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3 CONFERENCE COMMITTEE REPORT FOR SB162
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8 SYNOPSIS: Alabama's Prepaid Affordable College Tuition
9 (PACT) program, which was enacted in 1989, has
10 provided an opportunity for the purchase of PACT
11 contracts that provide for future college tuition
12 payments. The program has provided these payments
13 every year since its inception. The PACT Board has
14 suspended new entrants into the program and has
15 expressed concerns about the ability to meet the
16 contractual obligations for those participants
17 still in the program.

18 To help offset this shortfall, this bill
19 appropriates funds from the Education Trust Fund to
20 the PACT Program Trust Fund. These appropriations,
21 which begin in FY 2015 and end in FY 2027, will
22 make the PACT Program 100% fully funded according
23 to the actuarial professional retained by the PACT
24 Board. This bill also limits the tuition amounts
25 paid by the PACT Program for certain PACT
26 participants and requires the institutions where
27 such participants attend to accept the limited

1 tuition amounts as full tuition payment.
2 Furthermore, this bill also requires other sources
3 of revenue to be redirected to the PACT Program
4 Trust Fund.

5 In addition, under current law, the
6 Wallace-Folsom College Savings Investment Plan
7 consists of both the PACT Program and the Alabama
8 College Education Savings (ACES) Program. Both the
9 PACT and ACES Programs are governed by the same
10 ten-member board of directors.

11 This bill provides that the PACT Program
12 would be governed by its own board of directors and
13 would also provide for the composition and duties
14 of such board of directors. This bill also makes
15 certain changes to the duties and requirements of
16 the PACT Board, including a requirement that the
17 board make annual reports to members of the
18 Legislature. Furthermore, this bill encourages the
19 PACT Board to make financially beneficial changes
20 to PACT rules, procedures, or policies, to the
21 extent such changes are allowed by law and to the
22 extent such changes do not alter the contractual
23 relationship of the PACT Board and holders of PACT
24 contracts.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To appropriate funds from the Education Trust Fund
4 to Alabama's Prepaid Affordable College Tuition (PACT) Program
5 beginning in the fiscal year ending September 30, 2013 and
6 continuing, if necessary, into the fiscal year ending
7 September 30, 2027; to redirect other sources of funds to the
8 PACT Program Trust Fund; to limit the cost of tuition for
9 certain PACT plan contract participants; to repeal Section
10 16-33C-9 of the Code of Alabama 1975, as amended, relating to
11 the disposition of funds upon the dissolution of the PACT
12 Program; to provide that the PACT Program would be governed by
13 its own board of directors; to provide for the composition and
14 duties of such board of directors; to make certain changes to
15 the duties and requirements of the PACT Board; and to
16 encourage the PACT Board to make financially beneficial
17 changes to PACT rules, procedures, or policies, to the extent
18 such changes are allowed by law and to the extent such changes
19 do not alter the contractual relationship of the PACT Board
20 and holders of PACT contracts.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. (a) There is hereby annually appropriated
23 from the Education Trust Fund to the Trust Fund of the Prepaid
24 Affordable College Tuition (PACT) Program the following
25 amounts in the following fiscal years:

26 For the fiscal year ending 2015 -- \$23,558,000

27 For the fiscal year ending 2016 -- \$23,952,000

1 For the fiscal year ending 2017 -- \$22,622,000

2 For the fiscal year ending 2018 -- \$41,783,000

3 For the fiscal year ending 2019 -- \$42,539,000

4 For the fiscal year ending 2020 -- \$81,646,000

5 (b) These appropriations represent an amount that as
6 of May 1, 2010, is less than or equal to the difference
7 between the Education Trust Fund's portion of the FY 2014 debt
8 service obligations of the Alabama Public School and College
9 Authority (APSCA) and the Education Trust Fund's portion of
10 the debt service obligations of the APSCA for the applicable
11 fiscal year.

12 Section 2. (a) In addition to the appropriations
13 made in Section 1 of this act, there is also hereby annually
14 appropriated from the Education Trust Fund to the PACT Trust
15 Fund the following amounts in the following fiscal years:

16 For the fiscal year ending 2020 -- \$7,092,300

17 For the fiscal year ending 2021 -- \$31,881,600

18 For the fiscal year ending 2022 -- \$32,181,600

19 For the fiscal year ending 2023 -- \$33,494,400

20 For the fiscal year ending 2024 -- \$33,728,700

21 For the fiscal year ending 2025 -- \$38,449,500

22 For the fiscal year ending 2026 -- \$39,201,000

23 For the fiscal year ending 2027 -- \$32,500,000

24 (b) These appropriations represent an amount that as
25 of May 1, 2010, is less than or equal to thirty percent (30%)
26 of the difference between the Education Trust Fund's portion
27 of the FY 2014 debt service obligations of the Alabama Public

1 School and College Authority (APSCA) and the Education Trust
2 Fund's portion of the debt service obligations of the APSCA
3 for the applicable fiscal year. Traditionally, approximately
4 seventy percent (70%) of the appropriations in the annual
5 Education Trust Fund budget have been allocated to agencies
6 and entities providing educational services for K-12 students
7 while approximately thirty percent (30%) of the appropriations
8 in the annual Education Trust Fund budget have been allocated
9 to agencies and entities providing postsecondary educational
10 services. The appropriations made in subsection (a) of this
11 section represent, as of May 1, 2010, the portion of the
12 difference between the Education Trust Fund's portion of the
13 FY 2014 debt service obligations of the Alabama Public School
14 and College Authority (APSCA) and the Education Trust Fund's
15 portion of the debt service obligations of the APSCA for the
16 applicable fiscal year that would normally be appropriated to
17 agencies and entities providing postsecondary educational
18 services. As a result, the remaining seventy percent (70%) of
19 the difference between the Education Trust Fund's portion of
20 the FY 2014 debt service obligations of the Alabama Public
21 School and College Authority (APSCA) and the Education Trust
22 Fund's portion of the debt service appropriation to APSCA for
23 the applicable fiscal year shall be appropriated to K-12.
24 Appropriations made in this section shall be appropriated
25 entirely from funds that would otherwise be appropriated for
26 or received by colleges and universities. For budgetary
27 purposes and calculations, the appropriations made in this

1 section shall be considered to be a portion of the funding
2 received by colleges and universities. In no event shall the
3 K-12 portions of the Education Trust Fund budget be reduced or
4 altered in any manner as a result of appropriations made in
5 this section.

6 Section 3. (a) In addition to the appropriations
7 made in Section 1 and Section 2 of this act, there is hereby
8 annually appropriated from the Education Trust Fund to the
9 PACT Trust Fund the following amounts in the following fiscal
10 years:

11 For the fiscal year ending 2016 -- \$10,000,000

12 For the fiscal year ending 2017 -- \$20,000,000

13 For the fiscal year ending 2018 -- \$20,000,000

14 For the fiscal year ending 2019 -- \$13,000,000

15 (b) These appropriations, along with the
16 appropriations made in Section 1 and Section 2 of this act,
17 will make the PACT Program 100% fully funded, according to the
18 actuarial professional retained by the PACT Board.

19 Section 4. (a) Except as provided in subsection (b),
20 no public institution of higher education shall charge the
21 PACT plan or a PACT plan contract owner mandatory fees or
22 tuition per credit hour in an amount exceeding the cost of
23 mandatory fees or tuition per credit hour as of September 30,
24 2009, except that an annual increase of the lesser of the
25 actual annual tuition or mandatory fee increase or an annual
26 tuition or mandatory fee increase of two and one-half percent
27 (2.5%) shall be allowed for each year thereafter. In the event

1 the earnings of the PACT Trust Fund grow in an amount in
2 excess of five percent (5%) for two or more consecutive years,
3 an annual increase in mandatory fees or tuition per credit
4 hour will be allowed equal to either the actual increase in
5 mandatory fees or tuition per credit hour or two and one-half
6 percent (2.5%) plus the amount in excess of the five percent
7 growth realized in the first year the growth exceeded five
8 percent (5%) followed by a subsequent consecutive year in
9 which growth exceeded five percent (5%), whichever is less. In
10 no event, however, shall the increase in mandatory fees or
11 tuition per credit hour referenced in this paragraph be
12 allowed if the payment of such increased mandatory fees or
13 tuition per credit hour would cause the PACT Trust Fund's
14 funding status to fall below 90%, as determined by the
15 actuarial professional retained by the PACT Board. In the
16 event the earnings fall below five percent in any one year the
17 annual increase shall be limited to the actual increase in
18 mandatory fees or tuition per credit hour or two and one-half
19 percent (2.5%), whichever is less, until such time as the
20 earnings shall exceed five percent (5%) for two or more
21 consecutive years.

22 (b) The provisions of subsection (a) or subsection
23 (c) of this section shall not apply to institutions of higher
24 education under the oversight of the boards of trustees
25 established in Section 264 and Section 266 of the Constitution
26 of Alabama of 1901, now appearing as Section 264 and 266 of

1 Official Recompile of the Constitution of Alabama of 1901,
2 as amended.

3 (c) Nothing in this section shall be construed to
4 limit a public institution of higher education's ability to
5 set its own rates for mandatory fees or tuition per credit
6 hour. Nevertheless, the amounts paid by the PACT Program to
7 public institutions of higher education in accordance with
8 this section shall be considered full payment of mandatory
9 fees or tuition per credit hour on behalf of the beneficiary
10 of the PACT contract, and neither the beneficiary of the PACT
11 contract nor the PACT contract holder shall be required to
12 remit to the public institution of higher education an
13 additional amount for mandatory fees or tuition per credit
14 hour.

15 Section 5. In the event that the PACT Program's
16 Board of Directors receives an actuarial report certifying
17 that any appropriation made in Section 1, Section 2, or
18 Section 3 of this act is no longer necessary for the PACT
19 Program to be fully funded, the PACT Program's Board of
20 Directors shall certify to the Legislature that no future
21 appropriations are necessary.

22 Section 6. Any funds in the PACT Trust Fund
23 remaining after the payment of all of the obligations of the
24 fund shall be transferred to the Education Trust Fund in the
25 fiscal year immediately following the year in which the last
26 obligations are met.

1 Section 7. Sections 16-33C-3, 16-33C-4, 16-33C-5,
2 16-33C-6, 16-33C-7, 16-33C-8, 16-33C-10, 16-33C-11, and
3 16-33C-12 of the Code of Alabama 1975, are amended to read as
4 follows:

5 "§16-33C-3.

6 The following terms as used in this chapter shall
7 have the meanings ascribed to them, unless the context clearly
8 indicates otherwise:

9 (1) ACES ADMINISTRATIVE FUND. The ACES
10 Administrative Fund created in Section 16-33C-10.

11 (2) ACES BOARD. The board of directors and trustees
12 of the ACES Trust Fund.

13 ~~(2)~~ (3) ACES PROGRAM. The Alabama College Education
14 Savings Program created under subsection (a) of Section
15 16-33C-10.

16 ~~(3)~~ (4) ACES TRUST FUND. The fiduciary trust fund
17 created in Section 16-33C-10.

18 ~~(4)~~ (5) ADMINISTRATIVE COST. Any expense of
19 administering the PACT or ACES Programs, including, but not
20 limited to, the costs associated with administering the
21 programs throughout the State Treasurer's office, and any
22 records administration expense.

23 ~~(5)~~ (6) ADMINISTRATIVE FEE. Any fee or penalty
24 required by the board to be paid by a participant in the plan.

25 ~~(6) BOARD. The board of directors of the plan and~~
26 ~~trustees of the PACT and ACES Trust Funds.~~

1 (7) CONTRACT PAYMENT. Any amount paid to the PACT
2 Trust Fund toward the purchase of a PACT contract.

3 (8) CONTRIBUTION. Any amount paid to the ACES Trust
4 Fund for deposit into an ACES savings account.

5 (9) CONTRIBUTOR. Any person who contributes money to
6 an ACES Program savings account on behalf of a designated
7 beneficiary and who is listed as the owner of the savings
8 account.

9 (10) DESIGNATED BENEFICIARY. The person designated
10 at the time the PACT contract is entered into or ACES savings
11 account opened as the person who benefits from payments of
12 qualified higher education costs at eligible educational
13 institutions, or that person's replacement.

14 (11) ELIGIBLE EDUCATIONAL INSTITUTION. An
15 institution defined in Section 529 of the Internal Revenue
16 Code of 1986, as amended, and in Section 481 of the Higher
17 Education Act of 1965 (20 U.S.C. 1988) which is eligible to
18 participate in a program under Title IV of the act.

19 (12) INVESTMENT COST. Any expense of the PACT or
20 ACES Trust Funds, including, but not limited to, investment
21 manager fees, actuary fees, custodial fees, brokerage
22 commissions, and transactional costs.

23 (13) LEGISLATURE. The Legislature of Alabama.

24 (14) PACT BOARD. The board of directors and trustees
25 of the PACT Trust Fund.

1 ~~(14)~~ (15) PACT PROGRAM. The Alabama Prepaid
2 Affordable College Tuition Program created in subsection (a)
3 of Section 16-33C-6.

4 ~~(15)~~ (16) PACT TRUST FUND. The fiduciary trust fund
5 created in subsection (b) of Section 16-33C-6.

6 ~~(16)~~ (17) PACT ADMINISTRATIVE FUND. The PACT
7 Administrative Fund created in subsection (c) of Section
8 16-33C-6.

9 ~~(17)~~ (18) PACT CONTRACT. A contract entered into by
10 the board and a participant in the PACT Program.

11 ~~(18)~~ (19) PLAN. The Wallace-Folsom College Savings
12 Investment Plan created under Section 16-33C-2.1 that consists
13 of the PACT Program and the ACES Program.

14 ~~(19)~~ (20) PURCHASER. A person who is obligated to
15 make contract payments in accordance with a PACT contract
16 entered into pursuant to this chapter.

17 ~~(20)~~ (21) QUALIFIED HIGHER EDUCATION COST. Any
18 higher education expense permitted under Section 529 of the
19 Internal Revenue Code of 1986, as amended, and required for
20 the enrollment or attendance of a designated beneficiary at an
21 eligible educational institution. These expenses include
22 tuition, fees, books, supplies, equipment, and, subject to
23 certain limits, room and board.

24 ~~(21)~~ (22) SAVINGS ACCOUNT. An individual ACES Trust
25 Fund account established by a contributor pursuant to this
26 chapter on behalf of a designated beneficiary in order to

1 apply distributions from the account toward qualified higher
2 education costs at eligible educational institutions.

3 ~~(22)~~ (23) SAVINGS AGREEMENT. An agreement entered
4 into between the board and a contributor establishing a
5 savings account.

6 ~~(23)~~ (24) STATE TREASURER. The State Treasurer of
7 Alabama.

8 "§16-33C-4.

9 (a) The ACES board shall consist of 10 members as
10 follows:

11 (1) The Lieutenant Governor, or his or her designee.

12 (2) The Executive Director of the Alabama Commission
13 on Higher Education (ACHE), or his or her designee.

14 (3) The State Treasurer.

15 (4) The Chancellor of the Alabama Department of
16 Postsecondary Education, or his or her designee.

17 (5) One person appointed by the Council of College
18 and University Presidents.

19 (6) One person appointed by the Speaker of the House
20 of Representatives.

21 (7) One person appointed by the Lieutenant Governor.

22 (8) One person appointed by the State Treasurer.

23 (9) Two persons appointed by the Governor.

24 (b) Members shall serve for terms of office of four
25 years and shall be eligible for reappointment, and shall serve
26 until a successor is appointed. Any person appointed to fill a

1 vacancy on the ACES board shall be appointed in a like manner
2 and shall serve for only the unexpired term.

3 (c) Each person so appointed shall possess
4 knowledge, skill, and experience in business or financial
5 matters commensurate with the duties and responsibilities of
6 the plan. No person holding a full-time office or position of
7 employment with the state, any county or municipality in the
8 state, any educational institution, or any instrumentality,
9 agency, or subdivision of the foregoing, shall be eligible for
10 appointment to the ACES board.

11 (d) Members of the ACES board shall serve without
12 compensation, but may be reimbursed for each day's official
13 duties of the ACES board at the same per diem and travel rate
14 as is paid the employees of the state.

15 (e) The State Treasurer shall be the chair and
16 presiding officer of the ACES board, and the State Treasurer
17 may appoint such other officers as the ACES board may deem
18 advisable or necessary. A majority of the members of the ACES
19 board shall constitute a quorum for the transaction of the
20 business of the plan.

21 "§16-33C-5.

22 In addition to the powers granted by any other
23 provision of this chapter, the ACES board and PACT board shall
24 have, as agents of the State of Alabama, the powers necessary
25 or convenient to carry out the purposes and provisions of this
26 chapter and the powers delegated by any other law of the state

1 or any executive order thereof including, but not limited to,
2 the following express powers:

3 (1) To adopt and amend bylaws.

4 (2) To adopt the rules and regulations necessary to
5 implement the provisions of this chapter either with or
6 without compliance with the state Administrative Procedure
7 Act.

8 (3) To invest as ~~it deems~~ they deem appropriate any
9 funds in the PACT Trust Fund and ACES Trust Fund in any
10 instrument, obligation, security, or property that constitutes
11 legal investments for public funds in the state, including
12 legal investments for the State Treasurer and the Alabama
13 Trust Fund, and to name and use depositories for its
14 investments and holdings.

15 (4) To execute contracts and other necessary
16 instruments.

17 (5) To contract with a purchaser under the PACT
18 Program.

19 (6) To enter into savings agreements under the ACES
20 Program.

21 (7) To contract for necessary goods and services, to
22 employ necessary personnel, and to engage the services of
23 qualified persons and entities for administrative and
24 technical assistance in carrying out the responsibilities of
25 the plan, including the PACT Trust Fund and ACES Trust Fund,
26 under terms and conditions that the PACT board or ACES board
27 deems reasonable and appropriate. All such contracts awarded

1 by the PACT board or ACES board may be for periods not
2 exceeding five years, except that professional services
3 contracts awarded by the board for the ACES Program may be for
4 periods not exceeding ten years.

5 (8) To solicit and accept gifts, including
6 bequeathments or other testamentary gifts made by will, trust
7 or other disposition, grants, loans, and other aids from any
8 personal source for deposit into the PACT or ACES Trust Fund
9 as designated by the donor, or if no such designation is made,
10 into either as determined by the PACT board or ACES board, or
11 to participate in any other way in any federal, state, or
12 local governmental programs in carrying out the purposes of
13 this chapter.

14 (9) To define the terms and conditions of and enter
15 into PACT contracts and ACES savings agreements.

16 (10) To delegate to the State Treasurer the
17 responsibilities of the day-to-day administration of the plan.

18 (11) To establish other policies, procedures, and
19 criteria necessary to implement and administer the provisions
20 of this chapter.

21 (12) To authorize the State Treasurer to approve
22 marketing material produced for the plan. Neither the state,
23 the State Treasurer, the PACT board, nor the ACES board is
24 liable for misrepresentation by a marketing agent.

25 "§16-33C-6.

26 (a) The PACT Program is established as one college
27 savings alternative under the plan whereby purchasers enter

1 into PACT contracts for the future payment of tuition and
2 mandatory fees at eligible educational institutions. The PACT
3 Program includes the PACT Trust Fund and the PACT
4 Administrative Fund created pursuant to this chapter.

5 (b) The official location of the trust fund shall be
6 the State Treasurer's office, and the facilities of the State
7 Treasurer shall be used and employed in the administration of
8 the fund including, but without limitation thereto, the
9 keeping of records, the management of bank accounts and other
10 investments, the transfer of funds, and the safekeeping of
11 securities evidencing investments. The PACT Trust Fund is
12 hereby created as the source for payment of the PACT Program's
13 obligations under PACT contracts. The amounts on deposit in
14 the PACT Trust Fund shall not constitute property of the
15 state, and the state may have no claim or interest in them.
16 Payments which are received by the PACT Program from any
17 public or private source, except those which are payments of
18 administrative fees, shall be prudently placed in the PACT
19 Trust Fund. In order to provide funds to enable the PACT
20 Program to pay amounts due under the terms of its PACT
21 contracts, there is irrevocably pledged to that purpose from
22 the PACT Trust Fund the monies necessary to pay those amounts.
23 A PACT contract and any other contract entered into by or on
24 behalf of the trust, does not constitute a debt or obligation
25 of the state, and no participant is entitled to any benefits
26 except those for which he or she contracted.

1 (c) Payments received by the PACT board from
2 purchasers on behalf of designated beneficiaries or from any
3 other source, public or private, shall be placed in the trust
4 fund, and the fund may be divided into separate accounts as
5 may be determined by the PACT board. The PACT Administrative
6 Fund is hereby created as a separate fund within the State
7 Treasurer's office for the purpose of administering the PACT
8 Program. All administrative fees received by the PACT Program
9 shall be deposited into the PACT Administrative Fund. All
10 funds in the PACT Administrative Fund are hereby irrevocably
11 pledged to the payment of administrative costs of the PACT
12 Program. Funds in the PACT Administrative Fund may be invested
13 by the State Treasurer in any investment facility allowed by
14 this chapter. Any interest and earnings from the investment of
15 funds in the PACT Administrative Fund shall be deposited to,
16 and become a part of, the PACT Administrative Fund for use as
17 authorized by this chapter. All funds in the PACT
18 Administrative Fund at the end of each fiscal year of the
19 State of Alabama shall remain in the PACT Administrative Fund
20 and be automatically carried forward and available to be
21 appropriated by the Alabama Legislature for the administration
22 of the PACT Program.

23 (d) Gross earnings on PACT Trust Fund principal may
24 be directly used by the PACT board to satisfy investment costs
25 of the PACT Trust Fund and to supplement balances in the PACT
26 Administrative Fund to cover outstanding administrative costs
27 of the PACT Program as the board deems necessary. Gross

1 earnings on the principal of the PACT Trust Fund remaining
2 after payment of investment costs and deposits into the PACT
3 Administrative Fund as authorized herein shall be deposited
4 into, and become a part of, the principal of the PACT Trust
5 Fund. In acquiring, investing, reinvesting, exchanging,
6 retaining, selling, and managing property of the PACT Trust
7 Fund, the PACT board and any person or investment manager to
8 whom the PACT board delegates any of its investment authority
9 shall exercise the judgment and care under the circumstances
10 then prevailing which persons of prudence, discretion, and
11 intelligence exercise in the management of their own affairs,
12 not in regard to speculation but to permanent disposition of
13 funds, considering the probable income as well as the safety
14 of their capital. When acting within this standard of care, no
15 PACT board member, or any person or investment manager to whom
16 the PACT board delegates any of its investment authority,
17 shall be held personally liable for losses suffered by the
18 PACT Program on investments made pursuant to this chapter.

19 No PACT board member shall be held personally liable
20 for any losses, damages, or claims which have arisen or may
21 arise from or are related to any act or omission of the board
22 member taken in his or her service as a member of the board or
23 as a trustee, so long as the board member acted in good faith.

24 (e) The PACT board shall obtain appropriate
25 actuarial assistance to establish, maintain, and certify a
26 fund sufficient to defray the obligation of the PACT Trust
27 Fund, and shall annually evaluate or cause to be evaluated,

1 the actuarial soundness of the PACT Trust Fund. After that
2 determination has been made, all monies on deposit in the PACT
3 Trust Fund, up to and including the amount of the future
4 obligations, shall remain on deposit in the PACT Trust Fund.
5 If the PACT board perceives a need for additional assets in
6 order to preserve actuarial soundness of the PACT Trust Fund,
7 it may adjust the terms of subsequent prepaid tuition
8 contracts to ensure the soundness.

9 (f) Property and income of the PACT Trust Fund and
10 PACT Administrative Fund shall be exempt from all taxation by
11 the state and by all of its political subdivisions.

12 "§16-33C-7.

13 (a) Each PACT contract shall include, but shall not
14 be limited to, the following terms:

15 (1) The amount and the number of contract payments
16 required from a purchaser on behalf of a designated
17 beneficiary.

18 (2) The terms and conditions under which purchasers
19 shall remit contract payments, including, but not limited to,
20 the date or dates upon which each contract payment shall be
21 due.

22 (3) Provisions for late payment charges and for
23 default.

24 (4) Provisions for withdrawal from the PACT Program,
25 including refunds and any penalty therefor.

26 (5) The name and date of birth of the designated
27 beneficiary on whose behalf a contract is drawn.

1 (6) Terms and conditions under which another person
2 may be subsequently substituted for the designated beneficiary
3 originally named.

4 (7) The name of the person entitled to terminate the
5 PACT contract, the terms and conditions under which a PACT
6 contract may be terminated, and the name of the person
7 entitled to any refund due as a result of termination of a
8 PACT contract.

9 (8) The period of time during which the designated
10 beneficiary must claim benefits through the PACT Program.

11 (9) The number of credit hours contracted for by the
12 purchaser.

13 (10) All other rights and obligations of the
14 purchaser and the PACT Program.

15 (11) Such other terms, conditions, and provisions as
16 the board considers in its sole discretion to be necessary or
17 appropriate.

18 (b) In the event a designated beneficiary is
19 accepted by and elects to attend a college or university
20 outside the State of Alabama, the PACT board shall, upon
21 receipt of evidence of admission to said college or
22 university, remit contract benefits pursuant to the terms of
23 the PACT contract.

24 (c) A PACT contract shall also specifically provide
25 that, if after ten years following the designated
26 beneficiary's college entrance date or the actual entrance
27 date of a designated beneficiary who is an accelerated

1 student, neither the PACT contract has been terminated nor the
2 designated beneficiary's rights under the contract exercised,
3 the PACT board, after making reasonable effort to locate the
4 purchaser, shall presume the contract purchase amount
5 unclaimed and abandoned property, and thereafter administered
6 in accordance with the Alabama Uniform Disposition of
7 Unclaimed Property Act, Article 2 of Chapter 12 of Title 35.

8 (d) Nothing in this chapter, nor in a PACT contract
9 entered into pursuant to this chapter, shall be construed as a
10 promise or guarantee by the PACT board or the state that: A
11 person shall be admitted to a particular college or
12 university; or that a person shall be allowed to continue to
13 attend a college or university after having been admitted; or
14 that a person shall be graduated from a college or university;
15 or that Alabama resident status shall be conferred. Each state
16 college or university shall establish its own residency
17 requirements for matriculation.

18 (e) The state or any state agency, or any county, or
19 municipality, or any other employer in the state is hereby
20 authorized, by contract, or otherwise, to agree with any
21 employee to remit contract payments through payroll deduction
22 made by the appropriate official of the state, state agency,
23 political subdivision, or other employer under the terms of an
24 accepted PACT contract.

25 "§16-33C-8.

26 In addition to any other requirements of this
27 chapter, the PACT board shall:

1 (1) Make available summary information on the
2 financial condition of the PACT Program to all purchasers of
3 PACT contracts.

4 (2) Prepare, or cause to be prepared, an annual
5 accounting report of the PACT Program, including details
6 regarding the actuarial soundness of the program, and transmit
7 a copy of same to the Governor, the Lieutenant Governor, and
8 the Speaker of the House of Representatives. Such report shall
9 be submitted not later than the fifth legislative day of the
10 regular legislative session. Additionally, such report shall
11 be presented during annual legislative budget hearings.

12 (3) Make all necessary and appropriate arrangements
13 with colleges and universities in order to fulfill its
14 obligations under PACT contracts.

15 (4) Submit, before any PACT-related investment or
16 administrative contract is duly executed, a Request for
17 Proposals (RFP).

18 (5) Require, before any PACT-related investment or
19 administrative contract is duly executed, such contract to be
20 approved by a majority vote of the PACT board.

21 (6) Prepare, or cause to be prepared, a quarterly
22 report detailing the current projected funding status of the
23 PACT Program, with a copy of such report transmitted to the
24 Governor, the Lieutenant Governor, and the Speaker of the
25 House of Representatives.

26 (7) Establish specific investment guidelines that
27 include failsafe measures designed to limit future

1 susceptibility of PACT investments to extreme market
2 fluctuations.

3 "\$16-33C-10.

4 (a) The ACES Program is established as one college
5 savings alternative under the plan whereby contributors open
6 savings accounts according to savings agreements for the
7 payment of qualified higher education costs for a designated
8 beneficiary at eligible educational institutions. The ACES
9 Program includes the ACES Trust Fund, the ACES Administrative
10 Fund, and the ACES Opportunity Enhancement Fund created
11 pursuant to this chapter.

12 (b) The ACES Trust Fund is hereby created and shall
13 be comprised of separate savings accounts held in segregated
14 accounts as established by savings agreements. Funds
15 contributed to the savings accounts established pursuant to
16 the ACES Program are held in trust by the ACES board for the
17 sole benefit of the contributor and designated beneficiary.
18 Contributions and investment earnings to the savings account
19 may be used for any qualified higher education costs of the
20 designated beneficiary. The amounts on deposit in the ACES
21 Trust Fund shall not constitute property of the state, and the
22 state may have no claim or interest in them. Contributions
23 which are received by the ACES Program from any public or
24 private source, except those which are payments of
25 administrative fees, shall be placed in the ACES Trust Fund. A
26 savings agreement, or any other agreement entered into by or
27 on behalf of the ACES Program or ACES Trust Fund, does not

1 constitute a debt or obligation of the state, and no
2 contributor is entitled to any amounts except for those
3 amounts on deposit in or accrued to the respective savings
4 account.

5 (c) The ACES Administrative Fund is hereby created
6 as a separate fund within the State Treasurer's office for the
7 purpose of administering the ACES Program. The ACES
8 Administrative Fund shall accept, deposit, and disburse funds
9 for the purpose of administering the ACES Program. All funds
10 in the ACES Administrative Fund are hereby irrevocably pledged
11 to the payment of the administrative costs of the ACES
12 Program. Funds in the ACES Administrative Fund may be invested
13 by the State Treasurer in any investment facility allowed by
14 this chapter. Any interest and earnings from the investment of
15 funds in the ACES Administrative Fund shall be deposited to,
16 and become a part of, the ACES Administrative Fund for use as
17 authorized by this chapter. All funds in the ACES
18 Administrative Fund at the end of each fiscal year of the
19 State of Alabama shall remain in that administrative fund and
20 be automatically carried forward and available to be
21 appropriated by the Alabama Legislature for the administration
22 of the ACES Program.

23 (d) The State Treasurer is authorized to retain the
24 services of one or more persons as staff members in order to
25 implement and manage the ACES Program. Any expenses incurred
26 shall be paid from the ACES Administrative Fund.

1 (e) Gross earnings on ACES Trust Fund corpus may be
2 directly used by the ACES board to satisfy investment costs of
3 the ACES Trust Fund and to supplement balances in the ACES
4 Administrative Fund to cover outstanding administrative costs
5 of the ACES Program as the ACES board deems necessary. Gross
6 earnings on the principal of the ACES Trust Fund remaining
7 after payment of investment costs and deposits into the ACES
8 Administrative Fund as authorized herein shall be deposited
9 into, and become a part of, the corpus of the ACES Trust Fund.
10 In acquiring, investing, reinvesting, exchanging, retaining,
11 selling, and managing property of the ACES Trust Fund, the
12 ACES board, and any person or investment manager to whom the
13 ACES board delegates any of its investment authority, shall
14 exercise the judgment and care under the circumstances then
15 prevailing which persons of prudence, discretion, and
16 intelligence exercise in the management of their own affairs,
17 not in regard to speculation but to permanent disposition of
18 funds, considering the probable income as well as the safety
19 of their capital. When acting within this standard of care, no
20 ACES board member, or any person or investment manager to whom
21 the ACES board delegates any of its investment authority,
22 shall be held personally liable for losses suffered by the
23 ACES Program on investments made pursuant to this chapter.

24 No ACES board member shall be held personally liable
25 for any losses, damages, or claims which have arisen or may
26 arise from or are related to any act or omission of the board

1 member taken in his or her service as a member of the board or
2 as a trustee, so long as the board member acted in good faith.

3 (f) Property and income of the ACES Trust Fund, ACES
4 Administrative Fund, and the ACES Opportunity Enhancement Fund
5 shall be exempt from all taxation by the state and by all of
6 its political subdivisions.

7 (g) The ACES Opportunity Enhancement Fund is created
8 as a separate fund within the State Treasurer's office for the
9 purpose of enhancing and providing higher education
10 opportunities and programs, as the ACES board deems necessary
11 and appropriate. The fund may receive contributions from
12 individuals, private business entities, public corporations,
13 and contractual agreements with service providers. The funds
14 shall be utilized in the discretion and solely at the
15 direction of the ACES board. The amounts on deposit in the
16 fund shall not constitute property of the state, and the state
17 shall have no claim or interest in them.

18 "§16-33C-11.

19 (a) Each savings agreement made pursuant to the ACES
20 Program shall include, but shall not be limited to, the
21 following terms and provisions:

22 (1) The maximum and minimum contributions allowed on
23 behalf of a designated beneficiary.

24 (2) Provisions for withdrawals, refunds, transfers,
25 and any penalties.

1 (3) The terms and conditions for remitting
2 contributions, including, but not limited to, that
3 contributions may be made in cash only.

4 (4) The name, address, date of birth, and Social
5 Security number of the designated beneficiary on whose behalf
6 the savings account is opened.

7 (5) Terms and conditions for designation of a
8 substitute beneficiary.

9 (6) Terms and conditions for termination of the
10 account, including any refunds, withdrawals, or transfers, and
11 applicable penalties, the name of the person entitled to any
12 refund due as a result of termination, and the name of the
13 person entitled to terminate the account.

14 (7) The time period during which the designated
15 beneficiary is required to use benefits from the ACES Program.

16 (8) All other rights and obligations of the
17 contributor and the ACES Program.

18 (9) Any other terms and conditions which the board
19 deems necessary or appropriate, including those necessary to
20 conform the ACES Program and ACES Trust Fund to the
21 requirements of Section 529 of the Internal Revenue Code of
22 1986, as amended, or other applicable federal law.

23 (b) Each savings agreement made pursuant to this
24 chapter shall provide all of the following:

25 (1) If, after the specified time period determined
26 by the ACES board under which the designated beneficiary is
27 required to use benefits from the ACES Program, the savings

1 agreement has not been terminated nor the designated
2 beneficiary's rights exercised, the ACES board, after making
3 reasonable effort to contact the contributor, shall presume
4 the savings account monies unclaimed and abandoned property,
5 and thereafter administered in accordance with the Alabama
6 Uniform Disposition of Unclaimed Property Act, Article 2 of
7 Chapter 12 of Title 35.

8 (2) Participation in the ACES Program does not
9 guarantee that sufficient funds will be available to cover
10 qualified higher education expenses of a designated
11 beneficiary.

12 (3) Contributions shall be made exclusively for the
13 purpose of meeting the qualified higher education expenses of
14 a designated beneficiary at eligible educational institutions.

15 (c) Nothing in this chapter shall make any
16 provisions or warranties except as provided in savings
17 agreements, including that a person shall be admitted to,
18 allowed to continue in, graduated from a college or
19 university, or conferred Alabama resident status.

20 (d) The state or any state agency, county,
21 municipality, or any other employer in the state is hereby
22 authorized, by contract, or otherwise, to agree with any
23 employee to remit contributions through payroll deduction made
24 by the appropriate official of the state, state agency,
25 political subdivision, or other employer under the terms of a
26 savings agreement in the ACES Program.

27 "§16-33C-12.

1 In addition to any other requirements of this
2 chapter, the ACES board shall:

3 (1) Make available summary information on the ACES
4 Program to all contributors to savings agreements.

5 (2) Prepare, or cause to be prepared, an annual
6 accounting of the ACES Program and transmit a copy of same to
7 the Governor, the Lieutenant Governor, and the Speaker of the
8 House of Representatives.

9 (3) Make all necessary and appropriate arrangements
10 with colleges and universities in order to fulfill its
11 obligations under savings agreements.

12 Section 8. Section 16-33C-4.1 is hereby added to the
13 Code of Alabama 1975, to read as follows:

14 §16-33C-4.1.

15 (a) The PACT board shall consist of 15 members as
16 follows:

17 (1) The Director of Finance.

18 (2) The State Treasurer.

19 (3) Two persons appointed by the Governor.

20 (4) Two persons appointed by the Speaker of the
21 House of Representatives, one of which shall be a PACT
22 contract holder.

23 (5) One person appointed by the Lieutenant Governor.

24 (6) One person appointed by the Senate President Pro
25 Tempore.

26 (7) The President of the Council of College and
27 University Presidents or his or her designee.

1 (8) The Chancellor of the Alabama Community College
2 System or his or her designee.

3 (9) The Executive Director of the Alabama Commission
4 on Higher Education.

5 (10) One member of the House of Representatives
6 appointed by the Speaker of the House of Representatives.

7 (11) One member of the Senate appointed by the
8 Lieutenant Governor.

9 (12) The Chief Executive Officer of the Retirement
10 Systems of Alabama or his or her designee.

11 (13) The President of the Alabama Association of
12 Independent Colleges and Universities or his or her designee.

13 (b) Members shall serve for terms of office of four
14 years and shall be eligible for reappointment, and shall serve
15 until a successor is appointed. Any person appointed to fill a
16 vacancy on the PACT board shall be appointed in a like manner
17 and shall serve for only the unexpired term.

18 (c) With the exception of those members serving on
19 the PACT board by virtue of their respective offices, a person
20 appointed to the PACT board shall be an expert in the field of
21 investments, market analysis, or financial planning, or on
22 similar matters commensurate with the duties and
23 responsibilities of the plan. Additionally, all members of the
24 PACT board have the fiduciary responsibility to devise and
25 implement an investment strategy designed to maximize
26 investment returns in a manner that correlates with future
27 projected benefit payouts.

1 (d) Members of the PACT board shall serve without
2 compensation, but may be reimbursed for each day's official
3 duties of the PACT board at the same per diem and travel rate
4 as is paid the employees of the state.

5 (e) The State Treasurer shall be the chair and
6 presiding officer of the PACT board, and the State Treasurer
7 may appoint such other officers as the PACT board may deem
8 advisable or necessary. A majority of the members of the PACT
9 board shall constitute a quorum for the transaction of the
10 business of the plan.

11 (f) The membership of the PACT board shall be
12 inclusive and reflect the racial, gender, geographic,
13 urban/rural and economic diversity of the State. The PACT
14 board shall annually report to the Legislature by the fifth
15 legislative day of each regular session the extent to which
16 the PACT board has complied with the diversity provisions
17 provided for in this act.

18 Section 9. It is the intent of the Legislature that
19 there be an orderly transition between the current PACT board
20 and the PACT board created in Section 8 of this act. As a
21 result, on June 1, 2010, the PACT-related responsibilities of
22 the current PACT board shall terminate and the term of office
23 of the members of the PACT board created in Section 8 of this
24 act shall commence. Additionally, the PACT board created in
25 Section 8 of this act shall hold its first official meeting
26 prior to July 1, 2010.

1 Section 10. Section 16-33C-9 Code of Alabama 1975 is
2 hereby repealed.

3 Section 11. Notwithstanding any other provision of
4 law to the contrary, any interest income earned after the
5 effective date of this act on the proceeds of any bonds
6 heretofore or hereafter issued by the Alabama Public School
7 and College Authority shall be transferred by the Authority to
8 the PACT Program Trust Fund quarterly.

9 Section 12. On behalf of all current and future
10 postsecondary students, the Legislature hereby strongly
11 encourages all public institutions of higher education to
12 limit any annual percentage increases in mandatory fees and
13 tuition to the average percentage amount such fees and tuition
14 were annually increased over the previous ten-year period, to
15 the extent such limitation is possible.

16 Section 13. The Legislature hereby strongly
17 encourages the PACT Board to make any financially beneficial
18 changes to PACT rules, procedures, or policies, to the extent
19 that the PACT Board is authorized or permitted to make such
20 changes and to the extent that such changes would not violate
21 the contractual relationship existing between a PACT contract
22 holder and the PACT Board. Any such changes made prior to July
23 1, 2011, require the prior approval of the Legislative
24 Council.

25 Section 14. Once all benefits or obligations owed to
26 the PACT contract holders have been paid, the PACT Program

1 shall be dissolved and the provisions of this bill shall be
2 null and void.

3 Section 15. The provisions of this act are
4 unseverable. If any part of this act is declared invalid or
5 unconstitutional, that declaration shall affect the part which
6 remains.

7 Section 16. This act shall become effective
8 immediately upon its passage and approval by the Governor or
9 upon its otherwise becoming a law.