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**VIRGINIA TOBACCO INDEMNIFICATION
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501
Richmond, Virginia 23219

Executive Committee Meeting

Monday, January 11, 2010

4:30 p.m.

Richmond Marriott Hotel (Downtown)
Richmond, 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 Kathy J. Byron

6 The Honorable Patrick O. Gottschalk, Secretary of Commerce and Trade

7 The Honorable Joseph P. Johnson

8 The Honorable Daniel W. Marshall, III

9 Mr. Buddy Mayhew

10 The Honorable Edward Owens

11 The Honorable Phillip P. Puckett

12 The Honorable Frank M. Ruff

13 The Honorable William C. Wampler, Jr.

14

15 COMMISSION STAFF:

16 Mr. Neal Noyes, Executive Director

17 Mr. Ned Stephenson, Deputy Director

18 Mr. Timothy Pfohl, Grants Program Administration Manager

19 Ms. Stephanie Wass, Director of Finance

20 Ms. Sara Williams, Grants Coordinator Southwest Virginia

21 Ms. Sarah Capps, Grants Coordinator Southside Virginia

22

23 COMMISSION COUNSEL:

24 Mr. Francis N. Ferguson, Counsel for the Commission

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1 SENATOR HAWKINS: I'll call the meeting of
2 the Executive Committee to order and ask Neal to call the roll.

3 MR. NOYES: Mr. Bryant?

4 MR. BRYANT: Here.

5 MR. NOYES: Delegate Byron?

6 DELEGATE BYRON: Here.

7 MR. NOYES: Mr. Day?

8 MR. DAY: (No response.)

9 MR. NOYES: Secretary Gottschalk?

10 SECRETARY GOTTSCHALK: Here.

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. 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: (No response.)

4 MR. NOYES: Senator Wampler?

5 SENATOR WAMPLER: Here.

6 SENATOR HAWKINS: The Chair will entertain
7 a motion to approve the Minutes of October 28, 2009. It's been moved and
8 seconded to approve the Minutes. All those in favor say aye? (Ayes.)
9 Opposed? (No response.)

10 Next on the Agenda is the contract for outside counsel.

11 MR. NOYES: Mr. Chairman and members of the
12 Committee, I'm please to report to you that the Honorable Frank Ferguson
13 has agreed to serve as outside counsel for the Commission. That has now
14 been accomplished.

15 SENATOR HAWKINS: Of all the people that we
16 could possibly have working for the Commission, I don't know anybody any
17 better than Frank Ferguson, because he's been with us since the beginning
18 and knows the history probably better than anyone.

19 MR. NOYES: Ladies and gentlemen, if you would
20 look at pages 27 and 28 in your Board book you'll find a memo from the
21 Office of the Attorney General, and it's from Gary Conover. I met with
22 Attorney General Mims and others in mid-December. A legal action has
23 been filed, and there is litigation going on. I think the memo is self-
24 explanatory. They're seeking \$1 million over a period of two years from the
25 Tobacco Commission, and that's not to accomplish enforcement of the MSA

1 but for actual litigation expenses. I urge the Executive Committee to
2 authorize the Executive Director to pay the legal bills, arbitration expenses
3 associated with the Attorney General's defense against challenges to the
4 Master Settlement Agreement as described in page 27 of your book.

5 The authorization is limited to \$1 million and expires on
6 12-31-2011. Further, \$1 million will be transferred from the Reserve
7 account to the Administrative Account in the FY10 budget, and that will be
8 increased by a quarter of a million for this purpose. Some of this may need
9 to be tweaked as we go forward, depending on when the legal bills come in.
10 There is at present a \$97,000 bill that's pending that the Office of the
11 Attorney General wishes us to help. I've spoken with both the Chairman and
12 Vice Chairman; both indicated they wish this to go forward.

13 DELEGATE KILGORE: I was going to ask Neal,
14 I wanted to make a motion. While we're looking at this, look at moving
15 \$23 million, \$118 million. If we need to have the cost of legal counsel to
16 represent us make sure that \$23 million rather than \$118 million, and the
17 Commission --

18 SENATOR HAWKINS: -- The reality of it is, it's
19 part of our responsibility. We're receiving a lot of benefits from this, and I
20 think it's a reasonable request, and I'll entertain a motion.

21 MR. MAYHEW: So moved.

22 SENATOR HAWKINS: It's been moved and
23 seconded. Does everyone understand the motion? Is there any more
24 discussion? All those in favor say aye? (Ayes.) Opposed? (No response.)

25 MR. MAYHEW: Mr. Chairman, does this leave

1 us without counsel?

2 MR. FERGUSON: Mr. Chairman, the name of the
3 suit is Brown & Williamson; all the tobacco companies are involved.
4 You've heard me talk about this over the years and about diligent
5 enforcement, and if we don't do that, we risk losing our MSA allotment for
6 any given year. This happened to be 2003 that's being litigated right now.

7 As you know, I'm retired from the AG's Office, so I'm no longer
8 having direct contact with it. The AG's Office itself carries the burden this
9 far, and I think our bills to date that we've already paid are, I'm sure they're
10 in excess of more than a half million dollars. We've been paying out of the
11 Revolving Fund for those, and that's simply between all of the other things
12 that come out of that fund. That's sort of exhausted, and we wouldn't have
13 enough money to cover everything going forward. We're entering the most
14 expensive part of the litigation.

15 SENATOR HAWKINS: This is extremely
16 important. All in favor of the motion, say aye? (Ayes.) Opposed? (No
17 response.) The motion is carried.

18 MR. STEPHENSON: Mr. Chairman, the Freedom
19 of Information Act as presently exists provides some limited protection for
20 the Commission for certain applicants, such as R&D applicants, who are
21 supplying us with sensitive information. There is some draft language
22 appearing on page 29 in your book that is being contemplated for legislation
23 during this session, and that will strengthen those positions to provide ample
24 coverage for the R&D applicants that need to come forward to the
25 Commission with sensitive information that would be damaging if it were

1 available to the public. This is by way of information to you, and you need
2 not do anything today, but this is being considered for introduction in this
3 session.

4 SENATOR HAWKINS: Has this been
5 introduced?

6 MR. FERGUSON: To my knowledge it hasn't
7 been introduced, but I would expect Delegate Kilgore and Senator Puckett
8 will be the patron of the bill.

9 SENATOR PUCKETT: I haven't seen it yet.

10 DELEGATE KILGORE: I haven't seen it.

11 MR. FERGUSON: The request has been made,
12 and I put the draft in on their behalf prior to the pre-file deadline back in
13 December, so it should be eligible for pre-filing by noon on Wednesday.

14 MR. NOYES: MBC was notified in December
15 that there was some additional due diligence that was required which
16 anticipated the NTIA decision to award \$16 million for a new Broadband to
17 work in southern Virginia. This is one of several pending applications
18 where Reserve funding has been requested and approved. However, the
19 requirement is 20 percent of \$4 million. One point nine eight was approved
20 from the Reserve Fund, and additional funds were approved from
21 Technology earlier. The situation is that in grants 1773 and 1774 and 1384
22 there are unobligated available funds that could fill part of the shortfall from
23 roughly 416 million total that is necessary for Mid Atlantic Broadband to
24 have a single award that they could show the NTIA as the match. This is
25 partly a logistical thing and actually a shortfall based on all the due diligence

1 work that has been going on. They're requesting that \$1,059,028 to grants
2 1773, 1774 and 1384 be transferred to the Reserve Account as part of a new
3 award. The total of that new award would be, and again, the 1,000,980 is
4 already approved. The new award total would be totaling 4,011,074 for
5 which MBC will be a Reserve Account Fund. The transfer of these funds
6 will be contingent on final NTIA approval. What they've done is put
7 together multiple grant sources, since there is no longer a Technology
8 Committee, and we could go forward on this.

9 DELEGATE KILGORE: Neal, grants numbers
10 1773, 1774 and 1384 are what grants?

11 MR. NOYES: They were Technology Committee
12 awards, the Executive Committee is it.

13 SENATOR HAWKINS: Any discussion?

14 SENATOR WAMPLER: How many additional
15 dollars would be required?

16 MR. NOYES: It's not budget neutral, Senator;
17 roughly, I believe it's just under a million dollars additional funds. Of this
18 additional amount a million dollars is in the NTIA application, and that
19 would be reimbursed on an 80/20 ratio, with then those funds coming back
20 into the Reserve.

21 MR. DERISO: When we submitted our
22 application we had funds coming together from the Reserve application and
23 some of the Commission grants that we have that we felt that we could use
24 those funds. That grant was submitted last fall to the NTIA for their
25 consideration. Since that time we have had some member requests to get

1 some of this built quicker than what the NTIA would allow that award, if we
2 were even awarded the money to start this project in Amelia County. We
3 needed to get that project underway last fall to meet that requirement for a
4 very large MBC member in Amelia County, which resulted in revenue
5 contracts for MBC. So we're allowed to use that money that was originally
6 allowed for leverage money to use that to do it now. What we're asking for
7 is to take all of the existing grants and put them together in a single
8 application.

9 Senator Wampler asked a question about additional funds, that's
10 \$972,044.34.

11 SENATOR WAMPLER: Does that mean you'd be
12 reimbursed 80 percent of that?

13 MR. NOYES: If the NTIA grants this and it is
14 ultimately approved, that 80 percent would be reimbursed back to us. The
15 net cost to accomplish this if NTIA approves it is less than \$200,000.

16 SENATOR HAWKINS: Does everyone
17 understand the request? Any discussion? I'll entertain a motion. It's been
18 moved and seconded. Discussion? All those in favor say aye? (Ayes.)
19 Opposed? (No response.)

20 MR. DERISO: We've taken this project quite a
21 long way. It's 20 percent of your money and 80 percent of federal money,
22 and we thank you for your support.

23 SENATOR HAWKINS: All right, Ned.

24 MR. STEPHENSON: Briefly, Mr. Chairman, on
25 page 32 you will see a synopsis and the status of all of your TROF grants. I

1 believe the Committee is aware that these grants have come under increased
2 scrutiny by the Staff. We've been very successful in bringing about
3 substantial compliance by many of these grantees, and the default rate is
4 dropping rapidly. We have not relented on any collection effort or
5 enforcement effort, with the exception of two or three bankruptcy filings, in
6 which case we have relented. By way of information to the Committee, it
7 may be necessary in the coming months to contemplate legal action against
8 certain entities to enforce the collection of some of these grants, and I'm
9 giving you a heads-up, and that hasn't happened yet, but there are several in
10 the making that may require that, and I wanted you to know they are on the
11 table.

12 SENATOR HAWKINS: Does everyone
13 understand the new rules and the agreements, so you won't be surprised in
14 the future?

15 MR. STEPHENSON: The applicants that use
16 these grants seem to understand quite well that they have a duty to be
17 diligent in the enforcement of these grants.

18 SENATOR WAMPLER: The good news, as I
19 read it, is that of the ten projects that are listed in our packet it creates over
20 1,329 jobs, which I think by any measure is a good outcome. I thank the
21 Staff for pointing that out.

22 SENATOR HAWKINS: All right, Stephanie.

23 MS. WASS: On page 30 of your book you'll see a
24 summary of the 2010 budget bill summary. These are the amendments to
25 the current year budget, 2010, as proposed by Governor Kaine and subject to

1 the legislature's approval. For the current fiscal year they have proposed
2 transferring \$230,369 from Commission funds to the general fund, also
3 taking the interest earnings from the remainder of the fiscal year. There is a
4 list of agencies of which we are listed as one which would equate to
5 approximately 400,000. This is not interest from the Endowment but from
6 the money in the general account. As far as the next biennium, they have
7 proposed taking all of the interest from the general account for the entire two
8 years. I've been told that service agency charges have gone down slightly
9 and the MSA enforcement costs have gone up slightly. One thing to note is
10 that the Virginia Tobacco Settlement Funds allocation was reduced from 10
11 percent to 8.5 percent, which was part of the reason why we securitized.

12 SENATOR HAWKINS: Thank you. That may be
13 one of the major things we did, securitize, and the future will tell.

14 Now as far as the proposed budget, we need to anticipate some
15 sort of advance toward the money.

16 William, do you have a comment?

17 SENATOR WAMPLER: I don't have a comment
18 on it.

19 SENATOR HAWKINS: All right, thank you,
20 ma'am.

21 Our next meeting will be in Roanoke, Virginia on April 28,
22 2010.

23 Any public comments? Does anyone in the public wish to
24 make a statement?

25 All right, thank you all for coming, and we're adjourned.

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PROCEEDINGS CONCLUDED.

CERTIFICATE OF THE COURT REPORTER

CRANE-SNEAD & ASSOCIATES, INC.

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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 Monday, January 11, 2010 at 4:30 p.m. at the Richmond Marriott Hotel (Downtown), Richmond, Virginia.**

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

Given under my hand this 28th day of January, 2010.

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

My Commission Expires: October 31, 2010.
Notary Registration Number: 224566