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SYNOPSIS:

This bill amends the Education Trust Fund Rolling Reserve Act of 2011 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 delete obsolete provisions.

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, 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



28 from the Budget Stabilization Fund to eliminate temporary  
29 loans for repairs; and to repeal obsolete Section 29-9-2.1 of  
30 the Code of Alabama of 1975.

31 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

32 Section 1. Sections 29-9-2, 29-9-3, and 29-9-4, Code of  
33 Alabama 1975, as last amended by Acts 2022-139 and 2022-538 of  
34 the 2022 Regular Session, and Section 29-9-5, Code of Alabama  
35 1975, are hereby amended to read as follows:

36 "§29-9-2

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

39 (1) ALABAMA TRUST FUND. The Alabama Trust Fund created  
40 by ~~Amendment No. 450~~ Section 219.02 to the Constitution of  
41 Alabama of ~~1901~~ 2022.

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

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

51 ~~(3)~~ (4) EDUCATION TRUST FUND RAINY DAY ACCOUNT. The  
52 special account created within the Alabama Trust Fund by  
53 ~~Amendment No. 803 to the Constitution of Alabama of 1901~~  
54 Section 260.02 of the Constitution of Alabama of 2022.



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

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

64           ~~(4)~~ (7) FISCAL YEAR. The fiscal year of the State of  
65 Alabama that begins on October 1 and ends on September 30.

66           ~~(5)~~ (8) FISCAL YEAR APPROPRIATION CAP. The maximum  
67 amount of appropriations that may be made from the Education  
68 Trust Fund for any fiscal year under certain conditions  
69 pursuant to this chapter.

70           ~~(6)~~ (9) NEW RECURRING REVENUE. Revenue of any kind or  
71 type constituting a new annual source of money that has been  
72 enacted, established, or provided for prior to the first day  
73 of the fiscal year of which it is to first be included in the  
74 calculation of the Fiscal Year Appropriation Cap for the  
75 Education Trust Fund.

76           ~~(7)~~ (10) NONRECURRING REVENUE. Revenue of any kind or  
77 type that is deposited into or causes one-time abnormal  
78 revenue impacts on the Education Trust Fund and that is not  
79 recurring revenue, including one-time enhancements to revenues  
80 resulting from one-time assistance to individuals or  
81 businesses provided by the federal government. Any balance



82 remaining in the Education Trust Fund at the end of any fiscal  
83 year, and transfers from ~~the Education Trust Fund Proration~~  
84 ~~Prevention Account~~, the Education Trust Fund Rainy Day  
85 Account, and the Education Trust Fund Budget Stabilization  
86 Fund shall be nonrecurring revenue.

87 ~~(8)~~ (11) RECURRING REVENUE. Any permanent and continuing  
88 source of revenue of any kind or type that has been enacted,  
89 established, or provided for in fiscal years prior to the  
90 fiscal year for which it is to be included in the calculation  
91 of the fiscal year appropriation cap for the Education Trust  
92 Fund. Recurring revenue shall not include any balance  
93 remaining in the Education Trust Fund at the end of any fiscal  
94 year. Once a new recurring revenue produces a source of  
95 revenue for one complete fiscal year, it becomes a recurring  
96 revenue.

97 (12) SECONDARY SPENDING LIMIT. An amount equal to 106.5  
98 percent of the Education Trust Fund Base Appropriations for  
99 the fiscal year ending September 30, 2024; 106.25 percent of  
100 Education Trust Fund Base Appropriations for the fiscal year  
101 ending September 30, 2025; 106 percent of the Education Trust  
102 Fund Base Appropriations for the fiscal year ending September  
103 30, 2026; and 105.75 percent of the Education Trust Fund Base  
104 Appropriations for the fiscal year ending September 30, 2027  
105 and each fiscal year thereafter."

106 "§29-9-3

107 (a) Notwithstanding any other provision of law to the  
108 contrary, beginning with appropriations made for the fiscal



109 year ending September 30, ~~2013~~2024, appropriations from the  
110 Education Trust Fund shall not exceed the fiscal year  
111 appropriation cap, or the secondary spending limit, whichever  
112 is less.

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

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

119 (2) An amount equal to the amount in subdivision (1)  
120 multiplied by the average annual percent of change in the  
121 recurring revenues deposited into the Education Trust Fund for  
122 ~~the 14 highest of~~ the 15 most recently completed fiscal years  
123 preceding the date on which the fiscal year appropriation cap  
124 is calculated, excluding the highest and lowest years from the  
125 calculation.

126 (3) If new recurring revenue measures are enacted that  
127 will be deposited into the Education Trust Fund, or if  
128 existing revenue sources are amended to increase the amount of  
129 money deposited into the Education Trust Fund, for the first  
130 time during the year for which the fiscal year appropriation  
131 cap is being calculated, then 95 percent of the amount  
132 projected in the enacted fiscal note accompanying the  
133 legislative act creating the new recurring revenue shall be  
134 added or subtracted as a part of the fiscal year appropriation  
135 cap. If a recurring revenue source to the Education Trust Fund



136 is removed or reduced during the year for which the fiscal  
137 year appropriation cap is being calculated, the negative  
138 impact, based on the enacted fiscal note, of the removal or  
139 reduction of the recurring revenue shall be included in the  
140 calculation of the fiscal year appropriation cap.

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

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



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

176 "§29-9-4

177 (a) There is hereby created in the State Treasury an  
178 Education Trust Fund Budget Stabilization Fund and an  
179 Education Trust Fund Advancement and Technology Fund. Any  
180 monetary interest which accrues in the Education Trust Fund  
181 Budget Stabilization Fund shall be retained in the fund from  
182 year to year and shall be subject only to the provisions of  
183 this chapter. If total revenues deposited into the Education  
184 Trust Fund during the immediately preceding fiscal year exceed  
185 the fiscal year appropriation cap for the immediately  
186 preceding fiscal year, and total Education Trust Fund  
187 appropriations for the immediately preceding fiscal year are  
188 less than the fiscal year appropriation cap for the  
189 immediately preceding fiscal year, the excess revenues shall



190 remain in the Education Trust Fund as nonrecurring revenue. On  
191 or before May 31 of each fiscal year through the fiscal year  
192 ending September 30, 2023, if the total revenues deposited  
193 into the Education Trust Fund during the immediately preceding  
194 fiscal year exceed the fiscal year appropriation cap for the  
195 immediately preceding fiscal year, and Education Trust Fund  
196 appropriations for the immediately preceding fiscal year were  
197 equal to the fiscal year appropriation cap, the excess  
198 revenues shall be transferred to the Education Trust Fund  
199 Rainy Day Account until the account has been repaid in full.  
200 If the account has been repaid in full, any excess revenues  
201 remaining shall be transferred to the Education Trust Fund  
202 Budget Stabilization Fund and the Education Trust Fund  
203 Advancement and Technology Fund created in this chapter. The  
204 transfers to the Education Trust Fund Budget Stabilization  
205 Fund and the Education Trust Fund Advancement and Technology  
206 Fund shall be made annually as follows:

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

213 (2) ~~Revenues~~ a. Any excess revenues remaining after ~~in~~  
214 ~~excess of~~ those transferred in subdivision (1) shall be  
215 transferred to the Education Trust Fund Advancement and  
216 Technology Fund each year. Any amount of the available balance





217 in the Education Trust Fund Advancement and Technology Fund  
218 may be available for appropriation only by and through an  
219 independent supplemental appropriation bill for the following  
220 nonrecurring expenses: repairs or deferred maintenance of  
221 facilities for public education purposes in the state, capital  
222 outlay, for classroom instructional support as provided in  
223 Section 16-13-231(b)(2)c. and Section 16-13-231.3, for  
224 insuring facilities, for transportation as provided in Section  
225 16-13-233, for school security measures, and for the  
226 acquisition or purchase of education technology and equipment,  
227 or both. These funds, however, shall not be used as a pledge  
228 for the issuance or payment of debt service. No funds shall be  
229 appropriated in years when the balance of the Education Trust  
230 Fund Advancement and Technology Fund at the end of the  
231 previous fiscal year is less than ten million dollars  
232 (\$10,000,000). Amounts in the Education Trust Fund Advancement  
233 and Technology Fund shall be budgeted and allotted in  
234 accordance with Sections 41-4-80 through 41-4-96 and Sections  
235 41-19-1 through 41-19-12, but shall not be limited by the  
236 fiscal year appropriation cap.

237 ~~(3)~~b. The annual appropriation of ~~these~~ funds from the  
238 Education Trust Fund Advancement and Technology Fund shall be  
239 divided between the public schools and institutions of higher  
240 education in the state in accordance with the percentage  
241 split, based on the fiscal year in which an appropriation is  
242 made, between these two sectors of education as certified by  
243 the Legislative Fiscal Officer at the end of the preceding



244 fiscal year. Public schools shall be interpreted to include  
245 any public school in operation for the current fiscal year,  
246 the Alabama School of Math and Science, the Alabama School of  
247 Fine Arts, the Alabama School of Cyber Technology and  
248 Engineering, the portion of the Alabama Institute for Deaf and  
249 Blind providing appropriate elementary/secondary instruction,  
250 and may include the Department of Youth Services School  
251 District.

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

259 (c) On or before May 31 of each fiscal year beginning  
260 with the fiscal year ending September 30, 2024, if the total  
261 available revenues in the Education Trust Fund during the  
262 immediately preceding fiscal year exceed Education Trust Fund  
263 total appropriations for the immediately preceding fiscal  
264 year, and there is an unpaid balance owed to the Education  
265 Trust Fund Rainy Day Account, the excess revenues shall be  
266 transferred to the Education Trust Fund Rainy Day Account  
267 until the account has been repaid in full. If the account has  
268 been repaid in full, any excess revenues remaining shall be  
269 transferred to the Education Trust Fund Budget Stabilization  
270 Fund, the Education Trust Fund Advancement and Technology



271 Fund, and the Educational Opportunities Reserve Fund created  
272 in this chapter. The transfers to the Education Trust Fund  
273 Budget Stabilization Fund, the Education Trust Fund  
274 Advancement and Technology Fund, and the Educational  
275 Opportunities Reserve Fund shall be made annually as follows:

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

281 (2)a. Fifty percent of the excess revenues remaining  
282 after those transferred in subdivision (1) shall be  
283 transferred to the Education Trust Fund Advancement and  
284 Technology Fund each year, not to exceed one billion dollars  
285 in any fiscal year. Any amount of the available balance in the  
286 Education Trust Fund Advancement and Technology Fund may be  
287 available for appropriation only by and through an independent  
288 supplemental appropriation bill for the following nonrecurring  
289 expenses: repairs or deferred maintenance of facilities for  
290 public education purposes in the state, capital outlay, for  
291 classroom instructional support as provided in Section  
292 16-13-231(b) (2)c. and Section 16-13-231.3, for insuring  
293 facilities, for transportation as provided in Section  
294 16-13-233, for school security measures, and for the  
295 acquisition or purchase of education technology and equipment,  
296 or both. These funds, however, shall not be used as a pledge  
297 for the issuance or payment of debt service. No funds shall be



298 appropriated in years when the balance of the Education Trust  
299 Fund Advancement and Technology Fund at the end of the  
300 previous fiscal year is less than ten million dollars  
301 (\$10,000,000). Amounts in the Education Trust Fund Advancement  
302 and Technology Fund shall be budgeted and allotted in  
303 accordance with Sections 41-4-80 through 41-4-96 and Sections  
304 41-19-1 through 41-19-12, but shall not be limited by the  
305 fiscal year appropriation cap.

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

321 (3) a. Twenty percent of the excess revenues remaining  
322 after those transferred in subdivision (1) shall be  
323 transferred to the Educational Opportunities Reserve Fund.  
324 Amounts in the Educational Opportunities Reserve Fund may be



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



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

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

364 "§29-9-5

365 ~~(a) Except as provided in Section 29-9-3 and in~~  
366 ~~subdivision (b), amounts~~Amounts in the Education Trust Fund  
367 Budget Stabilization Fund may be withdrawn only to prevent  
368 proration in the Education Trust Fund. The Governor must  
369 certify to the state Comptroller and notify the Legislature  
370 that proration would occur in the Education Trust Fund before  
371 funds may be withdrawn to prevent proration. Following the  
372 certification and notification by the Governor, withdrawals  
373 may be made from the Education Trust Fund Budget Stabilization  
374 Fund to prevent proration; however, the withdrawals shall be  
375 limited to the amount of the anticipated proration and funds  
376 allotted only to the extent necessary to avoid proration of  
377 appropriations from the Education Trust Fund. Any funds  
378 withdrawn from the Budget Stabilization Fund in excess of the



379 amount necessary to avoid proration shall be transferred back  
380 to the Budget Stabilization Fund within 30 days after the end  
381 of the fiscal year in which withdrawals are made.

382 ~~(b) Amounts in the Education Trust Fund Budget~~  
383 ~~Stabilization Fund may be withdrawn upon certification by the~~  
384 ~~Governor that a natural disaster for which the Governor~~  
385 ~~declared a state of emergency caused damage to public schools~~  
386 ~~or institutions of higher education or both and funds are~~  
387 ~~needed to provide emergency temporary funding for repairs of~~  
388 ~~the damages. The Governor must certify to the state~~  
389 ~~Comptroller and notify the Legislature the amount of funds~~  
390 ~~needed for emergency repairs before funds may be withdrawn and~~  
391 ~~distributed to the impacted public school or institution of~~  
392 ~~higher education. In certifying the amount of funds needed for~~  
393 ~~emergency repairs, the Governor shall take into account any~~  
394 ~~emergency funding provided to the impacted public school or~~  
395 ~~institution of higher education by an insurance provider,~~  
396 ~~including, but not limited to, the State Insurance Fund.~~  
397 ~~Following the certification and notification by the Governor,~~  
398 ~~withdrawals may be made from the Education Trust Fund Budget~~  
399 ~~Stabilization Fund; however, withdrawals shall be limited to~~  
400 ~~the amount necessary to provide emergency repairs and shall~~  
401 ~~not exceed a total of 10 percent of the current balance of the~~  
402 ~~fund, and at no time shall more than 10 percent of the total~~  
403 ~~cumulative amount of revenues distributed to the Budget~~  
404 ~~Stabilization Fund be outstanding. Any funds withdrawn from~~  
405 ~~the Budget Stabilization Fund pursuant to this subsection must~~



406 ~~be repaid by the public school or institution of higher~~  
407 ~~education receiving the funds as expeditiously as possible,~~  
408 ~~but no later than the conclusion of the second fiscal year of~~  
409 ~~the state following withdrawal. The repayment shall be made~~  
410 ~~from the first insurance settlement proceeds received by the~~  
411 ~~public school or institution of higher education; provided,~~  
412 ~~however, that if the insurance settlement proceeds received~~  
413 ~~are less than the emergency repair funding received by the~~  
414 ~~public school or institution of higher education, then the~~  
415 ~~remaining repayment shall be made from any other funds~~  
416 ~~available to the public school or institution of higher~~  
417 ~~education. Any public school or institution of higher~~  
418 ~~education that receives emergency repair funding pursuant to~~  
419 ~~this subsection and fails to repay the amount received within~~  
420 ~~the two-year period shall be ineligible to receive any~~  
421 ~~additional emergency repair funding pursuant to this~~  
422 ~~subsection or any appropriations from the Education Trust Fund~~  
423 ~~Advancement and Technology Fund until such time as the funds~~  
424 ~~are repaid. Any amount not repaid within the two-year period~~  
425 ~~shall accrue interest at the rate of 8 percent annually until~~  
426 ~~the total amount, including accrued interest, is fully~~  
427 ~~repaid."~~

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

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