

1 HB228  
2 117522-3  
3 By Representatives Ford and Taylor  
4 RFD: Education Appropriations  
5 First Read: 12-JAN-10



1           Base Year Debt Service -- The debt service for the  
2           fiscal year ending September 30, 2013 for bonds issued by the  
3           APSCA which are paid from certain tax receipts which accrue to  
4           the Education Trust Fund. This amount for Fiscal Year 2013  
5           according to the current debt service schedule is  
6           \$189,515,980.

7           Current Debt Service Schedule -- The schedule for  
8           debt service for bonds issued by the APSCA as such schedule  
9           existed on January 1, 2010. It does not include any additional  
10          payments which might be due to any refinanced bonds or  
11          additional bonds issued after January 1, 2010 which are to be  
12          repaid from a tax source which accrues to the Education Trust  
13          Fund. It also does not include the debt service for any bonds  
14          described under Section 16-16-14 Code of Alabama 1975, as  
15          amended, and commonly referred to as "pool bonds."

16          PACT Program -- The Prepaid Affordable College  
17          Tuition program established under Section 16-33C-6 Code of  
18          Alabama 1975, as amended, under which purchasers enter into  
19          contracts for the future payment of tuition and mandatory fees  
20          at eligible educational institutions. The PACT program  
21          includes the PACT Trust Fund which is the source of payments  
22          of the obligations of the PACT program under the PACT  
23          contracts.

24          Section 2. Beginning in the fiscal year ending  
25          September 30, 2014 and continuing through the fiscal year  
26          ending September 30, 2021 there is hereby annually

1 appropriated from the Education Trust Fund to the PACT Trust  
2 Fund an amount equal to the difference between APSCA base year  
3 debt service and the APSCA debt service for the then current  
4 fiscal year. These appropriations for each year are as  
5 follows:

6 For the fiscal year ending 2014 -- \$19,592,531

7 For the fiscal year ending 2015 -- \$19,957,666

8 For the fiscal year ending 2016 -- \$20,347,990

9 For the fiscal year ending 2017 -- \$19,023,438

10 For the fiscal year ending 2018 -- \$19,697,076

11 For the fiscal year ending 2019 -- \$20,448,628

12 For the fiscal year ending 2020 -- \$84,052,287

13 For the fiscal year ending 2021 -- \$32,980,384

14 Section 3. No public institution of higher learning  
15 shall charge the PACT plan or a PACT plan contract owner  
16 mandatory fees or tuition per credit hour in an amount  
17 exceeding the cost of mandatory fees or a credit hour as of  
18 September 30, 2009, except that an annual increase of the  
19 lesser of the actual annual tuition or mandatory fee increase  
20 or an annual tuition or mandatory fee increase of two and  
21 one-half percent shall be allowed for each year thereafter.

22 In the event the PACT earnings grow in an amount in  
23 excess of five percent for two or more consecutive years, an  
24 annual increase in mandatory fees or tuition per credit hour  
25 will be allowed equal to either the actual increase in  
26 mandatory fees or tuition per credit hour or two and one half

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

15 Section 4. Any funds in the PACT Trust Fund  
16 remaining after the payment of all of the obligations of the  
17 fund shall be transferred to the Education Trust Fund in the  
18 fiscal year immediately following the year in which the last  
19 obligations are met.

20 Section 5. Sections 16-33C-3, 16-33C-4, 16-33C-5,  
21 16-33C-6, 16-33C-7, 16-33C-8, 16-33C-10, 16-33C-11, and  
22 16-33C-12 of the Code of Alabama 1975, are amended to read as  
23 follows:

24 "§16-33C-3.

1           The following terms as used in this chapter shall  
2 have the meanings ascribed to them, unless the context clearly  
3 indicates otherwise:

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

6           (2) ACES BOARD. The board of directors and trustees  
7 of the ACES Trust Fund.

8           ~~(2)~~ (3) ACES PROGRAM. The Alabama College Education  
9 Savings Program created under subsection (a) of Section  
10 16-33C-10.

11           ~~(3)~~ (4) ACES TRUST FUND. The fiduciary trust fund  
12 created in Section 16-33C-10.

13           ~~(4)~~ (5) ADMINISTRATIVE COST. Any expense of  
14 administering the PACT or ACES Programs, including, but not  
15 limited to, the costs associated with administering the  
16 programs throughout the State Treasurer's office, and any  
17 records administration expense.

18           ~~(5)~~ (6) ADMINISTRATIVE FEE. Any fee or penalty  
19 required by the board to be paid by a participant in the plan.

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

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

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

1 (9) CONTRIBUTOR. Any person who contributes money to  
2 an ACES Program savings account on behalf of a designated  
3 beneficiary and who is listed as the owner of the savings  
4 account.

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

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

15 (12) INVESTMENT COST. Any expense of the PACT or  
16 ACES Trust Funds, including, but not limited to, investment  
17 manager fees, actuary fees, custodial fees, brokerage  
18 commissions, and transactional costs.

19 (13) LEGISLATURE. The Legislature of Alabama.

20 (14) PACT BOARD. The board of directors of the plan  
21 and trustees of the PACT Trust Fund.

22 ~~(14)~~ (15) PACT PROGRAM. The Alabama Prepaid  
23 Affordable College Tuition Program created in subsection (a)  
24 of Section 16-33C-6.

25 ~~(15)~~ (16) PACT TRUST FUND. The fiduciary trust fund  
26 created in subsection (b) of Section 16-33C-6.

1           ~~(16)~~ (17) PACT ADMINISTRATIVE FUND. The PACT  
2 Administrative Fund created in subsection (c) of Section  
3 16-33C-6.

4           ~~(17)~~ (18) PACT CONTRACT. A contract entered into by  
5 the board and a participant in the PACT Program.

6           ~~(18)~~ (19) PLAN. The Wallace-Folsom College Savings  
7 Investment Plan created under Section 16-33C-2.1 that consists  
8 of the PACT Program and the ACES Program.

9           ~~(19)~~ (20) PURCHASER. A person who is obligated to  
10 make contract payments in accordance with a PACT contract  
11 entered into pursuant to this chapter.

12           ~~(20)~~ (21) QUALIFIED HIGHER EDUCATION COST. Any  
13 higher education expense permitted under Section 529 of the  
14 Internal Revenue Code of 1986, as amended, and required for  
15 the enrollment or attendance of a designated beneficiary at an  
16 eligible educational institution. These expenses include  
17 tuition, fees, books, supplies, equipment, and, subject to  
18 certain limits, room and board.

19           ~~(21)~~ (22) SAVINGS ACCOUNT. An individual ACES Trust  
20 Fund account established by a contributor pursuant to this  
21 chapter on behalf of a designated beneficiary in order to  
22 apply distributions from the account toward qualified higher  
23 education costs at eligible educational institutions.

24           ~~(22)~~ (23) SAVINGS AGREEMENT. An agreement entered  
25 into between the board and a contributor establishing a  
26 savings account.



1                   ~~(23)~~ (24) STATE TREASURER. The State Treasurer of  
2 Alabama.

3                   "§16-33C-4.

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

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

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

9                   (3) The State Treasurer.

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

12                   (5) One person appointed by the Council of College  
13 and University Presidents.

14                   (6) One person appointed by the Speaker of the House  
15 of Representatives.

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

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

18                   (9) Two persons appointed by the Governor.

19                   (b) Members shall serve for terms of office of four  
20 years and shall be eligible for reappointment, and shall serve  
21 until a successor is appointed. Any person appointed to fill a  
22 vacancy on the ACES board shall be appointed in a like manner  
23 and shall serve for only the unexpired term.

24                   (c) Each person so appointed shall possess  
25 knowledge, skill, and experience in business or financial  
26 matters commensurate with the duties and responsibilities of

1 the plan. No person holding a full-time office or position of  
2 employment with the state, any county or municipality in the  
3 state, any educational institution, or any instrumentality,  
4 agency, or subdivision of the foregoing, shall be eligible for  
5 appointment to the ACES board.

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

10 (e) The State Treasurer shall be the chair and  
11 presiding officer of the ACES board, and the State Treasurer  
12 may appoint such other officers as the ACES board may deem  
13 advisable or necessary. A majority of the members of the ACES  
14 board shall constitute a quorum for the transaction of the  
15 business of the plan.

16 "§16-33C-5.

17 In addition to the powers granted by any other  
18 provision of this chapter, the ACES board and PACT board shall  
19 have, as agents of the State of Alabama, the powers necessary  
20 or convenient to carry out the purposes and provisions of this  
21 chapter and the powers delegated by any other law of the state  
22 or any executive order thereof including, but not limited to,  
23 the following express powers:

24 (1) To adopt and amend bylaws.

25 (2) To adopt the rules and regulations necessary to  
26 implement the provisions of this chapter either with or

1 without compliance with the state Administrative Procedure  
2 Act.

3 (3) To invest as ~~it deems~~ they deem appropriate any  
4 funds in the PACT Trust Fund and ACES Trust Fund in any  
5 instrument, obligation, security, or property that constitutes  
6 legal investments for public funds in the state, including  
7 legal investments for the State Treasurer and the Alabama  
8 Trust Fund, and to name and use depositories for its  
9 investments and 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  
25 contracts awarded by the board for the ACES Program may be for  
26 periods not exceeding ten years.

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

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

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

14           (11) To establish other policies, procedures, and  
15 criteria necessary to implement and administer the provisions  
16 of this chapter.

17           (12) To authorize the State Treasurer to approve  
18 marketing material produced for the plan. Neither the state,  
19 the State Treasurer, the PACT board, nor the ACES board is  
20 liable for misrepresentation by a marketing agent.

21           "§16-33C-6.

22           (a) The PACT Program is established as one college  
23 savings alternative under the plan whereby purchasers enter  
24 into PACT contracts for the future payment of tuition and  
25 mandatory fees at eligible educational institutions. The PACT

1 Program includes the PACT Trust Fund and the PACT  
2 Administrative Fund created pursuant to this chapter.

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

25 (c) Payments received by the PACT board from  
26 purchasers on behalf of designated beneficiaries or from any

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

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

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

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

23 (e) The PACT board shall obtain appropriate  
24 actuarial assistance to establish, maintain, and certify a  
25 fund sufficient to defray the obligation of the PACT Trust  
26 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.



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

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

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

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

13           (9) The number of credit hours contracted for by the  
14 purchaser.

15           (10) All other rights and obligations of the  
16 purchaser and the PACT Program.

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

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

1           (c) A PACT contract shall also specifically provide  
2 that, if after ten years following the designated  
3 beneficiary's college entrance date or the actual entrance  
4 date of a designated beneficiary who is an accelerated  
5 student, neither the PACT contract has been terminated nor the  
6 designated beneficiary's rights under the contract exercised,  
7 the PACT board, after making reasonable effort to locate the  
8 purchaser, shall presume the contract purchase amount  
9 unclaimed and abandoned property, and thereafter administered  
10 in accordance with the Alabama Uniform Disposition of  
11 Unclaimed Property Act, Article 2 of Chapter 12 of Title 35.

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

22           (e) The state or any state agency, or any county, or  
23 municipality, or any other employer in the state is hereby  
24 authorized, by contract, or otherwise, to agree with any  
25 employee to remit contract payments through payroll deduction  
26 made by the appropriate official of the state, state agency,

1 political subdivision, or other employer under the terms of an  
2 accepted PACT contract.

3 "§16-33C-8.

4 In addition to any other requirements of this  
5 chapter, the PACT board shall:

6 (1) Make available summary information on the  
7 financial condition of the PACT Program to all purchasers of  
8 PACT contracts.

9 (2) Prepare, or cause to be prepared, an annual  
10 ~~accounting~~ report of the PACT Program and transmit a copy of  
11 same to the Governor, the Lieutenant Governor, and the Speaker  
12 of the House of Representatives. Such report shall be  
13 submitted not later than the fifth legislative day of the  
14 regular legislative session. Additionally, such report shall  
15 be presented during annual legislative budget hearings.

16 (3) Make all necessary and appropriate arrangements  
17 with colleges and universities in order to fulfill its  
18 obligations under PACT contracts.

19 (4) Submit, before any PACT-related investment or  
20 administrative contract is duly executed, a Request for  
21 Proposals (RFP).

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

25 (6) Prepare, or cause to be prepared, a quarterly  
26 report detailing the current projected funding status of the

1 PACT Program and transmit a copy of the same to the Governor,  
2 the Lieutenant Governor, and the Speaker of the House of  
3 Representatives.

4 (7) Establish specific investment guidelines that  
5 include failsafe measures designed to limit future  
6 susceptibility of PACT investments to extreme market  
7 fluctuations.

8 "§16-33C-10.

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

17 (b) The ACES Trust Fund is hereby created and shall  
18 be comprised of separate savings accounts held in segregated  
19 accounts as established by savings agreements. Funds  
20 contributed to the savings accounts established pursuant to  
21 the ACES Program are held in trust by the ACES board for the  
22 sole benefit of the contributor and designated beneficiary.  
23 Contributions and investment earnings to the savings account  
24 may be used for any qualified higher education costs of the  
25 designated beneficiary. The amounts on deposit in the ACES  
26 Trust Fund shall not constitute property of the state, and the

1 state may have no claim or interest in them. Contributions  
2 which are received by the ACES Program from any public or  
3 private source, except those which are payments of  
4 administrative fees, shall be placed in the ACES Trust Fund. A  
5 savings agreement, or any other agreement entered into by or  
6 on behalf of the ACES Program or ACES Trust Fund, does not  
7 constitute a debt or obligation of the state, and no  
8 contributor is entitled to any amounts except for those  
9 amounts on deposit in or accrued to the respective savings  
10 account.

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

1       appropriated by the Alabama Legislature for the administration  
2       of the ACES Program.

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

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

1 the ACES board delegates any of its investment authority,  
2 shall be held personally liable for losses suffered by the  
3 ACES Program on investments made pursuant to this chapter.

4 No board member shall be held personally liable for  
5 any losses, damages, or claims which have arisen or may arise  
6 from or are related to any act or omission of the board member  
7 taken in his or her service as a member of the board or as a  
8 trustee, so long as the board member acted in good faith.

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

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

24 "§16-33C-11.

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

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

6           (2) Provisions for withdrawals, refunds, transfers,  
7 and any penalties.

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

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

14           (5) Terms and conditions for designation of a  
15 substitute beneficiary.

16           (6) Terms and conditions for termination of the  
17 account, including any refunds, withdrawals, or transfers, and  
18 applicable penalties, the name of the person entitled to any  
19 refund due as a result of termination, and the name of the  
20 person entitled to terminate the account.

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

23           (8) All other rights and obligations of the  
24 contributor and the ACES Program.

25           (9) Any other terms and conditions which the board  
26 deems necessary or appropriate, including those necessary to



1 conform the ACES Program and ACES Trust Fund to the  
2 requirements of Section 529 of the Internal Revenue Code of  
3 1986, as amended, or other applicable federal law.

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

6 (1) If, after the specified time period determined  
7 by the ACES board under which the designated beneficiary is  
8 required to use benefits from the ACES Program, the savings  
9 agreement has not been terminated nor the designated  
10 beneficiary's rights exercised, the ACES board, after making  
11 reasonable effort to contact the contributor, shall presume  
12 the savings account monies unclaimed and abandoned property,  
13 and thereafter administered in accordance with the Alabama  
14 Uniform Disposition of Unclaimed Property Act, Article 2 of  
15 Chapter 12 of Title 35.

16 (2) Participation in the ACES Program does not  
17 guarantee that sufficient funds will be available to cover  
18 qualified higher education expenses of a designated  
19 beneficiary.

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

23 (c) Nothing in this chapter shall make any  
24 provisions or warranties except as provided in savings  
25 agreements, including that a person shall be admitted to,

1 allowed to continue in, graduated from a college or  
2 university, or conferred Alabama resident status.

3 (d) The state or any state agency, county,  
4 municipality, or any other employer in the state is hereby  
5 authorized, by contract, or otherwise, to agree with any  
6 employee to remit contributions through payroll deduction made  
7 by the appropriate official of the state, state agency,  
8 political subdivision, or other employer under the terms of a  
9 savings agreement in the ACES Program.

10 "§16-33C-12.

11 In addition to any other requirements of this  
12 chapter, the ACES board shall:

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

15 (2) Prepare, or cause to be prepared, an annual  
16 accounting of the ACES Program and transmit a copy of same to  
17 the Governor, the Lieutenant Governor, and the Speaker of the  
18 House of Representatives.

19 (3) Make all necessary and appropriate arrangements  
20 with colleges and universities in order to fulfill its  
21 obligations under savings agreements.

22 Section 6. Section 16-33C-4.1 is hereby added to the  
23 Code of Alabama 1975, to read as follows:

24 §16-33C-4.1.

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

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

3 (c) With the exception of those members serving on  
4 the PACT board by virtue of their respective offices, a person  
5 appointed to the PACT board shall be an expert in the field of  
6 investments, market analysis, or financial planning, or on  
7 similar matters commensurate with the duties and  
8 responsibilities of the plan. Additionally, all members of the  
9 PACT board have the fiduciary responsibility to devise and  
10 implement an investment strategy designed to maximize  
11 investment returns in a manner that correlates with future  
12 projected benefit payouts.

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

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

23 (f) The membership of the PACT board shall be  
24 inclusive and reflect the racial, gender, geographic,  
25 urban/rural and economic diversity of the State. The PACT  
26 board shall annually report to the Legislature by the second

1 legislative day of each regular session the extent to which  
2 the PACT board has complied with the diversity provisions  
3 provided for in this act.

4 Section 7. Section 16-33C-9 Code of Alabama 1975 is  
5 hereby repealed.

6 Section 8. Once all benefits or obligations owed to  
7 PACT contract holders have been paid, the PACT Program shall  
8 be dissolved and the provisions of this bill shall be null and  
9 void.

10 Section 9. The provisions of this act are  
11 unseverable. If any part of this act is declared invalid or  
12 unconstitutional, that declaration shall affect the part which  
13 remains.

14 Section 10. This act shall become effective  
15 immediately upon its passage and approval by the Governor or  
16 upon its otherwise becoming a law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Education Appro-  
priations ..... 12-JAN-10

Read for the second time and placed  
on the calendar with 1 substitute  
and ..... 11-FEB-10

Read for the third time and passed  
as amended ..... 25-FEB-10

Yeas 104, Nays 0, Abstains 0

Greg Pappas  
Clerk