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9 **Executive Committee Meeting**

10 Monday, January 10, 2005

11 3:00 p.m.

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13 Virginia Department of Agriculture and Consumer Services
14 Washington Building
15 Richmond, Virginia
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18 **APPEARANCES:**

19 The Honorable Charles R. Hawkins, Chairman
20 The Honorable Terry G. Kilgore, Vice Chairman
21 Mr. Thomas W. Arthur
22 Mr. Clarence D. Bryant, III
23 The Honorable Kathy J. Byron
24 The Honorable Allen W. Dudley
25 The Honorable Clarke N. Hogan
26 The Honorable Joseph P. Johnson
27 The Honorable Phillip P. Puckett
28 The Honorable Frank M. Ruff
29 Mr. James C. Thompson
30 Mr. Gary D. Walker
31 The Honorable William C. Wampler, Jr.
32

33 **COMMISSION STAFF:**

34 Mr. Carthan F. Currin, III, Executive Director
35 Mr. Ned Stephenson, Manager of Strategic Investments
36 Mr. Timothy Pfohl, Grants Program Administration Manager
37 Ms. Britt Nelson, Grants Coordinator Southside Virginia
38 Ms. Stephanie Wass, Director of Finance
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43 **APPEARANCES (cont'd.)**

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1 OFFICE OF THE ATTORNEY GENERAL:

2 Frank N. Ferguson, Senior Assistant Attorney General, Counsel for the
3 Commission

4 Anne Marie Cushmac, Senior Assistant Attorney General, Counsel for the
5 Commission

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10 SENATOR HAWKINS: Thank you all for coming. Let's get
started, because we have a fairly long agenda. Call the roll.

11 MR. CURRIN: Mr. Arthur?

12 MR. ARTHUR: Here.

13 MR. CURRIN: Mr. Bryant?

14 MR. BRYANT: Here.

15 MR. CURRIN: Delegate Byron?

16 DELEGATE BYRON: Here.

17 MR. CURRIN: Delegate Dudley?

18 DELEGATE DUDLEY: Here.

19 MR. CURRIN: Delegate Hogan?

20 DELEGATE HOGAN: Here.

21 MR. CURRIN: Delegate Johnson?

22 DELEGATE JOHNSON: Here.

23 MR. CURRIN: Senator Puckett?

24 SENATOR PUCKETT: Here.

25 MR. CURRIN: Senator Ruff?

26 SENATOR RUFF: Here.

27 MR. CURRIN: Secretary Schewel?

28 SECRETARY SCHEWEL: (No response.)

29 MR. CURRIN: Mr. Thompson?

30 MR. THOMPSON: Here.

31 MR. CURRIN: Mr. Walker?

32 MR. WALKER: Here.

33 MR. CURRIN: Senator Wampler?

34 SENATOR WAMPLER: Here.

35 MR. CURRIN: Mr. Vice Chairman?

36 DELEGATE KILGORE: Here.

37 MR. CURRIN: Mr. Chairman?

38 SENATOR HAWKINS: Here.

39 MR. CURRIN: We have a quorum, sir.

40 SENATOR HAWKINS: Thank you. We need a motion to approve
41 the Minutes of the last meeting.

42 DELEGATE JOHNSON: So move.

43 SENATOR HAWKINS: It's been moved and seconded that we

1 approve the Minutes of the October meeting, all in favor say aye? (Ayes.) Opposed?
2 (No response.) Thank you.

3 Most of what we start talking about today we will finish up tomorrow at the
4 Full Commission meeting. There are a couple of points we probably need to kind of
5 touch on before we get into that full meeting tomorrow.

6 MR. CURRIN: Mr. Chairman and members of the Committee, I
7 will be fairly brief today and more comprehensive tomorrow. We have the TROF policy
8 to talk about today, and Ned will be talking about that and the scholarship funding that
9 Ned and Stephanie both will discuss with you.

10 Let me bring you up-to-date on actions taken by the Southside Economic
11 Development Committee. They were presented with 16 funding requests, and 16.7
12 million dollars was the total available allocation remaining in this last year. The
13 Committee will be recommending to you, for your consideration tomorrow, funding 14
14 projects totaling 5.1 million dollars, leaving a balance of 1.6 unobligated. The next round
15 of applications to this Committee will be June 1st. Mr. Arthur, who is Chairman of the
16 Committee, will give that report to the Full Commission tomorrow.

17 Under the Education Committee, was presented with 19 competitive
18 applications and requests totaling 3.4 million. 1.4 million is the total available for these
19 requests, and the Committee recommended the funding of 1.1 million for 10 of these
20 projects. As for the community college allocations or applications, totaling 2.8 million
21 dollars available, and all other requests were recommended for full funding. Senator
22 Ruff will give a full report to the Commission tomorrow.

23 For the Full Commission meeting, Chris Chmura of Chmura Economics
24 recently completed a study of the labor market focusing the study for Southwest Virginia.
25 She will make a brief presentation at tomorrow's Full Commission meeting summarizing
26 her findings.

27 Also, at tomorrow's meeting there will be a representation from S&M Brands
28 and Philip Morris, who will present to the Full Commission their viewpoints concerning
29 the Allocable Share.

30 These are some of the items that came out of the Commission's Strategic
31 Planning Session this past October when we met in Clarksville. We will be addressing
32 some of these today and over the coming months. I will be working at the Chairman's
33 direction with Delegate Byron and her committee to review the current Long-Range Plan,
34 which was adopted over two years ago, and recommend if necessary some proposed
35 revisions to that plan to the next Commission meeting.

36 At this point I'd like to ask Ned Stephenson if he would like to make some
37 additional comments pertaining to our process that took place in October.

38 SENATOR HAWKINS: We need to make sure that in discussing
39 these economic development pieces with our local government bodies that they
40 understand that things like upgrading air-conditioning systems and commercial parks, we
41 just can't go there. It doesn't meet anything close to the criteria that we set up. We didn't
42 fund them and turned them down. Local government has to understand that we're talking
43 about economic development and not talking about air-conditioning improvement

1 projects; that comes nowhere close to what we're supposed to do.

2 MR. CURRIN: Mr. Chairman, I'll echo those comments when Mr.
3 Pfohl conducts the grant workshops in the coming months to be held in Southside and
4 Southwest. Ned.

5 MR. STEPHENSON: Thank you, Carthan. I'll be very brief, but
6 this fits right in with some of the conclusions that we reached in our Strategic Planning
7 Session in Clarksville. There were a lot of issues put on the table, and I tried to draw
8 from that some focus as to some things around which there was considerable agreement
9 for change. I have just several things to mention to you that fit in that category.

10 First of all, there was a very strong consensus in that planning session that we
11 have tighter guidelines in which to screen applications. Secondly, that our TROF
12 program be tightened up with respect to accountability and compliance with the contracts
13 that we sign. Thirdly, that we address and eliminate what one might call fiscal over-
14 extension, where the Commission is issuing promises ahead of its receipt of the MSA
15 payment. Those were the three core issues around which there was considerable
16 agreement, and the Staff is working on those, and you'll see some more of those later
17 today and tomorrow.

18 Less support, but some consensus nevertheless, for a revision to the actual
19 Long-Range Plan. The Chairman asked Delegate Byron if she would convene her
20 committee and work on the actual plan itself. There was some discussion given to the
21 notion of minimum cash match requirements for all grants to try to bring some leveraging
22 into the process. There was some discussion about minimum grant requirements to keep
23 the Commission from indulging in very small labor-intensive grants for processing
24 purposes. Lastly, there was some discussion about the Staff's ability and authority to
25 eliminate grant requests of highly ineligible applications and to try to knock them out
26 before they get to the Commission or the committees. Those were the items that bubbled
27 up in the strategic planning session, and you'll see more of those later on.

28 MR. CURRIN: Mr. Chairman, I'll ask Mr. Ferguson if he wants to
29 comment on the Allocable Share, or Anne Marie --

30 MS. CUSHMAC: I don't think we'll speak about it, we expect to see
31 it before the Legislature this year. There are other people here, and there will be a
32 presentation on it tomorrow.

33 SENATOR HAWKINS: There will be a presentation on it
34 tomorrow, yes, it's a very complicated subject, but we need to get a handle on it and get
35 involved in it. Tomorrow we will have all types of information and opportunities to
36 question people about aspects of this. This has to be brought to some kind of conclusion,
37 and this year we have to do something, because this has gone on long enough. The
38 Master Settlement part of it is a major worry for many of us, and we need to make sure
39 we're not going to be put in jeopardy, how we bring everyone under the same tent, that is
40 not going to be resolved any time soon. What we can do as a Commission, since this will
41 have to be legislatively driven, is make a recommendation as to what we recommend
42 from the Commission. We do have people involved in the Commission that are in the
43 legislative process, and they can help the process along. We need to become very

1 familiar with all parts of this many-faceted discussion. Having said that, we certainly can
2 hear testimony today, or we can wait until tomorrow, that's at the discretion of the
3 Commission. What are the wishes of everyone? Do you want to get into this today or
4 wait until tomorrow?

5 DELEGATE DUDLEY: Do you want to hear it today and
6 tomorrow?

7 MR. CURRIN: Mr. Chairman, I'd recommend we hear it all
8 tomorrow.

9 DELEGATE HOGAN: Mr. Chairman, Frank was on the agenda to
10 talk about it, I think it might be worthwhile to hear some today, and Frank probably
11 would be the one that would do that, but maybe Anne Marie can share something with us.

12 SENATOR HAWKINS: Anne Marie, do you feel comfortable
13 giving us a little background?

14 DELEGATE HOGAN: I think most of the people in this room are
15 reasonably familiar with the issue, to be honest with you. I'd be curious to hear at this
16 point where the AG is on it.

17 MS. CUSHMAC: That's something I'm not prepared to do or
18 present on. My understanding is that the Attorney General's Office hasn't taken a
19 position on it.

20 SENATOR HAWKINS: Does that answer your question?

21 DELEGATE HOGAN: For the moment, yes. You're saying the
22 Office has taken no position on that issue at this point in time?

23 MS. CUSHMAC: I have not been given any position to take, other
24 than we don't have a position on it, as I sit here right now.

25 SENATOR HAWKINS: Last year the bills that were carried, one in
26 the Senate and one in the House, were not brought to full conclusion based on the
27 understanding that we had with all the parties. There was not an agreement. We said we
28 would not proceed with legislation until some kind of agreement, this year we'll have to
29 do something, but I'm not sure what. Gentlemen, do you want a statement on this
30 particular subject, or do you want to wait until tomorrow as well? This may be the
31 shortest meeting in history.

32 MR. CURRIN: Mr. Chairman, I'd like to ask, with the Committee's
33 approval, that Ned go ahead and talk about the TROF guidelines at this point.

34 SENATOR HAWKINS: All right.

35 MR. STEPHENSON: Thank you, Carthan. Gentlemen, in your
36 packet you should have a document entitled, Tobacco Region Opportunity Fund. If you
37 will remember, this past summer we spent a little time working on some of the questions
38 surrounding your TROF program. There were so many of them that we adjourned that
39 meeting and you asked your Staff to work through some of those issues and bring back to
40 you a review or revised TROF policy, and that is what you have in your packet. This
41 policy you have in your packet is designed to align with the other programs that you run
42 in its format and its content. There are a few changes that occur, and I would like to at
43 least point them out to you so that you will know what you're looking at today.

1 Essentially, there are four changes in this document that are new to you, or
2 rather three changes and one point of clarification. The point of clarification is this. Our
3 TROF deals are awarded to applicants as they present themselves when they qualify.
4 However, there is a limit of two TROF awards per locality. It is a little unclear in the
5 record as to exactly what that means, but in the way of clarification, incorporated towns
6 count against the county in which they are located, but independent cities do not. So in
7 Pittsylvania County, Gretna, Virginia could have a deal for the county itself, and the third
8 one would have to come to the Full Commission. Whereas, the City of Danville would
9 not count against any county, and that's the point of clarification, and that was the intent
10 of the Commission, and that is written into this policy. We're going to ask you to approve
11 that today.

12 The second change in this document, prior to today there was a minimum job
13 count of 25 jobs required to get a TROF grant. This was knocking some small
14 communities out of the race who could not muster a TROF transaction to reach that
15 threshold. This policy before you removes the 25-job minimum threshold, and in its
16 place it calls for a minimum of a \$50,000.00 TROF amount. In other words, if a TROF
17 transaction can analyze sufficiently to qualify for at least \$50,000.00, even though the job
18 count is less than 25, then it can get passed.

19 The last change, and this is probably the most important one, is that the
20 approval of the TROF transaction still rests with the four persons that the Committee
21 established originally, being the Chairs of the two Economic Development Committees,
22 Tom Arthur and Terry Kilgore, Chairman Hawkins, and the Executive Director. It
23 requires the four of them to vote on TROF transactions. This policy indicates that a
24 TROF deal may be approved if any three of those four gentlemen cast a vote, but it must
25 be unanimous. The problem we were having is that if we had to have four people every
26 time it seemed like almost every time one of those four persons was out of place and out
27 of reach, and we could not get a vote. This calls for three out of four persons voting, and
28 it must be an affirmative vote to approve the TROF transaction.

29 DELEGATE DUDLEY: Does that mean it requires four out of four
30 would be required to vote for it if all four are voting?

31 MR. STEPHENSON: Let's see if I can state it again, Allen. What
32 we are asking for is that all four persons have the opportunity to vote, but if only three
33 out of the four of them respond to me all in the affirmative, then the deal is approved,
34 because the fourth could be out of town or out of place, not reading his mail, can't find
35 him, whatever, but if I can get three votes and all three are yes votes we are approved.

36 SENATOR HAWKINS: That would not apply to four, because four
37 is just the regular vote, three to make it pass.

38 DELEGATE DUDLEY: If you have all four voting, three can pass
39 it?

40 SENATOR HAWKINS: Yes.

41 MR. STEPHENSON: Allen, I think where we're heading is that any
42 nay vote would kill the deal, whether it was one nay vote and three yes votes.

43 SENATOR HAWKINS: That's right. Due to what we're doing with

1 TROF it has to be unanimous, you're right.

2 MR. STEPHENSON: So a single nay vote would kill the deal.

3 SENATOR HAWKINS: Because we're giving authority to allocate
4 large sums of money, it has to be unanimous.

5 MR. STEPHENSON: Mr. Chairman, we're seeking a motion this
6 afternoon for this to be approved and taken to the Full Commission, and I'd be happy to
7 discuss any other element in it that you might want.

8 SENATOR HAWKINS: Let's bring up one other aspect on
9 discussion of this TROF program. If we can do something to make it a deal closing
10 situation rather than having it the way we have it now. That was mentioned earlier by a
11 couple of members, to do something to make sure that it actually goes to the deal closing
12 rather than just the grant program.

13 MR. ARTHUR: Mr. Chairman, two years ago when we established
14 this TROF procedure it was stated but never made policy the purpose of this was deal
15 closing, and we could bring in some money to close the deal to bring in some jobs. Since
16 then this thing has migrated in every direction you can think of. I think we need to
17 establish a firm policy that it is either deal closing or we're going to handle it some other
18 way. That should also be stated in this meeting.

19 SENATOR HAWKINS: Let's open up that for discussion, any
20 comments?

21 DELEGATE KILGORE: What do you mean deal closing? What
22 does that mean, that we're the last part to go in?

23 MR. ARTHUR: Yes, they're supposed to seek funds from any other
24 source possible and then come to us, and this money would be the money that would
25 close the deal and get the company to come there. There are fringe areas you might want
26 to consider, too, but other than new companies coming in. I recognize that, because jobs
27 was our most important aspect here, not necessarily as much as maintaining the jobs that
28 we've got, but we're talking about new jobs. My personal opinion is that it ought to be a
29 deal closing fund. That's the way it was when we brought it up, and we all voted on it as
30 a Board two years ago, but it has migrated into everything that anyone wants to grab bag
31 for. Do you understand where I'm at?

32 SENATOR HAWKINS: Any other discussion? Remember that this
33 fund was set aside to be able to use quickly to respond to requests for localities based on
34 the ability of a company creating new jobs without going to the Full Commission and
35 time is wasted. I think that point needs to be discussed, to make sure that we are all on
36 the track with our thinking and it's supposed to be used that way.

37 MR. STEPHENSON: One of the issues surrounding this question of
38 being a deal closing fund or not is who is empowered to certify that it is or is not a deal
39 closing, it's highly a matter of opinion. I think Staff needs to know who holds that card.

40 MR. ARTHUR: Up until this time we have basically accepted the
41 recommendation of the Partnership, they are the most knowledgeable as to what the
42 status of the deal is. I don't have a problem with that, unless it's something I don't know
43 about, but somebody does have to determine whether or not it is a deal closing.

1 SENATOR HAWKINS: Discussion?

2 DELEGATE HOGAN: Mr. Chairman, we're not going to pass any
3 guidelines and take that part of it, we've got to trust four people to make that decision and
4 not worry about it. Do the best you can with the information you've got, we can't pass
5 guidelines that are going to define deal closing, because it is a matter of opinion. The
6 GOF is supposed to be deal closing and that's not, it's part of the package we put together
7 to encourage businesses in rural Virginia. You've all got to use your best judgment, and I
8 don't think we're going to do any better than that. I wouldn't cloud that issue with a
9 bunch of, the point you made that is relevant, this is a timely matter.

10 SENATOR HAWKINS: We don't want to lose any initiative that
11 may be out there, but we need to make sure that these monies are not being used for any
12 purpose other than what they are intended to be used for. I think the point is well taken,
13 if we use our own discretion and pass judgment based on the Partnership, it's up to us
14 four to see whether it is deal closing or not. We have to learn the word no, which is very
15 hard to say.

16 MR. ARTHUR: No, it is not hard, but to avoid political pressure
17 and fallout, where if you had some very rudimentary guidelines you can fall back on
18 them. You need some sort of guidelines, if it is no more than just a shadow guideline.
19 You've got to have something that you can base it on. If you say no you've got to be able
20 to back it up because this is the policy.

21 SENATOR HAWKINS: Ned, is there any way that we can come up
22 with language that would basically bring into play the basic premise of deal closing and
23 still allow the flexibility that we're looking for, or not?

24 MR. STEPHENSON: I think the Partnership is probably in the best
25 position to know or make that decision, because they are at the table with the company,
26 and often we are not.

27 SENATOR HAWKINS: The only problem I have with that advice,
28 it's fine, but if we're not careful they will be able to have veto over things that we decide
29 to do as a Commission.

30 MR. WALKER: Can we use the Partnership guidelines with the
31 understanding that the four-member committee would have the final say-so? That would
32 give you some regulations to satisfy Mr. Arthur and still give you all the flexibility to
33 make the final call.

34 SENATOR HAWKINS: I don't want to see us giving the authority
35 directly or indirectly away from the Commission.

36 MR. ARTHUR: No.

37 SENATOR HAWKINS: That could happen, that we could
38 inadvertently give someone veto power over what we're trying to do.

39 DELEGATE KILGORE: I don't have any problem with the
40 Partnership doing that. What about the deals that you're not originating, not coming from
41 the Partnership and coming from the local, or something like that, what about that?

42 SENATOR HAWKINS: There's no way we're going to be able to
43 solve that today. Let's go ahead and have a little discussion about this, let's defer

1 something on that and make it, discuss it at the meeting tomorrow. Let's work on that a
2 little further.

3 SENATOR RUFF: Mr. Chairman, I support eliminating the 25-job
4 requirement, but what does that do to us? Franklin County has 50,000 people ,and they
5 may have three or four requests. We're treating everyone the same, Amelia County has
6 about 10,000 people, Charlotte's got less than 10,000, bigger counties, are they going to
7 get more than the third one if we drop the size? Are we going to compensate for that in
8 any way?

9 SENATOR HAWKINS: I don't know how you compensate, what
10 we need to do is make sure that we have the ability to meet the needs of a community
11 when it is brought to us. To miss a job opportunity based on some arbitrary figure may
12 never come back to us. Also, if we can figure out some way to make more of a regional
13 approach to some of these projects it would be helpful as well, bring in smaller counties.
14 We need to try to do that to be successful. I don't know, other than using our own best
15 judgment, how we work with these things, but I would hate to put us in a position where
16 we would miss an opportunity to really make a difference. Charlotte County has lost four
17 hundred jobs, and that's a big hit for the county, and we've got to be able to have the
18 flexibility to do some things.

19 SENATOR RUFF: Mr. Chairman, I'm just wondering if we
20 shouldn't have some trigger that can be pulled if that fourth or fifth opportunity comes up,
21 without waiting three months for the next meeting.

22 MR. CURRIN: Mr. Chairman, Smyth County has a third request
23 this fiscal year.

24 MR. STEPHENSON: And fourth this fiscal year. Most often if a
25 deal has to wait for the Commission cycle to come, there's a high chance that it can't wait.

26 SENATOR HAWKINS: There is a trend in localities that if you hit
27 one deal odds are that you will have an opportunity to hit two or three more in a row.
28 Any suggestions you might have?

29 DELEGATE HOGAN: I suggest this might be something you want
30 to take a look at. If you're not careful to drop this job requirement, everybody that hires
31 two or three people is going to come in here and ask for 10,000. If we put a molder in
32 our plant and hire five people. You could make a big argument, although I wouldn't do it,
33 but I'm just saying that's a real example. That's not the kind of stuff we want to fund.
34 What you may want to say is, there's an advantage to have that 25-employee mark in
35 there, and you need to make some exceptions to it, but you need to be able to tell people,
36 going back to what Mr. Arthur said, we don't think this helps us enough for us to do this
37 deal. That's not deal closing, and if you're not awful careful it will go away.

38 SENATOR HAWKINS: The problem with 25 jobs, if there is a
39 company that's on the cutting edge of creating, making it, and they start out with two or
40 three employees, but the potential is unlimited that within three or four years they could
41 be at five hundred employees because what they are doing is such an innovative
42 approach, and I'd hate to limit us to be able to fund that sort of innovation because there
43 were some job numbers.

1 DELEGATE HOGAN: I think that's exactly right. Use some
2 language that says if you drop under 25, then only in the judgment of the Committee
3 there is long-term, there is significant long-term improvement.

4 SENATOR HAWKINS: You have to have flexibility.

5 DELEGATE HOGAN: But if somebody says we have three or four
6 jobs and we think in twenty years it's going to be six jobs, then I don't think that is
7 something we should do.

8 MR. CURRIN: We have two requests, one from Charlotte and one
9 from Smyth, that were about nineteen people. So in the strict sense we had to say no, and
10 I felt they were good jobs and an opportunity that, we're just asking for some direction
11 with respect to this.

12 MR. STEPHENSON: I think it is important to note that we're trying
13 to govern the awards on the small end not just by the head count but by the employment
14 level, the wage level, the job survival premium. We have an analysis that does that, and
15 that's where the \$50,000.00 minimum catch is. If someone wants to hire nine people and
16 they're low wage jobs and they don't stick around, they're not going to make the
17 \$50,000.00 threshold, and that is going to stop that deal. But if it is a few jobs and they
18 are high paying in a stressed area, our formula would yield more than 50 for that
19 transaction.

20 SENATOR HAWKINS: The whole purpose of what we're trying to
21 create is to create that new energy in these communities and create new economies. To
22 do that we need to be able to figure out some way that we can hone in on those new ideas
23 that will change dramatically the direction of the economy, rather than going back to the
24 old line. If somebody comes up with an idea that is a better way to, for instance, rebuild
25 computers at less price and be able to get them to the market, that would be a kind of an
26 example of something we need to look at. But, we have to have the flexibility to do these
27 things. We've also got to understand that these monies are held in trust and we have a lot
28 of requests from localities for things like upgrading air-conditioning systems. That's a
29 nice idea, but it's not what we're doing.

30 MR. ARTHUR: Mr. Chairman, on the other end of the spectrum, we
31 don't need to be financing R&D for Fortune 500 Companies, either. Just like giving the
32 money back to you all to balance the budget, we don't need to do that. Companies that
33 have 25 to 50 million on R&D, they don't need our one million dollars.

34 SENATOR RUFF: Mr. Chairman, to get off this issue, I would
35 make a motion that we give the TROF Committee the authority in necessary situations to
36 deal with the TROF requests.

37 SENATOR HAWKINS: Would you like to restate that motion?

38 SENATOR RUFF: It would give, the first two would be automatic,
39 and then the third and fourth would have to go to the TROF Committee with unanimous
40 approval of those four individuals.

41 SENATOR HAWKINS: Does everyone understand the motion? Is
42 there a second?

43 DELEGATE DUDLEY: I thought they all had to be unanimous.

1 SENATOR RUFF: But the limit is you can't exceed three at this
2 time, cannot exceed two. The third one has to go, you have to have the flexibility.
3 MR. CURRIN: Two per year?
4 SENATOR RUFF: Extend it to three.
5 SENATOR HAWKINS: That's the problem, we're limiting
6 ourselves to deal with these projects. The motion has died for lack of a second. Any
7 other discussion?
8 SENATOR RUFF: Let me restate it. The first two are automatic,
9 the third one, four members of the TROF Committee would have to agree unanimously to
10 allow consideration of the third one.
11 SENATOR HAWKINS: You're giving the Committee to make the
12 decision up to three per, as opposed to two, or adding one, basically.
13 MR. ARTHUR: Second.
14 SENATOR HAWKINS: It's been moved and seconded that we add
15 one, which gives us three. Any more discussion? Does that solve the problem?
16 Probably not, but let's do it and see what happens. All those in favor say aye? (Ayes.)
17 Opposed, like sign? (No response.) We're up to three. We're making progress, Ned.
18 MR. STEPHENSON: Yes, we are. I'd like to redirect your attention
19 back to the policy before you. Do you want to act on that today?
20 SENATOR HAWKINS: That's before us, and does anyone have a
21 motion or a recommendation from Staff on the policy?
22 SENATOR RUFF: Mr. Chairman, I would move that we accept the
23 Staff's recommendation, the four changes that Ned described.
24 SENATOR HAWKINS: Recommend to the Full Commission for
25 adoption?
26 SENATOR RUFF: Yes.
27 SENATOR HAWKINS: It's been moved and seconded that we
28 recommend the Opportunity Fund Grant Program Revitalization Grant Initiatives for
29 approval to the Full Commission. All in favor say aye? (Ayes.) Opposed? (No
30 response.) That's done.
31 MR. CURRIN: Ned and Stephanie would like to bring to the
32 Commission's attention the issue of the scholarship funding and like to have your
33 approval on the changes, how they conduct the business with regard to the Scholarship
34 Program currently in place.
35 MR. STEPHENSON: Gentlemen, since the Commission started
36 five years ago you have had a scholarship program every year for some 3.8 million
37 dollars awarded in Southside and Southwest. Because of the way your budget cycle falls
38 relative to the school year, there is a misalignment between the availability of your
39 money at budget time in April and the need for the money in the school calendar the
40 following fall. In a typical year you will complete your budget deliberations along about
41 April or May, and that is the point in time at which your Scholarship Administrator,
42 Rachel Fowlkes at the Higher Ed Center, then has the funds available to move forward
43 with her application process. The problem is that in May most of the students have

1 already made their school decision in February. Most of them, I understand, have
2 scattered for the summer, and her efforts are very frustrated, and consequently the fall
3 applicant pool is very skinny because she can't get to these students in time. We've been
4 locked into this cycle now for several years. The Education Committee last week passed
5 a motion to cure this calendar problem. That motion is in your packet on a single sheet
6 entitled, Motions Passed by the Education Committee. If I may, Mr. Chairman, I'd like to
7 read into the record for the benefit of everyone present.

8 Whereas, the Tobacco Commission Scholarship Program has been
9 funded in the amount of \$3.8 million for each of the years ending June
10 30, 2003, 2004, and 2005, and

11
12 Whereas, the Scholarship Program Administrator has advised Commission
13 Staff that applications for Fall 2005 scholarships must be taken in early Spring
14 2005, and

15
16 Whereas, the Commission budget process for Fall 2005 will not be
17 completed until after Spring 2005 (i.e., too late for Fall Scholarships),

18
19 Now, therefore, the Committee hereby recommends to the Commission a
20 FY 2006 Education budget appropriation of at least \$3.8 million for the express purpose
21 of enabling the Scholarship Program Administrator to accept applications for Fall
22 2005.

23
24 This was passed by the Education Committee last week and being referred on
25 to the Executive Committee and the Full Commission.

26 DELEGATE HOGAN: Mr. Chairman, I think I understand that you
27 want to, this is a one-time non-recurring expense of 3.8 million?

28 MR. STEPHENSON: They want to know that that is coming so that
29 they can launch these '05 people and get them started at one time. It's one-time.

30 DELEGATE HOGAN: Knowing that it is coming and going ahead
31 and getting them money so they can start their process four or five months earlier, which
32 is it?

33 SENATOR RUFF: Mr. Chairman, we can hold off giving them the
34 money until September 1st, but the problem is that, particularly with freshmen, they don't
35 know what's going on, and the parents don't know what's going on, and it gives them
36 some path to follow, some mechanism to know that they have some money coming in.

37 MR. ARTHUR: Mr. Chairman, this is essentially increasing the
38 Education Committee funding, since the percentage will be greater and the overall MSA
39 payment is going to be lower. We're essentially agreeing that we're going to raise the
40 budget, is that what we're doing?

41 MR. STEPHENSON: I don't think that's true, Tom. I think what
42 we're saying is that in the last three years the Commission has set an Education budget of
43 seven or eight million dollars. This is asking the Commission to set at least 3.8 million in

1 the coming budget session. You can choose to set it at seven, eight or nine or whatever
2 you want, but at least 3.8, so they know that is coming for the new year.

3 MR. ARTHUR: You state in the first sentence that it has been
4 funded in the amount of 3.8 million, not at least 3.8, not seven or eight like you just
5 mentioned. I'm just going by the numbers right here.

6 MR. STEPHENSON: The Scholarship Program in particular has
7 been funded at 3.8, and the Education Committee has been funded at seven or eight
8 million.

9 SENATOR RUFF: Mr. Chairman, I don't think there ever was a
10 great deal of consideration of going over 3.8. It's simply a phrase to get us, in case
11 somebody wants to put more money in it, but each year the Committee has chosen that as
12 the highest priority. Even if we get less money at the Education Committee, I think we
13 would follow the same philosophy.

14 DELEGATE DUDLEY: Mr. Chairman, Ned, this is money that we
15 would be receiving in the Spring of 2005 or the Spring of 2006?

16 MS. WASS: The Spring of 2006. In the next budget cycle we're
17 hoping to fix that problem of the Education funding.

18 DELEGATE DUDLEY: This is one of our highest priorities, and
19 our session in Clarksville was to eliminate fiscal over-extension, and now we're moving
20 beyond the year?

21 MS. WASS: We're hoping to fix that in the next budget cycle.
22 When we do the budget in April we're hoping to remedy that problem, but for now they
23 need to know for this coming fall.

24 MR. STEPHENSON: You're right, Allen, it is moving a little bit
25 away from our fiscal over-extension problem.

26 SENATOR HAWKINS: You're saying that our calendar and the
27 school calendar is not in sync.

28 MR. STEPHENSON: Has not been in sync.

29 MR. ARTHUR: It's got to be fixed, and we talked about that.

30 MR. STEPHENSON: Another cure, Mr. Chairman, would be to
31 stand completely still for a whole year and be no funding for a year, and then we'd be
32 caught up.

33 DELEGATE HOGAN: You can write that letter, Ned.

34 SENATOR PUCKETT: I think the simple answer to this is that
35 Rachel at the Southwest Higher Ed doesn't want to go out and obligate something that
36 she doesn't have any authority to. She's actually not giving anything different away than
37 we've always done, but she'd like to do it a little earlier and simply say to the freshmen
38 people, or whoever are applying for these scholarships, you do have that money, the 3.8,
39 that's what we've always done, and we've allowed them to get in sync with their timeline.

40 SENATOR HAWKINS: Any other discussion on the motion?

41 DELEGATE HOGAN: I'd move the motion.

42 SENATOR HAWKINS: It's been moved and seconded, any
43 discussion? All those in favor say aye? (Ayes.) Opposed? (No response.)

1 MR. CURRIN: That concludes the Staff report. Public comment, if
2 anyone wants to.

3 DELEGATE JOHNSON: Mr. Chairman, Motion Number 3, did we
4 vote on Motions 1, 2 and 3 all at the same time?

5 SENATOR HAWKINS: We just voted on one.

6 MR. STEPHENSON: Delegate Johnson, we just voted on Motion
7 Number 1. Our thinking was that it has budget implications, and this Committee is really
8 the gatekeeper for budget matters. The other two motions will come before the Full
9 Commission tomorrow to be passed, unless you want to talk about them today, and we
10 can. We thought we'd do that tomorrow.

11 SENATOR HAWKINS: Since we've finished that part of the
12 agenda, Clarke, do you want to --

13 DELEGATE HOGAN: -- Frank, are you prepared to comment on
14 this, we're going to hear tomorrow a little bit about the Allocable Share issue and other
15 issues related to it. You're on the agenda to talk about it, and I was wondering if you're in
16 a position at this point to give us the AG's position on the subject.

17 MR. FERGUSON: I'll tell you what I know, Delegate Hogan and
18 members of the Committee. As some of you may be aware, the General Assembly set up
19 an ad hoc joint subcommittee of the House and Senate Courts, which looked at the
20 Allocable Share proposed legislation from last year and might be coming up this year,
21 really has an educational exercise, so that when it comes back this year, as it certainly
22 will, there will be at least some members of the Legislature who had more than a ten or
23 fifteen minute opportunity to learn about it. In the course of that process the Attorney
24 General did forward a letter to the Chairman of that Committee, Delegate Albro, which
25 indicated, I don't have the letter in front of me. What it said generally was that he sees
26 the Allocable Share Legislation as a viable solution to the problem that is addressed.
27 That means lost revenue from the MSA as a result of market share movement from the
28 participating manufacturers to the non-participating manufacturers.

29 He also in the course of that letter restated his support of any effort that might
30 recognize the fact that we have NPM's within the state that will be significantly adversely
31 impacted by the Allocable Share Legislation, as has been seen in the past, and supports
32 any effort that might come forward to address that problem as well. While that may not
33 be a wholly clear answer, because I've tried to repeat it off the top of my head, I think that
34 summarizes the Attorney General's position.

35 SENATOR HAWKINS: Does that give you an answer?

36 DELEGATE HOGAN: More or less.

37 SENATOR HAWKINS: The bottom line, the other members of the
38 General Assembly are looking to us for a recommendation, because we are the ones
39 involved in the industry, and we're the ones that represent the tobacco sections of the
40 state. If you look around the room there may be no more than three or four other
41 members of the Legislature that have any part of the tobacco business, so it is up to us to
42 make some recommendations. Those things that come out of this Commission in the way
43 of recommendations will probably carry right much weight in the legislative process,

1 particularly when you carry the legislation this year. The bottom line, and it's going to be
2 up to us to put together something and put this in a position where we can explain it to
3 people and make a difference. We went through the process, and it's very involved. Last
4 year Terry carried the bill, and we couldn't get a consensus. We told people we wouldn't
5 proceed unless we had a consensus, so that's where we are.

6 Yes, sir?

7 MR. LEVIN: Mr. Chairman, my name is Peter Levin, L-E-V-I-N.
8 I'm with the National Association of Attorneys General. As you may know, NAAG is
9 charged under the Master Settlement Agreement with coordinating and facilitating the
10 enforcement and implementation of the Master Settlement Agreement and related
11 legislation, such as the legislation that this amendment is designed to fix. I'd be more
12 than happy to answer any questions that anyone has today or tomorrow morning. NAAG
13 is intimately familiar with the legislation. I'll tell you, if you don't already know, that
14 NAAG has taken a formal position, and they adopted a resolution urging adoption of the
15 Allocable Share Amendment. Every state that is a party to the Master Settlement
16 Agreement has enacted the model statute, the escrow statute, and forty of those states
17 have enacted the amendment that is before you all.

18 SENATOR HAWKINS: Out of those forty states, is any of them
19 tobacco producing states, such as Virginia, with the same history?

20 MR. LEVIN: Kentucky, I believe has enacted it, and I believe
21 Tennessee has enacted the Allocable Share Amendment.

22 SENATOR HAWKINS: How about Carolina?

23 MR. LEVIN: No, North Carolina, to my knowledge, has not
24 enacted it.

25 SENATOR HAWKINS: What about South Carolina?

26 MR. LEVIN: South Carolina, no.

27 SENATOR HAWKINS: What bumps did those states run into
28 which we can avoid here? The tax exempt piece, I've been told two sides, that we can get
29 tax exemption for the monies paid, and someone said we can't, because it is not part of
30 the agreement. How do taxes in the state piece enter into the discussion by other states?

31 MR. LEVIN: Are you referring to, I'm not sure if the issue came up.
32 Are you referring to the inability to deduct the escrow payment?

33 SENATOR HAWKINS: Yes.

34 MR. LEVIN: I don't know, quite frankly, whether that came up in
35 the other states. I know it has come up in legislation or in litigation in New York, where
36 this amendment is being challenged on constitutional grounds. There is testimony, at
37 least in that case, that if a non-participating manufacturer that is required to make the
38 escrow payments were prepared to give up its reversionary interests, it has entitlement to
39 money after 25 years that is put in escrow if the state does not successfully bring an
40 action like was brought against the original participating manufacturers. That is a
41 reversionary interest that would come due in 25 years. If the entity is prepared to give up
42 that reversionary interest and the interest that it would be entitled to on the escrow
43 deposits over that 25 years, then it is my understanding, at least based on testimony, that

1 would qualify for a deduction under federal law with respect to the deposit.

2 DELEGATE HOGAN: Tell me your name one more time?

3 MR. LEVIN: I'm Peter Levin.

4 DELEGATE HOGAN: Have you got a ruling from the IRS, or have
5 you written them asking them about the deductibility of the escrow payments?

6 MR. LEVIN: No, I have not. My understanding is that one
7 company has requested a ruling, and I don't think they have gotten one yet, Star Tobacco.

8 DELEGATE HOGAN: There are a couple of things that trouble me
9 about this. I guess the first thing, my understanding is that NAAG is not supposed to
10 advocate legislation one way or the other, and you're not a lobbying organization. That's
11 my understanding, and if it's not true I stand corrected.

12 The second is that the only person whose opinion matters about the
13 deductibility of escrow payments is the IRS. The fact that somebody somewhere said
14 they might be deductible if you did a bunch of things is troubling to me. I think before
15 we spend a lot of time discussing whether it's deductible or not in the context of your
16 comments about some recommendations or some comments or this Commission or the
17 General Assembly, we need to find the answer to that question. I've never seen an asset
18 that you could collect interest on that would be deductible. Until somebody produces a
19 letter from the IRS, I know for a fact the IRS says it's not deductible. Could you figure
20 out some way or some kind of time that might be deductible? Well, there are five
21 hundred dollar an hour tax attorneys that will work on it for you, and it might work, but
22 that's kind of specious, is what I'm saying. If you have an asset and you're collecting
23 interest on it, it's not deductible. Barring some ruling from the IRS, I don't think we
24 ought to be advancing that notion.

25 MR. BRYANT: Mr. Chairman, he just referred to the fact that you
26 had to waive your right to that asset in order to deduct it. That's what I think I
27 understood.

28 DELEGATE HOGAN: I understand that, but there has been a fair
29 amount of information saying you couldn't waive your right, and I think perhaps Mr.
30 Ferguson could comment on that. This is strictly a hypothetical, if you maybe could raise
31 your rights, which nobody knows, maybe you might be able to take a deduction, and
32 there's a lot of if's in that statement. That's a pretty important issue in regard to this
33 Allocable Share issue. We shouldn't operate on somebody said you might be able to do if
34 you did a certain thing, and that really concerns me.

35 SENATOR HAWKINS: That's a good point, and I think we all have
36 a concern about what we're doing, and we need to find out some answers before we get
37 into it. The constitutional challenge piece, would you mind elaborating a little bit on
38 that? If in fact it is proved to be unconstitutional, where are we when it comes to the
39 MSA?

40 MR. LEVIN: I may have misspoken, I guess it's being challenged, I
41 think it is also being challenged on anti-trust grounds, I should have added that. I don't
42 think it is going to be successful, but there has been a ruling out, at least. I might say it
43 was challenged against both the full escrow statute and may have involved the Master

1 Settlement Agreement. The judge temporarily did enjoin the Allocable Share
2 Amendment, he had really no record, and it is in New York, and they never even had an
3 Allocable Share release request. I know the State of New York is confident that that will
4 be reversed. Challenges to the Allocable Share Amendment have been sustained
5 elsewhere.

6 SENATOR HAWKINS: How many states have domestic cigarette
7 production industries that start up like Virginia has? Are there many out there, or does
8 North Carolina have industries that have started manufacturing?

9 MR. LEVIN: I'm sure North Carolina has domestic cigarette
10 manufacturers.

11 SENATOR HAWKINS: New ones, not like, you're talking about the
12 new ones like Star and Bailey's?

13 MR. LEVIN: North Carolina comes to mind, I know New Mexico
14 has one, it came up when they were considering the Allocable Share Amendment. I
15 believe Oklahoma may have some. I can find that out for you, that's not unique, but
16 you're certainly in the minority, I think.

17 SENATOR HAWKINS: I was wondering, because states that have
18 had the same sort of historical background that we have here, I'd be interested in knowing
19 how they were able to resolve it and if they were, maybe Tennessee is one.

20 MR. FERGUSON: Mr. Chairman, there are a handful of states, and
21 I think Anne Marie and I are familiar with that, that have cigarette production by actually
22 manufacturing in the state rather than being an entity that all that is done offshore and
23 become responsible manufacturers and don't do the work there. There are a handful of
24 states that have those, tobacco producing states, Virginia, North Carolina, I think there
25 are some in Kentucky. The other ones around the country, like Peter said, I think
26 Oklahoma and New Mexico and some of the tribal organizations have their own brands, I
27 don't know what the production capacity is. I think it is fair to say that most of that
28 tobacco comes from offshore for those products. Of the forty states that have adopted the
29 Allocable Share thus far, probably two, three or four of them are similarly situated as
30 Virginia.

31 DELEGATE HOGAN: You said the Allocable Share has been
32 sustained, in what states has it been sustained?

33 MR. LEVIN: I believe it has been sustained in Idaho, but I'd have to
34 check, the challenge to the Allocable Share, but I'm not one hundred percent sure.

35 DELEGATE HOGAN: The other litigation around it, how many do
36 we have besides New York and Idaho?

37 MR. LEVIN: I believe there is a challenge pending in Louisiana, I
38 believe there is a challenge pending in Nebraska, and there may be a challenge pending
39 in Oklahoma, those are three states that come to mind.

40 DELEGATE HOGAN: There has been no ruling in those states?

41 MR. LEVIN: No, I think the issue is under advisement with the
42 federal courts.

43 SENATOR HAWKINS: Who brought the challenge?

1 MR. LEVIN: A company called Excalibur in Louisiana, with two
2 other companies.

3 SENATOR HAWKINS: Is that domestic made or foreign?

4 MR. LEVIN: I believe it is domestic. There are two other
5 companies, I believe Carolina Tobacco may have been one, although I'm not a hundred
6 percent sure. In Nebraska it's Carolina Tobacco, and in Oklahoma I think it is Excalibur,
7 but I'm not a hundred percent sure on that. I'd point out that the flaw, at least in the view
8 of the states that have enacted it, in the escrow statute is that the Allocable Share
9 Amendment is designed to remedy and is not simply one that has proved beneficial to
10 domestic non-participating manufacturers but to foreign manufacturers as well. It's
11 available to any company that a) is not a party to the Master Settlement Agreement and b)
12 wants to concentrate its sales in one or a few states. Of course, these companies are not
13 subject to any of the public health restrictions of the Master Settlement Agreement, and
14 they are not subject to the payment provisions. Not that they don't have any corporate
15 right to operate, but the point is that nationally far and away there are many more foreign
16 companies that are a party to the Master Settlement Agreement than domestic companies,
17 and those are also affected by this Allocable Share Amendment.

18 DELEGATE DUDLEY: I don't have a question, but I was just
19 thinking that if we not consider legislation because we thought somebody might
20 challenge it, we would pass very few bills.

21 SENATOR HAWKINS: We can sit here and talk about this all
22 afternoon, or either we can solve the problem tonight at the reception, and we'd have a
23 conclusion to all of this and look forward to you being able to do this and make a
24 recommendation tomorrow. Thank you all, and thank you, Mr. Levin, for your
25 presentation.

26 Are there any other public comments? Going once, twice, do I have a motion
27 we adjourn? So moved, we're adjourned.

28
29 PROCEEDINGS CONCLUDED.

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32
33 CERTIFICATE OF THE COURT REPORTER

34
35
36 I, Medford W. Howard, Registered Professional Reporter and Notary
37 Public for the State of Virginia at large, do hereby certify that I was the court reporter
38 who took down and transcribed the proceedings of the **Executive Committee Meeting**
39 **when held on Monday, January 10, 2005 at 3:00 p.m. at the Virginia Department of**
40 **Agriculture and Consumer Services, Washington Building, Richmond, Virginia.**

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

43 Given under my hand this 24th day of January, 2005.

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

My Commission Expires: October 31, 2006.