

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



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1 Enrolled, An Act,

2 To amend Sections 29-9-2, 29-9-3, and 29-9-4, Code of
3 Alabama 1975, as last amended by Acts 2022-139 and 2022-358 of
4 the 2022 Regular Session, and Sections 29-9-5, Code of Alabama
5 1975, relating to the Education Trust Fund Rolling Reserve
6 Act, to provide additional definitions; to provide further for
7 annual Education Trust Fund appropriations; to provide further
8 for the distribution of revenues received in excess of
9 appropriations; to create the Educational Opportunities
10 Reserve Fund and provide for the funding and appropriations
11 from the fund; to revise the allowable uses of withdrawals
12 from the Budget Stabilization Fund to eliminate temporary
13 loans for repairs; and to repeal obsolete Section 29-9-2.1 of
14 the Code of Alabama of 1975.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 29-9-2, 29-9-3, and 29-9-4, Code of
17 Alabama 1975, as last amended by Acts 2022-139 and 2022-538 of
18 the 2022 Regular Session, and Section 29-9-5, Code of Alabama
19 1975, are hereby amended to read as follows:

20 "§29-9-2

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

23 (1) ALABAMA TRUST FUND. The Alabama Trust Fund created
24 by ~~Amendment No. 450~~[Section 219.02](#) to the Constitution of
25 Alabama of ~~1901~~[2022](#).

26 (2) EDUCATION TRUST FUND. An account in the State
27 Treasury into which are deposited certain revenues paid to the



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28 State of Alabama that are earmarked or set aside for
29 appropriation for public educational purposes.

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

35 ~~(3)~~ (4) EDUCATION TRUST FUND RAINY DAY ACCOUNT. The
36 special account created within the Alabama Trust Fund by
37 ~~Amendment No. 803 to the Constitution of Alabama of 1901~~
38 Section 260.02 of the Constitution of Alabama of 2022.

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

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

48 ~~(4)~~ (7) FISCAL YEAR. The fiscal year of the State of
49 Alabama that begins on October 1 and ends on September 30.

50 ~~(5)~~ (8) FISCAL YEAR APPROPRIATION CAP. The maximum
51 amount of appropriations that may be made from the Education
52 Trust Fund for any fiscal year under certain conditions
53 pursuant to this chapter.

54 ~~(6)~~ (9) NEW RECURRING REVENUE. Revenue of any kind or



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55 type constituting a new annual source of money that has been
56 enacted, established, or provided for prior to the first day
57 of the fiscal year of which it is to first be included in the
58 calculation of the Fiscal Year Appropriation Cap for the
59 Education Trust Fund.

60 ~~(7)~~ (10) NONRECURRING REVENUE. Revenue of any kind or
61 type that is deposited into or causes one-time abnormal
62 revenue impacts on the Education Trust Fund and that is not
63 recurring revenue, including one-time enhancements to revenues
64 resulting from one-time assistance to individuals or
65 businesses provided by the federal government. Any balance
66 remaining in the Education Trust Fund at the end of any fiscal
67 year, and transfers from ~~the Education Trust Fund Proration~~
68 ~~Prevention Account~~, the Education Trust Fund Rainy Day
69 Account, and the Education Trust Fund Budget Stabilization
70 Fund shall be nonrecurring revenue.

71 ~~(8)~~ (11) RECURRING REVENUE. Any permanent and continuing
72 source of revenue of any kind or type that has been enacted,
73 established, or provided for in fiscal years prior to the
74 fiscal year for which it is to be included in the calculation
75 of the fiscal year appropriation cap for the Education Trust
76 Fund. Recurring revenue shall not include any balance
77 remaining in the Education Trust Fund at the end of any fiscal
78 year. Once a new recurring revenue produces a source of
79 revenue for one complete fiscal year, it becomes a recurring
80 revenue.

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



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82 percent of the Education Trust Fund Base Appropriations for
83 the fiscal year ending September 30, 2024; 106.25 percent of
84 Education Trust Fund Base Appropriations for the fiscal year
85 ending September 30, 2025; 106 percent of the Education Trust
86 Fund Base Appropriations for the fiscal year ending September
87 30, 2026; and 105.75 percent of the Education Trust Fund Base
88 Appropriations for the fiscal year ending September 30, 2027
89 and each fiscal year thereafter."

90 "§29-9-3

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

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

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

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



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109 [calculation](#).

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

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

129 (c) The Director of Finance and the Legislative Fiscal
130 Officer shall certify their computation of the fiscal year
131 appropriation cap [and secondary spending limit](#) at the same
132 time as the certification required by ~~Amendment No. 803 to the~~
133 ~~Constitution of Alabama of 1901~~ [Section 260.02 of the](#)
134 [Constitution of Alabama of 2022](#). ~~If the computation results in~~
135 ~~a fiscal year appropriation cap that is less than the total~~



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

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

160 "§29-9-4

161 (a) There is hereby created in the State Treasury an
162 Education Trust Fund Budget Stabilization Fund and an



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



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190 Fund shall be made annually as follows:

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

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



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217 and Technology Fund shall be budgeted and allotted in
218 accordance with Sections 41-4-80 through 41-4-96 and Sections
219 41-19-1 through 41-19-12, but shall not be limited by the
220 fiscal year appropriation cap.

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

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

243 (c) On or before May 31 of each fiscal year beginning



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244 with the fiscal year ending September 30, 2024, if the total
245 available revenues in the Education Trust Fund during the
246 immediately preceding fiscal year exceed Education Trust Fund
247 total appropriations for the immediately preceding fiscal
248 year, and there is an unpaid balance owed to the Education
249 Trust Fund Rainy Day Account, the excess revenues shall be
250 transferred to the Education Trust Fund Rainy Day Account
251 until the account has been repaid in full. If the account has
252 been repaid in full, any excess revenues remaining shall be
253 transferred to the Education Trust Fund Budget Stabilization
254 Fund, the Education Trust Fund Advancement and Technology
255 Fund, and the Educational Opportunities Reserve Fund created
256 in this chapter. The transfers to the Education Trust Fund
257 Budget Stabilization Fund, the Education Trust Fund
258 Advancement and Technology Fund, and the Educational
259 Opportunities Reserve Fund shall be made annually as follows:

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

265 (2)a. Fifty percent of the excess revenues remaining
266 after those transferred in subdivision (1) shall be
267 transferred to the Education Trust Fund Advancement and
268 Technology Fund each year, not to exceed one billion dollars
269 in any fiscal year. Any amount of the available balance in the
270 Education Trust Fund Advancement and Technology Fund may be



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271 available for appropriation only by and through an independent
272 supplemental appropriation bill for the following nonrecurring
273 expenses: repairs or deferred maintenance of facilities for
274 public education purposes in the state, capital outlay, for
275 classroom instructional support as provided in Section
276 16-13-231(b)(2)c. and Section 16-13-231.3, for insuring
277 facilities, for transportation as provided in Section
278 16-13-233, for school security measures, and for the
279 acquisition or purchase of education technology and equipment,
280 or both. These funds, however, shall not be used as a pledge
281 for the issuance or payment of debt service. No funds shall be
282 appropriated in years when the balance of the Education Trust
283 Fund Advancement and Technology Fund at the end of the
284 previous fiscal year is less than ten million dollars
285 (\$10,000,000). Amounts in the Education Trust Fund Advancement
286 and Technology Fund shall be budgeted and allotted in
287 accordance with Sections 41-4-80 through 41-4-96 and Sections
288 41-19-1 through 41-19-12, but shall not be limited by the
289 fiscal year appropriation cap.

290 b. The annual appropriation of funds from the Education
291 Trust Fund Advancement and Technology Fund shall be divided
292 between the public schools and institutions of higher
293 education in the state in accordance with the percentage
294 split, based on the fiscal year in which an appropriation is
295 made, between these two sectors of education as certified by
296 the Legislative Fiscal Officer at the end of the preceding
297 fiscal year. Public schools shall be interpreted to include



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3298 any public school in operation for the current fiscal year,
3299 the Alabama School of Math and Science, the Alabama School of
3300 Fine Arts, the Alabama School of Cyber Technology and
3301 Engineering, the portion of the Alabama Institute for Deaf and
3302 Blind providing appropriate elementary/secondary instruction,
3303 and may include the Department of Youth Services School
3304 District.

3305 (3) a. Twenty percent of the excess revenues remaining
3306 after those transferred in subdivision (1) shall be
3307 transferred to the Educational Opportunities Reserve Fund.
3308 Amounts in the Educational Opportunities Reserve Fund may be
3309 withdrawn by and through an independent supplemental
3310 appropriation bill to provide one-time funding for the
3311 following purposes only: (1) to offset a reduction in revenues
3312 to the Education Trust Fund that could negatively impact
3313 funding for budgeted obligations from the Education Trust Fund
3314 for the current fiscal year as certified by the Director of
3315 Finance and the Legislative Fiscal Officer; (2) to provide
3316 funding for unanticipated obligations, and to sustain required
3317 programmatic increases for existing obligations paid from the
3318 Education Trust Fund in the event of a change in economic
3319 conditions; (3) to provide funding to maintain prior year
3320 appropriation levels, if the computation of the fiscal year
3321 appropriation cap or secondary spending limit is less than
3322 Education Trust Fund base appropriations for the previous
3323 fiscal year, not to exceed the difference between the two
3324 figures; and (4) for start-up or transitional support for



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325 initiatives that provide access to enhanced educational
326 opportunities to all public K-12 or higher education students
327 in the state, or both. Amounts in the Educational
328 Opportunities Reserve Fund shall not be appropriated for any
329 of the following purposes: repairs or deferred maintenance for
330 facilities, capital outlay, pay raises or bonuses for
331 educational personnel or retirees, or to provide additional
332 support for ongoing expenditures other than as specified in
333 (2) above. Provided, however, funds may be appropriated to
334 maintain Foundation Program state funding in extraordinary
335 situations.

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

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

348 "§29-9-5

349 ~~(a) Except as provided in Section 29-9-3 and in~~
350 ~~subdivision (b), amounts~~ Amounts in the Education Trust Fund
351 Budget Stabilization Fund may be withdrawn only to prevent



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352 proration in the Education Trust Fund. The Governor must
353 certify to the state Comptroller and notify the Legislature
354 that proration would occur in the Education Trust Fund before
355 funds may be withdrawn to prevent proration. Following the
356 certification and notification by the Governor, withdrawals
357 may be made from the Education Trust Fund Budget Stabilization
358 Fund to prevent proration; however, the withdrawals shall be
359 limited to the amount of the anticipated proration and funds
360 allotted only to the extent necessary to avoid proration of
361 appropriations from the Education Trust Fund. Any funds
362 withdrawn from the Budget Stabilization Fund in excess of the
363 amount necessary to avoid proration shall be transferred back
364 to the Budget Stabilization Fund within 30 days after the end
365 of the fiscal year in which withdrawals are made.

366 ~~(b) Amounts in the Education Trust Fund Budget~~
367 ~~Stabilization Fund may be withdrawn upon certification by the~~
368 ~~Governor that a natural disaster for which the Governor~~
369 ~~declared a state of emergency caused damage to public schools~~
370 ~~or institutions of higher education or both and funds are~~
371 ~~needed to provide emergency temporary funding for repairs of~~
372 ~~the damages. The Governor must certify to the state~~
373 ~~Comptroller and notify the Legislature the amount of funds~~
374 ~~needed for emergency repairs before funds may be withdrawn and~~
375 ~~distributed to the impacted public school or institution of~~
376 ~~higher education. In certifying the amount of funds needed for~~
377 ~~emergency repairs, the Governor shall take into account any~~
378 ~~emergency funding provided to the impacted public school or~~



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379 ~~institution of higher education by an insurance provider,~~
380 ~~including, but not limited to, the State Insurance Fund.~~
381 ~~Following the certification and notification by the Governor,~~
382 ~~withdrawals may be made from the Education Trust Fund Budget~~
383 ~~Stabilization Fund; however, withdrawals shall be limited to~~
384 ~~the amount necessary to provide emergency repairs and shall~~
385 ~~not exceed a total of 10 percent of the current balance of the~~
386 ~~fund, and at no time shall more than 10 percent of the total~~
387 ~~cumulative amount of revenues distributed to the Budget~~
388 ~~Stabilization Fund be outstanding. Any funds withdrawn from~~
389 ~~the Budget Stabilization Fund pursuant to this subsection must~~
390 ~~be repaid by the public school or institution of higher~~
391 ~~education receiving the funds as expeditiously as possible,~~
392 ~~but no later than the conclusion of the second fiscal year of~~
393 ~~the state following withdrawal. The repayment shall be made~~
394 ~~from the first insurance settlement proceeds received by the~~
395 ~~public school or institution of higher education; provided,~~
396 ~~however, that if the insurance settlement proceeds received~~
397 ~~are less than the emergency repair funding received by the~~
398 ~~public school or institution of higher education, then the~~
399 ~~remaining repayment shall be made from any other funds~~
400 ~~available to the public school or institution of higher~~
401 ~~education. Any public school or institution of higher~~
402 ~~education that receives emergency repair funding pursuant to~~
403 ~~this subsection and fails to repay the amount received within~~
404 ~~the two-year period shall be ineligible to receive any~~
405 ~~additional emergency repair funding pursuant to this~~



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406 ~~subsection or any appropriations from the Education Trust Fund~~
407 ~~Advancement and Technology Fund until such time as the funds~~
408 ~~are repaid. Any amount not repaid within the two-year period~~
409 ~~shall accrue interest at the rate of 8 percent annually until~~
410 ~~the total amount, including accrued interest, is fully~~
411 ~~repaid."~~

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

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



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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