State Constitutional Provisions on Gratuities for Economic Development

Executive Summary

Many states structure economic-development incentives as tax expenditures—such as credits, abatements, or exemptions—that reduce future tax collections rather than provide an immediate cash transfer. However, some jurisdictions also use direct grants or loans with statutory authority. Providing an incentive in the form of a cryptocurrency or other digital token—to enable on-chain, trackable measurement of value—appears novel and is not explicitly addressed in the CSG South state incentive statutes we reviewed. When governments accept crypto for payments, the payments are typically processed by a third party and converted immediately to U.S. dollars for accounting purposes. Structuring an up-front, token-based incentive could implicate state anti-gratuities provisions unless designed with a clear public purpose, enforceable performance-based considerations, statutory authorization, and claw-back or recapture terms. Given the novelty, any such program would require careful legal analysis beyond the scope of this memo.

Instead, this memo examines how many states in the 15-state CSG South region have prohibitions on gratuities per state law or constitutional provisions—particularly as they may relate to the incentivization or inducement of economic activity or development. A search of current state constitutional provisions reveals that only two Southern states—**Georgia** and **Mississippi**—explicitly mention gratuities in their constitutions. These range from an outright ban in **Georgia** to an allowance in **Mississippi** if certain legislative requirements are met. In **Mississippi**, a 1908 law enacted and approved the addition of Section 66 to the state's constitution, which permits laws granting donations or gratuities in favor of a person or object only if approved by a two-thirds vote of both chambers of the state legislature.[1]

Georgia's constitution prohibits the General Assembly from granting any donation or gratuity or forgiving any debt in favor of any person, corporation, or association.[2] The state's attorney general clarified this prohibition on gratuities in favor of any person, corporation, or association 1998. Specifically, the opinion notes that *"direct grants to private persons to induce economic activity for the general welfare are not permitted [per the constitution]."*[3] Further, additional opinions and interpretations of the constitutional provision have noted that using state funds to permanently improve property to which the state does not hold title violates the clause and is illegal.[4,5] This would also make it difficult to legally issue direct monetary value—via cryptocurrencies—to a private actor to induce economic activity by building a factory or other property improvement.

However, other states in the South appear to be either silent or unclear on the matter, with no specific prohibition or exemption on gratuities in state constitutional language.

Non-Tax Direct Grants to Private Entities in the South

However, several states in the South do provide state funds via grants—not including any federal programs—to select industry entities for economic growth purposes. For example, in North Carolina, South Carolina, and Tennessee, state governments are not prohibited from using current appropriations to provide money or property directly to private

[1] Miss. Const. Art. IV, Sec. 66.
[2] Ga. Const. Art. III, Sec. VI, Para. VI.
[3] Ga. 1998 Op. Att'y Gen. No. U98-15.
[4] Ga. 1962 Op. Att'y Gen. 588.
[5] Ga. 1967 Op. Att'y Gen. No. 67-115.

enterprises as an economic development incentive. This is due to clauses in the state constitution that permit state legislatures to budget general revenue for cash inducements paid directly to a new or expanding business entity.

Comparison of Select Southern State Non-Tax Economic Development Incentive Programs

North Carolina	South Carolina	Texas
One North Carolina Fund (*discretionary cash-grant program)*	**The Closing Fund** *(discretionary real-property improvement grant)*	**Texas Enterprise Fund** *(performance-based 'deal closing' grant)*
Job Development Investment Grant *(performance-based cash grant program)*		
Job Maintenance and Capital Development Fund *(large-capital investment discretionary cash grant)*		

North Carolina

- Lawmakers established the One North Carolina Fund in 2004 to serve as a quick-response means for the governor, through the state Department of Commerce, to issue discretionary cash-grant programs to stimulate economic activity and create new job opportunities.[6]
- The Job Development Investment Grant program, established in 2002, is a performance-based, discretionary incentive program providing cash grants directly to companies when a company creates jobs and invests in the state. The monies are only awarded in competitive recruitment or retention scenarios and hold recipients to strict performance targets, paid annually over time for a term of up to 12 years, with annual performance reviews conducted by both the state Department of Commerce and the Department of Revenue.[7] Pursuant to statute, the program will sunset on January 1, 2030, unless extended by the legislature.[8]
- Only available to qualifying large, heritage, or supply-chain impact manufacturing businesses, the JMAC grants are limited to no more than eight total agreements, no more than $6 million in total annual costs for any agreement entered into with a qualifying business, and no more than $159 million in total aggregate costs for all current agreements.[9]

South Carolina

The Coordinating Council for Economic Development is a state entity created by the General Assembly in 1986 – S.C. Code § 13-1-1710, et seq. – to provide improved coordination of economic development efforts by the many state agencies involved in recruiting new businesses to and expanding enterprises within the state. The council comprises the board chairs or agency heads of 11 state entities, plus the chairs of the Senate Finance and House Ways and Means Committees, or their designees, including the:

- South Carolina Department of Commerce;
- South Carolina Ports Authority;
- South Carolina Department of Parks, Recreation, and Tourism;
- South Carolina Department of Agriculture;

[6] N.C. Gen. Stat. § 143B-437.70, et seq.
[7] N.C. Gen. Stat. § 143B-437.50, et seq.
[8] N.C. Gen. Stat. § 143B-437.62.
[9] N.C. Gen. Stat. § 143B-437.012.

- South Carolina Technical College System;
- South Carolina Research Authority;
- South Carolina Department of Employment and Workforce;
- South Carolina Department of Revenue;
- Jobs for Economic Development Authority;
- South Carolina Department of Transportation; and
- Santee Cooper.[10]

The council is responsible for overseeing the state's three discretionary grant funds and evaluating project and grant proposals on an individual basis. The Closing Fund, established in 2006, is the only discretionary fund of these three that provides funds directly to non-local government actors. It is designed to allow the state to respond faster when additional flexible funding to improve or expand real property is necessary for high-impact economic development projects in the state, subject to appropriations from the General Assembly. For Fiscal Year 2024-2025, the council received $21.3 million in appropriations to support existing projects and allow for discretionary disbursement to new projects.[11]

Texas

The largest incentive program in the Lone Star State is the Texas Enterprise Fund, which is designed to attract large-scale capital investments to the state through "deal-closing" grants that entice companies to choose between Texas and another state to locate or relocate a business. The grant amount is calculated based on the average wage of new jobs, considering hiring timelines and the number of jobs created to calculate per-employee award amounts adjusted by the business's total proposed capital investment. To be eligible, the company must have:

- A single Texas site in active competition with at least one out-of-state site, and the company must not have already made a location decision, which means the business must not have signed a lease, purchased land, hired employees, and/or made a location announcement;
- A projected new job creation exceeding 75 full-time jobs in urban areas or 25 full-time jobs in rural areas;
- A total average wage for new jobs meeting or exceeding the average county wage for the county where the project would be located during the full term of the grant agreement;
- Demonstrated significant levels of planned capital investment, determined by the governor;
- Supported by the city, county, and/or school district where the project would be located, preferably in the form of local economic incentive offers;
- Proof of financial soundness and be well-established in its field; and
- Operated in an advanced industry that affords it other feasible location options nationally and/or internationally.

Additionally, before the funds are received, after being approved a company must sign a binding legal agreement with the state to fulfil projected job creation, capital investments, and wage commitments. However, these awards face a high barrier requiring the unanimous approval of the governor, lieutenant governor, and the speaker of the house.[12]

Summary of TEF Awards (FY 2004-2024)

[10] S.C. Code § 13-1-1710.
[11] S.C. House Bill 4025 (2025), Part 1A, Sec. 50.
[12] Texas Economic Development and Tourism Office.

Biennium	Total Projects Funded	Total Amount Awarded	New Direct Jobs Committed	Capital Investment Committed[2]	Average of Median Wage of Created Jobs
2004-2005	22	$279,664,000	29,129	$6,483,131,413	$66,962
2006-2007	17	$76,556,000	15,224	$6,772,088,000	$67,121
2008-2009	15	$33,573,392	7,457	$676,496,539	$51,196
2010-2011	38	$48,199,000	9,966	$909,124,214	$69,541
2012-2013	24	$77,215,500	12,153	$6,934,465,000	$89,351
2014-2015	17	$82,840,000	9,594	$3,006,393,250	$93,371
2016-2017	22	$58,658,500	13,354	$2,450,368,760	$81,141
2018-2019	18	$58,629,030	11,107	$4,313,093,242	$80,815
2020-2021	16	$57,306,184	7,682	$8,758,987,841	$80,702
2022-2023	17	$83,706,874	9,485	$20,164,770,670	$80,606
2024 to Date[1]	7	$22,054,000	2,464	$3,992,083,200	N/A[3]
Grand Total	213	$878,402,480	127,615	$64,461,002,129	

[1] Through December 31, 2024
[2] Capital Investment Committed per Biennium is rounded
[3] Job reports not yet verified with Office of Compliance and Monitoring