ACT No. 2010 - 725

SB162

122046-3

By Senators Little (T), Barron, and Mitchem

RFD: Fiscal Responsibility and Accountability

First Read: 12-JAN-10

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4 ENROLLED, An Act,

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. (a) There is hereby annually appropriated
25 from the Education Trust Fund to the Trust Fund of the Prepaid

1 Affordable College Tuition (PACT) Program the following
2 amounts in the following fiscal years:
3 For the fiscal year ending 2015 -- $23,558,000
4 For the fiscal year ending 2016 -- $23,952,000
5 For the fiscal year ending 2017 -- $22,622,000
6 For the fiscal year ending 2018 -- $41,783,000
7 For the fiscal year ending 2019 -- $42,539,000
8 For the fiscal year ending 2020 -- $81,646,000
9 (b) These appropriations represent an amount that as
10 of May 1, 2010, is less than or equal to the difference
11 between the Education Trust Fund's portion of the FY 2014 debt
12 service obligations of the Alabama Public School and College
13 Authority (APSCA) and the Education Trust Fund's portion of
14 the debt service obligations of the APSCA for the applicable
15 fiscal year.
16 Section 2. (a) In addition to the appropriations
17 made in Section 1 of this act, there is also hereby annually
18 appropriated from the Education Trust Fund to the PACT Trust
19 Fund the following amounts in the following fiscal years:
20 For the fiscal year ending 2020 -- $7,092,300
21 For the fiscal year ending 2021 -- $31,881,600
22 For the fiscal year ending 2022 -- $32,181,600
23 For the fiscal year ending 2023 -- $33,494,400
24 For the fiscal year ending 2024 -- $33,728,700
25 For the fiscal year ending 2025 -- $38,449,500

1 For the fiscal year ending 2026 -- $39,201,000
2 For the fiscal year ending 2027 -- $32,500,000
3 (b) These appropriations represent an amount that as
4 of May 1, 2010, is less than or equal to thirty percent (30%)
5 of the difference between the Education Trust Fund's portion
6 of the FY 2014 debt service obligations of the Alabama Public
7 School and College Authority (APSCA) and the Education Trust
8 Fund's portion of the debt service obligations of the APSCA
9 for the applicable fiscal year. Traditionally, approximately
10 seventy percent (70%) of the appropriations in the annual
11 Education Trust Fund budget have been allocated to agencies
12 and entities providing educational services for K-12 students
13 while approximately thirty percent (30%) of the appropriations
14 in the annual Education Trust Fund budget have been allocated
15 to agencies and entities providing postsecondary educational
16 services. The appropriations made in subsection (a) of this
17 section represent, as of May 1, 2010, the portion of the
18 difference between the Education Trust Fund's portion of the
19 FY 2014 debt service obligations of the Alabama Public School
20 and College Authority (APSCA) and the Education Trust Fund's
21 portion of the debt service obligations of the APSCA for the
22 applicable fiscal year that would normally be appropriated to
23 agencies and entities providing postsecondary educational
24 services. As a result, the remaining seventy percent (70%) of
25 the difference between the Education Trust Fund's portion of

the FY 2014 debt service obligations of the Alabama Public School and College Authority (APSCA) and the Education Trust Fund's portion of the debt service appropriation to APSCA for the applicable fiscal year shall be appropriated to K-12. Appropriations made in this section shall be appropriated entirely from funds that would otherwise be appropriated for or received by colleges and universities. For budgetary purposes and calculations, the appropriations made in this section shall be considered to be a portion of the funding received by colleges and universities. In no event shall the K-12 portions of the Education Trust Fund budget be reduced or altered in any manner as a result of appropriations made in this section.

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

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

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

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

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

(b) These appropriations, along with the appropriations made in Section 1 and Section 2 of this act,

will make the PACT Program 100% fully funded, according to the actuarial professional retained by the PACT Board.

Section 4. (a) Except as provided in subsection (b), no public institution of higher education shall charge the PACT plan or a PACT plan contract owner mandatory fees or tuition per credit hour in an amount exceeding the cost of mandatory fees or tuition per credit hour as of September 30, 2009, except that an annual increase of the lesser of the actual annual tuition or mandatory fee increase or an annual tuition or mandatory fee increase of two and one-half percent (2.5%) shall be allowed for each year thereafter. In the event the earnings of the PACT Trust Fund grow in an amount in excess of five percent (5%) for two or more consecutive years, an annual increase in mandatory fees or tuition per credit hour will be allowed equal to either the actual increase in mandatory fees or tuition per credit hour or two and one-half percent (2.5%) plus the amount in excess of the five percent growth realized in the first year the growth exceeded five percent (5%) followed by a subsequent consecutive year in which growth exceeded five percent (5%), whichever is less. In no event, however, shall the increase in mandatory fees or tuition per credit hour referenced in this paragraph be allowed if the payment of such increased mandatory fees or tuition per credit hour would cause the PACT Trust Fund's funding status to fall below 90%, as determined by the

actuarial professional retained by the PACT Board. In the event the earnings fall below five percent in any one year the annual increase shall be limited to the actual increase in mandatory fees or tuition per credit hour or two and one-half percent (2.5%), whichever is less, until such time as the earnings shall exceed five percent (5%) for two or more consecutive years.

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

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

1 additional amount for mandatory fees or tuition per credit
2 hour.
3 Section 5. In the event that the PACT Program's
4 Board of Directors receives an actuarial report certifying
5 that any appropriation made in Section 1, Section 2, or
6 Section 3 of this act is no longer necessary for the PACT
7 Program to be fully funded, the PACT Program's Board of
8 Directors shall certify to the Legislature that no future
9 appropriations are necessary.
10 Section 6. Any funds in the PACT Trust Fund
11 remaining after the payment of all of the obligations of the
12 fund shall be transferred to the Education Trust Fund in the
13 fiscal year immediately following the year in which the last
14 obligations are met.
15 Section 7. Sections 16-33C-3, 16-33C-4, 16-33C-5,
16 16-33C-6, 16-33C-7, 16-33C-8, 16-33C-10, 16-33C-11, and
17 16-33C-12 of the Code of Alabama 1975, are amended to read as
18 follows:
19 "§16-33C-3.
20 The following terms as used in this chapter shall
21 have the meanings ascribed to them, unless the context clearly
22 indicates otherwise:
23 (1) ACES ADMINISTRATIVE FUND. The ACES
24 Administrative Fund created in Section 16-33C-10.

1 (2) ACES BOARD. The board of directors and trustees
2 of the ACES Trust Fund.
3 (3) ACES PROGRAM. The Alabama College Education
4 Savings Program created under subsection (a) of Section
5 16-33C-10.
6 (4) ACES TRUST FUND. The fiduciary trust fund
7 created in Section 16-33C-10.
8 (5) ADMINISTRATIVE COST. Any expense of
9 administering the PACT or ACES Programs, including, but not
10 limited to, the costs associated with administering the
11 programs throughout the State Treasurer's office, and any
12 records administration expense.
13 (6) ADMINISTRATIVE FEE. Any fee or penalty required
14 by the board to be paid by a participant in the plan.
15 (7) CONTRACT PAYMENT. Any amount paid to the PACT
16 Trust Fund toward the purchase of a PACT contract.
17 (8) CONTRIBUTION. Any amount paid to the ACES Trust
18 Fund for deposit into an ACES savings account.
19 (9) CONTRIBUTOR. Any person who contributes money to
20 an ACES Program savings account on behalf of a designated
21 beneficiary and who is listed as the owner of the savings
22 account.
23 (10) DESIGNATED BENEFICIARY. The person designated
24 at the time the PACT contract is entered into or ACES savings
25 account opened as the person who benefits from payments of

1 qualified higher education costs at eligible educational
2 institutions, or that person's replacement.
3 (11) ELIGIBLE EDUCATIONAL INSTITUTION. An
4 institution defined in Section 529 of the Internal Revenue
5 Code of 1986, as amended, and in Section 481 of the Higher
6 Education Act of 1965 (20 U.S.C. 1988) which is eligible to
7 participate in a program under Title IV of the act.
8 (12) INVESTMENT COST. Any expense of the PACT or
9 ACES Trust Funds, including, but not limited to, investment
10 manager fees, actuary fees, custodial fees, brokerage
11 commissions, and transactional costs.
12 (13) LEGISLATURE. The Legislature of Alabama.
13 (14) PACT BOARD. The board of directors and trustees
14 of the PACT Trust Fund.
15 (15) PACT PROGRAM. The Alabama Prepaid Affordable
16 College Tuition Program created in subsection (a) of Section
17 16-33C-6.
18 (16) PACT TRUST FUND. The fiduciary trust fund
19 created in subsection (b) of Section 16-33C-6.
20 (17) PACT ADMINISTRATIVE FUND. The PACT
21 Administrative Fund created in subsection (c) of Section
22 16-33C-6.
23 (18) PACT CONTRACT. A contract entered into by the
24 board and a participant in the PACT Program.

1 (19) PLAN. The Wallace-Folsom College Savings
2 Investment Plan created under Section 16-33C-2.1 that consists
3 of the PACT Program and the ACES Program.
4 (20) PURCHASER. A person who is obligated to make
5 contract payments in accordance with a PACT contract entered
6 into pursuant to this chapter.
7 (21) QUALIFIED HIGHER EDUCATION COST. Any higher
8 education expense permitted under Section 529 of the Internal
9 Revenue Code of 1986, as amended, and required for the
10 enrollment or attendance of a designated beneficiary at an
11 eligible educational institution. These expenses include
12 tuition, fees, books, supplies, equipment, and, subject to
13 certain limits, room and board.
14 (22) SAVINGS ACCOUNT. An individual ACES Trust Fund
15 account established by a contributor pursuant to this chapter
16 on behalf of a designated beneficiary in order to apply
17 distributions from the account toward qualified higher
18 education costs at eligible educational institutions.
19 (23) SAVINGS AGREEMENT. An agreement entered into
20 between the board and a contributor establishing a savings
21 account.
22 (24) STATE TREASURER. The State Treasurer of
23 Alabama.
24 "§16-33C-4.

1 (a) The ACES board shall consist of 10 members as
2 follows:
3 (1) The Lieutenant Governor, or his or her designee.
4 (2) The Executive Director of the Alabama Commission
5 on Higher Education (ACHE), or his or her designee.
6 (3) The State Treasurer.
7 (4) The Chancellor of the Alabama Department of
8 Postsecondary Education, or his or her designee.
9 (5) One person appointed by the Council of College
10 and University Presidents.
11 (6) One person appointed by the Speaker of the House
12 of Representatives.
13 (7) One person appointed by the Lieutenant Governor.
14 (8) One person appointed by the State Treasurer.
15 (9) Two persons appointed by the Governor.
16 (b) Members shall serve for terms of office of four
17 years and shall be eligible for reappointment, and shall serve
18 until a successor is appointed. Any person appointed to fill a
19 vacancy on the ACES board shall be appointed in a like manner
20 and shall serve for only the unexpired term.
21 (c) Each person so appointed shall possess
22 knowledge, skill, and experience in business or financial
23 matters commensurate with the duties and responsibilities of
24 the plan. No person holding a full-time office or position of
25 employment with the state, any county or municipality in the

1 state, any educational institution, or any instrumentality,
2 agency, or subdivision of the foregoing, shall be eligible for
3 appointment to the ACES board.
4 (d) Members of the ACES board shall serve without
5 compensation, but may be reimbursed for each day's official
6 duties of the ACES board at the same per diem and travel rate
7 as is paid the employees of the state.
8 (e) The State Treasurer shall be the chair and
9 presiding officer of the ACES board, and the State Treasurer
10 may appoint such other officers as the ACES board may deem
11 advisable or necessary. A majority of the members of the ACES
12 board shall constitute a quorum for the transaction of the
13 business of the plan.
14 "§16-33C-5.
15 In addition to the powers granted by any other
16 provision of this chapter, the ACES board and PACT board shall
17 have, as agents of the State of Alabama, the powers necessary
18 or convenient to carry out the purposes and provisions of this
19 chapter and the powers delegated by any other law of the state
20 or any executive order thereof including, but not limited to,
21 the following express powers:
22 (1) To adopt and amend bylaws.
23 (2) To adopt the rules and regulations necessary to
24 implement the provisions of this chapter either with or

1 without compliance with the state Administrative Procedure
2 Act.
3 (3) To invest as they deem appropriate any funds in
4 the PACT Trust Fund and ACES Trust Fund in any instrument,
5 obligation, security, or property that constitutes legal
6 investments for public funds in the state, including legal
7 investments for the State Treasurer and the Alabama Trust
8 Fund, and to name and use depositories for its investments and
9 holdings.
10 (4) To execute contracts and other necessary
11 instruments.
12 (5) To contract with a purchaser under the PACT
13 Program.
14 (6) To enter into savings agreements under the ACES
15 Program.
16 (7) To contract for necessary goods and services, to
17 employ necessary personnel, and to engage the services of
18 qualified persons and entities for administrative and
19 technical assistance in carrying out the responsibilities of
20 the plan, including the PACT Trust Fund and ACES Trust Fund,
21 under terms and conditions that the PACT board or ACES board
22 deems reasonable and appropriate. All such contracts awarded
23 by the PACT board or ACES board may be for periods not
24 exceeding five years, except that professional services

1 contracts awarded by the board for the ACES Program may be for
2 periods not exceeding ten years.
3 (8) To solicit and accept gifts, including
4 bequeathments or other testamentary gifts made by will, trust
5 or other disposition, grants, loans, and other aids from any
6 personal source for deposit into the PACT or ACES Trust Fund
7 as designated by the donor, or if no such designation is made,
8 into either as determined by the PACT board or ACES board, or
9 to participate in any other way in any federal, state, or
10 local governmental programs in carrying out the purposes of
11 this chapter.
12 (9) To define the terms and conditions of and enter
13 into PACT contracts and ACES savings agreements.
14 (10) To delegate to the State Treasurer the
15 responsibilities of the day-to-day administration of the plan.
16 (11) To establish other policies, procedures, and
17 criteria necessary to implement and administer the provisions
18 of this chapter.
19 (12) To authorize the State Treasurer to approve
20 marketing material produced for the plan. Neither the state,
21 the State Treasurer, the PACT board, nor the ACES board is
22 liable for misrepresentation by a marketing agent.
23 "§16-33C-6.
24 (a) The PACT Program is established as one college
25 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

of the state, and no participant is entitled to any benefits except those for which he or she contracted.

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

1 (d) Gross earnings on PACT Trust Fund principal may
2 be directly used by the PACT board to satisfy investment costs
3 of the PACT Trust Fund and to supplement balances in the PACT
4 Administrative Fund to cover outstanding administrative costs
5 of the PACT Program as the board deems necessary. Gross
6 earnings on the principal of the PACT Trust Fund remaining
7 after payment of investment costs and deposits into the PACT
8 Administrative Fund as authorized herein shall be deposited
9 into, and become a part of, the principal of the PACT Trust
10 Fund. In acquiring, investing, reinvesting, exchanging,
11 retaining, selling, and managing property of the PACT Trust
12 Fund, the PACT board and any person or investment manager to
13 whom the PACT board delegates any of its investment authority
14 shall exercise the judgment and care under the circumstances
15 then 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 PACT board member, or any person or investment manager to whom
21 the PACT board delegates any of its investment authority,
22 shall be held personally liable for losses suffered by the
23 PACT Program on investments made pursuant to this chapter.
24 No PACT board member shall be held personally liable
25 for any losses, damages, or claims which have arisen or may

1 arise from or are related to any act or omission of the board
2 member taken in his or her service as a member of the board or
3 as a trustee, so long as the board member acted in good faith.
4 (e) The PACT board shall obtain appropriate
5 actuarial assistance to establish, maintain, and certify a
6 fund sufficient to defray the obligation of the PACT Trust
7 Fund, and shall annually evaluate or cause to be evaluated,
8 the actuarial soundness of the PACT Trust Fund. After that
9 determination has been made, all monies on deposit in the PACT
10 Trust Fund, up to and including the amount of the future
11 obligations, shall remain on deposit in the PACT Trust Fund.
12 If the PACT board perceives a need for additional assets in
13 order to preserve actuarial soundness of the PACT Trust Fund,
14 it may adjust the terms of subsequent prepaid tuition
15 contracts to ensure the soundness.
16 (f) Property and income of the PACT Trust Fund and
17 PACT Administrative Fund shall be exempt from all taxation by
18 the state and by all of its political subdivisions.
19 "§16-33C-7.
20 (a) Each PACT contract shall include, but shall not
21 be limited to, the following terms:
22 (1) The amount and the number of contract payments
23 required from a purchaser on behalf of a designated
24 beneficiary.

1 (2) The terms and conditions under which purchasers
2 shall remit contract payments, including, but not limited to,
3 the date or dates upon which each contract payment shall be
4 due.
5 (3) Provisions for late payment charges and for
6 default.
7 (4) Provisions for withdrawal from the PACT Program,
8 including refunds and any penalty therefor.
9 (5) The name and date of birth of the designated
10 beneficiary on whose behalf a contract is drawn.
11 (6) Terms and conditions under which another person
12 may be subsequently substituted for the designated beneficiary
13 originally named.
14 (7) The name of the person entitled to terminate the
15 PACT contract, the terms and conditions under which a PACT
16 contract may be terminated, and the name of the person
17 entitled to any refund due as a result of termination of a
18 PACT contract.
19 (8) The period of time during which the designated
20 beneficiary must claim benefits through the PACT Program.
21 (9) The number of credit hours contracted for by the
22 purchaser.
23 (10) All other rights and obligations of the
24 purchaser and the PACT Program.

1 (11) Such other terms, conditions, and provisions as
2 the board considers in its sole discretion to be necessary or
3 appropriate.
4 (b) In the event a designated beneficiary is
5 accepted by and elects to attend a college or university
6 outside the State of Alabama, the PACT board shall, upon
7 receipt of evidence of admission to said college or
8 university, remit contract benefits pursuant to the terms of
9 the PACT contract.
10 (c) A PACT contract shall also specifically provide
11 that, if after ten years following the designated
12 beneficiary's college entrance date or the actual entrance
13 date of a designated beneficiary who is an accelerated
14 student, neither the PACT contract has been terminated nor the
15 designated beneficiary's rights under the contract exercised,
16 the PACT board, after making reasonable effort to locate the
17 purchaser, shall presume the contract purchase amount
18 unclaimed and abandoned property, and thereafter administered
19 in accordance with the Alabama Uniform Disposition of
20 Unclaimed Property Act, Article 2 of Chapter 12 of Title 35.
21 (d) Nothing in this chapter, nor in a PACT contract
22 entered into pursuant to this chapter, shall be construed as a
23 promise or guarantee by the PACT board or the state that: A
24 person shall be admitted to a particular college or
25 university; or that a person shall be allowed to continue to

1 attend a college or university after having been admitted; or
2 that a person shall be graduated from a college or university;
3 or that Alabama resident status shall be conferred. Each state
4 college or university shall establish its own residency
5 requirements for matriculation.
6 (e) The state or any state agency, or any county, or
7 municipality, or any other employer in the state is hereby
8 authorized, by contract, or otherwise, to agree with any
9 employee to remit contract payments through payroll deduction
10 made by the appropriate official of the state, state agency,
11 political subdivision, or other employer under the terms of an
12 accepted PACT contract.
13 "§16-33C-8.
14 In addition to any other requirements of this
15 chapter, the PACT board shall:
16 (1) Make available summary information on the
17 financial condition of the PACT Program to all purchasers of
18 PACT contracts.
19 (2) Prepare, or cause to be prepared, an annual
20 report of the PACT Program, including details regarding the
21 actuarial soundness of the program, and transmit a copy of
22 same to the Governor, the Lieutenant Governor, and the Speaker
23 of the House of Representatives. Such report shall be
24 submitted not later than the fifth legislative day of the

1 regular legislative session. Additionally, such report shall
2 be presented during annual legislative budget hearings.
3 (3) Make all necessary and appropriate arrangements
4 with colleges and universities in order to fulfill its
5 obligations under PACT contracts.
6 (4) Submit, before any PACT-related investment or
7 administrative contract is duly executed, a Request for
8 Proposals (RFP).
9 (5) Require, before any PACT-related investment or
10 administrative contract is duly executed, such contract to be
11 approved by a majority vote of the PACT board.
12 (6) Prepare, or cause to be prepared, a quarterly
13 report detailing the current projected funding status of the
14 PACT Program, with a copy of such report transmitted to the
15 Governor, the Lieutenant Governor, and the Speaker of the
16 House of Representatives.
17 (7) Establish specific investment guidelines that
18 include failsafe measures designed to limit future
19 susceptibility of PACT investments to extreme market
20 fluctuations.
21 "§16-33C-10.
22 (a) The ACES Program is established as one college
23 savings alternative under the plan whereby contributors open
24 savings accounts according to savings agreements for the
25 payment of qualified higher education costs for a designated

1 beneficiary at eligible educational institutions. The ACES
2 Program includes the ACES Trust Fund, the ACES Administrative
3 Fund, and the ACES Opportunity Enhancement Fund created
4 pursuant to this chapter.
5 (b) The ACES Trust Fund is hereby created and shall
6 be comprised of separate savings accounts held in segregated
7 accounts as established by savings agreements. Funds
8 contributed to the savings accounts established pursuant to
9 the ACES Program are held in trust by the ACES board for the
10 sole benefit of the contributor and designated beneficiary.
11 Contributions and investment earnings to the savings account
12 may be used for any qualified higher education costs of the
13 designated beneficiary. The amounts on deposit in the ACES
14 Trust Fund shall not constitute property of the state, and the
15 state may have no claim or interest in them. Contributions
16 which are received by the ACES Program from any public or
17 private source, except those which are payments of
18 administrative fees, shall be placed in the ACES Trust Fund. A
19 savings agreement, or any other agreement entered into by or
20 on behalf of the ACES Program or ACES Trust Fund, does not
21 constitute a debt or obligation of the state, and no
22 contributor is entitled to any amounts except for those
23 amounts on deposit in or accrued to the respective savings
24 account.

1 (c) The ACES Administrative Fund is hereby created
2 as a separate fund within the State Treasurer's office for the
3 purpose of administering the ACES Program. The ACES
4 Administrative Fund shall accept, deposit, and disburse funds
5 for the purpose of administering the ACES Program. All funds
6 in the ACES Administrative Fund are hereby irrevocably pledged
7 to the payment of the administrative costs of the ACES
8 Program. Funds in the ACES Administrative Fund may be invested
9 by the State Treasurer in any investment facility allowed by
10 this chapter. Any interest and earnings from the investment of
11 funds in the ACES Administrative Fund shall be deposited to,
12 and become a part of, the ACES Administrative Fund for use as
13 authorized by this chapter. All funds in the ACES
14 Administrative Fund at the end of each fiscal year of the
15 State of Alabama shall remain in that administrative fund and
16 be automatically carried forward and available to be
17 appropriated by the Alabama Legislature for the administration
18 of the ACES Program.
19 (d) The State Treasurer is authorized to retain the
20 services of one or more persons as staff members in order to
21 implement and manage the ACES Program. Any expenses incurred
22 shall be paid from the ACES Administrative Fund.
23 (e) Gross earnings on ACES Trust Fund corpus may be
24 directly used by the ACES board to satisfy investment costs of
25 the ACES Trust Fund and to supplement balances in the ACES

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

1 (f) Property and income of the ACES Trust Fund, ACES
2 Administrative Fund, and the ACES Opportunity Enhancement Fund
3 shall be exempt from all taxation by the state and by all of
4 its political subdivisions.
5 (g) The ACES Opportunity Enhancement Fund is created
6 as a separate fund within the State Treasurer's office for the
7 purpose of enhancing and providing higher education
8 opportunities and programs, as the ACES board deems necessary
9 and appropriate. The fund may receive contributions from
10 individuals, private business entities, public corporations,
11 and contractual agreements with service providers. The funds
12 shall be utilized in the discretion and solely at the
13 direction of the ACES board. The amounts on deposit in the
14 fund shall not constitute property of the state, and the state
15 shall have no claim or interest in them.
16 "§16-33C-11.
17 (a) Each savings agreement made pursuant to the ACES
18 Program shall include, but shall not be limited to, the
19 following terms and provisions:
20 (1) The maximum and minimum contributions allowed on
21 behalf of a designated beneficiary.
22 (2) Provisions for withdrawals, refunds, transfers,
23 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:

1 (1) If, after the specified time period determined
2 by the ACES board under which the designated beneficiary is
3 required to use benefits from the ACES Program, the savings
4 agreement has not been terminated nor the designated
5 beneficiary's rights exercised, the ACES board, after making
6 reasonable effort to contact the contributor, shall presume
7 the savings account monies unclaimed and abandoned property,
8 and thereafter administered in accordance with the Alabama
9 Uniform Disposition of Unclaimed Property Act, Article 2 of
10 Chapter 12 of Title 35.
11 (2) Participation in the ACES Program does not
12 guarantee that sufficient funds will be available to cover
13 qualified higher education expenses of a designated
14 beneficiary.
15 (3) Contributions shall be made exclusively for the
16 purpose of meeting the qualified higher education expenses of
17 a designated beneficiary at eligible educational institutions.
18 (c) Nothing in this chapter shall make any
19 provisions or warranties except as provided in savings
20 agreements, including that a person shall be admitted to,
21 allowed to continue in, graduated from a college or
22 university, or conferred Alabama resident status.
23 (d) The state or any state agency, county,
24 municipality, or any other employer in the state is hereby
25 authorized, by contract, or otherwise, to agree with any

1 employee to remit contributions through payroll deduction made
2 by the appropriate official of the state, state agency,
3 political subdivision, or other employer under the terms of a
4 savings agreement in the ACES Program.
5 "§16-33C-12.
6 In addition to any other requirements of this
7 chapter, the ACES board shall:
8 (1) Make available summary information on the ACES
9 Program to all contributors to savings agreements.
10 (2) Prepare, or cause to be prepared, an annual
11 accounting of the ACES Program and transmit a copy of same to
12 the Governor, the Lieutenant Governor, and the Speaker of the
13 House of Representatives.
14 (3) Make all necessary and appropriate arrangements
15 with colleges and universities in order to fulfill its
16 obligations under savings agreements.
17 Section 8. Section 16-33C-4.1 is hereby added to the
18 Code of Alabama 1975, to read as follows:
19 §16-33C-4.1.
20 (a) The PACT board shall consist of 15 members as
21 follows:
22 (1) The Director of Finance.
23 (2) The State Treasurer.
24 (3) Two persons appointed by the Governor.

1 (4) Two persons appointed by the Speaker of the
2 House of Representatives, one of which shall be a PACT
3 contract holder.
4 (5) One person appointed by the Lieutenant Governor.
5 (6) One person appointed by the Senate President Pro
6 Tempore.
7 (7) The President of the Council of College and
8 University Presidents or his or her designee.
9 (8) The Chancellor of the Alabama Community College
10 System or his or her designee.
11 (9) The Executive Director of the Alabama Commission
12 on Higher Education.
13 (10) One member of the House of Representatives
14 appointed by the Speaker of the House of Representatives.
15 (11) One member of the Senate appointed by the
16 Lieutenant Governor.
17 (12) The Chief Executive Officer of the Retirement
18 Systems of Alabama or his or her designee.
19 (13) The President of the Alabama Association of
20 Independent Colleges and Universities or his or her designee.
21 (b) Members shall serve for terms of office of four
22 years and shall be eligible for reappointment, and shall serve
23 until a successor is appointed. Any person appointed to fill a
24 vacancy on the PACT board shall be appointed in a like manner
25 and shall serve for only the unexpired term.

1 (c) With the exception of those members serving on
2 the PACT board by virtue of their respective offices, a person
3 appointed to the PACT board shall be an expert in the field of
4 investments, market analysis, or financial planning, or on
5 similar matters commensurate with the duties and
6 responsibilities of the plan. Additionally, all members of the
7 PACT board have the fiduciary responsibility to devise and
8 implement an investment strategy designed to maximize
9 investment returns in a manner that correlates with future
10 projected benefit payouts.
11 (d) Members of the PACT board shall serve without
12 compensation, but may be reimbursed for each day's official
13 duties of the PACT 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 PACT board, and the State Treasurer
17 may appoint such other officers as the PACT board may deem
18 advisable or necessary. A majority of the members of the PACT
19 board shall constitute a quorum for the transaction of the
20 business of the plan.
21 (f) The membership of the PACT board shall be
22 inclusive and reflect the racial, gender, geographic,
23 urban/rural and economic diversity of the State. The PACT
24 board shall annually report to the Legislature by the fifth
25 legislative day of each regular session the extent to which

1 the PACT board has complied with the diversity provisions
2 provided for in this act.
3 Section 9. It is the intent of the Legislature that
4 there be an orderly transition between the current PACT board
5 and the PACT board created in Section 8 of this act. As a
6 result, on June 1, 2010, the PACT-related responsibilities of
7 the current PACT board shall terminate and the term of office
8 of the members of the PACT board created in Section 8 of this
9 act shall commence. Additionally, the PACT board created in
10 Section 8 of this act shall hold its first official meeting
11 prior to July 1, 2010.
12 Section 10. Section 16-33C-9 Code of Alabama 1975 is
13 hereby repealed.
14 Section 11. On behalf of all current and future
15 postsecondary students, the Legislature hereby strongly
16 encourages all public institutions of higher education to
17 limit any annual percentage increases in mandatory fees and
18 tuition to the average percentage amount such fees and tuition
19 were annually increased over the previous ten-year period, to
20 the extent such limitation is possible.
21 Section 12. The Legislature hereby strongly
22 encourages the PACT Board to make any financially beneficial
23 changes to PACT rules, procedures, or policies, to the extent
24 that the PACT Board is authorized or permitted to make such
25 changes and to the extent that such changes would not violate

1 the contractual relationship existing between a PACT contract
2 holder and the PACT Board. Any such changes made prior to July
3 1, 2011, require the prior approval of the Legislative
4 Council.
5 Section 13. Once all benefits or obligations owed to
6 the PACT contract holders have been paid, the PACT Program
7 shall be dissolved and the provisions of this bill shall be
8 null and void.
9 Section 14. The provisions of this act are
10 unseverable. If any part of this act is declared invalid or
11 unconstitutional, that declaration shall affect the part which
12 remains.
13 Section 15. This act shall become effective
14 immediately upon its passage and approval by the Governor or
15 upon its otherwise becoming a law.

President and Presiding Officer of the Senate

Speaker of the House of Representatives

Senate 11-FEB-10.
I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 22-APR-10
I hereby certify that the within Act originated in and passed the Senate, as amended by Executive Amendment.

McDowell Lee
Secretary

House of Representatives
Amended and Passed: 08-APR-10

House of Representatives
Passed: 22-APR-10, as amended by Executive Amendment.

By: Senator Little (T)

APPROVED April 30, 2010
TIME 8:00 a.m.
Bob Riley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2010-725
Bill Num...: S-162

Recv'd 04/30/10 10:27amJJB