

EXECUTIVE ORDER NO. 10

**EXECUTIVE ORDER
creating
Alabama Research Institute**

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EXECUTIVE ORDER # 10

WHEREAS, it is the policy of the State of Alabama to assure that the State support and encourage educational, agricultural, maricultural and industrial activities involving basic and applied scientific research and development; and

WHEREAS, there is a need to achieve this objective;

NOW THEREFORE, I, George C. Wallace, as Governor of the State of Alabama, under and by virtue of the authority vested in me by law, do hereby rescind executive order #62 dated 1-5-83 and rescind any and all appointments made pursuant thereto. Further I hereby order as follows:

SECTION 1. The establishment of the Alabama Research Institute for the purpose of research, investigation and experimentation in these fields and to carry out the intent of Act 81-1185 of the 1981 Third Special Session of the Alabama Legislature.

The Alabama Research Institute is to be located in Montgomery, Alabama, and will be housed in facilities provided by the Alabama Development Office.

The Alabama Research Institute is hereby designated as a State agency to accept federal funds appropriated or allocated by Congress to the State for scientific research and development; to receive contributions; to receive State appropriations; and to receive moneys from other sources for the purpose of carrying out research and development activities as provided by Act 81-1185.

SECTION 2. Definitions. The following words and phrases as used in this Executive Order shall have the following respective meanings:

"Amortized Premium", when used with reference to any Eligible Investment acquired for the purchase price (exclusive of accrued interest) reflecting a premium above the face or par amount thereof, means an amount determined by first dividing the total dollar amount of the premium at which such investment was purchased by the number of days between the date of purchase and the maturity of such investment (or other date when the principal thereof is contractually required to be paid to the holder thereof) and by then multiplying the quotient so obtained by the number of days between the date of purchase and the date as of which such amount is to be determined.

"Board" means the Board of Directors of the Alabama Research Institute.

"Director" means a member of the Board of Directors of the Alabama Research Institute.

"Eligible Investments" means any of the following:

(1) demand deposits (whether or not interest bearing) in Federally Insured Banks, interest bearing time deposits (whether or not evidenced by certificates of deposit) in Federally Insured Banks, provided that non-interest bearing deposits shall constitute an Eligible Investment for moneys in the Endowment Fund for only so long as sound business practice shall require such moneys to be held in such deposits pending the investment thereof in other Eligible Investments or the disbursement thereof in accordance with the provisions of this Executive Order;

(2) bonds, notes or other evidences of indebtedness that are direct obligations of the United States of America or that are unconditionally guaranteed as to both principal and interest by the United States of America;

(3) bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following agencies or corporations, Federal Farm Credit Bank, Federal Intermediate Credit Banks, the Export-Import Bank of the United States, Federal Land Banks, the Federal National Mortgage Association, the Tennessee Valley Authority, the Governmental National Mortgage Association, the Federal Financing Bank, the Farmers Home Administration, or any agency or instrumentality of the United States of America which shall be established for the purpose of acquiring the obligations of any of the foregoing or otherwise providing financing therefor;

(4) repurchase agreements with Federally Insured Banks or with government bond dealers reporting to and trading with the Federal Reserve Bank of New York, provided that such repurchase agreements are secured by obligations described in subdivisions (2) and (3) of this definition; and

"Endowment Capital" means all assets of the Endowment Fund other than Endowment Income.

"Endowment Fund" means "The Alabama Research Institute Endowment" created by this Executive Order.

"Endowment Income", when used with reference to any period, means the new income received during such period from the investment and reinvestment of all assets of

the Endowment Fund, determined in accordance with the provisions of Section 7(b) of this Executive Order.

"Federally Insured Bank" means any bank, whether organized under the laws of the United States of America or the laws of any State thereof, which is a member of the Federal Deposit Insurance Corporation or which obtains deposit insurance to the maximum extent possible from any agency of the United States of America that may succeed to the functions of the Federal Deposit Insurance Corporation.

"Fiscal Year" means the fiscal year of the State as may from time to time be provided by law.

SECTION 3. Board of Directors; Composition. There shall be a Board of Directors composed of thirteen (13) individuals. By virtue of their office, the following individuals shall be members of the Board; the Governor, the Director of the Alabama Development Office, a representative of the University of Alabama System to be selected by the Chancellor and the Presidents of the three institutions, a representative of the Auburn University System to be selected by the President, the President of Alabama A&M University, and the President of the University of South Alabama. Seven (7) individuals shall be appointed by the Governor, and these seven (7) individuals shall represent the industrial, agricultural, and scientific research and development community within the State of Alabama. Initial terms of office for these seven (7) individuals shall be staggered as follows: one member shall be appointed for a term of two (2) years, three for terms of four (4) years, and three for terms of six (6) years. Terms of office for subsequent appointed members shall be for a period of six (6) years. The Director of Finance and the State Treasurer shall serve as ex officio members of the Board. The Governor shall serve as chairman and the Director of the Alabama Development Office as vice-chairman.

There is hereby established from the membership of the Board an Executive Committee to be composed of the Director of the Alabama Development Office as chairman, the representative of the University of Alabama System, the representative of

the Auburn University System, and two (2) persons to be selected by the Governor from the appointed representatives to the Board. Between the regular meetings of the Board, the Executive Committee is authorized, empowered and instructed to perform any function of the Board when in the opinion of the Executive Committee action is advisable before the next regular scheduled meeting of the Board, or to perform any function delegated to it by the Board. A report of such action shall be made at the next Board meeting.

(a) If at any time there shall be a vacancy among the appointed Directors, a successor Director shall be appointed by the Governor to serve for the unexpired term applicable to such vacancy.

(b) Each member of the Board shall be reimbursed for expenses actually incurred in the performance of his or her duties as a Director.

(c) A majority of the Directors shall constitute a quorum for the transaction of business by the Board, and decisions shall be made on the basis of a majority of the quorum then present and voting, with each Director to have a single vote. No vacancy in the membership of the Board or the voluntary disqualification or abstention of any Director shall impair the right of a quorum to exercise all of the powers and duties of the Board.

(d) Any meeting held by the Board for any purpose shall be open to the public, except that executive sessions may be held by the Board when the character or good name of a person is involved, all in accordance with the laws of the State of Alabama. All proceedings of the Board shall be reduced to writing on behalf of the Board and maintained in the permanent records of the Board, a copy of which shall be filed in the

principal office of the Board and shall be open for public inspection there during regular business hours.

(e) If there shall be brought before the Board any matter in which a Director shall have any personal interest which may conflict with his duties as a Director, he or she shall immediately make a complete disclosure to the Board of such interest and shall thereafter withdraw from participation in any deliberation and decision of the Board with respect to such matter.

SECTION 4. Administration of the Institute. The institute established shall be subject to the management and control of the Board of Directors. The Director of the Alabama Development Office shall be the administrative officer and shall be responsible for causing to be provided to the Board any assistance necessary to implement the provisions of this Executive Order. The Board shall have all of the powers necessary to carry out and effectuate the purposes and provisions of this Executive Order, including without limiting the generality of the foregoing, the following:

(a) to adopt, alter and repeal bylaws, regulations and rules for the regulation and conduct of its affairs and business; to promulgate comprehensive rules and regulations for the awarding and administration of a research grant-in-aid program.

(b) to make, enter into and execute contracts, agreements and other instruments and to take such other actions as may be necessary or convenient to accomplish any purpose for which the Endowment Fund was created or to exercise any power expressly, or by reasonable implication, granted by this Executive Order;

(c) to enter into contracts with, to accept aid and grants from, to cooperate with and to do any and all things that may be necessary in order to avail itself of the aid and cooperation of the United States of America, the State or any agency, instrumentality or political subdivision of either thereof in furtherance of the purposes of this Executive Order; and

(d) to appoint, and contract with such agents, advisors, and consultants, including, but not limited to, attorneys, accountants, engineers, financial experts, scientists, and such other advisors, consultants and agents as may in its judgment be necessary or desirable, to properly evaluate applications for projects and activities; provided, however, that any obligation created or assumed by the Board shall not create any pecuniary obligation or liability of the State or the Endowment Fund other than the reimbursement of actual expenses for providing such advice. No lien or charge against the assets of the Endowment Fund for any purpose whatsoever shall be created by or result from any law enacted by the Legislature or any action taken by the Board or any other department, agency or instrumentality of the State.

SECTION 5. Initial Endowment; Endowment Capital. An initial sum of \$10,000,000 plus interest authorized by Act 81-1185 shall constitute the Endowment Capital. The Endowment shall not be diminished but may be increased by unrestricted appropriations, gifts, donations, or grants from any source. No disbursement may be made from the Endowment Capital to support research and development activities or for administrative support. It is intended that only the income from the Endowment shall be used to support research and development activities. Administrative support shall be provided as specified by Act 81-1185.

SECTION 6. Management of the Endowment. Management of the Endowment shall be vested in the Treasurer for the State of Alabama. The Endowment shall be under the management and control of the Treasurer and all powers necessary or appropriate for the management and control of the Endowment shall be vested solely in the Treasurer except as otherwise provided by this Executive Order.

Investments shall be made in accordance with the laws of Alabama and policies and procedures as established by the Treasurer's Office. The Endowment Fund shall be handled as a separately invested fund.

SECTION 7. Investment of Moneys in Endowment Fund.

(a) Except to the extent otherwise provided in this section of this Executive Order, the Endowment Capital shall be held in perpetual trust and shall not be disbursed by the Treasurer for the Board or expended or disbursed for any purpose other than to acquire Eligible Investments in accordance with the provisions of this Executive Order. All Eligible Investments acquired, in whole or in part, with moneys constituting part of the Endowment Capital shall to the extent of such moneys constitute part of the Endowment Capital, but any Endowment Income derived therefrom shall be subject to disbursement by the Board to the extent provided in this Executive Order.

(b) The Endowment Income for any period shall be the net income (determined as hereinafter provided) actually received in cash or cash equivalents during such period from the investment and reinvestment of all moneys held in the Endowment Fund (including both moneys representing Endowment Capital and moneys representing previously received Endowment Income that has not become part of the Endowment Capital). No accrual or other accounting calculation or classification shall constitute the basis for recognizing Endowment Income unless the moneys in question shall have been

actually received and paid into the Endowment Fund. The Endowment Income for any period shall consist of the aggregate interest received from investments during such period plus any profit realized during such period from any payment, sale, liquidation or other disposition of investments resulting in the receipt of any amount greater than the purchase price thereof, less (i) any negative audit adjustments to income and any losses with respect to investments which are required to be charged against the income of the Endowment Fund for such period pursuant to the provisions of subsection (c) of this section, (ii) any accrued interest paid as part of the purchase price of investments acquired during such period, and (iii) all expenses of selling and disposing of investments during such period such as brokerage commissions, legal expenses referable to a particular transaction, transfer taxes and other customary transactional expenses. For purposes of determining the amount of the Endowment Capital at any time held in the Endowment Fund, any investment acquired for a purchase price reflecting a discount below its face or par amount shall, at all times prior to its payment, sale, liquidation or other disposition, be valued at its original purchase price. If any investment is acquired for a purchase price reflecting a premium above its face or par amount shall, at all times prior to its payment, sale, liquidation or other disposition, be valued at its original purchase price less its then applicable amortized premium.

(c) The Endowment Income shall be adjusted in accordance with the succeeding provisions of this subsection if the application of generally accepted accounting principles in connection with the annual audit of the Endowment Fund requires any negative adjustment of income, including the recognition of any reduction in value or write off of investments for reasons relating to the probability of their payment or collectibility, or if any loss is realized upon any payment, sale, liquidation or other disposition of any investment resulting in the receipt of any amount less than the value thereof determined

in accordance with the provisions of this Executive Order; provided, however, that no reduction in value of any investment shall be made because the rate of interest or other yield thereon has fallen below the market rates then applicable to comparable investments. Any audit adjustment resulting in a charge against income or any loss realized from the payment, sale, liquidation or other disposition of investments, as the case may be, shall be charged first against any Endowment Income which, as of the time such adjustment is made or such loss is realized, has accumulated in the Endowment Fund and is then available for withdrawal, whether or not theretofore appropriated, and if the amount to be so charged is greater than the amount of accumulated Endowment Income subject to withdrawal, such amount shall be charged against Endowment Income thereafter received in the current and succeeding Fiscal Years until the full amount of such audit adjustment or loss, as the case may be, has been recovered or made good out of the investment income of the Endowment Fund, and from and after the time that such audit adjustment is made or such loss is realized, as the case may be, no income of the Endowment Fund shall be considered Endowment Income for purposes of this Executive Order until the full amount of such adjustment or loss shall have been so recovered or made good. In the event that, as a result of any audit adjustment or any realized loss, the aggregate amount of income appropriated and withdrawn from the Endowment Fund as of any time during or at the end of any Fiscal Year exceeds the aggregate Endowment Income which, taking into account such adjustment or loss, should have been available for withdrawal at or before such time, then, and in such event, the excess amount so withdrawn need not be returned to the Endowment Fund from the general fund of the State or from any other source of funds available to the State, but the amount of such excess withdrawal shall be recovered through charges against future income of the Endowment Fund as above provided.

(d) The expenses of making and disposing of investments such as brokerage commissions, legal expenses referable to a particular transaction, transfer taxes and other customary transactional expenses shall, as provided in Section 7(b) of this Executive Order, be payable from the investment income of the Endowment Fund, but no administrative or other expenses not specifically required to make or dispose of a particular investment shall be payable out of any assets of the Endowment Fund.

SECTION 8. Annual Audits; Reports. The Board shall cause an annual audit of the Endowment Fund to be performed for each Fiscal Year by the Department of Examiners of Public Accounts and shall cause a report of such audit to be prepared in accordance with applicable accounting principles and made public. The Board shall cause to be prepared and publicized such financial and other information concerning the Endowment Fund as may from time to time be provided by law duly enacted by the Legislature or as determined by the Board.

SECTION 9. Programs of the Institute. With funds available from the Endowment Income, the Board shall award grants to eligible applicants to carry out basic and applied research projects and activities. The administrator for the Board shall receive and cause to be evaluated applications for projects and activities. To conduct merit evaluations of applications, the administrator shall appoint as many Alabama Research Institute Review Panels as necessary. Panel members shall be selected from among Alabama citizens with appropriate scientific knowledge and competencies to assess the applications. Panel members selected from Alabama institutions of higher education shall not be permitted to review applications submitted from the institutions with which they are associated. Funds shall be made available to the panels as necessary to secure out-of-state expert assistance in reviewing applications when such is necessary to ensure a competent and objective

evaluation. Panel members shall serve without compensation but shall be reimbursed any expenses incurred in providing this service. The administrator shall present a prioritized listing of projects to the Executive Committee who shall then further evaluate the requests. After said evaluation a recommendation shall be made to the full Board who shall make the final allocation(s) according to the following criteria:

(1) Criteria relating to competent performance of research - the technical adequacy of the performer and of his or her institutional base.

(a) The researcher's training, past performance record, and estimated potential for future accomplishment.

(b) The researcher's demonstrated awareness of previous and alternative approaches to the problem.

(c) Probable adequacy of available or obtainable instrumentation and technical support.

(2) Criteria relating to utility or relevance: high probability that the research will result in tangible and identifiable contributions to the growth, enhancement, and competitive position of the industrial, technological, agricultural, medical, scientific and economic base of the State of Alabama.

The allocation of funds and the operation of the grant programs shall be subject to the following additional considerations:

(1) Purpose - Through the grant programs of the Institute, the Board shall seek to encourage and support high quality scientific research in areas which would enhance the state's prospects for agricultural, maricultural and industrial development;

(2) Limitations - The grant programs of the Institute shall support basic research, which is concerned with a generation of new knowledge irrespective of economic or commercial considerations, and applied research, which seeks to refine existing scientific knowledge and concepts and to develop usable technologies. However, the Institute should not support the development of products for direct commercial marketing or market research for particular products or inventions;

(3) Eligible Applicants - Alabama colleges and universities and faculty members at such institutions may submit applications for support to the Institute in accordance with procedures established at the respective institutions for submission of such applications;

(4) Types of Awards - The Institute shall make grant awards as follows: Research Project Grants shall support well-defined, time-limited basic and applied research projects consistent with the purposes of the Institute; generally, applications for research project grants will be submitted by individual faculty members at Alabama colleges and universities. Matching funds shall not be required for Research Project Grants, but such grants may be used cooperatively with funds from other sources. Institutional Challenge Grants shall not be project-oriented, but will seek to support institutional plans for permanent and significant enhancement of research capabilities in areas of potential economic significance to the state. An institution shall be required to match, dollar for dollar, a Challenge Grant award with funds specifically acquired by the institution for the activities specified in its application as, for example, with funds from federal or private sources. Challenge Grant funds may be used for, but are not limited to, such purposes as purchasing major items of research equipment, establishing centers for scientific research or endowing research chairs at an institution.

SECTION 10. Operation of the Grant Programs.

(1) Establishment of Priority Areas - Each year, the Board shall solicit, by such methods it deems appropriate, input from the State's agricultural, maricultural and industrial communities concerning research and development activities holding particular promise for the State's economic future. Based upon such input, the Board shall then specify not more than six priority areas of scientific inquiry in which the Board will solicit applications during the particular Fiscal Year.

(2) Grant Terms and Conditions - Each Fiscal Year, the Board shall, subject to this Executive Order, determine all necessary rules, procedures and policies necessary for the operation of its grant programs. These determinations shall be placed in a written Program Announcement which shall be made available to all eligible applicants in a timely fashion. The Program Announcement shall contain information on the application process, the review process, funding ranges, eligible costs and such other information as may be helpful to potential applicants.

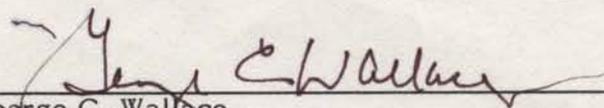
(3) Required Reports - In accordance with Act 81-1185 the Board shall require each recipient of an Institute Grant to submit timely reports indicating the purpose or purposes for which the moneys subject to such grant have been spent.

(4) The Board shall have a project review and audit policy which ensures that money is used for the purposes intended and shall require that money spent contrary to the award conditions shall be repaid to the Institute.

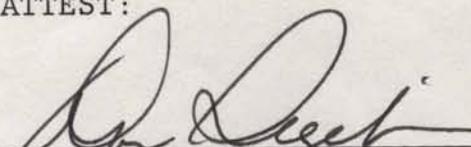
SECTION 11. Effective Date; Implementation of the Executive Order.

(1) The provisions of this Executive order shall be effective upon the appointment of the Board of Directors of the Alabama Research Institute.

DONE AND ORDERED THIS 11th DAY OF May, 1983.


George C. Wallace
GOVERNOR

ATTEST:


Secretary of State