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**VIRGINIA TOBACCO INDEMNIFICATION  
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501  
Richmond, Virginia 23219

**Executive Committee Meeting**

Wednesday, October 28, 2009

4:30 p.m.

Wytheville Meeting Center  
Wytheville, Virginia

1    **APPEARANCES:**

2    The Honorable Charles R. Hawkins, Chairman

3    The Honorable Terry G. Kilgore, Vice Chairman

4    The Honorable Kathy J. Byron

5    The Honorable Barnie K. Day

6    The Honorable Joseph P. Johnson

7    The Honorable Daniel W. Marshall, III

8    The Honorable Phillip P. Puckett

9    The Honorable Edward Owens

10   The Honorable Frank M. Ruff

11   Mr. James C. Thompson

12   The Honorable William C. Wampler, Jr.

13

14   COMMISSION STAFF:

15   Mr. Neal Noyes, Executive Director

16   Mr. Ned Stephenson, Deputy Director

17   Mr. Timothy Pfohl, Grants Program Administration Manager

18   Ms. Stephanie Wass, Director of Finance

19   Ms. Sara Williams, Grants Coordinator Southwest Virginia

20   Ms. Sarah Capps, Grants Coordinator Southside Virginia

21

22   OFFICE OF THE ATTORNEY GENERAL:

23   \*Mr. Francis N. Ferguson, Deputy Attorney General, Counsel for the

24                   Commission

25

1 SENATOR HAWKINS: I'll ask Neal to call the  
2 roll.  
3 MR. NOYES: Delegate Byron?  
4 DELEGATE BYRON: Here.  
5 MR. NOYES: Mr. Day?  
6 MR. DAY: Here.  
7 MR. NOYES: Deputy Secretary Hammond?  
8 DEPUTY SECRETARY HAMMOND: (No  
9 response.)  
10 MR. NOYES: She'll be here tomorrow.  
11 MR. NOYES: Senator Hawkins?  
12 SENATOR HAWKINS: Here.  
13 MR. NOYES: Delegate Johnson?  
14 DELEGATE JOHNSON: Here.  
15 MR. NOYES: Delegate Kilgore?  
16 DELEGATE KILGORE: Here.  
17 MR. NOYES: Delegate Marshall?  
18 DELEGATE MARSHALL: Here.  
19 MR. NOYES: Mr. Buddy Mayhew?  
20 MR. MAYHEW: Here.  
21 MR. NOYES: Mr. Owens?  
22 MR. OWENS: Here.  
23 MR. NOYES: Senator Puckett?  
24 SENATOR PUCKETT: Here.  
25 MR. NOYES: Senator Ruff?

1 SENATOR RUFF: Here.

2 MR. NOYES: Mr. Thompson?

3 MR. THOMPSON: Here.

4 MR. NOYES: Senator Wampler?

5 SENATOR WAMPLER: Here.

6 MR. NOYES: You have a quorum.

7 SENATOR HAWKINS: Do I have a motion for  
8 the approval of the Minutes from our last Executive Committee meeting?

9 SENATOR WAMPLER: So moved.

10 SENATOR HAWKINS: It's been moved and  
11 seconded that the Minutes of July 29, 2009 and August 18th be approved.  
12 All in favor say aye? (Ayes.) All right. That motion passes.

13 MR. STEPHENSON: At last week's meeting in  
14 Danville you authorized a 15 percent corpus invasion for the current fiscal  
15 year and an increase in the Southwest budget, subject to this invasion today.  
16 If you look on page 69 of your packet, there are two recommendations for  
17 the budget. The first is to increase the R&D budget 46.7 million to fully  
18 fund the Research & Development subject to the invasion that you  
19 recommended last week.

20 DELEGATE KILGORE: I'll make a motion for  
21 both of those.

22 SENATOR HAWKINS: Do it separately.

23 DELEGATE KILGORE: I'll make a motion for  
24 the corpus invasion into the Reserve account 22.9. That's 46 million to the  
25 current R&D budget and the balance of the invasion to Reserve at 46 point,

1 we did that last time.

2 SENATOR HAWKINS: You have the motion  
3 before you. Are there any questions on that? All in favor say aye? (Ayes.)  
4 Opposed? (No response.)

5 MR. NOYES: When you'll notice the actual  
6 interest, that'll be credited so in April we'll deal with allocating that amount,  
7 and we certainly don't have to guess, because we'll know for sure in March.  
8 The Committee may remember we had two bond issues, one was taxable and  
9 the other was tax-free. The use of those two kinds of money is different.  
10 One of them is unrestricted and you may use it for anything, such as  
11 scholarships, salaries and other sorts of costs. The other money being  
12 restricted, and you're limited to equipment and other things such as hard  
13 assets. A couple of years ago you gave the Staff the authority to determine  
14 which kind of money was used for each grant, and the Staff has been  
15 keeping that up. I just thought it was appropriate for the Commission to  
16 know where we are as to the burn rate between the two kinds of money,  
17 which Senator Wampler asked about earlier today.

18 The bottom line here is to keep you informed as to restricted  
19 and unrestricted and what they can be used for. For the restricted funds, you  
20 have obligated 41 percent of that pot, with 231 million remaining  
21 unobligated. With respect to the unrestricted money being a larger pot, you  
22 have obligated 18 percent of those monies, with 501 million remaining. I  
23 think the question arises, why do you care about this split. There are a  
24 couple of things to think about. If you use a hundred million dollars in  
25 research and large parts of that are for soft costs, that will come out of your

1 unrestricted pot, and you will go from 500 million to 400 million,  
2 conceivably.

3           The second point is that while this may not be a problem for  
4 you now, there will come a day when you're going to get pinched because  
5 you need one kind of money and you've used that up and you've got the  
6 other kind. We just want to keep this in front of your eyes; you don't need to  
7 do anything. We'll do this from time to time, but just be aware.

8                           DELEGATE KILGORE: If we were going to do  
9 something, what would you suggest, or what would you do?

10                          MR. STEPHENSON: Staff has attempted to use  
11 restricted money where possible to maintain for you maximum flexibility in  
12 the future. We've pushed projects into the restricted bucket. You can see we  
13 started at 390 and 231 left, and we'll continue on this path.

14                          DELEGATE KILGORE: What's the danger in the  
15 restricted dollars if that number keeps going down? What's the danger  
16 there?

17                          MR. STEPHENSON: I don't think there is any  
18 danger that I can think of. The only one, and I'll choose my words carefully,  
19 in the event someone else wants to use these monies, you might want to  
20 think about how you deploy them.

21                          DELEGATE KILGORE: I've got you.

22                          SENATOR HAWKINS: Even with the  
23 Technology money, 100 million coming off the top, 100 million coming off  
24 the top, unrestricted, we could still use a combination of those funds, could  
25 we not?

1 MR. STEPHENSON: Yes, we would use the  
2 restricted where possible, and for the soft costs we must use unrestricted.

3 SENATOR HAWKINS: Fine. We'll just continue  
4 with what we're doing?

5 MR. STEPHENSON: Yes, sir. The next slide I  
6 prepared for you is one that is informational only, and I think it will help  
7 understand the posture of your Endowment, and these are round numbers to  
8 make a point. The original Endowment was closer to a billion dollars. You  
9 have invaded 37 percent of that money, you have awarded 31 percent of it,  
10 but only 15 percent has actually gone out the door in cash. So, you can see  
11 the pipeline of grants that have been awarded but not yet disbursed is fairly  
12 large, and all those monies are in the bank earning interest, so to speak. This  
13 is kind of where you are. That invasion percentage of 37 percent does not  
14 reflect what we contemplate will happen tomorrow, though, for another  
15 invasion, and that will take you from 37 percent to 47 percent. You will  
16 have invaded about half of your Endowment. Keep in mind invading it  
17 doesn't mean you've committed it, and it does not mean that you have  
18 disbursed it.

19 SENATOR HAWKINS: Those that have been  
20 awarded have not been spent yet; there may be some point where there may  
21 be some kind of a clawback for some money not utilized.

22 MR. STEPHENSON: Your Staff has printed in  
23 your book a stale grant report each time, and for grantees that are not using  
24 the money for the purpose intended, we're applying pressure for them to  
25 surrender those monies back to the Commission so that you can continue to

1 reuse them. This is for information only, Mr. Chairman; I don't think you  
2 need to make any decision about that.

3 SENATOR HAWKINS: Okay. The Reserve  
4 Fund.

5 MR. NOYES: If you'll look on page 73 in your  
6 book, you can see where we are with the Reserve Fund. The beginning  
7 balance was 1.2 million, and you added at the beginning of the year roughly  
8 20 million, you've approved 24.7 million TROF balance, and right now we  
9 are in arrears about 3.6, although tomorrow's invasion will be adding in  
10 substantially more. Just for information purposes, there is a large project  
11 you'll be considering tomorrow. The interest that we get that we'll know  
12 about in March will be added into the Reserve Fund in ample time to  
13 accommodate any expenses incurred for the large project. We're completely  
14 covered on the cash flow issue, otherwise Stephanie wouldn't be sitting  
15 down.

16 MR. OWENS: What percent of the actual interest  
17 --

18 MR. NOYES: -- We'll know that pretty soon,  
19 because the six-month clock on the first batch which were approved is about  
20 to run out. We're hearing about specific ones that the TROF Panel approved  
21 which are not going to make it. I'll certainly be able to provide facts at the  
22 January meeting on this. We don't have it today. We haven't yet heard  
23 specifically on any that the clock has run out on. More than half won't make  
24 it.

25 MR. MAYHEW: Just for my information, what's

1 the difference between the TROF Fund and the Reserve Fund? Is there a  
2 distinction?

3 MR. NOYES: The TROF Fund is formula-driven,  
4 based on jobs and private investment in the different jurisdictions within the  
5 Commission. The Reserve Fund is established to provide that match that is  
6 required, for example ARA federal stimulus projects. That ranges from 20  
7 to 50 percent leveraging funds, but it's not tied specifically to whatever  
8 purpose is consistent with --

9 MR. MAYHEW: -- I just wasn't aware the TROF  
10 Panel was --

11 MR. NOYES: -- The reason the TROF Panel  
12 decides these is that these come in and there are due dates for applications  
13 that are going out to federal agencies or other places, and our quarterly  
14 schedule doesn't allow us to be able to respond in a timely fashion. We're  
15 reporting that information at each Board meeting.

16 MR. MAYHEW: Will there be a replenishment of  
17 the Reserve Fund, or is this it for now?

18 MR. NOYES: The interest that will be accruing  
19 when we find out about this will be added into the Reserve Fund, although  
20 some of that we expect will designated for specific projects and transfers to  
21 other committees. It's self-replenishing in the sense that if a deal doesn't  
22 make it money comes back after 180 days.

23 SENATOR HAWKINS: We have a list of the  
24 grants that are awarded.

25 MR. NOYES: I refer you to page 74 of your book.

1 That's a list as of last week, or as of the time the book went out, Reserve  
2 Fund applications with the disposition of the individual request.

3 MR. THOMPSON: Mr. Chairman, I suspect some  
4 of these entities that have received commitments of Reserve Funds will be  
5 coming back or asking for an extension. Is that possible?

6 MR. NOYES: Yes, and the Board agreed that the  
7 Executive Director could provide the extension for a reasonable time if it's  
8 justified and not just asking about it. Where an extension is not provided,  
9 that entity can reapply, get in the queue, and we'll do them in the order  
10 received.

11 MR. THOMPSON: I think what's being asked is  
12 that the stimulus dollars are not flowing as quickly as possible.

13 SENATOR HAWKINS: You mean the federal  
14 government isn't doing what they said they were going to do.

15 All right. The Opportunity Fund.

16 MR. STEPHENSON: Mr. Chairman, you may  
17 want to follow along on page 15 of your book. I presented here on the  
18 screen a couple of quick facts. In your TROF grant program you have made  
19 over 300 offers for companies to come and create jobs in investments since  
20 the Commission started. Fifty-six percent of those resulted in a deal where  
21 we disbursed the money, and you put \$46 million out in those deals. Of the  
22 ones you disbursed, 58 percent of them performed as agreed. Nineteen  
23 percent of them performed part of their promise, and we have about 23  
24 percent of them that are in default. You've seen some of these numbers  
25 before. Your Staff continues to work with these companies, and there are

1 many defaults. In this economy we're in, many companies are not able to  
2 meet their forecast and they're falling short of these targets. We're being as  
3 lenient as is reasonable, which you asked us to do. Still, there are some  
4 companies that cannot make their target and are having to pay some money  
5 back.

6 DELEGATE KILGORE: Of the ones we have  
7 approved, do you know how many jobs have been created, or is there any  
8 way to follow that and figure out how many jobs have been created with the  
9 TROF Funds?

10 MR. STEPHENSON: Terry, that's a knowable  
11 figure, and I just didn't compile it for today. It would be helpful to see that.  
12 It's a pretty big number.

13 DELEGATE MARSHALL: The number of jobs  
14 also ----- not just jobs, but what do they pay?

15 MR. STEPHENSON: Delegate Marshall, the older  
16 TROF agreements were silent as to the pay level. The newer TROF  
17 agreements contain the level of pay as part of the promise against which the  
18 compliants will be tested. You'd be surprised when it comes time to sign,  
19 the level of pay seems to drop before they sign. We need the proof before  
20 we sign.

21 Just quickly, you have in your books on page 16 a list of  
22 TROF agreements that are in default and have not been cured. Scott  
23 County is in that list, it got cured yesterday, and that comes off. We've  
24 whittled the list down substantially. There are a couple of others that are in  
25 the process of getting cured, but your posture of freezing disbursements until

1 these are cured has been invaluable in cleaning this up, and that's been most  
2 helpful.

3           There is one TROF matter I wish to bring to your attention.  
4 You may remember when you last met, and I'm speaking about before last  
5 week, that we had a particular company whose headquarters was located in  
6 Abingdon, Virginia, the Alpha Natural Resources. They contemplated  
7 moving their headquarters. Your TROF Panel approved an award of  
8 500,000. At your Executive Committee meeting you raised from 500,000 to  
9 3.4 million and you affirmed your desire for the TROF Panel to use its  
10 money to make that grant available. Since then the address for the  
11 headquarters has shifted away from Washington County, where you  
12 approved it, and the proposed address is now Bristol. The TROF Panel has  
13 weighed in on that change and has affirmed it, and I'm back in front of you  
14 to ask that you affirm that change because of the size of the award being  
15 over the normal TROF award.

16           Mr. Chairman, I'm seeking confirmation from the Executive  
17 Committee of its intent to continue that award in spite of the change of  
18 address.

19                           SENATOR HAWKINS: The TROF group  
20 recommended that. Is there any discussion of any consequence before we  
21 get to a vote on it?

22                           DELEGATE JOHNSON: It's all Washington  
23 County and the City of Bristol; it's just a move of a few miles. All the  
24 citizens who would benefit will continue to benefit.

25                           SENATOR HAWKINS: Do I have a motion

1 and a second? All right, a motion has been made and seconded. Any  
2 discussion? All in favor say aye? (Ayes.) Opposed? (No response.)

3 Our next meeting will be in the City of Richmond the day  
4 before the Legislature begins.

5 MR. NOYES: The Executive Committee will  
6 meet on the 11th and not the 12th. All right.

7 MR. RUTHERFORD: Mr. Chairman and  
8 members of the Committee, we just wanted to give you that handout as  
9 further evidence as to why we can't collect from anybody when they don't  
10 have any assets. This letter is from the CPA who was doing the company  
11 books, who also happens to be the IDA attorney. I went to him and  
12 asked him to investigate this on behalf of the IDA, and he came back  
13 with this letter saying there were no assets in the DWT&F corporation,  
14 which is the one that has a hundred thousand and still outstanding,  
15 and that's what we were seeking relief on.

16 SENATOR HAWKINS: Thank you, sir. Any  
17 comments? Any public comments?

18 MR. DAY: I would briefly just want to put an idea  
19 in the Committee's head to think about. I'll speak in the abstract. It seems to  
20 me that any good project that we're going to put \$25 million in, we ought to  
21 have a seat on the Board of Directors. I think Senator Wampler would fill  
22 that seat.

23 SENATOR WAMPLER: That would be fine.

24 MR. DAY: It's just something to think about.

25 SENATOR HAWKINS: Any more comments?

1 We have a motion to adjourn. We're adjourned.

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3 PROCEEDINGS CONCLUDED.

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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 **Virginia Tobacco Indemnification and Community Revitalization Commission Executive Committee Meeting when held on Wednesday, October 28, 2009 at 4:30 p.m. at The Wytheville Meeting Center in Wytheville, 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    day of November, 2009.

\_\_\_\_\_

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

My Commission Expires: October 31, 2010.