

1 **VIRGINIA TOBACCO INDEMNIFICATION AND COMMUNITY**
2 **REVITALIZATION COMMISSION**

3 701 East Franklin Street, Suite 501
4 Richmond, Virginia 23219

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9 Policy Review Committee (JLARC)

10 Wednesday, August 17, 2011

11 10:00 a.m.

12
13 Institute for Advanced Learning and Research
14 Danville, Virginia

1 **APPEARANCES**

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3 The Honorable William C. Wampler, Jr., Chairman

4 Ms. Cindy M. Thomas, Vice-Chairman

5 The Honorable Terry G. Kilgore, Chairman

6 The Honorable Mary Rae Carter

7 Deputy Secretary of Commerce & Trade

8 The Honorable James S. Cheng

9 Secretary of Commerce & Trade

10 The Honorable Frank M. Ruff, Vice Chairman

11 The Honorable Kathy J. Byron

12 The Honorable Daniel W. Marshall, III

13 The Honorable Edward Owens

14 Dr. David S. Redwine, DVM

15 Mr. Kenneth O. Reynolds

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17 **COMMISSION STAFF**

18 Mr. Neal Noyes, Executive Director

19 Mr. Ned Stephenson, Deputy Executive Director

20 Mr. Timothy J. Pfohl, Grants Program Administration Manager

21 Ms. Sarah K. Capps, Grants Coordinator, Southside Virginia

22 Ms. Sara G. Williams, Grants Coordinator, Southwest Virginia

23 Ms. Stephanie S. Kim, Director of Finance

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1 August 17, 2011

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4 SENATOR WAMPLER: Good morning
5 everyone, I'll call the meeting to order. I have been appointed
6 to chair this advisory group for the Commission. We're in
7 Danville this morning and this is Delegate Marshall's
8 hometown and your area. I know some of you have had to
9 travel great distances so I'll thank you for doing that. I hope
10 everyone received the recommendations from the staff about
11 the topics that we're going to discuss this morning. I will defer
12 to our Executive Director in a moment, my hope is that this is
13 a lively group and we're able to discuss the recommendations
14 the staff has prepared for us.

15 We may determine that we are in agreement
16 with the staff recommendations and we may have other points
17 of view and we may have to do some modification of the
18 recommendations. We might agree with a lot of the work or
19 recommendations of the Committee and I'm sure we will have
20 items there that there won't be much of a consensus on and
21 we may have to work through the Commission on this and
22 through the Committee to try to generate a consensus which is
23 another way of saying it may be at our January meeting rather
24 than at our September meeting before we're able to adopt as a
25 full Commission, some of these recommendations.

1 It's my hope today we'll discuss all of them in
2 depth and different points of view on the recommendations.
3 That is certainly encouraged. So that's kind of the way I
4 thought maybe we would try to conduct this meeting. I will
5 defer first to the chairman to see what the staff's comments
6 might be if any and others before we proceed.

7 DELEGATE KILGORE: I'd just like to say
8 thank you Senator Wampler for chairing this meeting. Neal
9 and I attended a JLARC meeting back a few months ago where
10 we had the pleasure of receiving this report and the
11 recommendations and a request that we respond back to them
12 which is what we're going to do. There's been a lot of
13 questions that were brought up. There were some exceptions
14 that they had about the Commission. The staff had, already
15 at the time, gone over a lot of the recommendations. Neal and
16 I did talk to JLARC and the speaker and the senate majority
17 leader and all asked that we do file a report back to the
18 legislature on it so that's what we're going to do and that's
19 really all I have to say right now.

20 SENATOR WAMPLER: Other comments from
21 Committee members? All right, the last comment I'll make is
22 that as a former member of JLARC, I would observe that once
23 the JLARC report was written as a point of reference and not
24 all JLARC reports carry the same weight as perhaps others,
25 but I know that from the JLARC staff they spent a lot of time

1 on this subject matter and they made their recommendations.
2 I think it's proper for us to review them. I'd also say that in
3 my 24 years of service that this report, a point in time, a
4 snapshot, they reference many things and there's some good
5 things and a snapshot for other members of the legislature
6 and the executive branch and even those outside of state
7 government. So that's where we are at this time. I'll now refer
8 you to our Executive Director who can call roll.

9 MR. NOYES: I just note for the record that all
10 members of the Ad Hoc Committee are present with the
11 exception of Kathy Bryon who will be here shortly. I'd like to
12 welcome Secretary Cheng and Mary Rae Carter. This is an
13 important meeting and the staff has put forth a lot of effort to
14 go through these points and discussing each of these 26
15 recommendations. Ned will be speaking to some. The
16 references will be on the screen, there are four groups, and
17 that's how the staff grouped these. Group A is
18 recommendations JLARC had for the legislature. B is for the
19 applicants, C is for the staff, and D is for the Commission.

20 Mr. Chairman, I think we ought to go right
21 down the group, starting with A, the first one of those.

22 DELEGATE KILGORE: Mr. Chairman, if I
23 could, as they come up, I suggest that we go ahead; we have
24 our discussion on them and try to go back and get our
25 thoughts together. I think we ought to just go ahead and

1 discuss them as they come up.

2 SENATOR WAMPLER: Without objection, we'll
3 proceed accordingly and then at the end if there's one that
4 seems to be contradictory, we can talk about it at length, is
5 that acceptable? All right.

6 MR. STEPHENSON: Mr. Chairman, the clients
7 are organized by the group that they affect and the
8 presentation that will appear before you on each slide will be
9 in one of three forms; either there will be a motion presented
10 to you and this is a motion that reflects the staff's
11 recommendation on what you should do. The second thing
12 you might see is make no motion and that is that the staff
13 recommendation that you make no motion at all which means
14 leave it as it is. The third staff position will be that the staff
15 makes no recommendation. So you'll see one of those three on
16 each slide and then of course, it's for the Commission to
17 determine or dispose of that as they wish. Group A is for the
18 legislature and I'll tell you that both the chairman and I have
19 the pages numbered on which these appear and try to
20 announce those so that you can find them in your outline in
21 your book.

22 The first item up there you'll find a two which
23 you'll see on page 71.

24 MR. NOYES: This is to extend the life of the
25 endowment. The question concerns the burn rate. The

1 statute allows two-thirds vote to an invasion of 15 percent
2 annually. Fifteen percent of the corpus of the endowment.
3 This motion has not in anyway changed that. This motion
4 that the bylaws be amended to limit the budget, it refers to the
5 budgeting process; it does not remove or change anything
6 about the amount you can invade. It's contrary then to what
7 it is JLARC seeks which limits the invasion to 10 percent. The
8 staff's recommendation, the budget is on a 10 percent basis
9 but you have an option available to you or the full Board two-
10 thirds vote to go beyond the 10 percent.

11 SENATOR WAMPLER: The Chair would like to
12 observe a couple of points. Any Commission member that
13 wants to offer Delegate Byron, good morning, glad to have you
14 with us. We just started our discussion and we're on the first
15 slide number two permitting the invasion to 10 percent. I'd
16 ask us to focus on the staff's recommendation and talking
17 about the bylaws and that's the way I think we should try to
18 examine this slide. By statute, we can invade up to 15
19 percent, that's by supermajority. I think what the staff is
20 trying to tell us is that we budget on a 10 percent invasion and
21 that's consistent with our current practice and should we have
22 a project or projects that might require a greater invasion, it
23 would still require a two-thirds vote. I think the operative
24 word there is that we budget based on 10 percent and then we
25 can have our discussion as to whether or not we could go

1 beyond that and the bylaws require a two-thirds vote. That's
2 my understanding of what this is. We'd have to go back to the
3 legislature to get approval for that if we have it in our bylaws.
4 That's the intent of this motion.

5 DELEGATE KILGORE: I want to caution
6 everyone, the legislature would understand where we're
7 coming from, if we get any less legislation concerning the
8 Tobacco Commission. In the legislature, in the house and the
9 senate, if amenable, we don't want to go that route. So I
10 would suggest anything we can do and do it under our own
11 bylaws or our own rules and regulations, we should do that.

12 SENATOR RUFF: In addition to that, our
13 problems here, you might talk about 20 years from now and
14 we have the responsibility to do that.

15 MR. NOYES: Not only that comment but I
16 would agree with Senator Ruff on that but it's not problems
17 just now but after a decade of building the infrastructure and
18 doing important work that the Commission has done. These
19 opportunities that we hope are going to appear on a regular
20 basis and for us not be able to draw large amounts of money,
21 that if there is a very large project that would be contrary to
22 what we have been working very hard for, for more than a
23 decade. This motion written this way would allow you to
24 invade up to the 15 percent. In years past it's been 10 percent
25 budgeted this past year and the year before but we don't want

1 to miss out on an opportunity. It would be a real shame after
2 all the work that's been done.

3 SENATOR WAMPLER: Mr. Chairman, Delegate
4 Kilgore's comment I think is a good one that we take care of
5 what we can internally because I think it would be hard in the
6 house and the senate to agree on some things so whatever we
7 can try to do internally we could save a lot of time and effort
8 and do it that way.

9 DELEGATE BYRON: We're not there based on
10 that only.

11 SENATOR RUFF: Mr. Chairman, I'd move that
12 we approve the staff's recommendation.

13 SENATOR WAMPLER: All right, you've heard
14 the motion and we've had our discussion, is there a second?
15 Any further discussion on the motion made by Senator Ruff?

16 DELEGATE KILGORE: There's one thing and
17 I'd say that let us make sure that when we increase the
18 amount we're going to invade that it's something we really
19 need to do and I think that's a motion, I think we really ought
20 to use this two-thirds majority when asking for an increase,
21 that two-thirds majority vote.

22 SENATOR WAMPLER: The motion is to adopt
23 the recommendation on limiting the invasion of 10 percent
24 and amend our bylaws accordingly. Any further discussion?
25 All in favor signify by saying aye. (Ayes). Opposed, no. (No

1 response). The ayes have it.

2 MR. STEPHENSON: The next item appears on
3 page 80. All these that you're looking at now are directed to
4 the legislature. I don't think the Commission has the
5 authority to even act on them.

6 MR. NOYES: On recommendation number 5,
7 the staff asked that there not be a motion, staff will modify
8 applications to require more specific information with respect
9 to low employment levels, per capita income, educational
10 attainment and other key workforce indicators. We can do
11 this again internally as part of reformatting the application
12 documents. In point of fact, we are getting a great deal of this
13 information already that's reported in the staff
14 recommendations and have the opportunity to review it for
15 yourselves when we send the applications out. We will simply
16 reformat the applications and say these are the things we
17 expect to see be done with this one. The legislature to act in
18 limiting the award may not be necessary if we have this
19 information for all applicants.

20 MR. OWENS: How do we get the applications
21 or how are we going to?

22 MR. NOYES: There's no discussion by staff on
23 assigning weights to any of these factors. It's more of a
24 transparency.

25 SENATOR WAMPLER: Let me try to address

1 one of these and I think Neal touched on it. Maybe another
2 way as far as a complete review and I think maybe the
3 workshops are really an important part of the pre-application
4 process where staff has an opportunity to work with the
5 applicants for those that apply because here you have time to
6 say these are the points and the data that we're interested in
7 observing. I think it will give you more of an opportunity to
8 understand. I think what JLARC is trying to look at,
9 education attainment levels and how does that intersect with
10 the applications that you are seeking and the applications that
11 you actually weigh and do they mean what they say.

12 I think the point is that let's look for that
13 specific information so that patterns develop and analyze it
14 and understand it. I don't think it has anything to do with
15 getting more points on your application if you reach that point.
16 I think some of that data really makes sense because we need
17 to really understand it. So the bottom line, so I think we need
18 to try and again I think maybe these workshops will make an
19 impact and make some headway to obtain what it is that
20 JLARC is trying to see. So I'd concur with the staff
21 recommendation and make no motion but rather internally,
22 place more emphasis on trying to harvest that information on
23 the front end and try to follow up and try to make it more
24 workable.

25 MR. NOYES: Workshops are certainly critical

1 and very important and are very meaningful. I think
2 modifying or reformatting a certain part of the application and
3 remind applicants that these are specific things that we'll be
4 telling board members in our staff reviews and I think that's
5 important as well. This is not a huge task for staff to do.

6 SENATOR WAMPLER: Is there consent that
7 we make no recommendation?

8 SENATOR RUFF: Just to clarify that as we do
9 these and act on the staff and the staff will be telling JLARC
10 that as a matter of our discussion how we do this.

11 SENATOR WAMPLER: That's a great point and
12 the director and I talked about it and we hope to provide them
13 an actual transcript of this meeting and it can be understood
14 and I'm sure there will be some informal response as to what
15 action we've taken.

16 SENATOR RUFF: Thank you.

17 SENATOR WAMPLER: So I'll just say as chair
18 without objection, we'll accept the staff's recommendation and
19 make no motion understanding that we will modify the
20 application process. Let's go to the next slide.

21 MR. NOYES: Recommendation number 6
22 revise strategic plan biennially. I think we can again handle
23 that through our bylaws. It's an entirely reasonable
24 recommendation on the part of JLARC and we should adopt it.
25 There is related later on a piece which I also agree we should

1 do being an outside, bringing in JLARC every two years and
2 we need to do it.

3 SENATOR WAMPLER: Any discussion?

4 DELEGATE MARSHALL: So moved.

5 MR. NOYES: Any further discussion?

6 SENATOR WAMPLER: Any further discussion,
7 all those in favor of the staff recommendations identify by
8 saying aye (Ayes). Opposed, no. (No response). The ayes have
9 it and it's adopted.

10 Now, let's spend some time on number 7 and
11 I'll read it. I think I know the meaning but I think everyone
12 can read it and understand it the same way.

13 MR. NOYES: I think I'd defer this, I'm going to
14 defer here to Ned, and the staff has been back and forth on
15 this particular recommendation. It's been my presumption
16 that the speaker rules and appoints legislative members, the
17 governor appoints non-legislative members. The presumption
18 is that everyone acts in a prudent fashion. I'll ask Ned to
19 speak to this.

20 MR. STEPHENSON: I have printed the
21 prudent rule up there for you to read. The prudent rule
22 resulted from some case years ago which some particulate
23 person spoke those words and they've been around for almost
24 100 years and they referred to the duty of anyone who holds
25 resources in trust and in effect says that you will do with

1 those resources the same as you would do with your own. It
2 has often been thought of as something that applies to the
3 security industry and obviously does but it is true and it refers
4 to any trustee of any resources. JLARC in this report is
5 asking or suggesting that the legislature make that law for the
6 Commission.

7 SENATOR WAMPLER: Ned, just for the rest of
8 the Committee, a couple of days ago we were discussing some
9 of the recommendations if we were to take the prudent person
10 rule, I'm not sure that we could be in the business of research
11 and development and the awarding of grants. Therefore, as a
12 trustee, one would take 10 percent of the corpus into the
13 valley of a shadow not knowing when or if we would ever
14 commercialize intellectual property. So I think we are
15 potentially, if we were to adopt a prudent person rule, we
16 would be cookie cutters and not speculative and we would
17 only do projects that had a guaranteed return. I'm not sure
18 that's where we are as far as this Committee or our
19 instructions. I don't want to kind of violate my core beliefs but
20 I think the prudent person rule is operating like that. I would
21 ask the Committee to reflect on that. I would agree with the
22 recommendation of the prudent person rule. I'll pass that
23 onto the Committee.

24 SENATOR RUFF: Mr. Chairman, we have one
25 banker on our staff and one banker on the Commission, do

1 you all follow the prudent man rule?

2 MS. THOMAS: For anything we do, it's the
3 risk associated with it. We may not ever go out on the limb
4 but I don't know what others would say about that.

5 MR. NOYES: Strictly applying the prudent
6 person rule would effectively limit what we do in the education
7 program and there are claw backs and there is the TROF. For
8 other types of projects we do, there is risk and members of the
9 Commission are asked to make a judgment based on the
10 applications made on the staff recommendations as to whether
11 or not we can entertain that level of risk.

12 SENATOR RUFF: Following up on what Ms.
13 Thomas said, why would anyone want to come to the
14 Commission to expand their business, why not go to the bank,
15 the answer is they need more help than what we're talking
16 about here. When you follow the prudent man rule and the
17 federal regulators, I can't do but so much. If we cut ourselves
18 off and no longer let us help.

19 DELEGATE KILGORE: Well the Commission's
20 role as we all know is economic development and there's going
21 to be some risk in economic development and there's always
22 risk in just about everything in economic development. We're
23 going to run into this down the road and the Executive
24 Committee, I'm not sure why EDA, if they follow the prudent
25 person rule in making or working with the federal government

1 in making these awards.

2 MR. NOYES: JLARC references the retirement
3 system where there is a risk involving financial management.
4 Other agencies that make investments and other states are
5 not under this requirement. You don't see it for public
6 housing and you don't see it for the Department of Business
7 Assistance and you don't see it in the VRA. None of them have
8 this written into the code. I think Mr. Chairman pointed out,
9 Senator Ruff pointed out it would tend to be very limiting in
10 terms of what you might want to do.

11 DELEGATE BYRON: I would just make a
12 comment that I believe we all are operating under the code
13 and as legislatures, we're bound by the law and each year or
14 every two years we're judged on that and how it would affect
15 different areas of our state budget and how to use the monies
16 that we have; whether something is worthy or a worthy goal
17 that involves costs and making the right decisions no matter
18 what. I think that's what we all operate under.

19 SENATOR WAMPLER: I'll take one more crack
20 at this. As we come to these investments and actual dollars,
21 we rely on the treasury to make those investments and I know
22 of no better way than to have good housekeeping and the
23 prudent man rule as it relates to that aspect. I believe that as
24 we go into these various investments such as we are
25 expanding and asking for third party advice, especially in

1 something like R&D. In this case we have a contract with
2 Virginia Economic Development Partnership to help review
3 those projects and determine or giving weight to the risk they
4 assign to it. To the extent that we recognize the risk and we
5 add an additional layer of proof or validation of this investment,
6 I think we are concerned with any deviation from the strict
7 interpretation of the prudent man rule. If we chose to
8 recommend to the full Commission that we offer no
9 recommendation, I think it's one that we understand the
10 weight that JLARC has given to these comments and for us to
11 understand. We also believe in the strict construction that we
12 are to follow and our mission of job creation and investment in
13 the Tobacco Commission footprint and we hope to remain
14 following the dictates of our mission. So if there's no further
15 discussion, and I think we concur with the staff that there be
16 no recommendation offered on this. Without objection then,
17 we will make no recommendation. I want to thank the
18 Committee because I think we're supposed to be doing this,
19 having this meeting so I hope everyone understands.

20 MR. STEPHENSON: Page 101, item number
21 11.

22 MR. NOYES: I'd like to offer a comment here
23 Mr. Chairman. The staff really doesn't have any comments on
24 this one. The governor and legislature can do whatever they
25 want to do in terms of assigning certain expertise of board

1 members.

2 SENATOR WAMPLER: As one of the more
3 senior senate members soon to be expired, I was around when
4 we first started this. I don't know who else was there, maybe a
5 few, Delegate Byron. In developing a consensus, it took time
6 to get the pot right as far as who was going to serve on the
7 board, whether quota holders or growers or a representative
8 for a certain section of the population of Virginia. Our best
9 work product it took us six days to try to work it out.

10 DELEGATE KILGORE: I know when the
11 Governor authorized it I was there and there was a lot of
12 discussion on this with everyone from Southside and
13 Southwest. There was discussion about the farm bureau,
14 burley, and flue cured and it was a big battle.

15 MR. NOYES: Maybe what they're looking for
16 here, do you want a doctor or a lawyer or Indian Chief. That
17 sort of thing in terms of state action.

18 DELEGATE BYRON: But that's not to say the
19 diversity we have in our legislature and also part time
20 legislators and all the different folks we have, we've drawn
21 from all over. We've certainly brought together a great section
22 of experience and putting together the language for all of this.
23 I think we do have great diversity.

24 SENATOR WAMPLER: The pattern that
25 developed this and recommending to a governor that we're

1 going to set by statute what his opinions ought to be and his
2 appointments. I don't think we should be doing that. I think
3 as it relates to and probably more so as it follows this and if
4 the secretary of the Commonwealth were to make a
5 recommendation to us as to how this thing should proceed
6 and modify the bylaws, maybe we should consider that.
7 Whether it's the speaker of the house or the Rules Committee
8 or the senate, if they chose to say we should modify this or
9 that, we're having a hard time, and we don't think you need
10 statutory construction, we should do this or that. I think we
11 ought to leave it as flexible as we can for diversity among the
12 board including cultural diversity. I think maybe that's how
13 we should operate and that might give us the best chance.

14 SECRETARY CHENG: I think diversity is fine
15 and good. Diversity generally is all right and we certainly have
16 that with VEDP concerning the technical and special
17 information; that having or knowing where to get that
18 information is very important. The fact that we can act and
19 get that.

20 SENATOR WAMPLER: Certainly when you
21 have political input and university input, combining that with
22 farmers, we certainly have diversity.

23 MR. NOYES: Well the staff made no
24 recommendation on that.

25 SENATOR WAMPLER: I think the consensus

1 is the Committee would concur with the staff recommendation
2 to make no recommendation, is that without objection? All
3 right.

4 SENATOR RUFF: On the first page number
5 five, no recommendation, then staff recommendation 7, 8 and
6 13, no recommendation. I think it might be better if we
7 changed that.

8 MR. STEPHENSON: Mr. Chairman, when the
9 slide says no recommendation offered, the staff is making no
10 recommendation to this Committee. I think the Committee's
11 conclusion so far on those has been no motion.

12 SENATOR RUFF: But I think it ought to be
13 clarified in that motion. I think five is fine.

14 SENATOR WAMPLER: Slide number five, the
15 recommendation was to make no motion and without
16 objection slide number five we make no motion. We make a
17 comment that we would try to address what JLARC seeks to
18 have us address, that is requiring specific information and
19 that's present under the category of making no motion.

20 SENATOR RUFF: Which other one. I would
21 say on 7 and 11, there's no motion.

22 SENATOR WAMPLER: On number 7 then
23 under statement of prudent person rule, the discussion
24 remains the same, same page. Senator Ruff says we made no
25 motion and we make no motion. So without objection then

1 what we would add to our formal presentation to the full
2 Commission and we would ask that, is that correct?

3 SENATOR RUFF: Yes.

4 SENATOR WAMPLER: Without objection we
5 would make no motion to slide number 7. Number 11 is no
6 recommendation and we would make that, we would reorient
7 that comment to make no motion in the discussion on number
8 11 as, make no motion. Without objection, make no motion to
9 slide number 11.

10 The chair would observe that the Governor
11 wishes to add his cabinet secretary and/or one of his agency
12 heads on this Commission and I think that we understand
13 that there needs to be emphasis on coordination among
14 everyone involved. Any questions or comments from the
15 Committee?

16 DELEGATE KILGORE: Going back to forming
17 the Commission and the discussions in the General Assembly
18 at the time, the secretary's involved at that time I know there
19 was an effort at that time to appoint certain cabinet
20 secretaries, other cabinet secretaries so if the Governor or
21 whoever should add a secretary of education, secretary of
22 finance or someone that's fine. I think at times that would be
23 maybe an advisory person to be included.

24 SENATOR WAMPLER: I believe he said before
25 adding any cabinet secretary should be, if we need it, we'd

1 have an ex officio appointment or an ad hoc appointed by the
2 Chair and see if we can do that. I think that's a call of the
3 Chair.

4 SENATOR RUFF: The Education Committee
5 can call on the education administration or the secretary and I
6 don't really see a problem with that.

7 MR. NOYES: I would just point out for
8 members of the subcommittee and the record that the staff
9 meets regularly, not only with the community colleges and
10 other folks so there's an ongoing dialogue to begin with.

11 MR. STEPHENSON: Mr. Chairman, this came
12 up about three years ago and at that time, at the instruction of
13 the then Chairman Hawkins, he issued a standing invitation
14 to the Secretary of Education to attend all Commission
15 functions and participate. That invitation stands today.

16 DR. REDWINE: If we don't consider this
17 Committee's recommendation and we just look at the
18 recommendations that were sent to us and I can tell you three
19 or four of those. One is to put stricter requirements on the
20 people who we are appointing out of the region. Another one
21 is later on reduce the number of seats on the board. Also got
22 recommendations for Secretary of Education and possibly the
23 Community College Chancellor and then another one later on
24 to add more staff. When you add all of those together, it just
25 kind of appears that there is an overall theme to centralize the

1 Commission and to take away from the board's base or
2 Commission and limiting input from members out in the
3 tobacco region and sort of increase the power or the input or
4 to me the staff, input of the legislature of the central part of
5 the Commission. I feel like when you put all those together, it
6 sort of works to reduce the size and scope of the membership
7 of the Commission and sort of limit the input of people out in
8 the tobacco region itself.

9 SENATOR WAMPLER: Dr. Redwine, that's a
10 point well taken and I'll ask either Mr. Secretary or the Deputy
11 Secretary to comment. The question would be do you all feel
12 like the Governor or his Chief of Staff, they don't understand
13 or they don't have a grasp of intimate details of what we're
14 doing. Another way of saying that is by adding anymore
15 cabinet secretaries would that help us in our reach? I think
16 our director and staff work with all of the cabinet people and
17 the Governor is not bashful about quoting his agenda but as
18 most governors and probably future governors, they don't
19 seem unable to promote what they think is the way to go. The
20 director and our chairman meet with the Chief of Staff say to
21 the extent we need to coordinate more, we'll do so. Is there a
22 disconnect here, I thought we were in pretty good shape.

23 SECRETARY CHENG: I think for the past 18
24 or 19 months, I mean there's an evolution to the Chief of Staff
25 and I think they understand what's happening. I don't know

1 that adding more would help but at this point the Secretary of
2 Education, including here or now, having more involvement all
3 that would be helpful. It's at the Secretary level, as long as
4 we're responsive to each other and responsive to JLARC that
5 would make sense. We can certainly bring it up to the
6 Governor and to the Secretary of Education or any other one
7 at that level. If we need more input or if they want more input,
8 they're certainly available. There's a lot going on and certainly
9 we can communicate with each other on that level.

10 SENATOR WAMPLER: Why don't we try this?
11 If there's a consensus to making no motion, we'll ask our
12 Chair or we'll recommend that our Chair communicate with
13 the Chief of Staff and the Governor and keep them abreast of
14 our recommendations and what we do and if there is a need in
15 the short term and short term meaning 1 July 2012, that the
16 Chair has the ability to appoint in an advisory capacity, any
17 secretary that is needed to accomplish the goals. Any further
18 discussion?

19 DELEGATE KILGORE: I think we can do that.

20 SENATOR WAMPLER: Senator Ruff on 12,
21 we'll make no motion and without objection then, we'll accept
22 the staff recommendation and make no motion.

23 Number 13, who wants to lead the discussion?
24 I have question about the number when you talk about the
25 quorum that we need to be able to vote.

1 MR. NOYES: If you turn to page 100 in the
2 book, the structure described in JLARC's documents, if that
3 were to be adopted, we could have a quorum where there are
4 no residents from the Tobacco Commission footprint. You
5 have a quorum, you need it to vote and take a look at what
6 that says and that's there on page 100. I'm not suggesting
7 there is an ulterior motive, I'm just commenting.

8 SENATOR WAMPLER: Let me see where this,
9 should you have a smaller Commission probably so. In terms
10 of getting everybody together and trying to facilitate the work, I
11 don't know how you do that.

12 DELEGATE MARSHALL: My problem is two
13 fold. First of all, if we adopt JLARC's recommendations, what
14 they recommended, you're talking about a lot of money to let
15 people handle it. The Board is large and probably larger than
16 most but I think the advantage of having a large board, you
17 also have a lot of folks in the community that are appearing,
18 the economic standpoint and knowledgeable about what we're
19 doing. I think it's important to stay in touch. I think it
20 ultimately might hurt us to do that recommendation.

21 DELEGATE KILGORE: The other thing is that
22 their recommendations removed, if we want to be true to our
23 commitments as a Commission, if we remove people like
24 farmers or the Farm Bureau and those representatives, we
25 should I think go back to where the dollars came from for the

1 Commission. I don't think it would be wise to do that.

2 DELEGATE MARSHALL: The only issue about
3 the farmers is it's a little bit hard to find those people that
4 have been growing tobacco and they did it in the past.

5 DELEGATE KILGORE: We may have to go
6 back a ways to find them.

7 SENATOR WAMPLER: And making another
8 observation, it's very, very hard to get through both houses of
9 the General Assembly. That's a senior observation. Putting
10 together a plan and by the recommendation when you
11 consider the practical application point of view, you might get
12 it through the Committee and they might concur but it would
13 be very difficult so the staff has recommended we make no
14 motion on number 13. Is there a consensus for that, we make
15 no motion, without objection then, we'll make no motion. So
16 we'll make no motion on 13.

17 Number 14, set minimum standards for
18 executive director expertise and qualifications. Agency heads
19 or cabinet secretaries, it's really hard to come up with this.
20 With regarding, a medical doctor or qualifications but beyond
21 that, just like a judge's qualifications.

22 DELEGATE MARSHALL: Mr. Chairman,
23 doesn't the Executive Director work with the Governor, doesn't
24 he normally do that? We don't tell the governor what
25 judgeships to make. We don't have much, certainly not future

1 governors telling them what to do or binding them. Ultimately
2 the Governor would make that choice.

3 SENATOR WAMPLER: We should
4 communicate and not try to bind him in the discharge of his
5 authority and reconciliation; four or five concerning the
6 Appropriations Act. The Governor should make that
7 determination. I don't know that we should be binding any
8 governor as far as his discretion. So, if there is no other
9 discussion on 14, we will be making no motion then.

10 MR. STEPHENSON: Mr. Chairman, the next
11 group of recommendations has the greatest impact on the
12 applicant that comes to the Commission because its changes
13 what they must do. You'll find these items on page 82.

14 SENATOR WAMPLER: We could spend two
15 hours on this set. I'd like to start the discussion by saying
16 that it is an economic impact analysis. I think we all would
17 say we know it when we see it. There are different forms. It
18 can be a very simply analysis in those kind of issues or you
19 may see someone with a three ring binder with supporting
20 documentation. I do not want it to be misunderstood that I'm
21 not suggesting that this Commission does not know what an
22 economic impact analysis is but to the degree that we might
23 say or asked to and it would be to the degree that we're asked,
24 this could involve many costs. When you think of a small
25 rural community, they have a more difficult time with the

1 more affluent localities that have the resources and the
2 expertise, that's kind of where I'd like to start the discussion.

3 SENATOR RUFF: Mr. Chairman, if I can ask
4 what recommendation to make, would that be all applicants
5 no matter what the dollar amount is even though the
6 recommendation from JLARC –

7 SENATOR WAMPLER: - -That would be a
8 question for the staff.

9 MR. NOYES: We tried to address that. The
10 recommendations from JLARC has one million dollars and you
11 could reasonably expect to get a lot of applications for,
12 \$999,999.00, there is no right number. The motion you have
13 before you says for purchases of capital assets, whether we
14 buy a building or we build water and sewer, it's a whole range
15 of projects that the Commission historically has supported.
16 Just for those that involve what we characterize as capital
17 assets. I don't know that anyone kind of puts a specific dollar
18 amount makes more or less sense. It's JLARC's intention to
19 have this addressed to only very large investors that were
20 interested in. We have all that proof, they came to the table
21 already. If you want to put a dollar amount on it, some
22 potential applicants could be at a disadvantage and they
23 spend money in that application and not be approved. That's
24 correct, not be approved but this is not something that's, that
25 is not looked for by the federal agency finance projects. It is

1 not an unreasonable recommendation on the part of JLARC. It
2 is typical to implement. It could be problematic for some
3 applicants that you wish to hear from. You could waive the
4 applicant's requirements for a small amount.

5 DELEGATE MARSHALL: Mr. Chairman, when
6 you consider the impact of these projects, I think what we're
7 doing is we are asking people what the income levels and the
8 capital expenditures and we already are doing this.

9 MR. NOYES: We're getting it from the
10 applicants in many cases and not from a third party. JLARC
11 is looking for that expenditure. We might have discussed this
12 earlier but the Senator was very reasonable in suggesting to
13 me which is we cannot allow this third party analysis, we can
14 make an award to those folks that don't, that have already
15 gone out so they can go and get it done.

16 DELEGATE MARSHALL: The whole point is
17 just to get the third party?

18 MR. NOYES: Yes.

19 DELEGATE MARSHALL: In the Executive
20 Committee we review the applications, 50, but if they spend
21 two million we can go back to two-thirds.

22 MR. NOYES: On capital projects.

23 DELEGATE MARSHALL: We don't have the
24 third party, what is that going to accomplish?

25 MS. THOMAS: Are they not going through our

1 economic agencies and if they're not, could that not be done?
2 In reading this report, I remember one comment in here that
3 they sent it back to someone, or the company that received the
4 grant.

5 SENATOR WAMPLER: Bringing up Delegate
6 Marshall's point, our applications do presume that much of
7 this information will be included but what I interpret from the
8 recommendations of JLARC, you would obtain or have a third
9 party to make those and that's why my concern that we might
10 price ourselves out of some applications quite literally.

11 SENATOR RUFF: Mr. Chairman, for
12 consideration if we remove the term shall, may be required
13 third party economic impact. Shall, give the staff a
14 requirement to do it, they may require, they may feel a little bit
15 antsy about it, that might be the right thing to do. Give them
16 the ability to use common sense.

17 DELEGATE MARSHALL: Is one million the
18 threshold?

19 SENATOR WAMPLER: Let's talk about a
20 consensus on this. If we say that all grant applications may
21 require a third party economic development analysis, then the
22 next question that Delegate Marshall brought up, what is the
23 threshold for staff, if we were to break that threshold, where
24 do you think that we, two and a half million or what would
25 that do to the number of applications that we receive, it

1 doesn't have to be an exact number.

2 MR. NOYES: For the \$1 million figure that
3 JLARC has recommended, it's a reasonable figure for
4 requiring, may be required for a capital project that involves, a
5 million dollars is an appropriate figure. Someone puts up a
6 million hard dollars and you have a match, they all do.

7 SENATOR WAMPLER: I'll take you through
8 the exercise. Why would a small community spend on an
9 application and preliminary engineering in this case, economic
10 analysis and they probably don't have the finances to do the
11 project without the Tobacco Commission money. Well,
12 probably, you could say we can provide advice and get an
13 analysis, that may delay and may be reducing our chances.
14 As Ms. Thomas said, maybe supply the other part which is you
15 got a whole bunch of outfits out here already who are staffed
16 to do this and they don't charge for a very minimum amount.
17 PDCs and other people that are out there and also like the
18 IDAs. They could do this and they have the capabilities in
19 house to do this. We can have this motion and point out
20 alternatives to applicants. It makes sense to have an
21 independent body do it.

22 DELEGATE KILGORE: A million is a lot of
23 money.

24 SENATOR WAMPLER: What percentage does
25 this, we're discussing a million dollars here, maybe Ned would

1 help us out.

2 MR. STEPHENSON: Or maybe Tim could.

3 MR. PFOHL: The number of projects you've
4 been talking about maybe there's a requirement, maybe in the
5 range of a million or two million. There's a number of projects
6 in that range but we have very few projects that are five million
7 plus. There's a handful each year. Maybe a few dozen over a
8 million plus each year. I have to agree with Neal, one million
9 is a reasonable number. I just point out that for years it's
10 been recommended that the applicants abide by the economic
11 analysis. We receive some that are probably larger projects
12 and we see that, we have to see that analysis.

13 SENATOR WAMPLER: I think that if we adopt
14 Senator Ruff's recommendation, and require a third party
15 analysis and we bring a \$1.5 million amount and if we adopt
16 the \$1.5 million amount. What I want to say is that from the
17 grassroots with this, if we find that that threshold was
18 arbitrary and too high or too low and we'd hear about that
19 also, but it's up to the full Commission to approve these
20 recommendations anyway. Or we can make no
21 recommendation at all. What's your consensus?

22 DELEGATE KILGORE: My only caveat is that,
23 how many companies are out there that actually do this
24 economic impact analysis and how long would it take and the
25 cost and how long would the cost be good for?

1 MR. NOYES: Twenty thousand probably.

2 DELEGATE MARSHALL: For a million dollar
3 project?

4 MR. NOYES: Forty maybe.

5 DELEGATE MARSHALL: From my point of
6 view, I'd like to know would that take 6 months, a year or what
7 would the cost be, would there be a delay in adopting it, we'd
8 have to find that out ahead of time and those are all
9 important. That's important information to know.

10 SENATOR WAMPLER: I think you said at the
11 outset that we don't have to make a recommendation by
12 September, maybe we could wait until January. I do not
13 believe the spirit of that is to defer or kicking the can down the
14 road to another day. We need to know how much the cost is
15 and the cost of this thing compared to our threshold and let's
16 get it right.

17 DELEGATE BYRON: I don't know how we
18 could not comply with that or make that part of the
19 discussion.

20 SENATOR WAMPLER: I think maybe we
21 should make no recommendation and defer it with hopes that
22 the staff or VEDP will enlighten us before our future
23 discussions.

24 DELEGATE MARSHALL: If we do this, what
25 will we find out? What additional information will we find out

1 that we don't know now?

2 MR. NOYES: I believe that JLARC, you are
3 believing what you are being told and it may not be reliable
4 information and that you improve the quality of the
5 information by going outside to get it.

6 SENATOR WAMPLER: But now someone's
7 paying 20,000 for that information.

8 MR. NOYES: Yes.

9 DELEGATE MARSHALL: Now you have to
10 believe what someone else says –

11 MR. NOYES: The preliminary engineer.

12 MR. OWENS: I believe that but I'm curious,
13 I'm quite sure it would be and I'm sure there would be but
14 there's got to be, we've got to have enough information for the
15 small communities without having to go to that extreme.

16 SENATOR WAMPLER: For the PDC.

17 DELEGATE BYRON: We can also get those
18 applications.

19 MR. NOYES: It is in the interest of the
20 Commission to have reliable information and I don't think
21 anyone would dispute that and if it cost a little bit of money,
22 it's better to spend that money whether it's our applicants
23 than use that part of the local match. If you spend a \$1.5
24 million dollars to find out that its smoke.

25 SENATOR WAMPLER: Part of my job is try to

1 get a consensus and I don't think we do. I don't know if we
2 can get there so I would say this one, maybe we should just
3 defer and ask the staff to bring this matter back for future
4 consideration.

5 DELEGATE KILGORE: I think so.

6 SENATOR RUFF: I would hope that would
7 include an average timeframe.

8 MR. NOYES: Yes.

9 DELEGATE KILGORE: Maybe we can get that
10 between now and September 28th, maybe meet before or in the
11 afternoon before to figure out a way. Maybe we should defer
12 that.

13 MR. NOYES: If we come back, it will depend
14 on the amount of work, whether it's two weeks or six weeks.

15 MS. THOMAS: Also could that include
16 information from economic development and what kind of
17 information they provide and if they can provide that.

18 SENATOR WAMPLER: I think we've got your
19 point.

20 MR. NOYES: Yes, understood.

21 SENATOR WAMPLER: Let's go to number 18.

22 MR. STEPHENSON: Page 116.

23 MR. NOYES: The same issues arise relative to
24 the grantee who asks for X number of dollars, we say all right,
25 the approval doesn't support that and the preliminary

1 engineering report does. The issue here is that we are asked
2 for a lot of money many times and it turns out that any
3 number of reasons repetitive bidding and all of those things
4 and sometimes that's left on the table. Alternatively we're
5 asked for an amount of money which isn't enough to complete
6 this work. What I'm saying is that the preliminary engineering
7 report will give you a fairly good idea of whether or not the
8 amount requested is reasonable in relationship to the scope of
9 work. We have it for every single construction project,
10 200,000 but it's too much but it was required and put some
11 people at a disadvantage.

12 SENATOR WAMPLER: It's up to us to decide
13 what we think. This preliminary engineering and my real
14 concern is should we create, or if we take this
15 recommendation and take another step and say in next year's
16 budget, I've allocated a certain amount of money for
17 preliminary engineering for localities that may have no or very
18 little bit of money to retain some of the larger engineering
19 firms. If it's anywhere from 6 to 12½ percent, if that's the
20 market for a preliminary engineering report, we ought to be
21 willing to cost share part of this with the locality. That's just
22 one opinion, not as Chair.

23 DELEGATE MARSHALL: Your idea as well as
24 that of the county or ADC would come to us first of all for
25 dollars to do this or the engineering and then come back to

1 us?

2 SENATOR WAMPLER: I think in a perfect
3 project driven world that might be a good thing.

4 DELEGATE BYRON: And my question is,
5 that's good but how do we accomplish that, how do we
6 determine who gets the money to do that out there and who
7 has the capacity to do it.

8 DELEGATE MARSHALL: So would this
9 happen during the bidding process or would they just come
10 and ask the staff?

11 DELEGATE KILGORE: The full Committee, I
12 think the full Committee authorizes an amount of money that
13 we would, I would suggest we get the staff or give them some
14 leeway using a dollar amount if we needed preliminary
15 engineering work, we don't want to be behind the 8 ball and
16 have to come back some time to Southwest of Southside and
17 say we've dropped the ball.

18 DELEGATE MARSHALL: Like the TROF?

19 SENATOR WAMPLER: Here is my thoughts.
20 Do you think it's appropriate for the next fiscal year to put a
21 beacon on it and say we're going to get in the business of
22 requiring preliminary engineering for those localities that have,
23 they can retain or that would include cost sharing. We would
24 say, we'd say we'll institute those in the next application cycle.
25 That would be included in the future and everyone knows or

1 should know where we're going.

2 DELEGATE MARSHALL: We need to meet and
3 talk about this with the committees, in the R&D Committee,
4 could be even Education Committee or Agriculture.

5 SENATOR WAMPLER: If it's a capital
6 expenditure number one, building or renovations,
7 construction.

8 MR. OWENS: I know that, are you going to
9 add a cap on this engineering?

10 MR. NOYES: That's really what the model
11 would be. Obviously the staff would develop some of the
12 arrangements that can accommodate this discussion. From
13 what I'm hearing, I'd make a couple of points. Frank Ferguson
14 is in the hospital or went yesterday. He would tell you
15 nothing, not to turn over to the staff spending money. This is
16 a Committee Commission that has the responsibilities. It is
17 fine and I appreciate the confidence and all that sort of thing.
18 If you're going to do that, then there's got to be a requirement,
19 a consultation with the committee chairs or vice chair and
20 these are things we do on a regular basis, not just the
21 executive director saying we can do this. This has got to be
22 done through the chair or vice chair.

23 SENATOR WAMPLER: Forget about who
24 makes the decision. I look at local government. We do a lot of
25 water projects and engineering or preliminary engineering

1 reports. At some point my thought is that if we set FY13 as
2 the effective date for what we mean as a precedent, projects
3 are either completed or ones which they'll be eligible for a
4 match or if it's a community that struggles, then they would
5 know here and now about the application process and the
6 workshops as to what we can do to help buy down the costs
7 involved.

8 DELEGATE KILGORE: Well, it seems like
9 everyone has a struggle of one type or another. Number two,
10 from what I'm hearing, all applicants, if you say everybody
11 does this trying to bring the cost down, you'd have to go down
12 that road 8 months before you can come back and get
13 approved. We just don't want to box ourselves in.

14 MR. NOYES: That's true and I would observe
15 that this stuff, these are all run by PERs are all run by
16 software. Someone will tell you for \$10 million how much or
17 1,000 linear feet of 8 inch water line is going to cost, these are
18 facts. My concern is that we have counties that have an
19 opportunity to get the preliminary information or preliminary
20 engineering on 17 different projects if you don't think that's
21 going to happen.

22 DELEGATE MARSHALL: We get that
23 preliminary engineering report and that's one of, and maybe
24 you run into rock that you didn't think you would and they
25 don't know that amount, we got to get them extra dollars and

1 then they come back and say we've gotten into more rock, are
2 we going to give it to them or not? What happens if we don't
3 give it to them?

4 DELEGATE BYRON: You've got a preliminary
5 engineering report someone has made a decision to go on the
6 project and there's some reason for them going that far, then
7 what?

8 SENATOR WAMPLER: That's one of the
9 reasons to cost share. You're speaking just to the cost
10 sharing?

11 DELEGATE BYRON: They should be able to
12 provide that information ahead of time before the actual work.

13 SENATOR WAMPLER: I wouldn't regret for a
14 moment what we did in Coalfield, a decade or longer we had to
15 provide dollars to or for the preliminary engineering report and
16 the PDC or the county or the region, there was a reason but by
17 making this particular project regional rather than a little
18 project, another little project and that's the way it worked.
19 What Delegate Byron brings up there still could be a problem
20 but that's the reason why there is a more cost effective way to
21 do it and do it on a regional basis. It doesn't address some
22 needs, just a recommendation. I think we all need to think
23 about it. If we say are we going to do preliminary engineering
24 reports and are they good and I think they are, but I think
25 that's been proven in Southwest. If you believe one of these

1 localities could spend \$100,000 of their money on it, probably
2 not.

3 SENATOR RUFF: I would move that we follow
4 the Commission's recommendations but as a second motion,
5 we can make this as a separate motion that we ask the
6 Executive Committee to put into the budget a dollar amount
7 that could be used for a preliminary study to determine how
8 that would be used at a later date.

9 SENATOR WAMPLER: Do you want to make
10 an effective date of FY13?

11 SENATOR RUFF: Yes.

12 MR. NOYES: Instruct the staff to figure it out
13 and ask the Executive Committee –

14 SENATOR WAMPLER: If we want to pay for
15 the preliminary engineering or not.

16 MR. NOYES: Senator Ruff made the motion.

17 SENATOR RUFF: Let's deal with the first one.

18 SENATOR WAMPLER: The first one would be
19 to follow the staff's recommendation and there would be a
20 requirement for them to have –

21 MR. NOYES: The Commission requires all
22 applicants to submit a preliminary engineering report with
23 each instruction for each grant or each request –

24 SENATOR WAMPLER: That's number one. It's
25 been moved and seconded, any further discussion?

1 DELEGATE KILGORE: The effective date for
2 that would be July or –

3 SENATOR WAMPLER: The motion is to accept
4 the written words under number 18 adding the effective date
5 of FY13 so the motion carries. Any further discussion? All
6 right. All in favor of adopting this motion say aye. (Ayes).
7 Opposed no. (No response).

8 SENATOR RUFF: Mr. Chairman, the motion
9 on the second one which is to instruct the Executive
10 Committee and the staff to explore options to put money in the
11 budget for fiscal year '13 for preliminary engineering reports to
12 be determined at a later date, however that would be.

13 DELEGATE BYRON: How can we put money
14 in the budget if we don't know what to put in?

15 SENATOR WAMPLER: Is there a second to the
16 motion?

17 MR. OWENS: Second.

18 SENATOR WAMPLER: Delegate Byron, I would
19 say that we may or may not be actually executing a budget
20 transaction here. I think what it does is it tells the applicants
21 in the communities to let us hear from you and do you want to
22 participate in this. I believe we'll hear from them.

23 SENATOR RUFF: We're asking the Executive
24 Committee and the staff to explore this.

25 DELEGATE MARSHALL: We're doing

1 something, a mandate unfunded.

2 SENATOR WAMPLER: Counter intuitive. We
3 fund it and we're going to find out what the demand is and
4 then decide whether we're going to fund it and how much.

5 MS. THOMAS: As part of this, can the staff
6 prepare or bring back to us, would that also include who
7 would review these as far as the applications coming in and
8 once the applications come in, is that going to be reviewed or
9 how is that going to work?

10 MR. NOYES: Well, there's no way to know how
11 much. We don't know what the demand will be for this yet.
12 We'll get back with the Executive Committee.

13 MS. THOMAS: Putting money in for a study
14 and we don't know what that's going to be.

15 MR. NOYES: I can't tell you where we'll get it
16 from, no.

17 SENATOR WAMPLER: There's a motion before
18 us and it's been moved and seconded, any further discussion
19 on the motion? All in favor of the motion signify by saying aye.
20 (Ayes). Opposed no. (No response).

21 MR. STEPHENSON: Page 121.

22 SENATOR WAMPLER: Number 22, without
23 objection, we'll make no motion and we'll ask the staff to
24 modify the applications or to include milestones so we'll make
25 no recommendations on that.

1 Number 23, we'll take the staff's
2 recommendations?

3 MR. NOYES: I would point out number 23
4 that we already do that when we make our report to JLARC we
5 need to make sure we put that in there that we already do
6 that. We've asked questions about other methodologies.

7 SENATOR WAMPLER: We'll make no motion
8 and we'll communicate, we'll emphasize that accordingly.
9 Then without objection, we'll make no motion. Number 27.

10 MR. NOYES: The chair ask if there was an ad
11 hoc committee appointed to address this issue and the staff
12 felt if it was sufficient to ask this group to go along with
13 JLARC.

14 SENATOR WAMPLER: I would say that a
15 public body and you receive any public monies, I would say
16 you must follow the Procurement Act and we need to reaffirm
17 that to our grantees and add a footnote from us that the
18 ultimate responsibility is to the public body that receives any
19 sort of public funds. We are not arbitrators. Unlike
20 performance agreements where we get someone, here we're
21 expected to remember that we're a public body to follow our
22 rules and regulations.

23 MR. OWENS: We always act as a public body.

24 SENATOR WAMPLER: That's correct. Most of
25 our awards and grantees know that and that is consistent

1 with the constitution and it will be up to the local governing
2 body to make sure that, including IDAs and that sort of
3 structure, make sure any funds are spent properly and that's
4 how it's funded.

5 MR. NOYES: When we took a look at this 85
6 and 90 percent of all of our grants always are covered by the
7 Public Procurement Act. Other nonprofits and those not
8 receiving large public funds from the Commission they are not
9 bound by the Procurement Act. To do that or to require that
10 the issue becomes verification and that does get into a lot of
11 staff comment.

12 DELEGATE MARSHALL: How do you know
13 that –

14 MR. NOYES: A public body?

15 DELEGATE MARSHALL: So under the
16 procurement act that would be funded out of the R&D, the
17 Commission would be –

18 SENATOR WAMPLER: If the staff wishes to
19 help me on this feel free to do so. Our job is to protect or do
20 our due diligence and provide grants to grantees and it's up to
21 the governing body two-thirds whether or not they can be
22 responsible for the procurement act. It's hard enough for us
23 to make sure that our performance agreements are being
24 adhered to. I don't know that we have any statutory authority
25 to or when it comes to the procurement act and I believe that's

1 up to the local governing body to determine the direction and
2 whether or not they are compliant with their own Procurement
3 Act.

4 MR. STEPHENSON: My thought on that Mr.
5 Chairman is that any other of the Commonwealths that we
6 want to require applicants to abide by or is it only this one.

7 SENATOR WAMPLER: I presume that they
8 must follow it.

9 MR. STEPHENSON: That's the point. We
10 assume that. I think the main point here is that whatever the
11 consequences when a grantee has an award under the
12 Procurement Act when Commission monies are involved,
13 that's our money so our monies are involved in their
14 misdoings and we're vulnerable to that.

15 SENATOR WAMPLER: Any time monies are
16 circulated.

17 MR. STEPHENSON: Circulated or are at risk.
18 That's always the case.

19 MR. NOYES: I think it's sufficient to reaffirm
20 it's our policy.

21 SENATOR WAMPLER: The prudent man rule.

22

23 NOTE: A recess is had whereupon, the
24 meeting is reconvened.

25

1 SENATOR WAMPLER: All right, we'll
2 reconvene. We're maybe one half ways through and we've
3 made some good progress. The next issue is the degree of and
4 we're looking at number 16. Delegate Kilgore added number
5 16. The issue for grant making authority at the staff level and
6 if there's a consensus that we make no motion on number 16.

7 MR. NOYES: I would agree.

8 SENATOR WAMPLER: So without objection,
9 we'll make no motion, the recommendation is to make no
10 motion.

11 MR. STEPHENSON: Page 116.

12 SENATOR WAMPLER: This is more like
13 inventory tracking. The staff recommendation is to move the
14 staff and to have the staff study related to the reporting to the
15 Executive Committee in January and JLARC is asking us to do
16 it, I think they probably want us to do it. Is there any other
17 discussion on this particular one? It's been moved and
18 seconded, all in favor signify by saying aye. (Ayes). Opposed
19 no. (No response).

20 MR. STEPHENSON: Page 119.

21 SENATOR WAMPLER: I'll ask someone from
22 the staff to lead us through this discussion.

23 MR. NOYES: Site visits are conducted on a
24 regular basis by Sara Williams or Sarah Capps. What is not
25 done is we don't have a feel in the database and would

1 regularly enter the data of the site visit as site visit reports are
2 filed. No one is doing it, there is no argument that we should
3 make site visits. Although what we find out when we observe
4 a project when we make a site visit, there can be problems.
5 I'm not sure exactly what we discover sometimes during the
6 construction. The way it operated in the federal government
7 was that years 1, 3 and 7, after construction is complete and
8 the project is complete, the project goes back, you go back
9 with the application, you say what was supposed to have
10 happened or has it happened and then you put something in
11 the box and I think that's what JLARC was looking for here.
12 We need to account better for work already being done. Do it
13 in a way that's rational and laying the ground work and
14 scholarships and making site visits for that purpose. They're
15 really looking at construction projects. Our ladies are doing a
16 good job of that now. We don't document it properly and we
17 should do that.

18 MR. OWENS: How often are you doing that?

19 MR. NOYES: Ladies, how often do you do it?
20 How often do you go out and do it?

21 MS. CAPPs: We do that and put that in
22 between the workload of the grant application review. Maybe
23 20 days doing site visits during the year.

24 MR. NOYES: Two a day?

25 MS. CAPPs: When I go to Brunswick County, I

1 try to visit all the sites that I need to in Brunswick County and
2 then do Nottoway or I'll do a sweep. If I'm in Richmond I drive
3 back to Chatham and I'll do a sweep in a certain direction and
4 stop by several localities. It varies depending on how much
5 time I need.

6 MR. OWENS: It's safe to say we do site visits
7 often on every one of them. On each one how often?

8 MR. NOYES: We don't document them but we
9 need to.

10 MR. OWENS: So you're going to start that?

11 MR. NOYES: Yes.

12 SENATOR WAMPLER: I want to observe, it
13 might not be as important, but we have to make sure that we
14 document significant points in the construction or
15 implementation of grants that the staff makes the appropriate
16 level of visits and document it and I know our goals require
17 visits and their documented and conduct them in that spirit.

18 MS. THOMAS: That leads to my next question
19 and that is, when there is a construction project and we
20 receive invoices for payment, is there an inspection made then
21 to see if this project is properly being done or completed? I
22 know from a banking standpoint we visit before we advance
23 the money to make sure that they're doing the job and they're
24 at a sufficient level.

25 MR. NOYES: We're not doing that. There is an

1 inspector on site for the construction projects who certifies the
2 work is done in accordance with the plans and specs but we
3 do not do site visits for the purposes you're describing.

4 MS. THOMAS: We receive a certification from
5 the inspector before we advance any funds.

6 MR. PFOHL: We release the funds based on,
7 the vouchers, after the grant or the AIA contract form which is
8 signed off on by the engineer on the project so we are getting
9 those project reports to release the funds.

10 MS. THOMAS: Do we require the AIA
11 contracts with all construction projects?

12 MR. PFOHL: Generally they're provided to us.

13 MS. THOMAS: That might be sufficient.

14 MR. PFOHL: It's more making sure that if we
15 get an invoice, it's for the work that they are signifying on the
16 invoice that it's for or something like that.

17 DELEGATE MARSHALL: Do we require a lien
18 waiver?

19 MR. NOYES: No.

20 MR. STEPHENSON: We don't hold the lien,
21 you can't waive it if there's no lien.

22 MR. NOYES: Not to the grantee. I'm not
23 aware of that. It may have happened on one or two projects.
24 It's not a big problem.

25 MR. OWENS: The issue is documenting it I

1 think.

2 SENATOR WAMPLER: Ms. Thomas' question
3 is appropriate but I think it's much beyond what JLARC was
4 looking for I think. The documentation that's necessary to
5 support our activities, I think that's what the major point is
6 but your point is well taken. JLARC wants us to be as diligent
7 as we can in determining that the work is done. I think there
8 is other but I see what you're talking about and it's more to
9 your point and saves time. Is there a consensus that we make
10 no motion but that we document all of the visits into the
11 database? Is there a consensus? Then without objection, we
12 make no motion and take the staff's recommendation.

13 The next one is number 24.

14 DELEGATE KILGORE: My thought would be
15 that if Neal feels we need more staff to follow up then probably
16 we need to follow up and make sure everything, we do have a
17 lot to do and we need to look to the director for his guidance
18 on that. If we need another person or two persons, I think we
19 should leave it up to him.

20 SENATOR WAMPLER: I'm not prepared as a
21 member to say we should add 3 or 4 or 5, I'd leave that up to
22 the director to talk to us in January if he feels he needs more
23 staff.

24 DELEGATE BYRON: It's always been the
25 practice before JLARC tells us we need more staff. I think we

1 ought to leave it up to the executive director to hire more staff
2 if and when he feels he needs it.

3 MR. OWENS: I consider the fact that they're
4 requesting more staff than we have now, maybe if we
5 implement some of these items, it will require more staff but
6 until we start doing that, it wouldn't be appropriate to just
7 hire staff and I think the director or executive director could
8 make that recommendation.

9 SENATOR WAMPLER: Can we say we'll make
10 no motion and we'll defer future decisions as far as staff to the
11 director to make a recommendation to the Commission. Any
12 further discussion on that? Do you all want to make that
13 motion? It's been moved and seconded, all in favor say aye.
14 (Ayes). Opposed no. (No response). All right that's 25. Next
15 26, move the Commission should develop a publicly available
16 online database for all its awards, I think that's possible. We
17 should make it available online.

18 MR. OWENS: I'd move we do that.

19 SENATOR WAMPLER: It's been moved and
20 seconded the recommendation on 26 be approved. All those
21 signify by saying aye. (Ayes). Opposed. (No response).

22 This last grouping before the Commission is
23 Group D.

24 MR. NOYES: There's two elements,
25 recommendation one concerns the place we work and the

1 other is place of residence and the Southside loan forgiveness
2 program and how that operates and that's focused on work
3 and not residency. You've got to be a resident to be eligible to
4 receive the loan.

5 DELEGATE KILGORE: You have to be?

6 MR. NOYES: You do, yes. To receive
7 forgiveness you have to bring that education back into the
8 footprint and work for a year, work forgiveness for a year.
9 JLARC was suggesting to expand that to say it's not where you
10 work and you can work outside the Commission footprint as
11 long as you reside within the Commission footprint. This is an
12 important change and the staff and the executive director
13 have, when you consider our objective, economic revitalization,
14 a very substantial change.

15 The other part of JLARC focuses on if folks
16 work anywhere in the footprint, anywhere rather than just in
17 southern Virginia. The way it is now, they need to work in
18 southern Virginia and can't work in Floyd County or Grayson
19 even if they're from Danville. That I think is a reasonable
20 accommodation. The motion speaks to working anywhere in
21 the tobacco region but it does not agree with what JLARC
22 wants us to do in terms of residing. That's the motion that
23 staff recommends.

24 SENATOR RUFF: I'm not worried about whose
25 living in the Southwest region and I think the issue there, even

1 dealing with the forgiveness of the loan but if you're living in
2 Dinwiddie and take that education to Richmond or
3 Chesterfield so I would move that change anywhere.

4 MR. OWENS: Second.

5 MR. STEPHENSON: Mr. Chairman, can
6 Senator Ruff have the motion reflect retroactive for all loans
7 that have been made. I think that's the intent.

8 MR. NOYES: That's a good point. I would add
9 that the staff has prepared a recommendation for the
10 Education Committee that will be heard next month so that
11 would change or eliminate the loan provision for four year
12 programs replacing it with the straight scholarship. We'll be
13 considering that in the Education Committee and that's the
14 proper venue to hear that.

15 SENATOR WAMPLER: Presuming, remaining
16 an outstanding balance, I guess. The loan presents something
17 that is an outstanding balance –

18 MR. STEPHENSON: No refunds being
19 contemplated.

20 MS. THOMAS: That might be an issue, you
21 don't require that.

22 SENATOR WAMPLER: This is one that would
23 likely require a separate motion for the Commission. I'd ask
24 that be read into the record so that we know what it is and we
25 know what the intent is today when we make that

1 recommendation to the full Commission. Any outstanding
2 balance would be forgiven assuming those conditions are met,
3 that we have a complete, accurate, clear and concise and that
4 be read into the record.

5 SENATOR RUFF: I'll make that motion.

6 MR. OWENS: Second.

7 SENATOR WAMPLER: You've all heard
8 Senator Ruff's motion, any further discussion, all those in
9 favor say aye (Ayes). Opposed no. (No response).

10 The next number three eliminate the
11 Southside allocation system.

12 MR. NOYES: I'll make the motion.

13 SENATOR WAMPLER: The issue that JLARC
14 tried to advise against is an issue we've had over the years
15 with the allocation.

16 DELEGATE KILGORE: We've had this
17 discussion before and Senator Ruff and Senator Wampler and
18 the capital budget. The fact that or it centers around the fact
19 they don't look at a project, project by project, not by county.
20 JLARC is talking about the historical tobacco production.

21 DELEGATE MARSHALL: Along those lines, the
22 allocations to Southside and they've asked you about this also
23 and might result in, in like Mecklenburg County, the amount
24 of money they receive from the Commission is substantial. Is
25 that the money or is that the only allocation and that could be

1 the way it is for years. I would say they don't understand,
2 JLARC doesn't understand and we've done the allocation
3 system so that the larger counties or the larger tobacco
4 production is represented. Also these industrial parks like
5 Henry County an allocation of \$140,000 in the last two years, I
6 think we've put a half a million dollars in projects but so far
7 the system is working.

8 DELEGATE BYRON: Well you know, about 14
9 years down the road as far as having this system set up to
10 work, now they're looking at amending it coming through a
11 closed circuit. We've had a lot of projects that have come
12 through and it's something that should be, maybe should be
13 looked at again. We've revitalized these areas and then we've
14 worked on those things that are good for us and we've changed
15 our committee structure to work on them. I think it would be
16 very difficult because our members are going to defend their
17 areas and they want to make sure that resources are available
18 for their region. I think it will be tough issue to start looking
19 at it from another perspective. So far it's worked rather well.
20 You can bring something back and it may be different. We can
21 look at it and see if it has merit at all but we have worked very
22 well in the past I think.

23 MR. OWENS: I would agree with you, we've
24 had that discussion many times. I think we could discuss it
25 but we don't have that here before us now. Before I sell the

1 old car I want to make sure that the new car works.

2 MR. NOYES: The new car extends the title to a
3 limited number of jurisdictions and doesn't really matter
4 whether it's – the point is that with the Southside formula is
5 that year end and year out four jurisdictions have access to 65
6 percent of the funds available and authorized by the Board for
7 economic development projects, notwithstanding what
8 Delegate Marshall said about shopping in other stores for
9 additional money for those people. I think perhaps the most
10 telling point in JLARC's report is that after tens of millions of
11 dollars spent in these four jurisdictions, not one of them
12 shows more evidence than other jurisdictions in terms of
13 revitalization, successful revitalization. So when we say it is
14 broken, I would characterize it by saying it's not working and
15 simply saying this is now broken –

16 DELEGATE MARSHALL: When you have a
17 company that's located less than two miles from here and had
18 15,000 employees at one time and have zero now, did the
19 Tobacco Commission have anything to do with that? That's
20 something that, so you can't, you can't take that in a vacuum,
21 the world has changed and NAFTA throughout all across
22 Southside probably more so than Southwest coupled with all
23 the job losses we've had here.

24 MR. NOYES: Southwest lost textiles and
25 furniture probably not of the same magnitude but in

1 relationship to the population, it was a significant loss. Mr.
2 Owen raises the question and it's a good question. He says
3 what will replace, what replaces. The question I heard and the
4 answer has been provided for, it's not another model of the
5 same old car, it is an open process where there is a set
6 amount of money and staff reviews the applications and
7 advises the committee which has the most potential in our
8 judgment to accomplish the revitalization objectives. What
9 you got now is the staff saying of those projects to which
10 jurisdictions have entitlement, based on nothing but an
11 extension of this indemnification argument, of those that they
12 apply for, these are the best, not the best possible within the
13 footprint. My argument is that revitalization of Southside
14 Virginia is simply not possible when 65 percent of the
15 resources the committees have are already allocated to a
16 limited number of jurisdictions. The projects may or may not
17 be as good as a project that could happen elsewhere. The
18 alternative is the same model that we use for every other
19 committee of the Commission. The only committee that has
20 its own indemnification process for jurisdictions rather than
21 individuals.

22 MR. OWENS: But if you follow my argument,
23 it has to have merit and I think that it might not always be
24 just the application system and I'm sure there was a reason
25 why it was that way but until we have a clear plan or draft on

1 how you're going to handle this process and of course, I wasn't
2 here in the beginning of this. I know it's somewhat limited or
3 some of the larger ones that are better equipped than the
4 smaller ones. Until that time I can't see us doing anything
5 much different until the staff comes up with any
6 recommended changes and have clear and concise changes.

7 DELEGATE KILGORE: We've done it that way
8 in Southwest and when you consider the big tobacco
9 producers in our larger counties like Washington and Scott
10 and Buchanan and Russell. I think most of the people have
11 and when you consider the wisdom and the reasonableness
12 but when you consider these projects, you might have one in a
13 small location that's going to benefit everyone. I think other
14 people from Southwest would tell you the same thing. We
15 have disagreements but we tried to work out that sort of thing.
16 It's not like the world's going to end.

17 SENATOR RUFF: When we came up with the
18 formulary, the concern was that someone would take it all and
19 we wanted to protect the smaller people. We probably haven't
20 protected some of the smaller counties. I'd be willing to say
21 that if we try this for two years and if we see any major things
22 going wrong, then we can revert back. If we see the world's
23 not falling apart, then we can continue on.

24 DELEGATE MARSHALL: If we're going to get
25 divorced in two years, why do it?

1 MR. NOYES: No, if I have anything to say
2 about it.

3 SECRETARY CHENG: We can do it the other
4 way, follow the formulary or you can change it if you see its
5 working fine. If it isn't, or if somebody wants it that way but if
6 you say we're going to keep the formulary 65 to 45 or
7 something like that, maybe we better wait and discuss it.

8 DELEGATE BYRON: I understand the concept
9 and you're trying to protect the fear factor that some aren't
10 going to be protected but if someone has a good project in
11 their area and it doesn't matter and they may end up being
12 usable for a larger project because they have something better
13 to offer. It should really be based on the project. I feel pretty
14 certain that as much as Danville would love to have a project
15 and if there's something a little further away that their
16 workers could benefit from, it would be just as excited about
17 those jobs as the jobs that their looking at right in their area.
18 The only way we can get those jobs there is to have something
19 available in the region and rather than coming up for ideas for
20 grants, this way they can benefit from that. Economic
21 development is when we get to the point where we start to
22 receive applications and we've done a lot of water and sewer
23 work, we have these parks and we've worked on these for
24 awhile and we had infrastructure increased. I can understand
25 your concerns but I don't think anybody is automatically going

1 to be ruled out, no way.

2 MR. NOYES: When you consider the last
3 common denominator, which is really guaranteed by the
4 formulary.

5 MS. THOMAS: I'd just like to comment that
6 the reason why we are even here on behalf of the Commission
7 was for the economic development and the revitalization of our
8 communities affected by the loss of tobacco quota and that
9 might have made some of us or counties that are larger and
10 we have counties with less of the allocation, I think we should
11 consider the most impacted. We shouldn't forget that.

12 MR. NOYES: That's all understood but the
13 enabling legislation does not say revitalization of those
14 communities most hurt, it says revitalization for all of the
15 communities in Southside and Southwest Virginia. There's no
16 instruction in the legislation about that four jurisdictions
17 would get 65 percent of the pot.

18 SECRETARY CHENG: But going back and one
19 of the things that Mary Carter said, when you think of the
20 formula, this is to embrace the region. When you do that, this
21 is the process for everyone.

22 DELEGATE MARSHALL: If this is approved,
23 we would have a budget in Southwest and Southside economic
24 development and then every one of the projects that applied
25 would chip away at that pot of money. I guess the real

1 problem here is the small localities and let's not have a very
2 small economic development office, you can be hurt more so
3 than Danville or Pittsylvania or Halifax. Halifax County has a
4 very small economic development office and it would even be
5 harder.

6 MR. NOYES: That's possible.

7 SENATOR WAMPLER: Well, do we have a
8 consensus? Would it be best to say we do, to JLARC that we
9 will defer this decision until January and at that time, I'm not
10 sure that statement would hold a lot of water. Where I sit
11 today listening to you all speak your opinions, it appears to me
12 we don't have the model good o bad, sort of good, sort of bad
13 but we don't have a model to adjust. I have to think
14 personally we should, but I don't know that there is a
15 consensus. I think what we need to do is to send a strong
16 message to JLARC to what we agreed on and what we're going
17 to do and what we don't have a consensus on. We'll take
18 another pass at it. But I don't think we have a consensus on a
19 recommendation at this time. Is that accurate?

20 SENATOR RUFF: Mr. Chairman, I think the
21 point is and I think maybe that might be the road we should
22 travel and try to figure out how we can identify that money by
23 region and that will help make this more palatable maybe, I
24 know what Neal wants.

25 SENATOR WAMPLER: Where we can say until

1 I'm not sure from my own observations and I'm not clear but I
2 think we have a consensus that's a practical issue and I think
3 unless somebody has another strong point of view like the
4 majority of us support that point of view.

5 DELEGATE BYRON: Not that I'm not
6 concerned but I'm considering the responsibility of it and from
7 this meeting, maybe the Chair could put a group together with
8 some to review this by a certain time.

9 SENATOR WAMPLER: I think I understand
10 and it's hard for this committee, for the committee to take the
11 JLARC recommendations and if there's consensus, if it's
12 acceptable or not acceptable, then we will report that back and
13 we'd take the appropriate action either in September of
14 January but on this point, I don't think we are there. It may
15 be beyond us to presume what might happen in another
16 committee or other venues. I'm sure we'll deal with it again.

17 DELEGATE KILGORE: Mr. Chairman, what I'd
18 like to do is for the Governor to make it known -

19 MR. NOYES: We can email but haven't
20 received communication from the Secretary.

21 DELEGATE KILGORE: I would like to see, at
22 the outset we have a team approach. I would prefer the staff
23 come up with some answers. I prefer you all meet and
24 Southside have a meeting and everyone involved in Southside
25 try to come up with a way in your localities that makes sense;

1 some may agree and some may not. Even though there's no
2 consensus here, there is a consensus for change and what
3 that change is, I don't know. I think we can work on that. I'd
4 like we report back to JLARC that we are going to change, it
5 may take time but we are going to change it. Is that
6 reasonable? Maybe the Secretary may want to go.

7 SENATOR WAMPLER: Would it be appropriate
8 to say without objection, we communicate that while we don't
9 have a complete consensus that we continue to work and
10 arrange for the committee to meet as we will endeavor to try to
11 change the allocations, is that a fair statement?

12 DELEGATE KILGORE: I would ask the
13 chairman of Southside to call a meeting. I don't know if you
14 can do it before, can you do it before September 28th? Try to
15 do that and I hope it's not an imposition on staff but to have a
16 discussion.

17 SENATOR RUFF: Mr. Chairman, I'd like to
18 point out that the JLARC review, the '09 recession period and
19 the communities in the southern part on the North Carolina
20 line may reflect the economies over in North Carolina far more
21 reaching than Charlottesville, a lower employment rate than
22 Halifax. That's reflected in the numbers that show or are
23 reflected back to like Lynchburg or Appomattox to say that
24 none of that money makes a difference is a gross statement
25 and it's not a fact.

1 SENATOR WAMPLER: I think it's time to go to
2 the next slide.

3 DELEGATE KILGORE: I just say a lot of time
4 on these projects I know, a specific project or another
5 committee take into account what's going on in the local area
6 and try to help out. I don't know how many projects but take
7 many things into account.

8 MR. NOYES: Too much right now.

9 SENATOR WAMPLER: Number 4, we're
10 making no motion. Anyone have any other thoughts on it? All
11 right, staff recommends we make no motion. We'll go onto the
12 next one. Number 9. The question as I see it and the staff
13 says we've requested an opinion from the attorney general and
14 there are those that say an opinion from the attorney general
15 will have the full weight and effect of or very close to it and
16 there are those that say it's just another opinion of a lawyer
17 which I don't subscribe to. I think that's part of a much larger
18 issue. I don't know that we need our opinion, whatever the
19 attorney general rules is what I think will govern our activities.
20 I'm not sure that we need to be bound by an opinion from the
21 attorney general's office. If in the opinion of our counsel there
22 is something that comes up that we had not contemplated, we
23 can always ask the attorney general for advice either
24 informally or formally that would rise to the level that we need
25 an opinion on. If we need an opinion on something or on a

1 particular issue or if there's something then I'd ask the staff to
2 let us know. That's just one person's opinion and that person
3 happens to be the chairman.

4 MR. NOYES: We will not ask for an opinion for
5 the Tobacco Commission. We're bound by whatever the law of
6 the land is.

7 SENATOR WAMPLER: So we'll make no
8 motion, number 9, we make no motion. Without objection
9 then we'll move on.

10 Next slide number 10.

11 DELEGATE KILGORE: I would make a motion
12 that it includes, we should include that part as our part.

13 SENATOR WAMPLER: It's been moved and
14 seconded that we adopt the recommendation of the staff, any
15 other discussion? All those in favor signify by saying aye.
16 (Ayes). Opposed no. (No response).

17 MR. NOYES: I just want to go back to the
18 strategic plan. I see absolutely no reason why we would not
19 be willing to bring in a third party to get the best guidance we
20 can get as to the strategic planning process as we move
21 forward. This is a good recommendation from JLARC.

22 SENATOR WAMPLER: Any other discussion,
23 it's been moved and seconded, that recommendation number
24 15 be adopted. All those in favor say aye. (Ayes). Opposed
25 no. (No response).

1 Now, 17. I'll call on the Executive Director.

2 MR. NOYES: I'll take a wack at it. Mr.
3 Chairman, JLARC in its wisdom created a whole bunch of new
4 committees to do this or that. We have all the committee we
5 need but what we really need to do is; it's my view that
6 healthcare services need to be a larger part of what we do.
7 Special projects was created to work on regional projects that
8 have a regional impact or to accommodate all of the 24
9 jurisdictions in southern Virginia to accommodate all of the
10 poor jurisdictions in southern Virginia. We really need to set
11 aside resources as part of our strategic planning process and
12 think not just about how we can provide finances to support
13 education and other aspects of healthcare but how we actually
14 get services delivered to citizens. Starting in the next fiscal
15 year, I would like to see the special projects committee
16 repurpose to look at specifically the opportunities to get
17 services out there. Whether that involves construction,
18 financing for clinics, whether it is expanding the networks in
19 the footprint, those are the sort of things that I think we can
20 start to do. We have built more sewer and water lines and
21 more industrial parks all of those types of things and we're
22 going to have to start repaving places we've already paved if
23 we're not careful. It's time to refocus.

24 DELEGATE KILGORE: We're not
25 consolidating, we're not doing that at this time. We'll be in the

1 formulary real quick.

2 MR. NOYES: There are many locations in
3 Southwest Virginia with some very different traditions and not
4 a complete alignment of needs and it's not inappropriate to
5 have a separate committee for economic development
6 purposes. I believe JLARC says one size fits all. That's what
7 this part of the report says in criteria and ranking them as one
8 thing. What we don't have is a dedicated committee to look at
9 delivering healthcare services.

10 DELEGATE KILGORE: I'll make that motion,
11 for special projects.

12 MR. OWENS: And when would that be?

13 MR. NOYES: As of July 1, 2012.

14 DELEGATE MARSHALL: Is special projects
15 only going to do healthcare, healthcare services?

16 MR. NOYES: Healthcare services, yes.

17 DELEGATE MARSHALL: Like what special
18 projects does now, where will those funds be going to?

19 MR. NOYES: Through economic development.

20 DELEGATE MARSHALL: Like the building
21 behind here, if we do that, in the future Southside Economic
22 Development would do that?

23 MR. NOYES: Yes.

24 DELEGATE MARSHALL: How about the
25 allocation?

1 MR. STEPHENSON: For clarity of the motion,
2 we need to restate the words, are we going to confine special
3 projects to healthcare?

4 SENATOR WAMPLER: The motion is
5 withdrawn. Let's hear from Secretary Cheng.

6 SECRETARY CHENG: That was my question,
7 what are the other three that they want to do?

8 MR. STEPHENSON: One of the four?

9 DELEGATE KILGORE: Three committees.

10 MR. NOYES: This is a responsibility of the
11 Executive Committee but I'd like to go back to Delegate
12 Kilgore's question if I may Mr. Chairman. Special Projects is
13 for people seeking funds, we still got education and economic
14 development. We're still going to have those other projects,
15 not to reinvent, it's just there's projects here from before and
16 southern Virginia special projects. But the committee will
17 focus on healthcare services and economic development will
18 handle the others.

19 DELEGATE KILGORE: If we do that, then I
20 want special projects to do the healthcare projects.

21 MR. NOYES: That's fine. We really need to
22 refocus our resources for that.

23 DELEGATE MARSHALL: Special projects
24 should add healthcare as part of change?

25 SENATOR WAMPLER: Just so it's included

1 and it's clear. Maybe the terms need to be defined, maybe a
2 new chairman, you'll be getting a new chairman there in
3 January, maybe that's a good thing. The value of the Special
4 Projects Committee in the past has been truly regional and
5 that's where the dollars have flown in getting regional projects
6 done and regional projects put in place. I think what
7 Secretary Cheng is trying to tell us, we need to get back to that
8 and focus on that. The underlying point is that if you add
9 healthcare services, I know in my neck of the woods, the two
10 largest employers are the school system and healthcare and I
11 think that's true if you go outside the region. The question is
12 should we be paying attention to it and the answer is
13 absolutely. I think our future suggests that. So I would
14 absolutely agree that Special Projects is probably the answer
15 and Special Projects is probably the committee to do that. My
16 real concern is that if we eliminate Special Projects as a
17 regional entity and try to do regional projects, we will get lost.
18 We will get lost in the committee structure. We know
19 Southside and Southwest. So what I'm hearing the Chairman
20 say is in Special Projects we have additional responsibilities for
21 healthcare services and we do it within our regional structure.

22 DELEGATE BYRON: I agree with that but isn't
23 it regional now, isn't that what we've been doing with our
24 resources?

25 MR. OWENS: Isn't that what the regional

1 approach is? Haven't we been doing that?

2 MR. NOYES: Three or more.

3 SENATOR WAMPLER: Sometime it's been one
4 major employer and it affects more than one locality.

5 MR. OWENS: And you want to add two?
6 Couldn't we just do like we do in economic development and
7 put a certain amount of money in it to be used for healthcare?

8 MR. NOYES: If the Executive Committee
9 approves. As our Chairman has pointed out, we're not hearing
10 projects that are authentically regional, they claim to be
11 regional in terms of their scope.

12 DELEGATE KILGORE: That's what we need to
13 say at the outset.

14 MR. NOYES: I'll do it.

15 DELEGATE KILGORE: Right, you've got the
16 grant and you're the person.

17 MR. NOYES: You know we like projects in the
18 committee where the same set of outcomes are measured so
19 having people come into special projects for projects that have
20 a regional application where the outcomes are certificates or
21 degrees, I would move that into education.

22 DELEGATE KILGORE: It should be.

23 MR. NOYES: Private sector capital investment,
24 direct jobs, move that into economic development.

25 SECRETARY CHENG: But we got to remember

1 that tracking these outcome measures has got to be part of –

2 MR. NOYES: - We should advise JLARC that
3 the Executive Committee is who we will talk with about the
4 strategic planning and approval of that and what comes with
5 it.

6 SENATOR WAMPLER: What do you all want to
7 do with that? Healthcare services is sufficient and consistent
8 with strategic planning and add to the scope of the Special
9 Projects Committee, is that where the discussion has taken
10 us?

11 MR. OWENS: I so move.

12 SENATOR RUFF: Second.

13 SENATOR WAMPLER: Any further discussion?

14 MR. STEPHENSON: In the previous motion
15 you referred the health services question to strategic planning
16 and in the strategic planning process for them to sort that out.
17 Now we have preempted that process, put it in here anyway.

18 SENATOR WAMPLER: We can work that out.

19 MR. NOYES: That's right.

20 SENATOR WAMPLER: That's a good point
21 Ned. So we have a motion before us to adopt the
22 recommendations as read. All in favor signify by saying aye.
23 (Ayes). Opposed no. (No response). All right.

24 MR. NOYES: For a number of years the
25 agreements governing how people would account to us

1 through VEDP were pretty much written by VEDP. Those
2 agreements were three or four years ago and the Committee
3 instructed the staff to get it fixed and get the agreements,
4 check it out so we could determine the amount and deal with
5 the problems and several years in earlier agreements. Mr.
6 Stephenson has done a heck of a job getting that done. What
7 we do now is that when there is a dispute or disagreement of
8 the documents that are so superior now. If there is a dispute
9 by your staff or somebody that has not met the requirements,
10 they are afforded the opportunity to appear before the
11 Executive Committee to make their case. I would never take
12 that away from an applicant. They can dispute staff and I
13 think that's reasonable but I think it's entirely reasonable the
14 Executive Committee continue to serve as a final arbitrator in
15 cases where there are disagreements. Most of this has to do
16 with JLARC's concern, looking at the early TROFs. Remember
17 most of them or they looked at it differently because it was a
18 three year period. We hadn't gotten the grievance perfected
19 where we would just tell them if one company had one set of
20 facts and another company based on what we were doing, we
21 were doing the very best we could to get the people close. I
22 think that's the way we were acting. The way it is now is we
23 know someone made or didn't make it and we can tell you and
24 there are consequences. The consequences is that we don't
25 disburse funds in that jurisdiction if that happens until the

1 matter is resolved. I think we're there with TROF. I don't
2 think we need to do anything about or we can fix the problem
3 in the first 5, or 6 or 7 years in the life of the Commission.
4 Now we'll tell you if somebody or show you the data and then
5 they have an opportunity to be heard and the Executive
6 Committee can issue instructions to staff.

7 SENATOR WAMPLER: Any comments from
8 Committee members? Do we have a consensus we can make
9 that motion without objection?

10 SENATOR RUFF: At the end of things, should
11 we take some hard action on what the Committee thinks?
12 Make sure all our publications and the committees
13 understand that they are to submit applications to the proper
14 committee and the Executive Director has the authority to
15 decline them when they apply to the wrong committee.

16 SENATOR WAMPLER: That's the motion.

17 DELEGATE MARSHALL: I'll second it.

18 SENATOR WAMPLER: Discussion. The
19 question I would ask to the director, don't you do that now?

20 MR. NOYES: No, I really don't. I grind my
21 teeth a lot but it is a regular occurrence that projects that
22 appear to be most appropriate for the Agribusiness Committee
23 or Special Projects. Sometimes even to the Education
24 Committee and then there's some shopping around of the
25 committee structure. That's rampant.

1 SENATOR WAMPLER: I'll ask Senator Ruff to
2 restate the motion.

3 SENATOR RUFF: My motion is that we clearly
4 identify what falls under each category and committee and
5 have the application filled out appropriately and the Executive
6 Director to reassign them if they don't agree.

7 SENATOR WAMPLER: That was not a JLARC
8 recommendation. I think that motion is appropriate before us.
9 Senator Ruff, is that something that should go to the
10 Executive Committee rather than a committee like this? It
11 may be the same consequence, I agree with you but I just
12 don't know – Mr. Chairman, we should be making that, I don't
13 know if we should be making that decision right now.

14 DELEGATE KILGORE: I would say that it not
15 only restricts it but if you have a problem with one and it
16 could be appealed to the Executive Committee like any other
17 problem.

18 SENATOR RUFF: I don't know that I would
19 agree with what you're saying. I will withdraw the motion and
20 take it the Executive Committee.

21 SENATOR WAMPLER: Maybe the full
22 Commission even before you.

23 DELEGATE KILGORE: Why don't you put that
24 on the agenda for the Executive Committee?

25 MR. NOYES: All right along with the

1 formulary.

2 DELEGATE KILGORE: Before we leave, can
3 you get a meeting set up between now and September to go
4 over certainly everything that we discussed and try to reach
5 maybe some kind of consensus and agreement or something.

6 MR. OWENS: This year or next year?

7 DELEGATE KILGORE: We can talk about it.
8 Do you have a meeting set up between then and now?

9 MR. OWENS: We'll talk about it.

10 SENATOR WAMPLER: Well, is there anything
11 else to come before the Committee?

12 MR. STEPHENSON: Just for clarity, we made
13 7 motions today by telling the staff and the staff intends to
14 deal with these and to report that, I'm assuming this will be
15 made to the Commission in September to vote upon those 7
16 motions.

17 SENATOR WAMPLER: Yes.

18 MR. STEPHENSON: Before you adjourn, Stacy
19 has some logistical information.

20 SENATOR WAMPLER: All right. Since our
21 meeting, since we've discussed what our meeting was intended
22 for, is there anyone from the public that wishes to address the
23 Committee? Anyone from the public, all right, thank you. The
24 meeting is adjourned.

25 PROCEEDINGS CONCLUDED

