing revenue sources are amended to increase the amount of money deposited into the Education Trust Fund, for the first time during the year for which the fiscal year appropriation cap is being calculated, then 95 percent of the amount projected in the enacted fiscal note accompanying the legislative act creating the new recurring revenue shall be added or subtracted as a part of the fiscal year appropriation cap. If a recurring revenue source to the Education Trust Fund is removed or reduced during the year for which the fiscal year appropriation cap is being calculated, the negative impact, based on the enacted fiscal note, of the removal or reduction of the recurring revenue shall be included in the calculation of the fiscal year appropriation cap.

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

(c) The Director of Finance and the Legislative Fiscal Officer shall certify their computation of the fiscal year appropriation cap and secondary spending limit at the same time as the certification required by Amendment No. 803 to the Constitution of Alabama of 1901 Section 260.02 of the Constitution of Alabama of 2022. If the computation results in a fiscal year appropriation cap that is less than the total
appropriations from the Education Trust Fund for the fiscal year immediately preceding the fiscal year for which the fiscal year appropriation cap is being calculated, the Legislature may appropriate from the Education Trust Fund Budget Stabilization Fund created in this chapter an amount equal to the difference between the preceding fiscal year's total appropriations from the Education Trust Fund and the fiscal year appropriation cap, provided that any such amount shall be in the determination of the Legislature not to compromise the fiscal integrity of the fund to offset any future proration of the Education Trust Fund.

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

"§29-9-4

(a) There is hereby created in the State Treasury an

Education Trust Fund Budget Stabilization Fund and an
Education Trust Fund Advancement and Technology Fund. Any monetary interest which accrues in the Education Trust Fund Budget Stabilization Fund shall be retained in the fund from year to year and shall be subject only to the provisions of this chapter. If total revenues deposited into the Education Trust Fund during the immediately preceding fiscal year exceed the fiscal year appropriation cap for the immediately preceding fiscal year, and total Education Trust Fund appropriations for the immediately preceding fiscal year are less than the fiscal year appropriation cap for the immediately preceding fiscal year, the excess revenues shall remain in the Education Trust Fund as nonrecurring revenue. On or before May 31 of each fiscal year through the fiscal year ending September 30, 2023, if the total revenues deposited into the Education Trust Fund during the immediately preceding fiscal year exceed the fiscal year appropriation cap for the immediately preceding fiscal year, and Education Trust Fund appropriations for the immediately preceding fiscal year were equal to the fiscal year appropriation cap, the excess revenues shall be transferred to the Education Trust Fund Rainy Day Account until the account has been repaid in full. If the account has been repaid in full, any excess revenues remaining shall be transferred to the Education Trust Fund Budget Stabilization Fund and the Education Trust Fund Advancement and Technology Fund created in this chapter. The transfers to the Education Trust Fund Budget Stabilization Fund and the Education Trust Fund Advancement and Technology
Fund shall be made annually as follows:

1. Any excess revenues remaining for any fiscal year shall be transferred to the Education Trust Fund Budget Stabilization Fund in an amount up to one percent of the previous year's Education Trust Fund total appropriations until the fund reaches seven and one-half percent of the previous year's appropriations from the Education Trust Fund.

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

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

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

(c) On or before May 31 of each fiscal year beginning
with the fiscal year ending September 30, 2024, if the total
available revenues in the Education Trust Fund during the
immediately preceding fiscal year exceed Education Trust Fund
total appropriations for the immediately preceding fiscal
year, and there is an unpaid balance owed to the Education
Trust Fund Rainy Day Account, the excess revenues shall be
transferred to the Education Trust Fund Rainy Day Account
until the account has been repaid in full. If the account has
been repaid in full, any excess revenues remaining shall be
transferred to the Education Trust Fund Budget Stabilization
Fund, the Education Trust Fund Advancement and Technology
Fund, and the Educational Opportunities Reserve Fund created
in this chapter. The transfers to the Education Trust Fund
Budget Stabilization Fund, the Education Trust Fund
Advancement and Technology Fund, and the Educational
Opportunities Reserve Fund shall be made annually as follows:

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

(2) a. Fifty percent of the excess revenues remaining
after those transferred in subdivision (1) shall be
transferred to the Education Trust Fund Advancement and
Technology Fund each year, not to exceed one billion dollars
in any fiscal year. Any amount of the available balance in the
Education Trust Fund Advancement and Technology Fund may be
available for appropriation only by and through an independent supplemental appropriation bill for the following nonrecurring expenses: repairs or deferred maintenance of facilities for public education purposes in the state, capital outlay, for classroom instructional support as provided in Section 16-13-231(b)(2)c. and Section 16-13-231.3, for insuring facilities, for transportation as provided in Section 16-13-233, for school security measures, and for the acquisition or purchase of education technology and equipment, or both. These funds, however, shall not be used as a pledge for the issuance or payment of debt service. No funds shall be appropriated in years when the balance of the Education Trust Fund Advancement and Technology Fund at the end of the previous fiscal year is less than ten million dollars ($10,000,000). Amounts in the Education Trust Fund Advancement and Technology Fund shall be budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12, but shall not be limited by the fiscal year appropriation cap.

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

(3) a. Twenty percent of the excess revenues remaining
after those transferred in subdivision (1) shall be
transferred to the Educational Opportunities Reserve Fund.
Amounts in the Educational Opportunities Reserve Fund may be
withdrawn by and through an independent supplemental
appropriation bill to provide one-time funding for the
following purposes only: (1) to offset a reduction in revenues
to the Education Trust Fund that could negatively impact
funding for budgeted obligations from the Education Trust Fund
for the current fiscal year as certified by the Director of
Finance and the Legislative Fiscal Officer; (2) to provide
funding for unanticipated obligations, and to sustain required
programmatic increases for existing obligations paid from the
Education Trust Fund in the event of a change in economic
conditions; (3) to provide funding to maintain prior year
appropriation levels, if the computation of the fiscal year
appropriation cap or secondary spending limit is less than
Education Trust Fund base appropriations for the previous
fiscal year, not to exceed the difference between the two
figures; and (4) for start-up or transitional support for
initiatives that provide access to enhanced educational opportunities to all public K-12 or higher education students in the state, or both. Amounts in the Educational Opportunities Reserve Fund shall not be appropriated for any of the following purposes: repairs or deferred maintenance for facilities, capital outlay, pay raises or bonuses for educational personnel or retirees, or to provide additional support for ongoing expenditures other than as specified in (2) above. Provided, however, funds may be appropriated to maintain Foundation Program state funding in extraordinary situations.

b. No funds may be appropriated until the balance of the Educational Opportunities Reserve Fund at the end of the previous fiscal year equals or exceeds three hundred million dollars ($300,000,000). Once this threshold is attained, any amount of the available balance may be appropriated for the purposes specified in this subsection. Amounts in the Educational Opportunities Reserve Fund shall be budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12.

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

"$29-9-5

(a) Except as provided in Section 29-9-3 and in subdivision (b), amounts in the Education Trust Fund Budget Stabilization Fund may be withdrawn only to prevent
proration in the Education Trust Fund. The Governor must certify to the state Comptroller and notify the Legislature that proration would occur in the Education Trust Fund before funds may be withdrawn to prevent proration. Following the certification and notification by the Governor, withdrawals may be made from the Education Trust Fund Budget Stabilization Fund to prevent proration; however, the withdrawals shall be limited to the amount of the anticipated proration and funds allotted only to the extent necessary to avoid proration of appropriations from the Education Trust Fund. Any funds withdrawn from the Budget Stabilization Fund in excess of the amount necessary to avoid proration shall be transferred back to the Budget Stabilization Fund within 30 days after the end of the fiscal year in which withdrawals are made.

(b) Amounts in the Education Trust Fund Budget Stabilization Fund may be withdrawn upon certification by the Governor that a natural disaster for which the Governor declared a state of emergency caused damage to public schools or institutions of higher education or both and funds are needed to provide emergency temporary funding for repairs of the damages. The Governor must certify to the state Comptroller and notify the Legislature the amount of funds needed for emergency repairs before funds may be withdrawn and distributed to the impacted public school or institution of higher education. In certifying the amount of funds needed for emergency repairs, the Governor shall take into account any emergency funding provided to the impacted public school or
institution of higher education by an insurance provider, including, but not limited to, the State Insurance Fund. Following the certification and notification by the Governor, withdrawals may be made from the Education Trust Fund Budget Stabilization Fund; however, withdrawals shall be limited to the amount necessary to provide emergency repairs and shall not exceed a total of 10 percent of the current balance of the fund, and at no time shall more than 10 percent of the total cumulative amount of revenues distributed to the Budget Stabilization Fund be outstanding. Any funds withdrawn from the Budget Stabilization Fund pursuant to this subsection must be repaid by the public school or institution of higher education receiving the funds as expeditiously as possible, but no later than the conclusion of the second fiscal year of the state following withdrawal. The repayment shall be made from the first insurance settlement proceeds received by the public school or institution of higher education; provided, however, that if the insurance settlement proceeds received are less than the emergency repair funding received by the public school or institution of higher education, then the remaining repayment shall be made from any other funds available to the public school or institution of higher education. Any public school or institution of higher education that receives emergency repair funding pursuant to this subsection and fails to repay the amount received within the two-year period shall be ineligible to receive any additional emergency repair funding pursuant to this
subsection or any appropriations from the Education Trust Fund Advancement and Technology Fund until such time as the funds are repaid. Any amount not repaid within the two-year period shall accrue interest at the rate of 8 percent annually until the total amount, including accrued interest, is fully repaid."

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

Section 3. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
SB101 Enrolled

President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB101
Senate 04-May-23
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Senate 25-May-23
I hereby certify that the within Act originated in and passed
the Senate, as amended by Conference Committee Report.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed: 25-May-23

House of Representatives
Passed 25-May-23, as amended by Conference Committee Report.

By: Senator Orr