



Executive Committee Meeting
Thursday, October 7, 2004 -- 2:00 p.m.
Hotel Roanoke & Conference Center
Wilson Room
Roanoke, Virginia

APPEARANCES:

The Honorable Charles R. Hawkins, Chairman
The Honorable Terry G. Kilgore, Vice Chairman
The Honorable Frank M. Ruff
The Honorable William C. Wampler (by telephone)
Mr. Gary D. Walker
Mr. James C. Thompson
The Honorable Kathy J. Byron
The Honorable Allen W. Dudley
Deputy Secretary Matt Erskine
Mr. Thomas W. Arthur

COMMISSION STAFF:

Mr. Carthan F. Currin, III, Executive Director
Mr. Timothy Pfohl, Grants Program Administration Manager
Mr. Ned Stephenson, Manager of Strategic Investments
Ms. Stephane Wass, Director of Finance
Ms. Britt Nelson, Grants Coordinator Southside Virginia
Ms. Sara Griffith, Grants Coordinator Southwest Virginia

OFFICE OF THE ATTORNEY GENERAL:

Frank N. Ferguson, Counsel to the Commission

SENATOR HAWKINS: All right, good afternoon. Carthan, call the roll.
MR. CURRIN: Mr. Bryant?
MR. BRYANT: (By telephone.)
MR. CURRIN: Delegate Byron?

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DELEGATE BYRON: Here.
MR. CURRIN: Delegate Dudley?
DELEGATE DUDLEY: Here.
MR. CURRIN: Deputy Secretary Erskine?
DEPUTY SECRETARY ERSKINE: Here.
MR. CURRIN: Delegate Hogan?
DELEGATE HOGAN: (No response.)
MR. CURRIN: Delegate Johnson?
DELEGATE JOHNSON: (No response.)
MR. CURRIN: Senator Puckett?
SENATOR PUCKETT: Here.
MR. CURRIN: Senator Ruff?
SENATOR RUFF: Here.
MR. CURRIN: Mr. Thompson?
MR. THOMPSON: Here.
MR. CURRIN: Mr. Walker?
MR. WALKER: Here.
MR. CURRIN: Senator Wampler?
SENATOR WAMPLER: Here. (by telephone)
MR. CURRIN: Mr. Vice Chairman?
DELEGATE KILGORE: Here.
MR. CURRIN: Mr. Chairman?
SENATOR HAWKINS: Here.
MR. CURRIN: You have a quorum, Mr. Chairman.

SENATOR HAWKINS: Thank you. Before we get into the agenda I'd like to touch on a couple of conversations and make some recommendations to the Full Commission in October. I'm going to restructure the committee system today and do away with a lot of the committees that haven't been meeting, like Personnel and Finance. There are several things that we, Procurement, it should be an Executive Committee responsibility. With that said, we'll probably do some restructuring based on some new membership and make sure everyone gets appointments to committees that actually do something rather than have people on committees that really don't do much.

The second thing I'd like to bring up by way of recommendation, and it's been recommended by several members, that we have a permanent meeting site rather than flying all over the world, and they suggested this building. That is something we need to discuss if that makes any sense, because it is a central location for Southwest and Southside. Most everybody is about a two-hour drive tops as opposed to flying and that sort of thing. Any discussions or recommendations to that idea or not?

DELEGATE DUDLEY: Mr. Chairman, in spring and summertime it's closer to --

MR. ARTHUR: Mr. Chairman, is that going to apply when you all are in session?

SENATOR HAWKINS: This is just an on-going meeting place, rather than

trying to find different places to meet, but when we're in Richmond, then, of course, we'd meet in Richmond during the session. We can still change it.

DELEGATE KILGORE: Mr. Chairman, I'd have a lot of heartburn with it. A lot of folks out my way in the far Southwest in the burley area this would give them an opportunity to come before the board. I don't have a lot of heartburn with changing it here in Roanoke, because this is the central location. I do think one of our mission statements, as a Commission, is to get out into these areas. Sometimes you learn a whole lot by doing that.

MR. CURRIN: May I make a suggestion that we take the middle road and we have four meetings a year? Have this as one and have one in Southwest and one in Southside and one in Richmond.

SENATOR HAWKINS: We'll make a recommendation to the Full Commission. I don't have a lot of strong feelings one way or the other, but it was suggested, and I thought I'd bring it up.

Another thing I'd like to ask the Executive Committee is to restructure the Executive Committee, because I'd like to make a change in the By-laws to make it that every sub-committee chair is automatically a member of the Executive Committee rather than have to go through this all the time. That makes the sub-committee chairman a member of the Executive Committee.

MR. CURRIN: We can have a language change before the October meeting and change the By-laws.

SENATOR HAWKINS: If there are no feelings one way or the other it makes sense that we get that done.

Let's go ahead and approve the Minutes. Is there a motion to have the Minutes approved?

DELEGATE BYRON: Just some minor things in the Minutes, to spell my name with a "K" rather than a "C".

SENATOR HAWKINS: Spell Kathy with a "K" instead of a "C", we can do that.

Do I have a motion? I've got a motion and a second. I've got a motion to correct the spelling, and it is so moved that we'll change the "C" to a "K" for Kathy Byron, all those in favor, say aye? (Ayes.) Opposed? (No response.) All right, that's corrected.

The Minutes as they have been amended, motion to approve them? All right and a second, all in favor, say aye? (Ayes.) Opposed? (No response.) The Minutes are approved as amended.

Next, we need to touch base on the Technology Committee project in the budget. What we need to do dealing with our commitments, particularly the backbone and participation of Southwest and what needs to be done out there and the type of monies that need to be set aside. We need to make some long-term plans, and, Kathy, your sub-committee will probably need to get into that as we get into some uncharted waters. Not only the lawsuit going on, but with the buy-out and other things involving long-term planning on how we can structure some things differently. If we start talking about changing the money to any degree and putting more money in Special Projects or Technology and it comes off the top of the over all allocation. The problem with that is you've got to be very careful, City of Danville, Halifax County, Pittsylvania

County have made obligations on long-term payouts for various projects instituted. The one that comes to mind is in Danville, a million dollars a year, and the county a million dollars a year. If we're not careful we'll cut their allocation to the point that Danville will not be able to live up to their obligation, and that wouldn't be something that is very good for anyone involved. I would suggest that if we plan to change those allocations that go over a million, which I don't think I would recommend, but if we do we need to talk about the overall obligations to these major projects by the Commission. If we're going to take the money away from the allocation from these counties and cities that have been promised due to the commitments they have made, and it goes to the overall benefit of the entire Commission, we may be looking at a different structure somewhere, and we have an obligation to live up to it in some way. Having said that, any comments?

MR. STEPHENSON: Thank you Mr. Chairman. Was Senator Wampler to be here?

SENATOR WAMPLER: I'm here by phone.

MR. STEPHENSON: Gentlemen, I want to bring to your attention some issues that are on the horizon for us that we need to know about, and it might present a problem later if we don't deal with it right now. I'll say at the outset that this issue may properly belong with the Technology Committee, or the Southside Committee, or some other committees, but because no one of them is equipped to deal with it completely it finds itself here before the Executive Committee for you to consider.

I'd also say at the outset that some of the things I might bring up here might put me in a little quicksand so Carthan, you can throw me a rope if I get hung up.

MR. CURRIN: In everyone's packet there is an outline that you generated that talks about this issue.

MR. STEPHENSON: Thank you, Carthan. I'll put this on the wall in a minute, but if you would get in your handout a single sheet full of numbers that is in your packet, I'll also have it on the wall as well.

The issue I want to bring to your attention today, and this is the heart of the issue. It is the amount and timing of the money that we spend on fiber, and secondly, the priority of the fiber over other projects. I'd like to draw your attention to this sheet for just a moment. What you have before you is a list of all of the fiber projects the Commission has engaged in to date. You recognize most of them. Opposite each project is the cost of the project and the status of its funding. When you get down to the red ink numbers, they are the ones that have been partially funded, or not yet funded, but they are standing in line and hoping, or anticipating that they will get funded. In particular, and if I am correct in stating this, there was a general agreement within the Commission that Southwest would stand down for a time to enable Southside to get some of its work done, but then understood that Southwest needed to be next up for the next piece of money. I don't think there is any disagreement about that, and that is the course that we are on. In particular, if you notice the red ink number of fifteen million dollars for the Southside network, nine of it has been funded and six of it has not been funded.

I want to walk you through some timing issues now, and please stop me and ask me if I am not being clear. Britt, go to the next piece please. Very briefly, this is the map of the routes that are under contract to be done in Southside. I'm really not prepared today to talk about why

these routes are where they are and whether we need to change them, and that is outside of this context, but I just want to say that these are the routes that the Commission approved and under contract, and MBC is preparing to prepare those routes.

DELEGATE KILGORE: Could you differentiate the difference between the backbone, the e58 Fiber Backbone and Southside Virginia Network, what is the difference there?

MR. STEPHENSON: Thank you. Britt, can you back up one slide. Essentially, Terry, the Backbone is the red ink, and the Network is the blue ink. The distinction is that we have fifty-percent match from EDA on the red piece, but we are in it alone on the blue piece.

DELEGATE KILGORE: The red piece basically follows Route 58?

MR. STEPHENSON: Yes, with two spurs.

SENATOR HAWKINS: The blue lines in Pittsylvania County, most of that has already been done and paid for by Pittsylvania County's allocation.

MR. STEPHENSON: I have painted a couple of blocks yellow here, and, William, I apologize, if you have a question, speak up and I'll try to help you along.

SENATOR WAMPLER: I am very clairvoyant.

MR. STEPHENSON: The yellow block that you see, the one at the bottom says the balance available to Technology now is zero. That is because the Technology Committee expended its nine million dollars for the yellow block that you see above to pay for part of this network leaving six million not yet funded.

The next one, please, Britt. Per our agreement within the Commission the next dollars available need to go to Southwest. The top yellow block are the two projects that have been identified to us and these are estimates, but these projects are coming, and they are putting them together. One is the Coalfields Coalition inter-connect project, which will cost six million dollars and half of which EDA will fund.

SENATOR WAMPLER: Can you tell me that amount again, Ned?

MR. STEPHENSON: Six million, half of which is expected from EDA.

The other project, BVU has put together the last mile projects that they have estimated about four million odd dollars will be their needs. There are about ten million dollars there less EDA's three, about seven million. If you look at the yellow block on the bottom, in April of '05 when our MSA payment arrives, we only have a half million dollars to work with to cover that Southwest need. In April of '06 we hopefully will have some additional funding, but that has not been budgeted, but in all likelihood it would be enough to cover that Southwest piece. Keep in mind that if we use the April '05 money, a half million, and the April '06 money, whatever it is, to satisfy the Southwest needs we have not yet fully funded the fifteen million, we've got six hanging out there that has not been funded.

Next slide.

SENATOR HAWKINS: The piece that has not been funded, has the rest of the fifteen million been fully spent or allocated? Where are we on the laying of the fiber and the allocation that we already put into place and paid out? Have we had any money drawn off of that so far?

MR. STEPHENSON: Yes, some monies have been dispersed for some

work that has been done but not a large portion. Most of that cash is still in our possession.

MR. CURRIN: Mr. Chairman, you're referring to Southside?

SENATOR HAWKINS: Southside.

MR. CURRIN: That is correct.

MR. STEPHENSON: Most of that cash is still in our possession.

MR. CURRIN: I think that is going to change pretty shortly, and Ned will speak to that. I think there is cash drawn down that will start taking place pretty quickly.

MR. STEPHENSON: That is kind of the heart of the issue here, so don't let me get past that. If we follow this course it would then seem that it would be April of '05 money and April of '06 money that would go to the Southwest projects, meaning that it would be April of '07 before it would be Southside's turn again to access resources to finish that six point one million.

Further, if you go out to April of '08, the last mile on this graph, I've called this the Cumberland/Buckingham/Crewe and others. When we put out the map showing the routes there were a number of communities that came forward and for one reason or another were displeased with the routes appearing on that map and asking that they be accommodated in some way. I perceive that it is the will of the Commission to try to respond to those communities. However, that also takes additional money to place fiber where we didn't plan on it.

SENATOR HAWKINS: The co-op that was set up to do this work, aren't they the ones that have to make the adjustments themselves and make recommendations where to put the line in? They are the ones that are actually doing the day-to-day work on it and planning and implementation of the whole project?

MR. STEPHENSON: Yes, the co-op has a contract with us to perform what is on that map. Until such time as there is a change order between the Commission and the co-op they are going to do what is on the map, because that is what they said they would do and that is under contract. As these various communities come forward with other needs they too will need funding, so perhaps that can come out of April of '08. The big problem here, if you will note, is that six point one, we have not gone back and funded that yet.

I just want to report to the Committee some information that came to me from MBC. I asked MBC what is the date on which you have to shrink the network in order to get the job done for nine million dollars? They are saying they are doing the rights-of-way, the permits, the poll tax negotiations, all the communities negotiations, that is under way right now. On or about November or December of this year, if they are going to build a fifteen million-dollar network, they will pass the point of no return about November or December. If they continue to build a fifteen million dollar network, the nine million will be exhausted by April or May of next year. According to the time line you see before you, the Commission as I see it, is not positioned to be able to supply any more money to MBC in time for them to put that network in the ground. So MBC in November needs to know if they've got to shrink that network and get the job done for nine million. If we tell them that next summer, they will have a large half-baked or half-built network, and they will be out of funds.

I'll stop and entertain some questions.

DELEGATE KILGORE: We already approved the fifteen point one million?

MR. STEPHENSON: Terry, the network was placed out for bids, went through the bidding process, and Adesta had the winning bid and the Commission approved. Their bid was for fifteen. MBC requested fifteen, and the Commission awarded nine with an unspoken moral promise that we're going to get you there as soon as we can. On the record is a nine million-dollar approval and no more.

SENATOR HAWKINS: What about the federal piece for six million?

MR. STEPHENSON: The e-58 Backbone showing a cost of twelve million, it's our six and EDA's six, that has not been spent yet, but it is in the bank, and they have to get the job done.

MR. CURRIN: Mr. Chairman, to amplify on what Delegate Kilgore said, they're looking at other options besides the Technology budget that the Southside Economic Committee can --

SENATOR HAWKINS: -- We're dealing with a problem now that encompasses more than just one sub-committee. Come up with a recommendation and try to have some long-range plans that are not going to be a difficulty when we're trying to budget based on formularies and all that type of thing, and we have to bring all these counties into play as quickly as possible. We may need to have Southside and Southwest Economic Committees meet with the Technology Committee and work out some sort of understanding of what they want to do with the monies that are available to us. Ned, it would be helpful to have some sort of chart of cash flow to make sure that we meet these obligations. We're going to have to be using some Economic Development money somewhere along the line if we're going to reach our goal, which may infringe on some other obligations that we have.

MR. CURRIN: I agree with that, Mr. Chairman, but I was going to suggest, and I want to make sure Senator Wampler hears this as well. I'm just suggesting Southside Economic, I'm not suggesting we do anything with the Southwest Economics or interrupting their flow of monies from the Technology Committee next fiscal year.

SENATOR HAWKINS: If we plan to go ahead with the Technology program we have in place it is the backbone down the entire 58 corridor, Southwest Virginia is in play with that just like Southside. The Southwest piece is going online next, and we've already obligated ourselves to that, but we need to have communications between these areas and make sure everyone understands what is going on in those regions as well if we start allocating this funding. I don't think anyone has any intention to try to bypass obligations we made to Southwest and Southside Virginia. I'm saying that if we plan to meet this time frame, Southside particularly will have to work with the Technology group to try to figure out some way to work out a formula that meets our past obligations when it comes to some of our funding streams, but also how to meet these goals without putting ourselves in harm's way.

What concerns me is that we need to have an understanding of the problems we may be facing, not only are we looking at a potential lawsuit which may or may not create problems for us, but there is a timeline involved that all these counties are very antsy about, about being left out of the process. We guaranteed and promised that no county would be left out without access. We can't do it sitting around here.

MR. CURRIN: The Staff is working very hard. I have had discussions with others like Senator Wampler. There may be some other venues that may be available to us

or other sources of funding that possibly could be out there to help.

SENATOR HAWKINS: That needs to be brought up before the sub-committees to make sure that recommendations may include all possibilities and different scenarios, so we'll be able to deal with these.

DELEGATE DUDLEY: We have a Long-Range Plan that kind of puts some percentages, or projections for different categories, what is in there as far as Technology?

MR. STEPHENSON: The Long-Range Plan, when it was prepared, set forth some spending guidelines for the Technology areas. We are currently somewhat off track in that it does call for more Technology expenditures than we have done. We're trying to curb a little bit on Technology. I think this issue boils down to our appetite for fiber products is out pacing our budget for fiber projects. The hard choice before the Commission is to cool off the appetite on the fiber projects, just slow down and shrink those projects, or amend the budget to shift money into the Technology area, which means at the expense of something else.

SENATOR RUFF: Mr. Chairman, if we have those two scenarios to build on we have to realize that if we go to the second scenario we could find ourselves putting Halifax, Pittsylvania and Danville in a position where they cannot meet their obligations on the industrial park in Halifax, or the Institute in Danville, that they have pledges made based on an assumption that we have said to them when we signed the agreement. We've got to work to that, too.

MR. STEPHENSON: I don't think anyone wants to leave them short on that.

SENATOR RUFF: We need to make sure we don't create another problem by trying to fix this problem.

DELEGATE BYRON: What is the word from Lenosiwco, or the building of the network. What is that situation if we slow it down, what is the status of doing those projects? What happens to the money, does it increase because we have slowed something down? I remember some discussion about that before. Are they still actively enough along and all still working that it doesn't actually put a halt to it but it slows it down?

MR. STEPHENSON: I think I can answer that. This is a little bit crude, Kathy, but that's kind of, this is our Commission schedule going forward, and we have a meeting October 20, and I put some arrows here. The red arrow is the point in time that I'm advised that MBC will have to make a planning decision whether they are building a fifteen million dollar network or a nine million dollar network. They can't go any further, and they've got to know. The blue arrow is the point in time which MBC will have consumed the nine million dollars, or we're out of cash. The green arrow is the point in time that MBC advises that they will be finished with the job.

DELEGATE BYRON: With or without cash?

MR. STEPHENSON: With cash.

SENATOR HAWKINS: Going back to the allocation of the four million dollars, where is that money now? Is that into the backbone? I think you had twelve million had been funded to date.

MR. STEPHENSON: As I understand it, the EDA contract for that backbone requires that they do all of the engineering, planning and permits a hundred percent

before they may dig the first spoonful of dirt, so we only disperse a small piece of money.

SENATOR HAWKINS: What is the spend out on this, when do you anticipate the twelve million dollars will be spent down?

MR. STEPHENSON: The green arrow, I'm told MBC is to get both done. By contrast the EDA project, the rest of the network is a dig-it-as-you-go, they are doing pieces of it at the time. The cash flows will be a little different for the two projects, but both to be completed by the end of '05.

SENATOR HAWKINS: Do we have a time frame on the e58 fiber backbone from them, when they expect various things to happen?

MR. STEPHENSON: I believe it exists, but I don't have it.

SENATOR HAWKINS: We may need to look at that as well and make sure we understand how this flow is going to take place for both areas.

MR. ARTHUR: Mr. Chairman, if you look at this paper, we have twenty-one million dollars already funded and today there hasn't been one piece of fiber put into the ground or moved. What I can say categorically is that Southside cannot take a six point one million-dollar hit and still meet our obligations, unless the entire Commission wants to take over the obligations that we have committed to on a long-term basis. I don't know how that is going to set with everybody. I know that Danville, Pittsylvania County and Halifax, as you have stated earlier, could not meet their long-term obligations. If you hit what was fifteen million dollars, and you're going to knock it down to nine, and then use the formulary, it is not going to work, so we just can't go that way.

MR. CURRIN: For conversation's sake, Mr. Arthur, do you think the Southside Economic Development Committee would be amenable to taking four and a half million dollars from Southside Economic, and go to Technology, and that would preserve?

MR. ARTHUR: I think you could take half of it at one time. If you've got to have six point one million dollars, and take three and then take three, that's two years out. There is no way they can deny that it is going to be two years before that goes through.

SENATOR HAWKINS: We've got to understand this obligation that we have and that are in place. We've got a meeting on the 20th in Clarksville. Tom, can you get with the Technology people prior to that meeting and try to have an understanding of what obligations we're looking at, and what we can do realistically to meet these goals?

MR. ARTHUR: Can you get the Chairman to get everybody together?

MR. CURRIN: Mr. Chairman, I had a conversation with Staff and Mr. Arthur and Delegate Hogan, and we'll get started with that.

SENATOR HAWKINS: We've got to start some place, because obviously there are some problems we're going to have to work out, and Ned is going to have to help us work through this whole process.

MR. ARTHUR: I've got to try to protect Pittsylvania County and City of Danville, and that is all there is to it.

SENATOR HAWKINS: We made obligations and there is no question about it, and we can't leave those people hanging out, because we've signed long-term agreements.

SENATOR RUFF: I would agree we have made some commitments to try,

but at the same time this entire conversation occurred, what would happen if the money was not coming. The understanding was that it would not jeopardize the rest of the tobacco region for those obligations. The first one was Danville, Pittsylvania and Halifax. Unless we want everyone community to come and put us in a long-term binding agreement I don't think we can play favorites.

SENATOR HAWKINS: It's not a question of playing favorites, we've got to understand that the monies were based on allocation formulas, and it was all done in good faith at the time. We have taken money off the top for the last several years and trying to put more money into the overall pockets for people to draw from rather than having allocations and favor larger counties. All of the money that we have changed going to Special Projects actually come off the top of your larger counties, such as Halifax. They have paid a larger percentage than the original agreement, and they actually carry more than their share as opposed to a small county like Cumberland or Appomattox and those counties. Those smaller counties have had access to monies that they would not have had access to if, in fact, we had adhered to the original formula. I think there is some give and take.

SENATOR WAMPLER: Mr. Chairman, I would say to Mr. Arthur that I think it was good medicine when the Hokies defeated the Mountaineers. I was thinking about that when I heard your voice.

MR. ARTHUR: Yes, it was.

SENATOR WAMPLER: Mr. Chairman, a couple of quick points. I would observe that the Southwest Economic Development Committee used part of its dollars to initiate the deployment of the broadband, so it is not totally new ground that we are plowing when you ask a region's economic development committee to use those dollars. What I think I heard you say, and what I hope the end product is from the Staff at our October 20th meeting, would be to have a series of options for us to choose from, and that might be that we had better rearrange our priorities, not only within the two regions, but also the standing committees that we have.

I think what is missing in this conversation, and bear with me on two points. We are not leveraging other dollars to make the project work. If it is a ten million-dollar project that we invest in we ought to be looking at a thirty million-dollar investment from private and/or other public sources. I think that is the example we have seen in Southwest and why we've been able to have the backbone, but the last mile application.

This may roll some eyes when I offer this one and it is not an attempt to slow it down but to quantify the costs. Make sure we set aside dollars for preliminary engineering and/or design where you can design it so we know exactly how much it is going to cost and that way we can go into a meeting and allocate the necessary dollars where everyone has the understanding of how to do it. Maybe Staff can come up with recommendations toward that point.

SENATOR HAWKINS: Point well taken.

DELEGATE KILGORE: I agree with Senator Wampler that we need to address this as soon as possible, because we don't want this hanging out there. I would suggest that we try to have some update by the 20th, which gives us almost two weeks, have an update at the Full Commission meeting so that everybody will be apprised of the situation that we're facing.

MR. ARTHUR: Mr. Chairman, Senator Wampler, I was not complaining

that Southside Economic Development didn't want to participate in this problem. It is just that we can't stand a six million-dollar hit at one time. They are at least two years out by their own definition here as to when they would need absolute funding. If we could do it a half at a time I'd be very willing to work with Delegate Hogan and sit down and make sure this is worked out. We've only got a two-week time frame to do this. Carthan, could you get that arranged?

MR. CURRIN: Yes, sir.

SENATOR WAMPLER: I would agree, Mr. Arthur, completely. I would think the Southwest is under similar constraints. All I am trying to say is that perhaps a combination of standing committees where we could find necessary funds and still have the project close to being completed.

SENATOR HAWKINS: That is why I go back to my original suggestion that we have Southwest and Southside and the Technology people start talking to each other and figure out what type of monies we're looking at long-term to complete the projects in both regions, and how we can have a cashflow in place that is dependable and that we can count on to get these things going as quickly as possible without affecting overall obligations that we have already taken on. Does that make sense?

SENATOR WAMPLER: Yes.

SENATOR HAWKINS: Let's do that.

MR. DUDLEY: Ned, on this list, the total dollar figures are not as much as we discussed earlier. Am I right in assuming that as time goes on there will be more added to the bottom in blue?

MR. STEPHENSON: There is an appetite for fiber and people continue to get in line with the various projects. The red numbers that you see continue to grow as time goes on. These are the ones we know about now.

SENATOR HAWKINS: There is also an understanding that some of the counties, that they want to wire the industrial parks, and we need some kind of timeline so we know what we're dealing with.

DELEGATE DUDLEY: We're not looking at prices just today, but we're looking for years down the road.

SENATOR HAWKINS: Allen, when we started this we fully understood this was a major investment of money that is going to require a great deal of effort on all our parts completely, but we made an obligation to do it. This is probably our greatest signature piece for the entire region, and we can't back off of it.

MR. STEPHENSON: Mr. Chairman, it's my understanding the will of this Committee that the Technology chair and the Southside chair and the Southwest chair will sort this out and put something before the Full Commission without first coming back to this body?

SENATOR HAWKINS: What we need to do is have like a Chinese restaurant, we need something color A and something color B and C to be able to have our menu complete and be able to do the appetite we have before us.

MR. WALKER: Mr. Chairman, going on with what he just said, I don't want to exclude the other committees. I think other committees need to be measured by this project, and if they are not progressive and won't have as much impact in the end result with this project, we may need to move some funds from other committees, too. You've said this is our

signature project as a Commission.

SENATOR HAWKINS: I think your point is exactly right, but we need to have an understanding from the groups that we're dealing with the types of monies that they need and what monies they have at their disposal to complete the project. If they don't we may have to go and find out what we can do differently. That's one of the recommendations. I understand the Executive Director will use some creativity, and we'll see how that works out.

MR. STEPHENSON: I would hope this process would not take us beyond October, because I think we'll have a difficult issue.

SENATOR HAWKINS: We'll have to pull the trigger on this one way or the other, and I think we've got enough time now, and we understand the importance of it, and we've also started the discussion about what we need to do, and we'll have to figure out the best way to do it and get some recommendations.

MR. STEPHENSON: I would hope, Mr. Chairman, I hope maybe before we leave today we can get with your calendars and sort that out and get Tom's calendar and yours, and we can sort that out.

MR. CURRIN: Yes, sir.

MR. STEPHENSON: That concludes my report, Mr. Chairman.

SENATOR HAWKINS: Let me just emphasize again comments have been made about the larger counties. When we first got into this we had an allocation formula, and that was put in place. We've started shifting money off the top, and we went into what we call Special Projects. Those were monies everyone could apply for that would give enough financial resources to actually complete the project. By doing that we took large amounts of money away from larger counties. I think a lot of these counties, Halifax and City of Danville and Pittsylvania County made some obligations based on the formulary that was put in place. And I think we have a moral obligation to see those through.

SENATOR RUFF: Mr. Chairman, I'm not attacking the larger counties, but everything that has been said should be put in the context of the original argument we had. I'm referring to Danville and about what it means to make a long-term commitment to one community.

SENATOR HAWKINS: What I'm trying to say is that those commitments were made when there was a firm understanding about the formula, which we have kind of shifted ourselves, but we'll get there, and no one said it would be easy.

All right, our next item is USA versus Philip Morris, Incorporated.

MR. CURRIN: Mr. Chairman, I want to bring to the Executive Committee's attention issues that are going on in our nation's capitol dealing with the federal buyout legislation. A bill was reported out of conference committee yesterday. The slide before you summarizes the Conference Committee report, a House vote is expected today, and the Senate is expected to vote tomorrow. Senator Wampler, since you can't see the slide, the bill has reported out a 7 - 3 quota owner producer split, payment to be spread equally over ten years, there is to be no FDA regulation, and Phase 2 payments would stop. I don't know how much of that you knew, but I wanted to be sure you did know that.

SENATOR HAWKINS: Dealing with the quota buyout and our obligation, there has been some discussion about when our obligation ends. We need a full understanding of

that, because there may be some discussion we need to start with, the Agriculture Committee can start with that, and if we get into the long-range commitment set aside a known amount of money that we put into the kitty every year to pay for our quota holders. Then, if there is any money freed up we can use that for Technology, then.

MR. CURRIN: A hundred twenty-eight point eight million dollars is the Commission's obligation to cover losses through 2002. This factors in all previous payments, totaling three hundred fifty million dollars through 2004. That is from all sources and assumes that the December, 2004 Phase 2 payment will be made. However, if this legislation passes, the cigarette manufacturers may argue that they are no longer obligated to make the Phase 2 payments, effectively immediately. So the Commission's obligation could potentially increase by another twenty-eight million dollars.

SENATOR HAWKINS: Let's discuss this for a second. Everything we are dealing with is based on domestic sales of cigarettes. If in fact the buyout, the premise of that is an increased tax on cigarettes to pay for this, there is going to be a continuous down side on that side. That means some of these non-participating manufacturers, we've got to start making sure that they participate. We've just got to get that settled, one way or the other, this year. If in fact the price of cigarettes keeps increasing and the amount of money we are receiving, I'm not sure that we can continue to count on this type of volume, either.

MR. CURRIN: Stephane, has Treasury done any projections on this?

SENATOR HAWKINS: It's something we have to keep in mind, that is why, Kathy, we have to do some long-term planning and have some sort of understanding where we're going to be five years out, so we can make some long-term plans and not be surprised. We have some fiscal decisions to make, none of it is going to be easy, particularly with all the pressures that are being placed on the four large manufacturers.

MR. CURRIN: The next slide addresses if there is no buyout. If the buyout bill fails and we continue as we have for the past five years, the Commission's remaining obligations for losses for 2004 would be approximately one hundred million dollars. This amount already factors in the Commission's fiscal year '05 budgeted funds, but there are two big assumptions with this number. The first assumption is that the Phase 2 payments will continue as forecasted. The second assumption is that there would be no future quota cuts. With this scenario, since we're chasing an annual moving target, our obligation could be as high as seven hundred thirty-eight million dollars if the quotas continue to decline.

DELEGATE KILGORE: That seven hundred thirty-eight million, does that mean that when you're talking about the remaining value you're talking about what quota is out there right now if they take it all?

MR. CURRIN: Yes, based on when the statute and the legislature created us --

MS. WASS: -- They are assuming Phase 2 payments continue.

MR. FERGUSON: Does that seven hundred thirty-eight essentially represent the one point two billion, minus the amount of Phase 2 we pay over the life of the Phase 2 program?

MS. WASS: Yes.

SENATOR HAWKINS: If the feds' buyout takes place in 2002, do we have

an obligation of one hundred twenty million left?

MS. WASS: That would be final.

MR. CURRIN: That is everything that we would owe for both regions?

MS. WASS: Yes, through 2002. Our future values would be paid for.

SENATOR HAWKINS: The monies we have paid to date, I was thinking we were closer, the hundred and twenty-eight million for both areas, I was thinking in Southside we had paid --

MS. WASS: -- Because Phase 2 was stopped. Originally you were assuming Phase 2 continued through the year 2010 and factored that in, and when Phase 2 goes away after this year.

MR. CURRIN: Stephane, to date, what is the figure that Phase 1 paid to both burley and flue cured?

MS. WASS: It's in the packet.

MR. WALKER: My thought process isn't clear, but if the Phase 2 is part of the negotiations, or if it is part of Phase 2 over the buyout, why wouldn't the buyout be the Phase 2 instead of coming back, the responsibility falling back on us. It sounds like the Phase 2 money was part of the negotiations to get the buyout.

MR. FERGUSON: Maybe I can answer it differently than the way you asked it. Phase 2, the trust instrument that is the basis of the Phase 2 payments contains a provision that if there is a federal tax assessed, and an additional federal tax assessed against tobacco manufacturers for purposes of paying off or indemnifying a farmer, quota owners, then there is a dollar-for-dollar deduction against what the manufacturers owe into the trust. The federal buyout would meet that qualification, and because of the amount of the buyout and the amount that they would have an obligation to meet, the obligation remaining under Phase 2. The Commission, their obligation is not tied to anything like that. The obligation of the Commission is tied to the statutory language which set the total value of quota at one point two billion dollars, to the extent that is all lost we would be obligated for anything that somebody else didn't pick up.

SENATOR HAWKINS: I think we probably need to make a recommendation, particularly the Agribusiness Committee, to start looking somewhere to set aside a known amount of money so farmers can anticipate a certain payout rather than being up and down so much. I think we could budget better, too.

MR. CURRIN: That's one possible way. Let me conclude very quickly by giving you two policy options that Staff would like to bring to your attention. Number one, if the buyout bill is passed, and one question is if the buyout rate is less than twelve dollars per pound, should the Commission pay the difference. Counsel has advised us that that may take legislation, tinkering with our statute. I would advise us not to go down that path, and that's my advice, and not tinker with our statute.

MR. FERGUSON: My understanding is that the change makes the Commission not responsible for the difference.

MR. CURRIN: Yes. The second policy issue is, if payments are made over a five or ten-year period, and I understand the bill says, or the legislation says it will be over a ten-year period, would the Commission want to suspend its indemnification payments while the federal buyout payments are being made? The Commission could then resume indemnification

payments once the federal payments are completed. That is just something to think about. We all will wait and see.

Frank and I will be advising the Agribusiness Committee and Executive Committee if this actually passes by tomorrow and as we anticipate the President signing it in the near future. We would send the Agribusiness Committee and this Committee the detailed bill and what the implications are. I have not seen it as of yet.

SENATOR HAWKINS: We can look in particularly the flue cured area, because I know burley is somewhat different, set a payout schedule that we can budget every year, something that is realistic, and I think we can do that.

MR. CURRIN: If the federal buyout takes place and those monies coming into the Commonwealth, I would suggest that you might want to reduce our indemnification obligations to a figure that is less than what we have been.

MR. WALKER: What was that figure?

MR. CURRIN: Around twenty million between the two regions, approximately.

DELEGATE KILGORE: We in the burley area have paid out more percentage-wise than flue cured.

MR. CURRIN: Yes, approximately eighty percent versus twenty percent. This year I think it was a change, if I'm not mistaken, seventy/thirty.

SENATOR HAWKINS: If there is a buyout will we --

MS. WASS: -- If there is a buyout in the 2002 base, burley would have the remaining obligation of thirty-eight and a half million and --

SENATOR WAMPLER: -- Mr. Chairman, could you repeat that, please?

MS. WASS: Burley would be thirty-eight and a half million, and flue cured would be ninety point three million, and that would compensate for all past losses for 2002.

SENATOR WAMPLER: Thank you.

MR. CURRIN: That information is in your packet.

DELEGATE DUDLEY: If that were to happen, I think it would behoove us to finish this obligation to the farmers as quickly as possible, otherwise we're still paying fairly significant amounts of money to maintain databases for people to locate owners and locate producers, people dying and moving, and all those changes. So if that happens we need to do this as quickly as possible.

SENATOR HAWKINS: The only problem with that is we're putting an awful lot on our plate, we've got the telecommunications piece that we're going to try to fund, and if we try to fast track the indemnification piece, we're going to run out of pieces here before we know it.

DELEGATE DUDLEY: In response to that, Mr. Chairman, I would say that we had the indemnification of the farmers in place a long time before technology or telecommunications was ever mentioned.

SENATOR HAWKINS: Any other questions or comments?

MR. FERGUSON: USA versus Philip Morris, there's not a lot of news to report on that. If you read the papers you know pretty much as much as I do. I don't anticipate a decision in that case before probably next summer. As I understand it, one side had fifteen

weeks to put on their case and over a half a year before they even finished the evidence. I'd be surprised if the judge doesn't take a month or two to issue a ruling. I don't anticipate anything until early next summer.

MR. CURRIN: Ned is going to address some language in our TROF guideline, and we hope that will address some of the smaller requests that have come to us and borderline based on our current criteria. I'll let Ned address those issues now.

MR. STEPHENSON: Ladies and gentlemen, at the urging of the Chairman we put a considerable effort into looking at the manner in which we process these TROF requests. Today I'd like to do three things with you. At the end of my talk I'm going to ask you to consider approving a TROF policy that contains some new provisions in it. Right before that I'm going to summarize the pieces of that policy that I think are sensitive to you, but before we examine that policy I'd like to first give you a little bit of history as to how we are currently operating so you might then understand why some of the policy requirements are needed.

I'm going to run through some things that characterize the current practice by which our TROF transactions pass through the system. We have evolved to this point, and some of these you may or may not agree with, this but this is generally how things go.

The first issue I cite to you is that the Tobacco Commission rarely ever talks with the company, the company talks with the county, the county talks to the partnership, the partnership talks to me, and I talk to you. I can assure you that by the time you get that message it is obscured from what the real origin is. The deals are changing all the time, so we are not at the source of this information, so we get a little misinformation.

The second thing you need to know is that in my observation the Tobacco Commission does not choose the grant amount. As someone said to me yesterday, the grant amount is driven by the ask. The numbers come to us, and I need two hundred and fifty thousand. We, the Staff and Commissioners, did not choose that number, because it comes from the ask, and you're going to see why that is important in a minute. The basis for a tip approval is not defined. You have four persons that vote on these transactions, a good and reasonable commissioner when presented with a TROF transaction, the first question to me is should we do this, is this within our policy, how do I need to see this. They are hungry and want to know whether this is within our policy. We really can't answer that, because there is not a yardstick or definition that has been established to tell us whether that deal should or should not be made and at what dollar level. We're kind of looking over our shoulder what we did with the last guy and using that as a benchmark.

By your written policy, no match is required for TROF transactions, but because we are hungry for some basis on which to tie these things down, a match often becomes a consideration in the mind of approving bodies, because they want to know what is the Governor doing or what is the county doing or what are other State agencies doing. That is not required in the policy, which you may or may not want to change. Use of funds is vaguely stated and not verified. I need two hundred fifty thousand, what are you going to do with the money. Site preparations, upgrade, cut and fill, building up-fit, whatever those words mean, when we say okay and the money passes, we don't ever go back down behind and find out what happened to our money. So, a compliance program does not exist. We are promised a hundred jobs in a three million-dollar investment, and we are the good guy, and we pay the money, and we don't know

whether that happened or not.

This is the last one, and probably the one that is most difficult. Currently we have four persons who hold voting power for these deals, and we poll them for their vote, and that becomes problematical at times. The request comes to us, and I need two hundred fifty thousand dollars. We polled the Commission, and the answer is no. The next word out of the mouth of the applicant is well, if you don't do two hundred fifty thousand will you do two hundred? We poll the commissioners again, and the answer is no. You won't do two hundred, what will you do, and then you poll the commissioners again. These commissioners are busy people, and we put these requests to you, and most of the time you turn around quickly. Sometimes you are out of place, and sometimes days go by and weeks go by and we can't get an answer, and I can't find you, because you're busy people. I can tell you that these TROF transactions, people are very anxious, companies want to know, and timing is a real issue, and polling is problematical. In the polling process, by the time I get the information and put it to you the deal is changing. Senator Hawkins will say I approve that deal, and I get back to the table the deal has changed, but that's not what Senator Hawkins approved. He approved what was presented to him.

Now, regarding a majority vote or unanimous vote, and I think Counsel has suggested that a unanimous vote be required. That, too, is problematical. The policy that I want to bring to you is an attempt to heal some of these difficulties and get us to a different approach.

This is a most telling graph, and I'm rather numerical at some times, and numbers really do speak. This is a sequential history of every TROF transaction that you have made in the life of the Commission in the order in which they occur across the bottom. Going up on the graph is how many dollars you paid to win one job. This is the cost per job. I invite your attention to the fact that on this particular deal, the fifth one you did, we decided five hundred dollars a job is reasonable to pay, and we paid that. The next transaction we paid three times that, the next transaction we paid ten times that. Even at one point we paid seven hundred fifty dollars, and the very next transaction we paid seven thousand to win one job, and I was searching for why we are doing this. I think the answer is the amount is driven by the ask, and in those cases those folks asked.

At one point I thought some of these higher per-job costs were in counties with high unemployment and were more important there. This request here and this one and this one are in the counties that have the very highest unemployment we have in our region, so that did make sense. This is what brought me to want to establish some uniform process by which we choose the amount that we write, knowing that there will be a point at which we cannot pay any more.

SENATOR HAWKINS: There are different kind of jobs that we are trying to create. I think that seventy-four hundred was a technology which is a new technology, but you have to remember the potential for growth changes the entire world.

MR. STEPHENSON: Some jobs are worth more than others.

SENATOR HAWKINS: These aren't minimum wage jobs, some of these technology jobs there is a spin-off, and there is a whole new technology and new industry that is going to create a whole new dynamics that didn't exist before that investment. We've got to take more than just the job itself into consideration.

MR. STEPHENSON: We need to retain that flexibility, and you'll see that in a minute.

In your packet is a five-page document entitled, TROF Guidelines. This is a newly drafted document and contains a number of policy guidelines that are different from what you're used to, and to save from having to read them, I'll give you the ones that I think are sensitive and that you want to know about, and you can flip through that as we go. The cornerstone of this policy is that the amount of the grant will not be driven by the ask. The amount of the grant is going to be formula-based, it will be based on these items. How many jobs, how much they pay, the capital investment that comes with those jobs, what is the employment rate in those areas, and most importantly the relationship between these numbers. One job paying x-money is worth more in a high-unemployment area than the same job would be worth in a low-unemployment area, and to give a premium for that.

What is the formula?

SENATOR HAWKINS: The relationship with the partnership is one that we're going to have to develop a little bit more, too.

MR. STEPHENSON: There is a little disconnect with the partnership. In the writing of this policy we had the partnership at the table to try to make it so it was seamless to them so that when they go to a prospect they don't get a disjointed presentation.

MR. ARTHUR: Mr. Chairman, I was at that meeting, and I thought we decided here under the purpose, to change the purpose of the fund. We initially set this up as a deal closing, and you haven't used that verbiage at all. Is that the purpose of the fund, or are we going to change that?

MR. STEPHENSON: We need to talk about it and make that decision today, and that is very important. You'll see that bullet in just a minute.

MR. ARTHUR: Without the deal closing it is a totally different animal.

MR. STEPHENSON: Yes. The formula that drives the amount is before you. It is a thousand dollars for direct jobs, six hundred for indirect jobs, and for those that come along with that industry there is a zero-to-fifty-percent premium for high-employment areas. The highest unemployment county would get a premium in their offer drifting down to nothing for the lower unemployment areas, a premium for high-paying jobs and a premium for jobs that last. Call centers get very low or no premiums, other jobs would get high premiums. All of this runs through a mathematical model and produces a number that is consistent for our TROF transactions.

SENATOR RUFF: Ned, how do you quantify the indirect jobs? With the direct ones you can make a commitment, we'll pay this and we want it back, but the indirect jobs, are you pulling the figure out of the air?

MR. STEPHENSON: In the economic world, and I got this from BB&T, they have a function called a multiplier, and the multiplier says that if you hire a person in the call center industry you're going to get one point zero jobs direct, and indirectly none at all. If you hire a person in another industry, you'll get the person that you hired, like the automotive industry, and you'll get two and a half more jobs coming with that in service industries that follow that industry. This is codified in the partnerships, and they have the universal codes for the spectrum of industries, and there is a multiplier for every industry. That multiplier drives those indirect jobs.

SENATOR WAMPLER: Mr. Chairman, I was going to try to listen to all of

Ned's presentation before I spoke. If Staff from the Tobacco Commission recommends alienating a call center as a target market, then the Southwest unemployment rate goes up a couple of points. Deputy Secretary Erskine would know that. That is something that we targeted. I realize that a technology job is very important, and we want to be able to compete in other venues to do that. If we follow the model of the Economic Development Partnership and the return on equity or return on investment, however one decides to measure it, we'll just close up shop, and that's why I think we need to retain some flexibility and subjectivity. It should come as no surprise that I offer that opinion. If we're going to vote on something today I feel a little sandbagged, but that's okay, and I'll do my homework and be prepared to speak on the 20th.

SENATOR HAWKINS: I don't think we're going to vote on anything, we're just sharing some concerns, something about the premium for high employment. My problem with using that higher figure for unemployment in the tier counties of Henry, Pittsylvania that I represent, and Halifax, always have the highest unemployment in our area. If we can locate a major employer in Franklin County or Prince Edward County that brings jobs to Charlotte and Appomattox Counties and Cumberland County, depending on the location. We've got to look at this a little more regionally than just that particular unit if we start dealing with this thing.

DELEGATE DUDLEY: Added to that, two counties right off, like Franklin County that I'm very familiar with, unemployment is not that high but forty percent of the people drive outside the county for employment, and in Floyd County it is fifty percent. If you're dealing with some false figures, then I don't know where you go.

MR. STEPHENSON: It may help the Commission to know that in this formula about seventy-five percent of the incentives is simply driven off the number of jobs. These premiums affect about a fourth of the amount of money and gives a little bump-up to those areas. Seventy-five percent of it is driven on the jobs.

SENATOR HAWKINS: We have to be careful we don't lose the flexibility that we need. A call center job or a technology job, a job is a job right now.

DELEGATE BYRON: Mr. Chairman, are we getting an overrun of jobs or job applications or jobs that want to come into the area? Is the problem we're addressing having to do with people asking for money, is that it?

SENATOR HAWKINS: I think the problem is that there is no set policy as such. We've been dealing with every request based on a recommendation in partnership, and we're so far down in the pecking order, and when it comes to decision-making time we don't have or understand what's happening. We don't know what took place in the original negotiations.

DELEGATE BYRON: You're setting up a formula at the beginning of this process, is that what you're trying to do?

MR. STEPHENSON: Yes, so when the partnership comes and they say what can you do, I can say this is the starting point of what we can do from the Commission.

SENATOR HAWKINS: Guidelines are fine, but for a hard and fast policy we need to have some out.

MR. STEPHENSON: There is an out.

SENATOR HAWKINS: William, do you have any other questions before you leave?

SENATOR WAMPLER: Objectively, I would say that if you use the VEC data as unemployment, Mr. Deputy Secretary will tell you that that is also not the most accurate gauge of what the actual unemployment rate is. After a while you drop off the VEC rolls and you're not counted, so that is not an accurate reflection. Delegate Kilgore and I are meeting with some prospective businesses tomorrow, and they are from a call center operation, and this is the best that the partnership has been able to send to us, and I'm glad they're doing that. Now I hear the Tobacco Commission Staff saying we don't put a high premium on it, Terry and I will just tell them to go home tomorrow.

SENATOR HAWKINS: William, I think probably what we need to do, this is a discussion and nothing more at this point, trying to make sure we all understand what our guidelines should be. There are points of improvement, and there is no question about that. That's where we are right now.

MR. STEPHENSON: Mr. Chairman, part of this process is wanting to ask the Executive Committee that if there are drivers in this formula that are inappropriate we can get them out of there, or if there are other things that are important to you we can get them in, so we get an answer that is satisfactory.

SENATOR RUFF: Mr. Chairman, I don't mean to cut it off, but capital investment, is that figured into the formula?

MR. STEPHENSON: The capital investment is figured in in the last one as a premium for jobs that last. The formula there is that if a company invests capital money to put those jobs there, they are inclined to stick around. If they have no capital investment up front and just payroll only, they can leave as easily as they came.

SENATOR RUFF: That was my thinking, we've got to factor that in.

DELEGATE BYRON: If you're talking about the whole tobacco region, is it necessary to really have that breakdown?

MR. STEPHENSON: As you may wish, I'm not hung up on it.

SENATOR HAWKINS: I think what she is pointing out is that like in Pittsylvania County you've got double digit unemployment, and right across the line in Campbell County it's different, and Franklin County is different. I'm just not sure how that is in the overall structure, since we're dealing with a known set of counties.

MR. STEPHENSON: We can knock it out.

SENATOR HAWKINS: Well, the unemployment situation, like in Martinsville, that we've allocated money for outside the normal, you've got to take in consideration like they have had furniture manufacturing, and we need some flexibility, no matter what we do in these areas.

MR. WALKER: You've got to consider those larger numbers, but I still think you have to consider the flexibility.

MR. STEPHENSON: Gentlemen and ladies, this one probably needs some explanation. This needs some attention from the Commission. This was the first pass at trying to cure the commissioner's polling problem, and the thought here was if a TROF request came to us that was within your budget and within your guidelines it could be approved by the director

and sent out and done. If not, there was an override procedure. I'm not hung up on ED approving it, but what I am asking you to do is to help us to avoid the polling quagmire that we can get hung up in, in trying to move this vehicle.

SENATOR HAWKINS: It is incumbent upon us to try to be more responsible when it comes to answering the questions that are put on the TROF requests. The Commission is appointed to make these decisions, and we delegate the authority to the Executive Director that may be doing something that may not be in the long-term advantage of the Commission. We have the responsibility for these monies, and I'd hate to see the Executive Director be put in a position to make decisions ultimately that were against the overall wishes of the Commission and may create some problems for us, the Staff, which I don't think is very good.

MR. ARTHUR: I was a party to some of this in Richmond when we tried to set up guidelines so that Ned can send us a deal and say that it meets our goals or our guidelines and you and I or whoever else is on the approval do not have to go out and research it a whole lot, so he can solve his polling problem, because the polling problems are quite simple. He might get me, or he might get you, but not get the other two voters. Our whole quagmire here is that we've got to respond rapidly to these things if they're deal closings. I agree with you that we do not delegate it to the Executive Director and that the people that have the responsibility for responding to the poll do so, and it is not happening, and he is having to go two weeks sometimes just trying to get a yes or no back. I've been guilty of it sometimes, because I've had to call Terry or somebody to try to get a recommendation on what is going on in their area, because I want to know. I think he has a legitimate problem in trying to respond rapidly, and we should look at some way to solve that problem. I disagree totally in delegating it.

SENATOR HAWKINS: The problem rests with us, and we've got to take responsibility for it.

SENATOR RUFF: Ned, why did Frank think you needed a unanimous decision on the four?

MR. STEPHENSON: Maybe Tim can help us on that, I was not involved in that. I think the question was put to Frank, and I was told that is what came back. It doesn't seem reasonable to me, but I accept it.

DELEGATE KILGORE: I think the reason was it was not specifically authorized. I believe the issue was it is not specifically authorized, and I guess the statute said we did it that way.

SENATOR HAWKINS: I think the Commission has a great deal of flexibility when it comes to a lot of these things. We had a pretty broad mandate from the General Assembly to deal with the monies in the allocations.

MR. STEPHENSON: I am guilty of having released some TROF deals with three out of four votes, I couldn't get the other person.

MR. FERGUSON: The reason we have suggested it be unanimous is because this is already an issue of a further delegation of the already delegated pending authority that the Commission received from the General Assembly. The more that delegation occurs, the more problematic from a constitutional perspective. Is there a case somewhere or some hard and fast rules that say no, you have to do it, no, but that was the basis of our suggestion.

SENATOR HAWKINS: What you can do, then, three out of four that vote positive for the approval, and if the fourth one does not reply in the negative or positive within a certain period of time, then you automatically assume that the three become it. Does that make sense? Let's do that. If the fourth party does not participate in the decision-making, we'll just have to assume that.

MR. FERGUSON: I think the way you probably can do that in most applications is simply say that within the rules for the TROF or for the Committee to respond within a certain period of time, but a vote of three members is a quorum sufficient without casting a negative if you don't hear from the fourth person.

SENATOR HAWKINS: Let's make that recommendation, if you have somebody out of place and you have to have four votes and the fourth person is out of town or on vacation, then that won't work, so we need that flexibility.

MR. STEPHENSON: All right. Part of this policy calls for what I call a one hundred percent compliance program, and in particular it's my recommendation that if we pay for a hundred jobs at a two million dollar investment we have hard documents supporting that that happened. It is not sufficient, in my judgment, for me to say to the company how many people did you hire, and have them say a hundred. I need to see it on tax filings or VEC filings or some hard documents.

DEPUTY SECRETARY ERSKINE: There is a forms agreement signed before any money flows out to a company in the jurisdiction, county, city or town.

SENATOR HAWKINS: If we work in conjunction with the partnership, wouldn't the same information apply for us?

MR. STEPHENSON: They do not have a one hundred percent compliance program. It is spotty as the situation arises, the compliance policy.

DEPUTY SECRETARY ERSKINE: I would agree it is not a hundred percent. This would require a higher level of compliance.

MR. WALKER: Why we would require a higher level of compliance than they would?

DEPUTY SECRETARY ERSKINE: That is something we should look into.

SENATOR HAWKINS: What Ned is trying to say is that we need some accountability to make sure that when someone makes a promise to deliver fifty jobs and our investment is based on that instead of twenty-five jobs, that they are doing what they said they would. If they are not doing what they said they were doing, we need to have something. I don't know that we would necessarily pull the rug, though.

MR. STEPHENSON: I want to first know what happened, and then you can decide what it is you want to do with that. Right now I don't know.

Part of the policy before you is what I call a no-minimum job count required. I think we might be disadvantaging some of the smaller communities who can not win a one hundred job transaction, and they may be able to get twenty or eighteen. By our rules it calls for twenty-five, we could not even entertain their requests, because that would cause some folks to get closed out, especially in these smaller communities. What I am saying here is to knock out the minimum job count, to have a fifty thousand-dollar minimum dollar requirement in the TROF

offer. If you're going to hire eleven people and they are high paying people and the formula cranks out a TROF award, that's a good transaction. If it's eleven people at minimum wage it would fall below the fifty, and that would get knocked out.

SENATOR HAWKINS: William, did you understand that?

SENATOR WAMPLER: I guess I do.

MR. STEPHENSON: Tom Arthur has already brought up this problem, and this has a great deal of sensitivity. No deal closing status required, I put it before you for this reason. Namely, because it is very difficult if at all possible to determine whether or not our piece of money was in fact the sole procuring cause of the transaction. If you want to retain the deal closing nature of these funds, that is fine, but I just need to know in whose opinion is it a deal closing fund or not. Do I rely on the partnership or rely on the county? Who do I rely on to tell me that it is or is not a deal closing? If you ask the county, they all are. It's hard for me to know who is empowered to make that determination. We get tangled up in that sometimes because we want it to be. The Commission in some cases has not made their decision yet.

SENATOR HAWKINS: Let me ask this question. If you strike the deal closing status altogether as far as the requirement, what does that do to the overall formula we have in place for the TROF funding?

MR. STEPHENSON: It doesn't do anything.

MR. ARTHUR: Because it was just basically a policy when we started this program that it would be deal closing. I disapproved two, and one in particular for Southwest. It was perfectly obvious it was not a deal closing, but I think the world flipped upside down when I did that. We've either got to take deal closing out or we've got to use deal closing as part of the deal.

SENATOR HAWKINS: We're going to have to come up with some sort of recommendation.

DEPUTY SECRETARY ERSKINE: How many TROF payments are made that are not linked to a project, the Governor's Opportunity Fund?

MR. STEPHENSON: I would say twenty percent.

MR. ARTHUR: The Governor doesn't participate in a lot of the ones that the Tobacco Commission does, and I would say at least twenty percent.

MR. STEPHENSON: The Governor has thresholds, and many of our communities fall way below that.

DELEGATE KILGORE: I don't see the actual need for the word deal closing there. We know that part of the TROF, our money, our monies are making the investment, and I don't see, I don't see that we have to have the word deal closing in there.

MR. ARTHUR: The problem comes to this. You're talking about fifty thousand dollars in a five million-dollar deal, it's not deal closing by any stretch of anyone's imagination. We're being used as a bank that somebody jumps through first to try to get some money in the county. I think the county is using it for that reason. Having a responsibility to actually close the deal. It makes it difficult to determine whether it is deal closing or not, I know.

MR. STEPHENSON: What I am trying to do with this is to suggest remove the deal closing requirement, but that this transaction with the Commission is a quid pro quo transaction. A piece of money in exchange for a hundred jobs, and we're going to find out if the

jobs are happening or not. If we pay the money and get the jobs I'm not sure that it matters to me whether it is deal closing or not, but I need to know the jobs are there.

SENATOR HAWKINS: Point well taken, and the example that Tom cited about the fifty thousand, we still have the ability to say no.

MR. ARTHUR: It's very hard for some people to say no.

SENATOR WAMPLER: Mr. Chairman, I've got to depart now.

SENATOR HAWKINS: All right, thank you.

MR. STEPHENSON: Specifically excluded from the policy in front of you is who else is in the deal, it doesn't matter who's in the deal, and there is no magic. How the money is used, we're not going to ask, whether it is a closer or not, minimum number of jobs required. I'm suggesting they not be a criteria on which our decision is made. If they are not a criteria, then I am not going to report them to you. If you want them in there, we'll dig that information out.

DEPUTY SECRETARY ERSKINE: Ned, what is the justification for not having the use of money as a criteria? The Governor's Opportunity Fund has a set number of things that you can use the funds for.

MR. STEPHENSON: I have no problem with requiring the money be used for certain things. If we do it must be definitive and must be verified and pinned down, because right now if we ask what the money is used for and they say site prep and we give them the money, that is the last we ever hear of it, I don't know why we ask.

DEPUTY SECRETARY ERSKINE: I think we should ask, and we should have, we need to have a set number of things.

SENATOR HAWKINS: We need some sort of guidelines.

MR. STEPHENSON: Excluded in this document is the polling of the commissioners, and we're back to three out of four.

SENATOR HAWKINS: If you look at the overall structure that we're trying to do is that if you give the ability to anyone other than an appointed member to make a decision on the allocation of money, they are assuming a lot of responsibility that may not be in the long-term good for the overall situation and creating other problems. Somebody needs to take responsibility for that. I hate to put that responsibility on any Staff.

MR. ARTHUR: Mr. Chairman, since Ned came up with the basic guidelines which he sends to us, basically something that looks like this, where he has applied this formula, and down at the bottom he says it meets our criteria. All I have had to do is initial it, date it and send it right back on the fax, and that solves this polling problem if the rest of us will do that. If he puts here it doesn't meet our criteria, that's why you need it, then we will want to investigate it and take a look at it. I'm trying to solve his polling problem, because I don't think the Executive Director ought to have that authority.

DELEGATE DUDLEY: Ned, could you determine when you talk about a deal closing if it is an emergency or immediate?

MR. STEPHENSON: It's hard to know that, Alan, and I've been in it long enough, and I don't think so, but most of the localities, the partnership, when they call with a deal, I've got to have it right now. The company is coming to announce it, and the Governor is here, I've just got to have it right now, and I know I'm five days away from an answer. I don't

know if the emergency is justified or not, and I'm not talking to the company. I'm like Tom, I can't believe a five million-dollar deal gets hung up on fifty thousand, so it's hard for me to know that.

Lastly, gentlemen, the formula that I have suggested to you is derived by trying to take all of these historical transactions and fit them into that formula. You can pick any one of these and run it through that formula, and the answer you will get is pretty close to what we did, except for the spikes, and in fact it is a little more generous than what we did, so it is actually a little more money.

MR. WALKER: Mr. Chairman, do you have an overall average of the number of jobs?

MR. STEPHENSON: It's right at twenty-two to twenty-four hundred dollars per job if you ignore everything else.

MR. WALKER: Is that in line?

DEPUTY SECRETARY ERSKINE: For Southside and Southwest the average GOF per job, in that range.

MR. STEPHENSON: Mr. Chairman, to wrap this up and move forward I would like to take this policy we have presented today, adjust it to reflect what I have heard around this table, and try to find a way to get that adjusted policy, maybe with Tom's and your help, satisfactory for approval by the Full Commission so we can operate on it.

SENATOR HAWKINS: That is fine, I have no problem with that, and I'll give you the authority to do that. I don't think we need to vote on it, it's a recommendation.

MR. STEPHENSON: I will do that.

SENATOR HAWKINS: Thank you. We've got to make sure we can do these things rapidly and we have the flexibility to meet the needs of the communities when things like that come up.

DEPUTY SECRETARY ERSKINE: Does this make a difference? How do we know if we lost the deal? It's difficult to know, because these business decisions are being made based on a lot of factors. I'd say for the larger amounts, the Governor's Opportunity Fund and these larger amounts, tends to be a big factor in the decision making.

SENATOR HAWKINS: One thing that hasn't been mentioned, and in my own mind the availability of the ownership in these communities to create board rooms in those communities means more to me than anything else you're talking about. Those board rooms and who is in them and that long-term investment means a lot, because they are going to stay. By going out and offering someone money in these communities is no real reason for them to stay there, other than money. People that are going to stay there and establish roots, it's very important. I'd like to see these ownership positions enhanced if at all possible, because those are the people that will stay in the communities, and that involves a long-term stability and the economy in our areas.

MR. CURRIN: Mr. Chairman, the last thing before public comment. We've looked at this committee structure, and some of these other committees have responsibilities that can be folded into this committee, the Executive Committee. This is kind of how the current structure is. We have the Commission with thirty-one individuals. We have the Executive Committee with some by-law changes, that would include Chairman Arthur. I think that the

Executive Committee would include twelve people, and then you have the standing committees before you. This structure, if I may add, also reflects the Long-Range Plan that the Commission did about two years ago.

SENATOR HAWKINS: The Long-Range Committee.

MR. CURRIN: If you want to keep that Long-Range Planning Committee.

SENATOR HAWKINS: The Long-Range Planning Committee is going to have to get involved.

MR. CURRIN: After our October strategic meeting the Chairman and I felt that Delegate Byron's committee, things that would come out of that, there needs to be some follow-up mechanism to help foster those recommendations along.

SENATOR HAWKINS: We'll still have six standing committees.

MR. CURRIN: We've just needed to streamline our process, and this is an attempt to do that.

SENATOR HAWKINS: We had people serving that didn't meet but maybe twice. Everybody should be involved, and I think by doing this it gives everybody a committee assignment.

MR. CURRIN: I think every Commission member should be on at least two major committees, and that's our goal, at least two.

Before we conclude I'd like to thank members of the Staff for their hard work in preparation for today's meeting. I have no other business before you, and public comment would now be appropriate.

SENATOR HAWKINS: Is there anyone that would like to make any public comment at this time on anything that we have discussed today, or anything else? Going once, going twice. Is there a motion to adjourn? There is a motion to adjourn and seconded. We're adjourned.

PROCEEDINGS CONCLUDED.

CERTIFICATE OF THE COURT REPORTER

I, Medford W. Howard, Registered Professional Reporter and Notary Public for the State of Virginia at large, do hereby certify that I was the court reporter who took down and transcribed the proceedings of the **Executive Committee when held on Thursday, October 7, 2004 at 2:00 p.m. at the Hotel Roanoke & Conference Center, Wilson Room, Roanoke, Virginia.**

I further certify this is a true and accurate transcript to the best of my ability to hear and understand the proceedings.

Given under my hand this 28th day of October, 2004.

Medford W. Howard
Registered Professional Reporter
Notary Public for the State of Virginia at Large

My Commission Expires: October 31, 2006.