

1 HB171  
2 147718-1  
3 By Representative Ford  
4 RFD: Ways and Means Education  
5 First Read: 06-FEB-13

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8 SYNOPSIS: Currently there is projected to be a  
9 shortage of funds to pay the full tuition and fee  
10 costs to the beneficiaries of the remaining active  
11 PACT contract holders.

12 This bill will provide that certain assets  
13 in the PACT Trust will be distributed to the  
14 several universities and colleges in the state and  
15 that certain funds would be retained in the fund to  
16 be available for private college or out-of-state  
17 tuition if selected by the PACT beneficiary.

18 This bill would also provide that future  
19 appropriations from the Education Trust Fund to the  
20 PACT programs would be distributed to the several  
21 universities and colleges in the same manner as the  
22 assets transferred. Any state university or college  
23 shall allow a PACT beneficiary who is accepted for  
24 admission to receive credit for all tuition and  
25 fees as under the terms of the PACT contracts which  
26 existed prior to the passage of Act 2010-725. Any  
27 PACT beneficiary electing a private or out-of-state

1 institution shall receive the amounts as determined  
2 according to the methods in place prior to the  
3 passage of Act 2010-725.

4  
5 A BILL  
6 TO BE ENTITLED  
7 AN ACT  
8

9 To amend Sections 16-33C-7 and 16-33C-8, Code of  
10 Alabama 1975, regarding the Prepaid Affordable College Tuition  
11 Program, to provide that certain assets in and future  
12 appropriations to the PACT Trust Fund from the Education Trust  
13 Fund shall be transferred to the several institutions of  
14 higher education and that all state institutions of higher  
15 education shall honor the remaining PACT contracts by allowing  
16 beneficiaries to attend, if otherwise eligible and accepted  
17 for admission, without having to pay tuition or fees as  
18 defined in the PACT contract and PACT administrative rules;  
19 and to repeal Sections 16-33C-17, 16-33C-18 and 16-33C-20.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 16-33C-6, 16-33C-7 and 16-33C-8,  
22 Code of Alabama 1975, are hereby amended to read as follows:

23 "§16-33C-6.

24 (a) The PACT Program is established as one college  
25 savings alternative under the plan whereby purchasers enter  
26 into PACT contracts for the future payment of tuition and  
27 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  
27 other source, public or private, shall be placed in the trust

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

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

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

21 ~~(e) The PACT board shall obtain appropriate~~  
22 ~~actuarial assistance to establish, maintain, and certify a~~  
23 ~~fund sufficient to defray the obligation of the PACT Trust~~  
24 ~~Fund, and shall annually evaluate or cause to be evaluated,~~  
25 ~~the actuarial soundness of the PACT Trust Fund. After that~~  
26 ~~determination has been made, all monies on deposit in the PACT~~  
27 ~~Trust Fund, up to and including the amount of the future~~

1 ~~obligations, shall remain on deposit in the PACT Trust Fund.~~  
2 ~~If the PACT board perceives a need for additional assets in~~  
3 ~~order to preserve actuarial soundness of the PACT Trust Fund,~~  
4 ~~it may adjust the terms of subsequent prepaid tuition~~  
5 ~~contracts to ensure the soundness.~~

6 (f) ~~(e)~~ Property and income of the PACT Trust Fund  
7 and PACT Administrative Fund shall be exempt from all taxation  
8 by the state and by all of its political subdivisions.

9 (f) No later than July 1, 2013, 84% of the assets of  
10 the PACT Trust Fund shall be distributed to the following  
11 state institutions in the following amounts:

12	<u>Alabama A &amp; M University</u>	<u>.35%</u>
13	<u>Alabama State University</u>	<u>.44%</u>
14	<u>Athens State College</u>	<u>.63%</u>
15	<u>Auburn University</u>	<u>30.74%</u>
16	<u>Auburn University - Montgom-</u>	
17	<u>ery</u>	<u>2.89%</u>
18	<u>Jacksonville State Univer-</u>	
19	<u>sity</u>	<u>3.46%</u>
20	<u>Troy University</u>	<u>5.03%</u>
21	<u>University of Alabama</u>	<u>33.14%</u>
22	<u>University of Alabama - Bir-</u>	
23	<u>mingham</u>	<u>8.69%</u>
24	<u>University of Alabama -</u>	<u>3.05%</u>

1	<u>Huntsville</u>	
2	<u>University of Montevallo</u>	<u>2.65%</u>
3	<u>University of North Alabama</u>	<u>3.43%</u>
4	<u>University of South Alabama</u>	<u>4.98%</u>
5	<u>University of West Alabama</u>	<u>.51%</u>

6                   The remaining 16% shall be retained in the PACT  
7 Trust Fund to pay for the tuition and fees of beneficiaries  
8 who elect to attend out-of-state institutions or private  
9 institutions, any refunds to contract holders and for  
10 administrative fees for the State Treasurer's Office.

11                   The future receipts into the PACT Trust shall be  
12 distributed annually to the above recipients in the same  
13 percentage amounts. Such future recipients shall include  
14 payments by PACT purchasers as well as the appropriations  
15 provided in the Code of Alabama 1975, Sections 16-33c-14,  
16 16-33c-15, and 16-33c-16.

17                   "§16-33C-7.

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

20                   (1) The amount and the number of contract payments  
21 required from a purchaser on behalf of a designated  
22 beneficiary.

23                   (2) The terms and conditions under which purchasers  
24 shall remit contract payments, including, but not limited to,



1 the date or dates upon which each contract payment shall be  
2 due.

3 (3) Provisions for late payment charges and for  
4 default.

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

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

9 (6) Terms and conditions under which another person  
10 may be subsequently substituted for the designated beneficiary  
11 originally named.

12 (7) The name of the person entitled to terminate the  
13 PACT contract, the terms and conditions under which a PACT  
14 contract may be terminated, and the name of the person  
15 entitled to any refund due as a result of termination of a  
16 PACT contract.

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

19 (9) The number of credit hours contracted for by the  
20 purchaser.

21 (10) All other rights and obligations of the  
22 purchaser and the PACT Program.

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

26 (b) In the event a designated beneficiary is  
27 accepted by and elects to attend a college or university

1 outside the State of Alabama, the PACT board shall, upon  
2 receipt of evidence of admission to said college or  
3 university, remit contract benefits pursuant to the terms of  
4 the PACT contract.

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

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

1 (e) The state or any state agency, or any county, or  
2 municipality, or any other employer in the state is hereby  
3 authorized, by contract, or otherwise, to agree with any  
4 employee to remit contract payments through payroll deduction  
5 made by the appropriate official of the state, state agency,  
6 political subdivision, or other employer under the terms of an  
7 accepted PACT contract.

8 (f) Beginning upon the effective date of this act,  
9 any state institution of higher education including any two  
10 year school shall honor the contract of any beneficiary of a  
11 PACT contract who is admitted to such institution. Full  
12 tuition and fees shall be waived for any student in accordance  
13 with the provisions of the PACT contract and the rules adopted  
14 by the PACT Board regarding allowable hours and the time frame  
15 in which PACT benefits must be utilized. The PACT Board shall  
16 also administer and pay from available funds the tuition of  
17 PACT beneficiaries who elect to attend private colleges or  
18 out-of-state institutions as provided for in the PACT  
19 contract.

20 "§16-33C-8.

21 In addition to any other requirements of this  
22 chapter, the PACT board shall:

23 ~~(1) Make available summary information on the~~  
24 ~~financial condition of the PACT Program to all purchasers of~~  
25 ~~PACT contracts.~~

26 ~~(2) Prepare, or cause to be prepared, an annual~~  
27 ~~report of the PACT Program, including details regarding the~~

1       ~~actuarial soundness of the program, and transmit a copy of~~  
2       ~~same to the Governor, the Lieutenant Governor, and the Speaker~~  
3       ~~of the House of Representatives. Such report shall be~~  
4       ~~submitted not later than the fifth legislative day of the~~  
5       ~~regular legislative session. Additionally, such report shall~~  
6       ~~be presented during annual legislative budget hearings.~~

7               ~~(3) (1) Make all necessary and appropriate~~  
8       ~~arrangements with colleges and universities in order to~~  
9       ~~fulfill its the obligations under PACT contracts.~~

10              ~~(4) Submit, before any PACT-related investment or~~  
11       ~~administrative contract is duly executed, a request for~~  
12       ~~proposals (RFP).~~

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

16              ~~(6) Prepare, or cause to be prepared, a quarterly~~  
17       ~~report detailing the current projected funding status of the~~  
18       ~~PACT Program, with a copy of such report transmitted to the~~  
19       ~~Governor, the Lieutenant Governor, and the Speaker of the~~  
20       ~~House of Representatives.~~

21              ~~(7) Establish specific investment guidelines that~~  
22       ~~include failsafe measures designed to limit future~~  
23       ~~susceptibility of PACT investments to extreme market~~  
24       ~~fluctuations.~~

25              (2) Invest the funds remaining in the PACT Trust  
26       Fund which are to be expended for out-of-state or private  
27       college tuition and administrative expenses only.

1           Section 2. Sections 16-33C-18 and 16-33C-20, Code of  
2 Alabama 1975, are hereby repealed.

3           Section 3. The PACT Board shall adopt any additional  
4 rules or regulations which may be required to provide for the  
5 coordination of the PACT beneficiaries and state institutions  
6 of higher education including two year colleges.

7           Section 4. No state institution may deny a PACT  
8 contract beneficiary admission due solely to the fact that the  
9 potential admittee is the beneficiary of a PACT contract.

10          Section 5. The provisions of this act are severable.  
11 If any part of this act is declared invalid or  
12 unconstitutional, that declaration shall not affect the part  
13 which remains.

14          Section 6. This act is effective immediately upon  
15 its passage and approval by the Governor, or its otherwise  
16 becoming law.