

## CHAPTER 89

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**EDUCATION - PUBLIC SCHOOLS**


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## SENATE BILL 23-221

BY SENATOR(S) Bridges and Zenzinger, Kirkmeyer, Buckner, Coleman, Cutter, Danielson, Exum, Fields, Ginal, Gonzales, Hansen, Hinrichsen, Jaquez Lewis, Kolker, Marchman, Moreno, Mullica, Priola, Roberts, Sullivan, Winter F., Fenberg; also REPRESENTATIVE(S) Bird and Sirota, Bockenfeld, Amabile, Bacon, Boesenecker, Brown, deGruy Kennedy, Epps, Froelich, Garcia, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lieder, Lindsay, Lindstedt, Lukens, Mabrey, Marshall, Martinez, Michaelson Jenet, Ortiz, Ricks, Snyder, Story, Titone, Valdez, Velasco, Vigil, Weissman, Willford, Young, McCluskie.

## AN ACT

CONCERNING THE FUNDING OF THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM, AND, IN CONNECTION THEREWITH, CREATING THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM GENERAL FUND EXEMPT ACCOUNT, ALLOWING EXPENDITURES IN EXCESS OF APPROPRIATIONS FOR THE PROGRAM, CLARIFYING HOW THE PROGRAM SHOULD BE ACCOUNTED FOR IN THE ANNUAL GENERAL APPROPRIATIONS BILL, AND MAKING AN APPROPRIATION.

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

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

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

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

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

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

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

GENERAL FUND EXEMPT ACCOUNT TO THE ACCOUNT.

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

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

(II) AWARDED LOCAL FOOD PURCHASING GRANTS PURSUANT TO SECTION 22-82.9-205;

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

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

(V) THE DIRECT AND INDIRECT COSTS OF ADMINISTERING THE PROGRAMS DESCRIBED IN THIS SUBSECTION (3)(a), SO LONG AS THESE COSTS DO NOT EXCEED ONE AND FIVE-TENTHS PERCENT OF THE TOTAL AMOUNT THE GENERAL ASSEMBLY ANNUALLY APPROPRIATES IN THE SAME FISCAL YEAR FOR THE OTHER PURPOSES DESCRIBED IN THIS SUBSECTION (3)(a).

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

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

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

OF THIS SECTION, AND THE TOTAL REVENUE TO BE RECORDED AND DEPOSITED BY THE DEPARTMENT OF REVENUE IN THE ACCOUNT FOR THE FISCAL YEAR.

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

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

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

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

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

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

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

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

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

**22-82.9-209. Program - funding.** For the 2023-24 budget year and for each budget year thereafter, the general assembly shall appropriate to the department, by separate line ~~item~~ ITEMS in the annual general appropriation bill, the amount necessary to implement the program, including the amount required to reimburse participating school food authorities for eligible meals provided to students pursuant to section 22-82.9-204 and including the amount distributed as local food purchasing grants pursuant to section 22-82.9-205, the amount distributed pursuant

to section 22-82.9-206 to increase the wages or provide stipends for staff who prepare and serve school meals, and at least five million dollars annually to implement the local school food purchasing technical assistance and education grant program pursuant to section 22-82.9-207, to the extent said sections are in effect as provided in section 22-82.9-204 (4)(b). The department may expend not more than one and five-tenths percent of the total amount annually appropriated pursuant to this section to offset the direct and indirect costs incurred by the department in implementing this part 2.

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

**24-75-109. Controller may allow expenditures in excess of appropriations - limitations - appropriations for subsequent fiscal year restricted - repeal.**

(1) For the purpose of closing the state's books, and subject to the provisions of this section, the controller may, on or after May 1 of any fiscal year and before the forty-fifth day after the close thereof, upon approval of the governor, allow any department, institution, or agency of the state, including any institution of higher education, to make an expenditure in excess of the amount authorized by an item of appropriation for such fiscal year if:

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

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

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

(5) The limitation on general fund appropriations and the requirement for a general fund reserve contained in section 24-75-201.1 shall not apply to overexpenditures from the general fund for medicaid programs allowed pursuant to ~~paragraph (a) of subsection (1)~~ SUBSECTION (1)(a) of this section TO OVEREXPENDITURES BY THE DEPARTMENT OF EDUCATION ALLOWED PURSUANT TO SUBSECTION (1)(f) OF THIS SECTION, or to supplemental general fund appropriations for medicaid programs enacted pursuant to subsection (4) of this section. Overexpenditures for all other purposes allowed pursuant to subsection (1) of this section and supplemental general fund appropriations for all other purposes enacted pursuant to subsection (4) of this section shall be considered appropriations for the fiscal year in which the overexpenditure was allowed and shall accordingly be subject to the limitations and requirements of section 24-75-201.1.

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

**24-75-201. General fund - general fund surplus - custodial money.**

(2) (c) ANY UNRESTRICTED BALANCE REMAINING IN THE HEALTHY SCHOOL MEALS FOR ALL PROGRAM GENERAL FUND EXEMPT ACCOUNT CREATED IN SECTION

22-82.9-210 (2) AT THE END OF ANY FISCAL YEAR SHALL NOT BE DESIGNATED AS PART OF THE GENERAL FUND SURPLUS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved: April 20, 2023