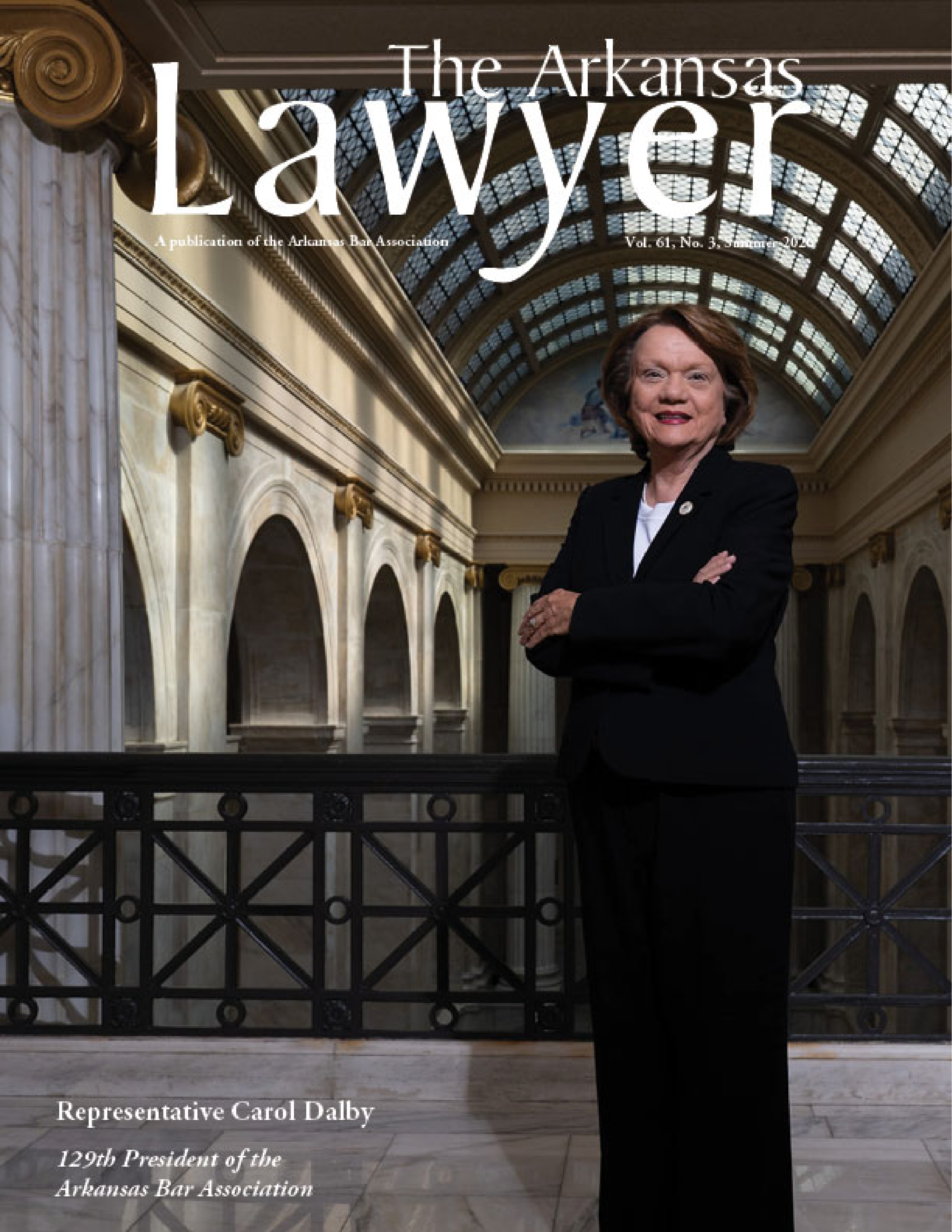

The Arkansas Lawyer

A publication of the Arkansas Bar Association

Vol. 61, No. 3, Summer 2026

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129th President of the Arkansas Bar Association

Issue 3: Leveling the Playing Field

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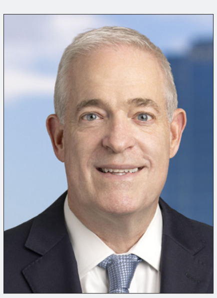

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Economic development often begins with a practical problem before it becomes a legal one. A community has a site that could support a manufacturer, a technology campus, housing, a mixed-use redevelopment, or a regional destination. Private investment is interested, but not yet committed. The project needs roads, utilities, site preparation, broadband, drainage, workforce facilities, housing, childcare, or other support before the investment can occur. Local officials may see the opportunity clearly. The legal question is whether Arkansas has the right constitutional tools to help make the opportunity feasible.

Issue 3, referred to the voters by the General Assembly for the November 3, 2026, election, would amend the Arkansas Constitution to authorize the General Assembly to provide for broader economic development programs, including the creation of economic development districts within cities, counties, or cooperative areas. The amendment provides constitutional authority for the General Assembly to create a district-based framework for financing economic development projects.

What Issue 3 Would Do

Issue 3 authorizes the General Assembly to provide for programs and for loans and grants of public money for four public purposes: developing and diversifying Arkansas's economy; eliminating and preventing unemployment or underemployment; developing or expanding transportation or commerce; and developing or improving real estate that contributes to economic development in the state. The amendment expressly provides that this authority includes the creation of economic development districts by cities and counties, which would make decisions on whether to extend such loans or grants.

Issue 3 would also amend Article 12, § 5 of the Arkansas Constitution, which is a general prohibition against counties, cities, towns, and other municipal corporations becoming stockholders in, appropriating money for, or lending credit to private entities. Issue 3 would add economic development districts to the list of constitutional exceptions under Article 12, § 5, for the purpose of economic development projects and services.

The amendment directs the General Assembly to establish implementing legislation. That means the real work of governance would occur through statutes, local ordinances, formation charters, bond documents, development agreements, grant agreements, and public oversight. The General Assembly drafted the proposed enabling legislation, SB 647, which was referred for interim study in 2025 since it cannot be constitutionally adopted yet. This article assumes adoption of enabling legislation in substantially the form currently drafted, and references to "Issue 3" include SB 647 for the sake of brevity.

Why a Constitutional Amendment Is Necessary

Arkansas's Constitution was written with an understandable suspicion of public aid to private enterprise. That caution remains important. Public money should be used for public purposes, and public credit should not be casually pledged. But economic development has changed. Modern projects often require coordinated investment before the tax base, jobs, and commerce exist. A county cannot attract a major employer to a site that lacks water and wastewater capacity. A city cannot redevelop an underused corridor without streets, lighting, drainage, and utilities. A regional partnership cannot compete for a large project if each jurisdiction must act separately and no mechanism exists to share costs and benefits across boundaries.

Issue 3 is necessary because the current constitutional framework leaves Arkansas with far fewer economic development tools than those of the states with which it competes. Currently, local governments are limited to incentivizing only the manufacturing industry, and the only meaningful tool is a property tax abatement. An economic development district would allow a community to offset development costs with sales tax and property tax revenues generated by development.

The Baseline-and-Increment Concept

One concern with any financing model is whether it diverts money from existing public services. Economic development districts establish and protect a "baseline" of tax revenue. The baseline is the amount of property tax and local sales tax generated within a district immediately before the district's establishment. The district is required to distribute the baseline revenue to the taxing authorities who currently receive those funds, so the district will not divert any existing funds from local schools, hospitals, or other existing public services. The district is permitted to use only the increases in property taxes and local sales taxes (the state sales tax is not included). Importantly, the city council must approve the formation of the district to utilize the city's share of the taxes, and the quorum court must separately approve the formation of the district to utilize the county's share of the taxes.

Neighboring States

Our neighbors use a toolbox of incentives, especially tax increment financing, sales-tax-and-revenue bond financing, and Texas-style 380 agreements. Issue 3 would permit local governments to use all three of these.

The first is tax increment financing, commonly called TIF. TIF allows the district to issue a bond at the beginning of a project that is repaid with future increases in property taxes. Arkansas technically has TIF, but the Arkansas Supreme Court effectively ended the program in *City of Fayetteville v. Washington County*[1] due to a perceived conflict between Amendment 74 and Amendment 78 (Issue 3 is designed to avoid this conflict).

The second major concept is Sales Tax and Revenue (STAR) bond financing, which functions just like TIF except it repays the bond with future increases in sales taxes. Notably, Kansas recently utilized STAR bonds to lure the Kansas City Chiefs' new stadium development to their side of the border. Issue 3 permits TIF and STAR to be combined to support one bond.

The third concept is a Texas-style 380 agreement. Chapter 380 of the Texas Local Government Code authorizes municipalities to make loans or grants of public money or services to promote economic development and stimulate business and commercial activity. In practice, Chapter 380 agreements are usually structured as performance-based rebate programs. A city agrees to provide a rebate of property and/or sales taxes to a developer who agrees to make a capital investment in businesses and infrastructure. For example, a city in Texas might incentivize a new shopping center or housing development by offering a $1,000,000 rebate from the taxes generated by the new development. If the private party performs, the incentive is paid. If it does not, the agreement may reduce, terminate, or recapture the benefit.

District Formation

Issue 3 district formation begins locally. A municipality, county, or cooperative area (*i.e.,* a regional partnership) may establish one or more economic development districts. District boundaries do not have to be contiguous, which is important for projects involving multiple parcels, corridors, campuses, or cooperative areas (*i.e.*, multiple cities or counties cooperating to attract a major development).

The district is created by a formation charter approved by the local government, which is the district's constitution. It must define the district boundaries, the district's term, the economic development plan, the board structure, and any restrictions on the board's powers. Because the charter can reserve increments back to local taxing authorities, restrict board authority, and define the economic development plan, it is the principal place where local policy choices become legal obligations.

The districts are also subject to significant public sunshine and FOIA requirements to provide transparency. Additionally, Issue 3 includes a 2% turnback of all funds to the Arkansas Department of Commerce to provide technical assistance, training, monitoring support, an online repository of publicly available project information, grant-process guidance, and financial oversight guidance. The Department could also review and audit districts and adopt rules to prevent malfeasance, mismanagement, or fraud. District boards would be required to keep public minutes, and expenditures would remain disclosable. District financial operations would be audited annually, and financial records showing sources and uses of district funds would be accessible to the public.

Conclusion

Issue 3 is not a guarantee that every project will succeed. It is a recognition that Arkansas cannot compete for modern development using only a narrow set of tools designed for a narrower economy. The proposal preserves the most important constitutional principle: public resources must serve a public purpose. But it also acknowledges that public purpose today may include the infrastructure, site work, housing, utilities, and amenities necessary to attract private investment and grow the tax base.

The safeguards matter. A district must begin with local approval, a defined boundary, a development plan, and a formation charter. Existing tax revenue is protected through the baseline. Future increments may be used only within the district and in furtherance of the economic development plan. Public meetings, audits, FOIA access, Department of Commerce oversight, and performance-based agreements all help ensure that incentives are tied to measurable results rather than promises alone.

No community should create an economic development district casually, but the absence of a tool is not a safeguard; it is a handicap. Other states already allow local governments to offer robust incentives. Arkansas communities should have the same ability, subject to Arkansas-specific controls and local accountability.

Issue 3 would level the playing field by giving cities, counties, and cooperative areas a constitutional framework to compete for jobs, investment, housing, infrastructure, and long-term growth. For lawyers, it should be understood as a public-finance and local-government measure as much as an economic-development measure. Used carefully, it can give Arkansas communities the legal tools to turn opportunity into reality.

Endnote:

1. 369 Ark. 455 (2007). ■