

1 HB781  
2 142250-1  
3 By Representatives Ford, Jackson, Melton, Grimsley,  
4 McCampbell, Howard, Bracy, Kennedy, Black, Robinson (J),  
5 Buskey, Scott, McAdory, Moore (M), Rogers, Coleman, Givan,  
6 Burdine, Beech, England and Hubbard (J)  
7 RFD: Ways and Means Education  
8 First Read: 02-MAY-12

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8 SYNOPSIS: This bill would establish an in lieu of  
9 payment based on amounts exceeding amounts  
10 appropriated from the Education Trust Fund pursuant  
11 to Act 2007-361, 2007 Regular Session, which would  
12 otherwise be required for repayment of the  
13 Education Trust Fund Rainy Day Account. The in lieu  
14 of payment would be used for the benefit of the  
15 State General Fund.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
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21 To amend Sections 29-9-2 and 29-9-3 of the Code of  
22 Alabama 1975, relating to the fiscal year appropriation cap  
23 for the Education Trust Fund rolling reserve; to provide for  
24 an alternative schedule of payments to the Education Trust  
25 Fund Rainy Day Account, by allowing for an in lieu of payment  
26 to be made to the State General Fund; to provide for the  
27 restoration to the Education Trust Fund of an amount up to and

1 including the appropriation level as appropriated under Act  
2 2007-361, 2007 Regular Session; and to add Section 29-9-4.1 to  
3 the Code of Alabama 1975, relating to the Education Trust Fund  
4 and the State General Fund, to provide that revenues in excess  
5 of the fiscal year appropriation cap for the Education Trust  
6 Fund rolling reserve may be transferred to the State General  
7 Fund and to provide a source for repayment to the Education  
8 Trust Fund.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 29-9-2 and 29-9-3 of the Code of  
11 Alabama 1975, are amended to read as follows:

12 "§29-9-2.

13 "For the purposes of this chapter, the following  
14 terms shall have the following meanings:

15 "(1) ALABAMA TRUST FUND. The Alabama Trust Fund  
16 created by Amendment No. 450 to the Constitution of Alabama of  
17 1901.

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

22 "(3) EDUCATION TRUST FUND RAINY DAY ACCOUNT. The  
23 special account created within the Alabama Trust Fund by  
24 Amendment No. 803 to the Constitution of Alabama of 1901.

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

1           "(5) FISCAL YEAR APPROPRIATION CAP. The maximum  
2 amount of appropriations that may be made from the Education  
3 Trust Fund for any fiscal year pursuant to this chapter.

4           "(6) IN LIEU OF PAYMENT. An amount dedicated for the  
5 repayment to the Education Trust Fun Rainy Day Account that is  
6 used for the benefit of the State General Fund.

7           "~~(6)~~(7) NEW RECURRING REVENUE. Revenue of any kind  
8 or type constituting a new or enhanced annual source of money  
9 that has been enacted, established, or provided for prior to  
10 the first day of the fiscal year of which it is to first be  
11 included in the calculation of the Fiscal Year Appropriation  
12 Cap for the Education Trust Fund.

13           "~~(7)~~(8) NONRECURRING REVENUE. Revenue of any kind or  
14 type that is deposited into the Education Trust Fund and that  
15 is not recurring revenue. Any balance remaining in the  
16 Education Trust Fund at the end of any fiscal year, and  
17 transfers from the Education Trust Fund Proration Prevention  
18 Account, the Education Trust Fund Rainy Day Account, and the  
19 Education Trust Fund Budget Stabilization Fund shall be  
20 nonrecurring revenue.

21           "~~(8)~~(9) RECURRING REVENUE. Any permanent and  
22 continuing source of revenue of any kind or type that has been  
23 enacted, established, or provided for in fiscal years prior to  
24 the fiscal year for which it is to be included in the  
25 calculation of the fiscal year appropriation cap for the  
26 Education Trust Fund. Recurring revenue shall not include any  
27 balance remaining in the Education Trust Fund at the end of

1 any fiscal year. Once a new recurring revenue produces a  
2 source of revenue for one complete fiscal year, it becomes a  
3 recurring revenue.

4 "§29-9-3.

5 "(a) Notwithstanding any other provision of law to  
6 the contrary, beginning with appropriations made for ~~the~~ any  
7 fiscal year in which Education Trust Fund appropriations will  
8 exceed the amount as appropriated under Act 2007-361 from the  
9 Education Trust Fund or in any fiscal year when the Education  
10 Trust Fund repayment to the Education Trust Fund Rainy Day  
11 Account or in lieu of repayment to the General Fund pursuant  
12 to Section 29-9-4.1 does not equal at least one hundred  
13 million dollars (\$100,000,000) or more in annual repayment  
14 beginning with fiscal year ending September 30, 2013,  
15 appropriations from the Education Trust Fund shall not exceed  
16 the fiscal year appropriation cap.

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

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

24 "(2) An amount equal to the amount in subdivision  
25 (1) multiplied by the average annual percent of change in the  
26 recurring revenues deposited into the Education Trust Fund for

1 the 15 completed fiscal years preceding the date on which the  
2 fiscal year appropriation cap is calculated.

3 "(3) An amount equal to 40 percent of the increase  
4 in recurring revenues deposited into the Education Trust Fund  
5 for the last completed fiscal year over the recurring revenues  
6 deposited into the Education Trust Fund for the fiscal year  
7 immediately preceding the last completed fiscal year. The  
8 amount provided in this subdivision shall be added only if the  
9 percentage in the recurring revenues deposited into the  
10 Education Trust Fund for the last completed fiscal year  
11 exceeds the 15 year average growth rate calculated in  
12 subdivision (b) (2).

13 "(4) If new recurring revenue measures are enacted  
14 that will be deposited into the Education Trust Fund, or if  
15 existing revenue sources are amended to increase the amount of  
16 money deposited into the Education Trust Fund, for the first  
17 time during the year for which the fiscal year appropriation  
18 cap is being calculated, then 95 percent of the amount  
19 projected in the enacted fiscal note accompanying the  
20 legislative act creating the new recurring revenue shall be  
21 added as a part of the fiscal year appropriation cap. If a  
22 recurring revenue source is removed from the Education Trust  
23 Fund during the year for which the fiscal year appropriation  
24 cap is being calculated, the negative impact, based on the  
25 enacted fiscal note, of the removal of the recurring revenue  
26 shall be included in the calculation of the fiscal year  
27 appropriation cap.

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

5           "(c) The Director of Finance and the Director of the  
6 Fiscal Office shall certify their computation of the fiscal  
7 year appropriation cap at the same time as the certification  
8 required by Amendment No. 803 to the Constitution of Alabama  
9 of 1901. If the computation results in a fiscal year  
10 appropriation cap that is less than the total appropriations  
11 from the Education Trust Fund for the fiscal year immediately  
12 preceding the fiscal year for which the fiscal year  
13 appropriation cap is being calculated, the Legislature may  
14 appropriate from the Education Trust Fund Budget Stabilization  
15 Fund created in this chapter an amount equal to the difference  
16 between the preceding fiscal year's total appropriations from  
17 the Education Trust Fund and the fiscal year appropriation  
18 cap."

19           Section 2. Section 29-9-4.1 is added to the Code of  
20 Alabama 1975, to read as follows:

21           §29-9-4.1.

22           (a) The Legislature may transfer a portion of the  
23 excess revenues in the Education Trust Fund to the General  
24 Fund in lieu of payment to the Education Rainy Day Account or  
25 Education Trust Fund Stabilization Account.

26           (b) The Education Trust Fund shall have first  
27 priority on any funds received by the state from litigation

1 involving the 2010 gulf oil spill for any amounts transferred  
2 to the General Fund pursuant to subsection (a).

3 Section 3. This act shall become effective  
4 immediately following its passage and approval by the  
5 Governor, or its otherwise becoming law.