

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

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

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9 **Executive Committee Meeting**

10 Wednesday, May 25, 2011

11 5:00 o'clock p.m.

12 Hilton Garden Inn

13 Lynchburg, Virginia

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CRANE-SNEAD & ASSOCIATES, INC.

4914 Fitzhugh Avenue, Suite 203

Richmond, Virginia 23230

Tel (804) 355-4335

Fax (804) 355-7922

1 **APPEARANCES:**

2

3 The Honorable Frank M. Ruff, Vice Chairman

4 The Honorable Kathy J. Byron

5 The Honorable Mary Rae Carter

6 Deputy Secretary of Rural Economic Development

7 Office of the Secretary of Commerce and Trade

8 The Honorable Charles R. Hawkins

9 The Honorable Joseph P. Johnson, Jr.

10 The Honorable Daniel W. Marshall, III

11 Ms. Connie Greene Nyholm

12 The Honorable Edward Owens

13 The Honorable William C. Wampler, Jr.

14 The Honorable Thomas C. Wright, Jr.

15

16 **COMMISSION STAFF:**

17 Mr. Neal Noyes, Executive Director

18 Mr. Ned Stephenson, Deputy Director

19 Mr. Timothy S. Pfohl, Grants Program Administration Manager

20 Ms. Stephanie S. Kim, Director of Finance

21 Ms. Stephanie S. Almond, Program Director

22 Ms. Sara G. Williams, Grants Coordinator - Southwest, Virginia

23 Ms. Sarah K. Capps, Grants Coordinator - Southside, Virginia

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26 **APPEARANCES:** (continued)

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COUNSEL FOR THE COMMISSION:

Mr. Francis N. Ferguson, Esquire

May 25, 2011

DELEGATE KILGORE: Neil, will you call roll.

MR. NOYES: Delegate Byron?

DELEGATE BYRON: Here.

MR. NOYES: Deputy Secretary Carter?

DEPUTY SECRETARY CARTER: Here.

MR. NOYES: Senator Hawkins?

SENATOR HAWKINS: Here.

MR. NOYES: Delegate Johnson?

DELEGATE JOHNSON: Here.

MR. NOYES: Delegate Marshall?

DELEGATE MARSHALL: Here.

MR. NOYES: Ms. Nyholm?

MS. NYHOLM: Here.

MR. NOYES: Mr. Owens?

1 MR. OWENS: Here.

2 MR. NOYES: Senator Puckett, he's not
3 available today.

4 MR. NOYES: Senator Reynolds?

5 SENATOR REYNOLDS: (No response).

6 MR. NOYES: Senator Ruff?

7 SENATOR RUFF: Here.

8 MR. NOYES: Senator Wampler?

9 SENATOR WAMPLER: Here.

10 MR. NOYES: Delegate Wright?

11 DELEGATE WRIGHT: Here.

12 MR. NOYES: You have a quorum, Mr.
13 Chairman.

14 SENATOR RUFF: Thank you. We don't have
15 the minutes available from our meeting last week.

16 Ned, would you talk about American of
17 Martinsville.

18 MR. STEPHENSON: Yes, I'm going to give you
19 the clip notes version. Slow me down if need be.

20 In 2009, the Commission made an award to
21 Henry County for the benefit of American of Martinsville.
22 American has defaulted and filed bankruptcy. Henry
23 County and Martinsville have been exceedingly diligent in
24 pursuing that even to include a levy upon assets and at
25 the plant. All of this to say I'm before you asking on
26 behalf on Henry County bringing their request that Henry

1 County be relieved of its duty to repay this default grant
2 because of the bankruptcy and possibility of collecting.
3 This has been practiced in times past when counties have
4 been very diligent all the way to the Bankruptcy Court.
5 And I'm seeking that authority.

6 SENATOR RUFF: The amount was what?

7 MR. STEPHENSON: Two hundred and eighty
8 thousand.

9 SENATOR RUFF: Can we have a motion?

10 DELEGATE MARSHALL: The 280,000, is that
11 the prorated version?

12 MR. STEPHENSON: Now that was the original
13 amount, there was some small degree of performance, it
14 wasn't sustained. So tentatively the entire amount would
15 be due.

16 DELEGATE WRIGHT: Mr. Chairman.

17 SENATOR RUFF: Delegate Wright.

18 DELEGATE WRIGHT: Ned, can you give us a
19 sample of how this happened in the past? I'm new on this
20 committee, I'm not familiar with this process and how it
21 works.

22 MR. STEPHENSON: Delegate Wright, there
23 have been maybe as many as a half dozen or so occasions
24 when the companies have actually filed for and been
25 discharged in bankruptcy. On those occasions, this
26 Commission has agreed to let the County off the hook

1 simply because it is uncollectible. A difference would be if
2 a company had defaulted, is not in bankruptcy. The
3 Commission has required that the counties be diligent and
4 press the company for repayment all the way to
5 bankruptcy if necessary.

6 DELEGATE WRIGHT: But if the company
7 meets the expectations, goals are set forth as far as jobs
8 and/or, but did they meet that at all?

9 MR. STEPHENSON: They did not.

10 MR. FERGUSON: That's one of the reasons
11 they're asking for forgiveness of this grant.

12 MR. STEPHENSON: If they meet their
13 obligations and fail, then we have no claim against them,
14 if they fulfill their obligations under the contract, whatever
15 happens after that is off limits, but they never did fulfill
16 their obligation.

17 DELEGATE WRIGHT: What separates this
18 action is different from a company that just does not meet
19 its goals and things set forth in the contract, are they
20 being penalized because they didn't take bankruptcy?
21 Why does bankruptcy change the situation, I guess, is
22 what I'm asking?

23 MR. FERGUSON: Delegate Wright, rules of
24 Bankruptcy Court are such that if you're an unsecured
25 creditor, as the Commission is, or even if you're secured
26 and no assets, a final discharge in Chapter 11 is a

1 complete and total discharge of any liability for the
2 company and essentially is beyond reach and there is no
3 availability of any funds because they have been spent.
4 There's no individual that we can seek to make
5 responsible for that.

6 The short answer to your question is to some
7 extent, yes, and if somebody is eligible for bankruptcy and
8 chose not to take it or take that option, then, yes, we
9 have recourse against them. But if there is a bankruptcy
10 discharge, as there was in this case, we're really not in
11 any different position than any other creditor.

12 MR. OWENS: What year was this grant given?

13 MR. STEPHENSON: This was a TROF grant
14 April of '09. Typically they run for three years and we're
15 two years into it. They failed here six months ago.

16 MR. OWENS: So back then the TROF, was that
17 responsibility of the County --

18 MR. STEPHENSON: -- All of the TROF grants
19 without exception are made to a locality or to an IDA, not
20 to a private entity.

21 MR. OWENS: I make a motion that we relieve
22 the County from this.

23 MR. MARSHALL: Second.

24 SENATOR RUFF: There's been a motion and a
25 second. Any further discussion? All in favor, say aye.
26 (Ayes). Opposed? (No response). The motion carries.

1 MR. STEPHENSON: Mr. Chairman, in recent
2 months, the Commission has become involved in some
3 TROF transactions that are more complex than ordinarily
4 so. In particular, you may remember we had one before
5 this committee in February located in Bristol, Virginia.
6 And we'll talk more about that later. There's another that
7 has emerged in Southside Virginia. Both of these, and
8 there's another potential, call for the need for legal
9 expertise that is not available within the Attorney
10 General's Office and not within Special Counsel Ferguson's
11 ability to provide, these are complex corporate
12 transactions.

13 In your budget that you recommended a week
14 ago, which will go before the Commission tomorrow, there
15 is a provision in that budget for the Commission to defray
16 some legal expenses for this purpose. I'm before you
17 today asking for your authority, the executive director to
18 expend in Fiscal Year 2012 not more than \$250,000 in
19 legal fees for this purpose.

20 SENATOR RUFF: You put that amount in the
21 budget?

22 MR. STEPHENSON: It is provided in the
23 budget, but your director doesn't have the authority to
24 spend that unless you agree.

25 MR. NOYES: I'm limited to \$50,000 according
26 to the bylaws. These are expenses that we talked about

1 in closed session and that situation arises.

2 SENATOR HAWKINS: I move that we
3 authorize the Executive Director the \$250,000 for this
4 purpose.

5 SENATOR RUFF: It's been moved and
6 seconded. Any further discussion?

7 DELEGATE WRIGHT: Would this also include
8 need to set up a different type of foundation for
9 authorization or an organization to take control ownership
10 of the property, the Committee, is that what you're talking
11 about doing?

12 MR. STEPHENSON: It could, but it is not
13 contemplated at this time. Should that desire arise,
14 authority would cover legal expenses for that.

15 MR. OWENS: Do we have a different contract
16 with a legal firm to do that?

17 MR. NOYES: The process is to go to the Office
18 of the Attorney General. They authorize the Commission
19 to contract with outside counsel.

20 MR. FERGUSON: The Attorney General's Office
21 has a list of approved counsel.

22 MR. NOYES: We have to go through that
23 process every time. If I may just mention, I had a call
24 from a senior deputy in the Office of the Attorney General.
25 There is agreement that we will have services from the
26 Office of the Attorney General compensating the AG for

1 those services, the details, and what we need to work out.

2 SENATOR RUFF: We have a motion and a
3 second. Any further discussion? All in favor, say aye.
4 (Ayes). Opposed? (No response).

5 MR. STEPHENSON: A couple of other items if I
6 may, quickly. If you remember back in February, we
7 began to talk to the Committee about a TROF transaction
8 involving a very large employer in Southwest Virginia and
9 the possibility that the Commission might purchase some
10 real estate to induce large concessions from its creditors
11 and owners to preserve the operation of this large
12 employer.

13 We've had intense conversations with all of
14 those parties. Some concessions have been made and
15 others we are close. We've encouraged some small legal
16 expense to get to this point. I am extremely
17 uncomfortable, let me back up here. The last meeting of
18 this Committee, you gave a good faith authority for the
19 staff to negotiate this transaction, good faith but subject
20 to your approval. We've done that and we're close but not
21 quite concluded.

22 I'm somewhat uncomfortable that I have led
23 all of these parties down this path on this transaction
24 without not having your approval of the transaction. If I
25 get him to the altar and say I don't will be difficult.

26 I'm before you today asking you if you would

1 consider motion to approve that transaction with certain
2 elements to be further negotiated by staff before closing is
3 complete and concluded. I wrote this motion for your
4 consideration if you would indulge me for a minute,
5 please.

6 I ask that you consider approving the purchase
7 of 60 acres or less at 15185 Industrial Park Road in
8 Bristol, Virginia for an amount not to exceed \$10 million
9 jointly with the Washington County IDA contingent upon
10 material compliance with the terms described in a certain
11 letter of intent dated February 24th, 2011, received from
12 the Virginia Economic Development Partnership. This was
13 the transaction you saw in your session in February.

15 Mr. Chairman, I am seeking that motion or one
16 similar.

17 DELEGATE JOHNSON: You're speaking in
18 reference to the meeting in Abingdon a couple of weeks
19 ago?

20 MR. STEPHENSON: Yes, I am.

21 DELEGATE JOHNSON: What about the
22 environmental problems?

23 MR. STEPHENSON: The environmental issues
24 have not been opened up yet. We're holding that back
25 until other concessions are made as expected, but that's
26 one of the items that must be accomplished before we will

1 move forward.

2 DELEGATE JOHNSON: Mr. Chairman, I
3 attended that meeting and I think that we should move
4 this forward and I so move.

5 SENATOR WAMPLER: I'll second it.

6 SENATOR RUFF: It's been moved and
7 seconded. Any further discussion? All those in favor, say
8 aye. (Ayes). Opposed? (No response).

9 MR. STEPHENSON: Mr. Chairman, it was
10 suggested to me at the conclusion of the last meeting by
11 one or two commissioners that this Commission consider
12 requiring its grantees be subject to and to use the Virginia
13 Procurement Act and all of its purchases using
14 Commission money. I think that's worthy of study. And
15 I'm suggesting to this committee that the chairman of the
16 Commission name one or two commissioners, two
17 Commission members to join with staff to study the
18 wisdom of doing this and to bring that report back to the
19 Commission at its September meeting. I'm asking for the
20 Executive Committee to consider that motion.

21 SENATOR RUFF: I think that's a reasonable
22 way to deal with it and look at it. Does anybody have any
23 objection to that? And then we'll look at it at the
24 September meeting.

25 MR. STEPHENSON: Thank you.

26 SENATOR RUFF: I think we need to go into

1 Executive Session at this time.

2 MR. OWENS: Mr. Chairman, I move that we
3 go into Executive Session in accordance with the
4 provisions of the Virginia Freedom of Information Act,
5 Section 2.2-3711(A) (7) of the Code of Virginia for the
6 purpose of consultation with legal counsel pertaining to
7 probable litigation.

8 SENATOR RUFF: I've got a motion. Is there a
9 second?

10 DELEGATE JOHNSON: Second.

11 SENATOR RUFF: I've got a motion and a
12 second. All those in favor. (Ayes). All right, we're in
13 Executive Session.

14
15 NOTE: Whereupon at 5:40 p.m., the
16 Executive Committee goes into Executive Session.

17 Whereupon, at 6:45 p.m., the Executive
18 Session is concluded, and the hearing resumes.

19
20 SENATOR RUFF: We're back in open session,
21 Mr. Owens.

22 MR. OWENS: Whereas, the Executive
23 Committee of the Virginia Tobacco Commission has
24 convened a closed meeting on this date pursuant to an
25 affirmative recorded vote and in accordance with the
26 provisions of the Virginia Freedom of Information Act; and

1 whereas, Section 2.2-3712.D, Code of Virginia, requires a
2 certification by the Committee that such a meeting was
3 conducted in conformity with Virginia law.

4 Now, therefore, be it resolved that the
5 Committee hereby certifies that to the best of each
6 member's knowledge, that only public business matters
7 lawfully exempt from open meeting requirements under
8 the Act and only such public business matters as were
9 identified in the motion by which the closed meeting was
10 convened were heard, discussed, or considered by the
11 Committee in that meeting.

12 SENATOR RUFF: It's been moved and
13 seconded. Call the roll.

14 MR. NOYES: Delegate Byron?

15 DELEGATE BYRON: Yes.

16 MR. NOYES: Deputy Secretary Carter?

17 DEPUTY SECRETARY CARTER: Yes.

18 MR. NOYES: Senator Hawkins?

19 SENATOR HAWKINS: Yes.

20 MR. NOYES: Delegate Johnson?

21 DELEGATE JOHNSON: Yes.

22 MR. NOYES: Delegate Marshall?

23 DELEGATE MARSHALL: Yes.

24 MR. NOYES: Ms. Nyholm?

25 MS. NYHOLM: Yes.

26 MR. NOYES: Mr. Owens?

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MR. OWENS: Yes.

MR. NOYES: Senator Ruff?

SENATOR RUFF: Yes.

MR. NOYES: Senator Wampler?

SENATOR WAMPLER: Yes.

MR. NOYES: Delegate Wright?

DELEGATE WRIGHT: Yes.

MR. NOYES: So certified, Mr. Chairman.

SENATOR WAMPLER: Mr. Chairman, I would make a motion that the Executive Committee recommend to the full Commission a TROF award in the amount of \$3 million for a major employer in Southwest Virginia.

DELEGATE JOHNSON: Second.

SENATOR RUFF: You've heard the motion and the second. Any further discussion? All in favor, say aye. (Ayes). Opposed?

DELEGATE WRIGHT: No.

SENATOR RUFF: Is there anyone in the public that would like to make a comment? Hearing none, then we are adjourned.

PROCEEDINGS CONCLUDED.

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CERTIFICATE OF THE COURT REPORTER

I, MEDFORD W. HOWARD, Registered Professional Reporter and Notary Public for the State of Virginia at large, do hereby certify that I was the Court Reporter who took down and transcribed the proceedings of the **Virginia Tobacco Indemnification and Community Revitalization Commission Executive Committee Meeting, when held on Wednesday, May 25th, 2011 at 5:00 o'clock p.m., at the Hilton Garden Inn, Lynchburg, 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 1st day of June, 2011.



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

MY COMMISSION EXPIRES: October 31, 2014.