HB171

147718-1

By Representative Ford

RFD: Ways and Means Education

First Read: 06-FEB-13
SYNOPSIS: Currently there is projected to be a shortage of funds to pay the full tuition and fee costs to the beneficiaries of the remaining active PACT contract holders.

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

This bill would also provide that future appropriations from the Education Trust Fund to the PACT programs would be distributed to the several universities and colleges in the same manner as the assets transferred. Any state university or college shall allow a PACT beneficiary who is accepted for admission to receive credit for all tuition and fees as under the terms of the PACT contracts which existed prior to the passage of Act 2010-725. Any PACT beneficiary electing a private or out-of-state
institution shall receive the amounts as determined according to the methods in place prior to the passage of Act 2010-725.

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§16-33C-6.

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

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

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

(d) Gross earnings on PACT Trust Fund principal may
be directly used by the PACT board to satisfy investment costs
of the PACT Trust Fund and to supplement balances in the PACT
Administrative Fund to cover outstanding administrative costs
of the PACT Program as the board deems necessary. Gross
earnings on the principal of the PACT Trust Fund remaining
after payment of investment costs and deposits into the PACT
Administrative Fund as authorized herein shall be deposited
into, and become a part of, the principal of the PACT Trust Fund. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property of the PACT Trust Fund, the PACT board and any person or investment manager to whom the PACT board delegates any of its investment authority shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to permanent disposition of funds, considering the probable income as well as the safety of their capital. When acting within this standard of care, no PACT board member, or any person or investment manager to whom the PACT board delegates any of its investment authority, shall be held personally liable for losses suffered by the PACT Program on investments made pursuant to this chapter. No PACT board member shall be held personally liable for any losses, damages, or claims which have arisen or may arise from or are related to any act or omission of the board member taken in service as a member of the board or as a trustee, so long as the board member acted in good faith.

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

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

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

<table>
<thead>
<tr>
<th>Institution</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>Alabama A &amp; M University</td>
<td>.35%</td>
</tr>
<tr>
<td>Alabama State University</td>
<td>.44%</td>
</tr>
<tr>
<td>Athens State College</td>
<td>.63%</td>
</tr>
<tr>
<td>Auburn University</td>
<td>30.74%</td>
</tr>
<tr>
<td>Auburn University - Montgomery</td>
<td>2.89%</td>
</tr>
<tr>
<td>Jacksonville State University</td>
<td>3.46%</td>
</tr>
<tr>
<td>Troy University</td>
<td>5.03%</td>
</tr>
<tr>
<td>University of Alabama</td>
<td>33.14%</td>
</tr>
<tr>
<td>University of Alabama - Birmingham</td>
<td>8.69%</td>
</tr>
<tr>
<td>University of Alabama -</td>
<td>3.05%</td>
</tr>
<tr>
<td>University</td>
<td>Percentage</td>
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<tr>
<td>-----------------------------------</td>
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</tr>
<tr>
<td>Huntsville</td>
<td>2.65%</td>
</tr>
<tr>
<td>University of Montevallo</td>
<td>3.43%</td>
</tr>
<tr>
<td>University of South Alabama</td>
<td>4.98%</td>
</tr>
<tr>
<td>University of West Alabama</td>
<td>0.51%</td>
</tr>
</tbody>
</table>

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

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

§16-33C-7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Nothing in this chapter, nor in a PACT contract entered into pursuant to this chapter, shall be construed as a promise or guarantee by the PACT board or the state that: A person shall be admitted to a particular college or university; or that a person shall be allowed to continue to attend a college or university after having been admitted; or that a person shall be graduated from a college or university; or that Alabama resident status shall be conferred. Each state college or university shall establish its own residency requirements for matriculation.
(e) The state or any state agency, or any county, or municipality, or any other employer in the state is hereby authorized, by contract, or otherwise, to agree with any employee to remit contract payments through payroll deduction made by the appropriate official of the state, state agency, political subdivision, or other employer under the terms of an accepted PACT contract.

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

"§16-33C-8.
In addition to any other requirements of this chapter, the PACT board shall:

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

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

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

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

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

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

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

(2) Invest the funds remaining in the PACT Trust
Fund which are to be expended for out-of-state or private
college tuition and administrative expenses only.
Section 2. Sections 16-33C-18 and 16-33C-20, Code of Alabama 1975, are hereby repealed.

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

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

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

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