

1 **VIRGINIA TOBACCO INDEMNIFICATION**
2 **AND COMMUNITY REVITALIZATION COMMISSION**

3 701 East Franklin Street, Suite 501
4 Richmond, Virginia 23219

5
6
7
8
9 **Executive Committee Meeting**

10 Monday, May 16, 2011

11 11:00 a.m.

12 Institute for Advanced Learning and Research
13 Danville, Virginia

1 **APPEARANCES:**

2 The Honorable Terry G. Kilgore, Chairman

3 The Honorable Frank M. Ruff, Vice Chairman

4 The Honorable Kathy J. Byron

5 Ms. Mary Rae Carter, Deputy Secretary for Rural Economic

6 Development, Office of the Secretary of Commerce and

7 Trade

8 The Honorable Charles R. Hawkins, Chairman Emeritus

9 The Honorable Joseph P. Johnson, Jr. (via telephone)

10 The Honorable Daniel W. Marshall, III

11 The Honorable Donald Merricks

12 Ms. Connie Greene Nyholm

13 The Honorable Edward Owens

14 The Honorable Phillip P. Puckett

15 The Honorable W. Roscoe Reynolds

16 The Honorable William C. Wampler, Jr. (via telephone)

17 The Honorable Thomas C. Wright, Jr.

18

19

20

21

22

23

24

25

1 **APPEARANCES:** (cont'd)

2

3 COMMISSION STAFF:

4 Mr. Neal Noyes, Executive Director

5 Mr. Ned Stephenson, Deputy Director

6 Mr. Timothy S. Pfohl, Grants Program Administration Director

7 Ms. Stephanie S. Kim, Director of Finance

8 Ms. Sarah K. Capps, Grants Program Administrator -

9 Southside

10 Sara G. Williams, Grants Program Administrator - Southwest

11 Ms. Stephanie S. Allman, Program Administrator

12

13 COUNSEL FOR THE COMMISSION:

14 Mr. Francis N. Ferguson, Esquire

15

16

17

18

19

20

21

22

23

24

25

1

2 DELEGATE KILGORE: I'll call the meeting of the
3 Executive Committee to order. We've got Senator Wampler
4 and Delegate Johnson on the phone. Can you hear all right?

5 SENATOR WAMPLER: I can hear you loud and
6 clear.

7 DELEGATE KILGORE: Neal, would you call the
8 roll?

9 MR. NOYES: Delegate Byron?

10 DELEGATE BYRON: Here.

11 MR. NOYES: Ms. Carter?

12 MS. CARTER: Here.

13 MR. NOYES: Senator Hawkins?

14 SENATOR HAWKINS: Here.

15 MR. NOYES: Delegate Johnson?

16 DELEGATE JOHNSON: I'm here by phone.

17 MR. NOYES: Delegate Kilgore?

18 DELEGATE KILGORE: Here.

19 MR. NOYES: Delegate Marshall?

20 DELEGATE MARSHALL: Here.

21 MR. NOYES: Delegate Merricks?

22 DELEGATE MERRICKS: Here.

23 MR. NOYES: Ms. Nyholm?

24 MS. NYHOLM: Here.

25 MR. NOYES: Mr. Owens?

1 MR. OWENS: Here.

2 MR. NOYES: Senator Puckett?

3 SENATOR PUCKETT: Here.

4 MR. NOYES: Senator Reynolds?

5 SENATOR REYNOLDS: Here.

6 MR. NOYES: Senator Ruff?

7 SENATOR RUFF: Here.

8 MR. NOYES: Senator Wampler is on the phone.

9 Delegate Wright?

10 DELEGATE WRIGHT: Here.

11 MR. NOYES: Mr. Chairman, you have a quorum.

12 DELEGATE KILGORE: Do I have a motion we
13 approve the Minutes of 4-26-11? It's been moved and
14 seconded. All those in favor say aye? (Ayes.) Those opposed?
15 (No response.) All right, the motion is carried and the Minutes
16 are approved.

17 Now we have the budget presentation; Stephanie.

18 MS. KIM: What I'm going to do --

19 DELEGATE KILGORE: -- Delegate Johnson and
20 Senator Wampler, we're going to go through the budget. If
21 there are any questions I'll try to keep you informed, and if I
22 need to explain the slide I'll do it.

23 MS. KIM: In your packet you should have the
24 Proposed FY12 Budget.

25 SENATOR WAMPLER: Can you speak up, please?

1 MS. KIM: I'll try to speak up.

2 DELEGATE JOHNSON: That budget is of 5-10-11?

3 DELEGATE KILGORE: Yes.

4 DELEGATE JOHNSON: For FY 2011 and FY 2012?

5 DELEGATE KILGORE: That's right.

6 MS. KIM: The proposed budget is \$85.1 million.

7 We're proposing to take 45 ½ million from the Endowment,
8 40.7 million from the interest earnings last year, .9 million is
9 from a prior year's allocation that we set aside for the present
10 budget. Out of this budget, 71 ½ million for economic
11 revitalization, 10.3 million is for final payment of the
12 Indemnification.

13 DELEGATE KILGORE: Are you adding those
14 numbers?

15 MS. KIM: That's included in that 85.1 million. The
16 remainder is the administrative budget. In administration the
17 total budget is 3.3, which is about the same as the current
18 year, 3.9 percent of the total proposed budget. It does add one
19 new position, and Neal can address it. It includes 620,000 for
20 legal fees for bond counsel and general counsel. You recall
21 you approved setting aside 500,000 for litigation costs for the
22 Office of the Attorney General related to the MSA. The
23 administrative budget also includes 304,000 for
24 Indemnification processing, 332,000 for the Appropriation Act,
25 and this is the MSA enforcement, and 905,000 is allocated in

1 prior years and set aside from the previous administrative
2 budget.

3 DELEGATE KILGORE: Do you want to speak on
4 any of those points, should we have a question?

5 MR. NOYES: I will, Mr. Chairman. We added one
6 new position, and that person will be 100 percent dedicated to
7 verifying outcomes from projects approved in the past and
8 populating the database, and you'll learn more about the
9 database, some today and some next week, with information
10 that will allow us to do the analytical work that we have been
11 somewhat lax getting around to doing. There is no current
12 FTE in the office that can do that. It is critical at this juncture
13 that we get the database populated with outcome measures.

14 DELEGATE KILGORE: Does anyone have any
15 questions related to the one new position?

16 Now, the 620,000 for legal fees; I know we have bond
17 counsel, but does that include the Office of the Attorney
18 General that we're talking about related to more assistance on
19 other matters?

20 MR. NOYES: Yes, it does.

21 MS. KIM: Going on, for Indemnification, \$10.3
22 million budgeted for the calendar year 2012 Indemnification,
23 7.1 million for flue-cured and 3.1 for burley, and this is the
24 total remaining obligation.

25 DELEGATE WRIGHT: You said this is the last

1 payment?

2 MS. KIM: Yes.

3 DELEGATE KILGORE: When will the last payment
4 go out?

5 MS. KIM: It'll be June, 2012.

6 DELEGATE KILGORE: Did you all get that?

7 SENATOR WAMPLER: Yes.

8 MR. NOYES: June of 2012.

9 DELEGATE KILGORE: It's the last Indemnification
10 payment, June of 2012.

11 MR. NOYES: Typically, there is an extension that is
12 requested given where there is some question about eligibility
13 or some legal issue; we've always done that. 2012 will be the
14 last round.

15 MS. KIM: In the program budget, we have budgeted
16 7 ½ million for TROF, 5 million for Special Projects, 2 million
17 for Agriculture and 12 million for Education; Economic
18 Development, 12 ½ for Southside and 7 ½ for Southwest; for
19 Mega Park development, 25 million.

20 MR. NOYES: Any question about the program
21 budget? With the carryforward that exists, and we sent that
22 out to you a couple of weeks ago, your budget winds up being
23 right about where it was last year.

24 SENATOR RUFF: Mr. Chairman, on the TROF
25 money, and I see where the economy and we've got more

1 people, is that going to be enough, that category?

2 MR. NOYES: If I may, almost certainly not. Not
3 only are there more projects, but the projects tend to be larger.
4 We see this happening now for the last year, or maybe 18
5 months. One came before the Panel last week for \$4 million,
6 and I haven't seen all the tallies on that, but the
7 recommendations from Mr. Stephenson were, and he can
8 expand on that. We are seeing larger projects, and also as I
9 think all members here know, there are some large projects
10 out there that cannot be accommodated within the 7.5, and
11 we'll address that through the overall budget process.

12 DELEGATE KILGORE: That tends to be a problem?

13 MR. NOYES: It's a wonderful problem to have.

14 SENATOR RUFF: I just want to point out that has
15 been the case in the past, but it seems odd to me that we cut
16 that by more than half.

17 MS. KIM: This is the amended FY11 budget, which
18 when we started out with FY11 it was not.

19 MR. NOYES: There was a budget amendment.

20 SENATOR RUFF: I understand that, but the budget
21 should reflect, we believe, it should have some reality. Don't
22 you agree?

23 DELEGATE KILGORE: You're asking me? I
24 thought you said Neal.

25 SENATOR RUFF: You're the Chairman.

1 DELEGATE KILGORE: I understand what you're
2 saying; I don't know what that figure would be, probably closer
3 to 10 or 12 million.

4 MR. NOYES: No, it would be closer to \$20 million.
5 That's why there are options in terms of when and how much
6 we invade the corpus. Ned will speak to that next. In terms of
7 the budget to begin the fiscal year, 7.5 is my recommendation,
8 and we'll deal with additional needs as the budget transfers
9 and as this Committee recommends to the full Board.

10 MS. KIM: There is currently available 10.3, and
11 that's faceted into the amount budgeted.

12 SENATOR RUFF: I understand, Mr. Chairman, but
13 how much of that 10.3 will be there --

14 MS. KIM: -- It's hard to say.

15 MR. STEPHENSON: One transaction would take
16 nine of that.

17 DELEGATE KILGORE: Did you hear that, Senator
18 Wampler and Delegate Johnson? One transaction could take
19 nine million.

20 MR. OWENS: Mr. Chairman, I know in TROF there
21 is a lot of money that could get de-obligated during the year.

22 DELEGATE KILGORE: I'll tell you what we're going
23 to do, we're going to move forward as we hear from Ned on the
24 corpus invasion, and then we can go back and try to look and
25 see if anybody wants to make a motion to do that.

1 MR. NOYES: We can do it that way.

2 DELEGATE WRIGHT: Mr. Chairman, I'd like to ask
3 Frank, Senator Ruff, a question. The Education budget of 12
4 million, I know in the past we never had enough money to
5 meet all the scholarship obligations, and we discussed it last
6 year. Are you satisfied with this figure as far as being able to
7 meet what the Commission deals with as far as Education?

8 SENATOR RUFF: I would respond and, no, we're at
9 level funding, we do what we can do with what we've got and
10 that seems to be reasonable and fair.

11 MR. NOYES: If I may, Mr. Chairman, it is level
12 funding, and there is significant carryforward, and that will be
13 available, and in fiscal year '12 we'll be dealing with the issue
14 of scholarships in the Education meeting next Wednesday in
15 Blacksburg.

16 DELEGATE KILGORE: If you'll look in the middle
17 part of your paper that was provided to you, in Tab 5 the
18 middle part shows you the carryover. It looks like we still have
19 62 million in R&D. Is that right?

20 DELEGATE BYRON: Yes.

21 DELEGATE WRIGHT: Mr. Chairman, the reason I
22 make the comment, this is the first time I've actually been
23 involved in the budget process at the Executive Committee
24 level, and the Committee has always been told we need to go
25 back to the Executive Committee to get more information and

1 get more money, so that's why I'm trying to raise that point.

2 DELEGATE KILGORE: It looks like you're going to
3 have about 15; with the carryover you've got about 15.

4 SENATOR RUFF: Following up on what Tommy
5 said, I think that was a matter of three million dollars that
6 jumped from the previous year's nine million. I think we got
7 ahead last year, and we're in good shape.

8 DELEGATE MARSHALL: As scholarships are paid
9 back to us, and hoping most of the people move back to the
10 region, when this money is paid back, does that go back to the
11 Education Committee, or does it go to the general fund?

12 MS. KIM: The loan repayments go back to the
13 general account.

14 DELEGATE MARSHALL: Do we know how much is
15 coming back each year?

16 MS. KIM: I can tell you this fiscal year, or through
17 March and three-quarters, 12,000 should come back. Any
18 funds that are not used or not disbursed do revert back to the
19 Education Committee fund.

20 DELEGATE KILGORE: That's for the Scholarship
21 Program.

22 SENATOR REYNOLDS: With regard to that issue, it
23 seems to me, and I may be misreading, I think last year or this
24 past year within the past 12 months, there were some who
25 indicated to me in Southside that they were not eligible

1 because all the money had been used up. I'm gathering since
2 there was a carryover maybe there is some misunderstanding
3 on my part about that. Can someone help me understand if
4 we're meeting all the requests in Southside for education
5 benefits?

6 SENATOR RUFF: Let me just say that people apply
7 and sometimes they decide not to go and use the money.
8 Sometimes they decide not to go to school, and we have to
9 reserve the money and have it backed up.

10 MS. KIM: There is a deadline for application. When
11 they have been over-subscribed in the past, we had used
12 carryover funds to make sure they get funded. At some point
13 there is a cutoff when they have to apply.

14 MR. NOYES: That's what happened this last year.
15 The Committee met and provided additional funds, and
16 Southwest higher education was able to accommodate a
17 number of additional students from those that did not take
18 down the money or from other resources up to a deadline, and
19 they have to be deadlined at some point in time; it's not an
20 open-ended program.

21 DR. FOWLKES: Sometimes students apply for a
22 graduate program, and we do fill all undergraduate needs first,
23 and they're only eligible for that one program. If they reapply
24 for the graduate, we can't fund that unless there is money left
25 over. That may be where you're getting some of the people

1 saying they were not funded. Everybody that follows the
2 criteria that the Commission has established, to my
3 knowledge, if they've applied on time they've received funding.

4 DELEGATE MARSHALL: How many people actually
5 got scholarships?

6 DR. FOWLKES: I apologize; I didn't bring that
7 information with me, although we prepared that.

8 DELEGATE KILGORE: You'll have that for the
9 Education Committee meeting?

10 DR. FOWLKES: Yes.

11 SENATOR REYNOLDS: My recollection, and I find
12 that's happened more than I like, help me understand the
13 process how students are notified when the deadline is.

14 DR. FOWLKES: We mail to all the tobacco families
15 in Southwest Virginia all the criteria in the mail. We post
16 everything, and Southside gets all the information through all
17 the high school mailings that are sent out to all graduating
18 seniors in all the high schools in Southside, same thing with
19 the community colleges. All the students are notified of the
20 scholarship opportunities and deadlines and criteria, and all
21 the information is posted on the website for the students and
22 for everyone to see. It's a very open process. We also send
23 information to the newspapers across Southwest and
24 Southside and in to the various newspapers. I think we're also
25 doing it on Facebook. We try to use every possible way to get

1 the information out to the people.

2 MR. NOYES: Do you have a person available?

3 DR. FOWLKES: We have a person in Southside who
4 travels to all the different high schools throughout the Tobacco
5 Commission area, and there are meetings here at the Center
6 at the Institute to inform people of the application process, all
7 the guidance counselors at the high school and community
8 colleges meet regularly, so that they'll know the whole process
9 and what's involved.

10 SENATOR REYNOLDS: I understand that to mean,
11 for instance, if a child was a student and received Tobacco
12 help, a student at the Institution, and in the following year
13 they said they did not apply at the appropriate time, it was not
14 because they did not have the deadline?

15 DR. FOWLKES: You're correct, and because of that
16 the application process and reapplying for families, we
17 changed that last year, applying in Southside, because some
18 had promissory notes and a one-year note to the
19 Commonwealth to fulfill their obligations to repay the money
20 or come back to Southside and work off their loan. Through
21 all of this, as a result, they had to reapply every year. Last
22 year, the Commission let us work with the Attorney General's
23 office to develop a promissory note that would be good for four
24 years, and that way we would encumber Southside and the
25 students. This would cover the four years and know that that

1 student was going to be in the system for four years and
2 reapplying would not be necessary. They would update us
3 every year on their transcripts and GPA and the number of
4 hours they were taking. That's the only thing the students
5 would have to do each semester.

6 DELEGATE KILGORE: All right, moving forward.
7 Let's go on to something else.

8 MS. KIM: Just to give you an update on your
9 Endowment. The current balance is 535.9 million. You
10 approved in the last budget cycle a 2011 invasion of 80.4
11 million coming out next month. For the FY12 budget we're
12 proposing a 10 percent corpus invasion of 45 ½ million, which
13 will leave an ending balance of 409.9 million.

14 DELEGATE KILGORE: We voted already on the 15
15 percent.

16 MS. KIM: Yes. You don't make the transfer until
17 June of each year.

18 DELEGATE KILGORE: The only thing you're
19 proposing today is 10 percent?

20 MR. NOYES: The proposed 10 percent covers the
21 budget that we just reviewed, that's what it does. It doesn't
22 add off-budget funds, which is something Ned is going to
23 speak about.

24 MS. KIM: Your FY11 ending balance would be
25 455 ½ million. If you do the proposed 10 percent corpus

1 invasion, and if we were to use 15 percent corpus invasion,
2 that would increase available funds 68.3 million and lower
3 your ending balance.

4 DELEGATE WRIGHT: I'm kind of new at this, Mr.
5 Chairman. I'm wondering why we reduced the corpus
6 invasion 15 to 10 percent.

7 MR. NOYES: The budget is the budget for the year
8 and not the invasion, the budget for the upcoming year, the
9 budget based on 10 percent, not on 15 percent. If we decide
10 to go to 15 percent this is what the ending balances would be,
11 but we would not add the difference between 45.5 and 68.3 for
12 the line items that we just reviewed. They would be off of the
13 off-budget amounts that are available to accommodate the
14 various concerns, and there won't be enough in the TROF
15 then.

16 MR. FERGUSON: If you do the 15 percent you have
17 to have a super majority vote.

18 DELEGATE WRIGHT: The reason I asked that is
19 with the localities like they are and the economy, there seems
20 to be a reduction in the amount of money we're planning on
21 budgeting and spending, and I couldn't quite understand the
22 reason.

23 MR. NOYES: We're not reducing, the 10 percent is
24 not a reduction in the amount of the budget, it's the amount
25 in the invasion, and Ned will speak to this in a moment.

1 MS. KIM: Each year we transfer interest earnings,
2 March through February. From February 2011 investment
3 earnings were 40.7 million, which was transferred to the fund
4 as part of the FY12 budget in addition to the corpus invasion
5 reduced the fund for FY12.

6 DELEGATE KILGORE: Greater than last year?

7 MS. KIM: All on the general account by the
8 appropriate. We do not earn interest on the general fund
9 account. As of March 31st the fund's balance is 267.9 million.
10 Out of this 237.9 million is obligated, 74.3 million through
11 March, and we're about to disburse about 10 million in
12 Indemnification next month.

13 MR. OWENS: Is that Power Point available upon
14 request?

15 DELEGATE KILGORE: Can you send the Power
16 Point?

17 MR. NOYES: It's in your book.

18 DELEGATE MARSHALL: Maybe you could e-mail it
19 to the Executive Committee ahead of the Board book next
20 week.

21 DELEGATE KILGORE: Ned.

22 MR. STEPHENSON: Mr. Chairman, you have just
23 seen in Stephanie's budget presentation, which calls for a 10
24 percent invasion of \$45 million on this budget. I want to talk
25 to you just for a minute only about the corpus invasion and

1 not about the budget. Your Endowment corpus peaked out in
2 April 2007 at about \$900 million. That was tied over, and
3 that's when you sold the second bond. You have been
4 invading annually since then. Today the balance is 536
5 million. The June invasion, which is already set to occur in
6 about a month, will be \$80 million, leaving you 456. That's
7 kind of where you are today.

8 I also presented to you your invasion history. This is
9 what you've done since the inception, some years greater than
10 others, but that's just for historical purposes. The number in
11 question, of course, is the last number on the page in red,
12 which is for 2012. The Commission has the option of invading
13 whatever amount they want. I want to make a point with you
14 just for a moment that might help you understand this. We
15 deal with four different financial numbers inside our
16 Commission. Each one is somewhat independent of the other;
17 each one operates at its own speed. For instance, there is the
18 budget which Stephanie has presented to you. That is not
19 identical to the invasion. You can budget one number and
20 invade another number. Yet, different from those are the
21 awards, and obviously you're not making any awards today,
22 that will happen later, and yet the disbursements are another
23 set of independent numbers that happen after that. I'm
24 asking you to kind of think in your mind about de-coupling
25 these events and focus on the invasion itself.

1 What happens is if you budget to spend 10 percent of
2 your corpus but you invade 15 percent, that additional
3 amount is available to you later on if you need to use it. You
4 don't have to use it, and you can use it in a subsequent year,
5 just happens to not be on the budget. The Commission has
6 done that a couple of times in recent years. I think what we're
7 presenting to you today is the option to fund the budget with a
8 10 percent invasion, which is necessary, with the option of
9 making an invasion of 15 percent which gives you flexibility
10 later on. That is the question before the Executive Committee
11 today as to the extent of the invasion.

12 This will show you what will happen should you choose
13 to invade 15 percent as presented, Mr. Chairman. Any
14 questions?

15 DELEGATE KILGORE: If we vote to invade or take
16 15 percent, we don't have to necessarily spend it?

17 MR. STEPHENSON: Correct; it's available to you, it
18 has not yet been budgeted.

19 DELEGATE KILGORE: If you do not invade the
20 corpus today, is there an opportunity to invade it at a later
21 meeting?

22 MR. STEPHENSON: There is, to a point. There
23 comes a point in time at which that invasion opportunity is
24 lost forever. You have to do it before the end of the fiscal year,
25 or it's gone forever.

1 DELEGATE WRIGHT: Ned, what is the history on
2 the 15 percent invasion, totally spending it, versus carrying it
3 over to another year? You talked about the 15 percent. What
4 is the history of the Commission as far as actually using all
5 the funds available, or at times do we carry forward part of
6 that 15 percent?

7 MR. STEPHENSON: Delegate Wright, I would have
8 to do a little analysis to answer that completely, but I will
9 answer it by saying that all four of these numbers on the
10 screen are different numbers that occur at different speeds.
11 You might be awarding money slower than you are invading,
12 or you may be actually disbursing it faster than you're
13 awarding it. Each one operates at a different speed, and you
14 have to take a snapshot and find out where each one of those
15 is.

16 DELEGATE KILGORE: For example, I would say if
17 you look at the carryover amount, Delegate Wright, R&D \$62
18 million, a lot of those dollars in that carryover amount come
19 from that corpus invasion. Would that be correct?

20 SENATOR WAMPLER: I would make an observation
21 that is if there is a need to immediately invade that amount for
22 purposes of the corpus and if we had capitalized that, that
23 would be awarded over a period of time, such as R&D, 62
24 million, we ought to consider invading 15 percent to keep a
25 cash balance so we can show investors that we're serious, and

1 that's just an observation. I'm not sure that the case has been
2 made that we need to invade 15 percent when you look at the
3 existing balances and the carryforward that is likely to exist at
4 the end of the fiscal year. I'd also say this may not count if we
5 decide to do 10 or 15 percent and ask the Executive
6 Committee to hold that in FY13 and we no longer have the
7 statutory obligation for the quota holders and growers, if my
8 math is correct, something around 10.2 million that would
9 otherwise be available to allocate it to the budget. So I don't
10 think it's such that we would not have sufficient headroom to
11 operate with the carryforward balances and there might be
12 additional capacity, but that's just an observation.

13 DELEGATE KILGORE: Are your observations for or
14 against? I'm trying to follow you there.

15 SENATOR WAMPLER: My point is that if we had
16 the cash, and we can always come back.

17 DELEGATE KILGORE: You are on the Senate
18 Finance Committee.

19 MR. STEPHENSON: Mr. Chairman, if I may
20 respond to that. Our choice of the invasion does not alter
21 treasury's investment structure. It's a book entry, no money is
22 moved anywhere, so the investment stays put.

23 SENATOR HAWKINS: If you look at this thing
24 another way, we budget 10 percent, we allocate a 15 percent
25 invasion, it gives us 5 percent to be able to have cash reserves

1 to be able to deal with unknowns we may be facing from time
2 to time during the coming year. We don't have to spend these
3 monies, but at least these are liquid; we can allocate them if
4 something comes up or a major economic development
5 opportunity, rather than have to go back and invade for that
6 extra five percent at a future date. Once the Indemnification
7 piece is done and farmers are fully paid out that money, that
8 money would then go into our cash flow and our reserve could
9 build back up again. At this point, having a cash reserve is
10 not a bad thing.

11 DELEGATE KILGORE: Ned, go ahead.

12 MR. STEPHENSON: I would like to invite a motion
13 from the Executive Committee as to the desire to invade the
14 corpus of 15 percent or for 10 percent.

15 SENATOR HAWKINS: Mr. Chairman, I move that
16 we budget 10 percent and make a withdrawal of 15 percent.

17 DELEGATE KILGORE: So there's a motion for 10
18 percent, and that's when we go to Full Commission.

19 SENATOR REYNOLDS: Second.

20 DELEGATE KILGORE: There's a motion and a
21 second. Any discussion?

22 DELEGATE MARSHALL: So the additional five
23 percent is a reserve?

24 MR. NOYES: The reserve line item.

25 MR. STEPHENSON: It does not appear on the

1 budget, it is a book entry at treasury that is available to you to
2 put in the budget if at a later time you want to.

3 MS. KIM: There is a general account which is kind
4 of a catch-all, and it will sit there but not in the budget, but it
5 will be on the financial statement.

6 DELEGATE MARSHALL: But it's in the reserve?

7 MR. NOYES: The reserve program expired on
8 October 31st.

9 MS. KIM: The reserve is when it became grant
10 funding account and had to create another general account.
11 It's just in the name.

12 DELEGATE KILGORE: Delegate Wright.

13 DELEGATE WRIGHT: I appreciate your time in
14 answering my questions. I do agree having cash available is a
15 good idea and if you don't need it you don't spend it, if they
16 need it you can use it. I understand that more clearly now,
17 and I support that motion.

18 DELEGATE KILGORE: Anyone else have any
19 comments? Did you all hear the motion and second to
20 invade? All those in favor say aye? (Ayes.) Opposed? (No
21 response.)

22 DELEGATE JOHNSON: Aye.

23 DELEGATE KILGORE: Thank you.

24 MR. STEPHENSON: Mr. Chairman, did I miss a
25 motion to approve the budget? I don't think that occurred.

1 DELEGATE KILGORE: You're exactly right. Do I
2 have a motion to approve the budget as presented?

3 MR. OWENS: So moved.

4 MS. NYHOLM: Second.

5 DELEGATE KILGORE: I have a motion and a
6 second. Any more discussion? Let me just say, also, Ned and
7 Stephanie, I appreciate you taking the time to go through the
8 budget. All those in favor say aye? (Ayes.) Opposed?

9 DELEGATE WRIGHT: No. I do want to say I
10 appreciate your patience. I appreciate your taking the time to
11 go through the budget and some parts of it I'm not really
12 familiar with.

13 DELEGATE KILGORE: Thank you. Next on the
14 Agenda is GIS Infrastructure Mapping, and this would be
15 Stephanie Allman.

16 MS. ALLMAN: Good morning. I'm here to provide
17 an update on outcome measures at the grant level. We have
18 level one and level two outcome measures that we're going to
19 be tracking. The first level, two years ago Chmura Economic
20 & Analytics defined revitalization as "a more stable, diversified,
21 and growing economy that leads to higher living standards,"
22 and they provided metrics for us to measure across the entire
23 tobacco region. Those are: job creation, capital investment,
24 workforce participation rate, wealth and average wage and
25 diversity.

1 We're working right now on level two, grant level outcome
2 measures and reports by spending type or purpose. These
3 outcome measures we also want to have or be supported by
4 known third-party data. For example, the level one data that
5 we track comes from the VEC, the Tax Department, Weldon
6 Cooper and UVA. Just as an update for everyone because
7 we've been working on this more at the Committee level but
8 TROF always had an incentive granted for the purpose of
9 tracking. And the purpose is to track private capital
10 investment. We want to know the number of jobs created, the
11 average wages of those jobs, and those are best tracked by
12 VEC, and the amount of capital investment which we track or
13 use from the Commissioner of Revenue.

14 We have some educational outcome measures which we
15 brought to the Education Committee last fall, I believe. If the
16 purpose across the board is to get the Education grants
17 approved, we want to know per grant the number of enrollees,
18 the number of credit hours completed, the number of
19 diplomas awarded, the number of degrees awarded, the
20 number of certificated awards and the number of transfers to
21 four-year schools from VCCS or Southwest Higher Education.
22 And, also, we get that data from the Council on Higher
23 Education. VCCS has been working with us on this data
24 collection, and they're going to be tracking all the students
25 from the VCCS system across the region, all eight of the

1 colleges that we support. They'll give us unduplicated data
2 starting next year.

3 We've also developed some tourism outcome measures,
4 and this is tracked through Special Projects or Economic
5 Development , whichever committee approves them, and that
6 will be the same, but the purpose is to track to a specific area.
7 There we want to know the percentage of visitors, if it's
8 increased at the site, and the amount of increased visitor
9 spending in a locality or region. Also, the amount of increased
10 taxes generated by tourism in a locality or region, direct jobs
11 that have been created, and we track that with VEC, VCC and
12 a lot of other information. We work with the Virginia Tourism
13 Corporation to request data from the grantee because they're
14 familiar with it.

15 That brings us up to today to the focus of the
16 conversation. We fund quite a bit of infrastructure in the
17 region. There are two types of infrastructure investment by
18 the Commission, community development infrastructure, like
19 Broadband across the region, water and sewer, electricity,
20 natural gas, road and rail. We also fund public industrial
21 parks and buildings, business and commercial inventory. We
22 spend approximately, from my records, 255 million just on the
23 industrial parks.

24 So the question is, how can we track the Commission's
25 infrastructure funding, whether it's through Special Projects,

1 Economic Development, or wherever it has occurred? We
2 came up with a plan to map the Commission's infrastructure
3 investing using GIS, Geographic Information Systems. Phase
4 1 is public parks and building mapping. We were provided
5 Shp files and boundaries of all public parks in the region from
6 VEDP. The Timmons Group is helping us build a program
7 that can connect our gifts, which are grant tracking database
8 through the state files, for example, all the business parks,
9 and this can be used through the Broadband or
10 infrastructure. Then we're going to connect according to that,
11 and we have data from InfoUSA and residential data from the
12 Census Bureau. I'm just trying to give you an example of
13 what we'll be seeking to provide you. We are in the very
14 beginning process of this, and we purchased USA data from
15 1999 to map what is there today. We're using a program like
16 James Lloyd, senior application programmer, Timmons Group.

17 MR. NOYES: If I may add, we'll be able to say this
18 industrial park at this location did not exist in 1999, and after
19 certain infrastructure improvements these numbers of
20 businesses and these numbers of jobs at this location, all
21 that's going to be available on our website so that anyone can
22 come look at this particular park, and these investments will
23 be up next year.

24 MR. LLOYD: What we have done is put together an
25 application that takes all of the information and data and puts

1 it into a super database, and it's represented on the screen by
2 lines. What we have initially here is the capability to come in
3 and select one of the various sites, then as Stephanie said, we
4 can quickly assign these to the various grants with the
5 underlying data as well. Once we get that association made,
6 then we've got the full capability to slice and dice that data
7 and report on it any way we need to answer the questions that
8 we need to with regard to these. What we've got for you here
9 today is just one sample report. In this case we're going to
10 buffer out a mile and a half of this particular site and return
11 the corresponding InfoUSA business data. This represents
12 any and all businesses from the 1999 data, as well as the
13 current data. Initially we've got a summary of it; then as you
14 cycle down into more detailed information, you've got
15 information on grants, and in some cases more than one, and
16 then the detailed information about each of those businesses
17 available to us as well.

18 Are there any questions with regard to that?

19 DELEGATE KILGORE: Is this something the public
20 will be able to access?

21 MR. LLOYD: This application you're looking at here
22 is just to make those associations and to develop printed
23 reports. The next step in this is to report that data through a
24 web portal, and then the decision will be made as to which
25 data makes sense and how to best present it to the general

1 public. It's all in the database where you can get the report
2 and scale up to the enterprise level.

3 MR. NOYES: I see Ms. Povar back there. You've
4 been working with VEDP in cooperation with them and how to
5 design this and how to come up with this database. I want to
6 thank you very much for that information and that help.

7 DELEGATE MARSHALL: Help me understand what
8 the outcome of this is. What will it be used for? Would
9 economic developers look at this, a potential client coming into
10 the area, would they look at this?

11 MR. NOYES: The answer to that is that both will
12 have access to the next iteration of this through a web portal.
13 The general public will be, universities, or anybody that gets
14 on the website can do it, other state agencies wishing to have
15 information about their business. VEDP is one, and we can
16 tack all kinds of things onto this, almost any agency. This is
17 the foundation around which we build the entire activity, and
18 this is an interactive database.

19 DELEGATE MARSHALL: This will be a lot more
20 comprehensive with the Partnership, and we'll get a lot more
21 information from VEC and other groups.

22 MR. NOYES: It has the potential to be very
23 comprehensive. I think we'll be sharing this with other state
24 agencies that will have an interest in it, and it will also be
25 available for members of the Commission that want to see how

1 many jobs are there and give us an idea of what we've done in
2 the past. We can have Staff do that, and we won't have to be
3 doing research by looking in at project files; we can just see
4 what promises have been made and actually achieved. We'll
5 have it all in front of us.

6 DELEGATE BYRON: I would like to suggest that
7 going forward, just what we're doing and exactly where we
8 stand.

9 MS. ALLMAN: We're working on that, and our first
10 page is parks in the region, and we're gathering data from the
11 Broadband and all those folks we fund. We already have
12 MBC, and we can go back to the first page. We're going to
13 have everything that we've funded, and it will take some time
14 to get it all up, but once we do, we're getting that information
15 into a centralized location with this database. We're attaching
16 all the grants from our database to it.

17 MR. NOYES: The first thing is to get our database
18 cleaned up so we want to know what the outcomes are. There
19 are lots of different layers.

20 DELEGATE BYRON: Are you also putting the
21 grants that go forward there?

22 MS. ALLMAN: Only those that have been funded.

23 DELEGATE BYRON: We had a meeting the other
24 day about the Broadband and mapping for the whole state on
25 this Broadband.

1 MS. ALLMAN: There is another map; they're
2 mapping Broadband and these TROF grants, but what we
3 need to know, I've had lots of conversations with the
4 Broadband folks, they're working with us to provide
5 information we need. We're focusing on what's funded in the
6 tobacco region. They're going to get that to us, though.

7 DEPUTY SECRETARY CARTER: What about
8 workforce?

9 MS. ALLMAN: We're working on that, and we'll get
10 the updated information on workforce going back to 2008.
11 The working number of adults 15 and up, workforce
12 participation in the tobacco region, and the ages 15 and up
13 employed people. We can get some of that from VEC against
14 our control group. We can include all those other metrics, but
15 this is grants, grant level reporting. The other level one
16 reporting is across the region.

17 DELEGATE BYRON: Is this an internal approach?

18 MR. NOYES: We're talking about the database
19 operating data.

20 DELEGATE BYRON: All electronic?

21 MR. NOYES: I have these reports for the secretary's
22 office and other people.

23 MS. ALLMAN: You'll be hearing at other meetings
24 about this on-line application form; that's tied in, that feeds
25 directly into our database. Then you can calculate all this

1 data. Everything will be connected. Thank you.

2 DELEGATE KILGORE: Thank you. Thank you for
3 letting us know where we're going. Stephanie, do you have
4 any old business? I think we have an EB-5 on the docket.

5 MS. KIM: Just to review the history. At this point
6 the Indemnification payments, payments that are made to
7 quota holders and growers, the first three years 2000 to 2002,
8 and the Full Commission adopted in February of 2002 a policy
9 to quota holders and growers that said they would revisit it in
10 2003 and beyond. At that February 2002 meeting the
11 Commission voted to include flue-cured quota holders and
12 growers on a 50/50 split and burley quota holder growers
13 38/62 split. In burley quota holders receive 38 percent,
14 growers receive 62 percent. Subsequently the Agribusiness
15 Committee was created, and this March 2003 meeting the
16 Commission said you have the issue revisited. The committee
17 voted to keep the split the same and the long-term
18 compensation. They have been getting the same split since
19 the first year of the Indemnification in 2000. The Agribusiness
20 Committee revisited this subject in 2003 and came back to the
21 Full Commission for a vote, and the Commission made the
22 decision not to change anything. You're actually going to
23 bring this to the Full Commission, but I wanted to read to you
24 that we're going to ask the Full Commission to officially vote to
25 ratify the split between the quota holders and the growers.

1 The Agribusiness Committee approved this in 2003, and the
2 program began in 2000. The Agribusiness will bring this up
3 and vote on it.

4 DELEGATE KILGORE: We've been acting on it the
5 same way, there's a 50/50. Southside is 38/62, Southwest for
6 burley.

7 MS. KIM: Yes. This is not on your Agenda, but I
8 wanted to update you on it. As you recall, you directed the
9 Staff to look into the EB-5 Regional Center, and we did issue
10 an RFP on March 15th. It was issued on April 18th, and the
11 Review Panel received the proposal, and ultimately it came
12 down to price and a payment schedule. We have the Review
13 Panel, and there's going to be an award of a contract to
14 Virginia Innovation Development Center. We plan to send a
15 contract the end of May, a two-year contract for 130,000.

16 DELEGATE KILGORE: Senator Wampler, did you
17 hear that?

18 SENATOR WAMPLER: Yes.

19 MS. KIM: The Virginia Innovation and Development
20 Center and working with the local EBA-5, and this should be
21 done around the first of the year, and they expect the project
22 to be funded as early as the end of 2012, and this is a two-
23 year contract. It will be within the next two years.

24 MR. NOYES: The Full Commission will have to
25 approve the award.

1 MS. KIM: Today we're asking you to authorize the
2 Executive Director to enter into a two-year contract for
3 \$130,000 for the Innovation and Development Center to create
4 and operate the regional center for the Tobacco Commission.

5 DELEGATE MARSHALL: Virginia Innovations,
6 where are they located?

7 MS. KIM: They are, actually there are two
8 managing partners for this. The name of this entity was
9 created for the RFP. The managing partner of this has created
10 a successful regional center in North Carolina and South
11 Carolina, and they will actually be, I think the office will be in
12 Halifax County. I'm not sure if that is required or if they
13 require a physical office location for the regional center, but
14 the physical address is Richmond, Virginia. They're actually
15 here, Daniel Robinson and Bradley Weiss. In the coming
16 months you'll probably get to know them.

17 DELEGATE KILGORE: Do I have a motion we
18 authorize the Executive Director to enter into a contract? I've
19 got a motion and a second. Any more discussion? All those in
20 favor say aye? (Ayes.) Opposed?

21 DELEGATE WRIGHT: No.

22 DELEGATE KILGORE: All right. TROF Program
23 Review, Ned.

24 MR. STEPHENSON: Thank you, Mr. Chairman. I
25 have two or three specific TROF matters I need to bring before

1 the Committee today, but before I do that I'd ask if you would
2 allow me to give you a brief history to kind of catch you up on
3 how the TROF Program is operating and why these are before
4 you today. I'll run through them rather quickly.

5 The TROF Program has evolved over the last six or eight
6 years or so, and I want to tell you a little bit about how it was
7 when we first began the program, the nature of the program
8 and how it operated, and what it has evolved to.

9 In the early days of the TROF Program the county or
10 locality asked for money and were not obligated on the
11 contract. That's the way the program got started, and that
12 was a significant event and how it went. For most of the TROF
13 agreements, and in fact I think 100 percent of them, there
14 were no securities to secure the promises made by the
15 company. They were unsecured promises made to the
16 Commission. For most of the TROF agreements there were no
17 deliverables, testing, or in other words, if the promise was for a
18 hundred jobs there really was no mechanism to prove whether
19 that happened or not. There was a little bit of self-reporting
20 that took place, but no real testing of that. There were no
21 collection efforts for those that defaulted on their TROF
22 promises. We just didn't have that, and it wasn't addressed in
23 that way. We also had what I call no freeze. Later on we
24 began to freeze some resources on those that were in default;
25 early on there was no freeze. So you can see as the original

1 program grew and had exposure to the Commission, there
2 were losses that occurred in these contracts. In the last six or
3 eight years the program has developed to the point where the
4 counties are obligated under these contracts, and most of you
5 know that has not been particularly well received by some
6 localities, because it's burdensome to them, and we've been
7 over that a number of times, and that's the way it's written
8 now. There is occasional security for these promises. We have
9 seen deeds of trust, we have seen cash deposits, commercial
10 letters of credit where a county is afraid of the risk of a
11 particular transaction and they will seek to secure that
12 promise so that if these things go down they don't get hurt.
13 We are testing a hundred percent of these contracts, and if a
14 hundred jobs are promised, we're going to find out whether
15 that happens or not. If capital investments are promised,
16 we're going to find out from the Commissioner of Revenue
17 whether the tax books reflect anything. We give a hundred
18 percent testing. Obviously, when you test these you find out a
19 lot of things. We have a limited collection effort going on, but
20 keep in mind that the Commission really relies on the locality.
21 Some localities are aggressive with collection efforts and failure
22 to perform, and some are not. It's been limited up to this
23 point. You remember some time ago you placed a freeze, or
24 you asked the Staff to place a freeze on any further
25 disbursements to localities that would have a TROF agreement

1 in default. From the original program to the current, I think
2 you can see the program was operating more tightly. However,
3 the tightness of the program, coupled with the recession and
4 other events, have caused a problem that many of the TROFs
5 haven't fulfilled their obligations thus far. We have over a
6 hundred of these in the office. Sometime years ago you
7 instructed your Staff to work out those where there was a
8 default. We've done some of that through discounts, through
9 deferred payments, repay these over time. We've granted some
10 extensions and tried to work through these issues. On the
11 occasion where the localities or the companies are not satisfied
12 with what Staff has worked out, we grant them an appeal right
13 to this body and ask you to review the situation and make the
14 call.

15 That brings me to the several that we have before us
16 today. I'll present each one to you and tell you that each one
17 of these the ask is essentially the same, and that is they be
18 granted relief from the contract in some form. With each one
19 of these there is a unique story. Many of the stories are very
20 compelling and very convincing, but the dilemma comes down
21 as to whether you want to adhere strictly to the letter of the
22 contract or whether you want to waive or relax some of the
23 requirements based on the circumstances that are presented
24 to you.

25 The first one on the list here is Engineered Products of

1 Virginia. Mr. Curtis Frye is in the audience, and I'll ask him to
2 come up here and join us. Curtis has asked if he could
3 address the Committee briefly and tell you about what's
4 happened.

5 MR. FRYE: Companies get money from the
6 Commission in exchange for a job promise and a capital
7 investment promise. The contract provides a certain time
8 period by which that has to happen, otherwise the money has
9 to be refunded. That is the case most often. In this case there
10 were two grants made to Engineered Products in this time
11 period. One promised 16 jobs for which we found six, and the
12 other one promised 18 jobs for which we found no jobs. Both
13 promised capital investment, and we've asked for that
14 information but haven't gotten it yet. At stake is \$85,000. I
15 believe the refund obligation is the entire amount in this case.

16 DELEGATE KILGORE: Is this the town, county or
17 who?

18 MR. STEPHENSON: I believe that's Smyth County.

19 DELEGATE KILGORE: The Town of Saltville?

20 SENATOR RUFF: Did I hear you say what the
21 capital investment was?

22 MR. STEPHENSON: The first was 872,000 and the
23 second was 979,000.

24 SENATOR RUFF: Did I hear you correctly say you
25 got no report on how much they invested? You don't know

1 what they invested, is what I'm saying?

2 MR. STEPHENSON: That is correct. I'll tell you it is
3 frequent that we ask for capital investment information and
4 just cannot get it; for whatever reason we just can't get the
5 information from them.

6 MR. NOYES: We have a problem even with the
7 employment piece.

8 MR. STEPHENSON: Generally speaking, half of the
9 grants are tied to employment, all the cash investment and
10 progress is recognized in the refund that might be due. A few
11 of the contracts are written to say that if the employment
12 promise is not made the entire amount is due. That's the case
13 in one of these grants to Engineered Products. I'll also add
14 that in many, many cases where we could not get information
15 we needed, when you instituted the freeze and we froze
16 disbursements, then we got the information quickly.

17 MR. OWENS: Tell us about under the old program
18 or new program, how does that work?

19 MR. STEPHENSON: The TROF contract under
20 which these are written has evolved over time, and they've
21 gotten progressively tighter and tighter. I'd have to go to this
22 particular contract to tell you exactly what the terms were at
23 this time this was written. We must not assume that it is
24 entirely on the right-hand side of this ledger. It is an older
25 contract and missing some of the elements.

1 DELEGATE WRIGHT: My question is that, I'll just
2 comment and say I'm uncomfortable being in this position
3 with us making decisions based on previous agreements. Is
4 there an appeal process with this?

5 DELEGATE KILGORE: The issue is if they have a
6 history with the Staff recommendations and if they appeal to
7 the Executive Committee, and that's the appeal process.

8 MR. FRYE: Thank you for letting me come here. I
9 apologize that our business has given you such frustration.
10 We are a products development company. Our physical focus
11 has been on building components for transformers, primarily
12 for the electric grid, which is basically older. We're involved
13 with electric vehicles and lighting. We have partnered with
14 ABB, and we have new materials to compete world-wide. We
15 have one joint patent with ABB, and one of those is the only
16 one in the world. We have green products for the energy
17 market, and we've been involved with transformers. Our
18 market potential is still there, and the Town of Saltville has
19 been trying to help us, too, and understand. Europe and
20 China are way ahead of the U.S. in the transformer
21 technology, and the U.S. market lags. The U.S. market still
22 uses petroleum-based products. Some of these other
23 technologies are limited, and they're critical as far as the
24 market is concerned, but the bottom line is we have suffered
25 severely from the economy. We're working as a product

1 development company, and usually you start on a shoestring,
2 like many companies. In the UL market we typically have to
3 have about three years to get the product to market. If you
4 run into delays you're talking a four-year time frame.
5 Approval testing and UL testing takes a long time. We've also
6 been shut down, and customers have to evaluate products,
7 and testing is involved, and we anticipated customers from the
8 equator to Alaska. Our real strength has been our ideology.
9 We want to grow the corporation and stay in Virginia, and we
10 want to continue to be in Virginia, so we tried to avoid this big
11 battle, and we feel like our technology is such that it's most
12 likely going to be someone from Europe or Asia and it will not
13 be manufactured here. We've struggled with these issues, and
14 in October we got our first world-wide approval for trying to
15 continue. Our problem is we didn't accept the components
16 and we've been pretty well hamstrung, and we've overcome
17 that, and we've just accepted local investment and coming
18 from existing businesses, and we're still trying to go forward
19 on new products. We're asking that you let us or allow us to
20 continue forward with our investments, and we can generate
21 about \$120 million in sales with our new products that can be
22 shipped worldwide, and we'll be manufacturing in Virginia.

23 SENATOR RUFF: How much has been invested in
24 your products?

25 MR. FRYE: We report to the county IDA, I don't

1 report directly. The numbers we reported have not changed
2 dramatically, and we've been real stressed over the issues that
3 we're facing. We're about to bring in new capital equipment,
4 and we basically have cost that in, in anticipation. We've
5 struggled. We are a business that our projects in technology
6 can be manufactured in Europe and Asia.

7 SENATOR RUFF: Would you be willing to give this
8 information --

9 MR. FRYE: -- Yes, certainly.

10 SENATOR RUFF: The other question is, you're
11 asking for an extension. How much time?

12 MR. FRYE: We've got our investment locked in, and
13 we need a little bit more runway, and we're in a market that
14 nothing happens fast.

15 SENATOR RUFF: How much time do you need?

16 MR. FRYE: I would say three to six months we'll
17 have another major product with ABB.

18 SENATOR PUCKETT: Here's what we've just heard.
19 If we give you that extension, that would be like December
20 31st. If we extend the agreement till December 31st and then
21 in the January meeting we'll make some other decision. I'd
22 make that as a motion.

23 SENATOR HAWKINS: Second.

24 DELEGATE KILGORE: So December 31st, 2011, all
25 the information will be provided, including job creation. I've

1 got a motion and a second.

2 DELEGATE WRIGHT: I'd like to get Ned's opinion
3 on this. He's worked with this operation. Do you recommend
4 this proposal?

5 MR. STEPHENSON: Delegate Wright, I often have
6 companies that need more time; that happens, and we do that
7 routinely. However, we withhold those extensions if we
8 haven't got the information, and that's the case in this
9 particular case. I must say that is not to my knowledge, and I
10 don't know whether Curtis, he and I have not talked about
11 that. Our grants, I checked, and this is the Town of Saltville.
12 I haven't been able to get the Town of Saltville to respond in
13 any way. There are two grants, and one contract ended in
14 April of '08 and working on an extension, and the other ended
15 in September of 2010. I've simply taken the position that
16 there won't be an extension until I get what I asked for.

17 SENATOR REYNOLDS: I'm especially troubled by
18 the absence of the grantee, the failure of the grantee to get to
19 Ned what he requested. I'm assuming, because they're not
20 here with us today, and I can't attribute much good to it, and I
21 apologize for saying that, I don't mean to be, but we've got to
22 rely on the grantee to do due diligence and to evaluate what
23 they come to us and ask us to do. I'm very sympathetic to the
24 position that this gentleman finds himself in, and therefore I
25 would ask that we defer any action on this until we get

1 representation from the grantee as to what is going on,
2 especially why they're not here today to participate in this
3 process.

4 DELEGATE KILGORE: We have a motion and a
5 second.

6 SENATOR PUCKETT: I think Roscoe is right. I
7 represent that area, and we'll be glad to sit down with Ned if
8 Ned will tell me exactly what we need, and I'll try to get that
9 information before the next meeting, and if we don't get it,
10 then I would yield to the Commission to do whatever we have
11 to do.

12 SENATOR RUFF: Would Senator Puckett be willing
13 to amend it to the condition that Ned get the necessary
14 information he has requested?

15 SENATOR PUCKETT: I would, Mr. Chairman.

16 DELEGATE MARSHALL: Seems like there is not a
17 meeting that goes by that we're not talking about this.

18 MR. OWENS: Is there a time frame we want to put
19 on this?

20 SENATOR PUCKETT: Mr. Chairman, I would say
21 that we leave the time frame as it is in the motion, just add the
22 condition that if we don't get it in the time frame that has been
23 requested or if we get it in the next 30 days, I'll make sure I
24 have contact with these folks.

25 DELEGATE WRIGHT: Is it really necessary to have

1 the motion? This discussion we're having now is one of the
2 reasons I'm uncomfortable with this process. I think Senator
3 Puckett's idea is wonderful, but when we start down this road
4 and --

5 DELEGATE KILGORE: -- Well, Tommy, ultimately
6 we're going to have to make that call, whether to call in the
7 grant or not, and you all have that authority. We've got to
8 make that call.

9 MR. STEPHENSON: We've done dozens of these
10 and had problems with some. I know that somebody like
11 Curtis is in an awkward spot, because the Commission is
12 hammering him about the grantee to perform, and they will
13 not. So Curtis is sort of thrown under the bus on this. From
14 time to time companies won't worry about the locality, and
15 they'll come forward and willing to work with us.

16 MR. NOYES: Mr. Chairman, the other option is to
17 cancel and not authorize any additional funding under any
18 circumstances from the Commission.

19 MR. FRYE: It's a wonderful town, and they do have
20 a town council, and the IDA has a lot of turnover there. There
21 are a lot of ideas for tourism and spending money in that area,
22 and the town has been very enthusiastic about what we're
23 doing.

24 DELEGATE KILGORE: The motion is before us,
25 seconded and amended, Senator Puckett will talk to these

1 folks.

2 MR. NOYES: The motion is to have an extension
3 through 12-31-2011, assuming that the Town of Saltville will
4 respond somehow to Ned with information that he has
5 requested within 30 days or within 45 days.

6 DELEGATE WRIGHT: I would like to ask Ned, do
7 you agree with that?

8 MR. STEPHENSON: That's very workable, from my
9 point of view. If I get what I need in 45 days, we're home free.

10 DELEGATE KILGORE: All those in favor say aye?
11 (Ayes.) Opposed? (No response.)

12 DELEGATE JOHNSON: Aye. (by phone)

13 MR. STEPHENSON: Mr. Chairman, we made a
14 grant to the Town of Lebanon for \$250,000 upon presentation
15 of a promise from them for certain investments and jobs, and
16 those jobs and investments did not happen. Then that
17 particular company filed bankruptcy. In this particular case
18 the grantee was the town and saw fit to have some personal
19 guarantees from six or seven individuals to guarantee the
20 performance of this grant or repay the money.

21 DELEGATE KILGORE: What was the capital
22 investment or jobs?

23 MR. STEPHENSON: Two hundred twenty jobs, \$6
24 million of capital investment by December of '08. The
25 company failed and bankruptcy occurred, and the issue is

1 before you today, and that question is whether or not the
2 Town of Lebanon should have its disbursement frozen in the
3 future because the guarantors have not paid the money back.
4 That amount is 250,000.

5 SENATOR HAWKINS: In this case, did you get a
6 guarantee from the individuals themselves or a corporation?

7 MR. STEPHENSON: There are six individuals who
8 signed a broad guarantee agreement guaranteeing the
9 repayment of this grant if jobs and investment did not occur.
10 Now that the company has failed, the town could call upon
11 those guarantors to restore the money back to the
12 Commission.

13 DELEGATE KILGORE: One of them declared
14 bankruptcy, one of the guarantors is bankrupt, and one of
15 them has another criminal problem unrelated to this matter.

16 MR. STEPHENSON: My concern, Mr. Chairman, is
17 that a lot of time is passing and there is no movement there,
18 and I just want to be able to bring it up before it's too late
19 altogether.

20 DELEGATE KILGORE: Who are the other
21 individuals?

22 MR. STEPHENSON: Six of them are on the
23 guarantee agreement.

24 SENATOR PUCKETT: According to the letter, one of
25 them has been discharged, bankruptcy, and the other has

1 pleaded guilty to certain unrelated criminal activity. So, Mr.
2 Chairman, let me speak to this again. You can put them on a
3 freeze or whatever you want to do, but the issue up to this
4 point is moving through the process. As I understand it, they
5 have an attorney who has filed the necessary papers to get the
6 process moving. If you freeze them, the only recourse they
7 have is to try to continue to pursue it, so I guess it's up to the
8 Committee to decide how you want to handle it.

9 DELEGATE KILGORE: Do we know if they are
10 pursuing it?

11 MR. STEPHENSON: I'm advised that they are. I
12 haven't had any correspondence, not that I want to.

13 DELEGATE KILGORE: I hate to ask you to do this,
14 but can you get them to provide Ned with a letter as far as
15 what they are doing to address the issue?

16 MR. FERGUSON: If you look in your packet, Mr.
17 Chairman, there's a brief summary of what has taken place so
18 far. On paper it looks like they are doing everything they can
19 do.

20 SENATOR HAWKINS: May I make a suggestion that
21 we take legal action?

22 DELEGATE KILGORE: That may take a while. We
23 need to have some time to look at it again, if that would be
24 okay, Ned. And in the meantime, then, Frank, should we go
25 with the legal action?

1 MR. FERGUSON: I would recommend a short time
2 period.

3 MR. NOYES: September 28th.

4 DELEGATE KILGORE: How about September 15th?
5

6 SENATOR REYNOLDS: Is there anything going on
7 right now in that regard with the Town of Lebanon? Anything
8 going on right now, or any funding for Lebanon?

9 MR. STEPHENSON: Not that I'm aware of at the
10 moment.

11 MR. NOYES: The deadline is July 15th for a new
12 application.

13 MR. STEPHENSON: I bring this before the
14 Committee, not because there is a pending transaction but
15 because it's languished for so long, and I just don't want to
16 leave it on the table if this isn't satisfied. We want to do
17 everything we can.

18 DELEGATE KILGORE: We have a motion,
19 September 15, 2011 we get a letter from the Town of Lebanon
20 about how they're going to proceed, or we'll take action.

21 DELEGATE WRIGHT: Mr. Chairman, has the Town
22 of Lebanon been made aware that they stand a chance to have
23 their funding frozen?

24 DELEGATE KILGORE: Yes, they're aware of that.

25 MR. FERGUSON: Mr. Chairman, if I can make a

1 suggestion, I would advise the Town of Lebanon that we plan
2 to take action pending this appeal. I can do that.

3 DELEGATE KILGORE: Fine, if you can, do that. All
4 those in favor say aye? (Ayes.) Opposed? (No response.)

5 DELEGATE JOHNSON: (By phone) Aye.

6 DELEGATE KILGORE: All right. Gates
7 Corporation, Washington County.

8 MR. STEPHENSON: Mr. Chairman, several years
9 ago we made a TROF grant to the Gates Corporation, and that
10 contract ended in June of 2010, at which time we had the data
11 about the employment. They were short of those promises,
12 and Gates requested an extension of time. I suggested an
13 extension could be considered only after I received the capital
14 investment I had asked for, and that has not yet occurred.
15 About two weeks ago, and they're asking for some relief on this
16 particular TROF.

17 DELEGATE KILGORE: Who is the grantee?

18 MR. STEPHENSON: The grantee is Washington
19 County. I believe Ms. Parker is present today.

20 DELEGATE KILGORE: What was the number of
21 jobs promised?

22 MR. STEPHENSON: Promised 172, delivered 107,
23 capital investment of 8.7 million, of which I have no data. In
24 June of 2010 contact ended; that's the moment the shortfall
25 occurred. We typically will grant an extension for more time if

1 we think it's in order in this particular case, but in this
2 particular case I didn't get the capital investment, as I should
3 have. The total grant was 300,000 and they've earned a
4 portion of that.

5 DELEGATE KILGORE: And 107 jobs.

6 MS. PARKER: Thank you, very much. The award
7 was actually made to the Washington Regional. Standing
8 before you today, myself for Washington County and the
9 economic development director from Smyth County. We're
10 here representing the entity and the grant recipient. As of
11 Friday or Thursday last week our commission did provide an
12 up-to-date summary and verified, and that information was
13 provided to the Tobacco Commission Staff. That amount is
14 verified by the Commissioner of Revenue, about 7.2 million of
15 the 8.7. And we fall short somewhere around 81 percent, and
16 we were allowed 90 percent. It looks like there would be some
17 level of repayment.

18 On the jobs, we would ask that the Commission allow the
19 company time to put in writing what the funding was at the
20 date, as of April 28th. VEC information comes out quarterly.
21 We'd ask you to give consideration to the company and give
22 them an opportunity to put in writing where they were at that
23 date for that point in time. The company asked for an
24 extension last year from the Tobacco Commission, also asked
25 for an extension from us, and we had some money as well.

1 This is an economic development partnership.

2 An unusual chain of events has happened, and we're not
3 sure the company will choose to rebuild. If that's the case, we
4 would just ask that we be given consideration, if they choose
5 not to rebuild in our community.

6 DELEGATE JOHNSON: The Gates Corporation, this
7 corporation has spent 100,000 in cash and has been an asset
8 to the community, so any way we can help them, I think we
9 should do it. A hundred thousand back into the community,
10 and their loss would really affect us.

11 DELEGATE MARSHALL: You'd like an extension of
12 time?

13 MS. PARKER: We're anxious to hear what the
14 company's plans are, moving forward. They're not very
15 forthcoming with this information, and even to the local
16 government representatives and the economic professionals.
17 We're really in limbo.

18 DELEGATE KILGORE: What about giving them
19 until September 15th?

20 MS. PARKER: That would be plenty of time.

21 DELEGATE KILGORE: Joe, would that be okay, to
22 give them until September 15th, like we did with the Town of
23 Lebanon? That way we'd know what they're going to do.

24 DELEGATE JOHNSON: (By phone) Yes.

25 DELEGATE KILGORE: We have a motion and a

1 second. I guess it's the same motion we did with the Town of
2 Lebanon.

3 DELEGATE WRIGHT: Mr. Chairman, I'd like to ask
4 Ned if that's workable with the Staff and he can do it?

5 MR. STEPHENSON: I'll work with you any way.

6 DELEGATE WRIGHT: Thank you.

7 SENATOR HAWKINS: Ultimately the decision of
8 what we do is up to the Commission, and the Commission has
9 to, the Staff works for us to ask the direct questions that we as
10 a Commission do, and ultimately decisions have to be made
11 on a case-by-case basis. I think the Staff does a wonderful
12 job, but ultimately we have to make the decisions.

13 DELEGATE WRIGHT: I know that remark was
14 made to me, and I feel like it was. I'll only say it's my
15 responsibility when the issue is put before me which I have
16 very little knowledge of and try to get information from the
17 Staff. I may disagree with you somewhat. I think the Staff is
18 in a better position to make a decision on grants and so forth
19 than we are; that's why we have a Staff. I want to be satisfied
20 myself before I vote on that, that we have all the relevant
21 information. That's the way I feel about it, and that's the way
22 I'll continue to do.

23 DELEGATE KILGORE: We have a motion and a
24 second for an extension to September 15th to provide
25 information back to Ned. All those in favor say aye? (Ayes.)

1 Opposed? (No response.)

2 DELEGATE JOHNSON: (By phone.) Aye.

3 MR. STEPHENSON: Mr. Chairman, in the interest
4 of time I've got another one, but we'll save that in the interest
5 of time.

6 DELEGATE KILGORE: That's fine. Now we'll hear
7 from Neal on the grant disbursement policy.

8 MR. NOYES: Members of the Committee, we have
9 across the board with our program a 10 percent match
10 requirement. Staff has run into some problems documenting
11 the requirements as being met, partly because some of the
12 matches may be in the form of a contingency. There is a big
13 array of reasons that we are not able to fully document that
14 the Commission's agreement moving forward requiring 10
15 percent is in fact being met. We can do it sometimes, and
16 sometimes we can't, as often as we think it is to be done and
17 important. We need to put to you the Staff's recommendations
18 that the disbursements that come from our office, the actual
19 disbursements, be at the rate of 90 percent against the
20 documentation that arrives. Because if the documentation is
21 something we can't rely on, then contingencies are affected.
22 For example, we've got cases where people commit to loans
23 and grants for the wastewater treatment plant as their
24 matching funds. If that's what the Board approves, we want
25 to see an invoice. Then I can look members of the

1 Commission in the eye and say that we disbursed 90 percent
2 and that's the invoice on this grant. This is the request from
3 the Staff, but there are a lot of cases where we can easily not
4 have a problem; a lot of them are over-matched. People buy
5 land and then they have that land, people do engineering work
6 ahead of time. I'm saying that as the invoices come in, when
7 they come in, if it's 10 dollars, the disbursement is going to be
8 10 dollars. The policy is 90 percent documented, and that's
9 the way it's being handled.

10 DELEGATE MARSHALL: Invoice and purchase
11 order?

12 MR. NOYES: Invoice and purchase orders come in
13 that are documented. The issue is instead of disbursing 100
14 percent against the promise, there is going to be 10 percent.
15 We're going to disburse 90 percent.

16 DELEGATE MARSHALL: Company A sends in a
17 purchase order for a million dollars, they submit that to us,
18 and then they get 90 percent?

19 MR. NOYES: They're going to get 900,000. The
20 grantee has committed in one form or the other to the 10
21 percent and is responsible for that 10 percent. That's the
22 policy. The mechanics of getting this done has proved
23 somewhat elusive.

24 MR. OWENS: What if it's 20 percent?

25 MR. NOYES: We've done 80 percent. In the R&D

1 program it's 50/50. Whatever the approved grant says, we're
2 going to disburse Commission funds with invoices. This
3 business of having to try to track down various claims, we're
4 just going to rely on our policy.

5 DEPUTY SECRETARY CARTER: In other words, no
6 money is disbursed until that entire --

7 MR. NOYES: -- It's disbursed over a period of time,
8 and if it's a million-dollar project and we get a hundred
9 thousand dollars' worth of invoices, disburse ninety thousand
10 dollars.

11 DELEGATE KILGORE: I have a motion and a
12 second. All those in favor say aye? (Ayes.) Opposed? (No
13 response.)

14 DELEGATE JOHNSON: Aye. (by phone)

15 SENATOR RUFF: Mr. Chairman, I move that we go
16 into Executive Session in accordance with the provisions of the
17 Virginia Freedom of Information Act, Section 2.2-3711(A)(5) of
18 the Code of Virginia for the purpose of consultation with legal
19 counsel and briefings by Staff members pertaining to possible
20 litigation. I so move.

21 DELEGATE KILGORE: There is a motion and a
22 second. All those in favor say aye? (Ayes.) Opposed? (No
23 response.) In that motion, would that allow JLARC and the
24 investigator to stay in the room along with other Staff
25 members? All those in favor say aye? (Ayes.) Opposed? (No

1 response.) All those folks will have to leave the room if you're
2 not with JLARC or with the Staff.

3

4 NOTE: Whereupon at 12:45 the
5 Executive Committee meets in Executive Session.

6 Thereupon, at 12:55 the Executive Committee
7 has concluded the Executive Session, and the hearing
8 continues, viz:

9

10 SENATOR RUFF: Whereas, the Executive
11 Committee of the Virginia Tobacco Commission has convened
12 a closed meeting on this date pursuant to an affirmative
13 recorded vote and in accordance with the provisions of the
14 Virginia Freedom of Information Act; and whereas, the Code of
15 Virginia requires a certification by the Committee that such a
16 meeting was conducted in conformity with Virginia law.

17 Now, therefore, be it resolved that the Committee hereby
18 certifies that to the best of each member's knowledge, that
19 only public business matters lawfully exempt from open
20 meeting requirements under the Act and only such public
21 business matters as were identified in the motion by which the
22 closed meeting was convened were heard, discussed or
23 considered by the Committee in that meeting.

24 DELEGATE KILGORE: All right. Call the roll.

25 MR. NOYES: Delegate Byron?

1 DELEGATE BYRON: Yes.
2 MR. NOYES: Ms. Carter?
3 DEPUTY SECRETARY CARTER: Yes.
4 MR. NOYES: Senator Hawkins?
5 SENATOR HAWKINS: Yes.
6 MR. NOYES: Delegate Johnson, by phone?
7 DELEGATE JOHNSON: Yes.
8 MR. NOYES: Delegate Kilgore?
9 DELEGATE KILGORE: Yes.
10 MR. NOYES: Delegate Marshall?
11 DELEGATE MARSHALL: Yes.
12 MR. NOYES: Ms. Nyholm?
13 MS. NYHOLM: Yes.
14 MR. NOYES: Mr. Owens?
15 MR. OWENS: Yes.
16 MR. NOYES: Senator Puckett?
17 SENATOR PUCKETT: Yes.
18 MR. NOYES: Senator Reynolds?
19 SENATOR REYNOLDS: Yes.
20 MR. NOYES: Senator Ruff?
21 SENATOR RUFF: Yes.
22 MR. NOYES: Senator Wampler by phone.
23 SENATOR WAMPLER: Yes.
24 MR. NOYES: Delegate Wright?
25 DELEGATE WRIGHT: Yes.

1 MR. NOYES: That's a quorum, Mr. Chairman.

2 DELEGATE KILGORE: Any further comments?
3 Our next Executive Committee is next week in Lynchburg,
4 unless called sooner. Any public comment? All right, then, I'll
5 accept a motion that we adjourn. It's been moved and
6 seconded that we adjourn. The meeting is concluded.

7

8 PROCEEDINGS CONCLUDED.

9

10

11

12

13

14

15

16

17

18 CERTIFICATE OF THE COURT REPORTER

19

20

21 I, Medford W. Howard, Registered Professional
22 Reporter and Notary Public for the State of Virginia at large, do
23 hereby certify that I was the court reporter who took down and
24 transcribed the proceedings of the **Virginia Tobacco**
25 **Indemnification and Community Revitalization**

1 **Commission Executive Committee Meeting when held on**
2 **Monday, May 16, 2011 at 11:00 a.m. at the Institute for**
3 **Advanced Learning and Research, Danville, Virginia.**

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

7 Given under my hand this ____ day of June, 2011.

8

9

10

11

12

Medford W. Howard

13

Registered Professional Reporter

14

Notary Public for the State of Virginia at Large

15

16

17 My Commission Expires: October 31, 2014.