

EXECUTIVE ORDER # 31

WHEREAS, the State recognizes that Economic Development is intrinsically linked to a strong scientific community; and

WHEREAS, a hallmark of a strong scientific community is a nationally recognized research program; and

WHEREAS, it is the policy of the State of Alabama to assure that the State support and encourage high standards of scientific research; and

WHEREAS, there is a need to achieve this objective;

NOW THEREFORE, I, Guy Hunt, as Governor of the State of Alabama, by virtue of the authority vested in me by law, do hereby rescind all previous Executive Orders relating to Act 81-1185. Further I hereby order as follows:

SECTION I. The establishment of the Alabama Research Institute (ARI) for the purpose of research, investigation and experimentation and to carry out the intent of Act 81-1185 of the 1981 Third Special Session of the Alabama Legislature. The intent of this act is to support the highest levels of educational, agricultural, maricultural, and industrial activities.

The Alabama Research Institute shall be administered by the Alabama Department of Economic and Community Affairs (ADECA).

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.

"Department" means Alabama Department of Economic and Community Affairs.

"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 deposits) 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 of Alabama.

SECTION 3. Board of Directors; Composition. There shall be a Board of Directors composed of seventeen individuals. By virtue of their office, the following individuals shall be

members of the Board: the Governor; the Finance Director; the State Treasurer; the Director of the ADO; and the Science, Technology and Energy Division Chief of ADECA. Six members of the Board shall be the Presidents or their designees of the following universities: The University of Alabama; Auburn University; The University of Alabama at Huntsville; The University of Alabama at Birmingham; Alabama A&M University; and The University of South Alabama. In addition, the Governor shall appoint six members of the business and industrial community. The Board Members will serve at the pleasure of the Governor. The Governor will serve as Chairman and the Science, Technology and Energy Division Chief of ADECA as Vice-Chairman.

The Board of Directors shall be assisted by a Steering Committee composed of the Science, Technology and Energy Division Chief of ADECA as Chairman; two representatives of the University Systems; and two representatives of industry. The members of the Steering Committee shall be appointed by the Governor. The Steering Committee is authorized to perform any function of the Board when, in their opinion, action is advisable before the next 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.

(b) Each member of the Board shall be reimbursed for expenses actually incurred in the performance of his or her duties as a Director. The reimbursement policy shall be consistent with that of the Alabama Department of Economic and Community Affairs.

(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 closed 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, submitted to the principal office of the Board (ADECA) and shall be open for public inspection there during regular business hours.

(e) If any Director has a conflict of interest in any matter brought before the board, the Director will make a full disclosure of this conflict to the Board and will 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 Chief of the Science, Technology and Energy Division (ADECA) shall be the Administrative Officer and shall be responsible to the Board for any assistance necessary to implement the provisions of this Executive Order. The Board shall have all of the powers necessary to carry out the purposes and provisions of this Executive Order, including the following:

(a) To adopt, alter, and repeal bylaws and regulations for the conduct of its affairs and business; to make 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 to accomplish any purpose for which the Endowment Fund was created;

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

(d) To appoint, and contract with consultants such as, engineers, scientists, attorneys, and such other advisors or other consultants as may be necessary, to properly evaluate

applications for projects and activities. 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 of the State.

SECTION 5. Initial Endowment; Endowment Capital. The Endowment Capital shall consist of \$11,500,000. Of this, \$10,000,000 was authorized by Act 81-1185 and \$1,500,000 was appropriated by the Legislature. 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.

SECTION 6. Management of the Endowment. Management of the Endowment shall be under the control of the Board of Directors and all powers necessary or appropriate for the management and control of the Endowment shall be vested solely in a professional fund manager selected by the Board except as otherwise provided by this Executive Order.

Investments shall be made in accordance with the laws of Alabama and with the policies and procedures as established by the Treasurer's Office of Alabama. 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 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 from this 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 explained below) 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 income unless the moneys are 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, 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 transaction 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 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 it shall, prior to its 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. This includes the recognition of any reduction in value or write-off of investments for reasons relating to the probability of their

payment or collectibility. This also includes any loss 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. However, 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 shall be charged first against any Endowment Income which has accumulated in the Endowment Fund and is then available for withdrawal. If the amount 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 has been recovered of the investment income of the Endowment Fund. From the time an audit adjustment is made or a loss is realized, no income of the Endowment Fund shall be used to fund research projects until the full amount of this adjustment or loss is recovered. 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, as provided in Section 7(b) of this Executive Order, shall be payable from the investment income of the Endowment Fund. 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 except those required for honoraria, the convening of review panels, site visits, a technical conference at the end of each funding year, or other necessary functions such as the Department's negotiated indirect cost rate.

SECTION 8. Annual Audits and Reports. At the request of the Board, an independent accounting firm shall perform an audit of the Endowment Fund for each Fiscal Year. The firm will also prepare a report of this audit which will be made public. The Board will authorize the preparation and publication of financial or other information as law requires or as the Board deems appropriate.

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. To conduct merit evaluations of applications, the Administrator shall appoint as many Alabama Research Institute Review Panels as necessary. Panel members shall be impartial reviewers with appropriate scientific knowledge and competencies to assess the applications. Panel members must not be associated with any of the institutions whose proposals are under review. The peer review process shall meet the standards of the Nation's research institutions and foundations. Panel members may be awarded honoraria consistent with those paid by other research funding agencies, such as The National Science Foundation. The Chairman of the Board may call panel members together to review proposals as a group. At these panel meetings, the scientific merits of the proposals will be thoroughly and openly discussed. Each of the proposals will be evaluated according to the following criteria:

(1) Criteria relating to competent performance or 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.
- (d) Likelihood of obtaining support from another source (federal or industrial) at the conclusion of this grant.

(2) Criteria relating to utility or relevance: high probability that the research will, within the next decade, result in tangible and identifiable contributions to the body of knowledge or the development of a new technique, product or process.

The Administrative Officer shall present a prioritized listing of projects to the Steering Committee who shall then further evaluate the requests. At this stage of the evaluation process, no committee member except the Administrative Officer shall be allowed to see proposals identified by investigator name or institution. The Steering Committee will then submit to the Board of Directors a list of the proposals recommended for funding. The Board will make the final decision regarding allocations of funds. However, regardless of the quantity of funds available, the Board shall not approve any proposal whose quality clearly fails to meet the standards of federal funding institutions.

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 scientific prominence and economic development.

(2) Limitations - The grant programs of the Institute shall support both basic research, which is concerned with a generation of new knowledge, 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 two types of 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 or small teams 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. 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 Area - Each year, the Board shall solicit, by such methods it deems appropriate, recommendations from the State's scientific and technological leaders concerning research and development activities for which the State's universities have particular potential to excel and achieve national prominence. Based upon such recommendations, 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 progress of the research and budget information.

(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. Further, grantee institutions shall certify that they will follow this policy.

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

DONE AND ORDERED THIS 12th DAY OF January, 1990.



Guy Hunt
Guy Hunt
Governor

ATTEST:

Perry A. Ward
Secretary of State