

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**VIRGINIA TOBACCO INDEMNIFICATION
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501
Richmond, Virginia 23219

Executive Committee Meeting

Wednesday, July 29, 2009
4:30 p.m.

Virginia International Raceway (VIR)
Alton, Virginia

1 **APPEARANCES:**

2 The Honorable Charles R. Hawkins, Chairman

3 The Honorable Terry G. Kilgore, Vice Chairman

4 Mr. Clarence D. Bryant, III

5 The Honorable Clarke N. Hogan

6 The Honorable Joseph P. Johnson, Jr.

7 The Honorable Phillip P. Puckett

8 The Honorable Edward Owens

9 The Honorable Frank M. Ruff

10 Mr. James C. Thompson

11 The Honorable William C. Wampler, Jr.

12

13 COMMISSION STAFF:

14 Mr. Neal Noyes, Executive Director

15 Mr. Ned Stephenson, Deputy Director _

16 Mr. Timothy Pfohl, Grants Program Administration Manager

17 Ms. Stephanie Wass, Director of Finance

18 Ms. Britt Nelson, Manager of Program Assessments

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: The Executive
2 Committee meeting will come to order.

3 Neal, would you please call the roll?

4 MR. NOYES: Mr. Bryant?

5 MR. BRYANT: Here.

6 MR. NOYES: Delegate Byron?

7 DELEGATE BYRON: (No response.)

8 MR. NOYES: Mr. Day?

9 MR. DAY: (No response.)

10 MR. NOYES: Deputy Secretary Hammond?

11 DEPUTY SECRETARY HAMMOND: (No
12 response.)

13 MR. NOYES: Senator Hawkins?

14 SENATOR HAWKINS: Here.

15 MR. NOYES: Delegate Hogan?

16 DELEGATE HOGAN: Here.

17 MR. NOYES: Delegate Johnson?

18 DELEGATE JOHNSON: Here.

19 MR. NOYES: Delegate Kilgore?

20 DELEGATE KILGORE: Here.

21 MR. NOYES: Senator Puckett?

22 SENATOR PUCKETT: Here.

23 MR. NOYES: Mr. Owens?

24 MR. OWENS: Here.

25 MR. NOYES: Senator Reynolds?

1 SENATOR REYNOLDS: (No response.)

2 MR. NOYES: Senator Ruff?

3 SENATOR RUFF: Here.

4 MR. NOYES: Mr. Thompson?

5 MR. THOMPSON: Here.

6 MR. NOYES: Senator Wampler?

7 SENATOR WAMPLER: Here.

8 MR. NOYES: We have a quorum, Mr. Chairman.

9 SENATOR HAWKINS: Thank you, sir. Can I
10 have a motion to approve the Minutes of April 22, 2009? It's been moved
11 and seconded that the Minutes be approved. All those in favor signify by
12 saying aye? (Ayes.) Opposed? (No response.) Motion is carried.

13 Mr. Noyes.

14 MR. NOYES: The Capital Access Program.
15 Some years ago we made an award to the Department of Business
16 Assistance. We're on Page 7 in your book. That project has run into the
17 three-year limitation that you all have established where there are funds that
18 have not been disbursed. We have had discussions with DBA. What they
19 are saying is that if we require, we would clawback the 250,000, then they
20 will have insufficient funds. They're spending, they believe, about 35,000 a
21 year to manage this program, which is an on-going program. What they
22 have asked, and what I'm recommending to you, is that we proceed with the
23 disbursement of the final 250,000, agree to that, and then they are not going
24 to turn that loan portfolio with the responsibility for managing it among nine
25 or ten banks back over to the Tobacco Commission. They do not have the

1 funds. If we go ahead with this 250, they have agreed to manage that or
2 service that program, which has been very successful. My recommendation
3 to you is that the balance of the 250,000, that we agree to disburse that on
4 the request of DBA and that they continue to manage the program. And
5 that's the motion.

6 SENATOR RUFF: Can you clarify that they will
7 continue to keep it in the tobacco region?

8 MR. NOYES: Yes, that's a condition of the
9 agreement.

10 SENATOR RUFF: Then I'd make the motion.

11 SENATOR HAWKINS: Any other questions?

12 DELEGATE KILGORE: I'll second that motion.

13 MR. FERGUSON: Just a question, Mr. Chairman.
14 I assume, in reading the motion on Page 7, that the third contingency is that
15 the funds be used in the continuation of the program for which the grant was
16 originally made. Will there continue to be some clawback provisions should
17 that not happen anymore?

18 MR. NOYES: That's correct, yes, sir. They will
19 continue to use the funds for the intended purpose and continue to service
20 the portfolio.

21 MR. FERGUSON: If somebody decides they want
22 to use it for something else?

23 MR. NOYES: No, that was not part of our
24 discussion.

25 SENATOR HAWKINS: If they used it for

1 something else, that's not in the contract, is it?

2 MR. FERGUSON: That's what I'm asking. Is
3 there any provision that says that?

4 MR. NOYES: In the original grant agreement.

5 SENATOR HAWKINS: Any other questions?
6 Are you satisfied?

7 MR. FERGUSON: As long as we make sure that's
8 what it says.

9 SENATOR HAWKINS: It's been moved and
10 seconded. Does everyone understand the motion before us? All those in
11 favor say aye? (Ayes.) Opposed? (No response.) The motion carries.

12 MR. NOYES: The Reserve Fund, if you will open
13 your Board books to Page 9, you will find a tabulation, a windshield report if
14 you will, as of 7-15 grants that have been approved, the approval dates and
15 approval amounts. Since the 15th there have been two additional approvals,
16 and the total approved amount at this point is just a bit over \$11,000,000.

17 DELEGATE KILGORE: Mr. Chairman, these are
18 funds that the TROF Committee approved where we had the matching
19 federal dollars.

20 MR. NOYES: A minimum of a one-to-one match,
21 and most are ARRA projects, but not all of them. They also provide a
22 stipulated requirement for a one-to-one match.

23 SENATOR HAWKINS: Any questions or
24 discussion? All right, moving on. Ned.

25 MR. STEPHENSON: Members of the Committee,

1 for ten years now you have operated the TROF program, which basically
2 provides money to private companies in exchange for a job and investment
3 promise. There have been about 170-some disbursements of about
4 \$42,000,000.

5 Upon inspection, we are finding that about half of those
6 companies are not performing as agreed to under their contracts. If I can
7 direct you to Page 56 toward the back of your book, you can kind of see the
8 numbers there, but we're looking to see if the jobs promised were actually
9 created, and about half of those expected are coming up short, and many of
10 those that came up short have repaid the shortfall as agreed, and they have
11 performed under the contract. A number of them have not repaid and have
12 not produced the jobs. You may remember, some time ago the Commission
13 froze future disbursements from the Tobacco Commission to any locality in
14 which there is a defaulted TROF, and you were asking the localities to cure
15 the problem so you could unfreeze the disbursements. Gentleman, this has
16 pinched a number of counties. If you'll turn to Page 57, that is a list as of
17 early July of those counties who have a TROF that is in default. This has
18 been an ongoing problem, and there are others that have matured that have
19 been added to the list, and this is a problem that I think deserves a little
20 conversation. We have one particular locality who is present today who is
21 being pinched by this rule, and later on, Mr. Chairman, they may want to
22 address the Executive Committee.

23 I might pause and entertain any questions that you have about
24 the mechanics and how this has worked.

25 DELEGATE HOGAN: Mr. Chairman, this is

1 something that sometimes I've been jumping up and down about for some
2 time. In this economic environment it's not surprising that people have not
3 hit the target that they thought they would be hitting. I'm just wondering if
4 three years ago or two years ago if you were going to create a hundred jobs
5 and then you had to deal with what you've had to deal with in the last 18
6 months, you're probably not going to make it. I'm just wondering if you
7 really want to do this in this environment.

8 SENATOR HAWKINS: We've had this
9 discussion several times before, and it's always lingering about how we're
10 actually going to approach this problem. I think we need to have some sort
11 of foundation that we can build these grants on and be able to depend on
12 those things that people say they're going to do. Your point is well taken,
13 and I think we need to have a full discussion of it and determine what our
14 policies will be.

15 MR. STEPHENSON: Delegate Hogan, in January
16 on your motion, Staff has been lenient in helping these companies through
17 these difficult times with extensions and reduced some of these things. We
18 have set up some payment schedules, and we've been very lenient in trying
19 to help them through this. At that time you said we were going to do that
20 through July.

21 DELEGATE HOGAN: Mr. Chairman, how about
22 extending that to January or indefinitely?

23 SENATOR HAWKINS: We're not in business to
24 create problems for people, but we need to make sure people understand that
25 there are some commitments we have to live up to. The Staff has been

1 working with these individual localities. I don't think that's a bad thing.

2 DELEGATE KILGORE: If we extend this, does
3 that prohibit one of these localities from receiving funds during that time we
4 extend it?

5 MR. NOYES: Delegate Kilgore, it is the
6 disbursement of the funds, the approval of the funds, that is held up. To
7 answer your question, when it comes to disbursement, until there is some
8 agreement or compliance, then the existing regimen shall be that there will
9 be no disbursements. Continuing it is certainly a good idea, and I would
10 make the point if I may, Mr. Chairman.

11 SENATOR HAWKINS: You may.

12 MR. NOYES: That a number of these projects fail
13 to meet the threshold numbers that were promised well in advance of 2008.
14 Some of the projects go back to 2007 and even 2006. Extending it, and in
15 every instance Mr. Stephenson has offered the opportunity of a work-out in
16 very generous terms. Extending it, I think is a very good idea, and
17 eliminating it particularly after 800,000 has been returned from most of the
18 places.

19 MR. OWENS: Mr. Chairman, I have no problem
20 with extending it; if we extend it indefinitely and say we're going to forgive
21 it, I don't think that would be right.

22 SENATOR HAWKINS: What about a time
23 frame?

24 DELEGATE HOGAN: In six months, and take a
25 look at it then.

1 SENATOR RUFF: Mr. Chairman, I'm not sure a
2 whole lot is going to change if we do it in six months; why don't we go
3 ahead and extend it until July next year?

4 DELEGATE HOGAN: I have no problem with
5 that.

6 MR. STEPHENSON: To be clear, it's your
7 suggestion that the Committee extend Staff authority to negotiate through
8 next July?

9 SENATOR RUFF: Yes.

10 DELEGATE HOGAN: Yes.

11 MR. STEPHENSON: And typically when a
12 company is responsive to us and asks for an extension, typically we grant
13 that for a year, still trying to play ball and trying to work through this. When
14 they try to work with us, we grant that. By the way, Delegate Kilgore, that
15 extension is a cure for the freeze. It's best regarded as a cure until the
16 deadline comes again.

17 MR. NOYES: So I think the motion is to extend
18 the policy and to authorize one year.

19 SENATOR HAWKINS: Is that a motion? The
20 motion is made and seconded. So what we're doing is extending the policy
21 we have in place for one year and allowing the Staff to work with the
22 localities in trying to work out some method to resolve these problems and
23 trying to be as lenient as we possibly can, based on the circumstances.
24 Those that do not want to play ball with us at all, that's a different subject.

25 MR. STEPHENSON: Senator Hawkins, there is

1 another facet to this problem, and that is that the Commission has
2 established on three occasions that the localities that ask for these grants
3 shall be liable for these grants to be repaid in the event a company defaults.
4 That posture has produced some displeasure among a number of the counties
5 who do not want to be held liable and when found liable don't want to repay.

6 SENATOR HAWKINS: Let's go ahead and
7 recognize this gentleman from Russell County. Who is here from Russell
8 County?

9 MR. RUTHERFORD: I'm Harry Rutherford from
10 Russell County, County Administrator.

11 SENATOR HAWKINS: Are you going to do this
12 as a tag team, or are you just going to do it on your own?

13 MR. RUTHERFORD: We've just come through
14 this deal. We had a company who you all invested 150,000 in and it went
15 defunct. They didn't declare bankruptcy, but they just closed up shop and
16 sold out, and there were no assets left or anything to get it from. From the
17 original performance agreement it obligated the company, which was DWT;
18 it was a flooring company, housing-related, of course. It did not live up to
19 its obligation, the principals nor the jurisdiction. We have tried every way in
20 the world. We had this come up with CGI last week where you approved
21 250,000 using that money for an expansion. We had to do something, and
22 the attorney said that we could not legally pay it out of county funds because
23 there is no obligation of the county to pay it, that we could give you a gift if
24 we had earned money to give it to you. Ned offered us a settlement of
25 \$100,000, 25,000 a year for four years. We had 10,000 which came from

1 what we had earned where we charge a percentage on any industrial revenue
2 bonds that we get. As of right now we don't know where we would come up
3 with the 25,000 next year, because we don't earn that much money. The
4 attorney says if we pay it out of county funds, then it would not be a legal
5 obligation. We're here asking for some type of help. We paid the 10,000 in
6 order to get the CGI finalized that we announced last week with a hundred
7 jobs at \$50,000-plus a year. It would have looked bad if we had said folks
8 we can't do it because it's \$250,000 not coming, that would have really made
9 all of us look bad. We came up with the 10 and got it started.

10 A couple of things I thought of talking to Ned about is that the
11 performance agreement makes the locality totally responsible if the company
12 does not perform. Does the Tobacco Commission not have any
13 responsibility? They're the ones who actually approved it, and we didn't
14 make application on behalf of the client. Couldn't that possibly be a shared
15 responsibility? If you really want to be sure you get your money back,
16 another way I talked to Ned about is possibly going to some of the larger
17 insurance companies and see what percentage they would take to do a
18 performance bond on every grant so you would be sure of getting your
19 money back. I'm trying to throw out some alternatives, and I'm not trying to
20 be hard-nosed or anything. It kind of puts us between a rock and a hard
21 place. Of course, if we were the only county in this position, that would be
22 one thing, but I understand several of you gentlemen had jurisdictions in the
23 same position that we're in.

24 Our attorney is explicit on it, that if it's not a legal debt, but
25 under the new performance agreement it would be a legal debt and the

1 county would pay it if they had the money. We just don't have any money as
2 county administrator. This could all be a whole new bag of worms. If we
3 had earned money, we could give it to you. We have earned the money for
4 the 10,000 and we gave that to you as a gift, we just gave it to you, and that's
5 the way it had to be done in order for us to stay legal and stay out of jail. So,
6 I don't know what the answer is, but I know it's a serious problem, and I
7 know you need your money back. If they had anything, I would gladly get
8 that to you in a heartbeat. They don't have anything, and you'd be wasting
9 your money. I was in the automobile business, and I even got sued in a
10 bankruptcy. It doesn't bother me to sue somebody that owes us money.

11 SENATOR HAWKINS: I don't understand how,
12 we've been in this position for a long time, and that's one reason for the
13 performance agreement being put in place, trying to figure out how we can
14 handle this ongoing obligations. We make grants to localities based on the
15 localities coming to us with their recommendations. It's worked very well,
16 except for a few instances like this that have popped up over the years. I'm
17 not sure exactly what we can do or where we stand on this.

18 Frank, have you looked at this agreement?

19 MR. FERGUSON: Ned and I talked about it a
20 little bit. The performance agreements were changed two years ago, partly
21 because of this issue arising. The question is whether or not the old
22 agreement is enforceable versus the new agreement that is against the
23 localities; probably not, and that's the real nut of the problem. The real
24 problem is how do you get the money back. Whoever gives it back, and
25 sometimes there won't be any funds there.

1 My recollection of the history of this was that because these
2 were TROF funds, as opposed to something going through a normal grant
3 cycle, we really relied upon the locality to do the due diligence on the credit
4 worthiness of the, if you will, of the recipient, and they probably had a three-
5 person committee that would review them in a quick manner, and so forth.
6 It was also the position of the Commission we didn't want to be in the
7 position of having to chase these dollars down; that was not what the
8 Commission was about. They really didn't have the resources or the
9 inclination to be debt collectors. The problem with any kind of TROF
10 program, you want to have money available quickly. You're always going to
11 run the risk, even though you've done due diligence, you're also going to be
12 exposed. These are pure grants, and it wasn't intended to be handled the way
13 we do other things. Then as opposed to where you control the process. This
14 was received money or dollars for various things they would use to bring
15 advances of businesses and so forth.

16 Ned and I have talked about it, and we haven't gotten down to
17 the nitty-gritty as far as better ways to do the agreement. One way the
18 agreement may be strengthened going forward is to make the obligation of
19 the ultimate recipient stronger as to the locality. That's not going to address
20 the problem if they go bankrupt.

21 SENATOR HAWKINS: There's not a bankruptcy
22 involved here?

23 MR. FERGUSON: I understand they have no
24 assets. The bankruptcy would be the easier way to handle it. The situation
25 he's got, where the man says I'm here and I've got no money, and you can

1 sue me and get a judgment; come take my shoes, that's all I've got. One of
2 my sections in the AG's Office, they do debt collection, and we run into
3 these problems all the time, and we can get whatever we can get. I would
4 say it's probably something you don't want to make a decision sitting here
5 right now. Ned and I, along with Neal, can look at it again; maybe there's a
6 better way to do a performance agreement. I think most of the localities, and
7 has been for some time it's just part of the deal, but policy has nothing to do
8 with the law. In this particular situation I don't know, I don't have any legal
9 advice to give. Everybody knows pretty much as far as the concerns or the
10 agreement itself. The original agreements were done to be quick and easy
11 and try to make everyone happy, and we found out it didn't work so well, so
12 we tightened up a little bit, but the problem still remains.

13 SENATOR HAWKINS: The advantage of the
14 TROF funds is where we can act fairly rapidly to make sure things take
15 place in the counties where the economies can begin to grow. The
16 disadvantage is they happen fairly rapidly and we do depend on localities to
17 be able to bring some sort of security with it that these are good
18 recommendations being made. The TROF has worked extremely well, and I
19 hate to see that as a problem.

20 MR. RUTHERFORD: I don't have any questions,
21 but our new agreement is very specific. Under the old performance
22 agreement --

23 DELEGATE HOGAN: -- I hear what Frank is
24 saying that you and Ned will work this out. So, let's let Frank and Ned work
25 this thing out so this gentleman can get his questions answered and then

1 make a recommendation and take it up next time.

2 SENATOR HAWKINS: Let's do that, let's go
3 ahead and see what we can do and fine tune this and come up with
4 something that suits everyone. We have to make sure that there is some
5 standard.

6 MR. RUTHERFORD: I'm just saying that
7 something that will work for all of us and we all share the blame.

8 MR. BRYANT: Is the gentleman correct when he
9 says the original agreement does not make the county legally liable?

10 MR. FERGUSON: I'm not sure I would agree a
11 hundred percent with his comment what the attorney told him. I think there
12 is some room in there. That was a concern that was raised repeatedly by the
13 localities. That's one of the things that was changed two years ago when we
14 were hearing that a lot. I don't know that that's been tested in court, to my
15 knowledge. I can't give you a firm answer right now. We knew at the time
16 the original one was designed that there was a trade-off between making it as
17 user friendly and designed to best achieve the TROF objective, versus an
18 ironclad legal agreement that we knew would be enforceable.

19 SENATOR HAWKINS: Let's go ahead and work
20 on this.

21 MR. RUTHERFORD: If you can help us out, we'd
22 appreciate it.

23 SENATOR WAMPLER: I realize that we will try
24 to work out future or perspective rough spots; the fact of the matter is the
25 performance agreement was signed by an entity, and we expect that to be

1 adhered to, whether or not the localities sign an additional agreement with
2 the business ultimately gets the cash. That's probably where the disconnect
3 is in many of these cases. I don't know that it's entirely fair to send Ned
4 back out to say work out a solution on this one ,because we gave him a
5 pretty tight boundary to operate within, and I think he's been quite
6 reasonable in his offers to localities, and I think that represents the
7 Commission's posture very well.

8 MR. STEPHENSON: If I may, Mr. Chairman, I
9 feel a duty to the Commission to see that you get what you pay for. When
10 those contracts default, the real essence of this problem is that who is going
11 to be mean enough and willing to press for the funds? The locality doesn't
12 want to be seen in that light, and this is a neighbor employer, and press them
13 and sue them and try to get paid. I don't think the Commission wants to be
14 seen in that light.

15 I'll tell you that many of these defaulting companies are not
16 necessarily the mom-and-pop. These are multi-national big companies.
17 They have a shrewd cast of characters, and they don't think they have to pay
18 you and will not unless they are pressed. The real essence of this question is
19 who's going to wield the hammer? Is the locality going to wield the
20 hammer? I've spent my life doing that, and I know how to do it, and I can
21 tell you it's not pleasant, but there are ways to get paid if you want to get
22 paid, but I'm not sure the Commission wants to be seen in that light.

23 SENATOR HAWKINS: Does this company have
24 any assets at all?

25 MR. STEPHENSON: My thoughts about that, Mr.

1 Chairman, are that often there are no assets, but sometimes when you press
2 them hard you'd be surprised what they can find in terms of assets. There
3 are ways to get at them. We've had some discussion about companies who
4 reach the finality of bankruptcy, and it's my belief that when that occurs
5 there is nothing there for us to get, and we need to give up, so to speak.
6 Short of bankruptcy there are often assets, and we all know how to plead
7 poverty when we need to.

8 MR. FERGUSON: I agree with what Ned is
9 saying. One of the issues that has been problematic, and we've gone through
10 that, is that some of these companies, if you assume a company is asset-less
11 if a company has failed or refused and they promise 500 jobs and they only
12 do 100 and they promised a million dollar capital investment and they've
13 only done a hundred thousand and they make a business decision not to
14 change their plans, that's a different situation in my view than when
15 somebody tries their best and it didn't work out. Just like in this case, the
16 flooring company was involved in the housing market, and that sank, and the
17 flooring business sank with it.

18 Right now the way the agreement is set up we don't have the
19 job of pursuing that money, and we don't have the contractual authority to do
20 it, although subrogation might say we could. If that's the case, then I'll offer
21 the services of my department, my debt collection folks in the AG's Office,
22 to help with that. They, like Ned, have been doing that for a long time. If
23 there has to be a policy decision to do that, they're going to treat it like any
24 other debt they're collecting.

25 SENATOR HAWKINS: Maybe we can go

1 through Russell County and in the process try to find out or figure out if
2 there is money there that we could get. Is that some sort of discussion we
3 should have, if we want to go forward?

4 MR. FERGUSON: We can work on that, but as I
5 say, that's like a case-by-case basis.

6 MR. NOYES: I can assure you that in the case of
7 the Loan Forgiveness Program for Southside educational loans, that where
8 the matter is turned over to the AG's office there is a resolution, and it is a
9 hundred percent.

10 MR. FERGUSON: We wouldn't guarantee, but it
11 has helped a lot.

12 SENATOR PUCKETT: I've had considerable
13 discussion with our people, and also Ned, about the Russell County
14 situation. We were in a bad spot because we desperately needed help in the
15 new technology piece CGI, and they're expanding and doing wonderful. I
16 also recognize, and I've said this to our local people, that this Commission
17 has a policy in force right now and Ned has bent over backwards to make
18 this thing work, and we're okay for a year, but I don't know what will happen
19 between now and next year. The worst possible situation in a year is that
20 Russell County has to put \$25,000 into its budget. I believe somewhere
21 down the road we probably can do that some way. From a legal standpoint
22 they feel like they're in a bind because their county attorney has said you
23 don't owe this. That's the piece that needs to be looked at, but we're okay
24 right now, and we paid the 10,000, and we're doing what Ned offered to us.
25 We'll move forward in a year if something doesn't change.

1 SENATOR HAWKINS: I think we're going to
2 have a discussion with the Attorney General's office, and we may be able to
3 get some help there, so we'll discuss this and see where we can go from
4 there.

5 I believe there's a motion on the table to extend this; we've done
6 that. All right.

7 Stephanie.

8 MS. WASS: Page 11, the FY2010 budget to
9 increase the current year's budget to the reserve account by \$5,630,466.78
10 from previously unclaimed indemnification. There is a surplus from the
11 previous year. When we approved this budget in January we were
12 estimating the endowment interest, and it actually came in at 3.77 million
13 more than we had thought. There are some unbudgeted funds that we can
14 increase the reserve account.

15 SENATOR HAWKINS: Any discussion?

16 SENATOR RUFF: I'd make a motion for that.

17 MR. BRYANT: Mr. Chairman, I understand why
18 you want to move money to the reserve, but in looking at the
19 indemnification part, it bothers me that in 2008 there was a lot of money left
20 on the table. I'd much rather see that money go to Agriculture. Therefore,
21 my substitute motion would be that the \$1,028,850 go to Agribusiness and
22 the remainder go to the reserve fund.

23 SENATOR HAWKINS: You want to split it?

24 DELEGATE HOGAN: I have another motion. I
25 don't know if it's a substitute. I've got a sad story to tell, and I'll tell it quick.

1 In Halifax, as many of you know, we had this Energy Center this last time.
2 The budget for these energy centers, the motion coming before the R&D
3 Committee, or there'll be one shortly. Probably some of you are not aware
4 that in Halifax we've had sort of a two-part project. We already had one for
5 the Energy Center, and we have a major expense for the Higher Ed Center
6 for a couple of years. If you add up all the money, 12 or 13 million on the
7 project total, and the Commission probably has about six in it and the rest is
8 coming from other places.

9 That Center is basically under construction right now. There is
10 no operating budget for it. There is a conflict between the Energy Center
11 being operated on a budget. What we're trying to do is what's called the bag-
12 factory, get this going. It has all kinds of needs, Advanced Manufacturing
13 and some other things. Neal has been down there and can tell you all about
14 it, and it's a good deal. If we take that 750,000 and cut it up among these
15 two projects, we can't get either one of them done. This Advanced
16 Manufacturing and training program, they can't hire people based on, Neal
17 and I have been over this many times, they cannot hire people based on a
18 one-year budget saying come work for us we can pay you a year and we
19 don't know what will be done after that.

20 In addition to that, locally we're going to try to work out these
21 issues. The Energy Center and the Higher Ed Center are in conflict, but it
22 boils down to we can't get do with the Energy Center what we need to get
23 done. If we do the budget, then the question is where are you going to get
24 the money from and then, no, we need it for the bag factory, and that goes
25 back and forth. It's been going on for six months like that. I'm asking you,

1 there's an application for both budgets. This last time one got kicked over to
2 R&D, I guess from Special Projects. They've gone round and round about
3 that.

4 The bottom line is we need your help to try to get this resolved.
5 If we can get a million dollars, we can take that budget plus the Energy
6 budget and resolve this for the next three years. The reason I say three years
7 is this. I think everybody here knows that if they're going to the General
8 Assembly for more of an operating budget in the next biennium that's not
9 going to happen. If we can't identify the funds, and we don't have to spend
10 all that, if you can't identify the funds right now, they can't get done what
11 they need to get done. It will kill that program for the next two or three
12 years.

13 What I'm asking for, there's an application in R&D right now,
14 and we can figure out a way to get it to the right place, is that we should
15 allocate a million dollars of this reserve money to solve that problem, and I'll
16 drag Ned into this and Neal and let Neal work with us locally and come up
17 with a budget and get the Energy Center funded and get this bag factory
18 funded. I'd like to have an opportunity to do that. If we don't allocate the
19 money, I don't know what we'll do.

20 SENATOR HAWKINS: Clarke, we've got the
21 five centers that we set aside 750,000 per center. If we start expanding, and
22 your argument is certainly sincere, we've got the other four that would want
23 another million, too. I don't understand why we didn't put this in one budget
24 to start with. If the bag factory and the Energy Center are competing against
25 each other and both expecting our funding, I don't know why we're funding

1 two competing sources.

2 DELEGATE HOGAN: They're not doing the
3 same thing. They're competing for operating dollars. My response to that is
4 with these other Energy Centers, have any of them broken ground yet?

5 MR. NOYES: No, sir.

6 DELEGATE HOGAN: They're a long way from
7 really needing operating money. We're in a very different situation with this
8 bag factory. Normally I would say the Halifax County allotment, let's use
9 the allotment and make it work. The problem is we've got a major industry
10 right now that will take that allotment and get that done, but we can't commit
11 that allotment without making trouble for ourselves.

12 SENATOR HAWKINS: What I understand is that
13 you want us to pay for two years in advance, this year and two extra years?

14 DELEGATE HOGAN: I want the Commission to
15 hold the money. I don't want the Commission to pay for anything without
16 the funds allocated. The bag factory can go out and hire people and we can't
17 say we can pay you this year without the next year. All I am saying is that
18 we have a chance to really do something good and pretty exceptional. We
19 can work it out if the funds are sitting there. If we can't, then we've got no
20 chance without the money sitting there. We've got some chance if the
21 money is sitting there and we could get this worked out. All we have to do
22 is allocate money that you didn't know you had yesterday.

23 DELEGATE KILGORE: Basically you've got two
24 different entities. You're got an Energy Research Center, which we've given
25 750 to, and then you've got this other manufacturing unit.

1 MR. NOYES: Seven hundred fifty, which was the
2 amount agreed to provide that, or will be recommended to the full
3 Commission tomorrow for approval. That amount clearly will not be three
4 years' worth of needs for operational, principally at the bag factory. In terms
5 of the modeling and simulation and energy piece, that particular project has
6 in fact received 18 months of operation support. At some point we will need
7 to look very seriously at operation support for the bag factory which is
8 getting ready to go under construction. I couldn't agree more with Delegate
9 Hogan. In the programs that would be going on in the bag factory, what
10 they're doing right now is trying to hire people and get this program started
11 right now.

12 SENATOR HAWKINS: Is the application in?

13 DELEGATE HOGAN: Yes. The application went
14 to Special Projects and got sent down to R&D.

15 MR. NOYES: At the request of the applicant.

16 DELEGATE HOGAN: Thank you, I'm not
17 arguing that. All I'm saying is that if you find it in your heart to allocate this
18 money, then we can sit down locally and make this thing work, and if you
19 don't, we basically have no chance for it to work if we're going to
20 cannibalize ourselves.

21 SENATOR HAWKINS: You want to hold the
22 money in trust so that you all can make plans to hire people and have some
23 assurance that the money is there to take care of the obligation?

24 DELEGATE HOGAN: Yes. We'll work the
25 budgets out over the next 60 to 90 days if we can. Staff will be involved,

1 the best and brightest we're going to lose. A big part of the project is based
2 on having people ready to go to operate. If we want to start a facility and
3 bring in a rookie to do the work, I don't think that's what the Commission
4 wants us to do. I don't think that's what your opinion is. You want to make
5 sure that we do due diligence. Again, I really believe that if we don't get this
6 thing funded, or at least committed to funding, then we're going to lose some
7 of the best and brightest people we have.

8 SENATOR WAMPLER: Mr. Chairman, I think
9 Mr. Owens directed his comments at me; I'll be glad to respond. I would ask
10 Staff is there not a cash balance within this footprint that could take care of
11 at least part of or the first year or 18 months of operation?

12 MR. NOYES: Senator Wampler, Halifax County
13 does have in allocation funds. There maybe a call on most or all of those
14 funds, I don't know. I am told that there are some near term deeds. There is
15 750, however the issue is the longer term and whether or not we can, if we
16 make a decision today that will support that three-year window which 750
17 cannot support. Now, could they come for an allocation from Economic
18 Development? Certainly that would be up to the county.

19 DELEGATE HOGAN: Here's the problem, Mr.
20 Chairman. We'll have an allocation and hopefully in the next there will be
21 an announcement that will commit that allocation, but that's going to create a
22 problem for us. If we get all of these details, which would be 18 months
23 versus three years, how do you know if, I'd be happy to go over it, but all I'm
24 asking for and all Ed is asking for, if we can allocate a million dollars of this
25 money and let us work with Staff and the local communities to get this

1 worked out, and we'll work it out. That would give us a chance to work it
2 out, because as Ed said, we've got some talented people there who are
3 working in this Advanced Manufacturing facility, and we need to keep those
4 and move forward.

5 DELEGATE KILGORE: With the allocation
6 under R&D last week, 375, that's where you're asking the money to go to?

7 DELEGATE HOGAN: The total allocation for
8 this is 750, and what we're trying to do, if we can get this chunk, is we can
9 take the money, take that 750 plus a million and create a budget that would
10 handle the Energy Center for a year and a half and then commit for the bag
11 factory for three years, and that will give us the ability to get the Center up
12 and running and they can hire some of these people that we need to make it
13 work.

14 SENATOR HAWKINS: The Committee works on
15 a motion.

16 DELEGATE HOGAN: I don't know how to make
17 the motion. I'm asking for one million.

18 MR. FERGUSON: Mr. Chairman, there's a
19 substitute motion pending.

20 SENATOR RUFF: I'll withdraw my motion.

21 MR. FERGUSON: That would make Mr. Bryant's
22 motion the main motion, which is to allocate the unclaimed 2008
23 indemnification funds, one or something over a million dollars, to
24 Agribusiness. The motion is not inconsistent, but I think you probably need
25 to take that motion up first.

1 DELEGATE HOGAN: Can I make an amendment
2 to that motion, to C.D.'s motion? What I'd like to do is amend that you
3 allocate one million dollars in addition to the million dollars so that C. D.
4 Bryant has allocated a million dollars to be taken off and put into the reserve
5 fund to develop a three-year operation budget for the Advanced
6 Manufacturing Center in Halifax to be worked out with Staff over the next
7 60 days.

8 DELEGATE KILGORE: So you're tying both of
9 these motions together?

10 DELEGATE HOGAN: You can do it separately.

11 SENATOR HAWKINS: A motion has been made
12 by Mr. Bryant that the unallocated indemnification money of 2008 be set
13 aside to be used for Agribusiness Subcommittee's work.

14 SENATOR RUFF: Second.

15 SENATOR HAWKINS: That's been moved and
16 seconded. Any discussion?

17 UNIDENTIFIED: The original motion was 2007
18 and 2008.

19 SENATOR HAWKINS: 2007 and 2008.

20 MR. BRYANT: One million twenty-eight
21 thousand eight hundred fifty.

22 MR. NOYES: This figure would go to the
23 Agribusiness Committee?

24 MR. BRYANT: Yes

25 SENATOR HAWKINS: Does everyone

1 understand the motion? This transfer will be used for the agricultural part of
2 the Agribusiness Committee. Any discussion? All those in favor say aye?
3 (Ayes.) Opposed? (Noes.)

4 DELEGATE HOGAN: Then I would ask that one
5 million be set aside; you can designate the application number, I can't
6 remember that, for Halifax Educational Foundation to develop a budget to
7 fund the Advanced Manufacturing Center for the next three years.

8 MR. STEPHENSON: Is this the award?

9 SENATOR HAWKINS: We need to make sure --

10 MR. NOYES: -- It's an earmark. That'll be
11 brought in October to the R&D Committee.

12 SENATOR HAWKINS: We need to look at the
13 application.

14 MR. NOYES: These are funds that will accrue to
15 the R&D Committee for a recommendation.

16 DELEGATE KILGORE: Does the R&D
17 Committee have to vote on it?

18 MR. NOYES: That's my understanding, that you
19 all wish to pursue it.

20 SENATOR HAWKINS: We have to go through
21 our normal process.

22 MR. NOYES: We can do it through Southside
23 Economic Development; we can do it through any number of mechanisms.

24 MR. FERGUSON: Not to wade into the policy
25 issue here, but as I understand what is being proposed, I do think that it

1 needs to be funded through some designated committee, whether it's R&D or
2 Southside, but to the extent that the Executive Committee instructs that
3 committee, it's only being designated that that committee should be used for
4 this project. I think you can do that and take that proviso on the designation.

5 SENATOR HAWKINS: Does everyone
6 understand the motion? We're going to set aside a million dollars to be used
7 by Southside Economic Development Committee for the bag factory in
8 Halifax County to be disbursed over three years if certain criteria are met.

9 MR. FERGUSON: The Halifax Education project,
10 because that involves both of those pieces.

11 SENATOR HAWKINS: All those in favor say --

12 SENATOR WAMPLER: -- Mr. Chairman,
13 discussion? That's fine.

14 SENATOR HAWKINS: I'm sorry. We're open
15 for discussion. All those who wish to make a comment, please speak.

16 Senator Wampler.

17 SENATOR WAMPLER: No, sir, thank you.

18 SENATOR HAWKINS: Anyone else? My
19 rudeness shows, I apologize. All those in favor say aye? (Ayes.) Opposed?
20 (Noes.)

21 MR. NOYES: The noes are Mr. Thompson,
22 Senator Wampler and Senator Puckett. Are there any other noes? The
23 motion carries, Mr. Chairman.

24 MS. WASS: Does the balance get --

25 MR. NOYES: -- Yes, the balance to reserve.

1 SENATOR HAWKINS: Can we have a motion on
2 that? It's been moved and seconded that the balance be rolled into the
3 reserve. Any discussion? All those in favor say aye? (Ayes.) Opposed?
4 (No response.) The motion carries.

5 The next meeting is set for October 28th in Wytheville.

6 MR. NOYES: Leave your travel vouchers at your
7 place and Michelle will pick them up. Hot laps around the track will be
8 offered and pick up at the VIPER facility, which is where the reception is
9 tonight. There will be a shuttle, and the tavern will be open this evening
10 after the reception. The reception is at the VIPER facility.

11

12 PROCEEDINGS CONCLUDED.

13

14

15

16

17

18

19

20

21

22 CERTIFICATE OF THE COURT REPORTER

23

24

25

I, Medford W. Howard, Registered Professional

1 Reporter and Notary Public for the State of Virginia at large, do hereby
2 certify that I was the court reporter who took down and transcribed the
3 proceedings of the **Virginia Tobacco Indemnification and Community**
4 **Revitalization Commission Executive Committee Meeting when held on**
5 **Wednesday, July 29, 2009 at 4:30 p.m. at Virginia International**
6 **Raceway (VIR), Alton, Virginia.**

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

9 Given under my hand this 14th day of
10 August, 2009.

11

12

13

14

15

16

17

18

19

20

21 My Commission Expires: October 31, 2010.

Medford W. Howard

Registered Professional Reporter

Notary Public for the State of Virginia at Large