Alabama Issues

2002 Issue

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a joint publication of Auburn University CGS and AUM Outreach
Dear Citizens:

Auburn University is proud to present *Alabama Issues 2002* as part of our outreach mission to serve the State of Alabama. It is a joint project of our two campuses. The goal is to stimulate informed discussion on important public concerns during the campaigns leading to the general election in November.

Elections are essential to democracy. Through them citizens grant and take away the power to govern. Yet too often elections are dominated by posturing and negative advertising with little serious discussion of critical issues. *Alabama Issues 2002* addresses substantive questions ranging from the powers and conduct of government to specific policy issues such as education, economics, and the environment. It is a resource to help candidates, news media, and voters raise the level of public discussion by framing and providing basic information on selected issues.

I commend *Alabama Issues 2002* for your reading and deliberation.

Sincerely,

William F. Walker
President
August, 2002

Dear Alabamians:

It is a pleasure for me to commend to you Alabama Issues 2002. Together with teaching and research, public and community service is a critically important mission of an urban university such as Auburn University Montgomery (AUM).

Since the early 1970's, soon after AUM was established, the University has been active in assisting a number of Alabama state agencies, local governments in central and south Alabama, and federal agencies in the Montgomery vicinity. In addition to AUM faculty who have worked directly and mostly on a pro bono basis in the community, AUM has several centers (Advanced Technology, Business and Economic Development, Demographic Research, and Government and Public Affairs) that have been active partners in client problem solving for many years.

I am also pleased with the publication of Alabama Issues 2002 as it represents another successful collaboration between the Auburn and Montgomery campuses of Auburn University. Many of the chapter authors include faculty, alumni, and current students of the joint Auburn University/AUM Ph.D. program in public administration and public policy whose mission, in part, is to educate and train high level public service practitioners.

As is the case with other Alabama universities, AUM faculty and staff are committed to working long and hard to ensure progress in our state. We welcome the opportunity to help, and we would be pleased to provide assistance in future problem solving efforts to advance local communities and the state.

Sincerely,

Guin A. Nance
Chancellor
Dear Citizens:

As Alabamians, we must continue to explore ways to improve upon and/or eradicate the numerous problems plaguing our state. More emphasis must be placed on providing our elected officials with information to assist them with drafting and implementing policy for positive growth. The time is now for Alabama to respond to the many challenges facing our state, the adequate funding of education being one of the most pressing.

Alabama serves as home to many individuals who possess broad visions as to where this state could go and what it can become in a short period. However, in order for this to happen, careful utilization of Alabama’s human and fiscal resources must take place.

We, at Auburn University, look forward to the future of Alabama with enthusiasm if we seize the moment and commence to address in earnest the funding of education, obstacles to community and economic development, particularly in West Alabama, and access to adequate healthcare. This enthusiasm is based on the passion for improvement we have witnessed by many residents who reside in some of the poorest regions of this state. We offer Alabama Issues simply as an educational tool to acquaint Alabamians with some of the challenges we face as a state.

Sincerely,

David Wilson
Associate Provost and Vice President
for Auburn University Outreach
ALABAMA ISSUES
2002

edited by
Jim Seroka
Thomas Vocino

August 2002

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A decade ago many in Alabama were hopeful that we would gain a foothold in the automobile industry. Success has exceeded expectations in the past nine years as world-class companies such as Mercedes, Honda, Toyota, and Hyundai have made commitments to Alabama that have and will result in tens of thousands of new jobs, requiring a set of job skills considerably different than those of many of the dominant industries of Alabama’s past.

The New Economy jobs of the widely-dispersed Alabama automobile industry, the world-class health care services available in Birmingham, and the cutting-edge, high-tech companies of the Huntsville area are challenging Alabama’s infrastructure to support them as our state never has before. Most important in the equation of this New Economy is the critical necessity of providing high quality education from K-12 through higher education in order to train the person power that will allow Alabama companies to sustain their competitiveness not only on a national level, but on a global basis. As Mayor Dow and Representative Ford indicate in their compelling essay on international trade, the state of Alabama can and must extend the reach of its commerce beyond the borders of the United States.

In addition, the quality of life of any society can be measured and evaluated to a large degree by the quality of citizen services provided by government. In the chapters that follow, a number of experts with considerable experience in a range of policy arenas lend their expertise to the dialogue of how quality state and local governmental services in Alabama will add value to the lives of its citizens. In the opinion of the editors of this volume, the quality of governmental services is a key factor in moving Alabama forward relative to its sister states both within the South and across the nation. Thus, the challenge, in our view, is to steadily improve the level and quality of governmental services in Alabama.
As the chapter authors indicate, a number of large steps forward have been made; however, much work needs to be done. Fortunately, most of the chapters in this volume provide a blueprint for further progress. We hope that, at the very least, serious consideration will be given to these many thoughtful ideas for improving Alabama’s public sector. In this regard, we are in debt and deeply appreciate the comprehensive analyses that each of the authors has provided.

This volume is intended for those who seek a better understanding of the key public policy issues that confront the state of Alabama. It is hoped that the essays published herein will stimulate a discussion about these issues that will impact positively on policy development in Alabama for its near- and long-term future. Each author or group of authors has been asked to introduce and discuss his or her subject matter in general terms, identify a number of problem areas requiring attention, and suggest a path(s) that may lead to positive change for Alabama.

In addition to libraries and newspapers within Alabama who will receive it, Alabama Issues 2002 is being distributed to all candidates for statewide office as well as nominees for legislative office. The primary goal for this project is that these essays will serve as a point of reference throughout the Fall campaign and well into the next quadrennium. The issues and opinions presented are those of the authors and do not necessarily reflect the views of Auburn University or Auburn University Montgomery.

Finally, we should acknowledge the support, financial and otherwise, to make Alabama Issues 2002 a reality. On the AUM campus, Chancellor Guin A. Nance and Dr. John Veres, AUM Director of University Outreach, are totally committed to community service in both their words and deeds. On the Auburn campus, President William Walker and Vice President for Outreach David Wilson, have also demonstrated their strong commitment to public and community service and outreach.

Thomas Vocino is Distinguished Research Professor and Head of the Department of Political Science and Public Administration at Auburn University Montgomery. He is co-author and co-editor of five books including a textbook, Contemporary Public Administration, which has been used in over 100 universities. He is also the author or co-author of over 50 articles, book chapters, technical reports, and case studies, and co-editor of the Public Administration Quarterly. Dr. Vocino’s work has been published in leading journals in his field, including: Administrative Science Quarterly, Public Administration Review, and the American Review of Public Administration.
PART I: Statewide Governmental Issues

CHAPTER ONE

Tax and Constitutional Reform

- Carl Grafton and Anne Permaloff

EXECUTIVE SUMMARY

Tax systems are usually evaluated by standards of equity, impact on the state’s economy, and their ability to support basic governmental services. Reforms suggested by equity and economic growth considerations are entirely consistent. Equity is measured largely by balance among types of taxes and ability to pay.

- Alabama’s state and local taxes are out of balance. The property tax is under utilized or the other major taxes are over utilized.
- The current use feature of the property tax discriminates against commercial and residential property owners in favor of agrarian-business. It should be eliminated or drastically narrowed to apply only to small family farms in proximity to large cities.
- The sales tax is regressive. Removing essentials such as groceries and adding services and Internet and 800 number sales would make it less regressive.
- The corporate profits tax is partly shifted to customers of varying levels of ability to pay and partly absorbed by the corporation making it a case of double taxation.
- Elimination of current use, modification of the sales tax, and elimination of the corporate profits tax could be implemented in a revenue neutral manner, resulting in a fairer tax system.

To stimulate economic growth, Alabama state and local governments should provide a stable, broadly based low rate tax structure that can support basic well managed public services. Part of Alabama’s tax code does not fit these specifications. Specifically, sales tax rates are too high; the property tax system is inconsistently applied; and the corporate income tax system is politicized and unstable.
Tax reform and constitutional reform have been permanent fixtures of the Alabama political landscape for more than a century. The durability of these issues is traceable to the last two constitutions both of which were drafted to constrain the ability of state and local government officials to modify tax structures or increase tax levels. Sheldon Hackney (1969) in *Populism to Progressivism in Alabama* showed that the 1901 Constitution was written by and for an alliance of the largest Black Belt plantation owners and industrialists based primarily in Jefferson County. Anne Permaloff and Carl Grafton (1995) refer to this group as the *Big Mule Alliance*. It was the Alliance’s explicit purpose to protect agricultural and industrial interests by creating difficult to change and regressive tax structures; its work still dominates Alabama politics and government.

Complaints about the Alabama tax system are familiar to anyone with even a casual interest in Alabama government: it is regressive and unstable in times of economic decline. Furthermore, the Alabama tax system is said to discourage economic growth, and many believe that it yields insufficient revenue to operate basic government services at adequate levels.

Most contemporary defenders of the Alabama tax code are indistinguishable from the original Big Mule Alliance and its allies. Their political power and the slanted constitutional playing field built by their predecessors make comprehensive tax reform a difficult and probably impossible task at least in the near term. Making tax reform even more problematic is a general mistrust of state government partly abetted by the Big Mules and reinforced by countless examples of government waste and dishonesty that may be found in almost any week’s newspapers. Taxpayers resist reform proposals emanating from a government that appears unable to honestly and efficiently manage the resources already at its disposal, and they do not trust the recommendations of experts who appear biased by ideology or interest group affiliations. On the other hand, opponents of tax reform almost never mention the inequities and discrimination built into the Alabama tax code (to be discussed below) or the ways it can discourage economic growth.

The ethical blindness and economic self-interest of tax reform opponents does not mean that their arguments are without merit. Tax reform opponents ask why proponents fail to accompany tax reform with spending reform. Although tax reform opponents themselves offer few ideas for spending reform, this objection cannot be brushed aside. There are many areas in which spending or administrative reform could enhance the value of government services. For example, we have argued in several venues for many years that the post secondary educational system contains waste at all levels, and that a statewide post secondary governing board could produce improvements in quality at or below present levels of cost.

Most defenders of the Alabama tax code also believe that tax reform is nothing but a disguise for tax increases. It must be admitted that most tax reform advocates would welcome tax increases. Furthermore, even revenue-neutral tax reform with no net increase in total revenue implies that post-reform tax burdens will increase for some. No observer of Alabama politics can doubt that potential losers will vigorously defend the status quo.
Tax systems are typically evaluated by standards of equity, balance, the impact of taxes on the state’s economy, and adequacy of funding levels to support basic governmental services. We begin with tax equity.

I. TAX EQUITY

Tax equity is often appraised using two concepts: ability to pay and user fees. The ability to pay standard calls for the affluent to provide more financial support to government than the poor in proportion to some measure of wealth. The terms horizontal and vertical equity are commonly used to characterize ability to pay. Horizontal equity means that equals in terms of ability to pay are treated equally. Vertical equity refers to the unequal treatment of unequals in terms of ability to pay.

With regard to user fees, some government services can be treated like private goods or services. Fees can be directly charged or taxes levied in lieu of direct charges. Here the standard of equity is that the fee or tax is levied in proportion to the use of the government service.

A. Progressive, Proportional, And Regressive Taxes

Tax systems can be categorized by whether the rate structure is progressive or graduated, proportional, or regressive. It is easiest to think about these terms in the context of an income tax. A progressive tax has the wealthy paying a higher percentage rate than the poor. With a proportional tax everyone pays the same rate regardless of ability to pay. Publisher and former presidential candidate Steve Forbes’ flat tax approximates this approach. With a regressive tax the poor are subjected to a higher rate than the wealthy. In public nearly everyone agrees, with some qualification, that a regressive tax is inequitable; in private tax reform opponents are mostly silent on this matter.

At minimum, the standards of horizontal and vertical equity call for tax burdens to be borne in proportion to ability to pay. A regressive tax structure does not by itself mean that a government is being unfair to the poor if the government programs being funded by the regressive taxes disproportionately benefit the poor (Buchanan, 1997). There is no reason to believe that this is the case in Alabama.

B. Balance

The largest sources of state and local government revenue are the general sales tax and excise (or selective) taxes, property taxes, income taxes, and a host of license taxes. Figure 1-1 shows the major sources of tax revenue for Alabama state government for 1998-1999.

No single tax can perfectly reflect ability to pay; each accesses different aspects of ability to pay. For example, the personal income tax reaches income, but to some degree misses wealthy individuals whose net worth increases each year because of unrealized capital gains from investments. The personal income tax also misses those whose livelihoods allow them to ille-
gally under report income. An equitable tax system should include all of Alabama’s major taxes in some balance. Figure 1-1 suggests that either the corporate income and property taxes are underutilized or the others are over utilized. This impression is not entirely off the mark, but we will see that there is more to be considered than simple percentage shares.

C. User Fees
Some taxes serve as user fees and are not meant to reflect ability to pay. The most common examples are excise taxes on gasoline, diesel fuel, motor oil, and tires. The theory behind these taxes is that the use of these products by individuals or businesses is proportional to their use of roads. For this reason funds from these kinds of taxes are earmarked for road construction and repair.

D. Consumption (Sales And Excise) Taxes
The sales tax is the largest single source of state and local revenue in Alabama and most other states\(^1\). The basic state rate is 4 per cent of the cost of the sale of tangible personal property, i.e., most day to day purchases. Other lower rates apply to automobiles, machinery used in manufacturing and farming, and a variety of other items. In addition to the state sales tax, counties and municipalities currently levy sales taxes ranging from 1/4 of 1 per cent to 5 percent. The sales tax does not apply to services and many Internet and 800-number purchases. Excise taxes are essentially sales taxes applied to specific categories such as alcoholic beverages, aviation fuel, and gasoline. Governing authority for the sales tax is Sections 40-23-2 through 40-23-37 of the Code of Alabama 1975. The Department of Revenue does not cite the Constitution as a governing authority for consumption taxes.

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\(^1\) A summary of consumption tax features and all other state and local taxes may be found at [www.ador.state.al.us](http://www.ador.state.al.us).
According to the Institute on Taxation and Economic Policy or ITEP (1996), in 1995 Alabama families in the lowest 20 percent income range paid an average of 7.9 per cent of their income on sales and excise taxes while those in the top 1 percent income range paid only 0.6 per cent (See Figure 1-2). There have been few changes in the tax code since then, and current figures are very close to these. A recent *Birmingham News* and Public Affairs Research Council of Alabama (PARCA) analysis examines three income groups also shown in Figure 1-3. The major difference between the two sets of figures is that the *News/PARCA* data do not span extremes of income as great as the ITEP data. Here the family earning an adjusted gross income of $16,667 is subjected to a sales tax of 5.2 percent while a family with an adjusted gross income of $103,926 pays a sales tax of only 3.1 percent of their total income.

At first glance, it might appear that the sales tax and excise taxes are proportional taxes because everyone pays the same rate regardless of income. Although it is true that the sales tax rate is constant, it becomes regressive when considered in terms of income. As Figure 1-2 shows, the lowest twenty percent of ITEP families earn an average of approximately $12,000. All or nearly all of their income is spent which means that all of their income is subjected to a

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2 See, for example, Public Affairs Research Council of Alabama (1997). This report uses a different year and different income categories, but the conclusion is the same.
sales or excise tax. The highest one percent earns an average income of well more than $500,000 and save substantial portions of it. That saved income is not subject to a sales or excise tax.

In Alabama necessities such as groceries and nonprescription drugs are subject to the sales tax along with discretionary purchases. The sales tax could be made less regressive if necessities were excluded (Mikesell, 1991, p. 280). Such an exemption would result in a large revenue reduction, so this change would have to be accompanied by some other modification for revenue neutrality to be maintained. One such change would be an increase in the tax rate on items still subject to the sales tax. However, this increase would significantly boost incentives for tax avoidance via, for example, Internet purchases. The exemption of necessities would also make revenues less stable because durable goods, which are more affected by recessions than are necessities, would make up a larger portion of the base (Derrick and Scott, 1995). Another change to counteract the impact of the exemption of necessities would be to broaden the sales tax to include services. According to the Public Affairs Research Council of Alabama (1997), the inclusion of services in and of itself would also reduce regressivity. Another option would be the rigorous inclusion of sales through the Internet and 800-number businesses. This change would require federal action.

E. Property Taxes
It is not accidental that the property or ad valorem tax is the most tightly constrained by the Alabama Constitution and the most complex. It seems designed to prevent comprehension by the average citizen or citizen-legislator. Governing authority is Amendment 373 of the constitution, many constitutional amendments specific to particular counties, and Sections 40-1-1 through 40-11-4, Code of Alabama 1975. The property tax system is too complex to be described in detail here, but we will touch on the major features.
The Constitution divides property into four classes: utilities; agricultural, forest, and owner-occupied residences; private passenger vehicles; and all property not otherwise classified (www.ador.state.al.us). Each class is treated differently with utilities and business properties most heavily taxed assuming that assessments are fair. In addition, the Constitution includes so-called lid limits on each class that establish maximum percentages of market value that property may be taxed (Ward, undated). Furthermore, agricultural and forest lands are treated differently from owner-occupied residences which supposedly occupy the same lowest-tax class. There are also a variety of exemptions for homesteads, farm tractors, and more. As with the sales tax, county and municipal governments also levy property taxes on top of the state tax. Counties and municipalities may increase property taxes only after approval by the governing authority (e.g., a city council), the legislature, and voters of the jurisdiction. State property tax increases are also tightly constrained by constitutional limits.

According to the Institute on Taxation and Economic Policy, property taxes in Alabama are regressive: the lowest 20 percent of families pay property taxes at an average rate of 1.7 percent of their income while the highest 1 percent pay only 1.0 percent. The Birmingham News/PARCA analysis presents a different picture of regressivity from their lowest to middle income categories and then progressivity from the middle to the highest. These data may not be meaningful in either case. The difficulty in their interpretation partly derives from determining the incidence of the property tax as well as the theoretical question of whether the property tax reflects ability to pay or is a kind of user fee or a combination of both. Incidence refers to the ultimate burden of a tax. The individual or organization actually paying a tax may be carrying all or some fraction of the burden depending on whether the tax can be shifted elsewhere. Thus the owner of a rental property may be able to pass some or all of a property tax increase on to renters depending on the rental market. If rental units are nearly 100 percent occupied, all of a property tax increase can probably be shifted to renters. However, in a situation of low occupancy levels an increase in rent may reduce the chances of attracting new renters and may even cause some existing renters to vacate. In this case the owner may not be able to pass the increase on to renters at least until the market recovers.

The property tax applied to a business such as a store or manufacturing plant may also be shifted in whole, in part, or not at all in the form of increased charges to customers, again, depending on the demand for services or products. Taxes on real estate used for personal purposes cannot be readily shifted and are borne primarily by the property owner (Heilbrun, 1997).

The interpretation of data regarding the incidence of the property tax also depends on whether the property tax is viewed as a user fee or simply a tax on capital (Zodrow and Mieszkowski, 1997). As we have seen, user fee equivalents such as some excise taxes are not subject to the ability to pay standard assuming that the user fee-taxes are proportional to resource use. However the property tax is considered, its incidence is difficult to calculate and interpret.

The foregoing assumes that the property tax is based on the market value of property (an estimate of the selling price of the property on the open market), and for a significant portion of
property this is the case, but large expanses of valuable land in Alabama are taxed based on a value that is barely related to the market value and which is far lower than the market value. This nonmarket valuation system is referred to as current use. The **Current Use Act of 1982** states explicitly that valuations will not be based on: *the prospective value such property might have if it were put to some other possible use*. By this system farm or forest land is valued according to its current use (i.e., farming or timber production). Instead of the market value of land, current use is supposedly based on estimates of the value of harvests using the so-called standard value method. This method has little or nothing to do with actual crop or timber harvests on particular pieces of land (Hyman, undated). Instead, it is performed using estimates of soil quality, productivity averages, average crop prices, and other arbitrarily derived indexes (Purdue University, undated). For a flavor of the current use procedure, consider just the first steps as described by a representative of the Alabama Forestry Commission:

> The law breaks agricultural and forest land into 10 soil productivity classes. These classes are then grouped into 4 value classes. The value of a farm is based on average income from major crops, less cost of production. This net income is then capitalized, converted into land value, by dividing it by a standardized interest rate. Under the Alabama current use law, the standard rate is the ten year average of interest rates on new loans by the Farm Credit Bank of Texas, which funds federally endorsed farm loans in Alabama. This interest rate is decreased by 4.5 percent before it is used in the calculations (Hyman, undated).

An attempt is made to justify this methodology by making a distinction between the market value of property and the value of property as an investment:

> The other way [besides the market] to value property is as an investment. How much can I expect to make from the land and how much is that income stream worth? The current use system in Alabama uses the investment model to find the value of the tract based on its present land use. It assumes that farm land and forest land will produce a stream of income that can be capitalized to determine a land value (Hyman, undated).

In this passage it is assumed that the market value of property is not a measure of a stream of income and that the current use system as practiced in Alabama is superior to the market in determining the value of an income stream. Both assumptions are without foundation in economic theory or practice. The potential income stream is a way to calculate what the market value of property (whether real estate, grain, common stock, or antiques) should be. Calculation of the potential income stream allows one to estimate the correct market value before making a purchase offer. But, the final arbiter of property value is the market. If in a particular case the income stream/current use value is significantly different from market value, the current use value is incorrect. In addition, the idea that the baroque and politicized income stream procedures of the Alabama property tax system are significantly related to the kinds of calculations used by seasoned investors to estimate market value is ludicrous.
The current use system was developed partly because farmers near cities were encountering increased property values and therefore higher property taxes. The current use system was explicitly designed to give the owners of such properties preferential treatment. This favoritism to a particular type of business may or may not be socially and economically desirable, but we ought to understand it for what it is, not as a superior method for determining the market value of property.

How favored are farmers and timberland owners under the current use system? According to the Alabama Forestry Commission representative in his defense of this system, in 1995, farm land of average quality taxed at the state average tax rate per acre was subjected to a tax of $1.125 per year (Hyman, undated). The Alabama Department of Revenue indicates that since October 2001, timberland owners pay $2.19 in taxes per acre for good timberland, the most valuable category of timberland. The current use procedure is justified as applied to legitimate farming and timber operations, but this is sometimes not the case. Current use has been utilized as a ruse to avoid the same property tax levels paid by ordinary commercial or residential property owners (Curran, 2000; State v. Delaney's, Inc., 668 So.2d 768, Ala.Civ.App. 1995; McPhail, 1994).

F. Income (Individual And Corporate) Taxes

The individual income tax is levied under the authority of Sections 40-18-1 through 40-18-30, Code of Alabama 1975 and Amendments 25 and 225 of the Alabama Constitution. It is a tax on net income with a variety of exemptions including federal income tax payments. Figure 1-4, based on data from the Institute on Taxation and Economic Policy (2000), shows the personal

![Figure 1-4: Alabama Individual Income Tax 1999](image)

income tax is roughly progressive through the first two 20 percent income classes, and then it becomes relatively flat. Except for the initial 20 per cent, the individual income tax approximates a flat tax. *Birmingham News*/PARCA figures (Figure 1-5) show it as progressive from their lowest to the middle income category, and then regressive from middle to upper income levels.

The corporate income tax (Sections 40-14-40 through 40-14-58 *Code of Alabama 1975* and amendments 212 and 662 of the *Constitution*) is paid by corporations according to a complex formula that includes property, payroll, and sales. The Institute on Taxation and Economic Policy’s calculations suggest that in 1995 the corporate income tax was slightly regressive at the first and second 20 percent income classes after which it becomes slightly progressive\(^3\). There have been substantial changes in the corporate income tax since 1995, and there is little chance the tax is progressive or even proportional. In 1996, 1999, and 2001 legislation drastically reduced corporate income tax revenues. The existence of these changes first came to the public’s attention when corporate income tax collections plummeted from $280 million in 2000 to $180 million in 2001. This drop, which was far too large to be accounted for just by the economic downturn that occurred in 2001, was partly to blame for proration in education spending in 2001. Late in 2001 the legislature partly reversed these changes and added a probably regressive excise tax on telephone and cellular service.

\(^3\) The *Birmingham News*/PARCA analysis does not cover the corporate income tax.
Like the property tax on business properties, there are difficult questions regarding the incidence of the corporate income tax and other businesses taxes (McLure, 1997). The basic issue is the degree to which such taxes are passed on to customers in the form of price increases for products. As with the property tax applied to rental property, the incidence depends partly on the demand for a business’s products or services. The incidence of the corporate profits tax also depends on the income levels of likely customers. To the degree that the tax can be passed on to customers, it is a progressive tax if the customers are affluent and regressive if they are poor.

To the degree that the corporate income tax is absorbed by the corporation and not shifted to customers, it is a form of double taxation and therefore questionable in terms of equity. Here the issue is that dividends to stockholders are taxed once as corporate profits and again as income to the stockholders. Profits not distributed as dividends are realized as capital gains and taxed if stockholders sell the stock. Again, it is a case of double taxation. It could also be argued that the profits tax is a way to make the corporation pay for services rendered by government, but it can be argued that the property tax accomplishes the same purpose. Whether the corporate profits tax is shifted to customers of varying levels of ability to pay or absorbed making it a case of double taxation, it appears questionable by the standard of equity.

G. The Equity Funding Law Suit
In 1993 Montgomery County Circuit Court Judge Gene Reese ruled, in what has come to be known as the Equity Funding Lawsuit, that Alabama students have a constitutional right to an adequate and equitable education (Alabama Supreme Court). The legislature and the State Department of Education have responded in a variety of ways, including: funding formula changes, establishment of rigorous graduation standards, and development of an Adequacy Plan in 2001, the price tag for which has been estimated as hundreds of millions of dollars per year. The case is now before Montgomery County Circuit Judge Sally Greenhaw. As of this writing, the case’s status is not clear, but it will probably be ruled on by the Alabama Supreme Court. The Court’s partisan and ideological makeup lead us to predict that the plaintiffs will lose. Alabama’s history with conflict involving inequality suggests that the suit would then shift to the federal court system; but in 1973, the U.S. Supreme Court ruled in San Antonio Independent School District v. Rodriguez that: Education was not a fundamental right, district wealth was not a suspect classification, . . . passing the standard used by the court when judicial ‘strict scrutiny’ is not required (Augenblick, Myers, and Anderson, 1997, p. 67). Since then, there have been no successful challenges of educational funding inequities in the federal court system.

H. Equity Overall
In terms of revenue balance among sales and excise, property, and income taxes, Alabama state and local governments are out of balance and regressive. On a purely percentage basis the property tax is under represented or the others are over represented. Furthermore, the sales tax and excise taxes as a whole are regressive and the property tax is discriminatory and also probably regressive. The personal income tax seems reasonable aside from an apparent
regrassity near the top income levels, but the corporate profits tax is of highly uncertain incidence, and if corporations absorb the entire tax, it is an example of double taxation.

One revenue-neutral approach to reform would be to: eliminate the current use feature of the property tax, or modify it so it only applies to family farms near a city’s edge where increasing property taxes might drive farmers out of business; remove essentials such as groceries from the sales tax; and add Internet and 800 number sales and services to the sales tax. Current use and other elements of the property tax are enshrined in the Constitution and would require constitutional revision to change. Modification of the sales tax would not.

II. ECONOMIC IMPACT
Except for well known cases of market failure, such as the production of public goods (e.g., law enforcement, education, construction and maintenance of roads and bridges), the market economy left to itself produces and allocates resources optimally. A tax system should interfere minimally with the market’s operation. But taxes affect individual and business decision-making; the higher the tax the greater the impact (Becsi, 1996). The impact of tax structures and tax levels on state, local, and national economic growth is one of the most thoroughly researched topics in the field of public finance. Although much is unclear in this complex and methodologically sophisticated literature, one point seems indisputable: taxes considered by themselves without reference to expenditures depress a state’s economic well-being (Benson and Johnson, 1986; Becsi, 1996). However, government expenditures if correctly implemented can have the opposite effect.

Presumably, there is an optimum level and mix of taxes and an optimum combination of public expenditures that would maximize economic growth. Clearly, taxes can be so low as to freeze public services at levels that most individuals and businesses find unacceptable (e.g., unpaved roads and unheated one room school houses). At the other extreme, very high taxes would discourage new business location and provide so much funding that additional levels of public services would be wasteful. How high should taxes be, and how should tax revenues be spent?

A. Alabama Tax Levels Compared To Other States
It is commonly observed that taxes paid in Alabama are the lowest in the nation on a taxes paid per capita or per household basis. In 1998-1999, Alabama’s state and local governments collected approximately $5,049 per household, while the mean figure for all of the states was approximately $7,743. Given the fact that per capita or per household income in Alabama is near the bottom rank of the states, this low tax level is not surprising. However, Alabama taxes are also low compared to other states when income levels are taken into account, although this correction for income brings Alabama and other states much closer. If Alabama per household income were equal to the national mean and if Alabama’s tax revenue increased in proportion, Alabama’s state and local revenue would be $6,432 per household.
Table 1-1 compares state and local tax collections for all of the states and Alabama. It also lists the figures corrected for Alabama’s low income levels. It is apparent that Alabama relies on the property tax at a far lower level than the national average, the individual income tax somewhat less, and excise taxes substantially more.

B. Alabama’s Economic Performance
From 1930 to 1980 the income of Alabama’s individuals and families as a percentage of the United States mean increased steadily from roughly 42 percent to 81 percent, with some variation depending on the measure used. After 1980 income dropped, and it appears to have leveled at 78.5 percent of the United States mean. In 1999 only six states performed worse.

C. Taxes And Economic Performance
Many have observed that Alabama’s particular combination of taxes appears not to be conducive to the economic performance that the state’s natural resources and location promise. One of the most thorough analyses in the literature on state economic growth is that of Thomas R. Plaut and Joseph E. Pluta (1983) who studied the relationship between measures of business climate and industrial growth. They found that traditional market factors such as energy cost and availability, labor cost and union activity, land cost and availability, and physical climate were most important in explaining economic growth. This is basically consistent with findings in more recent research (for example, Bradbury and Kodrzycki, 1997; Wasylenko, 1997). According to Plaut and Pluta, corporate profits taxes, personal income taxes, and sales taxes have little effect on state industrial growth. Property tax rates are positively and strongly related to state economic performance. The authors argue that this unexpected outcome is caused by the fact that: high property taxes are indicative of a locally-dominated state and local tax system. Their analysis revealed two distinctive state and local tax systems—a state-dominated tax system characterized by high corporate and personal income taxes and a locally-dominated tax system characterized by high property taxes. They hypothesize that industry is strongly attracted to those states with a locally-dominated tax system because firms are able to avoid high overall state taxes, pick a community with low local taxes, and/or choose a commu-

<table>
<thead>
<tr>
<th>Tax</th>
<th>All States</th>
<th>Alabama</th>
<th>Alabama Corrected for Income</th>
</tr>
</thead>
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<tr>
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<td>$2,276</td>
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</tr>
<tr>
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<tr>
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<tr>
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<td>171</td>
</tr>
<tr>
<td>Total</td>
<td>$7,743</td>
<td>$5,049</td>
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</tr>
</tbody>
</table>


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nity with the tax/expenditure system that best meets their needs. This is consistent with those who view property taxes as user fees with businesses and individuals shopping for the combination of tax levels and public services that fit their needs. Plaut and Pluta’s description of the relatively undesirable state-dominated tax system (high corporate and personal income taxes) does not fit Alabama, nor does their description of the more desirable locally-dominated tax system with high local property taxes and low state taxes.

As we noted earlier, local property tax increases must be approved by the legislature. As of this writing, Governor Don Siegelman has proposed a constitutional amendment (Senate Bill 83), described as Home Rule, that would remove the legislature from the local property tax increase process. A referendum in the localities would still be required for a property tax increase to take effect. The governor justifies this change as a way to enhance funding support for primary and secondary schools. Lieutenant Governor Steve Windom has taken the public stance of favoring this proposal even though this position makes little sense in terms of his conservative, business, and agricultural interest group supporters. This reform would make the state more closely resemble Plaut and Pluta’s model for economic growth.

It should be noted that Siegelman’s property tax proposal is incomplete without the elimination of current use, but with Alfa lobbyists already registering their concerns (i.e. opposition) regarding Siegelman’s reform, adding current use might make the mixture too politically volatile.

L. Jay Helms (1985) focused explicitly on the balance between taxes that depress economic performance and productive government expenditures that enhance it. Helms concluded that:

*State and local tax increases significantly retard economic growth when the revenue is used to fund transfer payments (e.g. unemployment compensation and welfare payments). However, when the revenue is used instead to finance improved public services (such as education, highways, and public health and safety) the favorable impact on location and production decisions . . . may more than counterbalance the disincentive effects of the associated taxes.*

Many other researchers arrive at similar conclusions (Mofidi and Stone, 1990; Eller and Wink, 1993; Bradbury and Kodrzycki, 1997; and Wasylenko, 1997). Ronald Fisher (1997) found that transportation (especially highways) expenditures are most likely to yield positive results, but the results vary with industries. Fisher found that public safety expenditures may also aid economic development, but with less reliability than transportation. Education expenditures are the least reliable way to achieve economic growth, according to Fisher. Some businesses have a greater need for it than others, and given the fact that to some degree education is an investment that yields results only years in the future and that the products of that investment (graduates) may exit the area, businesses may not be eager to make the investment. Stephen M. Miller and Frank S. Russek (1997) find that taxes have a negative effect on economic growth even if revenues finance education, and transportation and public safety (p. 10 of 22 Internet version; see also Bartik, 1994).
Michael Wasylenko (1997) joins many experts in recommending that state and local governments not try to implement seemingly clever strategies to stimulate economic growth but simply provide a stable tax structure with “low tax rates and broad tax bases” that can support basic well-managed public services. Part of Alabama’s tax code fits the Wasylenko formula but much does not. Sales and excise tax rates are high; the property tax system is inconsistently applied; and the corporate income tax system is highly politicized, and if the last five years is any indication, unstable. When equity considerations are added to the mix, the need for tax reform is clear.

III. CONSTITUTIONAL REFORM AND TAX REFORM

Equity and economic growth considerations taken together show the clearest need for reform of property and sales taxes. The last five years of apparently erratic and ad hoc legislative actions also show the need for clearer thought regarding the corporate profits tax. The Constitution is a barrier to the reform of the property tax. In particular, any differences in treatment of categories of property should be clearly justified, and the economically fanciful current use methodology should be junked. Changes in the personal income tax also require constitutional modifications.

In the past few years, comprehensive constitutional reform, via a constitutional convention, has been promoted by progressives and many newspapers. Recently, Governor Siegelman has added himself to the roles of constitutional convention advocates. Tax reform is one of their objectives. In our view, there is little chance that a constitutional convention will occur. If such a meeting occurs and creates a significantly changed constitution, there is little chance that such a document will be approved by voters. Virtually every change in the constitution is likely to produce opposition. All the changes added together would create overwhelming opposition. By far, the preferable mode of constitutional change for those interested primarily in tax reform is by amendments that target small parts of the constitution. Governor Siegelman’s property tax home rule proposal is an example.

IV. THE POLITICS OF TAX REFORM

The Big Mules and their conservative allies often observe that the phrase Tax Reform is nothing but code for Tax Increase. It is notable, however, that the Big Mule-conservative opponents to tax reform rarely mention tax equity. They appear comfortable with an inequitable and discriminatory status quo that also needs improvement in terms of economic growth considerations. Tax reform opponents concentrate most of their fire on the need for spending reform, but they produce few suggestions for how to end spending abuses in ways that would generate significant dollar savings.
Although advocates of tax reform usually couch their arguments in terms of revenue neutral reform (no net revenue increase), the authors have met few tax reform advocates who do not also favor tax increases. The dark suspicions of tax reform opponents are justified in this regard. And it is rare for tax reform advocates to address the issues of government waste and abuse that genuinely concern some reform opponents.

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www.constitutionalreform.org/symposium/taxes.html


CHAPTER TWO

Election Laws and Procedures

- Robert S. Montjoy

EXECUTIVE SUMMARY

While Alabama was spared the national scrutiny of Florida in the 2000 election, both external pressure and internal needs call for a thorough review of Alabama’s electoral system. Major Alabama issues include: (a) The decentralized structure of election administration; (b) Implementation of the state’s central voter registration file; (c) Voter identification at the polls; (d) Uniform procedures for dealing with voting errors; (e) New voting technologies; (f) Secret ballots for voters with disabilities; (g) Provisional voting; (h) Recruiting qualified poll workers; (i) Counting military and overseas absentee ballots; and (j) Procedures for post-election recounts and contests. Furthermore, the interdependent nature of the electoral system means that a change in one part can have unintended consequences in another. It is important for policy makers and the public to consider how the system, built through the accretion of laws to a basic structure that predates the state’s constitution, will serve the state in the 21st century.

I. INTRODUCTION

Alabamians may have felt relief, if not pride, on escaping the problems and intense national scrutiny that Florida and a few other states experienced following the Presidential election in November of 2000. No county in Alabama uses a punch card voting system. In fact, every county uses a marksense/optical scan system or direct recording electronic equipment, making our state one of the most advanced in the United States with respect to voting equipment. Perhaps Alabama will not have to deal with major elections issues in the foreseeable future.

Wrong! As this article is written, the Alabama legislature is grappling with bills to require voters to present identification at the polling place and to ease the process by which felons can have their voting rights restored. Congress is considering major election reform bills that would bring substantial change to the states. Even if the federal and state bills do not pass, they embody a number of issues that will be around for a long time. Finally, the Supreme Court’s reliance on the Equal Protection Clause of the U.S. Constitution in Bush v. Gore could affect the division of responsibilities between states and local jurisdictions in the administration of elections.
A danger in electoral reform is that the focus of discussion may be too narrowly cast. During 2001, a number of commissions undertook studies to remedy the problems in the U.S. electoral system that were revealed in Election 2000. They found that they had to confront fifty different state systems with many local variations. One result was a greater appreciation for the complexity and interdependence of the systems, with a recognition that a change in one part can have unanticipated consequences in another. The bills pending in Congress show a greater appreciation of this complexity than many of the initial proposals did.

Policy makers in Alabama would do well to follow suit. This state’s electoral system is the product of many laws passed at different times in response to different concerns throughout the history of this state. New mandates, especially external mandates such as the National Voter Registration Act of 1993, are sometimes simply promulgated without a thorough consideration of the impacts on existing institutions, laws, and procedures. Alabama is certainly not alone in this respect; many states have confusing and contradictory elements in their election systems. The effects, however, can be inconsistency, ineffectiveness, and inefficiency.

The pressures for electoral change are building throughout the United States. It is time for Alabama to take a comprehensive look at the statutes that frame its electoral system. The first step should be a review of current issues. It is vital for Alabama’s policy makers and the public to consider the values and tradeoffs inherent in different electoral arrangements.

**II. STRUCTURE**

Who makes the rules? Who carries them out? Who resolves controversies? As the Florida case demonstrated, the answer to these questions can determine not only who wins a particular election, but also how much confidence the public has in the system. In Alabama there are many decision makers because responsibility for the conduct of elections is decentralized and fragmented. Yet, the implications of Bush v. Gore and proposed federal legislation may be pressure for more central state oversight. Thus, the most fundamental issue may be the philosophical/political/practical question of who should be in charge.

**A. A Decentralized System**

Historically, election systems in the United States have been decentralized. One reason was the practical impossibility of organizing them in any other way in the early days of the Republic. When elections might last for several days as voters made their way to the county seat, states made laws and gave local jurisdictions considerable discretion in implementation. Undoubtedly, another reason was the fear of executive authority represented by the royal governors in colonial times. Americans have long feared the concentration of power, especially power over the electoral system, since it is the means by which the public grants and withholds governmental authority. Many governmental duties, including many elections responsibilities, were parceled out to local officials, who were, themselves, elected. And to discourage any one of them from
ensuring his/her own election by control of the system, many states created a system of checks and balances with divided local responsibilities among two or more officials.

Alabama follows this decentralized pattern. No single official in State or county government has administrative authority over the conduct of elections. At the state level, the Governor, Secretary of State, Director of Voter Registration, and Attorney General all have responsibilities. Elections for federal, state, and county offices are conducted by county government, where responsibilities are shared among the probate judge, the board of registrars, the sheriff, the circuit clerk, the county commission, and county party officials. In addition, the National Voter Registration Act of 1993 added a number of other agencies and institutions to the voter registration process. Municipal elections are conducted by municipal officials under a separate section of the Code.

Alabama’s fragmented system permits a good bit of variation in the local administration of elections. Proponents of decentralization point to the need to accommodate local circumstances, as well as the fear of concentrated power. Critics argue that such systems are inefficient and uncoordinated in a time when the task of election administration has become much more complicated as a result of new laws, court decisions, and the growth and increased mobility of the population.

B. Pressures for State Oversight
Two external factors have increased the pressure for State oversight. First, the United States Supreme Court relied on the Equal Protection Clause of the U.S. Constitution to stop the recount ordered by the Florida Supreme Court. The majority of the Justices reasoned that Florida officials were compelled to determine the intent of the voters by hand counting the ballots on a county-by-county basis. In the absence of statewide standards to guide their interpretations, the process failed to meet minimum standards of equal protection. The important point here is the Supreme Court’s use of the Equal Protection Clause. It is not clear how far this reasoning will extend, and the Court was careful to say that its opinion was limited to the case before it. Nevertheless, the application of the Equal Protection Clause could have profound consequences because it provides a basis for future suits in federal court challenging within-state variations that affect the opportunity of individuals to vote and have their votes counted.

As a consequence, several reform commissions advocated greater state responsibility as an alternative to federal control following the problems of Election 2000. The bills pending in Congress would significantly increase the federal role in elections1. They would also push the states to exercise enough control over local election administration to ensure compliance with minimum federal standards including: a statewide voter registration system, voter identification, in-precinct provisional ballots, uniform standards for determining what constitutes a vote, uniformed and overseas absentee voting, accessibility for voters with disabilities, and several standards for voting equipment. Alabama will need to consider how it is structured to respond.

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1 While they deal only with elections for federal office, as a practical matter they would affect all elections.
C. Rule-Making Authority

One mechanism that Alabama has used successfully with electronic voting is rule making. The detailed rules for the conduct of elections by paper ballot and by lever voting machine are imbedded in the Code of Alabama. When the legislature authorized the use of electronic voting equipment, it created the Alabama Electronic Voting Committee with the authority to make implementation rules provided that they were consistent with existing law. Because rules can be changed more easily than statutes, they are more likely to keep up with changes introduced by new technology or external mandates and to maintain internal consistency.

The Florida recount demonstrated the problems with subjective decisions made after the fact. The alternative is to try to define procedures as clearly as possible before an election. That is the reason why election statutes have traditionally been so detailed. But the accretion of detailed statutes builds up a large and often inconsistent body of law that is difficult to change with new circumstances. Rule-making allows greater responsiveness while retaining key elements of due process, including notification and appeal.

At present, rule-making authority extends only to the operation of electronic voting equipment. The rules for marksense ballots, however, are based on paper ballot laws dating back over a century. Rules for direct recording electronic equipment are based on laws that were added to the paper ballot statutes when lever machines were introduced. If new federal mandates should require significant changes in Alabama’s elections, it will be important to review and adjust the entire system so that the pieces will fit together. That would be an opportune time to review the statutory basis of the system and bring it up to date.

III. VOTERS

Determining who was qualified to vote in what election was once a fairly straightforward task in a largely rural country with an electorate restricted to male property owners. With the expansion of suffrage and the dramatic growth of cities in the 19th century, reports of voter fraud caught the public’s attention. Most states adopted registration systems that established both eligibility and residence prior to an election. North Dakota does not require voter registration, and four states allow registration on election day.

U.S. registration systems, unlike European systems, put the burden for initiative and action on the voter. Critics have argued that this feature is responsible for the much lower voting rate in the United States than in most industrial democracies. Certainly, restrictive registration rules and the discriminatory application of those rules in the South disfranchised most of the black population and many whites as well, creating a legacy of distrust that influences the discussion of election laws and procedures today. Efforts to make registration more convenient while still preventing fraud lie at the heart of several issues.
A. Central Voter File Maintenance
The current problem of maintaining an accurate voting list is not only putting people on the rolls correctly but also knowing when to take them off. Each county has a board of registrars that is responsible for additions, deletions, and corrections to the list of registered voters. In addition, an Alabama law passed in 1989 provides for a statewide voter list that can be used by local registrars to help keep the rolls clean by, for example, identifying and eliminating duplicate registrations. The central file maintenance system checks new applications against a statewide list to identify and resolve any duplicates. For example, when Baldwin County went on the system, over 4,000 duplicate registrations were eliminated statewide.

Creating and maintaining such a system requires money, staff, and the cooperative efforts of officials throughout the state. Alabama’s system was not fully funded when it was passed. The first counties went on in 1981 and the last four just came on board in the summer of 2002. This system has significantly improved voter file maintenance within Alabama. The next challenge will be to interact with other systems in order to detect changes of residence from Alabama to other states. While pending federal legislation addresses interstate interactivity, it remains to be seen what role the federal government will play in this process.

B. Voter Identification at the Polls
This is a contentious issue that has threatened to derail the electoral reform legislation pending in Congress. Many states require voters to present some form of identification at the polling place. To date, however, Alabama has not followed suit. Proponents of voter ID argue that it reduces fraud and error at the polling place. Opponents argue that it would be an unnecessary burden because the chief danger of fraud lies in absentee voting, not in the polling place. Opponents also fear selective enforcement and voter intimidation based on the legacy of past discrimination. In the past, for example, poll officials could ask prospective voters for poll tax receipts for the two previous years.

The National Voter Registration Act of 1993 added a new wrinkle to the issue by mandating that states accept registration by mail. Thus, a person could register by mail and then vote absentee without ever being seen by an election official. Bills pending in Congress would require that a person who registers by mail vote first at a polling place and present positive identification before voting absentee. Requiring identification from new voters who had registered by mail and not from others would be administratively complicated and could appear to some voters as selective enforcement.

C. Restoration of Voting Rights for Felons
Under Alabama law, felons may not vote unless they have their voting rights restored. Proposals that died in the last session of the state legislature would have eased the process of restoration. Felons who had completed all of their sentences, including probation time, could simply apply for registration as if they were new voters.
IV. VOTING EQUIPMENT
Election 2000 focused a great deal of attention on voting equipment, especially punch cards. Of the five basic types (i.e. paper, lever machines, punch cards, marksense/optical scan, and direct electronic vote recorders - DRE), punch cards have been the most widely used nationwide and are the type most associated with voting errors. Both the U.S. Senate and House bills provide funds to help states and localities upgrade their equipment.

In Alabama, as in most states, the county purchases voting equipment from a list approved by the state, and the cost is born entirely by the county. Most states have several different types of voting equipment in use at any given time. In Alabama, all counties had already moved to marksense or DRE equipment before the 2000 election; and, as a result, Alabama is under less pressure than many other states to change voting equipment.

Nevertheless, there are still several outstanding issues regarding voting equipment that should be considered. Accuracy is critical, and all of the equipment approved for use in Alabama will count accurately if it is used properly. The issue is really the human-machine interface. Since Election 2000, there has been a great deal of research on voting errors. Most of the studies have found that only punch cards stand out as having higher error rates; that even with punch cards the differences are small; and that devices to prevent and/or correct voting errors do make a difference. Cost is a major consideration for the local governments that have to purchase, operate, and maintain the voting equipment. It is one thing to proclaim as a matter of policy that each vote is important; it is another thing to take money from roads, health, or some other function to make a marginal difference in the probability of voting errors.

Closely related to the issue of cost is the issue of who pays. Local governments conduct elections for local, state, and federal offices and do so according to state and federal mandates, but most of them get no financial help from the other levels of government. The State of Alabama does share the cost of conducting elections other than purely local elections, but it does not share in the purchase of voting equipment. The federal government has not contributed to equipment or operating expenses, but pending legislation could change that situation.

Other issues related to voting equipment include: (a) Second chance voting; (b) Defining what constitutes a vote; (c) The adoption of new voting technologies; and (d) Providing methods for persons with disabilities to cast a secret ballot.

A. Second Chance Voting
Marksense voting equipment can be set to identify return ballots with over-votes and/or under-votes. This procedure is sometimes called Second Chance Voting. Marking too many candidates for a race produces an over-vote, and failing to record a mark for any candidate is an under-vote\(^2\). The equipment will not count votes in races with over-votes or under-votes, but it

\(^2\) Some under-votes are deliberate, but some result from improper marks, such as circling a block instead of filling it in.
will count the rest of the ballot. With second chance voting the voter is offered a choice of vot-
ing a new ballot or having the equipment process the ballot as originally marked. Two issues
arise from this error-catching mechanism.

First is the decision to use equipment that counts the ballots at the polling place (precinct coun-
ters), as most Alabama counties do, or equipment that counts ballots at a central location (cen-
tral counters), as eleven counties do. Where central counters are used, the voter is not present
to correct a ballot if an error is discovered. On the other hand, central counting systems tend to
be less expensive than precinct counters.

A second issue involves the use of the error catching mechanism with precinct counters. Almost no jurisdiction uses the mechanism to check votes in all races. The reason is that many
people do not vote in all races. Returning the ballot for every under-vote embarrasses the vot-
ers and clogs the voting process. Slow voting means long lines at the polls; more time in the
polling place; and for many people, a disincentive to vote. Nationwide, some jurisdictions with
precinct counters do not check ballots at all. Others check only for over-votes and completely
blank ballots. Alabama does not currently have a formal, state-wide policy on these issues, but
the Electronic Voting Committee has submitted revised rules of administrative procedure that
require the returning of ballots with over-votes only.

B. Determining What Constitutes a Vote
The telling issue in *Bush v. Gore* was that Florida did not have a statewide standard to guide its
recount. Instead, it used the *Intent of the Voter* standard. Paper, punch cards, and marksense
ballots are all susceptible to punches or stray marks, and even counties that use DRE systems
in the polling places must use one of these other ballots for mail-in absentee voting. If an error
is identified with the voter present, as noted above, there is no problem. If, however, the error
is discovered when the voter is no longer available, what standard should be used? Recognizing the impossibility of anticipating every possible error, many states, including Alabama, instruct the polling officials to attempt to determine the intent of the voter. The prob-
lem with this procedure is that officials must use subjective standards created after the fact.

In the aftermath of the Florida recount, reform commissions have recommended that all states
abandon the intent of the voter standard and adopt specific counting rules in advance of any
election. Alabama’s Electronic Voting Committee has submitted new rules to guide counting.

C. New Voting Technologies
The newest voting technology for in-precinct voting is direct recording electronic equipment.
This technology comes in two forms. Push button equipment presents a large face with buttons
over which is laid a ballot, and the voter sees the entire ballot at once. Montgomery, Mobile,
and DeKalb counties use this type. The other type is touch screen technology on which the bal-
lot is presented in a series of screens on a computer monitor, and the voter makes choices by
touching the screen in the appropriate spot. Both systems give voters a chance to confirm or
correct the choices they have made. Both store the votes electronically.
Advocates of these systems tout the prevention of over-votes and warnings of under-votes. Voters can correct their ballots in the privacy of the voting booth, thereby avoiding the possible embarrassment of a poll worker returning the ballot and the extra time required to obtain a new ballot in the case of second chance voting with marksense equipment. Each vote cast is definite; there can be no hanging chad or stray ballot marks. The newest DRE equipment can also accommodate special voter needs. For example, touch screen systems can be programmed in multiple languages. After the voter’s registration is confirmed he or she is given a card to insert in the voting equipment. Information on the card can tell the equipment which language to use in presenting the ballot.

Critics point to higher costs of this equipment, while advocates point out some offsetting savings on ballot printing. Critics also point out the lack of an independent audit trail. The equipment will print out a paper tape showing all of the votes it recorded, but this tape only confirms what the machine read. The voter has not seen or verified the paper record. Of course, the lever machines that many Alabama counties used for decades did not produce a paper trail either.

New equipment just coming on the market does offer voter confirmation of a paper printout. Some systems give the voter a printed ballot or receipt. Critics fear that voters’ taking ballot receipts from the polling place would create a new market for the buying and selling of votes. Other systems have techniques to prevent voters from taking the printed ballots with them. Election 2000 and federal legislation will likely give an impetus to further technological development.

D. Voters with Disabilities

Advocates for voters with disabilities seek equipment that allows virtually everyone to cast a secret ballot in the polling place. Currently in Alabama, a blind person would require assistance to vote. Some DRE equipment uses voice instructions to allow the blind to vote independently. Advocates argued vigorously for a federal requirement that voting equipment accommodate the needs of the disabled. Opponents of this requirement pointed to the cost and the newness of the technology. Compromise legislation pending in Congress would require at least one accessible machine in each polling place.

V. VOTING

A. Provisional Voting

Provisional voting addresses the problem of a prospective voter who appears in a polling place on election day only to find that her or his name is not on the list of registered voters. Generally speaking, the first response of poll officials is to seek information (e.g. the person is in the wrong polling place). But what should happen if the issue cannot be resolved at this level? Advocates argue for a provisional ballot that allows the person to vote but which can be withdrawn if the person’s eligibility cannot be established. Bills pending in Congress would require provisional balloting.
Alabama has long had a procedure whereby a person whose registration was in doubt could still vote. It is called the challenged ballot and it comes from the section of the Code that was written for paper ballots. A duly selected polling official serves as the challenger. The voter must sign appropriate oaths attesting to his or her identity and qualification to vote in that precinct. Challenged ballots are cast on paper and counted but are kept separate. In the event of a contest, a formal legal proceeding challenging the result of an election, any votes later proven to be illegal could, theoretically, be identified and removed. The process would involve removing a seal on the ballot covering a number that can be linked to the voter’s name on the poll list. All challenged ballots would have to be unsealed in order to identify the ones needing removal. This is a cumbersome process that does not appear to have been used in many years.

The provisional ballot procedure envisioned in the federal legislation would reverse the process and require election officials to ascertain the voter’s eligibility before counting the ballot. All provisional voters would have to be checked whereas in Alabama challenged ballots are checked only in the event of a contest. On the other hand, this process could maintain ballot secrecy through a double envelope system such as is used with absentee ballots. Under the federal proposal, provisional voters would have to be notified regarding the disposition of their ballots. This process works to the benefit of the voter but places a greater burden of election officials. Implementation of the proposed federal requirement would place a premium on maintaining current and accurate voter roles so that eligibility could be quickly ascertained.

B. Poll workers

The experience that any voter has in a polling place depends largely on the quality of the poll workers. Advocates have stressed the need for better qualified poll workers. However, a majority of election officials responding to a survey by the U.S. General Accounting Office reported significant difficulty in recruiting an adequate number of poll workers who could be trained. Elections are held on normal workdays and the basic pay for poll workers is generally low for a day that often lasts more than ten hours. Thus, the pool of candidates is limited in many cases. Elections officials trying to recruit an adequate number typically do not have many options.

Some states and local jurisdictions have developed programs to reduce this problem. One that has been successful in California is Adopt a Poll, patterned after Adopt a Mile. Businesses make employees available for training and service while still drawing company pay. Another is the integration of high school students who meet certain qualifications into the team of officials at each polling place. Reports indicate improved performance and a valuable experience for the students. Some observers advocate a mix of traditional poll workers from the precinct with others drawn from non-traditional sources.

The ability of Alabama’s appointing boards to adopt such innovations is limited by current law. They must choose from lists submitted by political parties and can choose other workers only when the parties fail to provide enough names. Further, poll workers must be eligible voters in the precinct where they serve. Thus, many high school students and prospective workers who live elsewhere are eliminated.
C. Military and Overseas Absentee Voting

In Election 2000, a number of military and overseas ballots were threatened with disqualification for failure to meet state deadlines. A number of states, including Alabama, require these ballots to be postmarked on or before election day. However, some military ballots arrived without postmarks, and some ballots arrived with unintelligible postmarks. In these cases, a strict application of the law would exclude those votes, even though the voters had complied with the law.

Other states simply require that the ballot arrive by a certain date and time, such as 5:00 p.m. on the day before the election. This is Alabama’s rule for hand-delivered absentee ballots. It is the voter’s responsibility to send the ballot in time to meet the deadline. This system, too, is subject to the vagaries of third parties. If there is an unusual delay in the mail, the voter suffers. Advocates of this system argue that at least the rules are clear and there are no judgments after the fact. The Department of Defense has undertaken several programs to facilitate the transmission of ballots. Meanwhile, states must decide what standard to use for the timely arrival of absentee votes.

VI. POST ELECTION PROCEDURES

The Florida case demonstrated the importance of post election procedures, and Alabama would do well to examine its rules in this regard. Most states make a distinction between recounts and contests and have separate procedures for conducting them. A recount is an administrative procedure to discover and correct errors in counting. A contest is a judicial procedure to address any flaws that could alter the outcome of the election. A recount could lead to a contest, but the goal is to finish the administrative procedure first before going into court. Florida underscored the difficulty of keeping the two distinct in the absence of clear standards.

Alabama statutes mingle recounts and contest without much clarity on either procedure. The Electronic Voting Committee has adopted rules for the recounting of electronic ballots, but these are constrained by the applicable statutes for paper ballots and machines, and have not been able to address some issues. For example, if a recount alters the result of an election, someone must still file a contest in order to get the election overturned.

The manner in which recounts are initiated and conducted deserves serious consideration. Some states have automatic recounts at public expense if the results fall within a certain margin, usually less than one percent. The rationale is that the public has an interest in the correct outcome and should be assured that the results are accurate. In addition, a candidate, or other person with standing, as defined by law, may request a recount of specified precincts regardless of the vote margin if he or she provides security for the cost of the procedure. Typically, losing candidates pick precincts in which they expect the greatest gain, and then the winning candidates request recounts in their favored areas. This Cherry Picking went on in Florida and contributed to the length and indecision of the process.
Alabama does not have an automatic recount procedure. A party with *Standing to Contest an Election* may request a recount of any or all precincts from the canvassing authority, but the requesting party must be prepared to pay for the recount. Rules adopted by the Electronic Voting Committee and awaiting pre-clearance from the U.S. Department of Justice stipulate machine recounts of all ballots that were read by the machines originally and hand recounts of ballots rejected by the machines in either the original count or in the recount.

While the Electronic Voting Committee has made progress on this matter, it is constrained by the existing code. For example, the law specifies the acceptable grounds for an election contest in order to prevent frivolous legal actions and to ensure that the contestant gives due notice to opposing parties. However, simple counting error, the normal basis for a recount, is included in the grounds for a contest in primary elections but not in general elections. This portion of the Code, especially, needs a careful review.

### VII. CONCLUSION

Alabama will almost certainly need to confront major election issues between 2002 and 2004. Because tinkering with electoral machinery is risky business for elected officials, the tendency here and in most states is to proceed incrementally on an issue-by-issue basis. In this case, however, the number and magnitude of issues call for a more comprehensive review of the system. While it is difficult to muster the political will to deal with such matters outside of a crisis, Election 2000 highlighted the high cost of avoidance.

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CHAPTER THREE

Alabama’s Ethics Law: Closing the Loopholes

- Melvin G. Cooper

EXECUTIVE SUMMARY

This chapter provides the historical background and legislative history of the Alabama Ethics Law. It outlines the specific requirements of the Law and discusses necessary modifications and improvements to the Law, as well as its probable future. Although the Alabama Ethics Law is widely considered one of the strongest in the nation and has improved the level of political behavior in the State, there are some omissions in the Law that should be addressed as well as some loopholes that need to be closed.

The author, a former executive director of the Alabama Ethics Commission, details 18 recommendations for additions or modifications to the current law. He also predicts that the Law will survive because it has now become institutionalized and legitimized within the State. In short, the Alabama Ethics Law is now and, it will continue to remain, a political reality and fact of political life in the State.

I. HISTORICAL DEVELOPMENT OF THE ALABAMA ETHICS LAW

The years between 1967 and 1973 marked a dark period in Alabama political history. During that short span of six years, the sitting Attorney General, the Director of the State Docks, Chairman of the Public Service Commission, a member of the Alabama Senate, and several Superintendents of Education in Alabama counties were indicted on various corruption charges, or with creating an atmosphere of public distrust in government.

The initial effort to stem this tide of distrust was made by Representative Walker Hobbie, Jr. in 1967 when he announced that he would introduce ethics legislation in the next regular session of the Legislature. Although he failed, Senator George Bailes, having seen the media reaction, pre-filed an ethics law himself. This bill also died a lingering death in committee.
Representative Hobbie returned to the fray and filed his ethics bill with the Clerk of the House in 1971. His action was an outgrowth of a scandal involving Senator V. G. McCarley of Prattville, Alabama, who was expelled from the Senate for conduct incompatible with his duty. The actual charge was extortion from officials of the Fraternal Order of Police in connection with legislation supported by that group. Despite this scandal, Representative Hobbie’s bill failed to gain passage.

Following the death of Governor Lurleen Wallace in May, 1968, Governor Albert P. Brewer, sensing a surge of outrage at the corruption scandals, issued Executive Order 15 in September, 1969. This order established an Ethics Commission for the purpose of drafting standards of ethics conduct for persons in the executive branch of government. After Governor Brewer’s defeat in the gubernatorial elections of 1970, newly elected Governor George Wallace extended the tenure of the Ethics Commissioners, and they continued their work.

In addition to establishing the Ethics Commission, Executive Order 15 mandated that the members of this first commission accomplish the following:

1. Administer and enforce the executive order and carry out any rules or regulations included in the order;
2. Investigate any complaint of unethical activity filed in writing by any qualified elector of the state; and
3. Conduct investigations of facts, conditions and practices that would serve as a basis for recommending future ethics legislation.

The commissioners disregarded the first two duties, and concentrated on the third by promptly appointing five study groups. One group was to formulate ethics standards for legislators; the second group would work on standards for officials and employees of the executive branch; the third group, state regulatory agencies; the fourth group, lobbyists; and the fifth group, the judiciary. To the credit of the members of these groups, many of their recommendations were included in the 1973 Alabama Ethics Law.

The reports of the various study groups were released and served to spur the media, Common Cause (i.e. a citizens’ lobbying organization), and public-minded citizens to pressure the legislature for passage of a strong ethics code for public officials.

Bowing to intense pressure, Senator George Bailes introduced Senate Bill Number 1 in May 1973. The bill passed with only two dissenting votes, and ironically, one of the dissenting senators remarked that he voted against the bill because it was not strong enough.

There was a different story in the House of Representatives. The debate was, to say the least, vigorous. More than a dozen amendments were attached to the Senate version; some so tough that it was apparent they were meant to kill the bill. Most political observers were astonished to watch the Senators vote for the amended bill in the early hours of September 14, 1973, the final day of the legislative session, following passage by the House. And so, Act Number 1056, a law
establishing a code of ethics for public officials and public employees was sent to the governor for his veto. It was a legislative fluke of the first magnitude, but both House and Senate members were convinced that the act was so onerous that the Governor would never sign it into law. They were due to be disappointed.

In a private conversation with the author in 1980, Governor Wallace related that he arrived at his office in the Capitol very early on the morning of September 15, 1973. He immediately signed the bill so that when a delegation of legislators arrived to urge him to exercise his veto power, he was able to assure them that they were now bound to abide by standards of ethical conduct embodied in Act 1056. To their chagrin, they had forgotten that the Governor had mentioned in a speech delivered during the summer of 1973 that he was so certain the Legislature would not pass an ethics law, he would sign Senate Bill Number 1 without reading the contents, if by some miracle, it did pass both chambers. He laughingly told this author that he had never read the Ethics Law.

The 1973 Law was, by far, the strongest law in the nation at that time. Then too, it was passed as the Watergate Scandal began to unfold in Washington, D. C. The scandals in Alabama, combined with a steady decline in the confidence of Americans in government at every level as a result of Watergate, focused national attention on the Alabama Law. While weak in several areas, it was tough in other sections. Within days, various groups began seeking legal loopholes to avoid complying with the Law.

Weaknesses in the 1973 Law included: an absence of any funding provisions for the Commission; a lack of subpoena power (which persists to the present day); repeated references to State officials and State employees, while in other sections, it appears that the Law was designed to cover not only State officials and employees, but officials and employees at every level of government (i.e. state, county and municipal).

Strong points in the Law included the prohibition against using a public office for private financial gain; the giving of anything of value to public officials and employees; restrictions on board members; prohibiting the use of confidential information; restricting officials from representing other agencies of government; the authority to issue binding advisory opinions; a penalty of ten years in prison and/or a $10,000 fine for violations; financial disclosure; and lobbyist and principal reporting.

Probably the most despised sections were the requirements that: officials, including members of the legislature, stop representing clients before governmental agencies; lawyer-legislators disclosing information regarding their clients; and board members required to file financial disclosure. This latter requirement sent shock waves throughout every city and county in Alabama because of the multiplicity of board, commission, committee, and authority members, often serving in unpaid positions, throughout the state. Initially, this provision caused major problems and formed the basis for one of many lawsuits filed against the Ethics Commission within the first two months of operation.
Additionally, one section which brought prompt legal action from newspapers attacked the constitutionality of Section 14 of the Law which prohibited any member of the news media from interviewing any public official or employee or attending legislative sessions without first receiving a pass from the Ethics Commission. The Federal District Court struck down this provision.

Lawsuits were filed by the Alabama League of Municipalities, the Board of Commissioners of the State Bar, the Board of Trustees of the University of Alabama, the Association of County Commissioners, and the Alabama State Employees Association. The usual basis for these legal actions was simply that the Law was unconstitutional, and plaintiffs should be exempted from the financial disclosure provisions of the law. Injunctions were issued against the Commission, and it was several months before Judge Eugene Carter of the Circuit Court of Montgomery County ruled that the Law and its provisions were constitutional.

The next biennial session of the Alabama Legislature took place in 1975. The first bill to be introduced was a bill to repeal Act Number 1056. Again, the media, Common Cause, League of Women Voters, and other groups applied heavy pressure on members of the legislature. The result was something entitled: An Act to Amend and Reenact the Code of Ethics for Public Officials, Employees, etc. Experts in legislative drafting had never heard of reenacting an act, but since the word amend was also part of the title, no further notice was taken of the unusual nomenclature.

The 1975 Ethics Law sought first to remove all five of the first Commission members, but this effort failed. Although the 1973 Law was weakened considerably in 1975, it still had much to commend it; albeit, badly in need of specific amendments to plug additional loopholes. The reenacted law did clearly define the meaning of Officials since legislators were angered by the legal efforts of city and county officials, employees and board members to remove themselves from the provisions of the Law.

The Legislators also weakened the Law to forestall wholesale resignations of city and county board members, and they decided to continue to allow lobbyists and other groups to provide food, drink and other things of value by exempting expenses associated with social occasions or social entertainment.

Each session of the legislature, until 1985, witnessed some effort to weaken or destroy completely the Alabama Ethics Law. Efforts to disband the Commission were made by the Sunset Committee of the Legislature - a committee, which was charged with eliminating state agencies that, in the opinion of the committee members, were no longer serving a public function. These efforts also failed; but ten years passed before Legislators addressed the Ethics Law again and, to their credit, succeeded in adding strong, much-needed, amendments.
II. THE PRESENT ETHICS LAW

While the commendatory actions of the 1995 Regular Session of the Alabama Legislature did not erase the repeated former efforts to weaken the Ethics Law, the changes made were remarkable indeed. These changes were due primarily to pressure from the media, fallout from the conviction of former Governor Guy Hunt on ethics charges, and the departure of staff members who had incurred the displeasure of numerous legislators, led by the then-Speaker of the House of Representatives. As a result, the present Ethics Law can be summarized as follows:

1. It is part of the **Code of Alabama 1975** in Chapter 25 of Title 36, Sections 1 through 30.

2. Legislators traditionally enact laws establishing new regulatory agencies in broad, general and, oftentimes, even in vague terms. Such is the case with the wording of the *Alabama Ethics Law*. However, the flip side of this coin is that the wording in the Law allows for considerable discretionary powers being granted to the Commission members and the staff of the agency. Again, this has proven to be the case with the current law, particularly in the area of allowing the Commission to issue its own rules and regulations and determining whether a violation of the law is major or minor.

3. **Title 36-25-1** contains an extensive list of definitions arranged alphabetically. By and large, these are excellent while a few are superfluous, such as the definition of a day as calendar day.

4. **Title 36-25-2** is, in effect, the preamble. It outlines the purpose of the law, together with some philosophical statements regarding the necessity for ethical conduct in the halls of government.

5. **Title 36-25-3** establishes a five member Ethics Commission with the qualifications for membership being that each member must be: *fair, equitable, of high moral character and ability*. One other qualification is that one member must be an African-American. In this connection, no other Alabama state board, commission, committee, or authority requires that one or more members be of a specific race.

   This section also establishes tenure, filling of vacancies, compensation, prohibition against any political activity, appointment authority, duties of the director and qualifications for investigative staff employees.

6. **Title 36-25-4** enumerates the duties of the Commission and staff to include: prescribing reporting forms, reporting guidelines, filing of reports, allowing review of the reports, and preservation of the forms sent to the Commission.
This Section requires that investigations will be made regarding any omissions in the reports and any failure to file the reports in a timely fashion.

Commission members are authorized to issue advisory opinions, which serve to protect the public official, or employee as well as having the force and effect of law, unless challenged in a court of competent jurisdiction.

Educational programs may be conducted for candidates, officials, employees and the general public under this section.

The Commission may issue its own rules and regulations consistent with the requirements of the **Alabama Administrative Procedures Act**.

A rather detailed description of the investigative process to be conducted by the Commission staff is included in this section. Protections for the official or employee against whom a complaint has been filed are included. The final step in the process includes referral of a possible violation to the local district attorney or to the Attorney General of Alabama.

7. At this juncture in the Law, **Title 36-25-5**, the ethical standards of conduct begin. The first standard is consistent with the wording of a similar standard of ethical conduct found in all ethics laws of the various states having such codes of behavior. Simply put, it is unethical for any public official or public employee to use his or her official position or office to obtain personal gain for himself or herself, any member of their family, or any business with which they may be associated, unless permitted to do so by law.

The first specific reference to members of the legislature is made in this section, by prohibiting a legislator from voting on any legislation which he or she knows or should have known is or would create a conflict of interest.

Officials and employees must not use public property including equipment, facilities, time, materials, human labor or other property for their private benefit or for the benefit of their business or political campaign.

The first specific reference to persons not in government prohibits them from soliciting officials and employees to use government-owned equipment, facilities, times, materials, or human labor to benefit that person or their business.

A public official or employee whose official duties include inspection, regulation or supervision may not solicit a thing of value from any subordinate, person, or business.
8. *Title 36-25-6* makes it unethical for contributions given to an office holder, candidate or moneys contributed to an inaugural or transitional fund to be converted to personal use.

9. *Title 36-25-7* contains two sections that affect persons outside of government for which they can be held accountable for a violation of the Ethics Law. The first section creates an unethical situation if a person offers or gives to an official, employee or member of their family a thing of value for the purpose of influencing the official or employee’s official action.

The second section is somewhat duplicative by prohibiting any person from offering or giving to a family member of the official or employee a thing of value for the purpose of influencing official action.

The remaining two sections of this Chapter reverse the prohibition by forbidding the official or employee from soliciting or receiving a thing of value for himself or herself or family member for the purpose of influencing official action.

The final section prohibits an official or employee from receiving any money for advice or assistance on matters concerning the legislature or from lobbying a legislative body, executive department or any regulatory board or other body of which he or she is a member. Since this section could conceivably prevent a department head from appearing before a legislative committee, a caveat is included which allows officials or employees to make such an appearance in the performance of their official duties or responsibilities.

10. *Title 36-25-8* is another section which is included in the ethics or conflict-of-interest laws in the several states. Quite appropriately, this section makes it unethical for public officials or employees, present or past, to use or disclose confidential information gained in their present or past position in government which would result in financial gain for himself or herself, family member, another person or any business.

11. Members of all regulatory boards at every level of government are brought under the purview of the Ethics Law in *Title 36-25-9*. Persons must not serve on a regulatory board that regulates a business with which they are associated. However, pressure from local, county, and municipal officials resulted in allowing persons in real estate, banking or professional fields to serve on boards that do impact on their private interests.

This chapter does prohibit all board members from voting or participating in matters in which they or their family members had any financial interest.
12. *Title 36-25-10* requires disclosure of any representation by a public official, employee, or family member before any governmental board or executive department. This chapter also contains the second specific reference to members of the legislature by prohibiting them from representing any person or business before the Public Service Commission or State Board of Adjustment.

13. Public officials, employees and family members may contract with governmental agencies and departments at every level of government under *Title 36-25-11*, provided the contract is secured through competitive bidding and a copy of the contract is filed with the Ethics Commission.

14. Persons outside of government are again the subjects of a provision of the Ethics Law in *Title 36-25-12*. It is unethical for them to offer or give to a regulatory board member a thing of value if the board regulates their own business. In turn, the regulatory board members and board personnel must not solicit or accept a thing of value.

15. *Title 36-25-13* is the so-called *Revolving Door* standard of conduct. Former officials and employees must not serve as a lobbyist or represent clients before their former department or agency for a two-year period following their departure from public service.

16. Chapter 25 of Title 36 is the lengthiest chapter in the Ethics Law. It outlines who must file an annual *Statement of Economic Interest*, as well as the information to be reported on the Statement.

17. *Title 36-25-15* extends the financial disclosure requirements to candidates for public office and adds a punitive statement that failure to file the report serves to remove the candidate’s name from the ballot.

18. Citizens who represent persons for a fee before regulatory boards or executive departments or who contract with governmental agencies must, under *Title 36-25-16*, disclose to the Ethics Commission if certain relatives are members of the board, employees or executive branch officials or employees.

19. Governmental department and agency heads are mandated in *Title 36-25-17* to cooperate with the Ethics Commission in any investigation, and report to the Ethics Commission any matters that may constitute a violation of the law.

20. *Title 36-25-18, 19 and 20* pertain to lobbyists and principals of lobbyists. These sections outline lobbyist and principal reporting procedures, filing dates, information required and lobbyist termination information on forms provided by the Ethics Commission.
21. All lobbyist and principal reports are public records and open to public inspection under Title 36-25-21.

22. Title 36-25-22 ensures that persons, particularly attorneys, who perform professional services by drafting bills, advising clients or rendering opinions of legislation are removed from the purview of the lobbyist provisions of the Ethics law.

23. Floor privileges are denied to former members of the House and Senate in Title 36-25-23. Additionally, public officials and employees must not solicit lobbyists for anything of value other than a campaign contribution. Also, a lobbyist or principal of a lobbyist may not receive compensation that is contingent on the passage or defeat of any legislation.

24. Title 36-25-24 is commonly referred to as the Whistleblower Protection provisions of the Ethics Law. Supervisors may not punish a subordinate for filing a complaint with the Ethics Commission in any manner.

25. Title 36-25-25 was repealed and replaced by Title 36-25-26 that outlines the offense of false reporting. Anyone, inside or outside of government must not knowingly or willfully make false statements, misrepresentations or submit false documentation to legislators or persons in the executive branch.

26. The penalties for violating the Ethics Law are listed in Title 36-25-27.

27. Title 36-25-28 emphasizes that the Ethics Law is not to be construed so as to deny or deprive a citizen of their constitutional right to communicate with members of the legislature.

28. Title 36-25-29 provides for funding the work of the Ethics Commission.

29. The final section, 36-25-30, places the Ethics Law alongside other laws in the Code of Alabama, which deal with ethical conduct.

III. STRENGTHS AND RECOMMENDATIONS
Although the Center for Public Integrity, a watchdog agency in Washington, D. C., has rated the Alabama Ethics Law as one of the strongest in the nation, there are omissions to the Law that should be addressed, and there are some loopholes that should be closed. The Alabama Ethics Law needs fine tuning in several areas, and as a Birmingham News editorial stated recently:
(The Law) could use some focused tightening to make sure that...those covered by the law don’t stray into areas they shouldn’t.

A. Strengths of the Alabama Ethics Law
The basis for listing the Alabama Ethics Law as a strong law should be pointed out before listing the recommendations for change. The notable strengths of Alabama’s Ethics Law include:

- The definitions are excellent and have been used as a model by other states;
- The Commission has wide-ranging investigative authority;
- The Commission has considerable discretionary authority in deciding on enforcement procedures and appropriate penalties for violations of the ethical standards of conduct;
- The membership of the Commission has near total independence, except for the requirement that the Alabama Senate concur in nominations of prospective Commissioners. Across the years, the members of the Commission have been drawn from a cross-section of Alabama citizens and highly respected individuals; and
- The Legislature has provided sufficient funding for the Commission during the past six years.

B. Recommendations for Changes in the Alabama Ethics Law
The commendable strengths of the Alabama Ethics Law should not imply that we have a perfect document. There are a number of changes in the Law that should be considered and a number of loopholes that should be closed.

1. The financial disclosure requirements as shown in Title 36-25-14 of the Law are at best, vague. At worst, they disclose little or nothing that, upon close examination, would highlight an immediate or prospective conflict of interests. The Legislature should refine the disclosure requirements by requiring specific monetary amounts, instead of, as is now the case, allowing the filer to merely disclose income in broad categories.

In this same vein, the Law could be amended to allow a reporting person to merely file a certified copy of his or her federal and state income tax forms in place of the Statement of Economic Interests.

Currently, a reporting person is allowed ninety days to amend the Statement of Economic Interests. This period should be reduced to thirty days.

2. The present law in Section 36-25-1(31)3 allows lobbyists to spend up to $250 each day to entertain public officials, public employees and members of their household. This figure is entirely too high, and the Law should be amended to reflect a figure of fifty dollars.
3. A glaring omission in the Law which ties in with the section cited above is that a lobbyist may spend any amount each day, week, month or year to entertain a public official, public employee or household members so long as he or she reports expenditures beyond $250. A definite limit on the total amount spent on entertainment of these individuals by lobbyists during a calendar year should be included in the Law.

4. Regardless of the professionalism of the investigative staff members, the staff is severely handicapped in conducting an inquiry into a possible violation of the Law by not having subpoena power. The investigators presently employed by the Commission have all the authority and training of other law enforcement officers but lack the essential tool of subpoena. The Legislature in past years has awarded subpoena power to investigators in other state agencies and departments, but has been extremely reluctant to give this same power to the Ethics Commission. This situation should be changed.

5. The present Sunshine or Open Meetings Law shown in the Code of Alabama 1975 requires that persons, including members of the media, be admitted to all meetings held by public bodies except where the character and reputation of a named individual is the subject being discussed or the attorney-client relationship could be breached. The Ethics Law should be amended to move the present open meetings law into the code of ethics so that the Commission can deal with public officials who fail to allow the general public and media into their meetings.

6. The Ethics Law should be amended to prohibit any member of the legislature who has custody of public funds slated for disbursement to any individual or organization, public or private, from retaining such public funds in his or her possession for a period in excess of five working days.

7. Title 36-25-3 of the Ethics Law should be amended to provide for the appointing authority; namely, the governor, lieutenant governor and speaker of the House of Representatives to be placed on a rotational basis in nominating new members for vacancies on the Commission. One vacancy occurs each year, and experience has shown that where the three appointing officials are members of different political parties, subsequent disagreements may delay appointments for lengthy periods of time.

8. The Law, in connection with this same section, should be amended to provide that in the event the Senate fails to confirm a nominee to the Commission during the first month of the regular session of the legislature, then the nominee is deemed to be qualified to begin immediate service on the Commission.
9. Since the foregoing section now requires the presence of a Black citizen on the Ethics Commission, the Law should be amended to provide that a woman shall serve on the Commission as well. The 2000 Census shows that African-Americans comprise 24% of the population of Alabama, while women comprise 51%.

10. As the Law is presently written, the members of the Ethics Commission may file a complaint under Title 36-25-4(a)(11)(c) only if five commissioners unanimously concur. This section should be amended to allow for a majority to agree on the filing of a complaint in the name of the Commission, or to allow for a unanimous vote by the number of Commissioners then serving. If there is a vacant position on the Commission, the remaining four Commissioners are powerless to file a complaint in their own right.

11. The Ethics Law should be amended to remove any ambiguity between the definition of Conflict of Interests as shown in Title 36-25-1(8), and the definition of Conflict of Interests as shown in Title 36-25-5(f).

12. The Ethics Law should be amended to bar any lobbyist convicted of a felony arising from a situation involving any public official, public employee, agency or department of state, county or municipal government from continuing to pursue his or her profession.

13. The requirement in 36-25-4(a)(11)(c) of the Ethics Law which states: The complaint may only be filed by a person who has or persons who have actual knowledge of the allegations containing in the complaint should either be removed or a definition of what constitutes actual knowledge placed in Title 36-25-1 of the Law. This requirement has the potential for a chilling effect on individuals who know of a possible violation but do not have actual knowledge of all the facts involved.

14. It would contribute to easier understanding of several ethical standards if all definitions were included in Title 36-25-1, Definitions. For example, the Law should be amended to place the definition of personal gain, which is now found in Title 36-25-5 in 36-25-1, where all other definitions are shown.

15. In Title 36-25-10, Legislators are prohibited from representing clients for a fee or other compensation before the Public Service Commission or State Board of Adjustment. This section should be amended to further prohibit such representation before the Board of Pardons and Paroles, the State Banking Commission, the Insurance Department, the Certificate of Need Board, the Department of Environmental Management, the State Personnel Board, the Department of Revenue, and the Alcoholic Beverage Control Board.
16. *Title 36-25-16* now requires only *citizens* of Alabama or any *business with which he or she is associated* who represent clients before a regulatory body or executive branch departments to report to the commission the names of any family members who are members or employees of that regulatory board or executive department. This section should be amended to require disclosure from persons who are non-citizens but represent clients before regulatory boards or executive departments in Alabama to report family members serving or employed on these boards as well.

17. *Title 36-35-19*, which pertains to reports filed quarterly by lobbyists, should be amended to require political action committees (PACs) to report any contributions from other PACs. These are known as *PAC-to-PAC* contributions. PACs normally include the lobbyist or lobbyists in their membership and this information would be readily available to the lobbyist or lobbyists.

18. In light of recent revelations, a private citizen or citizens or their businesses who receive any government awards, grants or contracts to be paid from State funds or federal funds funneled through the state, should be required to disclose any close personal or political connections with any high-ranking executive department official or anyone in the legislative or judicial branches who is in a position to assist the person or persons to obtain the awards, grants or contracts.

With the exception of the legislative session of 1995, members of the Alabama House of Representatives and Senate have been reluctant to strengthen the Ethics Law. A willingness to greatly improve the Law during the 1995 session may well have stemmed from the impact of a sitting governor’s conviction for violating the law and a wholesale turnover in the ranks of the Commission’s employees. Whatever the reasons, the impetus for improving the present ethics law should be based on a desire on the part of legislators to ensure that all loopholes have been closed and unethical activity curtailed further in public service.

### IV. THE FUTURE OF THE ALABAMA ETHICS LAW

James Russell Lowell once remarked, “Do not prophesy about the future - unless you know.” However, it is possible to look back on the events surrounding the Alabama Ethics Law and go beyond educated guesses as to the future of the Law and the Commission.

- First, the Law will survive. The majority of the states now have some form of ethics laws with the Alabama Law being in the top five ethics codes in the nation. In a state that is rarely rated highly in any area of public policy, any attempt to weaken the Alabama Law would be met by heavy opposition from the media and from the citizens of this state.
• Second, the only saint which adherents to the Baptist faith claim is St. Status Quo, and this same saint now protects the Ethics Law and the work of the Commission.

Legislators, public officials, public employees, board members and judges seemingly are satisfied with the present law and see little reason to overturn any of its provisions either by legislation or judicial decision.

• Third, it is a trite prophesy, but the Ethics Law will not eliminate all unethical activity on the part of public officials and employees in the future. Human nature and the temptations present in government being what they are, there will always be some official or employee who simply will not conform to the precept that: public office is a public trust.

• Fourth, if there is any success in obtaining beneficial legislative changes as recommended previously, the Commission should push for these changes during an election year. An incumbent legislator or incumbent governor seeking reelection cannot be viewed by the voters as opposing honesty, ethics and integrity in the halls of government.

• Fifth, under the excellent leadership of Mr. James L. Sumner, Jr., Executive Director of the Ethics Commission, programs to acquaint not only officials and employees, but private citizens as well, with the standards of ethical conduct embodied in the law will intensify in the future. With knowledge of the Law by these individuals as well as candidates for public office, compliance will increase.

• Sixth, the future operation of the Law will be seen as beneficial to the citizenry if the Commission stays completely free of politics. Much damage can be done to the work of the Commission if it appears that the Commissioners or the staff favor high ranking officials and employees while guillotining the mayor of a small town or a board member in an Alabama County whose ethical lapse is far below that of the well-known politician.

Any political activity by the Commissioners or the staff will be immediately suspect; thus, Commissioners and staff members must be made fully aware of the prohibition against any political activity other than the casting of their vote in local, state and national elections.

• Seventh, the current absence of any legal challenges to the Ethics Law will continue in the future. A brief review of the court cases involving provisions of the Ethics Law clearly shows that almost every issue that could be raised has been raised. As William Stephens, former legal counsel to the Commission, has written in his excellent *Cumberland Law Review* article: No law in the history of Alabama has been challenged so many times by so many people in the courts of this state as has the Alabama Ethics Law. In the future, the Commission attorney can enter court to face any opposition to the Law with a plethora of previous affirmative decisions.
Finally, the Alabama Ethics Law will continue to impact government in Alabama well into the future. It is now imbedded in government. It may be grudgingly accepted by some officials and employees, but it is accepted nevertheless; it will continue to be a fact of political life.

Melvin G. Cooper served as the Executive Director of the Alabama Ethics Commission from 1974 to 1994. Prior to this position, he had a distinguished career in the U.S. Air Force, including service as the Presidential and Congressional Liaison Officer for the Office of the Secretary of the Air Force, and as Director of the Office of Curriculum for the Air Force ROTC programs headquartered at Maxwell AFB. Mr. Cooper earned a J.D. from the University of Tennessee, an M.P.A. from George Washington University, and a Masters Degree in Political Science from West Virginia University. From 1994 to present, Mr. Cooper has served as Adjunct Professor of Government, Ethics and Administrative Law at Auburn University Montgomery and Troy State University in Montgomery.
PART II: Local Governmental Issues

CHAPTER FOUR

The Case for Planning and Zoning in Unincorporated Areas of Alabama

- O. H. “Buddy” Sharpless

EXECUTIVE SUMMARY

Much of the growth and development occurring in Alabama occurs in or within the jurisdictions of incorporated municipalities. Much growth and development, however, occurs in unincorporated areas of the State. Mercedes, Honda, and the future Hyundai assembly plants, for example, are all located in rural areas; much of the growth and development associated with these facilities has and will be in unincorporated areas. Despite this, the county commissions in the counties in which these facilities are located, and most of the surrounding counties, do not have planning and zoning authority.

A very important issue that must be faced by policy makers at all levels is whether or not our state is properly prepared to meet the challenges of managing growth and development. There is no general law in the Alabama Code that grants counties the authority to engage in planning and zoning activities on a countywide basis, and county authority to plan and zone is limited to designated flood-prone areas or in areas adjacent to airports. Currently, only Baldwin, Jefferson, and Shelby counties possess significant planning and zoning authority, and the Alabama Legislature needs to address a measure that would allow county commissions to regulate development in unincorporated areas through the exercise of planning and zoning authority.

Alabama must be prepared to address the challenges brought by economic growth and the resulting growth and development that will come with it. Proper planning is essential, and zoning is a necessary means of insuring that what is planned for, is achieved.
An article appeared in the May 8, 2002, edition of the *Montgomery Advertiser* in which reporter Alvin Benn quoted Harry Alford, President of the National Black Chamber of Commerce, as having stated that he views Alabama as the *Next California*. The article related other thoughts and observations held by Mr. Alford about Alabama’s economic future.

Alabama may not be the next California, but some people think our state is poised for a period of significant economic growth. Alabama, like many other states, has suffered during the economic downturn experienced by the entire country in recent years. A review of what has been going on in the state in recent years has led this writer to think that Alabama’s economic future looks bright. While the textile industry has been moving out, the automobile industry has been moving in and bringing with it thousands of new jobs. Mercedes, Honda, Toyota, and now Hyundai have selected Alabama as a site for major production. The automobile industry is not the only bright spot on Alabama’s economic horizon. Aerospace and aviation industries are continuing to grow in the state. Biotechnology, medical, and other scientific research, now underway in Alabama, will no doubt lead to increased economic growth and development. The evidence is clear that Alabama’s tourism industry is growing. All these things considered, and barring another major national economic downturn, Alabama seems to be in a position to realize significant economic growth.

The emphasis in the preceding paragraph was on economic growth. The emphasis now turns to the word *development* and some implications it has for the future of the State. For the purposes of this article, when the word *development* is used, it is referring to the construction of residential and commercial property and the necessary infrastructure (i.e. streets, roads, bridges, and utility facilities) that comes with economic growth. Hereinafter, when the terms *growth and development* are used, it will be in the context of development resulting from economic growth.

If growth and development does occur, where will it occur? Certainly, much of it will occur in or within the jurisdictions of incorporated municipalities. Much, however, will occur in unincorporated areas of the State. A very important issue that must be faced by policy makers at all levels is whether or not our state is properly prepared to meet the challenges of managing growth and development. More specifically, are our state’s local governments equipped with sufficient authority to manage growth and development? Authority to manage growth and development involves many elements, but for the purposes of this article discussion will be limited to the single element, *planning and zoning*¹. Some municipal officials may disagree that municipalities have ample statutory authority in the areas of planning and zoning. For that reason, the single matter of planning and zoning in unincorporated areas of Alabama will be addressed.

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¹ An article of considerable length could be written addressing the element of financing the management of growth and development.
There is no general law in the Alabama Code that grants counties the authority to engage in planning and zoning activities on a countywide basis. Counties do have authority to plan and zone in designated flood-prone areas, and there is limited authority to do so in areas adjacent to airports. There have been several local acts passed that have granted certain counties authority to engage in planning and zoning activities. Baldwin, Jefferson, and Shelby are the only counties that currently conduct significant planning and zoning programs. The two or three other counties that have authority to engage in such activities have not done so basically because of deficits or insufficiencies in the local acts granting the authority.

The 2000 Federal Decennial Census revealed that Alabama’s population grew by 406,513 since the last census. There is no reason to believe that the state’s population will not continue to increase, especially if the state realizes the economic growth envisioned. It is also reasonable to expect that a significant portion of the state’s future population growth will occur in unincorporated or rural areas. Mercedes, Honda, and the future Hyundai assembly plants, for example, are all located in rural areas, and much of the growth and development associated with these facilities has and will be in unincorporated areas. Despite this, the county commissions in the counties in which these facilities are located, and most of the surrounding counties, do not have planning and zoning authority.

It should be pointed out that many counties are experiencing growth and development for reasons not necessarily related to economic growth, per se. For example, Autauga and Elmore Counties are experiencing significant growth and development, at least in part, because many citizens have chosen to relocate from Montgomery to the more rural settings of these two counties and commute to work. In addition, much of the growth and development in these two counties are occurring in unincorporated areas, but the county commissions in Autauga and Elmore counties do not have planning and zoning authority. This phenomenon is not unique to these two counties. It is occurring in other areas of the State as well.

The membership of the Association of County Commissions of Alabama (ACCA) adopts a legislative program each December for the following legislative year. On December 7, 2000, the members approved a list of 10 items they wanted the Alabama Legislature to address. One of the items on the list was a measure that would allow county commissions to regulate development in unincorporated areas through the exercise of planning and zoning authority. As stated above, there is currently no general authority in Alabama for counties to engage in planning activities and enforce zoning requirements.

Prior to the 2001 Regular Session of the Legislature, the ACCA staff organized and participated in several meetings with representatives of about 10 statewide organizations representing interests that would be impacted if counties were granted such authority. The meetings were held in an effort to determine whether or not the organizations could reach an agreement to support appropriate legislation. Unfortunately, no agreement was reached, and the legislation was not introduced during the 2001 Regular Session or subsequent sessions of the Alabama Legislature.
It was interesting to observe that representatives from all organizations represented during the meetings agreed that there is a need to regulate growth and development, especially in our unincorporated areas. As is nearly always the case, the difficulties in reaching an agreement were found in the details. Specifically, how do you regulate and/or control development without giving up a perceived or real advantage? For example, agricultural interests want to preserve farm and timber land, if such can be accomplished without the owners losing the ability to convert the land to some other use of their choosing. Similarly, those who develop and/or sell real property would support measures aimed at ensuring that when land is developed it can be put to uses that produce the most economic gain. These same people, however, do not want to give up the advantage of being able to determine for themselves for what purposes and in what manner land should be developed.

Both of these positions are inconsistent with basic principals of planning and zoning. The fallacy in these positions is revealed when viewed in light of the competing interests and desires of individuals who are members of the same interest group. For example, Farmer “A” wants to continue farming but his neighbor, Farmer “B”, has developed his land into a residential subdivision. Farmer “A” cannot now farm his land as he did previously because certain farming practices could affect the adjacent homeowners. Much worse, suppose that Farmer “A” and Farmer “B” both want to sell their land, but Farmer “B” develops his land into a manufactured housing subdivision before Farmer “A” decides how he wants to develop his. Farmer “A” was considering developing his land into an upscale subdivision consisting of traditional single-family homes. He probably would not be able to do so because many potential residents would not want to invest in an expensive residence next to a manufactured housing subdivision. A particularly difficult situation develops when Farmer “A” sells five acres of land to an individual who wants to build his or her dream home “out in the country” and enjoy the pleasures of quiet country living. A few years after the purchaser moves into the home, he or she discovers that a cattle feed lot is under construction in close proximity. Several months later, the homeowner files a lawsuit claiming that the smell from the feedlot is a nuisance. These same scenarios would apply likewise to two land developers who have purchased adjoining land and have different ideas about how their respective land should be developed.

Similar situations arise over competing interests that have nothing to do with land historically used for agricultural, cattle or timber purposes. Rural residents do not like for solid waste landfills to be constructed near their property for fear that its value will be reduced. Similarly, some rural residents do not want certain kinds of commercial development (e.g. shopping malls, automobile service stations, junkyards, etc…) near their property. There are many other examples of how competing interests cause problems over growth and development.

Everyone wants to hold and enjoy their property, and does not want anyone telling them how to do so. Property owners also do not want the use of neighboring property to affect the value or potential value of their property. A utopian situation or attitude of that nature can simply no longer exist in most places in Alabama.
Those who support granting county governments in Alabama authority to exercise planning and zoning authority, and this writer is one of them, view such authority as a means of bringing competing interests together through proper planning, giving consideration to the best interest of the community as a whole. And, of course, this would be accomplished through zoning requirements aimed at preserving current property uses, maintaining property values, and ensuring orderly and timely development. History has well documented that individual property owners cannot achieve these things by themselves. They must have assistance from their elected representatives.

The official position of the ACCA is that it supports the granting of permissive authority for counties to regulate development in unincorporated areas of the state through the implementation of planning and zoning requirements. This support is with the understanding that any law passed granting such authority would contain appropriate due process and citizen involvement provisions.

Alabama must be prepared to address the challenges brought by economic growth and the resulting growth and development that will come with it. Proper planning is essential, and zoning is a necessary means of insuring that what is planned for, is achieved.

O. H. “Buddy” Sharpless is the Executive Director of the Association of County Commissions of Alabama and has served in that capacity since January 1974. He holds a B.S. degree from Troy State University and a J.D. degree from Jones Law Institute. Mr. Sharpless is a member of the Alabama and American Societies of Association Executives, and is a past president of the National Council of County Association Executives. During his tenure with the ACCA, Mr. Sharpless has worked to improve county government in Alabama by influencing the enactment of needed new laws affecting county government, and through the development of programs, publications, and educational opportunities aimed at increasing the ability of counties to provide important services.
CHAPTER FIVE

Issues Facing Alabama Municipalities and Their Leaders in 2002

- Perry C. Roquemore, Jr.

EXECUTIVE SUMMARY

Alabama municipalities face a multitude of unique issues based on size, topography, and economic conditions. There are also several key issues that face all municipalities, their leaders and their citizens. The first key issue is the reform of the tax structure. The State of Alabama needs to examine the entire state tax structure and create a more equitable system. Our current system is based on highly regressive sales taxes and other consumer taxes that have a greater effect on low-income families than on middle or high-income families. The reform of the Alabama Constitution is the second key issue. It is clear that the Alabama Constitution needs to be brought into the 21st century, although not at the expense of scrapping the entire document.

Enhancing the capacity of the municipalities to exercise extraterritorial powers is the third critical issue facing the Alabama municipality. Because of rising costs and liability issues in recent years, many municipalities have taken action to eliminate all services and taxes in their police jurisdiction. These municipalities have determined that the costs of regulating the police jurisdiction are too great, and the State Legislature will probably need to address this issue as Alabama becomes more urban.

A fourth area of concern relates to annexation powers, zoning, and land use issues. The State Legislature needs to examine this issue and consider providing counties and/or municipalities the authority to zone land in unincorporated areas. Such authority would help assure orderly growth for the unincorporated areas of the state.

Finally, the Legislature and state and federal agencies need to reexamine the rules and regulations that impact how municipalities provide services that affect the environment. Many of these regulations are appropriate and necessary. However, some are totally inappropriate, and compliance with many of these regulations is extremely costly to municipalities.

Although Alabama municipalities operate substantially under the same laws, many of the issues facing the leaders of these municipalities are not always the same. This is due to several factors, such as varying population, geographical location and the number of commercial and industrial facilities located therein. For example, the issues facing the state's largest city, Birmingham, are quite different from those facing the Town of Natural Bridge. A municipality
located in a highly urbanized area will face numerous issues that will not be faced by a municipality located in a rural area of the state. The amount of revenues collected to fund municipal operations is directly related to the number of commercial and industrial facilities located within the municipality.

In order to understand the issues facing Alabama municipalities and their leaders, one must first understand that Alabama is basically a state of small communities. The topography of our state ranges from mountains in the northern part of the state to seashores in the south. Portions of our state are rich in minerals, while other areas are great agricultural lands.

Our state has some wonderful natural resources that benefit all of our citizens. Some municipalities benefit from being located in areas rich with coal, iron, oil or gas resources. However, the extraction of these minerals may cause certain unique problems such as noise and pollution caused by drilling operations or blasting. Overloaded trucks cause problems in some of these areas by damaging municipal roads. Other municipalities are near abundant forested areas, but these areas also may have unique problems. Our seaside municipalities are blessed with tourist dollars that come into the community, but the seasonal addition of thousands of visitors requires a small city to provide a much larger infrastructure and services than is normally found in cities of its size.

Commercial and industrial development of our state's municipalities has been uneven at best. The larger municipalities and the smaller suburban municipalities have seen extensive economic development in recent years. This development is due, in large part, to the location of large manufacturing facilities such as Mercedes in Vance and Honda in Lincoln, and close proximity to major transportation routes such as the Interstate Highway System. Areas located away from these major transportation routes have not seen the same degree of commercial and industrial development.

In order to further understand Alabama's municipalities, one must also examine the population, forms of government and legal powers of Alabama's municipalities.

I. POPULATION ANALYSIS

Alabama has 457 incorporated municipalities located in 67 counties. State law designates these entities as either cities (i.e. 2,000 or more population), or towns (i.e. under 2,000 population). These municipalities range in size from the state's largest city, Birmingham (population 242,820) to the town of Natural Bridge (population 28). Three hundred seventy-five of the state's municipalities have a population under 2,000, and 131 of these are under 500 population. The following population breakdown underscores the extent to which Alabama is predominantly a state of small municipalities.
II. FORMS OF GOVERNMENT

The predominant form of municipal government in Alabama is the Mayor-Council form, and all but four of the state’s 457 municipalities operate under this form of government. The powers that can be exercised by these municipalities are essentially the same as set out in Title 11, Code of Alabama 1975. In all of these cities and towns, the mayor is the chief executive officer of the municipality. The major difference is that the mayor, in cities and towns of less than 12,000 inhabitants, is a member of the council with full voting powers and he or she also presides over the council meetings. The mayor has no veto.

In cities of 12,000 or more inhabitants, the mayor does not sit with the council, but has a veto over ordinances and resolutions of general and permanent nature and on matters pertaining to salaries. In summary, the legislative and executive branches are distinct branches in cities greater than 12,000 people. In smaller cities and towns, the mayor is a member of both branches.

Several of the larger municipalities with a mayor-council form of government have a variation in the general laws provided by acts of the legislature specific to their city. Those cities with special acts are Birmingham, Montgomery, Mobile, Gadsden, and Tuscaloosa.

Three cities operate under a council-manager form of government: Anniston, Phenix City and Auburn. In these cities, the elected council serves as the legislative body and hires a professional manager to run the city. The manager generally serves at the pleasure of the governing body.

The City of Dothan has a mayor-commission-manager form of government set out by a special act of the Legislature.

Table 5-1: Distribution of Alabama Municipalities by Population Size, 2000 Census

<table>
<thead>
<tr>
<th>Population Category</th>
<th>Number of Cities</th>
<th>% Of Total Cities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cities over 100,000</td>
<td>4</td>
<td>.087%</td>
</tr>
<tr>
<td>Cities Between 50,000 – 100,000</td>
<td>4</td>
<td>.087%</td>
</tr>
<tr>
<td>Cities Between 25,000 - 50,000</td>
<td>8</td>
<td>1.75%</td>
</tr>
<tr>
<td>Cities Between 12,000 - 25,000</td>
<td>30</td>
<td>6.56%</td>
</tr>
<tr>
<td>Cities Between 6,000 - 12,000</td>
<td>36</td>
<td>7.87%</td>
</tr>
<tr>
<td>Cities Between 2,000 - 6,000</td>
<td>82</td>
<td>17.94%</td>
</tr>
<tr>
<td>Towns Between 1,000 - 2,000</td>
<td>79</td>
<td>17.28%</td>
</tr>
<tr>
<td>Towns Between 500 - 1,000</td>
<td>83</td>
<td>18.16%</td>
</tr>
<tr>
<td>Towns Under 500</td>
<td>131</td>
<td>28.66%</td>
</tr>
</tbody>
</table>
III. POWERS OF MUNICIPALITIES

The Constitution of Alabama does not recognize any inherent right of local government. The Legislature of Alabama is vested with plenary, or absolute, power, except where restricted by limitations imposed by the state and federal Constitutions. In the exercise of this power, the legislature created, by general statutes, municipal corporations, declared them bodies politic and corporate, and vested them with a delegated portion of the sovereign powers of the state for the welfare and protection of their inhabitants and the general public within their jurisdictional areas. All powers, property, and offices of a municipal corporation constitute a public trust to be administered as such within the intent and purposes of the statutes that created them, and within the limitations imposed by the state and federal Constitutions.

The sources of power of a municipal corporation include the constitution, the statutes of the state and special acts of the legislature, particularly where such acts are in the nature of a charter for specific cities or towns. Alabama is a so-called Dillon Rule state. This rule, named for Judge Dillon from his work on municipal corporations, appeared in an early Alabama court case, Mobile v. Moog, 53 Ala. 561 (1875). The opinion quoted Judge Dillon from his work on municipal corporations:

*It is a general rule, and undisputed proposition of law, that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in, or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation – not simply convenient, but indispensa-ble.*

Therefore, the powers of Alabama cities and towns are delegated by the legislature and are subject to withdrawal and limitation by that body. That does not mean, however, that the powers of municipal corporations are weak, unimportant, or second-rate. When the legislature adopted the Municipal Code of 1907, which has been carried forward, and is currently found as part of Title 11 of the Code of Alabama, a broad array of power was granted to the cities and towns of Alabama. The legislature has continued to grant new powers that enable municipalities to cope with changing times.

While it is not within the scope or intent of this discussion to list the powers entrusted to the discretion of a municipal governing body, the following examples provide an impressive idea of the power of a municipal governing body:

1. To levy taxes on real property;
2. To establish privilege licenses;
3. To adopt police regulations for the safety, health and welfare of the community;
4. To punish by fine and imprisonment;
5. To condemn property;
6. To sue and be sued as a corporate entity;
7. To borrow money by general obligation bonds, warrants and negotiable notes;
8. To acquire property by purchase or lease;
(9) To sell or lease municipal property no longer needed for municipal or public purposes;
(10) To pledge municipal revenues to the payment of municipal obligations;
(11) To assess property for public improvements;
(12) To grant franchises for the use of municipal streets;
(13) To regulate the use of streets and prohibit selling in the streets;
(14) To acquire, own, and operate water, gas, sewer and electric utilities;
(15) To manage and control municipal finances and property;
(16) Adopt building laws;
(17) Abate nuisances;
(18) Adopt zoning regulations;
(19) Enter into contracts;
(20) Establish and maintain municipal buildings, hospitals, jails, magazines, museums, art galleries, and recreational facilities;
(21) To acquire and regulate cemeteries;
(22) To require witnesses to appear before the council or a council committee and punish for contempt for failure to do so;
(23) To provide for the health and sanitation of the community;
(24) To promote the industrial development of the community and to advertise for such purposes;
(25) To establish numerous separately incorporated boards to promote particular municipal projects and appoint directors of the boards;
(26) To vacate streets; and
(27) To enter into written contracts with counties to perform any services common to all contracting entities.

IV. THE KEY ISSUES

Although it is apparent from the above discussion that Alabama municipalities face a multitude of unique issues based on size, topography, and economic conditions, there are several key issues that face all municipalities, their leaders and their citizens. These issues don't affect every municipality to the same degree, but they do affect every city and town in our great state.

Key Issue #1 – Reform of the Tax Structure

Counties and municipal governments are not the same. Counties were formed by the state for the purpose of carrying out state functions at a regional level. Those primary functions were roads and court services. Over the years, many counties have been given additional powers to carry out additional services. Municipalities, on the other hand, are corporations voluntarily created by the people within a community, to provide additional services. As has already been discussed, municipalities have authority to provide a multitude of services.
Law enforcement protection, fire protection, solid waste collection, utility services, and other municipal services don't just happen. It costs a lot of money to provide these essential services. Money for these services is raised through the power of taxation.

Local governments in many states fund services through property taxes. However, the property tax is not a favored method of taxation in Alabama at either the state or local level. In fact, it has been stated many times that our property taxes are the lowest in the country and that you could triple property taxes and still have the lowest rates in the country.

The process used by a municipality to levy property taxes is very cumbersome. The first 5 mills can be levied by passage of an ordinance. Any increase that would bring the total millage to between 5 mills and 12 1/2 mills must be approved by the voters at a referendum. Any increase that would bring the total municipal millage above 12 1/2 mills must be approved by local act of the state legislature and by voters at a local referendum.

Due to this situation, municipalities have had to look for other revenue sources to fund the provision of municipal services. As mentioned above, Alabama is a Dillon Rule state. Municipalities can only exercise those powers expressly granted by the state legislature or implied from those express powers. Thankfully, those legislators responsible for the adoption of the Municipal Code of 1907 saw the wisdom in giving municipal governing bodies authority to enact measures to raise revenue. In fact, Alabama municipalities, unlike counties, have some of the broadest revenue-raising powers in the country. They can levy sales and use taxes, gasoline taxes, leasing taxes, lodging taxes, privilege license taxes, franchise fees, alcoholic beverage taxes, occupational taxes and other revenue measures by ordinance without a vote. The lone exception is ad valorem or property taxes. These powers have enabled Alabama's cities and towns to provide necessary services while remaining financially afloat.

The State of Alabama and municipal governments have increasingly relied on consumer taxes rather than property taxes. For several reasons, the State of Alabama needs to examine the entire state tax structure and create a more equitable system.

- **First**, highly regressive sales taxes and other consumer taxes have a greater effect on low-income families than on middle or high-income families.

- **Second**, sales or use taxes on sales of merchandise made via the Internet or through mail order to Alabama residents by out-of-state or remote vendors are not being collected in most instances. Although the state and local taxes are applicable to such sales, the remote vendor cannot be required to collect and remit the taxes unless they have a place of business within the State of Alabama. Not only are we losing large amounts of revenue, Alabama's main street merchants are at a competitive disadvantage by having to sell the same merchandise as their internet competitor for approximately 8% more. The United States Congress must make changes in this law, and efforts are underway to get this change adopted.
However, the Alabama Legislature should make sure any change adopted does not destroy the state's primary funding source for education and the primary source for funding municipal government. If these sources are not protected, we must look for replacement sources of revenue at both the state and local level.

- **Third**, the fact that Alabama relies so heavily on consumer taxes hurts Alabama's citizens when they file federal income tax returns. Property taxes are deductible items; consumer taxes are not deductible.

Alabama businesses have called for a simplification of the rules of taxation concerning sales and use taxes and business license taxes. Simplification of state, county and municipal sales and use tax procedures was accomplished by passage of legislation in the 1998 Regular Session. This compromise legislation was developed by a coalition composed of representatives of the business community, the Alabama Department of Revenue, county government, and municipal government. A similar coalition has been working for several years to develop legislation to reform the municipal business license laws and procedures. It is hoped that the legislation will be passed during the 2002 Regular Session.

**Key Issue #2 – Reform of the Alabama Constitution**

Recently, there has been a lot of renewed interest in the issue of constitutional reform. Since 1970, there have been three strong efforts to totally rewrite the Alabama Constitution of 1901. These efforts took place in 1973, 1979 and 1982. The only substantial change to the State Constitution came with the passage by the legislature and voter approval of the rewritten Judicial Article. During the same time period, hundreds of amendments have been added to the document.

Should the Alabama Constitution be revised or replaced? There are three possible positions that can be taken on the issue of constitutional reform:

- **First**, it can be argued that the Alabama Constitution of 1901 and its hundreds of amendments have worked reasonably well for over 100 years, and the old saying “If it ain’t broke, don’t fix it” should prevail.

- **Second**, an argument can be made that the document should be cleaned up or recompiled. Remove the repealed or out-of-date provisions and recompile the remainder.

- **Third**, it can be argued that the Alabama Constitution of 1901 is a total mess and that nothing short of a total revision will bring Alabama into the next century.

In my opinion, the first option should be rejected. The Alabama Constitution should be brought into the 21st century. However, this does not mean that the entire document should be scraped.
There are many provisions of the current Constitution that are as valid today as they were in 1901. Many of these provisions have been interpreted by the courts, and it would be extremely costly to have to bring these provisions back before the courts.

It has been argued that the abundance of local amendments to the State Constitution is one of the major problems. You may have 50 amendments giving the same power to a single county. There is a way to remedy this situation. First, examine those local amendments to the Constitution and determine which ones are repetitive or most likely to be needed for additional jurisdictions. An examination would most likely reveal that those amendments relate to the following subject areas: Empowering counties to engage in activities directed towards economic development; authorizing the levy and collection of local ad valorem taxes; authorizing the levy and collection of ad valorem school taxes; salaries, fees, charges and court costs; county and municipal debt limits; bingo games; special districts such as water districts, fire districts, etc.; and consolidation of county offices such as the tax assessor and tax collector. Once the examination has been completed, the Legislature could propose general amendments that apply statewide to cover these subject areas. They should include language within the amendments ratifying those amendments previously adopted on such subjects.

It has also been argued that local governments should have Home Rule. When we discuss the term Home Rule we must first decide what is the meaning of the term. Home Rule means different things to different people. Are we talking about merely providing general amendments to cover certain issues and eliminating the large number of local bills introduced each session, or are we talking about a complete reversal of the Dillon Rule? If you reverse the Dillon Rule, then a county or municipality could exercise any lawful power unless prohibited by act of the legislature. However, I suggest that mere reversal of the Dillon Rule will not eliminate local bills at the Alabama Legislature. Instead of seeking bills to give additional powers to counties, legislators will be going to the legislature to enact legislation that restricts powers of local governments.

A major argument for reform is that reform could eliminate the need for many local bills in the Alabama Legislature. Most local bills affect single counties. City government powers are constitutionally required to be made by general law. It appears that a good way to resolve the issue of local bills would be to follow the pattern set out for municipalities in 1907. The legislature could enact legislation providing several optional structures of county government that could be approved by individual counties. These laws could grant various administrative and lawmaking powers to county governing bodies. You could eliminate the need for local laws relating to salaries and benefits of county officials and employees by merely providing that these subjects can be handled by the local governing bodies in a manner similar to the way state law allows cities and towns to handle such matters.

Another issue often raised when discussing home rule is the issue of giving broad taxing powers to county governments. Counties currently levy several taxes. In most instances, these taxes are levied throughout the county, including areas of the county located within incorporated municipalities. In fact, in most counties, a large percentage of county tax revenue is gener-
ated within the boundaries of the cities and towns located in the county. This would not be such a problem if a significant amount of the revenues collected were expended to provide services to those municipal residents from which the taxes were collected. However, in many counties, most of the revenues are expended in areas located outside the boundaries of incorporated municipalities. The municipal taxpayer should not be required to pay for services given to residents of the county residing outside of the city. City residents already pay municipal taxes for these services. This "double taxation" of the urban citizen should not be allowed to continue or to be expanded. This issue could be resolved by giving county governments taxing authority provided: (1) Any new taxes could only be levied in areas located outside the corporate limits of a municipality; or (2) In the event new county taxes are levied throughout the county, including inside municipalities, that the money derived from such taxes from within a municipality could only be spent to provide services to residents of the municipality. A provision could also be included to allow countywide taxes if approved by all county voters. Again, the situation can be addressed by the legislature without rewriting the Constitution.

Key Issue #3 – Extraterritorial Powers in the 21st Century
Under the provisions of Section 11-40-10, Code of Alabama 1975, the territorial police jurisdiction of cities having 6,000 population or more extends for a distance of 3 miles beyond the corporate limits. In cities of less than 6,000, and in towns, the police jurisdiction extends for a distance of 1-1/2 miles beyond the corporate limits. Within this area, a municipality may adopt ordinances to affect the public health, safety and welfare of the community and prescribe fines and penalties for violations. Section 11-51-91, Code of Alabama 1975, gives municipalities the authority to collect privilege licenses in the police jurisdiction provided the amount of the license does not exceed one-half of the amount charged a similar business operating in the corporate limits of the municipality. Further, all taxes collected in the police jurisdiction must be expended to provide one or more services in the area.

Traditionally, the police jurisdiction was created by the legislature to give municipalities the ability to regulate those areas just outside the municipality that may one day become part of the municipality. The concept was never designed to raise revenues for the municipal general fund. In fact, as discussed above, it would be illegal to do so.

In recent years, many municipalities have taken action to eliminate all services and taxes in their police jurisdiction. These municipalities have determined that the costs of regulating the police jurisdiction are too great. This is especially true in areas where counties exercise many regulatory functions. Further, the police jurisdiction concept has hampered municipal annexation efforts. Why would a citizen in the police jurisdiction desire to be annexed to a municipality when he or she can enjoy very similar benefits for half the price?

The State Legislature will probably need to address this issue as Alabama becomes more urban.
Key Issue #4 - Annexation Powers, Zoning and Land Use Issues

Alabama municipalities have the authority to zone property within their corporate limits. This power helps to protect the property values of lands within the municipality. Without zoning, a property owner can locate an offensive business next to expensive residences. With the lone exception of Montgomery, municipalities cannot zone property located beyond their corporate limits. Very few counties have any type of zoning power.

The State Legislature should examine this issue and consider providing counties and/or municipalities the authority to zone land in unincorporated areas. Such authority would help assure orderly growth for the unincorporated areas of the state.

Municipalities can add additional unincorporated territory to their corporate limits through the process of annexation. There are three primary methods by which property can be annexed to a city or town. The State Legislature can annex property by enacting a local act. There are two statutory methods of annexation. Under one of the statutory methods, if 100% of the property owners owning property contiguous to the municipality ask the municipality to annex the territory, the city or town can annex the property by passing an ordinance to that effect. Under the other statutory method, any city or town, by adopting a resolution that is filed in the probate court along with a detailed map, may initiate annexation procedures. Consent of persons owning at least 60 percent of the acreage of the platted or unplatted land must be obtained. At least two qualified electors residing on each quarter of each quarter section must also consent. If these requirements are met, the probate judge orders an election, and if a majority of the qualified electors residing in the territory proposed to be annexed vote in favor, the territory is annexed.

There are problems associated with each of these annexation methods. The local act procedure can only be implemented when the Legislature is in session. The unanimous consent procedure can be halted by a single property owner breaking contiguity by declining to sign the petition. The referendum method cannot be used to annex vacant property.

There is a strong need to modernize the annexation laws of Alabama to create more workable procedures.

Key Issue #5 – Environmental Issues

Municipalities desire for their communities to be environmentally safe. Not only does a good environment attract new businesses and residents to the city or town, a good environment is necessary to protect the health of the citizens living in the community.

Municipalities provide numerous services that impact the environment. Cities and towns operate garbage collection services, provide drinking water, provide sewer services and provide for controlling stormwater. There are many state and federal agencies that regulate these activities such as the Alabama Department of Environmental Management (ADEM) and the U.S.
Environmental Protection Agency (EPA). Many of these regulations are appropriate and necessary. However, some are totally inappropriate. For example, cities and towns have been required to test for chemicals that don't even exist in our section of the country.

Compliance with many of these regulations is extremely costly to municipalities. Congress and federal agencies such as EPA have enacted many costly regulations without providing funding to help local governments comply. These so-called Unfunded Mandates hit our smaller municipalities very hard.

The Legislature and our Congressional delegation should be on the lookout for inappropriate regulations and try to keep them from becoming law. Further, if the regulations are necessary, Congress and the State Legislature should enact mechanisms to fund compliance with these mandates.

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EXECUTIVE SUMMARY

This paper encourages the State of Alabama to develop a comprehensive urban policy similar to the ones developed in neighboring states over the past two decades. Alabama has no urban policy despite the fact that a majority of its residents live in urban areas. Many of the State’s Metropolitan Statistical Areas (MSAs) are growing rapidly but the central cities of the largest MSAs continue to represent lesser percentages of the population of the MSAs in which they are located. Problems in the inner cities of the State can be expected to worsen in the future as they have in similar cities in other parts of the country.

The authors review many of the “lessons learned” cited in David Rusk’s Cities Without Suburbs, and attempt to apply those lessons to the current and future status of Alabama’s largest cities. Specifically, Rusk classifies cities as either elastic or inelastic, based on their ability to grow and to accommodate diverse populations and social problems within their borders. He concludes that inelastic cities cannot grow, and this condition results in less prosperous local economies and concentrated social problems. Watson, Juster, and Hassett also present the approaches that other states have taken in addressing comprehensive urban planning. In particular, they examine the efforts of Florida, Georgia, and Tennessee to integrate the plans of urban areas with those of the state governments. All three states have enacted progressive planning laws that are requiring local governments to think about their futures in coordination with their neighbors.

Finally, the authors recommend that the State of Alabama recognize the importance of urban areas in the State’s future by creating a Department of Urban Affairs in the State government. In addition, the Governor and Legislature should form a Task Force on Urban Alabama to study the peculiar problems that face the State’s urban areas.

I. INTRODUCTION

Alabama has no urban policy despite the fact that a majority of our citizens live in areas classified as urban by the United States Census Bureau. The State’s urban areas impact every Alabama resident even if they live in rural Alabama. As much as we enjoy the outdoors and
appreciate the lives of farmers, the real opportunities for economic prosperity, improved health care, better housing, and greater educational and cultural opportunities are found in the urban areas of America. As a result, people have flocked to the urban centers of America, and Alabama, to find better lives.

The most dramatic demographic change in Alabama during the 20th century was its transition from a primarily agricultural state to a largely urban state. Carolyn Trent points out that in 1900 only 216,714 Alabamians lived in urban areas and more than eighty-seven percent of Alabamians lived in rural areas (Trent, 2001, p. 8). By 1950, the urban share of Alabama’s population exceeded forty-three percent; and by 1990, it was in excess of sixty percent. Trent writes: “While much of the state’s land area remains rural, many rural economies have withered as people have left in search of economic opportunity” (Trent, 2001, p. 10).

With the exception of a handful of progressive states, this growth has happened over the history of our country with little guidance from the state governments in the form of comprehensive urban policy. The result is that all cities in those states without a comprehensive policy find themselves in constant battles to develop resources or strategies to address the serious infrastructure and social needs they face. Oftentimes, because of the inability to shape their futures through a lack of legal authority or conflicts with nearby jurisdictions, they turn to their state legislatures for a quick fix solution or the problems go unabated. The local officials appear helpless to respond to their constituents and the will of the people to improve their circumstances is thwarted.

The first question has to be what would constitute “urban policy” for Alabama. Depending on the perspective of the professional, urban policy means different things. For example, to the transportation planner, urban policy will mean the ability to move people efficiently throughout the urban area. To the environmentalist, clean water and clean air in the urban area are his primary concerns. To the elected officials, the primary concern is to protect or increase the revenue base to pay for the services that their constituents demand (Rusk, 1995, p. 1).

Urban policy, then, is in the eye of the beholder, although we would argue that the state should consider all of these perspectives in a comprehensive urban policy. The outcome of a lack of a comprehensive urban policy in many urban areas across the country has been to isolate the most serious maladies of high crime, poverty, poor educational systems, older infrastructure, and other social problems within older cities. In the meantime, the suburbs prosper.

While Alabama has several urban areas that already show evidence of these problems, it is likely that additional urbanized communities will find themselves in this situation within the next few decades. Most worrisome is that Alabama’s approach has been to develop piecemeal responses to problems or pressures over the decades without considering the eventual outcome from these reactive moves.

In this paper, we will present some “lessons from urban America” that we feel apply to the current situation in Alabama. Next, we will illustrate some of the actions that are being undertaken.
by other states, some of which are neighbors of Alabama. Finally, we will conclude with recommendations we have for the State’s leaders.

II. LESSONS FROM URBAN AMERICA

David Rusk, in his influential book *Cities Without Suburbs*, identified twenty-four lessons he learned in studying urban America over the last four decades of the 20th Century (Rusk, 1995, pp. 5-48). Because many of the lessons Rusk identified are directly applicable to Alabama, our plan is to present some of them in summary form here and attempt to demonstrate their applicability to Alabama.

A. The real city is the total metropolitan area - city and suburb

Prior to the 1950s, the inner cities of America were urban America. It was not until the early 1950s that the suburbs around the major cities in the United States started to develop. Rusk points out that in 1950, seventy percent of the population of the nation’s 168 metropolitan areas lived in the central cities. By 1990, sixty percent of the populations of the now-320 metropolitan areas lived in the suburbs. Not only did the people leave the inner cities, but the jobs left as well. Generally, *housing, jobs, schools, and services are worse in many inner cities than they are in the neighboring suburbs. Any attack on urban social and economic problems must treat suburb and city as indivisible parts of a whole* (Rusk, 1995, p. 7).

Alabama’s larger metropolitan areas have followed this same pattern of growth as similar-sized cities across the nation. Prior to World War II, there was little suburban development in Birmingham or Mobile; and suburban growth in Montgomery and Huntsville has occurred only recently. Other smaller metropolitan areas in the State are in the early stages of suburbanization, and it is likely that the smaller jurisdictions will repeat the growth and development patterns of the larger metro areas unless policies are changed allowing for a more unified approach to government and development. Increasing fragmentation in the delivery of services, the uncoordinated development of infrastructure, and growing differences between the haves and the have-nots will continue to separate Alabamians if the status quo remains the policy of the State.

B. For a city’s population to grow, the city must be elastic

Rusk defines cities as either elastic or inelastic. For a city to be elastic, it must have sufficient vacant land to accommodate future growth, and/or have the ability to annex additional land so that growth will be within the city limits. Inelastic cities are generally older ones that have fully developed their land and have no ability nor desire to expand their territory to incorporate growth on the fringes. Rusk concludes that *this pattern of urban development is sufficiently universal (at least, in America) to embolden me to state the first law of urban dynamics: Only elastic cities grow* (Rusk, 1995, p. 10).

Alabama cities are inelastic to a large degree and will become even more so in the future. Birmingham, for example, is surrounded on all sides by incorporated municipalities so its ability to grow substantially was long ago eliminated by suburban development. Interestingly, most
of the first ring suburbs of Birmingham now have the same problem with the current development of the second ring cities such as Pelham, Helena, and Alabaster. Other smaller urban areas of Alabama are facing similar problems with new municipalities incorporating within close proximity to them or with the growth of special districts for fire, water, and sewer services. Once they become institutionalized, special districts make a comprehensive approach to service delivery and infrastructure development nearly impossible.

C. Elastic cities expand their city limits; inelastic cities do not
Rusk (1995, p. 16) observes:

*Elastic cities did not just fill up vacant areas within existing city limits. They expanded their city limits aggressively. Houston, Columbus, Albuquerque, and Raleigh grew through aggressive annexation of surrounding areas. After the earlier pace of annexation had slowed, the city of Nashville and the city of Indianapolis expanded dramatically through consolidation with their home counties to create new, unified governments.*

*By contrast, almost without exception, inelastic cities entered the postwar growth era locked within their existing boundaries.*

The inelasticity of Alabama cities has roots in the annexation laws of the State. It is very difficult for a city to have a comprehensive growth plan when it is limited to annexation by petition of the property owners or by legislative action. The result of this approach to annexation is evident when one views the city limit maps of most Alabama cities. Most look like jigsaw puzzles, so it is no wonder that land use planning is difficult. Other contributing policies include the ease of incorporation of new municipalities and the formation of special districts.
D. When a city stops growing, it starts shrinking. Elastic cities “capture” suburban growth: inelastic cities “contribute” to suburban growth

Cities will either continue to grow or they will shrink in population. The loss of population is accompanied by the inability to pay for services and for infrastructure. Ironically, the people who are best able to pay for improved services and infrastructure are the ones who are leaving. The people who are left are often the ones who cannot leave because of a lack of income or education. Many of the large inelastic cities in the United States have less population today than they did fifty years ago. Milwaukee, Louisville, and Richmond expanded in population and in land area immediately after World War II and then reversed that trend. As a result, Milwaukee had 9304 fewer people in 1990 than in 1950; Louisville, 100,066 fewer residents; and Richmond, 27,254 less population in 1990 than in 1950 (Rusk, 1995, p. 19).

Since nearly all postwar growth in America has been suburban style, low-density development single-family homes on relatively large lots, our cities have either been able to capture that growth, or they have contributed population to it. Inelastic cities could not grow through annexation or in-fill because they did not have adequate land to accommodate the growth that was in demand. As a result, primarily the white, middle-class residents of these cities left for the suburbs.

The pattern of growth in Alabama’s five largest cities fits Rusk’s description. Figure 6-1 illustrates the respective population growth from 1950 to 2000 of the core city and the respective Metropolitan Statistical Areas (MSAs) of Birmingham, Mobile, Montgomery, Huntsville, and Tuscaloosa. The Figure underscores that the cities are either shrinking or growing at a much slower rate than their respective MSAs.

Table 6-1 points out that Birmingham’s population was at its highest population in 1960 (340,887). By 2000, however, the City of Birmingham’s population had declined to 242,820. In contrast, the Birmingham MSA has grown steadily over this time from 634,864 in 1960 to

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<tr>
<td>Birmingham</td>
<td>326,037</td>
<td>340,887</td>
<td>300,559</td>
<td>284,413</td>
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<td>847,487</td>
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<td>Montgomery</td>
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<td>177,857</td>
<td>187,106</td>
<td>201,568</td>
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<td>190,122</td>
<td>200,396</td>
<td>196,278</td>
<td>198,915</td>
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<td>Mobile MSA</td>
<td>231,105</td>
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<td>376,690</td>
<td>443,536</td>
<td>476,923</td>
<td>540,258</td>
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<tr>
<td>Huntsville</td>
<td>16,437</td>
<td>72,365</td>
<td>137,863</td>
<td>142,513</td>
<td>159,789</td>
<td>158,216</td>
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<td>Huntsville MSA</td>
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<td>228,232</td>
<td>308,593</td>
<td>293,047</td>
<td>342,376</td>
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<td>65,773</td>
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<td>116,029</td>
<td>137,541</td>
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In 1960, the City of Birmingham comprised fifty-four percent of the Birmingham MSA. Today, only twenty-six percent of the people living in the Birmingham MSA live in the City of Birmingham.

Mobile’s experience parallels that of Birmingham. After a strong decade of growth between 1950 and 1960, Mobile’s population has remained virtually the same since 1960. The Mobile MSA, in contrast, has increased from 314,301 in 1960 to 540,258 in 2000 (i.e. 58% increase). The City of Mobile now comprises approximately thirty-six percent of the MSA’s population compared to nearly sixty-five percent in 1960.

While the City of Montgomery has had modest gains in population in the past twenty years, the Montgomery MSA has grown by nearly three times the rate of the City. Overall, in each of the five largest Alabama cities, most of the population growth has taken place outside the city limits. It is obvious that Alabama city governments are not elastic enough to accommodate the growth that is taking place outside their city limits.

**E. Bad state laws can hobble cities**

Whether cities are elastic or inelastic depends on state laws. Local governments are the creations of state governments. A widely accepted doctrine of law in the United States governing the relationship between state and local governments is Dillon’s Rule, enunciated in 1872 by Iowa Chief Justice John F. Dillon. It states simply that local governments can do only what they are expressly authorized to do by the state governments (Watson, 1995, pp. 15-16).

Some states have recognized that cities are their creations to provide urban services to urban residents, while other states have failed to recognize the historic role of cities and have allowed many of their formerly prosperous municipalities to become liabilities rather than engines for growth and opportunity. Many cities in the Northeast have long been completely inelastic. The resulting severe inner-city problems of failing schools, violent crime, and outdated infrastructure in Newark, Jersey City, and Harrisburg have been well documented.

Other states, such as North Carolina, have allowed their cities to grow through progressive annexation laws. Rusk (1995, p. 21) writes: *Raleigh’s continuous expansion was guaranteed by North Carolina’s liberal annexation laws, it had the power- even the obligation- to annex urbanizing areas regardless of the property owners’ desires. Texas also allowed cities such as Houston to annex unincorporated areas by unilateral council action. Of course, in both states, the cities that annex property unilaterally have obligations to provide services to the areas annexed within a limited time period.*

Kentucky also had a pro-annexation law, but included what Rusk describes as a *poison pill* (i.e. small subdivisions facing annexation had the authority to self-incorporate to avoid annexation). According to Rusk (1995, p. 22): *After ninety-three suburban micro-municipalities had been organized, Louisville negotiated for a no more annexation/no more incorporation truce in return for a tax-sharing compact with Jefferson County.* In effect, the Kentucky law tried to please everyone, but only contributed to the problems of the urban areas in that state.
In Mississippi, cities can annex adjoining territory without the owners’ consent by ordinance. This ordinance is filed in the Chancery Court (i.e. the equivalent of Alabama’s probate court) with a petition requesting approval by the court. The statute empowers the court to enter a decree of approval if the annexation is found to be reasonable and service will be provided within an acceptable time. To satisfy the requirement for reasonableness the city must present evidence showing that it is experiencing growth, that such growth will continue through the immediate future, that the area to be annexed lies within the path urban growth is expected to take, and that it has the financial ability to furnish necessary services and improvement to the annexed area.

Alabama’s annexation laws contribute to the difficulties of developing a sensible approach to urban problems and challenges. Until the Legislature gives Alabama cities the authority, as well as the accompanying responsibility, to grow in a planned and orderly manner, their problems will multiply. The extreme cases of the cities in the Northeast may someday become the situation in Alabama. The models developed in North Carolina and Texas would be better ones for Alabama to emulate to ensure strong and equitable growth. Without more progressive annexation policies, Alabama’s urban areas will continue to fragment with serious ramifications in the future.

F. Fragmented local government fosters segregation; unified local government promotes integration
Generally, Americans believe that smaller is better, as public choice theorists would argue\(^1\). Rusk, however, points out that: *the sad reality is that the smaller the jurisdiction or school district, the more narrow and exclusive the population served. In general, the more highly fragmented a metro area is, the more segregated it is racially and economically* (Rusk, 1995, p. 33). A further complication of multiple governments in urban areas is the inability to plan. Since there is no interest in a local government organized to promote uniformity to incorporate diversity in housing, education, or recreation or social programs, the metropolitan area becomes more segregated racially and economically. This result has serious social consequences and repercussions that are already evident in many areas.

G. The smaller the income gap between city and suburb, the greater the economic progress for the entire metropolitan community
Metropolitan areas where the income gaps between central cities and suburbs were the lowest had the greatest job growth. Rusk found that for inelastic cities the city-suburb income ratio was sixty-eight percent, while the job growth in those metropolitan areas was twenty-three percent. For elastic cities, the income ratio was ninety-six percent while the job growth was fifty-eight percent over a fifteen-year period. *Job growth can be just a proxy for population growth. Are the lives of the elastic area residents getting better compared with those of inelastic area residents? The answer is yes* (Rusk, 1995, p.40).

\(^1\) See, for example, Ostrom (1989).
In Alabama, we see that the disparity between city and suburbs in income and job growth is already developing in some of our metropolitan areas. Based on the experience of inelastic cities in the rest of the country, we can expect less job growth in the inelastic metro areas of Alabama in the future. For the economic future of the State, urban policy should be considered as a top priority by the state’s policymakers.

III. LESSONS FROM OTHER STATES

The problems discussed above are shared by virtually every state. In most cases state policy makers have dealt with them in a piecemeal and reactive manner. However, between 1970 and 1998, ten states took steps to develop coordinated polices and programs as a means of managing change within their boundaries. Three of these states – Florida, Georgia, and Tennessee - are neighbors of Alabama, and their varying approaches are reviewed below.

A. Florida

Given its rapid population increases and the resulting pressures on its relatively fragile natural environment, it is not surprising that growth management became an important political issue in Florida. In the early 1970s, and in response to a challenge from Governor Reuben Askew, a task force was created to assess the adverse impacts of uncontrolled urbanization and to recommend better ways to manage development. The task force drafted four related bills that together amounted to a growth management package. These bills were enacted into law in 1972. One of these laws, the State Comprehensive Planning Act, mandated comprehensive planning by all cities and counties. Another law, the Environmental Land and Water Management Act, authorized the creation of regional planning commissions (RPCs) throughout the State.

As growth and change accelerated in Florida during the 1970s, the growth management system struggled to influence the resulting changes to the built and natural environment. Beginning in 1978, the growth management system resulting from the 1972 legislation was subjected to detailed review and assessment. These efforts culminated in action by the 1985 Legislature. The legislators first adopted a Comprehensive State Plan, and then passed the Omnibus Growth Management Act that made substantial changes to the existing management system.

The Florida State Comprehensive Plan established a hierarchical policy framework within which planning at the regional and local levels must be consistent. At the top level, each Florida department and agency is required to prepare a strategic plan for carrying out its assigned functions.

At the regional level, the RPCs were required to prepare regional policy plans that had to be reviewed by the Governor’s Office of Planning and Budget and then adopted by the regional commissions. Within their regions, each RPC was required to review the plans of local governments; to provide technical assistance to local governments in preparing, or on request pre-
pare their plans; and to continue to review developments of regional impact and applications from local governments for state and federal grants and loans.

At the local level, cities and counties within each region were mandated to prepare comprehensive plans in conformance with standards relating to their contents and processes, and to adopt the mechanisms for implementing them. These standards identified the functional elements that the plans must address; and required citizen participation in their preparation, adoption, and implementation.

Three principles are embedded in the overall Florida growth management system. They are consistency, concurrence, and compactness.

1. **Consistency**. The principle of consistency requires that the plans of cities be integrated with county plans; that county plans be coordinated with the regional policy plans; and that regional plans be compatible with the State comprehensive plan and state agencies’ plans.

2. **Concurrency**. This principle is essentially a requirement that the provision of public services must keep pace with that of development. Local governments are required to establish levels of service for transportation, water supply, sewage treatment, solid waste, parks and recreation, and stormwater management. To help meet this requirement, local governments are able to impose impact fees on new developments; and an essential element of their comprehensive plan is a capital improvements program.

3. **Compactness**. This principle requires that in planning for future change, emphasis should be placed on containing development. The State plan refers to such techniques as taking advantage of infrastructure already in place but having spare capacity and promoting infill and redevelopment. Subsequent rules developed by the Florida Department of Community Affairs required local governments to establish urban service boundaries and/or other policies that would in effect help to limit development to specified areas.

As it has evolved, Florida’s growth management system has become an interlocking set of regional, county, and city plans, policies, and implementation techniques within the framework of an official state plan. Its salient feature has been described as follows:

*The heart of the omnibus act was the provision that all local governments prepare new or revised comprehensive plans consistent with the goals and policies of the state plan, as well as the goals and policies of the comprehensive regional plans. This crucial provision provided the critical link between the state, regional, and local levels, at last positioning Florida to manage its growth comprehensively at all levels.* (DeGrove and Miness, 1992, p. 12)
B. Georgia

Like Florida, the State of Georgia has experienced considerable increases in population and urbanization since 1950. Efforts to deal with the problems resulting from such rapid growth were fragmented and its effectiveness varied considerably throughout the State. Georgia has 159 counties and over 540 municipalities, each of which has the power to provide services and regulate development. In addition, there was a network of Area Planning and Development Commissions which were initiated through the efforts of the Georgia Power Company and which relied heavily upon local financial and political support. The Atlanta metro area created its own regional agency, the Atlanta Regional Commission.

Efforts to bring more consistency to this fragmented system began in the 1970s. In 1972, Governor Jimmy Carter created a Planned Growth Commission. Although no legislation resulted from the Commission’s work, several of its members became interested and knowledgeable about the problems of growth, and later played major roles in subsequent growth management efforts. It was not until the 1980s, however, that Georgia’s political and civic leaders came together in a formal setting to address growth-related problems.

In June 1987, Governor Joe Frank Harris appointed a Growth Strategies Commission with 35 members representing both public and private interests and viewpoints. The Commission established four task forces to address economic development, infrastructure, land use, and the environment. It also obtained the services of staff from the Institute of Community and Area Development of the University of Georgia to assist it in its work, especially to facilitate its efforts to develop a consensus on potential policies and procedures. The Commission produced three reports, and their recommendations were incorporated into the Georgia Planning Act of 1989. This Act created a hierarchical growth management structure, similar to that of Florida, but with some significant differences.

At the State level, the Act created the Governor’s Development Council consisting of the governor as chairman, a total of 17 state department and agency heads, and three other individuals appointed by the Governor. The Council’s role is to advance the concept of growth management and to review the preparation and implementation of comprehensive plans at the regional and local levels. The Governor, in conjunction with the Georgia Department of Community Affairs (DCA), was charged with preparing a statewide plan.

The Georgia DCA received the responsibility to assist the regional and local planning agencies in meeting the requirements of the Act. To accomplish this, the agency formulated requirements and standards to be followed by the regional and local governments in preparing their plans. DCA was also charged with initiating and maintaining a statewide data system and defining the boundaries of the sub-state regions. In addition, DCA was assigned the task of certifying each local government as a Qualified Local Government following the fulfillment of all the requirements of the Act and all the regulations promulgated by DCA.

At the regional level, the former area planning and development commissions were reorganized as Regional Development Centers (RDC). The responsibilities of the RDCs include preparing a
regional plan, providing technical assistance to local governments in preparing their comprehensive plans or contracting to prepare such plans for them, reviewing the plans of local governments for consistency with the regional plan, reviewing local plans in relation to the standards which DCA uses in certifying local governments as qualified, and mediating any conflict among local governments. The importance of the RDCs in the overall system is emphasized by a requirement that all cities and counties within their jurisdictions must participate in them, both financially and as members.

At the local level, the Act does not mandate that cities and counties plan. However, if they want to be certified as a *Qualified Local Government* they must do so; and failure to become certified means that DCA can withhold State loans and grants from these jurisdictions. The DCA has published minimum standards and requirements concerning the contents of comprehensive plans and the processes for preparing them. The cities and counties are also required to prepare and adopt regulatory measures and capital improvements programs as a means of implementing their plans. If, in carrying out the requirements of the Act, a conflict arises among the local governments, such governments are required to submit the dispute to mediation by the RDC; and this requirement applies both to qualified and nonqualified governments. It should also be noted that in 1997, Georgia’s cities and counties were authorized by the State Legislature to impose impact fees as a means of implementing their plans.

Although there are many similarities between the Florida and the Georgia growth management systems, there are also two significant differences. First, in contrast to Florida, Georgia’s comprehensive planning by cities and counties is voluntary. Comprehensive planning is required only if a local government intends to be certified as a *Qualified Local Government*. In practice, however, most local governments seek certification in order to become eligible for State loans and grants. This provision, however, leaves open the possibility for a local government to plan to the extent required by the Act, or not to plan at all.

The other difference is the establishment in Georgia of the Governor’s Development Council. The importance of this requirement has been described as follows:

> The establishment of the Governor’s Development Council has been viewed by almost all participants in the development and implementation of the growth strategy as a, if not the, key to the success of the system. It places a set of state agencies together in an institutional framework that, if fully implemented, will bring them together for the first time in helping to develop a state plan and adjust their own plans and programs to be in harmony with the coordinated planning system, including compatibility of state agency plans with regional and local plans. (DeGrove and Miness 1992, 114)

### C. Tennessee

Tennessee has a longstanding tradition of comprehensive planning. In the 1930s, a State Planning Commission was established and staffed, and this agency encouraged cities and counties to undertake the preparation and implementation of comprehensive plans.
cases, the Tennessee State Planning Commission contracted with local governments to prepare such plans and assist in their implementation. Until recently, however, Tennessee did not have a coordinated Statewide approach to growth management.

Unlike Florida and Georgia, the impetus for addressing growth management problems in Tennessee did not evolve over a long period of time; it happened relatively quickly. In the mid 1990s, the spread of urbanization was creating conflict at the local level. This was manifested by the serious problems of annexation by existing cities and the incorporation of new cities to counter annexation efforts. In response to these annexation disputes, the General Assembly enacted a new annexation statute in 1997. Shortly after adoption, the statute was challenged and the Tennessee Supreme Court declared it unconstitutional.

Following this setback, the Legislature began considering a new approach to examine the serious questions caused by urban growth. The Tennessee Chapter of the American Planning Association (APA) viewed this as an opportunity to combine a new approach to annexation with the ideas contained in the APA’s Smart Growth project, and it provided the catalyst for the creation of a coalition of state-wide organizations, both public and private, to work closely with the Legislature on developing a solution. These joint efforts culminated in the adoption of a law in May 1998 that focuses on local governments as the means for controlling urban sprawl.

This law requires that every Tennessee county create a commission comprised of elected officials from the county and each of its cities. Each commission was given until mid 2001 to delineate a growth boundary defining the area needed to accommodate anticipated growth over the next twenty years. The commissions were further required to produce plans and policies to demonstrate how they will ensure that development will be compact, precisely where development would occur within this growth boundary, and how they would protect the natural resources and environment.

The plans of individual cities and the county must coordinate with one another. If there are issues among the local governments that cannot be resolved, the law contains an arbitration mechanism through which such disputes will be settled. Finally, according to the law, local governments can jeopardize their State funds for highway construction, community development, and tourism projects if they fail to reach an agreement.

It is too early to appraise how the Tennessee approach will work in practice. Although it emphasizes some of the same objectives as the Florida and Georgia systems (e.g. compact development patterns, protection and wise use of the natural environment, and coordinating the provision of services with development), this state’s approach places significantly more responsibility upon the local governments. It stresses horizontal coordination among cities and counties, and is less concerned with vertical coordination among the local, regional, and state levels of government. As such, it represents an alternative model for consideration.
IV. PREREQUISITE CONDITIONS
Gaining support for statewide policies of any kind is a complex and difficult task. The difficulties are compounded when the basic purpose is to control the use of land. Reviewing the programs of the significant minority of states that have created growth management systems and measures helps to answer two basic questions:

a. What conditions seem to be prerequisites for the creation of a growth management system of sufficient strength to impact urban problems; and
b. What institutional structures appear to work best in such systems?

Creating a climate in which growth management programs can be discussed and enacted seems to require at least two factors; namely, leadership and consensus.

The successful state programs have all been initiated and carried through to implementation by either a single person or a small group of people who share a visionary approach and commitment to the necessity and means of changing the status quo. Such leadership could be provided by a governor who thinks and acts like a statesman, rather than a politician. It could also be provided by civic or business leaders who place a premium upon the public interest. Both are examples of the types of people who have been instrumental in most of the successful growth management approaches in use by our neighbors.

One of the fundamental tasks that the leaders must perform is to create a broad consensus among a wide range of individuals and organizations, and to use this consensus to build coalitions through which the power necessary to change prevailing practices can be amassed. These prerequisites have been described as follows:

At every stage in the evolution of Florida’s growth management system, the governor and the legislature, or both acting jointly, have created committees, commissions, or task forces made up of a broad cross-section of stakeholders in the growth management arena. Typically comprised of elected and appointed officials from every level, developers, homebuilders, agricultural interests, environmentalists, and representatives of professions such as law and engineering, these groups have played a key role in assessing issues and building a consensus for legislative and administrative action. They have been bipartisan, broad based in membership, led by distinguished Floridians who commanded confidence and respect from a wide spectrum of interests, and they have all succeeded in moving the process forward by achieving a consensus on the key issues before them. Almost every state that has adopted a comprehensive growth management system since Florida acted in 1985 has used some version of a consensus-building effort by a broad-based coalition of interests in the growth management area (DeGrove and Miness, 1992, p. 11).
V. GROWTH MANAGEMENT PRINCIPLES

The systems in place in Florida and Georgia are based on the three principles reviewed above:

(a) Consistency, among the plans of cities, counties, regions and the state;
(b) Concurrency, requiring the provision of infrastructure to keep pace with development; and
(c) Compactness, an emphasis upon mixed and higher density development, infilling, and redevelopment.

More recently a fourth principle has emerged, namely containment. This principle appeared in a formal program setting in Maryland in 1996 when the State’s growth management system was revised to include State-defined smart growth boundaries for urban areas beyond which the State will not commit any funds for infrastructure that would encourage development. Tennessee’s system requiring the delineation of 20-year growth boundaries has the same effect as Maryland’s. In combination, these four principles provide critical guidelines for a growth management system.

VI. RECOMMENDATIONS

Based on Rusk’s national study of metropolitan areas in the United States and the lessons from neighboring states, we have developed a series of recommendations for Alabama decision makers to address the current and future needs of the urban areas of Alabama. Specifically, we suggest that special attention be given to Alabama’s eleven metropolitan statistical areas, as identified by the Census Bureau. These larger urban areas are the ones that are facing the more serious problems and challenges that we have identified in this chapter.

Recommendation 1

To underscore the importance of Alabama’s urban areas, the Legislature should create a Department of Urban Affairs (or similar title.) This Department would become an advocate for urban Alabama at the State level and would be responsible for conducting studies of service delivery, infrastructure, and social problems. A permanent advisory board of representatives of urban Alabama should be formed and a professional urban specialist should be appointed as the Director. While the Director should have the ear of the Governor and the Legislature, he/she should not be appointed based on political connections or background.

It should be emphasized that this new Department would not be comparable to any of the current State departments, most of which are program-oriented. The Alabama Department of Economic and Community Affairs, for example, is mainly a vehicle for channeling funds to local governments. While this function is important and could be incorporated into a new policy making entity, the overriding need is for an agency with state-wide policy-making responsibility with the authority to implement such policies at both the State and the local level.
Recommendation 2
The new Governor and Legislature should form a Task Force on Urban Alabama to study the peculiar problems of the urban areas of Alabama. The task force should be made up of leading citizens, elected officials, and academics with special knowledge of urban affairs. Funding should be provided to the task force so that expert consulting help may be provided to direct the work of the task force. At the conclusion of the in-depth study of the problems and challenges of urban Alabama, the task force should issue a report of its findings and recommendations.

The task force report should recommend a comprehensive urban growth management policy for Alabama. The Legislature should be willing to assign the report issued by the Task Force on Urban Alabama to a prominent committee that will consider implementing the recommendations of the Task Force, and the Task Force should give consideration to several critical issues:

1. Annexation  Current annexation laws should be addressed so that cities are allowed a vehicle to grow in reasonable ways. If a city unilaterally annexes contiguous property, stipulations regarding the responsibilities of a municipality should be detailed in annexation laws. For example, it must commit resources to provide infrastructure and services to the annexed area within a reasonable time. Both Mississippi’s and North Carolina’s annexation laws provide worthwhile models to examine and consider.

2. Consolidation  Consideration should be given to the role of the State legislature in encouraging the consolidation of adjoining cities or cities and the urban areas that surround them, or cities and counties. Rather than the current situation where incorporation is relatively easy for a growing area to accomplish, the law could discourage the formation of new municipalities and encourage the use of existing cities to provide services to areas that are urbanizing.

3. Special Districts  Presently, numerous special districts provide water, sewer, and fire services to areas adjoining current city limits. These districts create serious implications for managed growth, especially when adjacent cities are able to provide these services. Overlapping provision of services in Alabama’s urban area is the rule, not the exception.

4. Land Use Control  Attention should be given to the possibility of empowering cities with extraterritorial authority for land use control, such as zoning, within a growth boundary area or the planning jurisdiction currently allowed. This authority would allow each city to plan for future growth within at least a two-mile area around the city limits and have the exclusive right to determine land use and to provide water, sewer, fire, law enforcement, and other services.

5. Planning Commissions  In conjunction with consideration of land use control issues, composition of Planning Commissions should be re-evaluated. If cities are given authority to control land-use beyond the city limits, the role and function of Planning Commissions would be altered. Member composition should be considered to allow (or require) a broader membership. Furthermore, the Planning Commission would no longer be an arm of the municipality exclusively.
6. Impact Fees  The Florida and Georgia statutes that authorize cities to levy fees to cover the costs of public services upon the developments that generate the demands for such services should be reviewed. The experiences of cities in these two states with the use of this authority should also be evaluated.

7. Coordinated Planning  The creation of a state-regional-local planning and policy-making system should be evaluated. While the building blocks for such a system presently exist, there is no overall purpose or guidance for its implementation.

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Robert J. Juster has extensive experience in city, county and regional planning, including serving as Planning Director for the cities of Mobile and Auburn and as Director of the Birmingham Regional Planning Commission. He has also taught in graduate programs at the University of Alabama–Birmingham and the University of Mississippi; and from 1990 through 2001 he was a Visiting Professor in the graduate program for Community Planning at Auburn University. In 1999 he was a member of the first group of planners elected to the College of Fellows of the American Institute of Certified Planners. He holds an MPA from Harvard University and a Ph.D. from Vanderbilt University, and is a member of the editorial board of the Public Administration Review.

Wendy L. Hassett has nine years of experience in local government management, currently as the assistant city manager of Auburn, Alabama. She holds a Master of Public Administration degree and is a Ph.D. student in Public Administration and Public Policy at Auburn University. She is co-author of two forthcoming articles in Public Administration Review, the author of a forthcoming article in Public Management, and co-author of a chapter in Innovative Governments: Creative Approaches to Local Problems.

REFERENCES


PART III: State Policy Issues

CHAPTER SEVEN

Critical Issues in K-12 Education

- Ed Richardson

EXECUTIVE SUMMARY

Alabama public schools have made great strides during the past few years. Nevertheless, the steps Alabama’s leaders take during this decade to resolve critical issues will determine whether or not continued progress will be made. There are many critical issues, but lack of planning, low expectations, and failure to invest in education are among the most serious.

First, little progress can be expected without clearly stated and generally accepted goals. The lack of such a plan for pre-kindergarten through graduate school has been and remains education’s biggest challenge. Without a clear plan, Alabama’s elected officials will simply continue to react to the crisis of the day.

Second, low expectations from our educational system severely constrain our progress. Our youth will follow the jobs, and jobs will be created through ingenuity, hard work, and a good education. We must overcome the debilitating effects of low expectations, and we must start now.

Failure to invest in education is our third most significant weakness, despite the fact that investment in our youth is the best possible investment for the future. Alabama’s elected officials need to follow through and invest in education. Due to years of neglect, the price tag is large; however, unless something is done now, the costs will grow even larger in the future.

The next ten years will be a defining period for Alabama, and Alabama is obviously a state with all of the ingredients needed for success. To prosper and succeed, we need a comprehensive state plan, coupled with high expectations, and adequate funding. Delay is not an option; the sooner we start, the less ground we will have to cover to stride with our competitors.
I. BACKGROUND
For many Alabamians, elementary and secondary education elicits memories of small, rural schools located in most communities where everyone was known. Certainly, many such situations still exist but federal and state legislation, international competition in the economic arena, and intensive pressures on limited dollars have led to substantial changes. Alabama’s elementary and secondary students now number 730,000 or 89 percent of all school-aged children. [Within this total, 96,000 students are eligible for special education services and since Alabama’s special education law is more comprehensive than existing federal legislation, 21,600 students are classified as intellectually gifted requiring additional programs.] On any given school day, 395,000 students are transported to school in yellow school buses, the safest mode of travel for anyone.

There are 128 school systems in Alabama. Each system has a superintendent and locally appointed or elected board of education. The school systems range in size from the Mobile County Schools with 65,000 students to the Linden City Schools in Marengo County with 620 students. The school systems operate independently, but are subject to the general control and supervision of the Alabama Board of Education. The Alabama Board of Education consists of eight elected members and the Governor as chairman.

Alabama public schools have made great strides during the past few years. Currently, the drop-out rate rests at 16.4%, which is the lowest in Alabama’s history and is the lowest in the southeastern United States. ACT scores for public school students have continued to climb, and currently rest at 20.3. These scores are the highest in Alabama’s history and for the second year in a row, are near the average for the southeastern states. In addition, the Stanford Achievement Test scores, in every grade tested, are at or above the national average.

In this regard, the steps Alabama’s leaders take during this decade to resolve critical issues will determine whether or not continued progress will be made. There are many critical issues but lack of planning, low expectations, and failure to invest in education are among the most serious.

II. PROBLEM 1 - LACK OF PLANNING
Little progress can be expected without clearly stated and generally accepted goals. The lack of such a plan for pre-kindergarten through graduate school has been and remains education’s biggest challenge. Without a clear plan, elected officials simply react to the crisis of the day; problems which, for the most part, wouldn’t rise to a crisis level with a little planning. One indictment of poor planning is the commonly accepted position that the courts will solve our problems. This abdication by elected officials creates a lack of confidence on the voters’ part, and leads to undue resistance to every change. Leaving problems for the courts relegates all of us to being considered as unruly children and willing to pay a much higher financial cost than necessary. Paying later is always costly.
Lack of planning is demeaning to this great state, a state equal to any and better than most. Each year, I schedule a fall meeting of Alabama’s school superintendents in the Guntersville State Park. The weather is usually exhilarating, the scenery spectacular, and the sunsets inspiring. This is a sensational environment in which to have a meeting, until rooms are assigned. Years of neglect have resulted in an unattractive and somewhat depressing appearance. This certainly discourages tourism, a potentially great source of revenue for a state with limited resources.

Equally depressing is meeting in the Gulf State Park lodge. The beaches are pristine, the water crystal clear, and the uncrowded surrounding refreshing. All of this is a great start until rooms are assigned. Poor planning, accompanied by years of neglect, have resulted in unacceptably low comfort standards.

For many years, business people, elected officials, and recognized experts have emphasized the importance of education to economic development. Economic development attracts better paying jobs and reliable job opportunities. Poor educational opportunities increase the cost of social programs, unemployment compensation, food stamps, and prison populations. Lack of planning has led to confusion among many concerning the proper path to take. This has led to little progress and the recognition that Alabama is falling behind its sister states in the South.

Without higher expectations and scrutiny by elected officials, a few will benefit at the expense of many. This lack of involvement has been ingrained in our community and state operations for over 100 years. Much of the blame can be laid at the feet of those who wrote and those who continue to support the 1901 State Constitution. This Constitution effectively disenfranchised the poor and minorities. In addition, it concentrated all major discussions in the State Capitol, not at the local level. Home rule is practically non-existent, and its absence sends a strong message that Alabamians cannot be trusted to make decisions affecting them.

With most discussions being made in Montgomery, it is easier for a few to defeat proposals, than for many to pass them. This is an example of effective planning by a few overriding the interests of the majority. Alabamians have chafed at federal encroachment on state activities, but to date do not chafe at state encroachment on local government. A state without a plan will be unable to protect, provide adequate healthcare, pave its roads, or educate its citizens. It is not too late, but further delays will result in Alabama becoming a case study for state planners identifying the long-term problems of poor planning.

Alabama’s State Board of Education has developed a K-12 plan, but little effort has been made to involve higher education and other state agencies. As a result, K-12 education frequently fights with higher education over limited dollars, with the end result being that more funds are allocated to non-essential programs.

Lack of planning allows gubernatorial candidates to announce that plenty of money exists in Montgomery – a point of view that few have the courage to contradict. However, following election not one governor has been able to find these piles of wasted or unused funds.
III. PROBLEM 2 - LOW EXPECTATIONS
Admittedly, the problem with lack of planning may itself contribute to low expectations. The absence of a plan, or a disjointed plan, leads to little progress and low expectations. The frequent tendency of gubernatorial candidates to resort to demagoguery has served to reinforce stereotypes and continue to keep expectations low. It is often assumed, for instance, that certain students (i.e., Black, poor, rural, non-English speaking, and inner-city youth) are not as capable as others, and that our expectations for them should be lowered. This might work during a time with a high demand for manual labor and limited mobility, but few would espouse an investment in this model for the long-term. Our youth will follow the jobs, and jobs will be created through ingenuity, hard work, and a good education. A good education, regardless of the level, is an investment, and usually results in higher paying jobs. We can expect that in the years to come, the definition of what is a good education will demand higher expectations than are common today.

Today, Alabama has the nation’s highest requirements for high school graduation. Twenty-four units are required, including 16 core subjects. No other state requires four mathematics, including algebra and geometry; four sciences, including biology and physical science; four English; and four social studies courses.

When it became apparent that the Alabama Board of Education was committed to implementing these legislative requirements, many elected officials, educators, and parents publicly argued that Alabama’s students could not meet these requirements. The alarm and criticism reached such levels that the last card was used, the race card. Many of these critics implied that African-American students would be disproportionately impacted and couldn’t be expected to complete the program successfully. Much to their surprise, more than 90 percent of Alabama’s students, including African-American students, demonstrated high ability levels by completing the 24 courses and by passing a rigorous graduation exam. Once again, it was proven that people rise to the level of expectations placed upon them.

It will take a generation to overcome the debilitating effects of low expectations, but we must start now. The class of 2014 entered kindergarten this fall, and the class of 2019 was born this year. Our expectations must be raised to even higher levels if our state is to benefit from higher paying jobs associated with higher educational levels.

IV. PROBLEM 3 - FAILURE TO INVEST IN EDUCATION
A failure to recognize the importance of investing in education has led to low reading skills. One in seven of Alabama students reads at a functionally illiterate level. Poor reading skills will create an insurmountable handicap for those aspiring to meet ever-increasing standards. Even with the great success of the Alabama Reading Initiative, teaching students to read in the 8th grade is a costly and largely ineffective task. The Reading Initiative with its staff development
for teachers must be in every school if Alabama is to have a better chance of rejoining its sister states. During an examination of southern states, it was determined that Florida, Georgia, North Carolina, Virginia, Maryland, and Tennessee had moved so far ahead of Alabama, that it was unrealistic to even make comparisons.

It really boils down to fundamental beliefs. Aren’t we in Alabama just as capable as others? Isn’t an investment in our youth the best possible investment for the future? Don’t we want to be recognized, even emulated, for our investment in our future? Certainly, the answer to the three questions is a resounding yes!

A complete investment plan for K-12 education has been approved by the Alabama Board of Education. Due to years of neglect, the price tag is large. However, unless something is done, it will grow even larger in the years to come.

Neglect first shows up in physical facilities. For instance, Alabama’s K-12’s physical facilities are valued at $8.4 billion, and most of these facilities have been built with funds raised in local communities and counties. The continuing failure to maintain these facilities, however, has brought about a major deterioration in our K-12 physical plant. The cost to eliminate the most severe and unsafe conditions is more than $450 million, and more than $1.7 billion is needed in all.

V. THE FUTURE AND OUR CHOICE
Few take pride in a shallow or limited plan and over the next several years, Alabamians will decide whether to plan, raise expectations, and invest in the future. If we choose to avoid these steps, then proration of funds will occur every three or four years, and schools will not be able to meet higher expectations. If we choose to avoid these steps, embarrassing shortcomings in Medicaid, public safety, highway education, and our public parks will continue to surface.

The next ten years will be a defining period for Alabama. Parents are known and respected by their level of commitment to family members. Successful businesses are known and respected by their level of investment in employers. Prominent states are known and respected by their planning and long-term commitment to the welfare of their citizens.

Alabama is obviously a state with all of the ingredients needed for success. It just needs a comprehensive state plan, coupled with high expectations and adequate funding. Alabamians are clearly up to the task. We are in a race that will never end. The sooner we start, the less ground we will have to cover to stride with our competitors.

Are there risks? Yes, but no progress has been made without the element of risk. Dare we take such a risk? Only if we believe Alabamians are a great people and Alabama is a great state.
Dr. Ed Richardson has served as the Alabama State Superintendent of Education since 1995. He is the state's top appointed official over Alabama's K-12 public schools as well as secretary to the State Board of Education. Prior to becoming State Superintendent, he served as a local superintendent of education, assistant college professor, a high school and junior high principal, assistant principal, and classroom teacher. Dr. Richardson has overseen the implementation of the Education Accountability Law passed in the 1995 Legislative Session that requires schools and school systems to operate within strict standards of academic and financial accountability. In 1996, Dr. Richardson recommended to the State Board of Education a plan for implementing the nation's highest graduation requirements and he has helped manage the successful implementation of that plan.
CHAPTER EIGHT

Beyond Wyatt: Alabama’s Mental Health and Mental Retardation System in the 21st Century

- Kathy Sawyer
  Amy Hinton

EXECUTIVE SUMMARY

U.S. Surgeon General, David Satcher, published a report in 1999 indicating that one in five Americans will be touched by mental illness at some point during their lifetime. The World Health Organization has discovered that mental disabilities account for three of the top ten leading causes of global disability. The Alabama Department of Mental Health & Mental Retardation provides critically important services to over 214,000 citizens receiving services during fiscal year 2000-2001. Based on contemporary research, the number of Alabamians needing services from the Department is expected to grow in upcoming years, and it is vital that the Department is prepared to meet the demand.

The Alabama Department of Mental Health & Mental Retardation has made great strides in a number of important areas during the past four years. The settlement of the three-decade old Wyatt litigation, however, is arguably the most significant accomplishment occurring during this time. The establishment of new offices within the department, and the reassignment of certain staff to better utilize their unique skills, abilities and expertise has led to both greater efficiency and a more user-friendly Department.

While the department’s accomplishments and highlights are important from the standpoint of government accountability, these achievements underscore its dedication to its primary constituency; namely, Alabamians with mental illness, mental retardation and/or substance abuse disorders. To this end, the Department has enthusiastically employed many of the performance-based budgeting objectives to better allocate limited resources and facilitate better and more comprehensive planning.

A number of challenges face the Department of Mental Health & Mental Retardation in its continuing quest to fulfill its mission of providing the highest quality of treatment, habilitation and care for those we serve. First and foremost, prevalent inaccurate public perceptions about the populations served by the Department frequently prohibit the discussion and adoption of progressive policy alternatives that could reduce costs and enhance an individual’s quality of life. We are currently in the midst of an ambitious public education campaign to eradicate stigma and better educate elected officials, policymakers and the general public about those we serve.
Theoretically, the remainder of challenges facing the Department of Mental Health & Mental Retardation could be reduced if elected officials and the general public had a more complete understanding of what our service recipients want and need. The inconsistent manner of past funding for the Department often prevents the recruitment and retention of qualified staff, the proper upkeep of state-owned facilities, and limited opportunities to expand funding for community programs so that consumers are served in the least restrictive environment and have an enhanced quality of life.

I. HIGHLIGHTS AND ACCOMPLISHMENTS DURING FISCAL YEAR 2000-2001

The Alabama Department of Mental Health & Mental Retardation (DMH/MR) can claim numerous accomplishments for fiscal year 2000 – 2001. The fiscal year began with the settlement of the thirty-year-old Wyatt lawsuit, the continuation of the trend to move from institutional to community based services, and the implementation of a three-year statewide public education campaign. Since that time, the DMH/MR can boast of the renewal of accreditation for all ten state-operated mental illness facilities, as well as the maintenance of Title XIX Certification at all four state-operated developmental centers.

Perhaps the most exciting aspect of the past fiscal year occurred in two areas: children’s services, and housing. The Department established and staffed the Office of Children’s Services this year. The Director of the Office of Children’s Services reports directly to the Commissioner and is responsible for coordinating all DMH/MR services for Alabamians under the age of 19. The establishment of this office is expected to streamline the service delivery process for children and adolescents with mental illness, mental retardation, and/or substance abuse disorders. It will also provide valuable referral and contact information for parents and guardians about other appropriate services.

Thanks to the leadership of Gov. Don Siegelman, State Director of Finance Dr. Henry Mabry, and the hard work of many DMH/MR employees and staff, the Alabama Housing Initiative emerged as an important aspect of the Wyatt settlement agreement. The Housing Initiative is a collaborative partnership among various state agencies designed to increase the availability of affordable, appropriate and fully integrated community housing options for members of the Wyatt settlement class and their families. The Housing Initiative partners the DMH/MR with the Alabama Housing Finance Authority (AHFA), the U.S. Department of Housing and Urban Development (HUD), the Farmer’s Home Administration (FHA), and the Alabama Council for Rural and Affordable Housing (ALCARH).

Using a set aside arrangement agreed upon by lawmakers, policymakers, and housing officials, HOME and Low Income Tax Credits from the AHFA were utilized to provide housing for low-income individuals with mental illness and mental retardation. The Department is very pleased

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1 Alabama Housing Finance Authority website located at http://www.ahfa.com
to note that the 2001 AHFA awards are expected to afford our consumers with 241 new and affordable housing units valued at approximately $15 million. Furthermore, approximately 200 HUD Section 8 Vouchers are currently set-aside throughout Alabama specifically for individuals with mental illness and mental retardation.

In many ways, the accomplishments of the Department during fiscal year 2000 – 2001 also serve to highlight numerous opportunities for improvement in mental disability policy generally, and within the existing departmental service delivery system specifically. Many of the opportunities identified as priorities for the upcoming year are integral both to the ultimate success of the initiatives recently undertaken and the continued effort to improve the standards of the public mental health service delivery system. These opportunities for improvement can be grouped into four broad categories: (a) Departmental administration and staffing issues; (b) General education of the public and other target groups; (c) Political realities; and (d) Scope and quality of services. Within each category, several issues are of paramount importance to the continued development of a nationally recognized and consumer-focused service delivery system.

II. DEPARTMENTAL ADMINISTRATION AND STAFFING ISSUES

One of the greatest challenges for state mental health and mental retardation agencies is the recruitment and retention of qualified personnel, both in administrative and managerial capacities, as well as clinical professionals and direct care workers in facilities and community programs. The number of individuals entering academic programs in mental health and/or mental retardation related fields seems to be shrinking, which poses a problem for recruitment. This problem can become particularly acute when the courts and/or accrediting agencies mandate the establishment and/or staffing of a particular position, and a lack of qualified applicants prevents the position from being appropriately filled or from being filled in a timely manner.

Two areas where the department has experienced continuing difficulties in maintaining adequate numbers of qualified staff are nursing services and direct care workers. The shortage of nursing professionals, a trend demonstrated in Alabama and the nation as a whole, is a particularly acute problem for the state-operated facilities. The DMH/MR will continue efforts to recruit and retain qualified, dedicated and compassionate nursing professionals through Alabama’s system of public and private colleges and universities, and with more traditional personnel recruitment tools (e.g. job fairs).

Perhaps, the most pressing personnel issue for the Department involves the Mental Health Workers, the direct care professionals who perform the daily work for our service populations. The direct care staff is truly the backbone of the state mental health service delivery system. However, the arduous and challenging work for low pay is demoralizing to the staff and results in continuing problems for the Department in the recruitment and retention of good workers.

2 Press release about pay range increase available at http://www.mh.state.al.us/
First and foremost, the Department of Mental Health and Mental Retardation is constantly striving to do a better job of communicating the duties and expectations for direct care professionals at the outset. For instance, many individuals just beginning their work with the Department may not fully understand the extent of an individual’s mental illness or mental retardation, or how these conditions can impact personal behaviors. By providing mental health workers with better training, and continuing education and training opportunities, we can hopefully encourage a reduction in the relatively high turnover and/or absenteeism rate for these positions and, increase the pool of expertise possessed by these valuable employees. Enhanced training and professional development of current employees will better prepare individuals for these challenging positions, as well as reduce the department’s costs for newly hired employee training.

A continuing challenge for the Department is to increase employee satisfaction and to improve the morale of direct care staff through innovative programs that recognize and reward excellence in service. The DMH/MR Employee Appreciation Committee was reestablished in 1999, and is comprised of a representative from each state-operated facility and a member of the Department Central Office Personnel Division. This committee is responsible for promoting awards and events to honor exemplary direct care workers. It is also responsible for ensuring that important sources of communication are distributed to all departmental employees, and for communicating employee concerns and perspectives to executive level staff and management. Much positive feedback has been received from these ongoing efforts to be more inclusive of direct care staff and keeping them abreast of departmental events and developments.

An ongoing goal of the Department is to include direct care staff in departmental policymaking activities that directly impact their lives and permit them greater leisure time with family and friends. Two recent accomplishments have helped to improve employee satisfaction and also reduced departmental expenses. The first is the transitioning of direct care workers from an 8-hour work shift to a 12-hour work shift. This policy shift was made at the request of the majority of direct care workers, and it has successfully reduced both absenteeism/tardiness rates and turnover. An added benefit was experienced in the reduction of frequent overtime costs for direct care workers.

Finally, the accomplishment for which the DMH/MR is most proud occurred this year. Governor Don Siegelman, State Director of Finance Dr. Henry Mabry, the State Personnel Department, and the State Personnel Board worked diligently with the department to increase the pay range scales for the Mental Health Worker classifications. These modest increases are significant for two primary reasons. First, these pay range increases were the first pay range increases authorized for the Mental Health Worker classifications since 1982. Second, early in his administration, Gov. Don Siegelman had selected the Department as one of the first pilot agencies for his performance-based management and budgeting initiatives. These initiatives permitted us to fund pay range increases from existing savings, generated through the process of implementing performance-based management and budgeting.


Source: DMH/MR Central Office Personnel Division
One of the greatest opportunities for improvement at the Department is in the area of adequate funding for human resources. To attract qualified mental illness and mental retardation professionals – persons at the apex of their respective fields -- the State of Alabama must remain competitive with other states in the area of professional salaries. This is particularly true for skilled medical positions such as nursing. Although the pay ranges for mental health workers increased this year, they are still abysmally low considering that the work of these employees is some of the most physically and emotionally challenging in state government. These employees are dedicated public servants, many with years of service in their respective facilities, and they are truly the backbone of the public mental health service delivery system. Table 8-1 lists the new hourly and annual salary ranges for the mental health worker classifications.

### Table 8-1: DMH/MR Salary Scales for Mental Health Worker Classifications, FY 2001-2002

<table>
<thead>
<tr>
<th>Position</th>
<th>Old Rate</th>
<th>New Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mental Health Worker I</td>
<td>$7.16</td>
<td>$7.70</td>
</tr>
<tr>
<td>Mental Health Worker II</td>
<td>$7.52</td>
<td>$8.51</td>
</tr>
<tr>
<td>Mental Health Worker III</td>
<td>$8.30</td>
<td>$8.72</td>
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</table>

<table>
<thead>
<tr>
<th>Position</th>
<th>Old Rate</th>
<th>New Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mental Health Worker I</td>
<td>$14,890</td>
<td>$16,021</td>
</tr>
<tr>
<td>Mental Health Worker II</td>
<td>$15,636</td>
<td>$17,690</td>
</tr>
<tr>
<td>Mental Health Worker III</td>
<td>$17,267</td>
<td>$18,135</td>
</tr>
</tbody>
</table>

The Department believed that increases in the pay ranges for mental health workers were necessary and important. First, the low salary range was comparable for jobs outside of state government with significantly less responsibility, such as food service and custodial positions. Second, the department felt that the modest pay range increase would encourage existing direct care workers to remain with the DMH/MR and to view their position as a valued career option. Third, it would reward the myriad direct care employees with impressive records of state service, many with more than a decade of experience working directly with DMH/MR service populations, for their compassion and dedication. Most importantly, we strongly believe that increasing the pay range scales for direct care staff communicates a message of respect and admiration. This change is expected to substantially minimize work-related stress and further reduce the likelihood of sentinel events or incidents of abuse and/or neglect.

### III. General Education of the Public and Other Target Groups

One of the greatest frustrations routinely faced by the DMH/MR is the lack of knowledge and understanding of about mental illness, mental retardation, and substance abuse disorders. As a critical component of the Wyatt settlement agreement, the Department embarked upon a
A comprehensive three-year public awareness campaign to help educate Alabamians about their fellow citizens with mental and/or physical disabilities. Utilizing the professional expertise and commitment of the department’s volunteer Community Education Advisory Committee, the DMH/MR held a statewide creative communications contest in 2000 to help plan a statewide mass media campaign. The Committee eventually decided to use the campaign slogan We Are Alabama, Get To Know Us!, and to prominently feature departmental consumers in this campaign. On a strictly limited budget, the Department still managed to blanket television and radio stations statewide with this positive message that encourages community inclusion and seeks to eradicate the negative stigma and false stereotypes that so often shadow our service populations. Additionally, billboards carrying the message “When disAbility disAppears, AbilityAppears!” were posted along high-traffic routes in Decatur, Tuscaloosa, Birmingham and Montgomery.

The greatest challenge, however, is still the education of target audiences that need to understand the importance of mental health, mental retardation, and substance abuse treatment services to Alabamians who need them. The first target audience is elected officials. For many years, the DMH/MR has been inadequately funded, and this negatively impacted many areas of service delivery and administration. Hence, the most critical need for the Department is for elected officials to have more empathy and understanding of the paramount importance that our services have for many of their constituents.

The State also needs to encourage increased participation of consumers and their families in the policymaking process, as well as the use of culturally appropriate and sensitive language. The Department has been actively working to educate both print and broadcast journalists in this area, and hope to expand these efforts to other groups next year.

A heavy focus on the importance of appropriate language may seem out of character for an agency that is the state’s largest provider of publicly funded services for persons with mental disabilities. However, language serves as an effective cultural frame that clearly depicts how persons view their fellow citizens. The labels used to describe individuals with mental illness, mental retardation and/or substance abuse disorders are extremely important because they not only project the way society sees consumers, but also heavily influence the way consumers view themselves. The DMH/MR considers the intense stigma that so often follows consumers to be one of the main problems influencing contemporary mental health policy at both the state and national level.

The problem of stigma was demonstrated in 1999 when U.S. Surgeon General David Satcher released the 51st Surgeon General’s report Mental Health in the United States. The is the first Surgeon General’s report to ever focus on the state of American mental health care and it provides empirical evidence about trends that mental health professionals have suspected for

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* Media Guide for Writing and Reporting About Persons with Disabilities available at http://www.mh.state.al.us/
* Available at http://www.surgeongeneral.gov/library/mentalhealth/home.html
many years. Dr. Satcher revealed that one in five Americans would experience some form of mental illness in their lifetime. In other words, twenty percent of Alabama’s approximately four million residents will someday need the services of the DMH/MR. However, Dr. Satcher was disappointed to discover that only a quarter of those citizens who need mental health treatment actually receive it, and the report notes that the intense stigma surrounding mental health treatment is the primary reason for this failure.

Public servants have a responsibility to help the general public overcome its fear of mental illnesses and mental health treatment. All must do a better job of communicating the facts about mental illness. All must promote the fact that mental illnesses are no-fault biological brain disorders, not moral flaws or personality quirks.

Our public servants also need to inform every Alabamian about some of the most impressive and important statistical indicators of the quality of mental health. A typical example is the fact that the treatment success rate for clinical depression is approximately eighty percent, while treatment rates for comparable serious physical conditions like heart disease are much lower.

Another important problem with the perpetuation of stigma is its adverse impact on minority communities. As a companion to his initial mental health report, Dr. Satcher released in 2000 a report on minority mental health issues7. The Surgeon General found that African-Americans are less likely to receive any needed mental health treatment, primarily due to the cultural stigma associated with mental illness, lack of access to appropriate treatment, and fear and mistrust of the medical establishment. The DMH/MR has increased its outreach efforts for minority Alabamians and continues to view this as an important activity for our Department.

IV. POLITICAL REALITIES

The State of Alabama has experienced serious budgetary constraints during the last few years. Like many other state agencies, the DMH/MR has had to carefully engage in careful strategic planning activities in order to meet obligations to DMH/MR service recipients, as well as to the Alabama taxpayer. While careful budgeting should always be a priority for state agencies, the DMH/MR experienced level funding during several fiscal years immediately prior to the Wyatt settlement negotiations. Gov. Don Siegelman and members of his administration, Attorney General Bill Pryor, lead plaintiffs counsel James Tucker, and DMH/MR executive staff worked extremely hard to come to an acceptable settlement agreement in this thirty-year old case during 2000. The inadequate and inconsistent funding levels provided to the DMH/MR in previous years would not be enough to achieve and maintain a settlement in the Wyatt case. Appropriate planning and efficient resource allocation necessitate consistent and sufficient funding.

The three-year *Wyatt* settlement implementation period requires increased appropriations to fund the department’s settlement obligations. However, current budget shortfalls continue to represent a constant problem for the Department for a number of reasons. First, the trend toward full inclusion of DMH/MR consumers in appropriate community settings did not begin when the *Wyatt* case was settled. For many years, it has been the policy of the DMH/MR and mental health professionals that consumers should be served in the least restrictive environment. The department’s *Wyatt* settlement obligations to transition 600 individuals from state institutions into community settings simply accelerated those transition efforts that were already underway.

The political reality of institution-to-community transition for consumers is that local officials and state lawmakers often tend to oppose attempts to downsize state facilities and facility staff due to the economic impact on local communities. It is vital that elected officials become more aware about the inordinately high cost of institutional care and the cost-effectiveness of community-based models. Furthermore, it is important for lawmakers and policymakers to realize the therapeutic benefits of more independent and individualized living arrangements and self-determination for DMH/MR service populations.

A second political reality that heavily influences budgeting and planning activities at the DMH/MR is Alabama’s lack of a comprehensive health insurance parity law. Over the last ten years, many states have adopted variants of the federal *Domenici-Wellstone Parity Act*. Insurance parity simply means that people with mental illness and related disorders are covered at a level equal to that provided for persons with physical illnesses. Currently, consumers with health insurance are often victims of discriminatory co-payments that are much higher for mental health care than for comparable physical health care. Furthermore, the number of paid inpatient hospitalization days is frequently capped at a very low number. This arrangement has the potential to transform the DMH/MR into a crisis mental health system – when paid insurance days expire, hospitals can then release individuals who may still require medical attention. Those individuals subsequently enter the public system and public funds must finance their care.

Mental health insurance parity makes good economic sense. The National Mental Health Association has published research indicating that states with comprehensive parity laws have seen health insurance premiums rise *less than one percent*, if at all*. The passage of a comprehensive insurance parity bill would help to ensure that Alabamians with mental illness would have a greater likelihood of remaining out of state-operated facilities and continue to remain productive members of society. Persons with mental illness do not ask for their condition any more than someone with heart disease does. However, without the protection of a comprehensive health insurance parity bill, DMH/MR consumers face discrimination based on an arbitrary characteristic – their medical condition.

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* Read the *NMHA Mental Health Insurance Parity Fact Sheet* at [http://www.alaska.net/~mhaa/factsheets/insparity.html](http://www.alaska.net/~mhaa/factsheets/insparity.html)
V. SCOPE AND QUALITY OF SERVICES
As discussed earlier, the goal of the DMH/MR is a consumer-focused service delivery system that provides the highest quality of services to Alabamians with mental illness, mental retardation, and/or substance abuse disorders. The funding and public education components previously discussed heavily impact this goal, as do the political realities of state government. It is best to be proactive, rather than reactive, when planning and financing the scope and quality of services.

The importance of adequate and consistent funding cannot be overstated. The DMH/MR has been slowly pursuing a system-wide transition to community-based services. The necessity of increased funds to successfully accomplish this goal has received a boost from the Wyatt settlement agreement and the Legislature’s subsequent funding increases. However, to revert to inadequate funding at the end of the three-year Wyatt implementation period could seriously hamper further efforts to increase both the attractiveness and appropriateness of community treatment and living options for DMH/MR consumers.

The DMH/MR is responsible for certifying that all community programs are compliant with federal disability policy, as well as state law, and DMH/MR policies in areas like environmental standards, nutrition, prevention of abuse and/or neglect, and consumer rights protection. The Department must have the resources to employ a sufficient number of consumer advocates, persons who agree to be on call 24 hours a day and seven days per week for emergencies and rights protection issues. Continued transition into the community means more frequent unannounced visits and monitoring programs to ensure safe, appropriate, humane and dignified environments.

VI. CONCLUSION
The Alabama Department of Mental Health and Mental Retardation served over 200,000 individuals during fiscal year 1999 – 2000, the last year for which complete figures are available. Approximately, half of all those assisted were served in community programs, as opposed to state-operated facilities. The success of the statewide public education campaign is helping Alabamians prepare to share their communities with DMH/MR consumers, free from negative stereotypes and stigma. The performance based management and budgeting initiatives piloted at the DMH/MR have resulted in more efficient use of resources and more effective strategic planning activities. These initiatives have been profiled in Governing Magazine and an influential Canadian management journal.

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9 Read the DMH/MR Annual Report for FY 99-00 at http://www.mh.state.al.us/
In summary, the Department of Mental Health and Mental Retardation has accomplished a great deal in the past few years. More significantly, there are unlimited opportunities for even greater success in the future.

**Kathy Sawyer** was named by Governor Don Siegelman as Commissioner of the Alabama Department of Mental Health & Mental Retardation in January 1999. Ms. Sawyer holds both a B. S. and a Master of Social Work from the University of Alabama. She is a member of the Academy of Certified Social Workers (ACSW).

**Amy Hinton** is a Community Relations Specialist III with the Alabama Department of Mental Health & Mental Retardation. She holds a B. A. cum laude from Huntingdon College and a Master of Public Administration degree from Auburn University Montgomery. She is currently a doctoral student in public policy at Auburn University.
CHAPTER NINE

The Graying of Alabama

- Melissa Mauser Galvin

EXECUTIVE SUMMARY

Alabama faces many challenges in serving the seniors of the State. The Alabama Department of Senior Services is directed with serving the seniors of today and preparing for the seniors of tomorrow. Alabama is currently facing an enormous challenge in serving our current seniors. Equally daunting is the aging of the baby boom population and preparing for their needs. Alabama faces six significant issues: (1) Funding; (2) Long term care; (3) Prescription drug coverage; (4) Healthcare workforce; (5) preparation for the baby boomers; and (6) Death with dignity.

As with many social services in Alabama, aging programs are severely under funded. An adequate infrastructure is critical and adequate funds to implement programs for the elderly are imperative. Currently, Alabama does not have a long term care system, nor the funds to adequately pay for a system. It is estimated by age 80, 40% of the seniors will need long-term care. Currently, 84% of long-term care is provided for in the home, yet 82% of the long-term care expenditures are in nursing home. A continuum of care must be established as well as a mechanism to fund home and community based programs. Prescription drug costs are of paramount concern for the seniors of this state. Nearly 1/3 of seniors have no drug coverage, while low-income seniors spend 40% of their income on prescription drugs. Congress must address this issue on the national level, and the State must provide relief in the interim.

Alabama must also prepare for the wave of seniors — the graying of Alabama. In 2011 the baby boom generation will begin to turn 65, and we will double the number of seniors over the age of 85 in the next 20 years. The aging of the baby boomers will impact many areas of public life and Alabama must strategically plan for the increase in demand. An increased demand in the healthcare workforce is also a concern for the current senior population and the wave of baby boomers. Currently, there is a shortage of nursing assistants, home health aides, nurses and other health professionals. Finally, seniors want to die with dignity. We must begin to dialogue and prepare for a coordinated program providing palliative care.

We all want to age successfully. Alabama must be a partner in this process and assist seniors in living a life of independence and dignity.
Alabama is aging with over 13 percent (i.e. 579,798) of Alabamians now over the age of 65. Of the aged, 15 percent are living below the poverty level; but in many Alabama counties, the poverty rate for seniors is as high as 46 percent. Over sixty percent of those over the age of 65 are female, and seventy-two percent of those over 85 years of age are female. Nearly two thirds (i.e. 65 percent) of our seniors live in family households, while 30 percent live alone.

Many areas of public life will be greatly affected by the aging of the baby-boom population (i.e. those born between 1946 and 1964). In 2011, the baby boom generation will begin to turn 65; and by 2030, it is projected that one in five citizens will be age 65 or older. The oldest old (i.e. those 85 years and older) will double during the next 20 years. This is especially significant since those over the age of 85 require the most services. At the same time, the declining birth rate will mean that we will have only three workers for each retiree.

Currently, Alabama has an inadequate infrastructure for the aged in nearly all areas (e.g. transportation, housing, nutrition, access to health services, availability of social services and limited long-term care options). Three quarters of the seniors own their home, but over half report housing problems, including: (1) Physical defects; (2) Overcrowding; and (3) A cost burden. For example, many homes in Alabama in which the elderly live do not have complete plumbing. Transportation is also a challenge for many seniors, with 25% of seniors over 75 unable to drive.

Rural seniors face additional challenges with lower incomes and lower population densities. Rural seniors report more functional limitations and self-report that their health is poor. Rural seniors live in more dilapidated housing. In addition, health and social services are scarce and many of the seniors have limited experience utilizing and navigating the system.

Alabama faces two critical challenges. The first is to serve the seniors of today, and the second is to prepare for the seniors of tomorrow. Towards these ends, the Alabama Department of Senior Services (ADSS) identified six critical needs that must be addressed to meet these challenges.

I. NEED ONE - FUNDING
As with many social services in Alabama, programs for the elderly are severely under funded. Currently, there are significant waiting lists for home-delivered meals, transportation and other services. Prior to the Siegelman administration, the state budget for the Alabama Department of Senior Services remained stagnant for the past 10 years at $1.7 million dollars. In comparison, Kentucky and Georgia with comparable numbers of seniors, funded their aging programs at $27 and $57 million, respectively. Currently, ADSS receives $4.3 million for aging programs

1 U.S. Census, 2000
2 UAB Center for Urban Affairs, 1990
and $4.2 million for the Elderly and Disabled Medicaid Waiver. Although the Governor and Legislature have increased the budget each year to maintain level services, this has not allowed for the expansion of services. Adequate funding is critical to support our community dwelling seniors.

II. NEED TWO - LONG TERM CARE
Alabama must establish a continuum of long-term care options. Nursing home, assisted living, adult day care, and home care must be a part of a coordinated long-term care system. As many as six in ten American households have experienced a long-term care problem, either in their own family or with a close friend. Eighty-four percent of people using long-term care live at home, but 82% of the expenditures for long-term care are for those expenses in nursing homes\(^3\). Seniors need easier access to quality information and assistance regarding long term care.

Many states have a \textit{single point of entry} for long-term care information and services, but Alabama does not. A \textit{single point of entry} allows for seniors/family members to call and determine the appropriate long-term care setting, as well as the availability of long-term care in their community. In addition, seniors need more community solutions, including affordable housing and support for caregivers. Health care expenditures for the senior Medicaid population are expected to exceed $2.3 billion in 2025, therefore an overall system for delivering care to the aging population must be established.

III. NEED THREE - PRESCRIPTION DRUGS
Alabama seniors face an enormous challenge with prescription drug costs. Nationally, nearly one third of seniors have no drug coverage, and low-income seniors must spend 40% of their income on prescription drugs. This is a multi-faceted problem that needs to be addressed at the national level. In the interim, Alabama must assist seniors to alleviate this burden.

Currently, the Alabama Department of Senior Services has several pilot projects that assist seniors in obtaining free or reduced drugs from the pharmaceutical manufacturers; and there are over 150 pharmaceutical companies that offer prescription assistance. The application process can be overwhelming for many seniors because each firm has a unique protocol and a complex application form. To help alleviate this need, the Department initiated a counseling program to assist seniors in this process\(^4\).

\(^4\) The program will be expanded for statewide coverage on October 1.
IV. NEED FOUR - HEALTHCARE WORKFORCE SHORTAGE
There is a severe shortage of nursing assistants, home health and home care aides, nurses and health workers throughout the State, and turnover rates are extremely high. To address this problem, the Governor established the Healthcare Worker Task Force to determine ways to: (1) Enhance the recruitment and retention of individuals in the healthcare profession; (2) Broaden the educational opportunities for healthcare workers and potential healthcare workers at all levels of education to include K-12; and (3) Reduce the barriers to operations in the healthcare industry. The Task Force also developed detailed strategies to achieve these goals.

V. NEED FIVE - PREPARE THE BOOMERS
Ben Franklin invented bifocals at age 76; Martha Graham choreographed a new ballet for the Barcelona Olympics at age 97; and Michelangelo painted frescos for the Vatican at age 89. Life does not stop at age 65, and baby boomers must prepare for their senior years financially, physically, and mentally. To maintain our current lifestyle, we will need 70% of our pre-retirement income; while individuals with lower incomes, will need 90% of their pre-retirement income. Despite the fact that Social Security currently only pays 40% of pre-retirement income, only half of our baby boomers are covered by retirement plans. In addition to planning financially for retirement, baby boomers need to prepare mentally and physically for aging. A positive attitude, healthy lifestyle, a meaningful pursuit, lifelong learning, and loving relationships are all critical to successful aging. Research indicates that if you don’t use it, you lose it. Thus, staying physically and mentally engaged in life is critical. Studies also indicate that people who maintain healthy relationships with family and friends live longer than those with fewer social contacts.

VI. NEED SIX - DEATH IN OUR HEALTH CARE SYSTEM
In the past several years, interest in the rising numbers of elderly and health care costs has led to interest in medical care services rendered to the dying and where people die. Seven out of ten Americans state that they want to die at home, but three-fourths of them die in medical institutions. More than a third of dying people spend at least ten days in intensive care units, where they often endure torturous and generally futile attempts at a cure. Specialists say 95% of pain in terminally ill people can be mollified, but studies show that nearly half of Americans die in pain surrounded and treated by strangers. The place of death and pain management gives an indication of our society’s attitude toward old age and death.

Dying people and those close to them have many needs including; medical, emotional, social, financial, and spiritual assistance. Many interdisciplinary professions, such as physicians, social

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workers, nurses, hospice volunteers, clergy and families, are leaders in this important issue. It is critically important to our state that we develop a coordinated program that provides palliative care to seniors and supportive services to patients and their families.

VII. CURRENT STATUS AND ACCOMPLISHMENTS
The federal government mandates the Alabama Department of Senior Services to be the focal point for the delivery of aging services. The Alabama Department of Senior Services administers programs of the Older Americans Act, Title XIX of the Social Security Act, and other programs designated to meet the many needs of the elderly. The Department meets the needs of seniors, and promotes the independence and dignity of those we serve through a comprehensive and coordinated system of quality services. We strive to assist seniors to age successfully by helping them to achieve their maximum potential in physical, social, spiritual, and mental development. We do this in a number of ways:

A. Nutrition – Inadequate nutrition causes multiple problems. Alabama has a higher nutritional deficiency mortality rate (i.e. 2.6%) than the national average (i.e. 1.4%). Therefore, our nutrition program provides valuable support to the seniors of this state. There are over 350 operating senior centers throughout Alabama that provide hot, nutritious meals for senior citizens on a daily basis. In addition to serving 2.3 million balanced lunches annually, these centers provide consumer information, nutrition education, health and welfare programs, and recreation for some 47,900 Alabamians. In addition, 1.6 million meals are provided annually to individuals who are homebound and cannot participate in the meals served at the senior centers. ADSS, through the Area Agencies on Aging (AAAs), serve over 17,000 meals per day, with 42% of those meals being served to the homebound elderly. This reflects a 7.2% increase during the Siegelman administration.

B. Transportation – Transportation is provided to nutrition centers, medical facilities, grocery stores, and other necessary destinations by hundreds of vans statewide. These vans provide an estimated 1.7 million trips annually for thousands of older persons. Transportation is an important function for our agency because one in four Alabama seniors over the age of 75 do not drive.

C. Information and Referral – The AAAs also provide information to individual senior citizens seeking assistance. Referrals are made to other community organizations and private businesses, such as banks, hospitals, and nursing homes, which can best meet their needs. (1-800-AGE-LINE) In addition, some AAAs sponsor senior citizen discount programs and provide senior identification cards.
D. Alabama Cares – A program designed to provide assistance to caregivers was created in 2001. This program provides information, assistance counseling, respite care and other limited services to caregivers across the state.

E. Outreach – The AAAs provide social services including casework, referral, and counseling. Some home health services are offered through the Medicaid Waiver Program. The Nursing Home Ombudsman activities are also coordinated by the AAAs to assure quality care for the residents.

F. Medicaid Waiver - The Elderly and Disabled Medicaid Waiver Program is designed to serve Medicaid-eligible persons who require nursing care and are at risk of nursing home placement. The program, which provides home and community-based services, permitting clients to remain in their homes, rather than be placed in nursing homes, has been highly cost–effective and is especially sensitive to the needs of seniors, other clients, and their families. The Alabama Medicaid Agency funds the Alabama Department of Senior Services and the Department of Public Health to manage the program. Currently, we serve over 2800 seniors on the program. In 2001, this program saved the State $59 million by allowing seniors to remain at home.

G. Homemaker/Home Repair – The AAAs help many senior citizens live independently in their own homes by providing funding for services such as house cleaning, escorted shopping, and daily telephone reassurance. ADSS provides limited home repairs for those who lack the expertise and resources for basic repairs.

H. Legal Services – Education programs informing the elderly of their rights and benefits are supported by the AAAs. The program also provides for legal consultation and representation of eligible clients. Over 3,764 clients were served in 2001.

I. Ombudsman – The long term care ombudsman located within each AAA acts as an impartial third party to assist residents of long-term care health facilities (e.g. nursing homes and assisted living facilities). With the goal of promoting the well being and quality of life for long-term care health facility residents, the ombudsman can assist by providing information, resolving problems, and negotiating on behalf of residents. The program received over 2,000 calls and facilitated over 900 complaints. Over half of our referrals come from this institution.

J. Beneficiary Services and Information – The purpose of the Beneficiary Services and Information (BSI) Program is to assist senior citizens with their questions and problems concerning health insurance. Health insurance counseling through AAAs is provided to seniors who are making decisions about health insurance and benefits, assisting them to understand policies, red tape, and cov-
verage actually needed or desired. Volunteers are recruited throughout each region and receive special training to assist a part-time staff member. Counseling on insurance forms and policies has resulted in financial savings both on insurance and prescription drugs. Over 40,000 seniors were served last year in: (1) Finding individuals eligible for Medicaid insurance; (2) Explaining the differences in cost of insurance premiums; (3) Assisting in getting denied claims paid; and (4) Obtaining prescription drugs.

K. Senior Workers – Many seniors in the State seek employment. Seniors are highly valuable assets to the workforce. The Alabama Department of Senior Services administers the U.S. Department of Labor program. Currently, there are over 227 seniors working in the state of Alabama under this program.

L. Senior Farmers Market Nutrition Pilot Program – The U.S. Department of Agriculture awarded a grant to ADSS and the Alabama Farmers Market Authority for $710,840 to provide produce to over 17,500 low-income seniors.

M. Senior Center Renovation – Governor Siegelman awarded community enhancement grants through the Alabama Department of Economic and Community Affairs to renovate 13 senior centers. In addition, numerous grants are awarded to senior centers to promote energy conservation and efficiency while reducing energy costs.

N. Masters Games of Alabama – The AAAs and the city and municipal parks and recreation departments across the State collaborate on the Masters Games of Alabama, a statewide competition involving both passive and athletic activities for seniors.

O. Health Promotion and Disease Prevention – Programs such as exercise classes, blood pressure checks, vision and hearing screenings, and community health fairs are widely available. AAAs also promote the Vial of Life Programs, which provide emergency personnel with quick information about a senior’s medical conditions and medications.

P. Other Initiatives – ADSS has been aggressive in obtaining federal grants. Two exciting projects are the Alzheimer’s Disease and Dementia Services Program and the Medicaid Systems Change Grant. The Alzheimer’s project will provide dementia training to AAA personnel and limited direct services to Alzheimer’s patients and their families. The Systems Change Grant will revamp the Medicaid Waiver program to incorporate consumer directed care, training for case managers, and revise the assessment tool and incorporate the medical, social, cognitive, spiritual, and physical needs of the senior.
VIII. CONCLUSION
During Governor Siegelman’s administration, several milestones have been reached. The Commission on Aging was renamed the Alabama Department of Senior Services. ADSS implemented unit cost analysis to match units of services to associated expenditures more accurately. Second, performance based budgeting and performance based contracting will be implemented in 2003. Third, during the last three years, the budget for the Alabama Department of Senior Services, including both State and federal funds, increased by 64 percent; from $26 to $52 million annually. Finally, the Senior Services Trust Fund, administered by Retirement Systems of Alabama (RSA), was established in 1999 to fund the programs administered through the Alabama Department of Senior Services.

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CHAPTER TEN

Alabama’s Criminal Justice System Update

- Rosa H. Davis
  Lynda Leigh Flynt
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  Allen L. Tapley

EXECUTIVE SUMMARY

Alabama has experienced two decades of unprecedented prison population growth, and jail and prison construction has not kept pace with the rapid inflow of offenders. This lack of bedspace has resulted in overcrowding in county jails as inmates await transfer to state penitentiaries. The financial burden this situation has placed on many counties led the counties to sue the Department of Corrections to seek the prompt transfer of state-sentenced felons into state prisons. As of this writing, this issue was still pending in the Court of William A. Shashy, Judge, 15th Judicial Circuit (Montgomery County).

In 2000, the Legislature created the Alabama Sentencing Commission to conduct an evaluation of the state’s criminal laws, sentencing structure, available punishment options, and other factors impacting the number of people incarcerated to develop a comprehensive sentencing structure. Among the Commission’s goals are the implementation of a sentencing system that will promote public safety, ensure truth in sentencing, prevent prison overcrowding, and reduce sentencing disparity while providing judges meaningful discretion in the imposition of sentences. The Sentencing Commission’s recommendations should bring about long-term changes to Alabama’s approach to punishing criminal behavior, and should help avert such crises in the future.

In the meantime, Governor Don Siegelman has established a task force to address the issue of overcrowding. The task force is charged to design new program, modify existing programs, and monitor progress achieved relative to implementing these ideas. This chapter presents an overview of the work achieved by the Governor’s Task Force, and describes the work currently underway by the Alabama Sentencing Commission.
I. BACKGROUND

From September 30, 1991 to September 30, 2001, Alabama’s adult prison population soared from 17,220 inmates to 26,728 inmates – an increase of over 55 percent (or 9,508 inmates). During the same time period, the general fund appropriation for Alabama’s Department of Corrections (DOC) increased from approximately $136 million to over $197 million – an increase of around 45 percent. This reflects an average $6.1 million increase annually to operate the state’s prison system. This period of unprecedented growth was fueled by numerous mandatory sentencing laws passed as “tough on crime” measures during the 1980’s and 1990’s, coupled with an increased reliance on incarceration as a punishment option within the state.

Since 1991, only one new prison has been constructed (i.e. the Bibb County facility designed for 900 inmates which now houses 1,800 inmates). Despite the efforts of the Department of Corrections to keep pace with the growth, the Alabama prison system, which was designed to house approximately 14,000 inmates, now holds an in-house population of 23,887 inmates. According to DOC’s Monthly Statistical Reports, the number of correctional officers has grown from 2,479 to 2,487 over the last ten years; an increase of only eight officers, despite the addition of over 9,500 inmates. This lack of correctional staff has very often prevented DOC from opening additional space once it is completed. Without substantial changes to the state’s sentencing practices and procedures, combined with the development of community-based punishment and substance abuse treatment options and meaningful offender re-entry programs, significant additional funding to construct additional facilities and hire new correctional officers will continue to be needed. Otherwise, for the foreseeable future, the state’s prisons and jails will likely continue the present cycle of overcrowding.

In a move to address many of the lingering challenges which have continuously confronted the state’s criminal justice system over the last several decades, during the 2000 Regular Session, the Alabama Legislature established the Alabama Sentencing Commission which is charged with recommending changes to Alabama’s criminal laws, rules and procedures to the Legislature. The goals of the Sentencing Commission include making recommendations designed to: (1) Promote greater truth in sentencing; (2) Decrease sentencing disparity; and (3) Establish a sentencing structure designed to prioritize prison resources to ensure that scarce prison bedspace is reserved for the most violent and predatory offenders. As a part of their work, the Sentencing Commission plans to develop the capability to more accurately predict the consequences of new laws on the state’s corrections system to improve resource planning and management with the goal of averting further prison crises in the future.

Until the Sentencing Commission and Alabama Legislature can act to help resolve many of the challenges confronting Alabama’s criminal justice system, short-term and intermediate measures must be taken to address the problem of jail and prison overcrowding. There are present-

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1 Source: Alabama Department of Corrections. Division of Research, Monitoring and Evaluation. Monthly Statistical Reports.
2 This excludes those inmates assigned to work release, work camps and those housed in county jails.
ly over 14,000 offenders sentenced to the state’s prison system for nonviolent offenses. Last year alone, 7,500 nonviolent offenders were committed to the Alabama Department of Corrections statewide at a cost to taxpayers of approximately $10,000 per year per inmate⁵. It is believed that strategies designed to safely remove some of these offenders from DOC custody into intensive supervision within the community, coupled with the development of community-based punishment and treatment options designed to divert nonviolent offenders from the state’s prison system, could help alleviate some of the burden placed on county jails and the Department of Corrections until additional reforms can be achieved.

**II. HISTORY OF BARBOUR COUNTY et al. v. COMMISSIONER OF CORRECTIONS et al.**

In February 1992, the Plaintiff Class of Sheriffs and Counties sought a preliminary injunction requiring the Commissioner of the Alabama Department of Corrections, Morris Thigpen, to accept from county jails those state-sentenced inmates belonging to the state prison system pursuant to **Code of Alabama, Section 14-3-30(a)**. The Court granted the preliminary injunction on February 25, 1992. The injunction, while enforcing the dictates of **Section 14-3-30(a)**, granted the Commissioner a grace period of thirty days to accept inmates once the Department receives the judgment entry and sentence providing for imprisonment in the state penitentiary. On August 6, 1992, the Court entered an order finding the Commissioner in contempt of court. The Department of Corrections’ failure to comply with this injunction and **Section 14-3-30(a)** forced the Plaintiff Class to return to court in 1997 to seek contempt against the Commissioner once again. This time, the controversy ended on September 9, 1998 when the court issued an order approving and adopting a settlement agreement entered into by the parties, wherein the Commissioner agreed to: between **October 1 and October 15, 1998**...accept all state inmates whose transcripts have been received by the Department for thirty (30) days or longer and to thereafter accept state inmates in compliance with the Order on Preliminary Injunction. The court-approved and adopted Settlement Agreement essentially transformed the original preliminary injunction into a permanent injunction by consent of the parties.

During the time period between October 1998 and May 2001, the total number of state-sentenced inmates increased by 4,005. Meanwhile, the number of state-sentenced inmates in county jails grew from 1,310 to 3,380 inmates. According to DOC’s records, nearly 2,000 of these inmates were housed beyond the court-imposed thirty-day time limit. On May 18, 2001 the Court ordered the Commissioner to transfer all state-ready inmates into DOC by June 18, 2002.

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⁵ This includes all inmates admitted to DOC where the controlling offense was property, drug, traffic, public order offense. All inmates convicted of a crime against the person or where the offense was listed as listed as “other” were excluded.
2001, and a show cause hearing was scheduled for June 28, 2001, to determine whether the Commissioner should be held in contempt of the Consent Order, the current Court order, and the 1992 Preliminary Injunction.

Recognizing the seriousness of this continued problem, on May 14, 2001, Governor Siegelman convened a Task Force headed by his legal advisor to develop short and mid-range solutions to address this persistent situation. Representatives from numerous state agencies (e.g. DOC, Administrative Office of Courts, Alabama Board of Pardons and Paroles, The Sentencing Institute, Department of Human Resources, Department of Mental Health, Department of Industrial Relations, etc.) were instructed to work together to identify all available local, state and federal resources that could be utilized to help resolve this immediate crisis affecting counties throughout the state. Task Force members were instructed to think outside of traditional agency lines to determine how best to use funds and other agency resources to serve the felony population to help reserve prison bedspace for violent offenders. Thanks to the hard work of this group, a plan for reducing jail and prison overcrowding was released to the public on June 14, 2001, two weeks prior to the show cause hearing scheduled for June 28, 2001. By the date of the hearing, preliminary progress toward implementing the plan had been achieved, and since that time significant gains have been made in this area.

III. SUMMARY OF PROGRESS IN IMPLEMENTATION OF THE TASK FORCE PLAN

A. Maintaining Correctional Officers

Historically, one of the primary reasons for the delay in transferring state sentenced inmates from county jails has been the lack of correctional officers within the Department of Corrections. This has resulted not only in large overtime expenditures requiring substantial annual increases to DOC’s budget requirements, but it has also delayed opening new beds within DOC once they have been constructed. Because of these findings, the Task Force recommended that the State continue its efforts to recruit and retain correctional officers.

To help improve correctional officer recruitment and retention efforts within DOC, there have been several recent wage increases for correctional officers. When Governor Siegelman took office, the starting salary for a corrections officer was $19,200. Shortly after taking office, the Governor raised it to $22,300. As of October 2001, the starting salary had been raised to $23,200, a level that exceeds the average of other southeastern states.

In November 2000, the Alabama Department of Corrections graduated 102 new officers, the largest correctional officer academy class in the history of the Department. In May 2001, DOC exceeded its own record and graduated a class of 119 new officers; and with the increase in pay and additional emphasis on recruitment, DOC is having good success in recruiting new cor-
rectional officer candidates. Another large recruiting class graduated in December 2001. While DOC remains short-staffed, continued progress in this important area should begin to help alleviate this problem over the course of the next several years.

B. DOC Should Open New Beds
Because of the immediate need to help reduce the heavy financial and staffing burden placed on county jails as a result of having to house state-sentenced inmates in their facilities, the Task Force recommended that DOC renovate existing facilities to expand capacity and pay for additional overtime for correctional officers to staff the newly created beds to the extent possible, given existing resources. This goal has been completed, with the addition of over 200 beds since June 2001. As more correctional officers become available, DOC plans to continue its efforts to renovate existing facilities to increase its capacity level.

It should also be noted that given the new emphasis on expediting the parole process for non-violent offenders, coupled with the increased number of inmates being placed in programs such as the Supervised Intensive Restitution (SIR), reentry, and community corrections programs, the DOC population profile is rapidly changing. As more offenders are diverted from prison while many others are released to newly created transitional programs, the overall in-house DOC population is comprised of more risk-prone inmates. This has led to an increased demand for medium, as opposed to minimum, security beds in recent months. To respond to the challenge, DOC is presently developing plans to convert beds originally designed for low-risk offenders into more secure facilities. Once this is completed, DOC should be able to continue to receive state sentenced inmates in a timely fashion, without compromising public safety.

C. DOC Work Camp
The Task Force recommended that DOC develop plans to reopen the East Thomas Work Release facility to allow inmates to be transferred to the facility where inmates can perform right of way and clean up work for the Alabama Department of Transportation. While this project has not been completed, due to the poor condition of the abandoned facility, plans are underway to have this facility renovated and occupied in the near future.

D. Regional Substance Abuse Beds
Since substance abuse and chemical addiction are underlying factors in criminal activity in an estimated 85 percent of criminal cases, the Task Force determined that it is imperative that the state’s criminal justice system place a greater emphasis on the continued development of mechanisms designed to address addiction problems before, during, and after an offender goes to prison. The Task Force also noted that it would be a good idea to identify and employ an experienced and knowledgeable staff person to coordinate all proposals contained within this report related to alcohol and substance abuse intervention, education, treatment and aftercare.
As a result of the Task Force’s recommendations, many important activities in this area have occurred. These include, but are not limited to the following:

- Existing funds from a number of federal programs have been identified and earmarked for the purpose of increasing access to care among the state’s felony population.
- All substance abuse programs authorized to receive reimbursement for providing drug treatment, testing and counseling services through the Alabama Department of Mental Health have been contacted to solicit proposals on how to expand existing programs and facilities to increase the state’s ability to provide substance abuse services to felony offenders.
- Several sites for new substance abuse treatment facilities have been identified and are in the process of being evaluated for the establishment of new programs. Cities where sites are being evaluated include: Birmingham, Mobile, Montgomery, and Tuscaloosa.
- In Montgomery, better lines of communication have been established between the Alabama Board of Pardons and Paroles and local substance abuse treatment providers, and plans are underway to facilitate similar dialogue throughout the State.
- Numerous judges and district attorneys have participated in regional meetings to discuss plans and ideas on how best to alleviate jail and prison overcrowding by providing more comprehensive treatment services for offenders. As of the end of 2001, meetings had been conducted in Auburn, Birmingham, Florence, Gadsden, and Montgomery. Additional meetings are scheduled for Mobile and Tuscaloosa in early 2002.

E. Sample Regional Substance Abuse Proposal

The first program, to be opened in Birmingham, will be a 60 bed facility funded through a combination of offender fees and federal Residential Substance Abuse Treatment block grant funds (RSAT). This will be a six month program designed to:

(a) Provide long-term residential treatment to offenders previously assigned to community corrections programs who have repeatedly failed less intensive substance abuse treatment efforts; and

(b) Allow for the transfer of inmates awaiting treatment within DOC who have been clinically diagnosed as appropriate candidates for a six month residential treatment program who could be safely transferred to one of these facilities to receive services.

To implement this program, officials from Aletheia House in Birmingham are working with the Alabama Department of Corrections and community corrections providers to develop referral procedures for the program to ensure that those referred to the program are offenders who otherwise would have been sentenced to the Department of Corrections.
The Birmingham program will be at least six months in length, and will be designed to provide a combination of counseling; job readiness training; job placement assistance; GED/adult basic education; case management, including linkages to other social services; twelve step groups, such as Alcoholics Anonymous and Narcotics Anonymous; and transportation.

F. Supervised Re-Entry Program
The Task Force recommended the creation of the Supervised Reentry Program by the Alabama Board of Pardons and Paroles to provide a transitional program to allow split sentenced inmates nearing the end of their sentences to be released into the community early under the intensive supervision of probation and parole staff. In the short term, this program is designed to assist in decreasing jail and prison overcrowding by providing a mechanism to bring to the attention of local court officials for early release consideration those offenders who were sentenced to DOC under the Split Sentence Act with good institutional adjustment. In the long term, it is believed that reentry services, coupled with offender-specific sentence plans and improved case management, will help dramatically reduce the number of re-admissions into Alabama’s prison system.

As a part of the pilot program, the reentry case managers have been asked to assist probation and parole officers in developing home plans for offenders who are released, and to aid in monitoring compliance with these plans upon an offender’s reentry into society. Specifically, the reentry case managers’ duties include, but are not limited to: (a) Assisting offenders in locating and maintaining employment; (b) Assisting offenders to locate suitable housing; (c) Locating substance abuse aftercare programs for offenders, and verifying their continued participation in these treatment programs; (d) Monitoring offenders’ participation in job training/adult basic education programs; (e) Monitoring offenders to determine their compliance with other court-ordered sanctions (e.g. making fines, fees, restitution and child support payments); and (f) Making periodic reports to the sentencing judge and TSI and the Alabama Board of Pardons and Paroles regarding offenders’ progress and behavior while on probation.

As of December 2001, nine individuals had been employed by the Alabama Board of Pardons and Paroles to help provide intensive supervision and case management services to offenders released as a result of this program. Pilot sites where the program has been implemented include the following – 6th Judicial Circuit (i.e. Tuscaloosa County); 12th Judicial Circuit (i.e. Coffee and Pike Counties); 15th Judicial Circuit (i.e. Montgomery County); 21st Judicial Circuit (i.e. Escambia County); and 23rd Judicial Circuit (i.e. Madison County).

G. Increase Efficiency of Parole Board (Thursday Parole Dockets)
The Task Force recommended that, given the current prison and jail overcrowding crisis, the Alabama Board of Pardons and Paroles develop a system to make nonviolent offenders a priority population for parole consideration. In order to accomplish this task, the Board has established a special Thursday docket solely for nonviolent offenders. Senior staff within the Department have been reviewing the records of all inmates to determine which inmates should be recommended to the Board for parole consideration at these special hearings. In order to qualify for parole under this expedited program, an extensive background check must first show
that an inmate has no criminal history of violent behavior, and the inmate must also have a good disciplinary record while incarcerated. Additionally, the department has developed a risk assessment instrument designed to predict an offender’s likelihood of future criminal behavior, and only those inmates who are determined to be at low risk for recidivating will be considered. If all of these conditions are met, then an inmate will be recommended for consideration on the special Thursday dockets.

To further enhance the program’s likelihood of success, nine of the probation and parole department’s most experienced officers have been assigned to monitor offenders exiting prison as a result of the special Thursday dockets. Additionally, officers assigned to monitoring these offenders are required to maintain lowered caseloads to allow for stricter supervision and monitoring of this population.

Since the program's inception in September 2001, the number of paroles granted by the Parole Board each month has increased from approximately 50 to 200 inmates. This increased efficiency in paroling has allowed DOC to free up more beds that can be used to help further reduce the number of state-sentenced inmates in county jails who are awaiting transfer to the state prison system.

**H. Supervised Intensive Restitution Program (SIR)**

The Task Force recommended that the Alabama Department of Corrections reinstate the Supervised Intensive Restitution Program (SIR), which allows for community placement of low-risk offenders who are within four years of their expected release date. While in the program, offenders are to remain under the control of DOC under the supervision of SIR officers employed by the Department. Inmates allowed to participate in the program are required to: (a) Reside in an environment approved by DOC; (b) Maintain employment; (c) Pay all court ordered fines, fees and restitution; (d) Remain drug-free; (e) Obey curfew requirements; and (f) Otherwise comply with any restrictions on activities as deemed appropriate by the supervising SIR officer.

As of January 2002, there were nearly 400 inmates in the SIR program – up from just 50 in June 2001.

**I. Community Corrections**

For many years, community corrections providers have worked with the Alabama Department of Corrections to develop programs suitable for offenders in lieu of prison. These providers have been quite successful in providing such *diversions* over the last several years. In recent months, these providers have begun working in earnest with DOC to identify offenders in prison who could be safely transferred into community corrections facilities. As a result of their efforts, almost 100 inmates had been returned to the community to participate in these programs as of February 4, 2002.
J. Accurate Counting of State-Sentenced Inmates in County Jails
One of the most surprising findings of the Task Force on jail and prison overcrowding was the lack of information concerning the exact number of state sentenced inmates in county jails. As members of the Task Force began working closely with county sheriffs to determine the location of all individual inmates, it was found that the numbers of inmates believed to be in county jails waiting transfer to DOC were greatly overestimated. Out of approximately 2,000 inmates who were reported to be housed in county jails past the 30-day mark, at least 300 to 400 were not where DOC thought they would be. Many inmates had simply ended their sentence prior to being transferred into state custody and were released by local sheriffs. Other inmates had been transferred out of state or were being held within different jurisdictions awaiting trial and/or sentencing for additional offenses. In short, the implementation of better reporting policies and procedures helped a great deal in terms of reducing the number of inmates listed as past 30 days, from nearly 2,000 to less than 400 inmates by the end of 2001.

K. Drug Courts
Drug courts, which began in the early 1990’s, are designed to reduce drug use by ensuring that drug abusing offenders remain in treatment. Presently, there are 15 drug court programs underway in Alabama located in Baldwin, Butler, Colbert, Cullman, DeKalb, Etowah, Franklin, Jefferson, Marshall, Mobile, Montgomery, Shelby and Tuscaloosa Counties. The other drug courts are operated by the Bessemer Division of the 10th Judicial Circuit (i.e. Jefferson County) and the Poarch Band of Creek Indians. As of October 1998, there were 323 of these programs operating throughout the country (up from just 12 in 1994), and the Drug Courts Program Office within the United States Department of Justice continues to encourage the development of drug courts through grant support and technical assistance.

Typically, drug courts are designed as a pre-sentence diversion program. However, in order to participate in a drug court program, offenders must first plead guilty to a drug or drug-related offense. Once the plea is taken by the judge, the defendant is then placed into the drug court program and the court will explain the conditions of the drug court program. If the defendant is unwilling to comply with the program, the court can allow the plea to be entered and sentence the offender to an appropriate term of incarceration.

Conditions imposed by the drug court usually include some or all of the following: (a) Remaining free of drugs and participating in outpatient substance abuse counseling; (b) Submitting to random drug screening; (c) Periodically reporting to the drug court where the judge will evaluate the defendant’s progress in the program; (d) Paying fines, fees and restitution; (e) Participating in educational or vocational training; and (f) Avoiding people, places and activities that may cause the defendant to return to an offending lifestyle.

Upon entry into the program, the defendant is given dates for his next scheduled court appearances. One of the most important features of the drug court is that the defendant must continue to appear before the judge throughout the duration of the program. Each time the defendant is back in court, the judge will evaluate the defendant’s progress in complying with the conditions imposed by the court. For instance, a judge may order an on-the-spot urinalysis test for drugs if he or she believes the defendant is using drugs again. If the test results are positive, the court may impose additional conditions and restrictions on the defendant, or the defendant may have his or her drug court status revoked and be sent to prison.

Sometimes a judge may order a temporary jail stay without permanently revoking the defendant’s status. On the other hand, if a defendant is doing well in the program – remaining drug-free, maintaining employment, attending classes, etc.; the judge may lift some of the restrictions placed on the defendant. The focus of the program is on accountability and recovery, not just punishment without a meaningful purpose.

The drug court program in Birmingham, Alabama (i.e. 10th Judicial Circuit/Jefferson County) illustrates how these courts can be far tougher than traditional probationary programs. In the program, offenders who test positive for drugs will face time in the county jail. While the time imposed as a result of a dirty urine screen may vary from several days to several weeks, all offenders who break this rule will be incarcerated; and there are no exceptions to this rule. Repeated violations of the court’s no drug policy will cause a defendant to be dismissed from the program which means he or she will be sentenced just as he or she would have when the guilty plea was first entered. The defendant will also lose the opportunity to complete a punishment program with no criminal record.

Upon successful completion of the program, drug court cases are typically dismissed or nol prossed by the court allowing the defendant to avoid a criminal record. This gives defendants a strong incentive to participate fully in the treatment aspects of the program, thereby meeting the primary goal of the program to keep offenders off drugs. In other areas, drug courts may be used as an alternative to incarceration. In these programs, offenders face the prospect of prison or jail time if they fail to remain free from drugs. These types of incentives help guarantee that the defendant will comply with the other court-ordered conditions of participation (e.g. paying restitution, court costs, attorneys fees, etc).

According to the Office of National Drug Control Policy, of the 100,000 defendants who had participated in drug courts as of 1998, over 70 percent had graduated or were still active within a drug court program. This success rate is over twice that of other community drug treatment programs. Because of the close supervision and the emphasis on ensuring that offenders remain drug-free associated with drug courts, it is likely that these programs will continue to reduce the levels of addiction and crime for many years to come.

As of January 31, 2002, there were 15 drug courts operating in Alabama. The State should consider funding three to six additional drug court programs. The estimated annual cost per pro-
gram would be approximately $150,000 to handle 30 offenders, assuming adequate treatment resources exist within the community. The cost of funding three programs would be around $900,000 for two years.

IV. THE ALABAMA SENTENCING COMMISSION: PLANS FOR LONG RANGE IMPROVEMENT IN ALABAMA’S CRIMINAL JUSTICE SYSTEM

A. The Path to Reform

Joining the ranks of other states that acknowledge sentencing reform deserves priority status on the agenda of State government, Alabama has a permanent sentencing commission operating as a separate state agency under the Alabama Supreme Court. The Alabama Sentencing Commission has now completed its first year of work toward developing a comprehensive sentencing plan for felony offenders that will:

- **Secure the public safety** of the State by providing a **swift and sure response to the commission of crime**.
- **Establish an effective, fair and efficient sentencing system** for Alabama adult and juvenile criminal offenders that **provides certainty in sentencing**, **maintains judicial discretion**, and **avoids unwarranted sentencing disparities** among defendants with like criminal records who have been found guilty of similar criminal conduct.
- **Promote truth in sentencing** to ensure that parties involved in a criminal case and the criminal justice process are aware of the nature and length of the sentence and its basis.
- **Prevent prison overcrowding and the premature release of prisoners**.
- **Provide judges with flexibility in sentencing options and meaningful discretion** in the imposition of sentences.
- **Enhance the availability and use of a wider array of sentencing options** in appropriate cases; and
- **Limit the discretion of district attorneys in determining the charge or crime**.

As the first step toward achieving these goals, the Alabama Sentencing Commission devoted the first year of operation to reviewing sentencing laws and reform efforts in other states, examining the state’s existing criminal laws and procedures and compiling a comprehensive database for an accurate analysis of Alabama’s current sentencing practices. Due to time constraints, lack of accurate data and inadequate resources, the initial report to the Legislature submitted January 7, 2002, did not include a comprehensive reform package. The report explained the progress that had been made thus far and requested assistance from the Legislature to enable the Commission to continue its work.

The Sentencing Commission has identified the methodology that must be applied to overcome the obstacles it is facing and to build and maintain a sure foundation for sentencing reform in Alabama:

• **The First Step** – Gathering Information for a Reliable Picture of Current Policies and Practices
• **The Second Step** – Analyzing the Picture to Evaluate Current Policies and Practices and Develop Recommendations for Necessary Changes
• **The Third Step** – Projecting the Impact of Proposed Changes in Policies and Practices – Building a Simulation Model

**B. Overcoming the Obstacles to Building a Sure Foundation**

One of the primary challenges confronting the Alabama Sentencing Commission is that there is no single source for comprehensive information. Alabama has a number of excellent automated systems that gather information on crimes, offenders, and victim impact, but there is no single source of comprehensive information on criminal justice matters. There are four separate agencies in Alabama that gather various pieces of the essential information (i.e. the Administrative Office of Courts, the Alabama Department of Corrections, Alabama Criminal Justice Information Center, and the Alabama Board of Pardons & Paroles). The Sentencing Commission is now in the process of obtaining automated data from these agencies and, through consultants, merging information from the separate agencies to form a sentencing database of felony offenders.

**C. Planning for the Future**

With accurate data, the Commission will be able to make recommendations for changes in sentencing policies and practices that will be based on reliable information and specifically designed to accomplish the goals of sentencing in Alabama. Alabama’s new Sentencing Commission has experienced the same problems encountered by other states during their first year of operation, struggling with such basic issues as lack of funding and lack of data. These obstacles, while frustrating and a hindrance, will be overcome because in an unusual demonstration of nonpartisan support, the Legislature, the Governor, the Attorney General, and Alabama’s Chief Justice have united to improve Alabama’s Criminal Justice System.

**V. CONCLUSION**

The criminal justice system challenges confronting us today have evolved over the course of decades. Systemic change takes time, effort, and a comprehensive approach to problem solving. Much work still needs to be done.

Presently, there are dedicated people actively involved in taking a fresh look at the tough issues of crime and punishment in our state. There is a bipartisan effort to solve the immediate prison overcrowding crisis and provide long-term solutions designed to head off this type of problem in the future. Judges, district attorneys, legislators, defense attorneys, victims’ advocates,
agency heads and others all continue to work diligently with the Governor’s Task Force and the Alabama Sentencing Commission toward building a criminal justice system that will inspire confidence in its ability to protect and serve the citizens of Alabama. With this leadership and commitment, Alabama is poised to make great strides of progress in the coming years.

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Lynda Leigh Flynt is the Executive Director of the Alabama Sentencing Commission, appointed by the Chief Justice of the Alabama Supreme Court, Roy Moore, effective February 29, 2001. Ms. Flynt previously served as legal counsel and director of the legal division of the Administrative Office of Courts since 1992, having been a staff attorney for that office since 1981.

Becki R. Goggins has been a Research Specialist at The Sentencing Institute at Auburn University Montgomery since 1994. She received her BA (English) in 1991 and her Master of Public Administration (1993) from Auburn University. Ms. Goggins has served on numerous committees and task forces dealing with criminal justice and prison overcrowding issues in Alabama.

Allen L. Tapley serves as the Executive Director of The Sentencing Institute, a private, nonprofit corporation affiliated with AUM, which provides information to the executive, legislative, and judicial departments of government, the media and the public to assist in the development of effective criminal justice system policy. Mr. Tapley was Alabama’s Administrative Director of Courts from 1977 to 1991.
PART IV:
State Policy Challenges

CHAPTER ELEVEN

Alabama Environmental Issues 2002

- Trey Glenn
  Robert N. Jones
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EXECUTIVE SUMMARY

Abundant natural resources have formed the basis of Alabama’s prosperity throughout its history. Alabama’s citizens, governmental agencies and businesses are acting to comply with the following new federal requirements, while moving to protect, preserve and restore the quality of our air, water, land, plant and animal resources.

In the area of air quality, the Federal Clean Air Act requires that Alabama have an approved State Implementation Plan identifying how we will attain and/or maintain national air quality standards. The State continues to make marked progress in meeting EPA goals with respect to air quality standards, and currently only Jefferson and Shelby counties are in Non-attainment status.

The nation is faced with serious issues regarding Brownfield and land-based pollution. In Alabama, the Legislature and the Governor have recently taken action to develop a voluntary Brownfield clean-up program through the Alabama Land Recycling and Economic Redevelopment Act. In the agricultural arena an unavoidable side effect of growth in the livestock and poultry industries has been the increasing volume of waste by-products and heightened concern about the possible impact this waste might have on our natural environment. While progress has been made, the magic bullet for efficient and cost-effective management of these wastes has not yet been found.

Alabama has undertaken strong and concerted efforts to preserve and enhance the quality of our water and watersheds through the implementation of the Source Water Assessment Plan, enhancement of the wastewater permitting processes, construction storm water program, and Water Use Reporting Program. In addition, Alabama has remained a committed participant in the Tri-state Water Compact negotiations involving the neighboring states of Georgia and Florida.
I. INTRODUCTION
Abundant natural resources have formed the basis of Alabama’s prosperity throughout its history. Now these resources are being threatened by a variety of environmental challenges, from excessive ozone concentrations in our largest urban area, to the mountains of manure created by a flourishing poultry industry, to the increasing pollution of Alabama’s drinking water sources as the population grows and development spreads. In recent years, heightened awareness of the importance of protecting environmental quality has led to a broad range of new federal regulations and standards addressing these issues. Alabama’s citizens, governmental agencies and businesses are acting to comply with these new federal requirements, while moving to protect, preserve and restore the quality of our air, water, land, plant and animal resources.

The primary federal entity addressing these issues is the Environmental Protection Agency (EPA), created in 1970 to unify efforts to protect and enhance the total environment – air, land and water. The EPA is responsible for the development and enforcement of regulations to implement existing environmental laws. EPA researches and sets national standards for a variety of environmental programs, while delegating responsibility for issuing permits, monitoring performance and enforcing compliance to the state environmental agencies. Established with passage of the Alabama Environmental Management Act of 1982, the Alabama Department of Environmental Management serves this state-level function.

II. AIR QUALITY
The Federal Environmental Protection Agency (EPA) utilizes the National Ambient Air Quality Standards (NAAQS) to set the dividing line between healthy and unhealthy air. EPA measures and analyzes air quality data for a determined area against the national standards to determine if that area should be designated as having achieved Attainment or Non-attainment status. Attainment areas meet the national ambient air quality standard for all six major pollutants, while Non-attainment areas fail to meet one or more of the standards. Currently, all Alabama areas meet current air quality standards, except for the Birmingham Non-attainment Area (i.e. Jefferson and Shelby Counties), which exceeds the national standard for ozone concentration. Plans are in place that are expected to bring the area into attainment status.

The Federal Clean Air Act requires that each state have a State Implementation Plan (SIP) identifying how that state will attain and/or maintain the NAAQ Standards. SIPs may contain such elements as: emission inventories, monitoring network, air quality modeling, and attainment demonstrations. They may also contain enforcement regulations and mechanisms. The SIP must be developed through a public process, formally adopted by the State, and submitted by the Governor’s designee to EPA, who must formally approve or disapprove the SIP. Upon approval by EPA, the State Implementation Plan requirements are enforceable by the state, by EPA, and by any citizen. SIP revisions must go through the same adoption and submission process.
A. Birmingham Attainment Demonstration
The Birmingham area was designated a Non-attainment area for not meeting the ozone concentration standard. An area meets the standard only if there is no more than one day per year when the highest hourly average ozone concentration in the area exceeds the threshold value established by NAAQS. In November 2001, the EPA approved revisions to the Alabama SIP addressing the Birmingham 1-hour ozone non-attainment area. These revisions, as well as those related to the reduction of nitrogen oxides, are the most significant changes to Alabama’s SIP for control of ground level ozone since the 1980s.

Birmingham’s attainment control strategies include emission controls on two electric power-generating utilities in the Birmingham area, as well as the distribution of a cleaner gasoline in the Birmingham area. The Alabama Department of Environmental Management (ADEM) staff successfully demonstrated that the fuel requirements are necessary to attain the ozone NAAQS.

B. New Air Quality Standards
New, more stringent standards for ground level ozone and particulates were set by EPA in 1997, and subsequently challenged in court. In 2001, the Supreme Court upheld EPA’s authority to revise air quality standards, though some matters related to interpretation continue in litigation. The new standards go into effect only if EPA makes formal designations of areas as Attainment or Non-attainment. ADEM has a network in place to monitor both particulates and ground level ozone, and continually reviews the network for effectiveness, placing new monitors wherever necessary to efficiently assess air quality. The newest monitor was placed online in Tuscaloosa County in 2001.

In June 2000, Alabama submitted recommendations based on the most current three years of available data (i.e. data collected during 1997-1999). Based on the data and EPA’s guidance, Jefferson, Shelby, Madison, Clay and Mobile counties were recommended for Non-attainment status, but final action has not yet been taken\(^1\). Over time, however, the use of more recent 3-year data periods may change the Non-attainment status for individual counties. For example, based on 1998-2000 data, Montgomery and Lawrence Counties would be in Non-attainment. Based on 1999-2001 data, Clay, Mobile, and Lawrence Counties would be back in Attainment status.

The National Governors Association recently adopted a policy calling upon Congress to establish a flexible, market-based program to significantly reduce and cap emissions and to provide market-based incentives, such as emissions trading credits to help achieve the required reductions. The EPA also seems to be supportive and is working on a proposal for multi-emissions legislation that will further reduce air pollution from power plants while providing that industry the flexibility it needs to produce clean, efficient energy.

\(^1\) Complete versions of state submittals can be found on EPA’s website: http://www.epa.gov
C. The Nitrogen Oxide State Implementation Plan Call
On September 24, 1998, EPA issued rules that require large reductions in nitrogen oxide emissions in Alabama, 21 other eastern states, and the District of Columbia (DC). Essentially, the EPA requires that SIPs contain provisions to prevent sources in one state from emitting pollutants that significantly interfere with maintenance of air quality standards by an affected downwind state. For the purpose of this Rule, ozone is the ambient air quality standard impacted, and nitrogen oxide is the pollutant to be controlled. The 22 states and the DC are expected to participate in a multi-state nitrogen oxide cap and trade program, similar to the Sulphur Dioxides Acid Rain Trading Program.

Alabama submitted its nitrogen oxide SIP in March 2001, and was the first southeastern state to receive EPA approval in July 2001. The SIP affects large electric generating units, industrial boilers, and turbines, as well as stationary internal combustion engines and cement kilns. Currently, only those Alabama counties that lie above the 32nd parallel are affected. Controls are expected to be in place by May 31, 2004, and it is anticipated that these controls will bring about reductions in emission of approximately 50,000-tons per annual ozone season.

D. ADEM Air Permit Program Receives EPA Approval
On October 28, 2001, the Environmental Protection Agency (EPA) approved the Air Division's major source operating permit program. The approved program submittal was made in response to a directive in the 1990 Clean Air Act (CAA) Amendments, which required air regulatory authorities to develop and submit to the EPA an operating permit program for major stationary sources.

In implementing the Title V operating permit programs, permitting authorities require that certain sources of air pollution obtain permits that contain all applicable requirements under the Clean Air Act, and to pay emission fees to the permitting authority to offset the cost of administering the program. Since the promulgation of its operating permit program regulations, ADEM has collected more than $38 million in operating permit fees. These funds have enabled ADEM to regulate the more than 300 major sources of air pollution in the State.

III. LAND ISSUES
A. Brownfields and Land Issues
Brownfields are abandoned or underutilized commercial or industrial sites where redevelopment or expansion is complicated by the presence of real or perceived threats of onsite environmental contamination. To address the problem, the Alabama Legislature, with the support of the Business Council of Alabama, ADEM, and several environmental groups, passed the

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2 These counties are: Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, Dallas, Dekalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston.
Alabama Land Recycling and Economic Redevelopment Act (ALRERA) during the 2001 Regular Session. This Act authorized ADEM to act for the State in the promotion of voluntary Brownfield cleanup activities. The Act encourages the redevelopment of Brownfields by limiting liability to property owners who voluntarily address any existing onsite conditions that may present a threat to human health and the environment.

Alabama’s Brownfields program provides a legal mechanism to encourage the cleanup and reuse of properties that might not otherwise be utilized. The reuse of Brownfield sites, many served by existing infrastructure, reduces threats to the environment, improves blighted areas and helps to conserve undeveloped land. To obtain the liability limitations provided under the Act, property owners must investigate their sites for potential environmental problems; then, if such problems exist, create and carry out a plan to address those problems. ADEM is charged with the responsibility of reviewing all plans and activities to ensure they meet requirements of any applicable regulations and guidelines. Completion of an approved plan should render the site suitable for commercial development.

The Act also established the Alabama Land Recycling and Economic Redevelopment Commission (ALRERC) to perform a national survey of cleanup incentive programs, assess those programs, and then make recommendations for enhancing Alabama’s program to the Legislature at each regular session. First convened on August 17, 2002, ALRERC is composed of representatives from involved governmental agencies, business and industry, and the environmental community. ALRERC will consider tax credits and incentives, grants and revolving loan funds for municipalities and private developers, regulatory relief, and technical assistance for redevelopment projects.

The first voluntary cleanup projects in Alabama were implemented in the fall of 2001, and Renaissance Development L.L.C. of Tuscaloosa became the first company in Alabama to sign a voluntary cleanup agreement with ADEM. Renaissance Development’s plan is to raze the former Sabel Steel warehouse in Tuscaloosa and, after implementing cleanup measures, erect an office complex. Viacom Inc. of Pittsburgh, Pennsylvania became the second company to sign an agreement with ADEM, voluntarily agreeing to undertake any necessary cleanup at the former Diversified Products facility in Opelika. In both cases, the developers are responsible for implementing any necessary cleanup measures, while ADEM is responsible for review and oversight of those actions to ensure that applicable regulations are met.

B. Natural Resource Management and Livestock Issues
Over the past two decades, livestock and poultry have become big business in Alabama, generating almost 60 percent of agricultural cash receipts and farm income five times that from all crops. This growth is reflected in the increasing size and number of poultry houses and livestock pastures and feedlots covering much of Alabama’s countryside. An unavoidable side-effect of this growth has been the increasing volume of waste by-products and heightened concern about the possible impact this waste might have on surface and ground water quality, air quality, soil contamination, and other natural resources.
During the same period, many Alabamians have become ever more environmentally sensitive, even as spreading suburban residential development has resulted in growing numbers of non-farming citizens living in close proximity to farming operations. These trends have focused greater public scrutiny on agriculture, and have made natural resources planning and management an essential element of farming operations. Livestock and poultry producers, in particular, must manage their operations in a way that minimizes negative impacts, real or perceived, on the surrounding community and the environment.

As a result of new state and national regulations, increased farmer and industry awareness, and USDA’s commitment to providing necessary technical and educational assistance, Alabama’s agricultural and livestock producers have adopted many new nutrient and pest management practices. However, as we move into a new era of Total Maximum Daily Load (TMDL) regulated watersheds, livestock and poultry producers are going to be challenged to implement waste and nutrient management practices to meet their allocated nutrient levels. Survival of smaller, family-owned operations will depend heavily on their capacity to implement science-based, time-tested, and cost-effective conservation practices that have been determined to be acceptable resource management systems.

New technologies and cultural practices are being developed to improve how the waste is handled, to minimize phosphorous runoff, to reduce the volume of water in liquid systems, and to incorporate chemicals or compounds to reduce nutrients that are present in the waste. The livestock and poultry industries recognize that waste management is not just an on-farm problem, and that bad press can impact not only individual farmers, but the entire industry. Many farmers and producers are installing waste storage structures, utilizing waste by-products on crops and pasture fields, establishing grazing management systems which control stream access, and managing nutrients and pests in ways that are environmentally safe and neighbor friendly. The complexities and increased costs of these practices have raised questions as to whether farmers in Alabama, or for that matter, in any part of America, can successfully compete in world markets against producers operating in less regulated situations.

**IV. WATER ISSUES**

**A. Drinking Water Source Assessment and Protection in Alabama**

Congress modified the Safe Drinking Water Act in August 1996 to require the establishment of source water assessment activities for individual states. The purpose of this requirement was to have the states identify drinking water sources that may be a threat to public health, evaluate all drinking water sources to determine what contaminant activities might impact the quality of water, and provide the public with this information to encourage protection efforts for these drinking water sources. In response to guidance, ADEM eventually developed a source water assessment plan, submitted the plan to Region IV EPA, and subsequently received approval for this plan.
Alabama’s Source Water Assessment Plan identifies the methods to be used to delineate various ground water aquifers and sensitive areas within identified watersheds, as well as to seek the location of potential sources of contamination. Once the wellhead area is delineated, all potential sources of contaminants are identified by location, type, and ownership and noted on a map. This map and supporting documentation are provided to the Department and made available to its customers after the susceptibility determination has been made. The susceptibility for each potential source of contamination is determined in a joint meeting of the drinking water system staff and ADEM staff.

ADEM has established a mechanism in which a portion of the State Revolving Fund Grant, used to provide low interest loans for water system construction, is available to offset a portion of the cost to water systems for the delineation activities. To date, ADEM has provided more than $800,000 to offset delineation costs for surface water systems, and more than $2,200,000 for ground water source delineation. Through these efforts, more than 70% of the surface water source assessments have been completed, and approximately 45% of the ground water sources have been delineated and final assessment reports approved. All water systems must submit their final source water assessment plan, approved by ADEM, by February 6, 2003.

B. National Pollutant Discharge Elimination System Permits

The National Pollutant Discharge Elimination System (NPDES) program was created as a part of the Clean Water Act legislation of 1972. It requires all facilities that discharge waste to waters of the State to apply for and hold permits to ensure that proper treatment is provided and to control the amount of pollutants allowed to be released. Limits contained in NPDES permits are developed to prevent the in-stream concentration of pollutants from exceeding water quality standards. This ensures that a water body’s classified use (e.g. fishing, swimming, drinking, etc.) is achieved.

A General Permit is a type of NPDES permit. These permits often address storm water runoff and other non-process discharges associated with specific activities. There are presently 18 general permits covering more than 2500 industrial sites, with operations ranging from shipbuilding to food processing. There are also general permits covering construction activities and mining operations.

C. State Indirect Discharge Permits

The pre-treatment permitting program is used to control the discharge of wastewater to publicly and privately owned treatment works (POTW). Significant industrial sites that discharge to POTWs are required to obtain a State Indirect Discharge (SID) permit. These permits are designed to protect the collection system, the operation of the treatment plant, the disposal of the sludge, and water quality in the receiving stream.

ADEM’s responsibilities related to these programs include the performance of on-site inspections of wastewater treatment systems and the review of plans, reports, and applications pertaining to pollution prevention and wastewater treatment plant design. For FY2001, ADEM man-
aged 893 NPDES, 315 pretreatment and 2530 general permitted sites, performed 1050 inspections, issued or modified 716 permits, and took 37 formal enforcement actions.

D. Construction Stormwater Program

Section 303(d) of the Clean Water Act requires states to identify all waters that do not fully support their designated uses and to develop Total Maximum Daily Loads (TMDLs) for all pollutants causing impairment in those waters\(^3\). In Alabama, designated uses include: public water supply, shellfish harvesting, swimming and other whole body water contact sports, fish and wildlife, limited warm water fishery, agricultural and industrial water supply, and outstanding Alabama water. With the development during FY2001 of 51 Total Maximum Daily Loads (TMDLs) for streams in the Tennessee, Black Warrior, and Tallapoosa River basins, Alabama has made significant progress in protecting water quality.

Regulations promulgated by EPA in 1985 and revised in 1991 require that the list of impaired waters be submitted to EPA for approval every two years. Alabama's first list was submitted in 1992, and there have been three lists approved since that time. Alabama's 1998 List consists of 197 water bodies scattered throughout the State\(^4\). Most (70.5%) are found in the Black Warrior, Tennessee, Cahaba, and Mobile River basins. In all, there are 395 causes of impairment indicated on the 1998 list. Pollutant sources include runoff from urban and agricultural land, municipal and industrial wastewater treatment facilities, abandoned mine lands, and contaminated sediments.

Settlement of a lawsuit filed against EPA Region 4 in 1998 established a schedule for TMDL development in Alabama. The schedule is based on Alabama's 1996 List, which included 115 water bodies. The schedule requires that all 115 water bodies be addressed by November 5, 2003, either by developing TMDLs, or by de-listing waters that can be shown to be fully supporting their designated uses.

Alabama has met its commitments during the first three years of the schedule through the approval of TMDLs in 1997, removal of segments from the 1996 list, and submission of additional draft TMDLs in 2000 and 2001. During 2000 and 2001, the State developed a total of 51 draft TMDLs\(^5\). These TMDLs addressed water bodies, primarily in the Tennessee and Black Warrior River basins, impaired by organic enrichment/low dissolved oxygen, siltation (sedimentation), ammonia, pathogens (fecal coliform), and pesticides.

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\(^3\) A TMDL is essentially the sum of all pollutants flowing in and out of a watershed, and calculates the maximum amount of contaminants that a water body can receive and still meet applicable water quality standards. The calculated total is allocated over all sources (e.g., industries, municipalities, agriculture, construction activities) of the pollutant so that in sum, these do not exceed the maximum.

\(^4\) The list includes information on where the impaired water body is located, the pollutant(s) causing the impairment, the suspected sources of the pollutant(s), and an expected completion date for the TMDL for each pollutant. Causes of impairment include depressed dissolved oxygen levels due to organic enrichment, high levels of fecal coliform bacteria (an indicator of possible pathogen contamination), nutrients, sediment, and various toxins.

\(^5\) Further information concerning Alabama's TMDL program, including a list of TMDLs developed and the schedule for future TMDL development, is available at [http://oaspub.epa.gov/waters/state_rept.control?p_state=AL](http://oaspub.epa.gov/waters/state_rept.control?p_state=AL).
E. Water Resources Planning and Management
The protection of Alabama’s water resources is of critical importance to the health and safety of the citizens of this state. The continued economic growth of Alabama requires that the competing water needs of industry, public health, the environment and recreation be carefully monitored and analyzed so that the best possible result can be achieved.

The water planning and management functions of the Office of Water Resources (OWR), combined with the effort underway in conjunction with the Alabama–Coosa–Tallapoosa (ACT) and Apalachicola–Chattahoochee–Flint (ACF) Allocation Formula negotiations, offers Alabama its best chance at wise stewardship of one of the most valuable resources this state has to offer. The development and implementation of new programs, such as Regional Water Studies, and Drought Planning, will further our efforts to support the full implementation of the Alabama Water Resources Act, while improving water resource management and coordination with other agencies.

The major focus of Program and Policy development has been the Water Use Reporting Program. The database that is generated as a result of this program is the only comprehensive database of water use in Alabama. It is being revised to be more user friendly, and to allow receipt and dissemination of data via the Internet. Since the issue of drought management has become a priority in the State, the Office of Water Resources has hosted meetings of representatives of major water users affected by the drought. This has provided a forum to discuss drought-monitoring efforts and to allow for coordination between river system operators and representatives of industry, municipal, and environmental groups.

F. Water Wars - ACT / ACF Tri-State Water Compact
The Compacts, as they are known, are the congressionally authorized processes for Georgia, Alabama, and Florida to negotiate water allocation formulas for the Apalachicola-Chattahoochee-Flint (ACF) and the Alabama-Coosa-Tallapoosa (ACT) river basins. Negotiations for the two compacts have been in process for three years, and periodically the three states have agreed to extend them. The negotiations will end unless agreements are reached, or the states agree to additional extensions. The Compact Commissioners include the Governors of each state, plus two Federal Commissioners appointed by the President of the United States as non-voting members. Under the River Basin Compacts, the State Commissioners must negotiate and agree on a proposed allocation formula and present the formula to the Federal Commissioners for concurrence before the allocation formula can be implemented.

V. THREATENED AND ENDANGERED SPECIES

Congress passed the Endangered Species Act in 1973 to protect species of plants and animals that were in danger of disappearing. Alabama has 89 federally listed threatened and endangered species. The law provides protection from direct human threats, such as killing and trapping, as well as protection from threats to the ecosystem on which the species depend.

The Endangered Species Act, in regard to animals that are listed as endangered or threatened by the Department of the Interior, applies to both public and private lands. Legal protections of plants, however, are limited primarily to public lands (e.g. National Forests, public parks, military bases, and other lands owned by any national, state, county, or other public agencies). Although listed plants should be protected on all lands, Endangered Species Act violations can only occur on private lands if existing state laws, such as trespassing laws or state endangered species laws, are broken. The U.S. Fish & Wildlife Service is the federal agency with regulatory responsibility for the Endangered Species Act.

The risks to our ecosystems are extreme. Alabama’s population density is now 80 people per square mile, an increase of 5 percent since 1982. The amount of developed land grew at a much higher rate, increasing by 19 percent between 1982 and 1992. Half of the state’s wetlands have been lost since 1780, and all but a few remnants of the Black Belt prairie have been converted to agriculture. The Department of Conservation and Natural Resources has a policy to protect, conserve and increase the wildlife of the state, but Alabama does not have a formal biodiversity policy to provide added substance to this policy.

Alabama has a program specifically designed to acquire lands important because of their biodiversity values. The Forever Wild Land Trust, established by constitutional amendment, acquires land for the purpose of increasing wildlife habitat and natural diversity. Its funding derives from the Alabama Trust Fund, which is an irrevocable, permanent fund established by the State Constitution. An interdisciplinary Board of Trustees determines which lands are to be acquired. The current level of funding for this program is only a few million dollars, and has not approached the $15 million cap.

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6 Information on endangered plants and animals in Alabama may be obtained from the U.S. Fish & Wildlife Service at the Daphne (Alabama) Field Office, or the Jackson (Mississippi) office. Other sources of information include the Alabama Forestry Commission, university faculties in Alabama and neighboring states, and the Game and Fish and Natural Heritage Program sections of the Alabama Department of Natural Resources.

*Alabama Code 1975 §9-2-2 (1)*

*Alabama Constitution. Amendment no. 543, §3)*

Trey Glenn is the Director for the Office of Water Resources Division of the Alabama Department of Economic and Community Affairs (ADECA). He earned his Bachelor’s of Civil Engineering from Auburn University and his Master’s of Business Administration from the University of Alabama in Birmingham. Trey holds his professional engineering license and is a member of several professional groups. He has worked in the water resources field for many years and has extensive experience in hydrologic engineering and water resources management. During his professional career he has provided technical and policy level support to water quality studies, the ACT/ACF Allocation Formula negotiations, reservoir systems operations, drought management, flood management and other various water resources programs.

Robert N. Jones is the Alabama State Conservationist with the U.S. Department of Agriculture’s Natural Resources Conservation Service. He has 30 years of experience in the field of natural resources conservation and has held his present position for 3 years. Prior to coming to Alabama, Mr. Jones had assignments in Oklahoma and Mississippi. He has received numerous honors for his work, including the Distinguished Service Award from the National Association of Conservation Districts and the Oklahoma Governor’s Conservation Award.

Paul Kennedy is a Project Coordinator for USDA-Natural Resource Conservation Service, currently assigned to the Cawaco Resource Conservation and Development Council as a Technical Assistant. He earned a Bachelor’s of Science in Forestry from North Carolina State University. Paul has worked extensively in public and private forestry and natural resource management for over two decades. A Registered Forester and Certified Professional in Sediment and Erosion Control, Kennedy has also been awarded the Alabama Historical Commission’s Distinguished Service Award and the Friend of Planning Award from the American Planning Association’s Alabama Chapter.

James (Jim) M. Moore, III currently serves as Chief of ADEM’s Office of Education and Outreach housing the Non-Point Source Section 319 Programs, the Alabama Clean Water Partnership, the Agency’s Ombudsman Office and Pollution Prevention Programs. He has served as Chief of Petroleum Section of the Air Division for five years. Prior to the above appointment, Moore served as the Ombudsman for the Department and helped establish that office. In addition he has worked in project design, permitting and enforcement areas for both the Municipal and Industrial Branches of the Water Division for 14 years. Jim holds a BS in Civil Engineering from Auburn University. He has served and is participating with several associations, including the Water Environment Federation, the Air and Waste Management Association, Alabama’s Water Environment Association, Legacy Partners in Environmental Education and the Alabama Clean Water Partnership.
CHAPTER TWELVE

Supporting and Promoting International Trade in Alabama

- Michael C. Dow
Johnny Ford

EXECUTIVE SUMMARY

International trade is vital to the strength and globalization of Alabama’s economy and to the development of value-added businesses within the State. During 2001, Alabama producers shipped over $7.5 billion worth of goods to some 100 countries. These international transactions support thousands of jobs in Alabama. Reports show that export related jobs pay up to 15% more than other jobs, thus improving the standard of living for Alabamians. The expansion of international markets also gives Alabama manufacturers, farmers, and service industries a chance to grow and prosper far beyond the limit of the domestic economy. Being diversified in the international arena helps our companies’ weather economic downturns here at home.

The future economic well being of Alabama companies are tied to their ability to compete in a global market. The State’s leadership needs to fully realize the contributions of international trade and provide the support to encourage businesses to look at new markets and help them understand new ways of doing business in a dynamic, competitive world market. To do so will require a commitment of resources and political support to steadily upgrade the state’s efforts to bring together Alabama producers and international buyers. Additional steps include building a superior transportation infrastructure, support of open markets, and the education of our state and local leaders to move Alabama forward in the new era of globalization.

I. INTRODUCTION

The economies of Alabama and our nations are inextricably linked to the economy of the world. Manufacturers, service industries, farmers, workers and their families all across the United States benefit from the production of goods and services which are marketed successfully overseas. This is certainly true in the state of Alabama, as trade has become an integral part of our state’s economy. And as we move towards globalization, we need to embrace and support open markets but likewise support initiatives that allow the citizens of Alabama and citizens of other countries to share in the gains from the global economy. Alabama’s markets should be open and foreign markets should reciprocate.
Alabama benefits from open markets. The state's manufacturers of goods and services exported almost $7 billion during 2000, up 15 percent from 1999 and 125 percent above the 1993 total of $2.5 billion. Over the 1993-2000 period, Alabama ranked seventh among the fifty states in terms of percentage growth in exports.

Alabama exports goods globally to 178 foreign destinations. The state's leading markets, by far, are the North American Free Trade Agreement (NAFTA) nations of Canada and Mexico. Other top markets are Japan, Austria and Germany.

The state's leading export sector is transportation equipment. These products alone accounted for over $1.5 billion of Alabama's total exports in 2000. Other major exports included computers and electronic products, paper products, apparel, and machinery.

Within Alabama, there were four metropolitan areas that generated 48 percent of the state's exports during 1999. The leader was Huntsville, which posted export sales of some $1.1 billion. That is more than one-fifth of the state's total. The other top exporting metropolitan areas were Mobile, Birmingham and Phoenix City/Columbus. The areas recording the fastest export growth during the 1993-1999 period were Florence, Decatur, Huntsville and Mobile.

A study by the Institute for International Economics and the Manufacturing found that export-oriented firms earn 10 percent more than workers in similar firms that export less or that do not export at all. Export-related jobs are also more secure as exporting plants are 9 percent less likely to shut down than comparable non-exporting plants. Exporting firms also grow faster, create more jobs, are more productive, and innovate more rapidly than firms that do not export. Exporting creates new sources of profits and company growth. With a diversified customer base, exporting firms are thus decreasing business cycle vulnerability. Exporting oriented firms also increase their production economies of scale and profitability and extend product life cycles. The study also found that the benefits from export reliance are not limited to corporate elite, but touch everyone. The result? Stronger companies and stronger economies.

The latest figures indicate that Alabama depends on manufactured exports for some 115,000 jobs. Export supported jobs accounted for an estimated 7.3 percent of Alabama's total private sector employment. What's more, roughly one of every seven workers in Alabama manufacturing industry jobs is export related. Manufacturing sectors with the most export-related jobs were transportation equipment, computers and electronic products, primary metals, and chemicals. Exports of manufactured goods also indirectly supported some 63,700 jobs in Alabama's non-manufacturing industries. These industries supply manufacturers with a broad range of inputs that are needed to produce goods for export.

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Trade benefits also ripple through the local economy -- a fact that every public and elected leader should recognize. Local spending by exporting companies and their employees has a ripple effect throughout the local economy, benefiting non-exporting companies and residents. Purchases of supplies and equipment by exporting companies support jobs in local firms. According to a multi-year study by Global Trade Information Services, Alabama exporters spend, on average, 16% of each dollar of revenue on locally produced goods and services, generating an estimated $1.2 billion in business and supporting an estimated 12,800 jobs in local suppliers statewide. The typical American exporter purchases goods and services from 23 local firms. In addition, the employees of exporters and of the companies that supply them spend an average of 70 percent of their wages on goods and services produced by locally owned businesses, including clothing stores, automotive shops and entertainment venues.

As we are aware, trade and commerce are changing as a result of globalization, technology, and other forces. Alabama’s economy has been traditionally driven by mass manufacturing with low cost and low skilled jobs. According to a report by the Progress Policy Institute, Alabama ranked 35th in export orientation. In their evaluation, states with lower rankings tended to have more traditional manufacturing industries that compete directly with lower-wage nations, making it more difficult to export. States more firmly rooted in the old economy, including Alabama, tended to be Southern and Plains states that lagged behind in industrialization. Many were viewed to have made limited investments in education and research and development. Their economics often depended on natural resources or on mass production manufacturing. The Institute stated that while lower-ranking states face challenges, they could also take advantage of new opportunities, particularly with the IT revolution. This will give companies and individuals more geographical freedom, making it easier for businesses to relocate, or start up and grow, in less densely populated states.

Thus, Alabama should position itself to anticipate change in order to evaluate what these developments will mean for workers, investors, consumers, and citizens in the years ahead. It needs to be able to adapt rapidly by implementing new practices and be ready to take advantage of new global opportunities. Several issues that need to be addressed in order to achieve successful globalization include assisting the state’s manufacturers to become globally engaged; expand our educated workforce; embrace the digital economy through our institutions and infrastructure; and work to support free and expanded trade markets.

II. IN SUPPORT OF GLOBALLY ENGAGED COMPANIES

Alabama companies operate in and are racing into an ever-changing, increasingly fast-paced and competitive decade and century that is unforgiving in its economic punishments to those who are stagnant, ignorant, unplanned, unprepared and mired in status quo politics and mediocrity.

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The ever-increasing process of globalization is taking place in all industries under the mechanism of the market economy with mergers, acquisition activities and corporate strategic alliances transcending national borders at an accelerated pace. Competition is being carried out on a global scale in automobile, electrical equipment, communications, pharmaceutical and many other sectors.

The adoption of global standards is accelerating these mergers and acquisitions. ISO 9000, OS 9000, ISO14000, environmental protection standards, international accounting standards and quickly developing are international securities and reporting standards. These standards are greatly simplifying and accelerating the consolidation of overlapping competing markets and business units and absorbing technological advances on a worldwide level.

Small and medium businesses that offer the greatest potential for trade-related jobs growth – the clients of trade development programs – require more competitive and sophisticated trade development services and support. The U.S. Department of Commerce profiled American exporters and found that while exports were dominated by a few large companies, almost 97 percent were small or medium-sized companies (i.e. those employing less than 500 workers) accounting for about 29 percent of the known export values. In Alabama, some 2,600 companies have been involved in exporting with the state following the national pattern of small and medium sized companies. This may be one way to help those Alabama black-belt areas that the Alabama Commerce Commission, a thirty-member committee appointed by the Governor to develop a strategic plan for the State of Alabama, is rightly targeting.

The State needs to gain the focused, broad-based leadership, strategic planning and the state coordination that is needed to develop a clear and decisive action to assist Alabama companies become global traders so they will not be left behind.

The traditional state level trade promotion programs in the United States are under-staffed, under-used and focused primarily on moving domestic goods into foreign markets. These traditional programs in and of themselves need more emphasis, planning and budgets since only one in four U.S. firms who could export do so. Of those who do export, their sales are one-fourth of their true potential.

The Aspen Institute’s publication, The International State: Crafting a Statewide Trade Development System, points out in its conclusion that the shift from under-funded, traditional, state-level trade promotion programs to a competitive, much-needed, integrated statewide trade development strategy and trade system is not a matter of semantics. It is a fundamental and needed change in our purpose and approach to a more globally competitive international trade and economic development effort. We need to create an international state.

The argument and need for states to transfer from traditional trade promotion to trade development systems is to foster market-savvy firms that continuously adopt their products, operations and business alliances to compete effectively and at global levels of quality in both home and foreign markets. It involves exports, imports, joint ventures, investment and much more.

As competitive global challenges and opportunities continue to increase, there is a need to re-invent our state-level jobs creation efforts to include a vigorous, deeply-integrated, public/private trade development system designed to create a greater company to better manage our state international affairs and economic interests.

In short, the Aspen Report indicates that states who want to organize for global competition have an opportunity to create an international state, a state characterized by a vigorous, deeply-integrated, public/private trade development system, a growing capacity to manage state international affairs and interests and a populace aware of and capable of taking advantage of international opportunities.

The Alabama Commerce Commission recognized international trade as an integral piece of Alabama’s economic development picture during its assessment of the state. Its recommendation for trade development reads in part:

Assess all foreign trade offices for viability. Charge ADO, in partnership with Alabama’s public and private sector trade-related organizations, with developing a statewide international trade development system, which takes into consideration existing trading partners and established cultural relationships.

While a state trade program does exist, it is without adequate budget and staff to accomplish an effective fully integrated, long-term trade program. On the positive, the State does have a professional and active trade community at our core. From this base, a strong, competitive and coordinated statewide trade system can be developed. Implementing a statewide trade development program will enable Alabama businesses to operate efficiently and effectively. Pulling together public and private resources to offer a unique blend of expertise to export producers, Alabama companies can achieve efficiencies that competing firms in other states cannot. It is important to recognize that in order to achieve this, the State’s trade development program must have a sufficient commitment of resources and political support to upgrade its efforts to bring together Alabama producers and international buyers.

The Commission is dedicated to organizing and facilitating the creation of a statewide international trade development system for Alabama. It will need insight and initiative to allow the creation and harnessing of the necessary leadership, vision, statewide coordinated strategic plans, best trade practices and the competitive Alabama Development Office trade budgets necessary for Alabama to compete and prosper in a global arena.
III. ENHANCING THE STATE’S INTERNATIONAL TRANSPORTATION SYSTEM

Today, Alabama’s transportation system is the central element of our economy; and it is essential to an efficient movement of people and goods, both domestically and internationally. Ports, highways, airports, and railroads are visible symbols of the economic well being of Alabama. They generate and support local economic development by stimulating business activity and investment. For Alabama to realize its full growth potential, we must adequately invest in this infrastructure that will enable companies to get their product to foreign markets in a competitive and efficient manner.

One of the two major international transportation assets in the State of Alabama is the Port of Huntsville. It is an inland port comprised of the Huntsville International Airport, the International Intermodal Center, and the Jetplex Industrial Park. These facilities provide quality multi-modal transportation services to a diverse regional customer base and stimulate economic growth and development throughout the Tennessee Valley Region.

A study commissioned some five years ago on the Port of Huntsville underscores the impressive results attributed to the Port. The study focused on jobs created within a two-mile radius of the Port of Huntsville, and it indicated that the Port of Huntsville accounted for the creation of almost 15,000 jobs with an annual payroll of $638 million. The total regional impact of the Port totalled more than 28,000 jobs and a payroll of over $970 million. The study also reported that the Port of Huntsville had a significant economic impact, not only Madison County, where it is located, but also on eight different metropolitan areas throughout northern Alabama. When one combines the aforementioned economic impact study results with over 23,000 rail lifts, most of international origin or destination, and adds in more than 66 metric tons of air cargo shipments, along with $95 million of goods moving through Foreign Trade Zone #83, it can clearly be seen that there exists no comparable catalyst for international trade in the Tennessee Valley region.

If the past is any indication of the future, the Port of Huntsville will continue to impact the region with increasing amounts of jobs, payroll and tax dollars and services. However, many critical planning steps are necessary to continue this role. Identifying the ever-changing logistical needs of the shippers and consignees is paramount. The Port of Huntsville needs the support of the state of Alabama to assist in providing economic impact studies, effective integration in related programs, and marketing it as an international cargo gateway to the world.

Bridging the gulf to the world is one of Alabama’s greatest untapped resources -- the Alabama State Docks. Alabama’s port city, located on the eastern Gulf of Mexico is at an advantage to capture much of the trade shipments to Latin America and the Caribbean. Located at the deepwater Port of Alabama, the Alabama State Docks is a public seaport facility that offers modern

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wharves, warehouses, general cargo, and bulk material handling capabilities. The seaport’s strategic location on the central US Gulf gives shippers quick access to open water and overseas markets from the Caribbean and Latin America to northern Europe, the Mediterranean, Africa, and the Pacific Rim. It also provides access to an unparalleled inland transportation infrastructure to the nation’s heartland by barge, rail, truck, and air.

In the past, the management of the Alabama State Docks, our largest and most valued international asset and our strongest link to international commerce, was highly politicized. For example, the Director was a gubernatorial appointment, and this position was replaced after each gubernatorial election. The docks were also severely under-funded, and they lacked the infrastructure investments to modernize and diversify for a changing and fast-paced global competition and service requirements.

The Alabama State Docks was removed from the day-to-day control, as well as from the direct appointment of its director by the Governor and his staff. A separate business entity was established by the legislature with a nine-member, staggered-term board appointed to elect the director, run the marketing and operations of the port, establish a five year strategic plan to modernize and diversify the port, and to obtain funding for the plan. The appointment of a chairman of the new Alabama Port Authority is helping connect north and south Alabama and realize the concept of building appropriate world-class, statewide trade infrastructure.

The passing of Amendment One was a critical piece of legislation and action for statewide Alabama economic development and trade. The Moffatt & Nichol’s $300 million, five-year strategic plan and a first phase financing schedule provided by $100 million from Amendment One and $50 million from other sources has been a huge step forward. While this was a serious financial commitment at the state level, the first ever since the creation of the State Docks in 1928, it still does not place Alabama in a league to support the shipping of many of the products produced in the State to overseas markets. However, the success of this initiative indicates that we have the collective will and capability to fund the modernization and diversification of the Port of Alabama.

First and foremost, we need a competitive, modern, greatly expanded inter-modal container port linking our air cargo potential at Brookley Field directly with a carefully sized and phased new deepwater container docks at Frescatti Yard with rail and truck transport strategically linked at the same facility. Furthermore, we need to create a state-of-the-art warehousing system facilitating a competitive distribution system to attract global trade. If Mobile can plan and effect a more sophisticated, modern distribution infrastructure, then planes, ships, trains, trucks, investments, and customers will seek us out and not vice-versa.
IV. EDUCATION ON TRADE AND FREE TRADE AGREEMENTS

Open markets are an important engine of economic growth, and it is the way to expand opportunities for the citizens of Alabama and to raise living standards. Our trading competitors recognize how effective eliminating barriers to international commerce can be in stimulating their own economies. The United States Trade Representative Office states that about a third of total world exports are covered by European Union (EU) free trade and customs agreements, compared to almost 11 percent for U.S. free trade accords. The EU is only one of a number of trading partners negotiating deals that do not include the United States. Unfortunately, the United States is no longer the indispensable country on trade.

Even though global trade negotiations remain stalemated, the abundance of free trade agreements (FTAs), bilateral investment treaties (BITs) and mutual recognition agreements (MRAs) by our trading partners continue to expand. There are over 130 free trade agreements among countries of the world, with a majority of these agreements negotiated since 1990. The United States is a signatory to only three FTAs. This is in contrast to Mexico which has FTAs with at least 28 countries, and the EU with over 20 new FTAs with such varied countries as South Africa, Mexico, and Egypt. Fifteen more free trade agreements are under active negotiation by the EU, including ones with South American, Middle Eastern, and African nations. When countries in the EU reduce or eliminate tariffs and duties on their products, it has real economic effects. It is no coincidence that during 2000, for the first time in history, the EU exported more goods to South America than did the United States.

While our competitors are initiating agreements that provide them preferential terms, Alabama and American companies are finding themselves at a great disadvantage. With the lack of FTAs, our exporters and their workers are experiencing discrimination in customs tariffs and services rules, the development of unfavorable product standards and regulations, and exclusion from investment protection and liberalization initiatives.

Our leaders need to support policies that will keep trade open, lower barriers, and preserve American leadership in the global economy. These policies include: fast-track trade negotiating authority, new multilateral agreements in areas such as services, information technology, and agriculture, and new regional agreements with Latin America, Asia, and Africa.

The Alabama World Trade Association, a statewide non-profit membership based organization, has strategically been strengthened. It is in the process of growing in financial support, membership and prominence in Alabama’s economic development arena, and its primary objective is to be the voice of trade for all of Alabama. In doing so, its volunteer membership has stood steadfast in promoting the attributes of trade policy to both state and federal leaders. It has continued to build a consensus among the Alabama business community that addresses trade issues and the impact it has on all of the citizens in our state.

Engaging in global trade brings a responsibility to deal with individuals in the workforce who will lose jobs as a result of lower skilled jobs moving offshore. We should find new ways to address the dislocations caused by economic change and act upon the realization that globalization requires higher levels of education. This includes high-tech skills and the provision for an opportunity of lifelong learning so workers can keep up with the revolution of developments in technology, globalization, and new business practices.

Alabama citizens will also enjoy a rise in per-capita incomes that accompanies a more educated workforce. Traditionally, companies would hire workers with basic skills and train them in the company-specific skills they need. These workers would then have a reasonable expectation to advance up the career ladder. Unfortunately, in today’s global world, our workers sometimes lack the basic skills necessary to even begin work at many companies. These companies are hard pressed to justify investment in training in Alabama, particularly for hourly workers, when other states and nations can provide on site the necessary educated and trained workers.

The State of Alabama has stepped forward to play a meaningful role in skill enhancement for those workers displaced by jobs going off shore through its pilot program Alabama Works. This program is designed to train county residents in skills needed by companies located within driving distance of the county. However, this program should be supported to the fullest extent so that it can grow and become a regional approach, made available to not only the western side of the State, but to whomever and wherever it is needed. The State of Alabama needs to develop additional new approaches that recognize the changes in the marketplace; that help lessen the understandable fears of Alabama citizens who have lost their job because of this shift; and that provide opportunities to increase job skills for Alabamians. By doing so, we can help build a new consensus surrounding the benefits of globalization.

V. CONCLUSION
Alabama’s trade record for the past decade has seen steady growth. It has also recorded a fundamental shift from traditional industry exports to that of the development of high-tech and greater valued-added products being shipped throughout the world. Exports are helping to transcend the state’s economy to high paying, higher-skilled jobs. Alabama voices to our Congressional delegation are being heard as America moves forward to improve competitiveness for our businesses, farmers, and service sector by passing trade related agreements. These steps will help raise our standards of living by price reductions in everything from electronics to clothing.

Nevertheless, there are many steps that we must still undertake. Alabama needs a living, breathing strategic plan and vision created through a grass roots participative process. We need a shared vision that can unite and make us competitive, productive, and stronger politically, economically, and socially. We need something that our citizens can get excited about, and something that we can expect our elected officials to lobby, work and vote for.
We must give trade a voice and educate state legislators and other elected officials on the benefits of a coherent trade program. Governor Siegelman is dedicated to trade development as a statewide jobs creation program aimed at expanding statewide investment and creating jobs for existing industry, most importantly growing our small to medium companies in rural Alabama. If this initiative will have an impact that will substantially create jobs, new commerce, and expanded trade success; then the Governor’s office, the Alabama Commerce Commission, and the Alabama House and Senate leadership must actively support and participate in the trade development program.

The fact that other countries are negotiating numerous trade agreements while the U.S. is neglecting this policy tool creates a serious threat to our businesses, workers, and farmers. Specifically, Alabama companies will continue to play on an uneven field; and in the long-term, our trading partners will be creating rules that put us at an unfair advantage. It is important that our congressional delegation’s constituents understand and know the facts on trade that will impact their becoming globally engaged in order to encourage globalization.

Alabama’s ports of entry are our gateway to economic growth. The majority of what we buy and sell to the rest of the world passes through these facilities. Although investments have been made in these ports of entry to deal with the new economy and globalization, there are still needs that must be met. Responsibility for financing Alabama’s infrastructure is widely dispersed. It is important that the State lives up to its promises and obligations in funding the future projects, particularly at the Alabama State Docks.

Yes, Alabama can have such a new politics. But, if we want more, we must motivate, organize, plan, manage and lead to get different results. The business of government can get us beyond our divisive politics if we understand its principles, processes and systems, and if we have the energy and intellect to pull our state together and work together hard enough and smart enough. It starts with believing and knowing it can be done, and it ends with doing it.

Let us give Alabama’s citizens a big win on international trade development so we can be even further excited, motivated, and empowered to move Alabama into the new millennium with an expanded economic strength and competitive global positioning.

Michael C. Dow and Johnny Ford

Michael C. Dow is serving a 4th consecutive term as the Mayor of the City of Mobile. He is a strong advocate of international trade, a member of the Mobile Chamber of Commerce, the Alabama State Port Authority, and the Alabama World Trade Association. Mayor Dow chairs the Alabama Commerce Commission’s Subcommittee on Trade promoting a global business environment for Alabama.

Johnny Ford has served as an Alabama State Representative since 1998 and was Mayor of the City of Tuskegee for 24 years. He is in the forefront of promoting and building strong ties for Alabama, both domestically and internationally. Representative Ford is a charter member of numerous organizations, including the World Conference of Mayors, National Conference of Black Mayors, and founding chair of the Alabama International Trade Conference.
CHAPTER THIRTEEN

Social and Economic Inequality in Alabama

- David Wilson
  Royrickers Cook

EXECUTIVE SUMMARY

This chapter explores three areas that are in dire need of improvement by the State of Alabama; namely, education, public health, and criminal justice policy. All three of these issues are somewhat interrelated because failure in one ultimately has an adverse impact on the success of the others.

The first step toward reducing social and economic inequality in Alabama must begin with addressing the serious problems confronting K-12 education. Far too many school systems around the State suffer from dilapidated physical infrastructure, teacher incompetence, low teacher salaries, high dropout rates, and inequitable or inadequate funding. Despite the impressive progress made by the State in teacher salaries, progress in many other areas has been slow. In order to improve Alabama’s educational system, Alabama must fund all our school systems more equitably and adequately, reform the tax structure, and encourage more minorities to pursue a career in the teaching profession.

Alabama also faces many challenges regarding the health of its residents. This includes a severe shortage of doctors, and a lack of health care insurance for all residents. To alleviate these problems, counties located in the most distressed areas of the State must be targeted for development of health care facilities, and incentives must be put in place to attract doctors to these areas. Second, schools systems in Alabama must become more proactive in the fight against teenage pregnancy, sexually transmitted diseases, and other health conditions.

The poor and African-American men disproportionately populate our prisons. Regardless of the race of inmates, however, poverty and a lack of education are common characteristics for the vast majority of the state’s prisoners. If we are to deal effectively with the explosion in the size of the prison population, we must find ways to provide better education for all of our citizens, particularly in the regions where there is pervasive poverty.
I. INTRODUCTION
Two years ago, Alabamians welcomed in the 21st Century. The anticipation leading up to this monumental event was nothing short of amazing. To a small degree, our anticipation was accompanied by the anxiety of terrorist attacks and/or computer glitches. Nevertheless, these anxieties did not diminish the excitement of moving into another era.

Like the majority of Americans, most Alabamians at the dawn of the new century, spent an enormous amount of time reflecting simultaneously on both the major accomplishments and the shortcomings of the 20th Century. Many Alabamians remembered the turbulent times of the 1950s and 60s, an era marked by segregation and discriminatory practices, but they also looked forward to the continuing progress the State had made in many social areas over the last 40 years, despite the fact that many social and economic inequalities remain.

In this chapter, we will explore numerous social and economic inequality issues that Alabamians face on a daily basis. The issues examined in this chapter include: education, health care, and criminal justice. These issues are interrelated because failure in one ultimately has an adverse impact on the success of the others.

II. EDUCATION
Arguably, the first step toward reducing social and economic inequality in Alabama must begin with addressing the serious problems confronting K-12 education. Far too many school systems around the State suffer from dilapidated physical infrastructure, teacher incompetence, low teacher salaries, high dropout rates, and inequitable or inadequate funding. Inadequate funding ultimately affects every aspect of Alabama’s educational system, resulting in many students in poor districts having outdated textbooks, or even no textbooks at all. While there has been a push to raise teacher salaries to the national average, in some instances the State has done this by reducing support for school supplies.

One has to look no further than the recently approved State budget to see this scenario played out. When State economists forecasted a downturn in the economy this year, resulting in a reduction in revenues, Alabama’s legislators considered a budget without salary increases for K-12 teachers. Mysteriously over a weekend, however, more money was found, and a 3 percent increase in salaries for teachers was put in the budget. Where did the 3 percent new money come from? It came from downsizing support for school supplies, books, and maintenance, as well as cutting support for staff and administrative positions. These are the essentials needed to build a solid educational system across the State. Somehow, Alabama must find a way to pay teachers a competitive salary, without shortchanging students by reducing support for critical educational resources to facilitate the teaching and learning process.

We all know that providing nationally competitive wages to teachers should be a priority. Some have argued that it is virtually impossible for a school system to produce highly trained and edu-
icated students if the school system is incapable of attracting highly educated, trained, and culturally diverse school teachers with competitive wages. Today, Alabama ranks 31st in the nation in teacher salaries. If we look only at our neighboring southern states, however, Alabama ranks fourth in teacher salaries among the ten states; and over the last five years, Alabama has made appreciable progress in this area (See Table 13-1).

Table 13-1: Comparison of Teacher Salaries Alabama, Southern States & U.S., 1995-2000

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>$31,324</td>
<td>40</td>
<td>$32,551</td>
<td>37</td>
<td>$32,799</td>
<td>41</td>
<td>$36,689</td>
<td>31</td>
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<tr>
<td>Arkansas</td>
<td>$29,964</td>
<td>44</td>
<td>$31,021</td>
<td>44</td>
<td>$32,119</td>
<td>43</td>
<td>$33,386</td>
<td>43</td>
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<tr>
<td>Florida</td>
<td>$33,330</td>
<td>27</td>
<td>$33,855</td>
<td>28</td>
<td>$34,473</td>
<td>28</td>
<td>$36,722</td>
<td>30</td>
</tr>
<tr>
<td>Georgia</td>
<td>$33,869</td>
<td>26</td>
<td>$35,679</td>
<td>24</td>
<td>$37,412</td>
<td>21</td>
<td>$41,023</td>
<td>17</td>
</tr>
<tr>
<td>Kentucky</td>
<td>$32,935</td>
<td>29</td>
<td>$33,797</td>
<td>29</td>
<td>$34,453</td>
<td>29</td>
<td>$36,380</td>
<td>31</td>
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<tr>
<td>Louisiana</td>
<td>$26,800</td>
<td>50</td>
<td>$29,025</td>
<td>48</td>
<td>$30,090</td>
<td>48</td>
<td>$33,109</td>
<td>45</td>
</tr>
<tr>
<td>Mississippi</td>
<td>$27,692</td>
<td>48</td>
<td>$27,877</td>
<td>49</td>
<td>$28,691</td>
<td>49</td>
<td>$31,857</td>
<td>48</td>
</tr>
<tr>
<td>N. Carolina</td>
<td>$30,411</td>
<td>43</td>
<td>$31,167</td>
<td>43</td>
<td>$33,123</td>
<td>38</td>
<td>$39,419</td>
<td>22</td>
</tr>
<tr>
<td>S. Carolina</td>
<td>$31,622</td>
<td>36</td>
<td>$32,830</td>
<td>36</td>
<td>$33,608</td>
<td>35</td>
<td>$36,081</td>
<td>34</td>
</tr>
<tr>
<td>Tennessee</td>
<td>$33,126</td>
<td>28</td>
<td>$34,222</td>
<td>27</td>
<td>$34,584</td>
<td>27</td>
<td>$36,328</td>
<td>33</td>
</tr>
<tr>
<td>U.S. Average</td>
<td>$37,594</td>
<td>28</td>
<td>$38,415</td>
<td>27</td>
<td>$39,347</td>
<td>33</td>
<td>$41,724</td>
<td>31</td>
</tr>
</tbody>
</table>

Despite the impressive progress made by the State in teacher salaries, progress in many other areas has been slow. In a recent report released by the National Center for Public Policy and Higher Education, Alabama received low scores on four out of five measured areas (i.e., Participation C++; Affordability D; Completion B- ; and Benefits C) and failed one area completely. Alabama received an F for inadequately preparing students to take advantage of college. Louisiana was the only other state to receive an F in this area.

The challenge faced by Alabama’s public elementary and secondary education system is not a new phenomenon. For a long period of time, numerous critics charged Alabama’s educational system with operating inequitably and inadequately. This charge was finally etched into law on

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March 31, 1993, when Judge Gene Reese delivered an opinion in *Alabama Coalition for Equity (ACE) v. Hunt*, which stated that the differences between Alabama’s wealthier school systems and Alabama’s poorer school systems constituted equity disparity in funding. Although this decision was rendered nearly a decade ago, conditions within Alabama’s K-12 school systems have largely remained unchanged.

A recent commentary from the *New York Times* made this point vividly, and illustrated why it was necessary for numerous school systems to file a lawsuit against the State of Alabama for inequitable and inadequate funding. The school systems represented by ACE in the lawsuit included: Barbour, Butler, Clarke, Coosa, Crenshaw, Geneva, Hale, Lawrence, Lowndes, Macon, Pickens, Pike, Winston, Bullock, Conecuh, Talladega, Chambers, Henry, Limestone, Perry, Walker, Wilcox, the Dallas County Board of Education, and the Troy City Board of Education. The location of many of these school systems (i.e., Alabama’s Black Belt) was once characterized by rich farmland. Today, however, it is characterized by high infant mortality, high unemployment, low incomes, persistent poverty, low education, and dependence. These areas are also populated by a high percentage of African-Americans as compared to whites. There is much work to be done in these counties as in much of Alabama.

In order to improve Alabama’s educational system, the State must do what Judge Gene Reese ordered. According to Judge Reese’s ruling, all of Alabama’s public elementary and secondary school systems must be funded more equitably and adequately. If the current system of funding is not changed, we cannot expect the current conditions of schools to improve. Many schools systems are currently producing students who are not ready to enter the workforce, enroll in college, or manage the complexities of life. The State can no longer continue to produce these kinds of graduates if it hopes to continue its strong emphasis on, and success in, attracting industry.

Second, Alabama’s tax structure must be reformed. Alabama’s tax structure favors those who are wealthy. Our State can no longer allow the progress or sustainability of its school system to be based on a regressive and inadequate tax structure. It has been pointed out, for example, that even if Alabama increased its property tax rate by 100 percent, the State would only improve its national ranking from 50th to 49th in property tax effort. Alabama’s elected officials must bite the bullet and implement a tax structure to fund the state’s educational system.

Third, more emphasis must be placed on enlightening and informing public school teachers about the importance of, and the need to, appreciate cultural differences. Colleges and universities must incorporate courses into their curriculum that imbue prospective teachers with awareness of various cultures.

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Alabama must also encourage more minorities to pursue the teaching profession. Currently, only 20 percent (i.e. 9,579) of Alabama’s schoolteachers are African-American (See Table 13-2). Children need to be exposed to culturally diverse teachers, and they need to understand that African-Americans make major contributions, not only in other places in America, but in Alabama too. African-American history must be taught in our schools. If illiteracy is to be eradicated in Alabama, all children must be provided with incentives to want to attend school and to learn. Children must feel good about who they are and the contributions their ancestors have made to America and to Alabama. What better way to make children feel good about themselves and their race, than to expose them to a diverse teacher base?

| Table 13-2: Breakdown of Alabama’s School Teachers By Race\(^5\) |
|-------------------------|------------------|-----------|-----------------|----------------|
|                         | White            | Black     | Other           | Not Reported   |
| Teachers                | 37,062           | 9,579     | 201             | 355            |
|                         |                  |           |                 | 47,197         |

III. HEALTH

Although the first step toward improving social and economic inequalities will require an overhaul of Alabama’s public elementary and secondary school systems, more steps must be taken in other areas as well. Alabama faces many challenges regarding the health of its residents, including a severe shortage of doctors, and a lack of health care insurance for all residents. A high percentage of Alabama residents suffer from various illnesses; including, cancer, hypertension, tuberculosis, diabetes, infant mortality, and HIV/AIDS. Each of these illnesses can ultimately be fatal, most of them, however, are treatable.

The problems surrounding treatment are twofold. First, many Alabamians are not treated for various illnesses because of the lack of access to medical care. According to the American Medical Association, Alabama ranks 39th in the nation in the number of doctors per 100,000 residents (See Table 13-3). Among the southern states, only Arkansas and Mississippi has a worse ratio of doctors to residents than does Alabama. Second, over 13 percent of Alabamians do not have health care insurance, thereby limiting access to medical care for a substantial proportion of the population.

The poor access to doctors and inadequate health insurance coverage contribute to the extremely high infant mortality rate in Alabama. According to the Center for Health Statistics of the Alabama Department of Public Health, although Alabama’s infant mortality rates are at a historically low level, they remain higher than the national average and higher than the rate

Table 13-3: Southern State Comparison, Physicians per 100,000 Population, 1998

<table>
<thead>
<tr>
<th>State</th>
<th>Physicians Per 100,000 pop.</th>
<th>1998 National Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>198</td>
<td>39</td>
</tr>
<tr>
<td>Arkansas</td>
<td>190</td>
<td>41</td>
</tr>
<tr>
<td>Florida</td>
<td>238</td>
<td>16</td>
</tr>
<tr>
<td>Georgia</td>
<td>211</td>
<td>32</td>
</tr>
<tr>
<td>Kentucky</td>
<td>209</td>
<td>33</td>
</tr>
<tr>
<td>Louisiana</td>
<td>246</td>
<td>13</td>
</tr>
<tr>
<td>Mississippi</td>
<td>163</td>
<td>49</td>
</tr>
<tr>
<td>North Carolina</td>
<td>232</td>
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</tr>
<tr>
<td>South Carolina</td>
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</tr>
<tr>
<td>Tennessee</td>
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<td>14</td>
</tr>
<tr>
<td>Texas</td>
<td>203</td>
<td>35</td>
</tr>
<tr>
<td>United States</td>
<td>251</td>
<td></td>
</tr>
</tbody>
</table>

found in most of the southern states (See Table 13-4). Table 13-4 also underscores the disparity between blacks and whites with regard to infant mortality, both nationally and within Alabama. The infant mortality rate among blacks is twice the rate of their white counterparts.

Table 13-4: Infant Mortality by Race, Alabama and U.S. Average.

<table>
<thead>
<tr>
<th></th>
<th>Whites</th>
<th>Blacks</th>
<th>Overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>5.8%</td>
<td>14.6%</td>
<td>7.1%</td>
</tr>
<tr>
<td>Alabama</td>
<td>6.5%</td>
<td>15.4%</td>
<td>9.4%</td>
</tr>
</tbody>
</table>

Table 13-5 demonstrates that the disparity between the races is apparent in the incidence of HIV/AIDS as well. Over 70 percent of newly reported HIV infections are among African-Americans while only 26 percent of the population is African-American. Even more worrisome is that approximately 25 percent of the State’s HIV positive population has not yet sought medical care or treatment.

There are several steps that must be taken to improve the health of Alabamians. First, counties located in the most distressed areas of the State must be targeted for development of health care facilities, and incentives must be put in place to attract doctors to these areas. The presence of more doctors in rural communities throughout the State is urgently needed, and one incentive could be to reduce the amount of student loans they must repay. Incentives such as this may entice more doctors to commit several years of medical practice to impoverished areas of the State.

Second, school systems in Alabama must become more proactive in the fight against teenage pregnancy, sexually transmitted diseases, and other health conditions. The State might continue to lose the fight against sexually transmitted diseases if it decides to not incorporate sex education into its public elementary and secondary school curricula. Of course we would prefer our teenagers and young adults to abstain from sexual intercourse until later in life, however, given the results from numerous studies, teenagers are engaging in sex at very young ages. It is our responsibility to educate them and provide them with as much information as possible for their protection.

IV. CRIMINAL JUSTICE AND THE PRISON SYSTEM

Who are in Alabama’s prisons? In short, the answer includes primarily the poor and African-American men. According to population figures from the 2000 Census report, Alabama’s population is 71.1 percent white and 26 percent black. These figures are virtually reversed among black and white men in prison. Over sixty percent of men in Alabama’s prisons are black (See Source: AIDS Alabama, www.aidsalabama.org

<table>
<thead>
<tr>
<th>Race/Gender</th>
<th>AIDS</th>
<th>HIV</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Male</td>
<td>35.3%</td>
<td>27.7%</td>
</tr>
<tr>
<td>African-American Male</td>
<td>45.9%</td>
<td>41.6%</td>
</tr>
<tr>
<td>White Female</td>
<td>4.2%</td>
<td>6.7%</td>
</tr>
<tr>
<td>African-American Female</td>
<td>13.6%</td>
<td>20.8%</td>
</tr>
<tr>
<td>Other Male</td>
<td>0.9%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Other Female</td>
<td>0.2%</td>
<td>0.8%</td>
</tr>
</tbody>
</table>
Table 13-6). Although many would argue that these figures reflect the racial injustices experienced by blacks, there are other contributors that warrant much needed attention. Research conducted by Robert Sigler, a criminal justice professor at the University of Alabama, revealed that regardless of the race of inmates, common elements characterizing nearly all inmates are poverty and a lack of education. We must find ways to provide better education for all of our citizens, particularly in the regions where there is pervasive poverty.

<table>
<thead>
<tr>
<th>Race</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>32.7%</td>
<td>3.1%</td>
<td>35.8%</td>
</tr>
<tr>
<td>Black</td>
<td>60.3%</td>
<td>3.5%</td>
<td>63.9%</td>
</tr>
<tr>
<td>Other</td>
<td>0.3%</td>
<td>0.0%</td>
<td>0.3%</td>
</tr>
<tr>
<td>Totals</td>
<td>93.4%</td>
<td>6.6%</td>
<td></td>
</tr>
</tbody>
</table>

V. CONCLUSION

This chapter has explored three areas that are in dire need of improvement by the State of Alabama; namely, education, public health, and criminal justice policy. The lack of an appropriate education, however, is the fulcrum for all other social and economic conditions; and in recognition of these dynamics, Alabama’s elected officials must explore ways to educate its citizens in nontraditional ways (i.e. outside the classroom). This will not be an easy task since many adults in our State have not completed a high school education, and major efforts must be undertaken to reach the nontraditional student. In order to begin this task, our State elected officials need to be aware that a crisis exists and that action is imperative.

If Alabama’s elected officials are sincere about eradicating social and economic inequalities in this State, they must enact legislation that will improve the conditions within poor communities; and are, more often than not, comprised of communities that have a high percentage of African-American residents. Improving conditions within Alabama’s poor communities can be accomplished by working collaboratively with grassroots leadership to develop best practices for improving the quality of life and implementing other creative strategies. Grassroots leaders are capable of offering creative strategies for improvement, because they are working directly with local residents and witnessing the strengths and weaknesses of current statewide policies.


A reoccurring problem with the implementation of many policies is the lack of input by residents in the formulation of public policy. Social equity among African-Americans, whites, the poor, and non-poor will be achieved when our elected officials seek to involve all Alabamians in discussions of ways to ameliorate these conditions. We cannot expect communities to achieve equity socially and/or economically if residents within a community are not involved.

In addition to working with grassroots leadership and being inclusive in the development of public policy, Alabama legislators must revisit existing policies or develop new policies that address and/or encourage effective social programs, civic responsibility, financial planning, and entrepreneurship. These values and skills play an intricate role in the successes and failures of individuals and communities, and it is important to add these concerns as components in the education of the nontraditional student. Such an emphasis will not only benefit residents individually, it may inspire otherwise uninvolved individuals to become more active in their community.

The quality of life for many Alabamians will remain unchanged if the insights and/or feedback from residents in their respective communities are overlooked. With this in mind, it is imperative that Alabama’s elected officials not only understand, but also respect, the passion that is displayed by residents who live in impoverished communities. Although these communities are not performing well, one must remember that these communities serve as home to many Alabamians. It is the duty of our elected officials to help all Alabamians search for ways to improve their communities while building and maintaining a high community spirit.

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Dr. Royrickers Cook is the Special Assistant to the Vice President for Auburn University Outreach. He received his B.A. in Public Administration, M.P.A, and Ph.D. in Public Administration and Public Policy from Auburn University. Dr. Cook’s work and research primarily focuses on ways to improve educational and economic conditions and the quality of life of individuals in rural Alabama.
CHAPTER FOURTEEN

The Public and Alabama Issues

- Jim Seroka

EXECUTIVE SUMMARY

During March 2002, the Center for Governmental Services at Auburn University conducted a telephone poll of a random sample of 562 adult Alabamians from across the State. Alabamians were asked about their views on reforming the State political system, tax system, and a wide range of public policy issues. They were also asked to evaluate the performance of state and local government agencies, to appraise what kind of job the State was doing in areas ranging from education to road maintenance, and to assess their willingness to pay more in taxes to address particular needs.

Alabamians generally believe that the State is a good place to live, and that our quality of life is good or very good. There is also virtually universal recognition that K-12 education, job growth, public safety, leadership in government, drug abuse, unemployment, taxes and government spending are important issues. When asked to select the most critical issue facing Alabama, over forty-two percent identified K-12 Education as the most important issue in the State that needed to be addressed.

Support for rewriting the Alabama constitution or for reforming the political system in the State is far from unanimous. Only 11 percent of those queried Strongly Support a new constitution. Thirty-four percent Support it, and nearly 30 percent Oppose or Strongly Oppose a new Alabama constitution. Regarding home rule, fifty-six percent of Alabamians Oppose or Strongly Oppose giving home rule to counties.

Although Alabamians are very proud of the State, they are not very impressed with the quality of public services that the State provides. No State level activity earned an overall assessment that exceeded a Fair categorization (i.e. C grade) by the public. Higher Education received the highest assessment given for any public service, and Mental Health fell into the overall D category. Forty-eight percent of respondents characterized Higher Education service delivery as Good or Very Good, but one quarter or less of those queried gave a Good or Very Good assessment for Mental Health, Public Transportation, or Elderly Services in Alabama.
I. INTRODUCTION
Contrary to the opinion of many pundits, Alabama’s public rarely speaks with a unanimous voice. Just as our population is diverse, so also do residents throughout the State express differing opinions and attitudes. To the extent that there is consensus, Alabamians have a very positive attitude about their State, and are very proud to be residents of Alabama. Nevertheless, although we are very concerned about a wide range of public issues, we do not necessarily agree on how to tackle these important questions.

During March 2002, the Center for Governmental Services at Auburn University conducted a telephone poll of a random sample of 562 adult Alabamians from across the State. We queried our citizens about their views on the important issues they faced, and what issues were facing the State. We asked about their views on reforming the State political system, tax system, and a wide range of public policy issues. We asked the respondents to evaluate the performance of State and local government agencies, to appraise what kind of job the State was doing in areas ranging from education to road maintenance, and to assess their willingness to pay more in taxes to address particular needs.

The margin of error in this survey is plus/minus four percentage points. This means that we are confident that the sample results reported are within four percentage points, plus or minus, of the opinion of the total population.

II. WHAT ARE THE IMPORTANT ISSUES FOR ALABAMIANS?
Alabamians, as reported in our survey, generally tend to believe that the State is a good place to live, and that our quality of life is good or very good. Sixty-four percent of the respondents judged the quality of life in Alabama to be Good or Very Good. Less than two percent rated the quality of life in the State as Very Poor, and less than six percent felt that it was Poor (See Table 14-1).

<table>
<thead>
<tr>
<th>Table 14-1: How do You Evaluate the Quality of Life in Alabama</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>Valid</td>
</tr>
<tr>
<td>Don't Know</td>
</tr>
<tr>
<td>Very Poor</td>
</tr>
<tr>
<td>Poor</td>
</tr>
<tr>
<td>Fair</td>
</tr>
<tr>
<td>Good</td>
</tr>
<tr>
<td>Very Good</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
Although residents of the State value the quality of life in Alabama, this finding does not imply that they are unconcerned or oblivious to issues and problems around them. There is virtually unanimous recognition that K-12 education, job growth, public safety, leadership in government, drug abuse, unemployment, taxes and government spending, are *Important* or *Very Important* issues for the respondents. In each of these cases, recognition of importance exceeded 90 percent; and, in some cases, reached 97 percent. For a second tier of issues, including environmental protection and racism, the incidence of personal high importance ranged between 80 and 90 percent (See Table 14-2).

<table>
<thead>
<tr>
<th>Table 14-2: Importance of Selected Policy Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Important</strong></td>
</tr>
<tr>
<td>K-12 Education</td>
</tr>
<tr>
<td>Jobs</td>
</tr>
<tr>
<td>Drug Abuse</td>
</tr>
<tr>
<td>Crime and Public Safety</td>
</tr>
<tr>
<td>Leadership in Government</td>
</tr>
<tr>
<td>Unemployment</td>
</tr>
<tr>
<td>Racism</td>
</tr>
<tr>
<td>Taxes and Governmental Spending</td>
</tr>
<tr>
<td>Environmental Protection</td>
</tr>
</tbody>
</table>

When asked to select the most critical issue facing Alabama, over forty-two percent identified *K-12 Education* as the most important issue in the State. The issue that came in second, *Drug Abuse*, garnered a little over ten percent of the first choice selections; and *Jobs, Leadership in Government, and Unemployment* received about nine percent of the first choice selections each (See Table 14-3). A large proportion of Alabamians feel very strongly about the need to deal with K-12 education, and perceive this policy issue as the most critical problem facing the State today.

<table>
<thead>
<tr>
<th>Table 14-3: Most Critical Issue Facing Alabama Today</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Frequency</strong></td>
</tr>
<tr>
<td>Valid K-12 education</td>
</tr>
<tr>
<td>Jobs</td>
</tr>
<tr>
<td>Drug abuse</td>
</tr>
<tr>
<td>Crime and public safety</td>
</tr>
<tr>
<td>Leadership/govt.</td>
</tr>
<tr>
<td>Unemployment</td>
</tr>
<tr>
<td>Racism</td>
</tr>
<tr>
<td>Taxes/govt. spending</td>
</tr>
<tr>
<td>Envir. protection</td>
</tr>
<tr>
<td>Other (fill in blank)</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
III. CHANGE IN THE POLITICAL SYSTEM

As noted in the previous section, the issue of Leadership and Government is important for 92% of the respondents, and it is considered the single most important issue for nearly 10% of those polled. The survey examined this issue in more depth to determine the extent to which Alabamians were prepared to support fundamental change in the political system, including the drafting of a new constitution. We also polled Alabamians on their openness to change in specific features of the political system, including support for home rule for counties and the appointment of trial judges, rather than the current judicial election system.

Alabamians are far from unanimous in their support for rewriting the Alabama constitution. Only 11 percent of those queried Strongly Support a new constitution. Thirty-four percent Support it, and nearly 30 percent Oppose or Strongly Oppose a new Alabama constitution (See Table 14-4). Despite a major print media campaign to develop groundswell support for a constitutional convention and strong support by the Governor for a convention, only one in nine of our respondents felt strongly supportive about this move, and an overwhelming proportion (i.e. 85%) did not see this as a vital issue about which they were either strongly committed or opposed. In other words, the case has not been made that a new constitution is vital for Alabama’s future.

Table 14-4: Opinion of Alabamians Towards Rewriting the Alabama Constitution

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Don't Know</td>
<td>70</td>
<td>12.5</td>
<td>12.5</td>
<td>12.5</td>
</tr>
<tr>
<td>Strongly Oppose</td>
<td>24</td>
<td>4.3</td>
<td>4.3</td>
<td>16.7</td>
</tr>
<tr>
<td>Oppose</td>
<td>142</td>
<td>25.3</td>
<td>25.3</td>
<td>42.0</td>
</tr>
<tr>
<td>Indifferent</td>
<td>76</td>
<td>13.5</td>
<td>13.5</td>
<td>55.5</td>
</tr>
<tr>
<td>Support</td>
<td>188</td>
<td>33.5</td>
<td>33.5</td>
<td>89.0</td>
</tr>
<tr>
<td>Strongly Support</td>
<td>62</td>
<td>11.0</td>
<td>11.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>562</td>
<td>100.0</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

The reluctance of Alabamians to change or alter their political system is also evident in the responses to some specific and limited proposals for change. For example, fifty-six percent of Alabamians Oppose or Strongly Oppose the appointment of trial judges; and an identical percentage Oppose or Strongly Oppose giving home rule to counties (See Table 14-5).

One should not interpret the reluctance of Alabamians to change the political system as a general reluctance for any sort of change in Alabama’s society and legal framework. For example, fifty-six percent of Alabamians support a change in the funding system for education, although there did not seem to be any consensus as to how this should be accomplished.

The lack of consensus towards supporting specific policy proposals for change is evident in the responses to the restoration of voting rights for felons. While only 30% of Alabamians oppose the restoration of voting rights to felons in all cases, those who support voting rights restoration
are sharply divided in how this should be accomplished. Eighteen percent favor the restoration of voting rights for felons on a case-by-case basis. Twenty-eight percent favor restoration after a certain waiting period, and 21 percent advocate immediate restoration of rights after release and completion of probation.

One likely explanation for the lack of support for fundamental political change in Alabama may be a relatively high level of distrust that many Alabamians have towards their elected officials on the State and local levels. We asked the respondents to reply to a series of questions regarding their perception about the frequency of corruption among various types of public officials. Fifty-one percent of respondents stated that local elected officials *Often* or *Very Often* engage in corrupt activities, while only fourteen percent perceived corruption by local elected officials to occur *Rarely* or *Very Rarely*.

The perceptions regarding the honesty of State elected officials are somewhat worse. Fifty-two percent perceive that State elected officials *Often* or *Very Often* engage in corrupt activities, and only ten percent perceived corruption by State elected officials to occur *Rarely* or *Very Rarely*. Police officers and judicial officials receive significantly better appraisals. Forty-one percent report that they perceive police officials engage in corrupt activities *Often* or *Very Often*, and for judicial officials that percentage drops to thirty-six percent.

### IV. CHANGE IN ALABAMA’S TAX SYSTEM

Many of the contributions to this volume have pointed out that Alabama’s tax system is inadequate and is in critical need of reform. Ninety-two percent of Alabamians agree that taxes and State government spending are important issues. Again, however, there is no consensus as to what needs to be done. For example, forty percent of our sample *Agreed* or *Strongly Agreed* that property taxes in Alabama are too high (See Table 14-6), and sixty-five percent of respondents *Agreed* or *Strongly Agreed* that sales taxes are too high (See Table 14-7).
Many Alabamians believe that Alabama is doing a poor job in the allocation of funds and only a few believe that State officials are allocating the funds available to them in the most effective way. Forty-two percent of the sample state that Alabama is doing a Poor or Very Poor job in allocating public funds where they are most needed, and only fifteen percent state that Alabama is doing a Good or Very Good job in this area.

Based on our results, large numbers of Alabamians seem to prefer having some other group pay taxes, and support tax reduction or relief for themselves. Fifty percent of Alabamians support legalized gambling machines in Alabama as a way of deferring taxes to others, and seventy percent Oppose or Strongly Oppose granting new businesses tax incentives to locate or expand in Alabama. Meanwhile, sixty-eight percent of Alabamians support the elimination of sales tax on food products.

Table 14-6: Property Tax Rates in Alabama are Too High

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Don’t Know</td>
<td>33</td>
<td>5.9</td>
<td>5.9</td>
<td>5.9</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>29</td>
<td>5.2</td>
<td>5.2</td>
<td>11.1</td>
</tr>
<tr>
<td>Disagree</td>
<td>275</td>
<td>48.9</td>
<td>49.1</td>
<td>60.2</td>
</tr>
<tr>
<td>Agree</td>
<td>155</td>
<td>27.6</td>
<td>27.7</td>
<td>87.9</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>68</td>
<td>12.1</td>
<td>12.1</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>560</td>
<td>99.6</td>
<td>100.0</td>
<td></td>
</tr>
<tr>
<td>Missing</td>
<td>System</td>
<td>.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>562</td>
<td>100.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 14-7: Alabama Sales Taxes are Too High

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valid</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Don’t Know</td>
<td>19</td>
<td>3.4</td>
<td>3.4</td>
<td>3.4</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>2</td>
<td>.4</td>
<td>.4</td>
<td>3.8</td>
</tr>
<tr>
<td>Disagree</td>
<td>175</td>
<td>31.1</td>
<td>31.3</td>
<td>35.1</td>
</tr>
<tr>
<td>Agree</td>
<td>275</td>
<td>48.9</td>
<td>49.2</td>
<td>84.3</td>
</tr>
<tr>
<td>Strongly Agree</td>
<td>88</td>
<td>15.7</td>
<td>15.7</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>559</td>
<td>99.5</td>
<td>100.0</td>
<td></td>
</tr>
<tr>
<td>Missing</td>
<td>System</td>
<td>.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>562</td>
<td>100.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

V. HOW ARE WE DOING?

Although Alabamians are very proud of the State, they are not very impressed with the quality of public services that the State provides. Table 14-8 provides the distribution of evaluations of eight different specific public services provided in Alabama. These services include: Pre-school
Significantly, no State level activity enjoys an overall assessment that exceeded a *Fair* categorization (i.e. *C* grade). *Higher Education* received the highest assessment given for any public service of a *C* (i.e. 2.19 on a 4 point scale). This was followed by a *C* for *Pre-School Education* (i.e. 1.98 on a 4 point scale); and a *C* for *K-12 Education* (i.e. 1.96 on a 4 point scale). *Roads, Public Health, Public Transportation, and Elderly Services* each received an overall assessment of a *C-* (i.e. 1.84 to 1.63 on a 4 point scale); and *Mental Health* fell into the overall *D* category (i.e. 1.50 on a 4 point scale). Forty-eight percent of respondents characterized *Higher Education* service delivery as *Good* or *Very Good*, but one quarter or less of those queried gave a *Good* or *Very Good* assessment for *Mental Health, Public Transportation, or Elderly Services* in Alabama.

These findings corroborate the discussions provided by many of the contributors to this volume. They also underscore that Alabamians are aware of and dissatisfied with the level of public services provided in this State.

A citizen may have a strong opinion regarding the quality of the delivery of a public service, but he/she may not be sufficiently interested in or committed to raising taxes to improve the quality of those services. In order to determine this level of concern and commitment, we asked our respondents how they felt about raising taxes to improve specific services. For most of the public services, the distribution of assessment is as follows:

<table>
<thead>
<tr>
<th>Program Area</th>
<th>Very Poor</th>
<th>Poor</th>
<th>Fair</th>
<th>Good</th>
<th>Very Good</th>
<th>Grade</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-School Education</td>
<td>4</td>
<td>18</td>
<td>35</td>
<td>30</td>
<td>5</td>
<td>C</td>
<td>1.98</td>
</tr>
<tr>
<td>K-12 Education</td>
<td>4</td>
<td>23</td>
<td>36</td>
<td>27</td>
<td>5</td>
<td>C</td>
<td>1.96</td>
</tr>
<tr>
<td>Higher Education</td>
<td>2</td>
<td>11</td>
<td>28</td>
<td>40</td>
<td>8</td>
<td>C</td>
<td>2.19</td>
</tr>
<tr>
<td>Public Health</td>
<td>5</td>
<td>22</td>
<td>38</td>
<td>24</td>
<td>3</td>
<td>C-</td>
<td>1.82</td>
</tr>
<tr>
<td>Public Transportation</td>
<td>10</td>
<td>27</td>
<td>29</td>
<td>22</td>
<td>3</td>
<td>C-</td>
<td>1.63</td>
</tr>
<tr>
<td>Elderly Services</td>
<td>6</td>
<td>29</td>
<td>34</td>
<td>20</td>
<td>3</td>
<td>C-</td>
<td>1.64</td>
</tr>
<tr>
<td>Mental Health</td>
<td>6</td>
<td>21</td>
<td>30</td>
<td>22</td>
<td>3</td>
<td>D</td>
<td>1.50</td>
</tr>
<tr>
<td>Roads</td>
<td>8</td>
<td>24</td>
<td>37</td>
<td>22</td>
<td>5</td>
<td>C-</td>
<td>1.84</td>
</tr>
</tbody>
</table>

This table provides a detailed breakdown of the distribution of assessment across various public services in Alabama.
lic services queried, about one third of the respondents were opposed to raising taxes; and about two thirds favored a tax increase, provided that the level of service delivery would be enhanced (See Table 14-9).

The level of support for taxes to improve public services was somewhat higher for those services conducted at the local level (e.g. police and fire protection) than for those services administered at the state level. For example, seventy-two percent would potentially support a tax increase tied to improved fire protection, sixty-six percent would potentially favor a tax increase to improve K-12 education, and sixty-five percent would potentially support a tax increase linked to improved police protection.

There is still a considerable reservoir of potential support for tax increases for state level services, provided that the level and quality of service delivery would be improved with such increases. Sixty-seven percent would potentially support a tax increase for enhanced public health care, sixty-two percent support tax increases linked to better roads and highways, fifty-seven percent support tax increases linked to higher education, but only thirty-eight percent support increased taxes to improve the state prison system.

Table 14-9: Level of Support in Percent for Increased Taxes Linked to Specific Public Services.

<table>
<thead>
<tr>
<th>Program Area</th>
<th>Strongly Oppose</th>
<th>Oppose</th>
<th>Indifferent</th>
<th>Support</th>
<th>Strongly Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Protection</td>
<td>3.2</td>
<td>24.6</td>
<td>5.0</td>
<td>56.8</td>
<td>8.4</td>
</tr>
<tr>
<td>K-12 Education</td>
<td>4.5</td>
<td>23.9</td>
<td>2.9</td>
<td>54.5</td>
<td>11.9</td>
</tr>
<tr>
<td>Fire Protection</td>
<td>2.5</td>
<td>19.4</td>
<td>4.3</td>
<td>62.9</td>
<td>8.9</td>
</tr>
<tr>
<td>Public Health</td>
<td>3.2</td>
<td>22.6</td>
<td>4.8</td>
<td>58.1</td>
<td>8.4</td>
</tr>
<tr>
<td>Higher Education</td>
<td>4.3</td>
<td>32.6</td>
<td>2.9</td>
<td>48.3</td>
<td>8.7</td>
</tr>
<tr>
<td>Roads</td>
<td>3.6</td>
<td>25.0</td>
<td>6.8</td>
<td>54.4</td>
<td>7.5</td>
</tr>
<tr>
<td>Prison System</td>
<td>9.6</td>
<td>39.8</td>
<td>6.8</td>
<td>35.1</td>
<td>3.4</td>
</tr>
</tbody>
</table>

One should be very cautious about assuming a high level of support among Alabamians for tax increases linked to higher quality services in the State. In any given category of public service, over one in five of the respondents are opposed to a tax increase, even for improved fire protection. Often, the intensity of this group’s opposition to tax increases is much higher than the intensity of support among those supportive of a tax increase.
In summary, if Alabama is to improve its level of public services and deal effectively with the public policy issues discussed in this volume, it will be necessary for the political leaders in the State to conduct well organized, well researched, and well articulated campaigns to achieve these goals. At a minimum, our elected leaders will need to be committed to the cause, committed to leadership, and not revert to the old pattern of following the public and blaming others for the difficulties that result.

Jim Seroka serves as Director of the Center for Governmental Services and Professor of Political Science at Auburn University. Dr. Seroka earned a B.A. in Political Science from the University of Michigan and a M.A. and Ph.D. in Political Science from Michigan State University. His core teaching and research interests are in the areas of public policy analysis and state and local government. He has authored nearly 100 books and professional journal articles, and has consulted or lectured to numerous national and international organizations. Dr. Seroka serves on the Editorial board of the National Civic Review, and is listed in the current Who’s Who in the World and Who’s Who in America.