REPORT TO THE CITIZENS' COMMISSION ON CONSTITUTIONAL REFORM

by the

TECHNICAL ADVISORS COMMITTEE FOR ECONOMIC DEVELOPMENT

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PART I

ALABAMA'S EXISTING CONSTITUTIONAL PROVISIONS IMPACTING ECONOMIC DEVELOPMENT

Alabama's Constitution includes provisions which not only affect, but proscribe, economic development activities by the State and its political subdivisions. In some instances, this result is the intentional product of efforts to avoid repetition of disastrous experiences in the 1800's. In others, it is an indirect consequence of our limited governmental resources and provisions that prescribe the uses of those resources. In almost all cases, the relevant provisions reflect a distrust of public officials' ability to spend public funds wisely for the promotion of private enterprise.

Sections 93 and 94

During the early 1800's, the State went into the banking business by issuing bonds on its own credit and lending the proceeds to businesses and individuals. Many of the borrowers defaulted on their loans and by the time of the 1901 Constitutional Convention, 70 years later, the State's debt had still not been paid. During the same period, many counties and cities competed to attract railroads to their communities, with the hope that having a railroad would facilitate commerce and travel, create new and improved job opportunities and generally promote the economic well-being of the area. With few, if any, constitutional limitations in existence at the time, some cities and counties issued public debt and invested the proceeds in railroad and related enterprises as an incentive to locate in their jurisdictions. The State also issued bonds to support the railroads. When the railroad failed or the expected benefits did not materialize, the governments were left with unmanageable debt loads and, in some cases, were pushed into default and insolvency. This experience was not unique to Alabama.

In an effort to curb such speculative investments in private enterprise, Sections 93 and 94 were included in the Constitution of 1901.[1] Section 93 is applicable to the State and, as amended by Amendment 58, provides in pertinent part as follows:

> "The state shall not engage in works of internal improvement, nor lend money or its credit in aid as such, except as may be authorized by the Constitution of Alabama or amendments thereto; nor shall the state be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation, except as may be

[1] Sections 93 and 94 were carried over from Article IV, Sections 54 and 55 of the Constitution of 1875. Alabama's constitutions prior to the Constitution of 1875 did not contain any such prohibitions.

expressly authorized by the Constitution of Alabama, or amendments thereto."

Section 94 applies to cities and counties and, as amended by Amendment 112, provides in pertinent part as follows:

"The legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds or otherwise."

The Alabama Supreme Court explained a predecessor provision to Section 94 as follows:

"[T]o comprehend the scope of [Section 94], the causes in which it originated, and the mischiefs designed to be remedied, may be properly and helpfully considered. Under the constitutions preceding the present, the legislature had unlimited power over the subject. Several of the counties had, by legislative authority, subscribed for stock in railroad corporations, and issued bonds to pay for the same, in anticipation of their future public benefit. The disastrous consequences which ensued are common knowledge. Either from mismanagement or fraud, insolvency of the companies, and failure to complete the roads, supervened, the stock became worthless, and the indebtedness exceeded the ability of the counties to pay. Expensive and protracted litigation was inaugurated, taxation became oppressive; legal proceedings to compel the levy of taxes were prosecuted …; confiscation of the property of the citizens was impending, and the counties reduced to such condition as to be designated 'the Strangulated Counties.' To prevent a recurrence …, [§ 94] was introduced. Its terms are comprehensive enough to include any aid, by issuing bonds or otherwise, by which a pecuniary liability is incurred, furnished by the municipalities named to private enterprises. … A loan of credit, or grant of money or thing of value, in aid of an individual or corporation, in any mode, directly or indirectly, falls within its operation. A direct loan or grant to the individual or corporation is not essential."[2]

Sections 93 and 94 were, therefore, intended to separate public and private enterprises and to prohibit the State and its political subdivisions from using public funds to promote the development of private interests. "The evil to be remedied is the expenditure of public funds in aid of private individuals or corporations, regardless of the form which such expenditure may take …"[3] Given their most literal and restrictive interpretation, these provisions might prohibit the state and local governments from engaging in almost any transaction with private businesses in which a benefit is realized by the private

[2] Garland v. Board of Revenue of Montgomery, 87 Ala. 223, at 225, 6 So. 402 at 402-403 (1889).

[3] Opinion of the Justices No. 120, 254 Alabama 506, 49 So.2d 175, 178 (1950).

enterprise. For example, a city might be prevented from buying police cars since the purchase price, paid for with public moneys, presumably produces a profit for the private dealer or manufacturer. Or the State might be prohibited from establishing vocational/technical schools offering instruction in the skills needed by potential employees in a modern manufacturing plant since the private employer is spared the expense of providing the same training. However, Alabama's Supreme Court has interpreted Sections 93 and 94 and other portions of the Constitution in a manner that avoids such extreme results and has permitted limited governmental involvement in economic development.

Judicial Interpretation

First, the Court has held that entry by the State into "an ordinary commercial contract, with benefits flowing to both parties and a consideration on both sides," does not violate Section 93."[4] Second, it has embraced the generally held rule that public moneys must be spent for "public purposes":

> "The limitation that public money and credit can only be used for 'public purposes' is a matter of due process and implicit in the Alabama Constitution. Indeed, the premise that all appropriations or expenditures of public money by municipalities and indebtedness created by them must be for a public purpose as opposed to a private purpose is a widely recognized one."[5]

The Court has explained what distinguishes a "public purpose" from a private one as follows:

> "[A] public purpose has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare…The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit…. The trend among the modern courts is to give the term 'public purpose' a broad expansive definition."[6]

And in that context, it is not fatal that a private party may benefit from the expenditure:

> "Where a proposed governmental expenditure may in some respects result in conferring a benefit upon the public and in other respects in conferring

[4] Rogers v. City of Mobile, 169 So.2d 282 (Ala. 1964); Ramer v. City of Homewood, 437 So.2d 455 (Ala. 1983); and Gober v. Stubbs, 682 So.2d 430 (Ala. 1996).

[5] Brown v. Longiotti, 420 So.2d 71, 72 (Ala. 1982).

[6] Slawson v. Alabama Forestry Commission, 631 So.2d 953, 956 (Ala. 1994).

> a benefit upon or in paying money to, private individuals, its permissibility will depend upon whether the benefit to the public is primary or direct and not merely incidental."[7]

Finally, the Court has repeatedly held that public corporations (such as local industrial development boards and authorities, municipal medical clinic boards, the State Industrial Development Authority, and the Alabama 21st Century Authority), although created by the State or local governments, are legally distinguishable from the sponsoring political subdivision.[8] Under this "separate entity doctrine," public corporations, although created to undertake activities that might otherwise be accomplished by government, have been held not to be subject to the Constitutional limitations otherwise applicable to the governmental entity that creates them.

Literally applied, Sections 93 and 94 would prevent participation by state and local governments in most economic development activities. However, through liberal applications of the "commercial contract," "public purpose," and "separate entity" principles described above, the Court has moderated the potential impact of these provisions and has accommodated many forms of economic development in the State. Thus, for example, Montgomery and Elmore Counties were allowed to enter into a contract with a private developer requiring the developer to build and maintain a toll bridge as a private, for-profit venture, and the counties to build and maintain public access roads on either end of the bridge. "The mere fact that a county enters into a mutually beneficial agreement with a private individual or corporation does not violate Article IV, Section 94 of our constitution. To rule that it does would arbitrarily prevent cities and counties from attempting to find innovative solutions to the problems they face, by foreclosing any opportunity for cooperation between the public and private sectors for the public good."[9] The Court was similarly supportive when it found adequate public purpose to justify the issuance of $5,200,000 of debt by the City of Daphne to finance its purchase of land from a private shopping center developer on the condition that the land would be set aside as a parking lot for the proposed shopping center.[10] Finally, the "separate entity doctrine" has permitted local industrial development boards to issue bonds to assist the location and expansion of industry, medical clinic boards to finance hospitals and other medical facilities for use by charitable and for-profit enterprises, the Alabama 21st Century Authority to issue bonds to raise funds to satisfy the State's incentive packages to Honda, Mercedes, Toyota, Teksid Aluminum Components, Lockheed-Martin and others, and Alabama Housing Finance Authority to issue over $3

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[7] 63 Am Jur 2d. 283, 284, "Public Funds - Effect of Benefit to Private Persons" (citations omitted).

[8] In re Opinion of the Justices, 154 So. 2d 12 (Ala. 1963); In re Opinion of the Justices, 116 So. 2d 588 (Ala. 1959); McBurney v. Ruth, 527 So. 2d 1265 (Ala. 1988); Edmondson v. State Industrial Development Authority, 184 So. 2d 115 (Ala. 1966).

[9] Gober v. Stubbs, 682 So.2d. 430, 436 (Ala. 1996).

[10] Guarisco v. City of Daphne, CV-2000-679, released Jan. 18, 2002, __ So.2d __ (Ala. 2002).

billion dollars of bonds to finance more than 44,000 single family houses and 15,000 multi-family rental units.

Despite the Court's fairly restrained enforcement of Sections 93 and 94, as reflected in its willingness to approve many economic development initiatives by resorting to the commercial contract, public purpose and separate entity theories, our history in this area is not consistent. On some occasions, the court has taken a narrower view of the relevant provisions and declared programs unconstitutional. In one such case, it refused to approve a proposed issue of bonds by the City of Hamilton to finance a new K-Mart store notwithstanding a local constitutional amendment that specifically authorized any city in Marion County to lend its credit in aid of, or give money or land to, a private enterprise.[11] And early in the second administration of Fob James, when the State was searching for the best way to satisfy commitments made by the prior administration of Governor Folsom to Mercedes for its new assembly plant in Vance, Alabama, the Court refused to approve a proposal to use certain monies from the Alabama Trust Fund to pay debt service on bonds to be issued by the Alabama Incentives Financing Authority, a public corporation of the State. In doing so, the Court surprised many professionals in the area when it equivocated on the "separate entity" doctrine:

> "[T]here is language in some of our cases, and especially in some other advisory opinions, that suggests that the constitutional restrictions of § 93 and § 213 do not apply to public corporations. We are of the opinion that both of these constitutional provisions apply to public corporations. Obviously, the constitution cannot be circumvented merely by forming a public corporation and authorizing it to do what the legislature is forbidden to do by the constitution."[12]

Local Economic Development Amendments

Perhaps due to the uncertainty created by cases like these, and certainly out of a desire to authorize economic development efforts that might otherwise be prohibited (or at least rendered doubtful) by Section 94, the Legislature and the citizens of numerous areas of the State have adopted 50 local constitutional amendments which, to varying degrees, supercede Section 94 as applicable to them. A list of these local amendments (including 5 proposed amendments on the ballot this fall) is attached as Appendix A. Typical among these amendments are provisions permitting certain counties and cities to acquire land to serve as an industrial site, to prepare the site for industrial and commercial uses and to sell at below-market prices or even donate the improved site to a private industrial user. Although such actions might be justifiable, even without a local amendment, as reasonable commercial contracts or as serving a valid public purpose, the proponents of the amendments must have believed that enough uncertainty existed to justify the effort needed to adopt the amendments. The result is that some of our cities

[11] Brown v. Longiotti, 420 So2d. 71 (Ala. 1982).

[12] Opinion of the Justices, 665 So. 2d 1357, 1362 (Ala. 1995).

and counties have considerably more flexibility than others to offer valuable incentives to new industry and can do so comfortable in the knowledge that their offers and agreements are legal and reliable. Cities and counties without such amendments must either decline to participate in the incentives and economic development game or hope that if challenged, their programs will be approved by the courts. This unequal treatment is at best nonsensical and at worst, unfair.

Amendment 666

In marked contrast to Sections 93 and 94, the State has adopted at least one constitutional amendment of statewide application which takes a decidedly different, more progressive and more proactive approach to economic development. Amendment 666 was adopted in November, 2000 as a means of permitting the State to fund its efforts to attract new industries such as Honda, Toyota and Hyundai. The Amendment captures 28% of the future oil and gas royalty payments flowing into the Alabama Trust Fund, and dedicates those amounts to a new "Alabama Capital Improvement Trust Fund." Moneys in this Fund may be used only for certain purposes, including direct appropriations for economic development projects, and as a source of payment of bonds issued to finance economic development projects. Recently, the State issued $55,000,000 of bonds under Amendment 666 to finance 7 different economic development projects. While Sections 93 and 94 prohibit or restrict many forms of economic development efforts, Amendment 666 assures that at least a small portion of the State's resources can and will be used for these efforts.

Other Provisions

This report focuses on those provisions of the Constitution described above as having a direct impact on economic development, some negative, some positive. We should observe, however, that other provisions have an equally profound, although more indirect, impact. For example, provisions in the Alabama Constitution which limit the State's ability to borrow money have reduced the State's flexibility in raising funds for economic development. As a result, the State has been forced to create various public authorities and rely upon tenuous legal theories to provide the funds necessary for some of the largest and most important projects in the State. Section 213, as amended by Amendment 26, provides as follows:

> "After the ratification of this Constitution, no new debt shall be created against, or incurred by the state or its authority . . . [with certain exceptions irrelevant to economic development]."

The State is thus constitutionally prohibited from incurring "debt"; any borrowing by the State itself must be authorized by a specific constitutional amendment. The State has found means to circumvent this restriction by creating public corporations eligible for treatment as "separate entities" under the cases described above, and appropriating to

such corporations revenues in a manner which has been held by the Court not to create a new "debt" of the State. The Court has generally held that pledging revenues from a new source which have not previously been paid into the State's general fund does not create a debt of the State.[13] Relying upon this approach, the State has created the Alabama Incentives Finance Authority, to which it has pledged certain "in lieu of tax" payments made to the State by TVA, the State Industrial Development Authority, to which are pledged the revenues from certain increases in state cigarette taxes, and the Alabama 21st Century Authority, to which the State has dedicated a portion of its share of the payments resulting from the national tobacco litigation settlement. These three authorities have been used to finance much of the incentive packages promised in recent years to companies such as Mercedes, Honda, Toyota, Boeing and Hyundai. Although the arrangement has worked for these and other projects, it is cumbersome and, to some extent, misleading. Moreover, the revenues available for appropriation to these authorities without creating a state debt are limited, thereby limiting the funds that can be raised for future economic development projects.

Other examples of constitutional provisions having an indirect impact on the State's economic development efforts, include provisions which "earmark" state revenues for specified uses[14] and provisions which place constitutional limits on property taxes, personal income taxes and corporate income taxes in this State. Approximately 87% of the revenues received each year by the State are constitutionally or statutorily "earmarked" for particular purposes; the average in other states is approximately 24%. Other provisions limit the level of ad valorem taxes on land and provide "current use" valuations which reduce the tax bills for owners of timberland and farmland in the State. Such provisions make it difficult for the State and local governments to manage their budgets in ways that permit adequate funding of state and local responsibilities, including economic development. We are a poor state with an inferior public education system. Without adequate funding of the infrastructure that is necessary for business and without an education system capable of providing a workforce with the skills needed by today's businesses (and a suitable education for the families of new arrivals into the State), our economic development success will be limited and we may never catch up with some of our neighboring states.

[13] Opinion of the Justices, 26 Ala. 78, 93 So.2d 923 (1957); Edmonson v. State Industrial Development Authority, 279 Ala. 206, 184 So.2d 115 (1966).

[14] Examples include Amendment 61 (requires that the proceeds of personal and corporate income taxes be deposited into the Special Education Trust Fund and used solely for the payment of teachers' salaries); Amendment 93 (requires gasoline taxes and vehicle registration fees to be used for highways purposes); and Amendment 111 (dedicates state ad valorem taxes to education).

PART II

OTHER STATES' ECONOMIC DEVELOPMENT PROVISIONS

General Constitutional Provisions

The Massachusetts Constitution sets forth a general authorization for the state legislature (known as the "General Court" in Massachusetts) to provide by general law for economic development of the cities and towns of the state. The provision reads:

> "The industrial development of cities and towns is a public function and the commonwealth and the cities and towns therein may provide for the same in such manner as the general court may determine."[15]

In the Mississippi Constitution, on the other hand, there is also a general provision, but instead of playing an enabling function, it is one directed to the concerns that have led to the adoption of prohibitions like those in Alabama Constitution, Section 93 and 94. Instead of constitutionally proscribing particular activity, though, the Mississippi provision simply states:

> Provision shall be made by general laws to prevent the abuse by cities, towns, and other municipal corporations of their powers of assessment, taxation, borrowing money, and contracting debt.[16]

Other general provisions relate to internal improvements, either carving out exceptions to prohibitions on internal improvements (like that in Alabama Constitution Section 93, discussed below, where these provisions will be noted again) or representing an explicit rejection of such a prohibition. Some examples:

- North Dakota authorizes the state and any county or city to make internal improvements or to engage in industry, enterprise or business except to the extent explicitly prohibited.[17]

- A Kansas provision allows the state "for the purpose of stimulating economic development and private sector job creation" to "participate in the development of a capital formation system and have a limited role in

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[15] Massachusetts Constitution, Article LXXXVIII. This provision was added by amendment, apparently to supercede Article LXII, Section 1, the Massachusetts provision corresponding to Alabama Constitution Section 93.

[16] Mississippi Constitution, Article 4, Section 80.

[17] N. Dak. Const. Article X, Section 18.

such system through investment of state funds authorized in accordance with law."[18]

- A Wyoming provision allows the state to engage in any work of internal improvement if "authorized by a two-thirds (2/3) vote of the people."[19]

More Specific Constitutional Provisions

In Amendment 666, Alabama has in its Constitution an innovative provision that supports economic development projects. Other states' constitutions also set forth innovative provisions, or at least more specific provisions, worthy of the Commission's consideration. Georgia and Texas provide an array of examples.

Georgia

The Georgia Constitution contains a number of provisions to facilitate economic development, including:

- a provision allowing the legislature to establish development authorities, the Constitution recognizing that development of trade, commerce, industry and employment opportunities are a public purpose; development authorities can issue revenue bonds without being subject to state debt limits[20]

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[18] Kans. Const. Article 11, Section 9.

[19] Wyoming Const. Section 97-16-006.

[20] Georgia Constitution Article 9, Section 6, Paragraph III reads:

> **Development authorities.**
>
> The development of trade, commerce, industry, and employment opportunities being a public purpose vital to the welfare of the people of this state, the General Assembly may create development authorities to promote and further such purposes or may authorize the creation of such an authority by any county or municipality or combination thereof under such uniform terms and conditions as it may deem necessary. The General Assembly may exempt from taxation development authority obligations, properties, activities, or income and may authorize the issuance of revenue bonds by such authorities which shall not constitute an indebtedness of the state within the meaning of Section V of this article.

Revenue bonds issued by an authority created pursuant to this provision were validated in Alexander v. Macon-Bibb County Urban Development Authority, 257 Ga. 541, 357 S.E.2d 62 (1987). As noted below, the provision can be thought of as an exception to the Georgia provision analogous to Alabama Constitution section 94.

- A provision enabling the legislature to create an "emerging crops" fund[21]

- A provision enabling the legislature to create a Seed-Capital Fund to be disbursed by the Advanced Technology Center at the University of Georgia.[22]

- A provision for enterprise zones[23]

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[21] Georgia Constitution, Article 3, Section 6, Paragraph IIj reads as follows:

> (j) The General Assembly is authorized to provide by general law for the creation of an emerging crops fund from which to pay interest on loans made to farmers to enable such farmers to produce certain crops on Georgia farms and thereby promote economic development. The General Assembly is authorized to appropriate moneys to such fund and moneys so appropriated shall not be subject to the provisions of Article III, Section IX, Paragraph IV (c), relative to the lapsing of appropriated funds. Interest on loans made to farmers shall be paid from such fund pursuant to such terms, conditions, and requirements as the General Assembly shall provide by general law. The General Assembly may provide by general law for the administration of such fund by such state agency or public authority as the General Assembly shall determine.

[22] Georgia Constitution, Article 3, Section 6, Paragraph IIg reads as follows:

> The General Assembly is authorized to provide by law for the creation of a Seed-Capital Fund from which funds shall be disbursed at the direction of the Advanced Technology Development Center of the University System of Georgia to provide equity and other capital to small, young, entrepreneurial firms engaged in innovative work in the areas of technology, manufacturing, or agriculture. Funds shall be disbursed in the form of loans or investments which shall provide for repayment, rents, dividends, royalties, or other forms of return on investments as provided by law. Moneys received from returns on loans or investments shall be deposited in the Seed-Capital Fund for further disbursement. The General Assembly is authorized to appropriate moneys to such fund and such moneys paid into the fund shall not be subject to the provisions of Article III, Section IX, Paragraph IV(c) relative to the lapsing of funds. The General Assembly shall be authorized to provide by law for any matters relating to the purpose or provisions of this subparagraph.

[23] Georgia Constitution, Article 9, Section 2, Paragraph VIII(c) reads as follows

> (c) The General Assembly is authorized to provide by general law for the creation of enterprise zones by counties or municipalities, or both. Such law may provide for exemptions, credits, or reductions of any tax or taxes levied within such zones by the state, a county, a municipality, or any combination thereof. Such exemptions shall be available only to such persons, firms, or corporations which create job opportunities within the enterprise zone for unemployed, low, and moderate income persons in accordance with the standards set forth in such general law. Such general law shall further define enterprise zones so as to limit such tax exemptions, credits, or reductions to persons and geographic areas which are determined to be underdeveloped as evidenced by the unemployment rate and the average personal income in the area when compared to the remainder of the state. The General Assembly may by general law further define areas qualified for creation of enterprise zones and may provide for all matters relative to the creation, approval, and termination of such zones.

- A provision authorizing the state to cooperate with any local political subdivision and/or nonprofit organization to promote tourism.[24]

- A provision allowing locally adopted exemptions from ad valorem taxes, though only as to inventories (probably targeted as an incentive to distribution centers to locate in Georgia).[25]

Texas

Texas also has several provisions in its Constitution to facilitate economic development activities:

- A provision expressly authorizing the grant or loan of public money for economic development[26]

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[24] Georgia Constitution, Article 3, Section 6, Paragraph II(a)(5), which reads as follows:

> **Paragraph II. Specific Powers.** (a) Without limitation of the powers granted under Paragraph I, the General Assembly shall have the power to provide by law for:
>
> (5) The participation by the state with any county, municipality, nonprofit organization, or any combination thereof in the operation of any of the facilities operated by such agencies for the purpose of encouraging and promoting tourism in this state.

[25] The Georgia provision, Georgia Constitution, Article 7, Section 2, Paragraph III(a)(1), reads:

> **Paragraph III. Exemptions which may be authorized locally.**
>
> (a) (l) The governing authority of any county or municipality, subject to the approval of a majority of the qualified electors of such political subdivision voting in a referendum thereon, may exempt from ad valorem taxation, including all such taxation levied for educational purposes and for state purposes, inventories of goods in the process of manufacture or production, and inventories of finished goods.
>
> (2) Exemptions granted pursuant to this subparagraph (a) may only be revoked by a referendum election called and conducted as provided by law. The call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the results of the election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.
>
> (3) The implementation, administration, and revocation of the exemptions authorized in this subparagraph (a) shall be provided for by law. Until otherwise provided by law, the grant of the exemption shall be subject to the same conditions, limitations, definitions, and procedures provided for the grant of such exemption in the Constitution of 1976 on June 30, 1983.

[26] Texas Constitution, Article 3, Section 52-a, which reads:

> LOAN OR GRANT OF PUBLIC MONEY FOR ECONOMIC DEVELOPMENT. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the

- Provisions for establishment of a Texas Product Development Fund and a Texas Small Business Incubator Fund, each with authority to issue bonds[27]

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growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.

Like the Georgia provision, this Texas provision, which was adopted in 1987, functions as an exception to the Texas version of Alabama Constitution Section 93 (Texas Constitution, Article III, Section 50) and Alabama Constitution Section 94 (Texas Constitution, Article III, Section 52-b). This is discussed below.

[27] Texas Constitution, Article 16, Section 71, which reads as follows:

TEXAS PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR FUNDS; BONDS. (a) The legislature by law may establish a Texas product development fund to be used without further appropriation solely in furtherance of a program established by the legislature to aid in the development and production of new or improved products in this state. The fund shall contain a program account, an interest and sinking account, and other accounts authorized by the legislature. To carry out the program authorized by this subsection, the legislature may authorize loans, loan guarantees, and equity investments using money in the Texas product development fund and the issuance of up to $25 million of general obligation bonds to provide initial funding of the Texas product development fund. The Texas product development fund is composed of the proceeds of the bonds authorized by this subsection, loan repayments, guarantee fees, royalty receipts, dividend income, and other amounts received by the state from loans, loan guarantees, and equity investments made under this subsection and any other amounts required to be deposited in the Texas product development fund by the legislature.

(b) The legislature by law may establish a Texas small business incubator fund to be used without further appropriation solely in furtherance of a program established by the legislature to foster and stimulate the development of small businesses in the state. The fund shall contain a project account, an interest and sinking account, and other accounts authorized by the legislature. A small business incubator operating under the program is exempt from ad valorem taxation in the same manner as an institution of public charity under Article VIII, Section 2, of this constitution. To carry out the program authorized by this subsection, the legislature may authorize loans and grants of money in the Texas small business incubator fund and the issuance of up to $20 million of general obligation bonds to provide initial funding of the Texas small business incubator fund. The Texas small business incubator fund is composed of the proceeds of the bonds authorized by this subsection, loan repayments, and other amounts received by the state for loans or grants made under this subsection and any other amounts required to be deposited in the Texas small business incubator fund by the legislature.

(c) The legislature may require review and approval of the issuance of bonds under this section, of the use of the bond proceeds, or of the rules adopted by an agency to govern use of the bond proceeds. Notwithstanding any other provision of this constitution, any entity created or directed to conduct this review and approval may include members, or appointees of members, of the executive, legislative, and judicial departments of state government.

(d) Bonds authorized under this section constitute a general obligation of the state. While any of the bonds or interest on the bonds is outstanding and unpaid, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this

- A provision for establishment of a Texas Growth Fund[28]

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constitution, the amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, less any amount in any interest and sinking account at the end of the preceding fiscal year that is pledged to payment of the bonds or interest. (Added Nov. 7, 1989; Subsec. (b) amended Nov. 2, 1999.)

[28] Texas Constitution, Article 16, Section 70, which reads as follows:

Sec. 70. TEXAS GROWTH FUND. (a) In this section:

(1) "Board of trustees" means the board of trustees of the Texas growth fund.

(2) "Fund" means the Texas growth fund.

(3) "Venture capital investment" means an investment in debt, equity, or a combination of debt and equity that possesses the potential for substantial investment returns, and includes investments in new or small businesses, investments in businesses with rapid growth potential, or investments in applied research and organizational activities leading to business formation and opportunities involving new or improved processes or products.

(b) The Texas growth fund is created as a trust fund. Except as otherwise provided by this section, the fund is subject to the general laws of this state governing private sector trusts. The governing boards of the permanent university fund, the permanent school fund, the Teacher Retirement System of Texas, the Employees Retirement System of Texas, and any other pension system created under this constitution or by statute of this state in their sole discretion may make investments in the fund.

(c) The fund is managed by a board of trustees consisting of four public members appointed by the governor and one member from and elected by the membership of each of the following:

(1) the Board of Regents of The University of Texas System;

(2) the Board of Regents of The Texas A&M University System;

(3) the Board of Trustees of the Teacher Retirement System of Texas;

(4) the Board of Trustees of the Employees Retirement System of Texas; and

(5) the State Board of Education.

(d) Each public member of the board must have demonstrated substantial investment expertise. A public member serves for a six-year term expiring February 1 of an odd-numbered year.

(e) A person filling an elected position on the board of trustees ceases to be a member of the board of trustees when the person ceases to be a member of the board the person represents or as otherwise provided by procedures adopted by the board the person represents. The governor shall designate a chairman from among the members of the board of trustees who serves a term of two years expiring February 1 of each odd-numbered year. A member may serve more than one term as chairman.

(f) The board of trustees shall manage the investment of the fund, and may:

(1) employ and retain staff, including a chief executive officer;

(2) analyze and structure investments;

(3) set investment policy of the fund;

(4) take any action necessary for the creation, administration, and protection of the fund;

(5) enter into investment contracts with the participating funds or systems;

(6) adopt rules regarding the operation of the fund;

(7) pay expenses of the fund based on an assessment on investor contributions; and

(8) alternatively, or in combination with its own staff, contract for the management of investments under this section with a private investment management firm or with an investing fund or system electing a member of the board of trustees.

(g) In making investments, including venture capital investments, the board of trustees shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of the capital of the fund. All investments of the fund shall be directly related to the creation, retention, or expansion of employment opportunity

and economic growth in Texas. In making venture capital investments, all other material matters being equal, the board of trustees shall invest in technological advances that could be expected to result in the greatest increase in employment opportunity and economic growth in Texas.

(h) The board of trustees shall establish and operate the fund to the extent practical under the generally accepted business procedures relating to a mutual fund and shall value the investments for determining the purchase or sales price of participating shares of investing funds or systems participating in the fund consistent with investment contracts. Evidences of participation in the fund shall be held by the comptroller of public accounts in keeping with the custodial responsibilities of that office.

(i) An investing fund or system, without liability at law or in equity to members of the governing board of the fund or system in their personal or official capacities, may cumulatively invest in the Texas growth fund not more than one percent of the book or cost value of the investing fund or system, as determined at the end of each fiscal year.

(j) The board of trustees shall establish criteria for the investment of not more than 10 percent of the fund in venture capital investments. Not more than 25 percent of the funds available for venture capital investments may be used for unilateral investment. Investments of the remainder of the funds available for venture capital investments must be matched at least equally by funds from sources other than the fund, with matching amounts established by the board of trustees. The board of trustees shall also establish criteria for the investment of not less than 50 percent of the fund in equity or debt security, or a combination of equity and debt security, for the initial construction, expansion, or modernization of business or industrial facilities in Texas. The board of trustees may invest in money funds whose underlying investments are consistent and acceptable under the investment policy of the fund.

(k) On a quarterly basis, the amount of income realized on investments under this section shall be distributed to each of the systems and funds investing in the Texas growth fund in proportion to the number of participating shares of each investing system and fund. Capital appreciation becomes a part of the corpus of the Texas growth fund and shall be distributed in accordance with the investment contracts.

(l) The board of trustees shall make arrangements to begin liquidation, phase out investments, and return the principal and capital gains on investments to the investors in the fund not later than the 10^{th} anniversary of the date of the adoption of this section. Except under unusual circumstances where it may be necessary to protect investments previously made, further investments may not be made in or by the fund after the 10th anniversary of the date of the adoption of this section.

(m) At the regular legislative session next preceding the 10th anniversary of the date of the adoption of this section, the legislature, by two-thirds vote of each house, may authorize the creation of Texas growth fund II, which shall operate under this section and under the board of trustees created by this section in the same manner as the Texas growth fund. Funds in Texas growth fund II may not be commingled with funds in the Texas growth fund.

(n) The board of trustees may purchase liability insurance for the coverage of the trustees, employees, and agents of the board.

(o) The legislature shall provide by law for the periodic review of the board of trustees in the same manner and at the same intervals as it provides for review of other state agencies, except that the legislature shall provide that the board of trustees is not subject to abolishment as part of the review process.

(p) This section expires September 1, 1998, except that if the legislature authorizes the creation of Texas growth fund II as provided by Subsection (m) of this section, this section expires September 1, 2008.

(q) This section is self-executing and takes effect on its adoption by the voters. All state officials named in this section and the comptroller of public accounts shall take all necessary actions for the implementation of this section. The legislature shall provide by law for full disclosure of all details concerning investments authorized by this section.

(r) (Repealed Nov. 2, 1999.)

- Authorization for appropriations to publicize the economic advantages of Texas.[29]
- A provision allowing an exemption from ad valorem taxes "to promote economic development" (available only for tangible personal property temporarily in the state, and thus, like the Georgia provision, probably targeted as an incentive for distribution centers to locate in Texas) [30]

Addressing Some Common Issues: Examples of Ad Valorem Tax Exemption Provisions

The provisions discussed in this subsection are all state constitution provisions providing for ad valorem tax exemptions. Even though Alabama has low property taxes, exemption from property taxes can itself be useful in attracting new business, and so these provisions are worthy of consideration for that reason alone. But the ad valorem tax exemption provisions discussed in this subsection also illustrate how some of our sister states have addressed issues like limits on the power to grant financial incentives,

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[29] Texas Constitution, Article 16, Section 56, which reads:

> APPROPRIATIONS FOR DEVELOPMENT AND DISSEMINATION OF INFORMATION CONCERNING TEXAS RESOURCES. The Legislature of the State of Texas shall have the power to appropriate money and establish the procedure necessary to expend such money for the purpose of developing information about the historical, natural, agricultural, industrial, educational, marketing, recreational and living resources of Texas, and for the purpose of informing persons and corporations of other states through advertising in periodicals having national circulation, and the dissemination of factual information about the advantages and economic resources offered by the State of Texas; providing, however, that neither the name nor the picture of any living state official shall ever be used in any of said advertising, and providing that the Legislature may require that any sum of money appropriated hereunder shall be matched by an equal sum paid into the State Treasury from private sources before any of said money may be expended.

[30] Sec. 1-j. CERTAIN TANGIBLE Personal Property EXEMPT FROM AD VALOREM TAXATION. (a) To promote economic development in the State, goods, wares, merchandise, other tangible personal property, and ores, other than oil, natural gas, and other petroleum products, are exempt from ad valorem taxation if:
(1) the property is acquired in or imported into this State to be forwarded outside this State, whether or not the intention to forward the property outside this State is formed or the destination to which the property is forwarded is specified when the property is acquired in or imported into this State;
(2) the property is detained in this State for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property; and
(3) the property is transported outside of this State not later than 175 days after the date the person acquired or imported the property in this State.
(b) The governing body of a county, common, or independent school district, junior college district, or municipality that, acting under previous constitutional authority, taxes property otherwise exempt by Subsection (a) of this section may subsequently exempt the property from taxation by rescinding its action to tax the property. The exemption applies to each tax year that begins after the date the action is taken and applies to the tax year in which the action is taken if the governing body so provides. A governing body that rescinds its action to tax the property may not take action to tax such property after the rescission.

authority and accountability of representative officials, process, targeting of types of businesses to be attracted, and equalizing the burdens of providing financial incentives as well as the capability to attract new businesses.

Process, Limits, Authority and Accountability of Representative Officials, and Targeting

Florida

Article 7, Section 3(c) of the Florida Constitution allows counties and municipalities to grant economic development tax exemptions to new businesses and for expansion of existing businesses.[31] The provision reflects some of the choices Florida has made as to limits and process:

- A local economic development exemption is available only for new businesses or for businesses expanding their facilities, and this is to be defined by general law
- The exemption must be adopted through an ordinance approved by the county or municipality governing board, thus recognizing their authority to initiate the process, and to be correspondingly accountable
- As a further process requirement, it must be approved by a referendum of the voters, thus providing citizen participation
- Authorization given by the voters for an exemption is valid for only ten years, after which the authorization "sunsets", thus providing a limit on the authority to grant exemptions.

Georgia

As previously mentioned, the Georgia Constitution allows for local exemptions from ad valorem taxes, but only as to inventories.[32] For purposes of this subsection, what is

[31] Florida Constitution, Article 7, Section 3(c) reads as follows:
(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

[32] The Georgia provision, Georgia Constitution, Article 7, Section 2, Paragraph III(a), reads:

> **Paragraph III. Exemptions which may be authorized locally.**
>
> (a) (l) The governing authority of any county or municipality, subject to the approval of a majority of the qualified electors of such political subdivision voting in a referendum thereon, may exempt from ad valorem taxation, including all such taxation levied for educational purposes and for state

interesting is that the Georgia provision deals somewhat differently with the issue of limiting the authority of the local governing board to grant the exemption:

- Like the Florida provision, the Georgia provision requires a referendum, thus providing for citizen participation in the process.
- And as with the Florida provision, the role of the governing authority is a visible and vital one, with corresponding authority and accountability.
- But in contrast to the Florida provision under which an exemption authorization automatically sunsets at the end of ten years, under the Georgia provision the exemption can only be revoked by another referendum (the call for which cannot be made until five years after the exemption was first granted). Thus under the Georgia provision, the exemption authority given to the local governing authority continues until the provision's procedures for a revocation referendum are invoked.
- Unlike the Florida provision, the Georgia provision is limited to inventories, probably evidencing a desire to target distribution centers, while the Florida provision is targeted at the attraction of new businesses generally.

Thus under the choice made by the drafters of the Georgia provision, there is a greater likelihood that the exemption authorization will continue, while under the choice made by the drafters of the Florida provision, there is a greater likelihood that it will terminate. Georgia and Florida have made different choices as to the common issue of limits on the power to grant economic development incentives. And, as indicated, the two provisions are designed with different economic development targets in mind.

Texas

Article 16, Section 1-j of the Texas Constitution sets forth an exemption from ad valorem taxes "[t]o promote economic development."[33]

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purposes, inventories of goods in the process of manufacture or production, and inventories of finished goods.

(2) Exemptions granted pursuant to this subparagraph (a) may only be revoked by a referendum election called and conducted as provided by law. The call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the results of the election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.

(3) The implementation, administration, and revocation of the exemptions authorized in this subparagraph (a) shall be provided for by law. Until otherwise provided by law, the grant of the exemption shall be subject to the same conditions, limitations, definitions, and procedures provided for the grant of such exemption in the Constitution of 1976 on June 30, 1983.

[33] Sec. 1-j. CERTAIN TANGIBLE Personal Property EXEMPT FROM AD VALOREM TAXATION. (a) To promote economic development in the State, goods, wares, merchandise, other tangible personal property, and ores, other than oil, natural gas, and other petroleum products, are exempt from ad valorem taxation if:
(1) the property is acquired in or imported into this State to be forwarded outside this State, whether or not the intention to forward the property outside this State is formed or the destination to which the

- Like the Georgia provision, but unlike the Florida provision, the exemption appears to be targeted to attracting regional distribution centers of one kind or another, since it only applies to tangible personal property temporarily in the state. It's broader than the Georgia provision though in that it is not limited to inventory.
- Subsection (b) allows a local governing authority to rescind a previous determination to tax the type of property covered by the provision without a referendum. Thus, under the circumstances covered by subsection (b), there is authority and accountability of government representatives, but there is apparently no citizen participation in the form of a referendum.

Kansas

Kansas has probably the broadest constitutional provision allowing ad valorem property tax exemptions for economic development purposes.[34] The Kansas provision is worthy of note in view of:

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property is forwarded is specified when the property is acquired in or imported into this State;
(2) the property is detained in this State for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property; and
(3) the property is transported outside of this State not later than 175 days after the date the person acquired or imported the property in this State.
(b) The governing body of a county, common, or independent school district, junior college district, or municipality that, acting under previous constitutional authority, taxes property otherwise exempt by Subsection (a) of this section may subsequently exempt the property from taxation by rescinding its action to tax the property. The exemption applies to each tax year that begins after the date the action is taken and applies to the tax year in which the action is taken if the governing body so provides. A governing body that rescinds its action to tax the property may not take action to tax such property after the rescission.

[34] Kansas Constitution, Article 11, Section 13 provides:

> **Exemption of property for economic development purposes; procedure; limitations.**
>
> (a) The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of: (1) All buildings , together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state; or (2) all buildings, or added improvements to buildings constructed after the date on which this amendment is approved by the electors of this state, together with the land upon which such buildings or added improvements are located, and all tangible personal property purchased after such date and associated therewith, used exclusively for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which is necessary to facilitate the expansion of any such existing business if, as a result of such expansion, new employment is created.
>
> (b) Any ad valorem tax exemption granted pursuant to subsection (a) shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its

- the breadth of the purposes for which exemptions may be granted, including research and development as well as manufacturing and (like Florida and Texas) storage of goods
- the breadth of the property covered, including improvements to real property (like Florida) as well as personal property (like Georgia and Texas)
- notwithstanding the breadth as to purposes and property, a ten year sunset provision (like Florida), thus establishing a limit
- of greatest significance is the choice Kansas has made as to the issues of process, authority of representative officials, and citizen participation: under the Kansas provision the grant of an exemption may be made by the county governing board, without the necessity for a referendum, and the authority of the legislature to adopt additional exemptions is also recognized.

Louisiana

Closer to home, Louisiana's constitution includes three very interesting provisions permitting designated agents of the government to enter into contracts for property tax incentives with property owners. One of these, in Article 7, Section 21 I of the Louisiana constitution, is merely a provision allowing inventories held in distribution centers to be exempted from property tax.[35] It differs from the Texas and Georgia provisions discussed

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operations or the calendar year in which expansion of an existing business is completed, as the case requires.

(c) The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties.

(d) The provisions of this section shall not be construed to affect exemptions of property from ad valorem taxation granted by this constitution or by enactment of the legislature, or to affect the authority of the legislature to enact additional exemptions of property from ad valorem taxation found to have a public purpose and promote the general welfare.

[35] Louisiana Constitution, Article 7, Section 21(I), which reads:

(I)(1) Notwithstanding any contrary provision of this Section, the authority or district charged with economic development of each parish is hereby authorized to enter into contracts for the exemption from parish, municipal, and special ad valorem taxes of goods held in inventory by distribution centers. In the absence of the existence of an economic development authority or district, the parish governing authority is authorized to grant contracts of exemption as are provided for in this Paragraph.

(2) The contract for exemption shall be on such terms and to the extent, up to and including the full assessed valuation of the goods held in inventory, as the economic development authority or district deems in the best interest of the parish. However, prior to entering into each individual contract, the economic development authority or district must request and receive written approval of the contract, including its terms and an estimated fiscal impact, from each affected tax recipient body in the parish, as evidenced by a favorable vote of a majority of the members of the governing authority of the tax recipient body. Failure to receive all required approvals from the tax recipient bodies before entering into a contract shall render the contract null and void and of no effect.

(3) The term "distribution center" as used herein means an establishment engaged in the sale of

above in that it allows the exemption to be effected by contract rather than by municipal or county ordinance, and that the contract can be consummated by the local economic development authority or by the parish, without the need of a referendum, but only with the consent of all affected tax recipient entities.

This is an important difference in process though:

- As to limits and process, the Louisiana provision is noteworthy in omitting a requirement for a referendum but in requiring approval by all tax receiving entities (school boards, etc.), thus recognizing the authority and accountability of local officials

- In choosing to use a contractual process, the provision permits the extent of benefit to be tailored to the local area's bargaining power and the desirability of the particular enterprise being recruited, which reflects the way in which economic development recruitment actually proceeds

Two other Louisiana provisions are broader in scope than the one just discussed, but both use the contract process and omit any citizen referendum requirement. One of these authorizes exemptions in downtown, historic, or economic development districts (as established by local governing authorities or by general law) for property owners expanding or developing improvements on the property.[36] Like the first Louisiana provision, though, it employs the contract process rather than a county or municipal ordinance. Such contracts are negotiated by the State Board of Commerce and Industry, with the consent of the state governor and the local governing authority and are for a maximum of ten years. Thus:

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products for resale or further processing for resale. The term "goods held in inventory" as used herein means goods or products which have been given new shapes, qualities, or combinations through some artificial process and does not include raw materials such as natural gas, crude oil, sulphur, or timber or goods or products held for sale to consumers.

[36] Louisiana Constitution, Article 7, Section 21(H), which reads:

> (H) Notwithstanding any contrary provision of this constitution, the State Board of Commerce and Industry or its successor, with the approval of the governor and the local governing authority and in accordance with procedures and conditions provided by law, may enter into contracts granting to a property owner, who proposes the expansion, restoration, improvement, or development of an existing structure or structures in a downtown, historic, or economic development district established by a local governing authority or in accordance with law, the right for an initial term of five years after completion of the work to pay ad valorem taxes based upon the assessed valuation of the property for the year prior to the commencement of the expansion, restoration, improvement, or development. Contracts may be renewed, subject to the same conditions, for an additional five years extending such right for a total of ten years from completion of the work.

- As to process, the transaction is done by contract, but only with the approval of the governor and the local governing authority, addressing in that way the issues of authority and accountability
- As to limits, the exemption is limited to specified types of districts, and for ten years
- The contract process allows the incentive to be tailored to the specific project on a negotiated basis.

Finally, the broadest of the Louisiana provisions authorizes the Governor to enter into contracts for ad valorem exemptions with "new manufacturing establishments" or for an "addition to existing manufacturing establishment" on terms satisfactory to the Louisiana State Board of Commerce and Industry.[37] The contract must be approved by the governor and is for a maximum of ten years. Once again the modality of a negotiated contract allows the incentive to be tailored to the specific project on a negotiated basis.

Equalizing the Burden of and the Capability to Provide Economic Development Incentives

Oklahoma

Oklahoma also has a constitutional provision authorizing the grant of ad valorem tax exemptions for "qualifying manufacturing concerns", a term that includes businesses new to the state as well as existing businesses that expand their facilities. There are several interesting features to the provision. For one thing, the exemption is limited to the ad valorem tax increase attributable to new improvements. And there is a time limit of five years, a type of provision we have seen before.

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[37] Louisiana Constitution, Article 7, Section 21(F), which reads:

(F) Notwithstanding any contrary provision of this Section, the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and may be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms "manufacturing establishment" and "addition" as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process.

But the really unique feature of the Oklahoma provision is that the Legislature is to provide reimbursement to local entities—schools, counties, cities and towns, etc.—whose tax receipts are reduced by the grant of an exemption.[38]

This is an intriguing concept, from two perspectives. One arises from the fact that unfortunately those areas of the state that have the highest unemployment have the most difficulty in attracting new employers. There are a number of reasons for this, including the fact that they may be more removed from transportation facilities—this is why proposals like the extension of I-85 are so welcome. The skill level of the local work force may also be a problem. But one reason at least is that the local governments in those areas, already under economic strain, are least able to contribute to a "package" to attract new industry. If the state underwrites those costs, however by reimbursing the local governmental units (and perhaps this would only be done for particularly distressed areas of the state as defined by appropriate criteria) those areas, at least as to this issue, could become more competitive.

Another perspective arises from the fact that tax incentives may fall unevenly on the state's communities, agencies, and activities, even though the benefits may be to a broader group. The Oklahoma provision responds to this by transferring the burden from the tax receiving units— "schools, county governments, cities and towns, emergency medical services districts, vocational-technical schools, junior colleges,

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[38] Oklahoma Section X-6B, which reads:

Qualifying manufacturing concern - Ad valorem tax exemption.

For the purpose of inducing any manufacturing concern to locate or expand manufacturing facilities within any county of this state, a qualifying manufacturing concern shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities for a period of five (5) years.

For purposes of this section, a "qualifying manufacturing concern" means a concern that:

1. Is not engaged in business in this state or does not have property subject to ad valorem tax in this state and constructs a manufacturing facility in this state or acquires an existing facility that has been unoccupied for a period of twelve (12) months prior to acquisition; or

2. Is engaged in business in this state or has property subject to ad valorem tax in this state and constructs a manufacturing facility in this state at a different location from present facilities and continues to operate all of its facilities or acquires an existing facility that has been unoccupied for a period of twelve (12) months prior to acquisition and continues to operate all of its facilities.

The exemption allowed by this section shall apply to expansions of existing facilities. Provided, however that any exemption shall be limited to the increase in ad valorem taxes directly attributable to the expansion.

The Legislature shall define the term "manufacturing facility" for purposes of the ad valorem tax exemption provided by this section in order to promote full employment of labor resources within the state; provided, however, that a manufacturing facility that qualifies for the ad valorem tax exemption provided by this section, pursuant to the definition of "manufacturing facility" then applicable, shall be eligible for the exemption without regard to subsequent changes in the definition of the term "manufacturing facility".

The Legislature shall enact laws to carry out the provisions of this section and to provide for the reimbursement to common schools, county governments, cities and towns, emergency medical services districts, vocational-technical schools, junior colleges, county health departments and libraries for revenues lost to such entities as a result of the exemption provided by this section.

The assessed valuation of property exempt from taxation by virtue of this section shall be added to the assessed valuation of taxable property in computing the limit on indebtedness of political subdivisions contained in Section 26 of this article.

county health departments and libraries"—whose revenues are curtailed by the exemption, to the state as a whole by reimbursing those units of local government.

Analogues to Sections 93 and 94 in Sister States

A. Section 93's Prohibition on Engaging in Internal Improvements

The opening phrase of Section 93 of the Alabama Constitution is one that is often mentioned as prime evidence of the need for revision of the state's overly restrictive Constitution. Section 93 begins with an absolute prohibition against the State of Alabama engaging in works of internal improvements or lending money or its credit in aid of internal improvements. The specific language reads as follows:

> "The state shall not engage in works of internal improvement, nor lend money or its credit in aid of such . . . ."

That language has been carried forward as the opening refrain of each of the three amendments that have re-written Section 93: Amendment 1, added in 1907, authorizing the state to support road construction; Amendment 12, adopted in 1921, adding an authorization to develop harbors and seaports, as well as expanding the language of the road construction authority and adding a helpful "except as may be authorized by the Constitution of Alabama or amendments thereto" after the quoted language; and Amendment 58, adopted in 1945, adding authority to build, operate, maintain, repair and improve airports and related facilities.

1. Parallel Provisions in Other States' Constitutions.

None of other states in Alabama's region contain provisions corresponding to Section 93's prohibition on public improvements provision.[39] The reason for this may be that the Section 93 prohibition on internal improvements is a Midwestern transplant.

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[39] If Maryland is thought of as in the same region as Alabama, then it constitutes the sole exception to the statement in the text. The Maryland Constitution, Article III, Section 34 contains a prohibition against using the full faith and credit of the state to support construction of internal improvements, except in certain counties. Md. Code Ann., Const. art. III, § 34 (1981 & Supp. 2001). The adoption of that provision in Maryland, however, originated in much the same circumstances that led to the adoption of prohibitions on internal improvements in several Midwestern states, as explained below.

Apart from Maryland, the most nearly analogous provision in a Southern state's constitution is a provision in the Texas section corresponding to Alabama Const. Section 104, listing subjects as to which special or local laws may not be enacted. Texas Const. Section 56 of the Texas Constitution reads:

> The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law . . . :
>
> For incorporating railroads or other works of internal improvements.

The prohibition against internal improvements first appeared in an Alabama constitution as Article IV, Section 33 of the 1868 Constitution, the "Reconstruction Constitution".[40] The constitutions of the Midwestern states of Michigan[41] and Wisconsin[42] already contained prohibitions on internal improvements nearly identical to that written into Alabama's 1868 Constitution[43]. The 1867 Constitutional Convention of course included

[40] That the prohibition against the state engaging in internal improvements was a Carpetbagger innovation is ironic in view of the received tradition in Alabama and the South that it was the failure of the Carpetbagger regimes to restrain public debt and expenditures that led to the restrictive measures, such as Sections 93 and 94, adopted in "Redeemer" state constitutions, such as the Alabama Constitution of 1875, and retained in later constitutions, such as the Alabama Constitution of 1901. Actually there is some truth to the received tradition. The 1867 Alabama Constitution provision disfavoring internal improvements was not an absolute prohibition, but merely a requirement for approval by two-thirds of the Legislature. Apparently the supermajority vote requirement was an insufficient restraint, leading the "Redeemers" of 1875 to retain the "Carpetbagger" innovation disfavoring state support of internal improvements, but to convert it to an absolute prohibition. Malcolm Cook McMillan, Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism (University of North Carolina Press, Chapel Hill, 1955) (reprinted by The Reprint Company, Publishers, Spartanburg, S.C. 1978), p.137, particularly n. 27.

[41] Originally adopted in the Michigan Constitution of 1850, the Michigan prohibition on internal improvements is now set forth in Article III, Section 6 of the Michigan Constitution, and reads:

> The state shall not be a party to, nor be financially interested in, any work of internal improvement, nor engage in carrying on any such work, except for public internal improvements provided by law.

In addition to the general exception of the last phrase, the Michigan Constitution also contains a specific exception for port authorities in Article IV, Section 42, which reads:

> The legislature may provide for the incorporation of ports and port districts, and confer power and authority upon them to engage in work of internal improvements in connection therewith.

[42] Originally adopted in 1848, the Wisconsin prohibition now appears as Section 10, Article VIII (Finance) of the Wisconsin Constitution, where (as amended several times), it now reads:

> **Internal improvements.** SECTION 10. Except as further provided in this section, the state may never contract any debt for works of internal improvement, or be a party in carrying on such works. **(1)** Whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion. **(2)** The state may appropriate money in the treasury or to be thereafter raised by taxation for: (a) The construction or improvement of public highways. (b) The development, improvement and construction of airports or other aeronautical projects. (c) The acquisition, improvement or construction of veterans' housing. (d) The improvement of port facilities. (e) The acquisition, development, improvement or construction of railways and other railroad facilities. **(3)** The state may appropriate moneys for the purpose of acquiring, preserving and developing the forests of the state. Of the moneys appropriated under the authority of this subsection in any one year an amount not to exceed two–tenths of one mill of the taxable property of the state as determined by the last preceding state assessment may be raised by a tax on property

[43] The adoption by these states of prohibitions against state engagement in internal improvements was prompted by the failed attempts, such as that of Maryland with the Chesapeake and Ohio Canal, to win

a number of "carpetbaggers" who had come south in the wake of the Civil War, and who might be expected to draw on their home state constitutions in drafting that of Alabama[44]. Though no specific statement in the Proceedings of the 1867 Constitution indicates that the provision was copied from one of the Midwestern states, a fair inference is that it was[45]. Once set forth in the Alabama Constitution, the provision was carried forward in the 1875 and 1901 Constitutions.

2. How Alabama and Other States Have Responded to the Prohibition Against Engaging in Internal Improvements.

Alabama has responded to the prohibition against the state engaging in internal improvements in two ways. First, the Alabama Supreme Court has tended to interpret the prohibition on internal improvements restrictively. For example, in Edmonson v. State Industrial Authority,[46] utilizing the "separate entity doctrine" discussed above, the Court held that Section 93 does not prohibit the State Industrial Development Authority (a public corporation formed by the State) from engaging in internal improvements. Second, we have amended the text of Section 93 to expressly allow certain particularly vital forms of internal improvement. Thus, the first amendment to the Constitution, adopted in 1907, only six years after the Constitution's ratification, was one to permit the state to construct roads. Amendment 12 authorized the improvement of ports, and Amendment 58 authorized the construction and maintenance of airports.

Other states with prohibitions on internal improvements have also made both responses. For example, in a high profile case involving the construction of Brewer stadium in Milwaukee, Libertarian Party of Wisconsin v. State,[47] the Wisconsin Supreme

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economic benefits from canal construction equal to those the Erie Canal, completed in 1825, bestowed on New York. Awareness of the resulting difficulties led Wisconsin to adopt prohibitions against internal improvements. See, Jack Stark, A History of the Internal Improvements Section of the Wisconsin Constitution, 1998 Wis. L. Rev. 829 (1998). Not surprisingly, Maryland, for whom the costs of a failed canal venture was even more immediate, adopted such a prohibition as well. Dan Friedman, Magnificent Failure Revisited: Modern Maryland Constitutional Law From 1967 to 1998, 59 Md. L. Rev. 528 (1999). In Michigan, the state's own unfortunate history under a prior constitution that actually required the state to provide for internal improvements led to the adoption of the prohibition. Susan P. Fino, The Michigan State Constitution: A Reference Guide (Greenwood Press, Westport, Conn., 1996), pp. 8, 68.

[44] See. McMillan, Constitutional Development in Alabama, pp. 118-20, as to "Carpetbagger" delegates.

[45] Other states that adopted prohibitions against state sponsorship of internal improvements are states where one would expect the constitutional models of Michigan and Wisconsin to be influential. These include Minnesota, where the prohibition, first added by amendment in 1872, is now Article XI, Section 3, of the Minnesota Constitution; Kansas, where the prohibition now appears in Article 11, Section 9 of the Kansas Constitution; and Wyoming, where the prohibition now is included in Section 97-16-006 of the Wyoming Constitution. In North Dakota, a provision prohibiting the state from engaging in internal improvements except on two-thirds vote of the people was included in the state's original constitution of 1889 but that provision has since been amended to expressly allow the state and any county or city to engage in internal improvements, Article X, Section 18 of the North Dakota Constitution

[46] 279 Ala. 206, 184 So. 2d 115 (1966).

[47] 546 N.W. 2d 424 (Wis. 1996).

Court ruled that construction projects that are primarily public in nature do not violate the internal improvements proscription. Under that test, the state's involvement in the construction of Brewer Stadium did not offend the internal improvements clause.

And, as in Alabama, other states have also carved out explicit exceptions in the text of the constitution, relaxing the prohibitions restrictions against internal improvements. Thus the Wisconsin provision includes exceptions, added by amendment, paralleling the Alabama amendments: highways, ports, and airports. In addition, the Wisconsin provision contains exceptions for construction and maintenance of veteran's housing and for acquiring, preserving and developing the state's forests.[48] In Michigan, a separate section authorizes a port authority to engage in internal improvements.[49]

If the Commission wishes to recommend a further amendment to Alabama's prohibition on internal improvements, the following formulations from other states might be considered:

i. North Dakota now authorizes the state and any county or city to make internal improvements or to engage in industry, enterprise or business except to the extent explicitly prohibited[50].

ii. A Kansas provision allowing the state "for the purpose of stimulating economic development and private sector job creation" to "participate in the development of a capital formation system and have a limited role in such system through investment of state funds authorized in accordance with law."[51]

iii. Wyoming's provision prohibiting the state from engaging in any work of internal improvement "unless authorized by a two-thirds (2/3) vote of the people."[52]

B. The Section 93 and 94 Prohibitions Against Lending Credit, Owning Stock, or Aiding Private Individuals or Corporations

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[48] Wisc. Const., Finance Article, Section 10(2)-(3).

[49] Mich. Const., Art. IV, Section 42.

[50] N. Dak. Const. Article X, Section 18.

[51] Kans. Const. Article 11, Section 9.

[52] Wyoming Const. Section 97-16-006.

While constitutional prohibitions against internal improvements are somewhat rare, the constitutions of a number of states, including many in our region, contain analogues to the prohibitions in Alabama Constitution Sections 93 and 94 on lending credit and stock ownership.

1. Analogous Provisions in States in Our Region.

For example, such provisions appear in the constitutions of Georgia[53], Tennessee[54], Florida[55], Mississippi[56], Kentucky,[57] and Texas[58].

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[53] Article 7, Section 4, Paragraph VIII of the Georgia Constitution parallels Alabama Constitution Section 93. It reads:

> **State aid forbidden.**
>
> Except as provided in this Constitution, the credit of the state shall not be pledged or loaned to any individual, company, corporation, or association. The state shall not become a joint owner or stockholder in or with any individual, company, association, or corporation.

Article 9, Section 2, Paragraph VIII of the Georgia Constitution parallels Alabama Constitution Section 94. It reads:

> **Limitation on the taxing power and contributions of counties, municipalities, and political subdivisions.**
>
> The General Assembly shall not authorize any county, municipality, or other political subdivision of this state, through taxation, contribution, or otherwise, to appropriate money for or to lend its credit to any person or to any nonpublic corporation or association except for purely charitable purposes.

[54] Article 2, Section 31 of the Tennessee Constitution parallels Alabama Constitution Section 93. It reads:

> The credit of this state shall not be hereafter loaned or given to or in aid of any person, association, company, corporation or municipality; nor shall the state become the owner in whole or in part of any bank or a stockholder with others in any association, company, corporation or municipality.

Article 2, Section 29 of the Tennessee Constitution parallels Alabama Constitution Section 94. It reads:

> The General Assembly shall have power to authorize the several counties and incorporated towns in this state, to impose taxes for county and corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to state taxation. But the credit of no county, city or town shall be given or loaned to or in aid of any person, company, association or corporation, except upon an election to be first held by the qualified voters of such county, city or town, and the assent of three-fourths of the votes cast at said election. Nor shall any county, city or town become a stockholder with others in any company, association or corporation except upon a like election, and the assent of a like majority. But the counties of Grainger, Hawkins, Hancock, Union, Campbell, Scott, Morgan, Grundy, Sumner, Smith, Fentress, Van Buren, and the new county herein authorized to be established out of fractions of Sumner, Macon and Smith Counties, White, Putnam, Overton, Jackson, Cumberland, Anderson, Henderson, Wayne, Cocke, Coffee, Macon,

Marshall, and Roane shall be excepted out of the provisions of this section so far that the assent of a majority of the qualified voters of either of said counties voting on the question shall be sufficient when the credit of such county is given or loaned to any person, association or corporation; provided, that the exception of the counties above named shall not be in force beyond the year one thousand eight hundred and eighty: and after that period they shall be subject to the three-fourths majority applicable to the other counties of the state.

[55] Article 7, Section 10 of the Florida Constitution includes provisions paralleling the prohibitions of Alabama Constitution Section 93 as well as Section 94. It reads:

> **Pledging credit.**--Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:
> (a) the investment of public trust funds;
> (b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;
> (c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.
> (d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

[56] Article 14, Section 258 of the Mississippi Constitution is analogous to Alabama Constitution Section 93. It reads:

> The credit of the state shall not be pledged or loaned in aid of any person, association, or corporation; and the state shall not become a stockholder in any corporation or association, nor assume, redeem, secure, or pay any indebtedness or pretended indebtedness alleged to be due by the state of Mississippi to any person, association, or corporation whatsoever, claiming the same as owners, holders, or assignees of any bond or bonds, now generally known as "Union Bank" bonds and "Planters Bank" bonds.

Article 4, Section 183 of the Mississippi Constitution parallels Alabama Constitution Section 94. It reads

> No county, city, town, or other municipal corporation shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation, or loan its credit in aid of such corporation or association. All authority heretofore conferred for any of the purposes aforesaid by the legislature or by the charter of any corporation, is hereby repealed. Nothing in this section contained shall affect the right of any such corporation, municipality, or county to make such subscription where the same has been authorized under laws existing at the time of the adoption of this Constitution, and by a vote of the people thereof, had prior to its adoption, and where the terms of submission and subscription have been or shall be complied with, or to prevent the issue of renewal bonds, or the use of such other means as are or may be

prescribed by law for the payment or liquidation of such subscription, or of any existing indebtedness.

[57] Kentucky Constitution Section 177 (analogue to Section 93); Section 179 (analogue to Section 94). Kentucky Section 177 reads:

> The credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality, or political subdivision of the State; nor shall the Commonwealth become an owner or stockholder in, nor make donation to, any company, association or corporation; nor shall the Commonwealth construct a railroad or other highway.

Kentucky Section 179 reads:

> The General Assembly shall not authorize any county or subdivision thereof, city, town or incorporated district, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads: Provided, If any municipal corporation shall offer to the Commonwealth any property or money for locating or building a Capitol, and the Commonwealth accepts such offer, the corporation may comply with the offer.

[58] Texas Constitution, Section 50 (analogue to Section 93) and Section 52 (analogue to Section 94). Texas Section 50 reads:

> LOAN OR PLEDGE OF CREDIT OF STATE. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

Texas Section 52 reads:

> COUNTIES, CITIES OR OTHER POLITICAL CORPORATIONS OR SUBDIVISIONS; LENDING CREDIT; GRANTS; BONDS. (a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of premiums on nonassessable property and casualty, life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.
>
> (b) Under Legislative provision, any county, political subdivision of a county, number of adjoining counties, political subdivision of the State, or defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include, towns, villages or municipal corporations, upon a vote of two-thirds majority of the voting qualified voters of such district or territory to be affected thereby, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes to wit:
>
> (1) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof, or irrigation thereof, or in aid of such purposes.
>
> (2) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.
>
> (3) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof.

2. How Other States Deal with Their Section 93/94 Analogues.

In Alabama, the proscriptions of 93/94 have been dealt with in two ways, as discussed in the preceding section. One way is through judicial rulings that have narrowly construed the prohibitions of Sections 93 and 94. The other is an amendment authorizing the desired action. Some of our sister states, however, while retaining a provision analogous to Sections 93 and 94, have addressed the problem more directly through exceptions or qualifications in the text of the Constitution itself. Discussed below are such provisions in the constitutions of Tennessee, Florida, Georgia, and Texas.

Tennessee

The Tennessee provision paralleling Alabama Section 94, Tennessee Constitution, Article 2, Section 29, carves out an exception that allows a city or county to lend its credit in aid of a private person or corporation by a three-fourths (3/4) vote of the electors of the affected political subdivision.

Florida

Florida Constitution, Article 7, Section 10, after a prohibition paralleling Sections 93 and 94 of the Alabama Constitution, then sets forth four exceptions. The third and fourth facilitate governmental involvement in economic development by, among other things, authorizing "revenue bonds to finance the cost of capital projects for industrial or manufacturing plants" in defined circumstances.[59]

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[59] Florida Constitution, Article 7, Section 10, reads:

> **SECTION 10. Pledging credit.**--Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:
> (a) the investment of public trust funds;
> (b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;
> (c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.
> (d) a municipality, county, special district, or agency of any of them, being a joint owner of giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

Georgia

Georgia's approach is different. While it retains in Article 7, Section 4, Paragraph VIII and Article 9, Section 2, Paragraph VIII the proscriptions analogous to Alabama Sections 93 and 94 (in the 1983 Revision of the Georgia Constitution, these provisions simply were carried over from the previous constitution), the Georgia Constitution also contains enabling provisions that marginalize the effect of those prohibitions.

The most general of the Georgia authorization provisions is Article 9, Section 6, Paragraph III, enabling the Legislature to establish development authorities and to authorize counties and municipalities to create such authorities "under such uniform terms and conditions as it may deem necessary".[60] Other provisions of the Georgia Constitution authorize the Legislature to enable counties, municipalities, and housing authorities to undertake and carry out community redevelopment[61]. The Georgia

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[60] Georgia Constitution Article 9, Section 6, Paragraph III reads:

> **Development authorities.**
>
> The development of trade, commerce, industry, and employment opportunities being a public purpose vital to the welfare of the people of this state, the General Assembly may create development authorities to promote and further such purposes or may authorize the creation of such an authority by any county or municipality or combination thereof under such uniform terms and conditions as it may deem necessary. The General Assembly may exempt from taxation development authority obligations, properties, activities, or income and may authorize the issuance of revenue bonds by such authorities which shall not constitute an indebtedness of the state within the meaning of Section V of this article.

Revenue bonds issued by an authority created pursuant to this provision were validated in Alexander v. Macon-Bibb County Urban Development Authority, 257 Ga. 541, 357 S.E.2d 62 (1987).

[61] Georgia Constitution, Article 9, Section 2, Paragraph VIII(a)-(b) reads as follows:

> **Community redevelopment.**
>
> (a) The General Assembly may authorize any county, municipality, or housing authority to undertake and carry out community redevelopment, which may include the sale or other disposition of property acquired by eminent domain to private enterprise for private uses.
>
> (b) In addition to the authority granted by subparagraph (a) of this Paragraph, the General Assembly is authorized to grant to counties or municipalities for redevelopment purposes and in connection with redevelopment programs, as such purposes and programs are defined by general law, the power to issue tax allocation bonds, as defined by such law, and the power to incur other obligations, without either such bonds or obligations constituting debt within the meaning of Section V of this article, and the power to enter into contracts for any period not exceeding 30 years with private persons, firms, corporations, and business entities. Notwithstanding the grant of these powers pursuant to general law, no county or municipality may exercise these powers unless so authorized by local law and unless such powers are exercised in conformity with those terms and conditions for such exercise as established by that local law. The provisions of any such local law shall conform to those requirements established by general law regarding such powers. No such local law, or any amendment thereto, shall become effective unless approved in a referendum

Constitution also contains a number of other innovative provisions to facilitate economic development, as discussed above.

Texas

The Texas approach is similar to that of Georgia. Texas Constitution, Article 3, Section 50 is an analogue to Alabama Constitution, Section 93.[62] The first sentence of Article 3, Section 52(a) of the Texas Constitution is the Texas analogue to Alabama Constitution, Section 94,[63] with Section 52(b), like the Alabama amendments to Section 93, carving out exceptions for such purposes as navigation of streams, irrigation, and highways.

In 1987 though, Texas added Section 52-a to Article 3 of the Texas Constitution, which sets forth a broader economic development exception to the prohibitions of the Texas versions of our Sections 93 and 94.[64] Also like Georgia, Texas includes in its Constitution several provisions that facilitate economic development, discussed above.

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by a majority of the qualified voters voting thereon in the county or municipality directly affected by that local law.

[62] Texas Constitution, Art. III, Section 50 provides:

> The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of liabilities, present or prospective, of any individual association of individuals, municipal or other corporation whatsoever.

[63] The first sentence of Texas Constitution, Art. III, Section 52(a), reads:

> Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town, or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

[64] Texas Constitution, Section 52-a reads:

> Sec. 52-a. LOAN OR GRANT OF PUBLIC MONEY FOR ECONOMIC DEVELOPMENT. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.

Other States' Recent Legislative Initiatives:

As will be discussed below, all 50 states have adopted business location incentives of varying types. A review of those provisions is beyond the scope of this report. However, notice should be taken of innovative statutes recently adopted or proposed in Alabama's neighboring states of South Carolina, Georgia and Mississippi - all states with which Alabama frequently competes for new industry.

South Carolina

In 2001, South Carolina adopted its "State General Obligation Economic Development Bond Act"[65], authorizing the issuance of general obligation bonds to provide infrastructure for economic development projects within the state. The legislation relaxes state bond financing limits for 'mega' projects: those in which the industry invests at least four hundred million dollars ($400,000,000) and creates at least four hundred (400) new jobs. The Act represents an effort by South Carolina to target projects that will have a significant impact on the state's economy by limiting availability of certain specified public financing assistance to those projects. It thus allows the state's economic development recruiters to go after such projects with a demonstrable ability to provide the incentives being offered.

The legislation was adopted within the context of a South Carolina state constitution provision limiting state general obligation bonds by capping the maximum annual debt service on general obligation bonds at five percent (5%) of the general revenues of the state for the preceding fiscal year, but authorizing the legislature, by a two-thirds vote, to increase that cap to seven percent of general revenues (or to reduce the cap to as low as four percent).

The South Carolina "State General Obligation Economic Development Act" increases that cap to five-and-one-half percent (5 1/2%) of the state's general revenues for the preceding year, but with the increased debt service to be available only for repayment of bonds issued to provide "infrastructure" for "economic development projects". [66]

"Infrastructure" is broadly defined in the Act, including everything from land acquisition to employee training and research facilities[67].

The notable feature of the Act, though, is its definition of an "economic development project" that qualifies for the financing under the more relaxed rules of the Act increasing the limits on the state's issuance of bonds. An "economic development

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[65] 2001 S.C. S.B. 1200.
[66] South Carolina Const., Art. X, Section 13(6)(c).
[67] S. C. Code, sec. 11-41-30(3).

project" is a project ". . . in which a total of four million dollars is invested by the sponsor and at least four hundred new jobs are created at the project by the sponsor."[68]

Georgia

Draft legislation proposed in Georgia would amend the state's income tax laws to allow a business enterprise a "job tax credit" of $5,250 annually for each new fulltime job created by a qualified project. The credit would be allowed against the enterprise's liability for withholding taxes with respect to its employees Georgia income tax (with each such employee receiving a corresponding credit against his or her personal Georgia income tax). Under the proposal, the employer's credit against the payments it would otherwise be required to make may be allowed on a monthly or quarterly basis against such payments, thus providing the business almost immediate cash flow assistance.

As discussed elsewhere in this Report, a "job tax credit" such as that proposed in the Georgia legislation has many features that make it attractive as an economic development recruitment incentive. What is noteworthy about the proposed Georgia legislation, though, is that it would only be available for "qualified projects" meeting a prescribed "investment requirement" of $500 million and a prescribed "job creation requirement" of 2,000 eligible full time employees by the close of the sixth year from the beginning of the allowance of the credit. Like the South Carolina "State General Obligation Economic Development Bond Act" described above, the Georgia legislation, if adopted, would be targeted only at projects that would have a significant impact on the state's economy.

Mississippi

In contrast the "Smart Growth Economic Development Infrastructure Act" introduced (but not passed) in the 2002 Mississippi Regular Legislative Session,[69] targets the state's economically distressed areas. As proposed, the Act would create a fund to be administered by the Mississippi Development Authority, and which would loans (convertible in some circumstances to grants) to "qualified distressed counties" to finance acquisition of industrial sites and parks and other economic development infrastructure purposes. The Act defines a "qualified distressed county" as one in which the average unemployment is one hundred fifty percent (150%) of the average rate of unemployment in the state as a whole. While the South Carolina Act and the proposed Georgia legislation focus on the size of the project in making the public policy choice to provide incentives, the Mississippi Act would have focused on the needs of the particular local areas in making that choice.

[68] S. C. Code, sec. 11-41-302).
[69] Miss. S.B. 2618, 2002 Reg. Session.

PART III

CURRENT APPROACH TO ECONOMIC DEVELOPMENT BASED UPON EXISTING CONSTITUTIONAL PROVISIONS

For many years, Alabama recruited industry by marketing our poverty. We induced businesses to relocate from more expensive areas of the country, notably the northeast, by extolling the benefits of our low taxes, low wages and cheap land. The strategy worked for a time, at least to attract companies building manufacturing facilities that benefited from low cost land and raw materials, and operating with low-skilled or non-skilled workers earning lower wages than their predominantly unionized counterparts in the northeast. What we didn't tell these companies, of course, was that those very same factors that attracted them prevented us from raising our economy, our education system, our general infrastructure and our quality of life to the levels enjoyed by most of our neighboring states, particularly Georgia, Florida and North Carolina. Thus was created a cycle of low-wage, low-skill industry begetting more low-wage low-skill industry. But trends are at work today that have caused may of those industries to close or move to other countries, leaving many of our citizens, particularly those who are older, inadequately skilled and/or immobile, with few alternatives. The globalization of business, enabled by improvements in communications and the adoption of international trade agreements such as GATT and NAFTA, has encouraged freer trade and international competition. Advances in technology have transformed the ways in which even the most traditional businesses, such as textiles and farming, operate today. Economic, social and demographic factors have led to an urbanization of our population. Whereas the 12-county area in Alabama known as the "Black Belt" was once the most populated area in the State, it now averages 23 people per square mile according to the 2000 census. Jobs are now clustered in the metropolitan areas of the State where 69% of our population lives. As a result of these trends and others, we now have two Alabama's: reasonably affluent highly educated urban areas with thriving economies, ample job opportunities and (for Alabama) quality public education systems, and sparsely populated rural areas with high unemployment, poorly trained and educated workers, and economies in which raising catfish has replaced picking cotton as the prevailing occupation.[70]

For these reasons and others, some of Alabama's business leaders and public officials concluded in the late 1980's and early 1990's that our traditional selling points were no longer sufficient and that it was necessary to raise the stakes in the competition for large new projects. Thus, with the successful recruitment of the original Mercedes plant to Vance, Alabama, our state became a player in the tough competition between states for the location of large new facilities offering high-skilled, high-wage jobs. This

[70] See "The State of the South 2002 - *Shadows in the Sunbelt Revisited*" published by MDC, Inc.; "The Black Belt - Alabama's Third World," *The Birmingham News*, October 13, 2002 (copy attached to this Report as Appendix B).

competition has at times been so intense as to be called the "second civil war".[71] Although Alabama was broadly criticized by politicians and economists in other states (and by some within our own state) for the extent of the incentives offered to Mercedes, we did so out of a recognition that we had to; that in order to put Alabama "on the map" so that we would at least be considered by national and international companies, we had to do something dramatic to attract a marquee company such as Mercedes. Most people now seem to agree that the costs incurred by the State and local governments for projects such as Mercedes and others that followed (Boeing, Toyota, Honda, Hyundai) have been worth it and that as a state, we are far better off than if those companies had gone elsewhere.[72]

As is true in other states, many of the incentive programs used by Alabama in the "war" for new industry are based upon tax credits, abatements and deductions designed to attract investment to the State.[73] The following provides a good summary of the history of these kinds of programs throughout the country and helps put the Alabama experience in perspective:

> "The use of state tax policy as a tool for economic development is not new. For hundreds of years, national governments have deployed tariffs to provide protective advantages for local enterprises. The states likewise have long used their tax systems to pose obstacles for out-of-state competitors of local businesses. Recent years, however, have seen an extraordinary expansion in the use of tax incentives, not to protect in-state businesses, but to influence business decisions about where to locate.
>
> In the United States, the idea of offering specific tax breaks to encourage businesses to locate in a state apparently had its origins in the 1930s South, where several states authorized abatements of property taxes to attract industries to their depressed economies. Other states soon imitated this strategy, and by the 1960s, property tax incentives had become a familiar fixture on the tax landscape.
>
> Encouraged by the revival and expansion of the federal investment tax credit (ITC) in the 1970s and by the growing currency of 'supply-side' theories of economic growth, states dramatically expanded their use of tax incentives to lure businesses in the late 1970s and early 1980s. Increasingly, states supplemented property tax abatements with credits and other adjustments against their income and corporate franchise taxes. Large businesses, most notably automobile manufacturers, drew the states

[71] "The Second War Between the States", Business Week, May 17, 1976 at 92; "War Between the States", Newsweek, March 30, 1988, at 45.

[72] See "How Big Incentives Won Alabama a Piece of the Auto Industry", The Wall Street Journal, April 3, 2002 at 1 (copy attached to this report as Appendix C).

[73] A list of Alabama's statutory tax incentives for new and expanding business is attached as Appendix D to this report.

into high-stakes bidding wars for new manufacturing facilities. Commentators have aptly dubbed the 1980s 'the decade of industrial recruitment and the state incentive package.'

These trends show little sign of abating. One state-by-state survey found that, of forty-eight states responding, only Wyoming had not enacted at least one location incentive between 1991 and 1993. Location incentives have become an ubiquitous feature of the state tax scene, and businesses have come to expect them as a standard part of their siting decisions.

In the competition to provide alluring and distinctive incentives for businesses, states have developed an extraordinary variety of tax preferences for businesses. Among the most common are state ITCs, which allow businesses to reduce their state income tax liability by a specified percentage of their new in-state investment in depreciable plant and equipment, and job-creation credits, which are measured as a multiple of a company's incremental in-state employment or payroll. Each credit encourages businesses to locate in the state by offsetting a portion of business costs with a corresponding tax reduction.

This Article takes ITCs and job-creation credits as archetypes of business location tax incentives. However, many other kinds of tax breaks serve similar functions. For example, property tax exemptions, or partial abatements, for business plant and machinery and sales tax exemptions for purchases of such property mimic an ITC by reducing taxes in response to new in-state investment. Credits for worker training costs and for research and development costs provide more narrowly targeted, but similar, incentives for in-state employment and investment. The acceleration of depreciation deductions for in-state property and favorable adjustments to the rules by which states apportion business income, typically by increasing the weight given to the location of sales and decreasing the weight given to the locations of property and payroll, are other common measures for encouraging investment.

As these types of provisions have become increasingly common elements of state tax policy, a number of states have turned to more innovative measures in order to stay a step ahead of the competition. Several states, for example, have implemented tax-increment financing arrangements, which allow businesses to pay off development loans or other costs of expansion with the taxes that they ordinarily would have owed the state on account of their new purchases or payroll. Other states have sought to reduce the capital costs for in-state businesses by providing preferential tax treatment to investors who provide funds to in-state businesses.

As these examples suggest, states have employed a wide variety of approaches. Although different measures may have differing appeal to

various types of businesses and differing significance within various states' overall tax systems, they all share a common purpose: to enhance the state's attractiveness as a place for businesses to locate their facilities and their jobs. To what extent the structural differences among these measures may counterbalance their shared functions for purposes of constitutional analysis is a subject to which we must return later.

Business tax incentives have had a marked impact on state treasuries. Although overall national cost figures are not available, a number of states prepare annual tax-expenditure reports, which estimate the revenues foregone on account of the various tax breaks offered in that state. In Massachusetts, for example, the 1992 tax-expenditure budget attributes $2.5 billion of lost revenues from the state's major taxes to tax expenditures in furtherance of commerce, more than one-third of the state's total revenues from those taxes. Michigan identifies nearly $4.9 billion of tax expenditures in support of commerce, an amount that dwarfs the state's $210 million of direct expenditures for that purpose. New York's 1993 tax-expenditure budget lists more than $500 million dollars in tax losses attributable to specific investment and jobs incentives. The Minnesota tax-expenditure report for 1995 attributes $268.5 million in lost revenues to a single program providing property tax exemptions to developers, and California estimates that, in the 1995-1996 fiscal year, its new credit for manufacturing equipment will cost over $400 million.

The rapidly escalating costs of incentive packages offered by the states to woo particular new plants provide further evidence of the scale and pace of the bidding wars. In 1980, Tennessee attracted a Nissan automobile plant, providing 1900 jobs, at a cost of $33 million. Five years later, the cost for Tennessee to attract GM's Saturn plant, with its 6000 jobs, had risen to $150 million in state and local incentives, and by the end of the decade, Indianapolis offered a package totaling $294 million to win a competition among ninety cities for a United Airlines maintenance facility employing 6300. More recently, in 1993, Alabama assembled incentives costing over $300 million to attract a Mercedes-Benz plant employing 1500 workers. As the interstate competition intensifies, businesses are seeking incentives not only for the siting of new facilities, but also for simply keeping facilities in their present locations."[74] [footnotes omitted]

As pointed out, all 50 states and most significant cities offer some form of incentive for business location or expansion[75] despite the generally held conviction by

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[74] P. Enrich, "Saving the States From Themselves: Commerce Clause Restraints on State Tax Incentives for Business", 110 Harv. L. Rev. 377, 382 (1996).

[75] See "Directory of Incentives for Business Investment and Development in the United States; a State by State Guide", published by the National Association of State Development Agencies; and C. Micheli, "A 50

economists and other academics that they don't work or are, at best, an inefficient means of promoting job growth and economic development.[76] If tax breaks and other forms of public incentives don't work, why do states and local governments continue to offer them? At least one commentator has suggested that the reasons are largely political; that while public officials are virtually powerless to have any immediate impact on the most significant factors in the site location decision (job force availability; cost and availability of raw materials; transportation; utilities; infrastructure; quality of life; etc.) they can create tax incentives which, although of minimal relative value in many cases, demonstrate the politician's willingness to be aggressive and meet the competition, generally promote a "business friendly" atmosphere and don't require any direct expenditure of public funds.

All of this has led to the somewhat surprising result that while operating with limited state resources and constrained by difficult constitutional limitations on economic development, Alabama has nonetheless been reasonably successful in attracting significant new industry, and in doing so, has found ways to offer generous and imaginative incentive packages. Our business and political leaders, and their advisors, deserve credit for these successes. They created programs and identified sources of funding which produced the needed incentives for economic development yet circumnavigated the prohibitory provisions of our constitution such as sections 93, 94 and 213. Our Supreme Court has played a helpful role by interpreting and enforcing these provisions to permit a degree of public involvement in economic development. The process has not always been pretty however. State and local economic developers have occasionally had to force round pegs into square holes and to promise benefits without really knowing they could perform. Their lawyers and other advisors, under pressure from their clients, have had to make difficult judgments about the legality and enforceability of incentive arrangements. Lawsuits have been filed to block or contest incentives proposed for new industry, thus casting a cloud over entire programs. And state and local governments have had to scrape together funds from limited budgets, sometimes not really confident that they will be able to pay for the commitments they have made. To some extent, these difficulties will always exist, and properly so. Committing public funds to any use, particularly if the use includes a direct benefit to a private industry, should be tightly controlled and should require long and thoughtful deliberation. But once a proper decision is made to offer any form of economic development assistance, the public officials making the offer and the private company to whom it is made should be entitled to know that the proposal is legal and will be upheld in court if challenged. In Part IV of this report, we offer several suggestions for revisions

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State Comparison of Tax Incentives for Manufacturing Equipment Purchases", 12 State Tax Notes 1739 (1997).

[76] See R. Weber, "Why Local Economic Development Incentives Don't Create Jobs: The Role of Corporate Governance", 32 The Urban Lawyer 98 (Winter 2000); R. Pomp, "The Role of State Tax Incentives in Attracting and Retaining Business: A View from New York", 29 Tax Notes 521 (1985); W. Barrett, "Note, A Proposal to Prohibit Industrial Relocation Susidies", 72 Texas L. Rev. 669, 712-713 (1994); and "Symposium: The Effects of State and Local Public Policies on Economic Development", New England Econ. Rev., March/April 1997.

to Alabama's Constitution which will make it more responsive to today's economic development realities and provide more certainty and reliability in the process.

PART IV

RECOMMENDATIONS FOR CHANGE

The committee believes that the time has come to change Alabama's approach to business development incentives. Our current programs, although moderately successful in recent years, are outdated. Many apply only to manufacturing, warehousing, distribution and some research enterprises while excluding financial institutions, insurance companies, communications, and many types of high tech and biotech engineering and research. Little or no support is given to entrepreneurship, venture capital, incubator programs and small business development loans. Many of the needed improvements could be made by legislation although it has not happened. Our suggestions are intended to spark discussion and debate and eventually to help the State realize the following economic development goals:

- Create a system of economic development incentives which promote high-paying, high-skilled jobs
- Require value judgments to be made about the types of businesses which will be most beneficial to Alabama
- Encourage the formation of new businesses owned and operated by Alabama citizens[77]
- Build and support first-class educational and training facilities to produce a large, well-qualified workforce
- Build and maintain the modern infrastructure necessary to attract and retain today's businesses
- Provide special programs aimed at developing the Black Belt and other rural areas of the State
- Adopt constitutional provisions which encourage rather than prohibit public participation in economic development

[77] Alabama's efforts in the past to attract plants owned and controlled by out-of-state or foreign corporations has sometimes been described as "depending on the kindness of strangers".

The committee has considered two different approaches to constitutional change in this area. The first, similar to that reflected in the Massachusetts constitution, would be simply to repeal Sections 93 and 94 and replace them with a provision authorizing the Legislature to adopt laws and make appropriations in support of economic development as it sees fit from time to time.[78] Such a provision might read as follows:

> "The economic development of the State and its political subdivisions and the encouragement of industry, trade and commerce are necessary and appropriate public functions of government. The Legislature shall adopt laws from time to time to provide for the same in such manner as it may determine."

This approach has several advantages: (a) it provides constitutional recognition of economic development; (b) it respects the role of the Legislature in the passage of laws; (c) it permits our elected officials to determine the types of economic development programs to be offered; (d) it allows the Legislature to adopt and revise programs as needed to reflect the changing business environment; and (e) it recognizes the Legislature's responsibility for budgeting revenues and expenditures. The disadvantage of course is that it leaves our economic development future in large measure to the politicians. Through lack of leadership, failure of will or vulnerability to political pressures, they may enact unwise programs or simply neglect their responsibility in this area entirely.

At the other extreme, the second approach would involve the adoption of proactive, self-executing provisions which mandate certain programs and do not depend upon action by the Legislature. Amendment 666 is an example of such a provision. It requires that 7% of the oil and gas royalty payments received by the State each year be paid into a County and Municipal Government Capital Improvement Trust Fund (from which the annual income is made available to local governments) and that 28% of such royalties be paid into the Alabama Capital Improvement Trust Fund (from which payments can be made for a variety of projects, including economic development). Amendment 666 was only adopted in November, 2000 and thus had has limited operation. In fiscal years 2000 and 2001, however, the portion of the oil and gas royalties dedicated to the Alabama Capital Improvement Trust Fund totalled more than $110 million.

Using Amendment 666 as the starting point for the second, proactive approach, the Committee recommends the following:

A. Job Creation Credits.

The Constitution should provide for a system of job creation credits similar to the program offered in Kentucky. Qualifying companies would receive payments from the State in an amount equal to, or measured by, the state and local income taxes on wages

[78] No recommendation is made with respect to Section 213 (creation of state debt) since that section falls within the province of a separate working paper.

paid to the new employees at a qualified new or expansion project. During a specified period after project start-up, a company could recoup from the State an amount equal to 5% (the current personal income tax rate) of the total wages and salaries paid to their new employees at the project. Including this economic development program in the Constitution would resolve any lingering Section 93 and 94 issues as well as any questions about its appropriateness under Amendment 61 (earmarking income taxes for the Special Education Trust Fund). The proposed constitutional provision should establish the broad parameters of the program and direct the Legislature to adopt enabling legislation dealing with such matters as (i) qualifications for participation; and (ii) duration of the payments. Based upon our collective experience in drafting, negotiating and administering various state incentive programs, the Committee members believe that a "job creation credit" such as this would have the following advantages:

- It rewards the activity sought to be encouraged, i.e. the creation of qualifying jobs
- It provides an immediate benefit to the recipient company in contrast to income tax breaks which are only useful when and if the company becomes profitable
- The amount of the benefit varies directly with the size of the payroll, thus the more jobs and the higher the wages, the greater the benefit
- It is self-funding -- amounts paid by the State will be covered by the payroll taxes created by the qualifying projects
- It <u>may</u> permit the State to repeal or reduce some of its other incentive programs

Although substantial additional research would be helpful, the Committee believes that an incentive of this type and magnitude would be very attractive to new businesses and may eventually replace some of the State's other "direct" incentives, i.e. those which provide direct subsidies or tax savings to private enterprise.

B. <u>Revisions to Amendment 666</u>.

If the "job creation credit" described above is implemented, the Committee recommends that Amendment 666 be revised to provide that the monies currently directed to the Alabama Capital Improvement Trust Fund and the County and Municipal Government Capital Improvement Trust Fund be appropriated and spent for generic, rather than project specific, economic development purposes. The new provision should require the Legislature to adopt enabling legislation spelling out the details, but at a minimum, the monies in the trust funds should be used for infrastructure needs such as modern communications technology, transportation, computer technology, internet access, utilities, etc. A top priority should be assigned to establishing a few world-class college and post-graduate education facilities for training in engineering, information technology, biotechnology and similar fields, as determined to be most appropriate to increase our talent pool for new business. Scholarships should be available for these programs to persuade Alabama's "best and brightest" to remain in the State. Efforts

should be made to find ways to address the special needs of the Black Belt and other rural areas of the State. Consideration should be given to establishing an authority or commission, composed of public officials, business leaders and educators, to study and make recommendations for the wisest use of the trust funds for economic development purposes, with a view toward improving the State's general preparedness to attract the types of industry which will contribute to our overall well-being. Such a public/private body might also be given a continuing role in the administration of the trust fund monies.

Conclusion

The Committee suspects that both approaches should be used. The repeal of Sections 93 and 94, coupled with the enactment of a general constitutional provision recognizing that economic development is a proper function of state and local government would permit the Legislature to develop and refine programs as and when needed. It would also permit cities and counties to spend their funds for economic development purposes within limits established by the Legislature. The job creation credit and Amendment 666 recommendations, if enacted and properly enabled by the Legislature, would provide a solid, financially responsible foundation for our economic development strategy, utilizing currently available funds and incremental new tax revenues.

Economic development is important to any state, but particularly so to Alabama. By many measures, we lag our sister states in the Southeast. Perhaps at some point in the future, Alabama will succeed in raising its economy, its educational and cultural resources, its public infrastructure and its overall "quality of life" to a level sufficient to attract new businesses without regard to special incentives. The suggestions with respect to Amendment 666 and the funds available as a result of that provision are designed to help fund and develop the infrastructure and the educational and cultural assets that, although truly public, are essential to successful economic development and may help us reach that goal. In the meantime, it will probably be necessary for Alabama to offer a program of project specific incentives. Our other recommendations will provide a constitutional basis for those programs and a beginning point for the debate over their terms.