

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 23-0813.01 Pierce Lively x2059

SENATE BILL 23-221

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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Senate Committees
Appropriations

House Committees
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE FUNDING OF THE HEALTHY SCHOOL MEALS FOR ALL**
102 **PROGRAM, AND, IN CONNECTION THEREWITH, CREATING THE**
103 **HEALTHY SCHOOL MEALS FOR ALL PROGRAM GENERAL FUND**
104 **EXEMPT ACCOUNT, ALLOWING EXPENDITURES IN EXCESS OF**
105 **APPROPRIATIONS FOR THE PROGRAM, CLARIFYING HOW THE**
106 **PROGRAM SHOULD BE ACCOUNTED FOR IN THE ANNUAL**
107 **GENERAL APPROPRIATIONS BILL, AND MAKING AN**
108 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
2nd Reading Unamended
April 5, 2023

SENATE
3rd Reading Unamended
March 30, 2023

SENATE
2nd Reading Unamended
March 29, 2023

[http://leg.colorado.gov/.](http://leg.colorado.gov/))

Joint Budget Committee. At the November 2022 general election, Colorado voters approved proposition FF. Proposition FF created the healthy school meals for all programs (program) and increased taxes to pay for the program.

The bill creates the healthy school meals for all program general fund exempt account (account). The department of revenue will deposit the revenue resulting from the tax increase in proposition FF into the account. The department of education (department) will use the tax revenue in the account to implement the program. To the extent there is not enough money in the account for the department to implement the program, the department may expend money from the general fund for amounts appropriated for the program.

The bill also allows for expenditures in excess of appropriations from the fund for limited purposes and clarifies how the appropriations made for the program will be shown in the annual general appropriations bill.

Appropriations from the account are excluded from the amount that is used to calculate the statutory general fund reserve, and the unrestricted balance in the account at the end of a fiscal year is excluded from state surplus.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 22-82.9-210 as
3 follows:

4 **22-82.9-210. Healthy school meals for all program general**
5 **fund exempt account - creation - uses - reporting requirements -**
6 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
7 OTHERWISE REQUIRES:

8 (a) "ACCOUNT" MEANS THE HEALTHY SCHOOL MEALS FOR ALL
9 PROGRAM GENERAL FUND EXEMPT ACCOUNT CREATED IN THIS SECTION.

10 (b) "HEALTHY SCHOOL MEALS FOR ALL PROGRAM REVENUE"
11 MEANS THE REVENUE GENERATED BY THE ADDITION TO FEDERAL TAXABLE
12 INCOME IN SECTION 39-22-104 (3)(p.5), WHICH REVENUE IS A
13 VOTER-APPROVED REVENUE CHANGE.

1 (2) THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM GENERAL
2 FUND EXEMPT ACCOUNT IS HEREBY CREATED IN THE GENERAL FUND. THE
3 ACCOUNT CONSISTS OF HEALTHY SCHOOL MEALS FOR ALL PROGRAM
4 REVENUE DEPOSITED IN THE ACCOUNT IN ACCORDANCE WITH SUBSECTION
5 (4)(a) OF THIS SECTION. THE STATE TREASURER SHALL CREDIT ALL
6 INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF
7 MONEY IN THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM GENERAL
8 FUND EXEMPT ACCOUNT TO THE ACCOUNT.

9 (3) (a) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
10 ASSEMBLY, THE DEPARTMENT MAY EXPEND MONEY FROM THE ACCOUNT
11 FOR THE FOLLOWING PURPOSES:

12 (I) PROVIDING REIMBURSEMENTS TO A PARTICIPATING SCHOOL
13 FOOD AUTHORITY FOR OFFERING ELIGIBLE MEALS WITHOUT CHARGE
14 PURSUANT TO SECTION 22-82.9-204 (1)(b);

15 (II) AWARDING LOCAL FOOD PURCHASING GRANTS PURSUANT TO
16 SECTION 22-82.9-205;

17 (III) DISTRIBUTING MONEY TO A PARTICIPATING SCHOOL FOOD
18 AUTHORITY TO INCREASE WAGES OR PROVIDE STIPENDS FOR INDIVIDUALS
19 WHOM THE PARTICIPATING SCHOOL FOOD AUTHORITY EMPLOYS TO
20 DIRECTLY PREPARE AND SERVE FOOD FOR SCHOOL MEALS PURSUANT TO
21 SECTION 22-82.9-206 (1);

22 (IV) AWARDING LOCAL SCHOOL FOOD PURCHASING TECHNICAL
23 ASSISTANCE AND EDUCATION GRANTS PURSUANT TO SECTION 22-82.9-207;
24 AND

25 (V) THE DIRECT AND INDIRECT COSTS OF ADMINISTERING THE
26 PROGRAMS DESCRIBED IN THIS SUBSECTION (3)(a), SO LONG AS THESE
27 COSTS DO NOT EXCEED ONE AND FIVE-TENTHS PERCENT OF THE TOTAL

1 AMOUNT THE GENERAL ASSEMBLY ANNUALLY APPROPRIATES IN THE SAME
2 FISCAL YEAR FOR THE OTHER PURPOSES DESCRIBED IN THIS SUBSECTION
3 (3)(a).

4 (b) MONEY IN THE ACCOUNT SHALL ONLY BE USED FOR THE
5 PURPOSES DESCRIBED IN SUBSECTIONS (3)(a)(II) AND (3)(a)(IV) OF THIS
6 SECTION IF THE SUM OF THE ANNUAL TAX YEAR REVENUE RECORDED IN
7 THE ACCOUNT AND THE BALANCE IN THE ACCOUNT, AS CALCULATED
8 PURSUANT TO SUBSECTION (4) OF THIS SECTION, IS GREATER THAN, OR IS
9 ANTICIPATED TO BE GREATER THAN, THE ANNUAL EXPENDITURE
10 ANTICIPATED TO BE REQUIRED FOR THE PURPOSES DESCRIBED IN
11 SUBSECTIONS (3)(a)(I), (3)(a)(III), AND (3)(a)(V) OF THIS SECTION.

12 (4) (a) THE DEPARTMENT OF REVENUE SHALL, ON A MONTHLY
13 BASIS, RECORD REVENUES AND DEPOSIT MONEY TO THE ACCOUNT IN A
14 MANNER THAT IS ALIGNED WITH EXEMPT REVENUES DETERMINED
15 PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION.

16 (b) THE DEPARTMENT OF REVENUE SHALL, ON A MONTHLY BASIS,
17 REPORT THE AMOUNT OF PROGRAM REVENUE IDENTIFIED FROM TAX
18 RETURNS TO THE OFFICE OF STATE PLANNING AND BUDGETING AND THE
19 LEGISLATIVE COUNCIL STAFF. THE OFFICE OF STATE PLANNING AND
20 BUDGETING SHALL CALCULATE THE AMOUNT OF HEALTHY SCHOOL MEALS
21 FOR ALL PROGRAM REVENUE BOTH PROJECTED TO BE RECEIVED AND
22 ACTUALLY RECEIVED BY THE DEPARTMENT OF REVENUE BASED ON INCOME
23 TAX RETURN DATA AND OTHER RELEVANT FACTORS. THE OFFICE OF STATE
24 PLANNING AND BUDGETING SHALL ALSO IDENTIFY, IN COLLABORATION
25 WITH THE DEPARTMENT OF REVENUE, THE REVENUE TO BE RECORDED AND
26 DEPOSITED ON A MONTHLY BASIS BY THE DEPARTMENT OF REVENUE IN THE
27 ACCOUNT PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, AND THE

1 TOTAL REVENUE TO BE RECORDED AND DEPOSITED BY THE DEPARTMENT
2 OF REVENUE IN THE ACCOUNT FOR THE FISCAL YEAR.

3 (c) THE AMOUNT OF HEALTHY SCHOOL MEALS FOR ALL PROGRAM
4 REVENUE IDENTIFIED BY THE OFFICE OF STATE PLANNING AND BUDGETING
5 FOR EACH FISCAL YEAR MUST INCLUDE ADJUSTMENTS FOR ESTIMATION
6 ERRORS DISCOVERED FOR ALL PRIOR FISCAL YEARS. THE OFFICE SHALL
7 NOTIFY THE DEPARTMENT OF REVENUE AND THE LEGISLATIVE COUNCIL
8 STAFF OF THE GENERAL ASSEMBLY OF THE ADJUSTMENT AMOUNTS.

9 (d) ON DECEMBER 1, 2024, AND EVERY DECEMBER 1 THEREAFTER,
10 THE OFFICE OF STATE PLANNING AND BUDGETING SHALL REPORT THE
11 AMOUNT OF HEALTHY SCHOOL MEALS FOR ALL PROGRAM REVENUE
12 RECEIVED BY THE DEPARTMENT OF REVENUE IN THE PREVIOUS TAX YEAR
13 BASED ON INCOME TAX RETURN DATA AND OTHER RELEVANT FACTORS.
14 THE GENERAL ASSEMBLY SHALL CONSIDER THIS REPORT WHEN
15 ESTIMATING THE AMOUNT OF MONEY TO APPROPRIATE FOR THE PURPOSES
16 SPECIFIED IN SUBSECTION (3) OF THIS SECTION IN THE NEXT FISCAL YEAR.

17 (5) IF THE DEPARTMENT DETERMINES THAT THERE IS AN
18 INSUFFICIENT AMOUNT OF MONEY IN THE ACCOUNT TO PROVIDE FOR AN
19 EXPENDITURE AUTHORIZED BY THE ANNUAL APPROPRIATION FROM THE
20 ACCOUNT FOR THE PURPOSES DESCRIBED IN SUBSECTIONS (3)(a)(I) AND
21 (3)(a)(III) OF THIS SECTION, THE DEPARTMENT MAY MAKE THE
22 EXPENDITURE FROM THE GENERAL FUND.

23 (6) IN ITS ANNUAL SUBMISSION OF THE STATE DEPARTMENT'S
24 BUDGET REQUEST TO THE JOINT BUDGET COMMITTEE, THE OFFICE OF STATE
25 PLANNING AND BUDGETING SHALL REPORT:

26 (a) THE TOTAL AMOUNT OF EXPENDITURES FROM THE ACCOUNT
27 MADE PURSUANT TO SUBSECTION (3) OF THIS SECTION; AND

1 (b) THE TOTAL AMOUNT OF EXPENDITURES FROM THE GENERAL
2 FUND MADE PURSUANT TO SUBSECTION (5) OF THIS SECTION.

3 (7) (a) PURSUANT TO SECTION 24-75-201 (2)(c), ANY
4 UNRESTRICTED BALANCE REMAINING IN THE ACCOUNT AT THE END OF ANY
5 FISCAL YEAR SHALL NOT BE DESIGNATED AS A PART OF THE GENERAL FUND
6 SURPLUS.

7 (b) PURSUANT TO SECTION 24-75-201.1 (2)(e), APPROPRIATIONS
8 FOR EXPENDITURES FROM THE ACCOUNT SHALL BE EXCLUDED FROM THE
9 BASIS FOR THE CALCULATION OF THE GENERAL FUND RESERVE.

10 **SECTION 2.** In Colorado Revised Statutes, **amend** 22-82.9-209
11 as follows:

12 **22-82.9-209. Program - funding.** For the 2023-24 budget year
13 and for each budget year thereafter, the general assembly shall
14 appropriate to the department, by separate line ~~item~~ ITEMS in the annual
15 general appropriation bill, the amount necessary to implement the
16 program, including the amount required to reimburse participating school
17 food authorities for eligible meals provided to students pursuant to
18 section 22-82.9-204 and including the amount distributed as local food
19 purchasing grants pursuant to section 22-82.9-205, the amount distributed
20 pursuant to section 22-82.9-206 to increase the wages or provide stipends
21 for staff who prepare and serve school meals, and at least five million
22 dollars annually to implement the local school food purchasing technical
23 assistance and education grant program pursuant to section 22-82.9-207,
24 to the extent said sections are in effect as provided in section 22-82.9-204
25 (4)(b). The department may expend not more than one and five-tenths
26 percent of the total amount annually appropriated pursuant to this section
27 to offset the direct and indirect costs incurred by the department in

1 implementing this part 2.

2 **SECTION 3.** In Colorado Revised Statutes, 24-75-109, **amend**
3 (5); and **add** (1)(f) as follows:

4 **24-75-109. Controller may allow expenditures in excess of**
5 **appropriations - limitations - appropriations for subsequent fiscal**
6 **year restricted - repeal.** (1) For the purpose of closing the state's books,
7 and subject to the provisions of this section, the controller may, on or
8 after May 1 of any fiscal year and before the forty-fifth day after the close
9 thereof, upon approval of the governor, allow any department, institution,
10 or agency of the state, including any institution of higher education, to
11 make an expenditure in excess of the amount authorized by an item of
12 appropriation for such fiscal year if:

13 (f) THE OVEREXPENDITURE IS BY THE DEPARTMENT OF EDUCATION
14 FOR EITHER:

15 (I) PROVIDING REIMBURSEMENTS TO A PARTICIPATING SCHOOL
16 FOOD AUTHORITY FOR OFFERING ELIGIBLE MEALS WITHOUT CHARGE,
17 PURSUANT TO SECTION 22-82.9-204 (1)(b); OR

18 (II) DISTRIBUTING MONEY TO A PARTICIPATING SCHOOL FOOD
19 AUTHORITY TO INCREASE WAGES OR PROVIDE STIPENDS FOR INDIVIDUALS
20 WHOM THE PARTICIPATING SCHOOL FOOD AUTHORITY EMPLOYS TO
21 DIRECTLY PREPARE AND SERVE FOOD FOR SCHOOL MEALS, PURSUANT TO
22 SECTION 22-82.9-206 (1).

23 (5) The limitation on general fund appropriations and the
24 requirement for a general fund reserve contained in section 24-75-201.1
25 shall not apply to overexpenditures from the general fund for medicaid
26 programs allowed pursuant to ~~paragraph (a) of subsection (1)~~ SUBSECTION
27 (1)(a) of this section TO OVEREXPENDITURES BY THE DEPARTMENT OF

1 EDUCATION ALLOWED PURSUANT TO SUBSECTION (1)(f) OF THIS SECTION,
2 or to supplemental general fund appropriations for medicaid programs
3 enacted pursuant to subsection (4) of this section. Overexpenditures for
4 all other purposes allowed pursuant to subsection (1) of this section and
5 supplemental general fund appropriations for all other purposes enacted
6 pursuant to subsection (4) of this section shall be considered
7 appropriations for the fiscal year in which the overexpenditure was
8 allowed and shall accordingly be subject to the limitations and
9 requirements of section 24-75-201.1.

10 **SECTION 4.** In Colorado Revised Statutes, 24-75-201, **add**
11 (2)(c) as follows:

12 **24-75-201. General fund - general fund surplus - custodial**
13 **money.** (2) (c) ANY UNRESTRICTED BALANCE REMAINING IN THE
14 HEALTHY SCHOOL MEALS FOR ALL PROGRAM GENERAL FUND EXEMPT
15 ACCOUNT CREATED IN SECTION 22-82.9-210 (2) AT THE END OF ANY
16 FISCAL YEAR SHALL NOT BE DESIGNATED AS PART OF THE GENERAL FUND
17 SURPLUS.

18 **SECTION 5.** In Colorado Revised Statutes, 24-75-201.1, **add**
19 (2)(e) as follows:

20 **24-75-201.1. Restriction on state appropriations - legislative**
21 **declaration - definitions.** (2) The basis for the calculation of the reserve
22 as specified in this section includes all appropriations for expenditure
23 from the general fund for such fiscal year, except for any appropriations
24 for:

25 (e) EXPENDITURES FROM THE HEALTHY SCHOOL MEALS FOR ALL
26 PROGRAM GENERAL FUND EXEMPT ACCOUNT CREATED IN SECTION
27 22-82.9-210 (2).

1 **SECTION 6.** In Colorado Revised Statutes, 39-22-104, **amend**
2 (3)(p.5)(II) as follows:

3 **39-22-104. Income tax imposed on individuals, estates, and**
4 **trusts - single rate - report - legislative declaration - definitions -**
5 **repeal.** (3) There shall be added to the federal taxable income:

6 (p.5) (II) For the 2023-24 state fiscal year and state fiscal years
7 thereafter, the general assembly shall annually appropriate an amount of
8 ~~general fund revenue~~ at least equal to the amount of revenue generated by
9 the addition to federal taxable income described in subsection (3)(p.5)(I)
10 of this section, but not more than the amount required, to fully fund the
11 direct and indirect costs of implementing the healthy school meals for all
12 program as provided in section 22-82.9-209. The provisions of subsection
13 (3)(p.5)(I) of this section constitute a voter-approved revenue change,
14 approved by the voters at the statewide election in November of 2022,
15 and the revenue generated by this voter-approved revenue change may be
16 collected, retained, appropriated, and spent without subsequent voter
17 approval, notwithstanding any other limits in the state constitution or law.
18 The addition to federal taxable income described in subsection (3)(p.5)(I)
19 of this section does not apply for an income tax year that commences after
20 the healthy school meals for all program, or any successor program, is
21 repealed. Upon repeal of the healthy school meals for all program, or any
22 successor program, the commissioner of education shall promptly notify
23 the executive director in writing that the program is repealed.

24 **SECTION 7. Appropriation.** (1) For the 2023-24 state fiscal
25 year, \$115,339,107 is appropriated to the department of education. This
26 appropriation is from the healthy school meals for all program general
27 fund exempt account. To implement this act, the department may use this

1 appropriation as follows:

2 (a) \$268,088 for healthy school meals for all program
3 administration, which amount is based on an assumption that the
4 department will require an additional 3.1 FTE;

5 (b) \$34,100 for health, life, and dental;

6 (c) \$349 for short-term disability;

7 (d) \$10,892 for S.B. 04-257 amortization equalization
8 disbursement;

9 (e) \$10,892 for S.B. 06-235 supplemental amortization
10 equalization disbursement;

11 (f) \$115,000,000 for school meal reimbursements; and

12 (g) \$14,786 for the purchase of legal services.

13 (2) For the 2023-24 state fiscal year, \$14,786 is appropriated to
14 the department of law. This appropriation is from reappropriated funds
15 received from the department of education under subsection (1)(g) of this
16 section and is based on an assumption that the department of law will
17 require an additional 0.1 FTE. To implement this act, the department of
18 law may use this appropriation to provide legal services for the
19 department of education.

20 **SECTION 8. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, or safety.