

1 SB331  
2 219306-1  
3 By Senator Orr  
4 RFD: Finance and Taxation Education  
5 First Read: 29-MAR-22

SYNOPSIS:           This bill amends the Education Trust Fund Rolling Reserve Act of 2011 to clarify current practices for the determination of the annual appropriation cap, for the disposition of revenues received in excess of the cap, and for the appropriation of funds in the Education Trust Fund Advancement and Technology Fund.

                  This bill also deletes certain obsolete provisions and modifies certain transfer dates to improve cash flow for the Education Trust Fund.

A BILL  
TO BE ENTITLED  
AN ACT

                  To amend Sections 29-9-2, 29-9-3, 29-9-4, as last amended by Act 2022-139 of the 2022 Regular Session, and 29-9-6, Code of Alabama 1975, relating to the Education Trust Fund Rolling Reserve Act, to clarify current practices for the calculation of the annual appropriation cap for the

1 disposition of revenues in excess of the cap, and for the  
2 appropriation of funds in the Education Trust Fund Advancement  
3 and Technology Fund; to delete certain obsolete provisions;  
4 and to modify certain transfer dates to improve cash flow for  
5 the Education Trust Fund.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 29-9-2, 29-9-3, 29-9-4, as last  
8 amended by Act 2022-139 of the 2022 Regular Session, and  
9 29-9-6, Code of Alabama 1975, are amended to read as follows:

10 "§29-9-2.

11 "For the purposes of this chapter, the following  
12 terms shall have the following meanings:

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

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

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

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

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

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

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

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

1               "§29-9-3.

2               "(a) Notwithstanding any other provision of law to  
3 the contrary, beginning with appropriations made for the  
4 fiscal year ending September 30, 2013, appropriations from the  
5 Education Trust Fund shall not exceed the fiscal year  
6 appropriation cap.

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

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

14              "(2) An amount equal to the amount in subdivision  
15 (1) multiplied by the average annual percent of change in the  
16 recurring revenues deposited into the Education Trust Fund for  
17 the 14 highest of the 15 completed fiscal years preceding the  
18 date on which the fiscal year appropriation cap is calculated.

19              "(3) If new recurring revenue measures are enacted  
20 that will be deposited into the Education Trust Fund, or if  
21 existing revenue sources are amended to increase the amount of  
22 money deposited into the Education Trust Fund, for the first  
23 time during the year for which the fiscal year appropriation  
24 cap is being calculated, then 95 percent of the amount  
25 projected in the enacted fiscal note accompanying the  
26 legislative act creating the new recurring revenue shall be  
27 added or subtracted as a part of the fiscal year appropriation

1 cap. If a recurring revenue source ~~is removed from~~ to the  
2 Education Trust Fund is removed or reduced during the year for  
3 which the fiscal year appropriation cap is being calculated,  
4 the negative impact, based on the enacted fiscal note, of the  
5 removal or reduction of the recurring revenue shall be  
6 included in the calculation of the fiscal year appropriation  
7 cap. ~~Any new recurring revenue measures and any changes in the~~  
8 ~~distribution of Education Trust Fund recurring revenues~~  
9 ~~enacted during the First or Second Special Session of 2015~~  
10 ~~shall not require any addition or reduction in the fiscal year~~  
11 ~~appropriation cap for the fiscal year ending September 30,~~  
12 ~~2016.~~

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

17 ~~"(5) The amount required to be appropriated from the~~  
18 ~~Education Trust Fund to the Prepaid Affordable College Tuition~~  
19 ~~Trust Fund pursuant to Section 16-33C-16, Code of Alabama~~  
20 ~~1975.~~

21 "(c) The Director of Finance and the ~~Director of the~~  
22 ~~Fiscal Office~~ Legislative Fiscal Officer shall certify their  
23 computation of the fiscal year appropriation cap at the same  
24 time as the certification required by Amendment No. 803 to the  
25 Constitution of Alabama of 1901. If the computation results in  
26 a fiscal year appropriation cap that is less than the total  
27 appropriations from the Education Trust Fund for the fiscal

1 year immediately preceding the fiscal year for which the  
2 fiscal year appropriation cap is being calculated, the  
3 Legislature may appropriate from the Education Trust Fund  
4 Budget Stabilization Fund created in this chapter an amount  
5 equal to the difference between the preceding fiscal year's  
6 total appropriations from the Education Trust Fund and the  
7 fiscal year appropriation cap, provided that any such amount  
8 shall be in the determination of the Legislature not to  
9 compromise the fiscal integrity of the fund to offset any  
10 future proration of the Education Trust Fund.

11 "(d) Amendment No. 803 to the Constitution of 1901, l  
12 requires an estimate of available revenue for the Education  
13 Trust Fund which is to be certified by the Finance Director  
14 and the Legislative Fiscal Officer prior to the third  
15 legislative day of each regular session. If, however, the  
16 average of the estimated available revenue is less than the  
17 fiscal year appropriation cap calculated in subsection (b),  
18 the Legislature shall appropriate no more than the lesser  
19 amount of the average of the estimated available revenue or  
20 the fiscal year appropriation cap as required to be determined  
21 by this section.

22 "§29-9-4.

23 "There is hereby created in the State Treasury an  
24 Education Trust Fund Budget Stabilization Fund and an  
25 Education Trust Fund Advancement and Technology Fund. Any  
26 monetary interest which accrues in the Education Trust Fund  
27 Budget Stabilization Fund shall be retained in the fund from

1 year to year and shall be subject only to the provisions of  
2 this chapter. If total revenues deposited into the Education  
3 Trust Fund during the immediately preceding fiscal year exceed  
4 the fiscal year appropriation cap for the immediately  
5 preceding fiscal year, and total Education Trust Fund  
6 appropriations for the immediately preceding fiscal year are  
7 less than the fiscal year appropriation cap for the  
8 immediately preceding fiscal year, the excess revenues shall  
9 remain in the Education Trust Fund as nonrecurring revenue. On  
10 or before ~~November 15~~ May 31 of each fiscal year, if the total  
11 revenues deposited into the Education Trust Fund during the  
12 immediately preceding fiscal year exceed the fiscal year  
13 appropriation cap for the immediately preceding fiscal year,  
14 and Education Trust Fund appropriations for the immediately  
15 preceding fiscal year were equal to the fiscal year  
16 appropriation cap, the excess revenues shall be transferred to  
17 the Education Trust Fund Rainy Day Account until the account  
18 has been repaid in full. If the account has been repaid in  
19 full, any excess revenues remaining shall be transferred to  
20 the Education Trust Fund Budget Stabilization Fund and the  
21 Education Trust Fund Advancement and Technology Fund created  
22 in this chapter. The transfers to the Education Trust Fund  
23 Budget Stabilization Fund and the Education Trust Fund  
24 Advancement and Technology Fund shall be made annually as  
25 follows:

26 ~~"(a) (1)~~ Any excess revenues remaining for ~~the any~~  
27 fiscal year ~~ending September 30, 2015, up to two percent of~~



1 ~~the previous year's Education Trust Fund appropriations,~~ shall  
2 be transferred to the Education Trust Fund Budget  
3 Stabilization Fund. ~~Thereafter,~~ in an amount up to one percent  
4 of the previous year's Education Trust Fund appropriations  
5 ~~shall be transferred to the Education Trust Fund Budget~~  
6 ~~Stabilization Fund annually~~ until the fund reaches seven and  
7 one-half percent of the previous year's appropriations from  
8 the Education Trust Fund.

9           ~~"(b) (2) Funds Revenues~~ in excess of those  
10 transferred in ~~subsection~~ subdivision ~~(a) (1)~~ shall be  
11 transferred to the Education Trust Fund Advancement and  
12 Technology Fund each year. ~~Amounts~~ Any amount of the available  
13 balance in the Education Trust Fund Advancement and Technology  
14 Fund ~~shall~~ may be ~~appropriated~~ available for appropriation  
15 only by and through an independent supplemental appropriation  
16 bill for the following nonrecurring expenses: repairs or  
17 deferred maintenance of facilities for public education  
18 purposes in the state, capital outlay, for classroom  
19 instructional support as provided in Section 16-13-231(b) (2) c.  
20 and Section 16-13-231.3, for insuring facilities, for  
21 transportation as provided in Section 16-13-233, for school  
22 security measures, and for the acquisition or purchase of  
23 education technology and equipment, or both. These funds,  
24 however, shall not be used as a pledge for the issuance or  
25 payment of debt service. No funds shall be appropriated ~~until~~  
26 in years when the balance of the Education Trust Fund  
27 Advancement and Technology Fund at the end of the previous

1     fiscal year ~~equals or exceeds~~ is less than ten million dollars  
2     (\$10,000,000) ~~\$10 million~~. Amounts in the Education Trust Fund  
3     Advancement and Technology Fund shall be budgeted and allotted  
4     in accordance with Sections 41-4-80 through 41-4-96 and  
5     Sections 41-19-1 through 41-19-12, but shall not be limited by  
6     the fiscal year appropriation cap.

7             "~~(c)~~ (3) The annual appropriation of these funds  
8     shall be divided between the public schools and institutions  
9     of higher education in the state in accordance with the  
10    percentage split, based on the fiscal year in which an  
11    appropriation is made, between these two sectors of education  
12    as certified by the ~~Legislative Services Agency, Fiscal~~  
13    ~~Division,~~ Legislative Fiscal Officer at the end of the  
14    preceding fiscal year. Public schools shall be interpreted to  
15    include any school in operation for the current fiscal year,  
16    the Alabama School of Math and Science, the Alabama School of  
17    Fine Arts, the Alabama School of Cyber Technology and  
18    Engineering, the portion of the Alabama Institute for Deaf and  
19    Blind providing appropriate elementary/secondary instruction,  
20    and may include the Department of Youth Services School  
21    District.

22             "§29-9-6.

23             "During the first six months of a fiscal year, the  
24    Director of Finance may temporarily transfer available funds  
25    in the Budget Stabilization Fund into the Education Trust Fund  
26    as necessary to alleviate cash flow problems in the Education  
27    Trust Fund. Any funds temporarily transferred shall be repaid

1 to the Budget Stabilization Fund from funds in the Education  
2 Trust Fund ~~within 90 days following the date the funds are~~  
3 ~~transferred~~ by September 30 of the fiscal year in which the  
4 transfer was made."

5 Section 2. This act shall become effective  
6 immediately following its passage and approval by the  
7 Governor, or its otherwise becoming law.