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3 SB162 HOUSE EDUCATION APPROPRIATIONS COMMITTEE SUBSTITUTE
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8 SYNOPSIS: The Prepaid Affordable College Tuition
9 program which was enacted in 1989 has provided an
10 opportunity for the purchase of PACT contracts to
11 provide for future college tuition payments to be
12 made. The program has provided these payments for
13 each year since inception. The PACT Board has
14 suspended new entrants into the program and has
15 expressed concerns about the ability to meet the
16 contractual obligations for those participants
17 still in the program. This bill will provide for a
18 source of funding to help offset the shortfall if
19 the assets of the program are insufficient to meet
20 the obligations by appropriating funds from the
21 Education Trust Fund as debt service from such fund
22 declines and this bill will limit the tuition costs
23 for PACT plan contract participants for the
24 remaining life of existing contracts.

25 In addition, under current law, the
26 Wallace-Folsom College Savings Investment Plan
27 consists of both the Alabama Prepaid Affordable

1 College Tuition (PACT) Program and the Alabama
2 College Education Savings (ACES) Program. Both the
3 PACT and ACES Programs are governed by the same
4 ten-member board of directors.

5 This bill would provide that the PACT
6 Program would be governed by its own board of
7 directors and would also provide for the
8 composition and duties of such board of directors.

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10 A BILL
11 TO BE ENTITLED
12 AN ACT
13

14 To provide for additional funds to be appropriated
15 from the Education Trust Fund to the Prepaid Affordable
16 College Tuition program beginning in the fiscal year ending
17 September 30, 2014 and continuing into the fiscal year ending
18 September 30, 2021, to limit the cost of tuition for PACT plan
19 contract participants, to repeal Section 16-33c-9 Code of
20 Alabama 1975 as amended relating to the disposition of funds
21 upon the dissolution of the PACT Program, to provide that the
22 Alabama Prepaid Affordable College Tuition (PACT) Program
23 would be governed by its own board of directors, and to
24 provide for the composition and duties of such board of
25 directors.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

27 Section 1. Definitions:

1 APSCA -- The Alabama Public School and College
2 Authority, a corporation authorized by Section 16-16-3 Code of
3 Alabama 1975 as amended to issue bonds for educational
4 purposes in Alabama.

5 Base Year Debt Service -- The debt service for the
6 fiscal year ending September 30, 2013 for bonds issued by the
7 APSCA which are paid from certain tax receipts which accrue to
8 the Education Trust Fund. This amount for Fiscal Year 2013
9 according to the current debt service schedule is
10 \$189,515,980.

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

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

1 Section 2. Beginning in the fiscal year ending
2 September 30, 2014 and continuing through the fiscal year
3 ending September 30, 2021 there is hereby annually
4 appropriated from the Education Trust Fund to the PACT Trust
5 Fund an amount equal to the difference between APSCA base year
6 debt service and the APSCA debt service for the then current
7 fiscal year. These appropriations for each year are as
8 follows:

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

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

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

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

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

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

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

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

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

25 In the event the PACT earnings grow in an amount in
26 excess of five percent for two or more consecutive years, an
27 annual increase in mandatory fees or tuition per credit hour

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

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

22 Section 5. Sections 16-33C-3, 16-33C-4, 16-33C-5,
23 16-33C-6, 16-33C-7, 16-33C-8, 16-33C-10, 16-33C-11, and
24 16-33C-12 of the Code of Alabama 1975, are amended to read as
25 follows:

26 "§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.

26 (9) CONTRIBUTOR. Any person who contributes money to
27 an ACES Program savings account on behalf of a designated

1 beneficiary and who is listed as the owner of the savings
2 account.

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

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

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

17 (13) LEGISLATURE. The Legislature of Alabama.

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

20 ~~(14)~~ (15) PACT PROGRAM. The Alabama Prepaid
21 Affordable College Tuition Program created in subsection (a)
22 of Section 16-33C-6.

23 ~~(15)~~ (16) PACT TRUST FUND. The fiduciary trust fund
24 created in subsection (b) of Section 16-33C-6.

25 ~~(16)~~ (17) PACT ADMINISTRATIVE FUND. The PACT
26 Administrative Fund created in subsection (c) of Section
27 16-33C-6.

1 ~~(17)~~ (18) PACT CONTRACT. A contract entered into by
2 the board and a participant in the PACT Program.

3 ~~(18)~~ (19) PLAN. The Wallace-Folsom College Savings
4 Investment Plan created under Section 16-33C-2.1 that consists
5 of the PACT Program and the ACES Program.

6 ~~(19)~~ (20) PURCHASER. A person who is obligated to
7 make contract payments in accordance with a PACT contract
8 entered into pursuant to this chapter.

9 ~~(20)~~ (21) QUALIFIED HIGHER EDUCATION COST. Any
10 higher education expense permitted under Section 529 of the
11 Internal Revenue Code of 1986, as amended, and required for
12 the enrollment or attendance of a designated beneficiary at an
13 eligible educational institution. These expenses include
14 tuition, fees, books, supplies, equipment, and, subject to
15 certain limits, room and board.

16 ~~(21)~~ (22) SAVINGS ACCOUNT. An individual ACES Trust
17 Fund account established by a contributor pursuant to this
18 chapter on behalf of a designated beneficiary in order to
19 apply distributions from the account toward qualified higher
20 education costs at eligible educational institutions.

21 ~~(22)~~ (23) SAVINGS AGREEMENT. An agreement entered
22 into between the board and a contributor establishing a
23 savings account.

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

26 "§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
26 state, any educational institution, or any instrumentality,

1 agency, or subdivision of the foregoing, shall be eligible for
2 appointment to the ACES board.

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

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

13 "§16-33C-5.

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

21 (1) To adopt and amend bylaws.

22 (2) To adopt the rules and regulations necessary to
23 implement the provisions of this chapter either with or
24 without compliance with the state Administrative Procedure
25 Act.

26 (3) To invest as ~~it deems~~ they deem appropriate any
27 funds in the PACT Trust Fund and ACES Trust Fund in any

1 instrument, obligation, security, or property that constitutes
2 legal investments for public funds in the state, including
3 legal investments for the State Treasurer and the Alabama
4 Trust Fund, and to name and use depositories for its
5 investments and holdings.

6 (4) To execute contracts and other necessary
7 instruments.

8 (5) To contract with a purchaser under the PACT
9 Program.

10 (6) To enter into savings agreements under the ACES
11 Program.

12 (7) To contract for necessary goods and services, to
13 employ necessary personnel, and to engage the services of
14 qualified persons and entities for administrative and
15 technical assistance in carrying out the responsibilities of
16 the plan, including the PACT Trust Fund and ACES Trust Fund,
17 under terms and conditions that the PACT board or ACES board
18 deems reasonable and appropriate. All such contracts awarded
19 by the PACT board or ACES board may be for periods not
20 exceeding five years, except that professional services
21 contracts awarded by the board for the ACES Program may be for
22 periods not exceeding ten years.

23 (8) To solicit and accept gifts, including
24 bequeathments or other testamentary gifts made by will, trust
25 or other disposition, grants, loans, and other aids from any
26 personal source for deposit into the PACT or ACES Trust Fund
27 as designated by the donor, or if no such designation is made,

1 into either as determined by the PACT board or ACES board, or
2 to participate in any other way in any federal, state, or
3 local governmental programs in carrying out the purposes of
4 this chapter.

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

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

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

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

16 "§16-33C-6.

17 (a) The PACT Program is established as one college
18 savings alternative under the plan whereby purchasers enter
19 into PACT contracts for the future payment of tuition and
20 mandatory fees at eligible educational institutions. The PACT
21 Program includes the PACT Trust Fund and the PACT
22 Administrative Fund created pursuant to this chapter.

23 (b) The official location of the trust fund shall be
24 the State Treasurer's office, and the facilities of the State
25 Treasurer shall be used and employed in the administration of
26 the fund including, but without limitation thereto, the
27 keeping of records, the management of bank accounts and other

1 investments, the transfer of funds, and the safekeeping of
2 securities evidencing investments. The PACT Trust Fund is
3 hereby created as the source for payment of the PACT Program's
4 obligations under PACT contracts. The amounts on deposit in
5 the PACT Trust Fund shall not constitute property of the
6 state, and the state may have no claim or interest in them.
7 Payments which are received by the PACT Program from any
8 public or private source, except those which are payments of
9 administrative fees, shall be prudently placed in the PACT
10 Trust Fund. In order to provide funds to enable the PACT
11 Program to pay amounts due under the terms of its PACT
12 contracts, there is irrevocably pledged to that purpose from
13 the PACT Trust Fund the monies necessary to pay those amounts.
14 A PACT contract and any other contract entered into by or on
15 behalf of the trust, does not constitute a debt or obligation
16 of the state, and no participant is entitled to any benefits
17 except those for which he or she contracted.

18 (c) Payments received by the PACT board from
19 purchasers on behalf of designated beneficiaries or from any
20 other source, public or private, shall be placed in the trust
21 fund, and the fund may be divided into separate accounts as
22 may be determined by the PACT board. The PACT Administrative
23 Fund is hereby created as a separate fund within the State
24 Treasurer's office for the purpose of administering the PACT
25 Program. All administrative fees received by the PACT Program
26 shall be deposited into the PACT Administrative Fund. All
27 funds in the PACT Administrative Fund are hereby irrevocably

1 pledged to the payment of administrative costs of the PACT
2 Program. Funds in the PACT Administrative Fund may be invested
3 by the State Treasurer in any investment facility allowed by
4 this chapter. Any interest and earnings from the investment of
5 funds in the PACT Administrative Fund shall be deposited to,
6 and become a part of, the PACT Administrative Fund for use as
7 authorized by this chapter. All funds in the PACT
8 Administrative Fund at the end of each fiscal year of the
9 State of Alabama shall remain in the PACT Administrative Fund
10 and be automatically carried forward and available to be
11 appropriated by the Alabama Legislature for the administration
12 of the PACT Program.

13 (d) Gross earnings on PACT Trust Fund principal may
14 be directly used by the PACT board to satisfy investment costs
15 of the PACT Trust Fund and to supplement balances in the PACT
16 Administrative Fund to cover outstanding administrative costs
17 of the PACT Program as the board deems necessary. Gross
18 earnings on the principal of the PACT Trust Fund remaining
19 after payment of investment costs and deposits into the PACT
20 Administrative Fund as authorized herein shall be deposited
21 into, and become a part of, the principal of the PACT Trust
22 Fund. In acquiring, investing, reinvesting, exchanging,
23 retaining, selling, and managing property of the PACT Trust
24 Fund, the PACT board and any person or investment manager to
25 whom the PACT board delegates any of its investment authority
26 shall exercise the judgment and care under the circumstances
27 then prevailing which persons of prudence, discretion, and

1 intelligence exercise in the management of their own affairs,
2 not in regard to speculation but to permanent disposition of
3 funds, considering the probable income as well as the safety
4 of their capital. When acting within this standard of care, no
5 PACT board member, or any person or investment manager to whom
6 the PACT board delegates any of its investment authority,
7 shall be held personally liable for losses suffered by the
8 PACT Program on investments made pursuant to this chapter.

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

14 (e) The PACT board shall obtain appropriate
15 actuarial assistance to establish, maintain, and certify a
16 fund sufficient to defray the obligation of the PACT Trust
17 Fund, and shall annually evaluate or cause to be evaluated,
18 the actuarial soundness of the PACT Trust Fund. After that
19 determination has been made, all monies on deposit in the PACT
20 Trust Fund, up to and including the amount of the future
21 obligations, shall remain on deposit in the PACT Trust Fund.
22 If the PACT board perceives a need for additional assets in
23 order to preserve actuarial soundness of the PACT Trust Fund,
24 it may adjust the terms of subsequent prepaid tuition
25 contracts to ensure the soundness.

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

4 "§16-33C-7.

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

7 (1) The amount and the number of contract payments
8 required from a purchaser on behalf of a designated
9 beneficiary.

10 (2) The terms and conditions under which purchasers
11 shall remit contract payments, including, but not limited to,
12 the date or dates upon which each contract payment shall be
13 due.

14 (3) Provisions for late payment charges and for
15 default.

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

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

20 (6) Terms and conditions under which another person
21 may be subsequently substituted for the designated beneficiary
22 originally named.

23 (7) The name of the person entitled to terminate the
24 PACT contract, the terms and conditions under which a PACT
25 contract may be terminated, and the name of the person
26 entitled to any refund due as a result of termination of a
27 PACT contract.

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

3 (9) The number of credit hours contracted for by the
4 purchaser.

5 (10) All other rights and obligations of the
6 purchaser and the PACT Program.

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

10 (b) In the event a designated beneficiary is
11 accepted by and elects to attend a college or university
12 outside the State of Alabama, the PACT board shall, upon
13 receipt of evidence of admission to said college or
14 university, remit contract benefits pursuant to the terms of
15 the PACT contract.

16 (c) A PACT contract shall also specifically provide
17 that, if after ten years following the designated
18 beneficiary's college entrance date or the actual entrance
19 date of a designated beneficiary who is an accelerated
20 student, neither the PACT contract has been terminated nor the
21 designated beneficiary's rights under the contract exercised,
22 the PACT board, after making reasonable effort to locate the
23 purchaser, shall presume the contract purchase amount
24 unclaimed and abandoned property, and thereafter administered
25 in accordance with the Alabama Uniform Disposition of
26 Unclaimed Property Act, Article 2 of Chapter 12 of Title 35.

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

11 (e) The state or any state agency, or any county, or
12 municipality, or any other employer in the state is hereby
13 authorized, by contract, or otherwise, to agree with any
14 employee to remit contract payments through payroll deduction
15 made by the appropriate official of the state, state agency,
16 political subdivision, or other employer under the terms of an
17 accepted PACT contract.

18 "§16-33C-8.

19 In addition to any other requirements of this
20 chapter, the PACT board shall:

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

24 (2) Prepare, or cause to be prepared, an annual
25 ~~accounting~~ report of the PACT Program and transmit a copy of
26 same to the Governor, the Lieutenant Governor, and the Speaker
27 of the House of Representatives. Such report shall be

1 submitted not later than the fifth legislative day of the
2 regular legislative session. Additionally, such report shall
3 be presented during annual legislative budget hearings.

4 (3) Make all necessary and appropriate arrangements
5 with colleges and universities in order to fulfill its
6 obligations under PACT contracts.

7 (4) Submit, before any PACT-related investment or
8 administrative contract is duly executed, a Request for
9 Proposals (RFP).

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

13 (6) Prepare, or cause to be prepared, a quarterly
14 report detailing the current projected funding status of the
15 PACT Program and transmit a copy of the same to the Governor,
16 the Lieutenant Governor, and the Speaker of the House of
17 Representatives.

18 (7) Establish specific investment guidelines that
19 include failsafe measures designed to limit future
20 susceptibility of PACT investments to extreme market
21 fluctuations.

22 "§16-33C-10.

23 (a) The ACES Program is established as one college
24 savings alternative under the plan whereby contributors open
25 savings accounts according to savings agreements for the
26 payment of qualified higher education costs for a designated
27 beneficiary at eligible educational institutions. The ACES

1 Program includes the ACES Trust Fund, the ACES Administrative
2 Fund, and the ACES Opportunity Enhancement Fund created
3 pursuant to this chapter.

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

24 (c) The ACES Administrative Fund is hereby created
25 as a separate fund within the State Treasurer's office for the
26 purpose of administering the ACES Program. The ACES
27 Administrative Fund shall accept, deposit, and disburse funds

1 for the purpose of administering the ACES Program. All funds
2 in the ACES Administrative Fund are hereby irrevocably pledged
3 to the payment of the administrative costs of the ACES
4 Program. Funds in the ACES Administrative Fund may be invested
5 by the State Treasurer in any investment facility allowed by
6 this chapter. Any interest and earnings from the investment of
7 funds in the ACES Administrative Fund shall be deposited to,
8 and become a part of, the ACES Administrative Fund for use as
9 authorized by this chapter. All funds in the ACES
10 Administrative Fund at the end of each fiscal year of the
11 State of Alabama shall remain in that administrative fund and
12 be automatically carried forward and available to be
13 appropriated by the Alabama Legislature for the administration
14 of the ACES Program.

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

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

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

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

20 (f) Property and income of the ACES Trust Fund, ACES
21 Administrative Fund, and the ACES Opportunity Enhancement Fund
22 shall be exempt from all taxation by the state and by all of
23 its political subdivisions.

24 (g) The ACES Opportunity Enhancement Fund is created
25 as a separate fund within the State Treasurer's office for the
26 purpose of enhancing and providing higher education
27 opportunities and programs, as the ACES board deems necessary

1 and appropriate. The fund may receive contributions from
2 individuals, private business entities, public corporations,
3 and contractual agreements with service providers. The funds
4 shall be utilized in the discretion and solely at the
5 direction of the ACES board. The amounts on deposit in the
6 fund shall not constitute property of the state, and the state
7 shall have no claim or interest in them.

8 "§16-33C-11.

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

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

14 (2) Provisions for withdrawals, refunds, transfers,
15 and any penalties.

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

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

22 (5) Terms and conditions for designation of a
23 substitute beneficiary.

24 (6) Terms and conditions for termination of the
25 account, including any refunds, withdrawals, or transfers, and
26 applicable penalties, the name of the person entitled to any

1 refund due as a result of termination, and the name of the
2 person entitled to terminate the account.

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

5 (8) All other rights and obligations of the
6 contributor and the ACES Program.

7 (9) Any other terms and conditions which the board
8 deems necessary or appropriate, including those necessary to
9 conform the ACES Program and ACES Trust Fund to the
10 requirements of Section 529 of the Internal Revenue Code of
11 1986, as amended, or other applicable federal law.

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

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

24 (2) Participation in the ACES Program does not
25 guarantee that sufficient funds will be available to cover
26 qualified higher education expenses of a designated
27 beneficiary.

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

4 (c) Nothing in this chapter shall make any
5 provisions or warranties except as provided in savings
6 agreements, including that a person shall be admitted to,
7 allowed to continue in, graduated from a college or
8 university, or conferred Alabama resident status.

9 (d) The state or any state agency, county,
10 municipality, or any other employer in the state is hereby
11 authorized, by contract, or otherwise, to agree with any
12 employee to remit contributions through payroll deduction made
13 by the appropriate official of the state, state agency,
14 political subdivision, or other employer under the terms of a
15 savings agreement in the ACES Program.

16 "§16-33C-12.

17 In addition to any other requirements of this
18 chapter, the ACES board shall:

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

21 (2) Prepare, or cause to be prepared, an annual
22 accounting of the ACES Program and transmit a copy of same to
23 the Governor, the Lieutenant Governor, and the Speaker of the
24 House of Representatives.

25 (3) Make all necessary and appropriate arrangements
26 with colleges and universities in order to fulfill its
27 obligations under savings agreements.

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

3 §16-33C-4.1.

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

6 (1) The Director of Finance.

7 (2) The State Treasurer.

8 (3) Two persons appointed by the Governor.

9 (4) Two persons appointed by the Speaker of the
10 House of Representatives, one of which shall be a PACT
11 contract holder.

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

13 (6) One person appointed by the Senate President Pro
14 Tempore.

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

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

19 (9) The Executive Director of the Alabama Commission
20 on Higher Education.

21 (10) One member of the House of Representatives
22 appointed by the Speaker of the House of Representatives.

23 (11) One member of the Senate appointed by the
24 Lieutenant Governor.

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

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

3 (b) Members shall serve for terms of office of four
4 yeas and shall be eligible for reappointment, and shall serve
5 until a successor is appointed. Any person appointed to fill a
6 vacancy on the PACT board shall be appointed in a like manner
7 and shall serve for only the unexpired term.

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

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

22 (e) The State Treasurer shall be the chair and
23 presiding officer of the PACT board, and the State Treasurer
24 may appoint such other officers as the PACT board may deem
25 advisable or necessary. A majority of the members of the PACT
26 board shall constitute a quorum for the transaction of the
27 business of the plan.

1 (f) The membership of the PACT board shall be
2 inclusive and reflect the racial, gender, geographic,
3 urban/rural and economic diversity of the State. The PACT
4 board shall annually report to the Legislature by the second
5 legislative day of each regular session the extent to which
6 the PACT board has complied with the diversity provisions
7 provided for in this act.

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

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

14 Section 9. The provisions of this act are
15 unseverable. If any part of this act is declared invalid or
16 unconstitutional, that declaration shall affect the part which
17 remains.

18 Section 10. This act shall become effective
19 immediately upon its passage and approval by the Governor or
20 upon its otherwise becoming a law.