

1 HB29
2 171764-1
3 By Representative Poole
4 RFD: Ways and Means Education
5 First Read: 08-SEP-15

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8 SYNOPSIS: This bill amends the Education Trust Fund
9 Rolling Reserve Act of 2011 to provide further for
10 the determination of the annual appropriation cap,
11 for the disposition of revenues received in excess
12 of the cap, for the appropriation of funds in the
13 Education Trust Fund Advancement and Technology
14 Fund, and for the temporary transfer of funds from
15 the Education Trust Fund Budget Stabilization Fund.

16 This bill amends the Wallace-Folsom College
17 Savings Investment Plan Act to delete certain
18 obsolete provisions concerning PSCA debt service.
19 This bill further clarifies the fiscal status of
20 holding or clearing accounts created as an
21 administrative convenience to implement the
22 statutory and/or constitutional distribution of
23 earmarked tax revenues so as to prohibit the
24 appropriation of such funds.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To provide further for the calculation of the annual
4 appropriation cap for the Education Trust Fund Rolling Reserve
5 Act to include payments to the Prepaid Affordable College
6 Tuition (PACT) Trust Fund; to provide for a one-time transfer
7 to the State General Fund for the fiscal year ending September
8 30, 2015; to provide further for the use of revenues from the
9 Education Trust Fund Budget Stabilization Fund and the
10 Education Trust Fund Advancement and Technology Fund; to
11 delete certain obsolete provisions concerning PSCA debt
12 service; and to prohibit appropriations from holding or
13 clearing accounts.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 29-9-3, 29-9-4, 29-9-5, and
16 29-9-6, Code of Alabama 1975, are hereby amended to read as
17 follows:

18 "§29-9-3.

19 "(a) Notwithstanding any other provision of law to
20 the contrary, beginning with appropriations made for the
21 fiscal year ending September 30, 2013, appropriations from the
22 Education Trust Fund shall not exceed the fiscal year
23 appropriation cap.

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

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

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

10 ~~"(3) An amount equal to 40 percent of the increase
11 in recurring revenues deposited into the Education Trust Fund
12 for the last completed fiscal year over the recurring revenues
13 deposited into the Education Trust Fund for the fiscal year
14 immediately preceding the last completed fiscal year. The
15 amount provided in this subdivision shall be added only if the
16 percentage in the recurring revenues deposited into the
17 Education Trust Fund for the last completed fiscal year
18 exceeds the 15 year average growth rate calculated in
19 subdivision (b) (2).~~

20 "~~(4)~~ (3) If new recurring revenue measures are
21 enacted that will be deposited into the Education Trust Fund,
22 or if existing revenue sources are amended to increase the
23 amount of money deposited into the Education Trust Fund, for
24 the first time during the year for which the fiscal year
25 appropriation cap is being calculated, then 95 percent of the
26 amount projected in the enacted fiscal note accompanying the
27 legislative act creating the new recurring revenue shall be

1 added as a part of the fiscal year appropriation cap. If a
2 recurring revenue source is removed from the Education Trust
3 Fund during the year for which the fiscal year appropriation
4 cap is being calculated, the negative impact, based on the
5 enacted fiscal note, of the removal of the recurring revenue
6 shall be included in the calculation of the fiscal year
7 appropriation cap. Any new recurring revenue measures and any
8 changes in the distribution of Education Trust Fund recurring
9 revenues enacted during the First 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 "~~(5)~~ (4) Nonrecurring revenue shall be added as a
14 part of the fiscal year appropriation cap for the fiscal year
15 in which the nonrecurring revenue is deposited into the
16 Education Trust Fund.

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

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

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

11 "(d) Amendment No. 803 to the Constitution of 1901
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 ~~Capital~~ Advancement and Technology Fund.
26 Any monetary interest which accrues in the Education Trust
27 Fund Budget Stabilization Fund shall be retained in the fund

1 from year to year and shall be subject only to the provisions
2 of this chapter. On or before November 15 of each fiscal year,
3 if the total revenues deposited into the Education Trust Fund
4 during the immediately preceding fiscal year exceed the fiscal
5 year appropriation cap for the immediately preceding fiscal
6 year, the excess shall be transferred to the Education Trust
7 Fund Rainy Day Account until the account has been repaid in
8 full. If the account has been repaid in full, any excess
9 remaining shall be transferred to the Education Trust Fund
10 Budget Stabilization Fund and the Education Trust Fund
11 Advancement and Technology Fund created in this chapter. The
12 transfers to the Education Trust Fund Budget Stabilization
13 Fund and the Education Trust Fund Advancement and Technology
14 Fund shall be made annually as follows:

15 "(a) An amount equal to one percent of the previous
16 year's Education Trust Fund appropriations shall be
17 transferred to the Education Trust Fund Budget Stabilization
18 Fund annually until the Fund reaches seven and one-half
19 percent of the previous year's appropriations from the
20 Education Trust Fund. Provided, however, any excess remaining
21 for the fiscal year ending September 30, 2015 only, after the
22 distribution to the Budget Stabilization Fund as provided for
23 in this subsection in an amount not to exceed \$50,000,000,
24 shall be transferred to the State General Fund. The transfer
25 made herein to the State General Fund shall not include
26 revenues from income tax receipts. The amount transferred to
27 the State General Fund pursuant to this subdivision (a) shall

1 be repaid from a source of revenue other than the Education
2 Trust Fund no later than September 30, 2018. If the
3 transferred amount is not repaid by this date, then the
4 delinquent amount shall be distributed from the use tax
5 receipts that would otherwise be distributed to the State
6 General Fund in the fiscal year ending September 30, 2019.

7 "(b) Funds in excess of those transferred in
8 subsection (a) shall be transferred to the Education Trust
9 Fund Advancement and Technology Fund each year. Amounts in the
10 Education Trust Fund Advancement and Technology Fund shall be
11 appropriated for the planning, improvement, repair or
12 renovation of facilities for public education purposes in the
13 state, including the purchase of land and equipment for
14 facilities, for existing debt payments related to facilities,
15 for classroom instructional support as provided in Section
16 16-13-231(b) (2)c. and Section 16-13-231.3, for insuring
17 facilities, for transportation as provided in Section
18 16-13-233, for deferred maintenance and for the acquisition
19 and/or purchase of education technology and equipment. These
20 funds, however, shall not be used as a pledge for the issuance
21 of new debt. No funds shall be appropriated until the balance
22 of the Education Trust Fund Advancement and Technology Fund at
23 the end of the previous fiscal year equals or exceeds \$10
24 million. Amounts in the Education Trust Fund Advancement and
25 Technology Fund shall be budgeted and allotted in accordance
26 with Sections 41-4-80 through 41-4-96 and Sections 41-19-1
27 through 41-19-12, but shall not be limited by the fiscal year

1 ~~appropriation cap. until the Fund reaches an amount which~~
2 ~~equals 20 percent of the then current year's appropriations~~
3 ~~from the Education Trust Fund. After the balance in the~~
4 ~~Education Trust Fund Budget Stabilization Fund reaches a total~~
5 ~~of 20 percent, any excess remaining shall be distributed to~~
6 ~~the Education Trust Fund Capital Fund.~~

7 "(c) The annual appropriation of these funds shall
8 be divided between the public schools and institutions of
9 higher education in the state in accordance with the
10 percentage split between these two sectors of education as
11 certified by the Legislative Fiscal Office at the end of the
12 preceding fiscal year. Public schools shall be interpreted to
13 include the Alabama School of Math and Science, the Alabama
14 School of Fine Arts, the portion of the Alabama Institute for
15 Deaf and Blind providing appropriate Elementary/Secondary
16 instruction, and may include the Department of Youth Services
17 School District."

18 "§29-9-5.

19 ~~"(a)~~ Except as provided in Section 29-9-3, amounts
20 in the Education Trust Fund Budget Stabilization Fund may be
21 withdrawn only to prevent proration in the Education Trust
22 Fund. The Governor must certify to the state Comptroller and
23 notify the Legislature that proration would occur in the
24 Education Trust Fund before funds may be withdrawn. Following
25 the certification and notification by the Governor,
26 withdrawals may be made from the Education Trust Fund Budget
27 Stabilization Fund; however, withdrawals shall be limited to

1 the amount of the anticipated proration and funds allotted
2 only to the extent necessary to avoid proration of
3 appropriations from the Education Trust Fund. Any funds
4 withdrawn from the Budget Stabilization Fund in excess of the
5 amount necessary to avoid proration shall be transferred back
6 to the Budget Stabilization Fund within 30 days after the end
7 of the fiscal year in which withdrawals are made.

8 ~~"(b) Amounts in the Education Trust Fund Capital~~
9 ~~Fund shall be used only for construction, reconstruction,~~
10 ~~alteration, and improvement of buildings and other facilities~~
11 ~~for public education purposes in the state, including the~~
12 ~~acquisition of sites and equipment for buildings and~~
13 ~~facilities, and for the payment of indebtedness incurred for~~
14 ~~any of those purposes. Amounts in the Education Trust Fund~~
15 ~~Capital Fund shall be budgeted and allotted in accordance with~~
16 ~~Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through~~
17 ~~41-19-12 but shall not be limited by the fiscal year~~
18 ~~appropriation cap."~~

19 "§29-9-6.

20 "During the first ~~quarter~~ six months of a fiscal
21 year, the Director of Finance may temporarily transfer
22 available funds in the Budget Stabilization Fund into the
23 Education Trust Fund as necessary to alleviate cash flow
24 problems in the Education Trust Fund. Any funds temporarily
25 transferred shall be repaid to the Budget Stabilization Fund
26 from funds in the Education Trust Fund within 90 days
27 following the date the funds are transferred."

1 Section 2. Sections 16-33C-14 and 16-33C-15 Code of
2 Alabama 1975, are hereby repealed.

3 Section 3. Section 16-33C-16 Code of Alabama 1975,
4 is hereby amended to read as follows:

5 "§16-33C-16.

6 ~~"In addition to the appropriations made in Section~~
7 ~~16-33C-14 and Section 16-33C-15, there~~ (a) There is annually
8 appropriated from the Education Trust Fund to the PACT Trust
9 Fund the following amounts in the following fiscal years:

10 (1) For the fiscal year ending 2016 -- ~~\$10,000,000~~
11 \$33,952,000;

12 (2) For the fiscal year ending 2017 -- ~~\$20,000,000~~
13 \$63,622,000;

14 (3) For the fiscal year ending 2018 -- ~~\$20,000,000~~
15 \$62,783,000;

16 (4) For the fiscal year ending 2019 -- ~~\$13,000,000~~
17 \$61,539,000.

18 (5) For the fiscal year ending 2020 -- \$53,738,300
19 \$60,738,300;

20 (6) For the fiscal year ending 2021 -- \$31,881,600;

21 (7) For the fiscal year ending 2022 -- \$32,181,600;

22 (8) For the fiscal year ending 2023 -- \$33,494,400;

23 (9) For the fiscal year ending 2024 -- \$33,728,700;

24 (10) For the fiscal year ending 2025 -- \$38,449,500;

25 (11) For the fiscal year ending 2026 -- \$39,201,000;

26 (12) For the fiscal year ending 2027 -- \$32,500,000.

1 "(b) Beginning with the fiscal year ending September
2 30, 2017, for budgetary purposes and annual budget
3 calculations, forty-five percent (45%) of the appropriations
4 made in this section shall be considered to be a portion of
5 the funding received by colleges and universities, and the
6 remainder shall be considered to be the same as appropriations
7 made for debt service."

8 Section 4. The Legislature shall not appropriate any
9 funds from any of the several clearing or holding accounts
10 into which the Department of Revenue deposits tax revenues on
11 a timely basis and from which the State Comptroller makes
12 disbursements, which are limited by statutes to the purpose of
13 legal expenditure of such tax revenues. Such accounts are not
14 the end destination of such tax revenues but a clearinghouse
15 for immediate deposit of tax revenues into the State Treasury
16 as a matter of convenience until the State Comptroller makes
17 such disbursements, including the processing of tax refunds as
18 may be necessary. Nothing in this Section, however, shall be
19 construed to limit the authority of the Legislature to amend
20 current statutes to further provide for the distribution of
21 tax revenues.

22 Section 5. All laws or parts of laws in direct
23 conflict with this act are hereby repealed.

24 Section 6. If a court of competent jurisdiction
25 shall adjudge to be invalid or unconstitutional any clause,
26 sentence, paragraph, section or part of this act, such
27 judgment or decree shall not affect, impair, invalidate or

1 nullify the remainder of this act, but the effect thereof
2 shall be confined to the clause, sentence, paragraph, section,
3 part of this act so adjudged to be invalid or
4 unconstitutional.

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