

Is PACT a pact?

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Lawmakers are wrestling with three questions as they wait for the results of a study of Alabama's ailing Pre-Paid Affordable College Tuition program.

Does the state have a legal obligation to fund a program that sold contracts to almost 50,000 residents for future college tuition, but finds itself at least \$400 million behind what is needed to meet all of its agreements?

If a legal obligation does not exist, is there a moral or ethical obligation to honor what many believed to be a state-backed promise?

If the answer to either of the first two questions is yes, how will it be funded?

The Alabama PACT program has been one of many casualties of the economic recession. It began operating in 1990 and has been administered by the State Treasurer's Office. The concept was attractive: Buy a PACT contract for your children or grandchildren at today's tuition costs, then allow the PACT fund to invest the contracts and let the fund grow to meet the cost of tuition when it is time for the children to attend college.

But the recession crippled the program, causing the PACT fund to dwindle from a high of \$793 million in December of 2007 to a low of \$463 million at the end of January 2009. As of May 20, the program was only 52.2 percent funded, representing a deficit of \$460 million.

While the original intent of the program may have been an investment option and not a guarantee backed by state funds, many lawmakers believe the language of the contract and the administering of the program through the state treasurer's office led purchasers to believe their investment was guaranteed. Owners of early PACT contracts indicate the word "guarantee" is in the contract language. Since 1995, the word "guarantee" has apparently been removed.

State Rep. Benjamin Lewis, R-Dothan, said he believes the state has a legal obligation to honor all contracts that had the "guarantee" language. He also said the state may have a moral obligation to honor all other contracts because of what may have been an "implied" guarantee, or at least misleading language or program marketing.

"Initially, the idea was a good one," Lewis said. "But in hindsight, how was it ever going to work?"

In a 2005 interview with the Dothan Eagle, State Treasurer Kay Ivey acknowledged the PACT program was not guaranteed.

"There's always a concern about the skyrocketing trend of tuition," Ivey said in a Dothan Eagle story published April 10, 2005. "Certainly, we hope that is going to level off, but we just have to be prepared."

The Retirement Systems of Alabama is currently conducting an actuarial study of the PACT program. Results are expected to be provided to Gov. Bob Riley and the Alabama Legislature next month.

State Sen. Harriane Smith, R-Slocumb, said the study should shed light on possible solutions.

Some ideas mentioned include a state lottery, with proceeds used to fund the program, tapping into the Education Trust Fund or Alabama Trust Fund or using a combination of some or all of those along with agreements with Alabama's major universities to guarantee the reduction of growth in tuition costs for PACT participants.

"I am very much in favor of the state honoring the obligations of the PACT program," Smith said. "When people purchased the contracts, they felt it had the good name of Alabama backing it. We do have an obligation to make those people whole."

Riley has the option to call a special session of the Legislature to address the problem. Currently, it is believed the program will not run out of money until 2014.