

**VIRGINIA TOBACCO INDEMNIFICATION
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501
Richmond, Virginia 23219

**Executive Committee Meeting
Wednesday, September 28th, 2011**

4:00 o'clock p.m.

Southwest Virginia Higher Education Center
Abingdon, Virginia

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1 **APPEARANCES:**

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3 The Honorable Terry G. Kilgore, Chairman

4 The Honorable Frank M. Ruff, Vice Chairman

5 The Honorable Kathy J. Byron

6 The Honorable Mary Rae Carter

7 Deputy Secretary, Commerce and Trade

8 The Honorable Joseph P. Johnson, Jr.

9 The Honorable Daniel W. Marshall, III

10 Ms. Connie Greene Nyholm

11 The Honorable Edward Owens

12 The Honorable Phillip P. Puckett

13 Dr. David S. Redwine

14 The Honorable W. Roscoe Reynolds

15 The Honorable William C. Wampler, Jr.

16 The Honorable Thomas C. Wright, Jr.

17

18 **COMMISSION STAFF:**

19 Mr. Neal Noyes, Executive Director

20 Mr. Ned Stephenson, Deputy Executive Director

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

22 Ms. Stephanie S. Kim, Budget Director

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

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

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DELEGATE KILGORE: I'm going to call this meeting to order. And sorry to the members of the public because we're running late. I want to welcome you all to Abingdon and hope you enjoyed your trip down and your stay here.

7

I'll ask Mr. Noyes to call the roll.

8

MR. NOYES: Delegate Byron.

9

DELEGATE BYRON: Here.

10

MR. NOYES: Deputy Secretary Carter.

11

DEPUTY SECRETARY CARTER: Here.

12

MR. NOYES: Delegate Johnson.

13

DELEGATE JOHNSON: Here.

14

MR. NOYES: Delegate Kilgore.

15

DELEGATE KILGORE: Here.

16

MR. NOYES: Delegate Marshall.

17

DELEGATE MARSHALL: Here.

18

MR. NOYES: Ms. Nyholm.

19

MS. NYHOLM: Here.

20

MR. NOYES: Mr. Owens.

21

MR. OWENS: Here.

22

MR. NOYES: Senator Puckett.

23

SENATOR PUCKETT: Here.

24

MR. NOYES: Dr. Redwine.

25

DR. REDWINE: Here.

1 MR. NOYES: Senator Reynolds.

2 SENATOR REYNOLDS: Here.

3 MR. NOYES: Senator Ruff.

4 SENATOR RUFF: Here.

5 MR. NOYES: Senator Wampler.

6 SENATOR WAMPLER: Here.

7 MR. NOYES: Delegate Wright.

8 DELEGATE WRIGHT: Here.

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

10 DELEGATE KILGORE: Do I have a motion to approve
11 the 5-25-11 minutes?

12 SENATOR PUCKETT: So moved.

13 DELEGATE KILGORE: It's been moved and
14 seconded we approve the minutes. All those in favor say aye.
15 (Ayes).

16 All right. The minutes are approved.

17 Next we'll hear from Stephanie Kim. Next we'll hear
18 from Stephanie on the budget amendments, and this will be for
19 tomorrow's full Commission meeting.

20 Those of you that have your books if you'll look at
21 page 8. Well, if they're not in there, let's go ahead. You really
22 don't need to look at it.

23 MS. KIM: The first budget amendment is to transfer
24 \$1,287,182 from Special Projects to Southside Economic
25 Development. This is for two grants that were approved, were

1 recommended by the Special Projects Committee for two
2 Southside projects and also Southside Economic Development
3 Fund, so we're just transferring them to consolidate them into
4 one.

5 SENATOR REYNOLDS: So moved.

6 MR. OWENS: Second.

7 DELEGATE KILGORE: It's been moved and seconded.
8 Any discussion?

9 MR. NOYES: In Southside Economic Development, the
10 use of the allocations approved in that meeting, we have four
11 projects.

12 DELEGATE KILGORE: All those in favor of transferring
13 those dollars, say aye. (Ayes). Opposed? (No response).

14 MS. KIM: The second is to transfer \$1,065,588 from
15 unclaimed 2010 Indemnification to Agribusiness. We made it a
16 year after the deadline.

17 MR. OWENS: So moved.

18 DELEGATE KILGORE: I have a motion and a second to
19 transfer the unclaimed amount through Agribusiness. All in
20 favor, say aye. (Ayes). Opposed? (No response).

21 MS. KIM: The next one is to transfer \$2,510 from
22 Technology, which is no longer a committee, and these were
23 unobligated dollars.

24 MR. OWENS: So moved.

25 DELEGATE KILGORE: It's been moved and seconded.

1 All those in favor, say aye. (Ayes). Opposed? (No response).

2 MS. KIM: The next one is to transfer \$147,500 from
3 Agribusiness to Southwest Economic Development. And that's to
4 help fund two different grants.

5 DELEGATE KILGORE: In Southwest Economic
6 Development, I believe already approved the two grants to make
7 it one grant.

8 MR. NOYES: It will be recommended for approval to
9 the full Commission tomorrow.

10 DELEGATE JOHNSON: So moved.

11 MR. OWENS: Second.

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

14 MS. KIM: The next one is a motion to approve an
15 increase in the previously approved five-year contract with
16 Microedge, and this is for our software. It's \$8,000 per year for
17 five years to accommodate improvements to our Online Grants
18 Management System (additional licenses, segregation of duties,
19 additional staff access).

20 DELEGATE KILGORE: That's 8,000 more per year for
21 five years.

22 SENATOR PUCKETT: So moved.

23 DELEGATE KILGORE: I have a motion and a second.
24 All in favor, say aye. (Ayes). Opposed? (No response).

25 Thank you, Stephanie.

1 DELEGATE JOHNSON: Mr. Chairman, before we move
2 off of this, if I may, I read a page, and maybe I misunderstood
3 something. I did not mean that the Tobacco Commission, we
4 were talking about red tape, and it was a locality where we had
5 to get permits and the EPA and all that. If it was misunderstood
6 or upsetting, I just wanted to clear that up. I apologize for that.

7 DELEGATE KILGORE: Maybe it was Neal's fault.

8 DELEGATE JOHNSON: I wanted to say the Tobacco
9 Commission staff was very cooperative. That project had been
10 extended two times, and each time, and I do appreciate it, so
11 thank you.

12 DELEGATE KILGORE: No problem. Thank you,
13 Delegate Johnson.

14 Now we turn to the highlight of the day, Ned
15 Stephenson will have the next four or five discussion points.

16 The first item we have is the TROF Program Review.
17 And this will give us an opportunity to look at what we're doing
18 on TROF. Ned is the staff person that makes sure that work is
19 done correctly. Ned.

20 MR. STEPHENSON: Mr. Chairman and members of the
21 committee, thank you. I know that many of you have just come
22 off of the Appalachian Mountain high over there with King
23 College, and I apologize in advance, but we've got to return to
24 the trenches to deal with some issues before the Commission
25 meeting tomorrow morning.

1 My remarks today will be somewhat detailed. I think
2 there are some things happening with our TROF Program that
3 you may not know about and you need to know, and I'm going to
4 bring that to your attention today.

5 My purpose in doing this is that I need to ask you for
6 some policy guidance for the staff on a multitude of issues that
7 affect a large number of the TROF recipients. We will have
8 almost 200 deals with tens of millions of dollars out there, and
9 over 100 of those deals were done in the last five years and are
10 still outstanding. There are some issues we want to address.

11 I'm borrowing a term from a certain senator in this
12 room that from time to time talks about a pinch point, and I think
13 it's appropriate we do that today.

14 These are the issues for which I'm seeking guidance,
15 and they are eight common issues that plague this TROF
16 Program. I have applied for each one, and very quickly like to
17 talk to you a little bit about whether you are interested in
18 providing incentives for new jobs or for --

19 DELEGATE KILGORE: -- Ned, before we go any
20 further, you're going to have a slide for each and then there'll be
21 a decision for each of these?

22 MR. STEPHENSON: I would hope that the Committee
23 would offer guidance to staff because we are conflicted with a
24 number of TROF recipients over these issues. Today, the staff is
25 inclined to make decisions on, could in many cases exceed our

1 comfort level and our authority level, and we're looking for
2 guidance. Net new jobs versus new, we'll talk about that, jobs
3 versus investment, which is more important.

4 The current contract calls for the company to create
5 and maintain jobs. That has become a problem for us. Time
6 extensions are always sought and they have to, we've had some
7 problems with time extensions, self-certification is an issue.
8 That's where the companies then tell us what they have done,
9 and that's been a practice that has been used. We have some
10 tax returns that have not been filed. That is a problem.

11 The recession is a huge one. I don't need to explain
12 that. And all of these TROFs are contracts where people are
13 seeking relief.

14 Then finally there's what we call the disbursement
15 freeze, and you authorized a couple of years ago when things
16 resolved and we resort to freezing the disbursement, and that's
17 an unhappy time for everybody. I'm just going to run through
18 these and explain to you what I mean.

19 I want to talk to you for a minute about new jobs and
20 net new jobs, new jobs versus net new jobs. The contract under
21 which we grant these incentives calls for net new jobs. Now,
22 often companies fall short of their obligation and they will come
23 to us and they say, yes, I did gain these jobs, what I produced
24 then, but we had losses in another area, and we're asked to
25 recognize job gains but not recognize job losses. This is our

1 practice and you tell me whether this is what you want. If jobs
2 come from outside the State of Virginia into the State of Virginia,
3 we reward that and recognize that because that's what this is
4 about, we believe. Now, that's pretty easy.

5 Often, we will have losses in a Virginia locality and
6 gains in another. We'll have a job move from Fairfax to Halifax,
7 and the question arises, should the Commission be recognizing
8 job gains when they're stolen from another area of the state?

9 It also gets worse because we have a lot of companies
10 who maybe have operations in two tobacco communities. They'll
11 have losses in one and gains in another. My question is do you
12 want to pay money for that when jobs are moving around within
13 your own service area?

14 Now, it gets more interesting because we have some
15 come forward and say I switched them from Assembly Line A to
16 B. I created new jobs on the new assembly line in the same
17 building. I'm not kidding you, we have people that present this
18 and they want those to be recognized. We have still some others
19 that come to us and say we stopped making green ones and
20 we're making red ones, they're new jobs.

21 I'm just telling you we are slammed with all of these
22 pleadings from people that say they're creating new jobs and we
23 only recognize the one on the top. And that's creating some
24 heartburn for some of our TROF recipients.

25 We'll circle back to all of these in a minute. Maybe

1 you can make a note about which ones you would like to speak
2 to.

3 When we look at the jobs that were created, often
4 there'll be a shortfall, and the argument quickly comes, well, I
5 didn't quite hire the people I said I was going to hire, but I
6 invested more money. And you look at the shortfall on the jobs
7 and the long investments and call it even. We don't do that, and
8 maybe you would like us to do that, but we don't do that. If it's
9 short, it's short.

10 MR. NOYES: If I may, Ned. Mr. Chairman, the way
11 that the contracts are written, it's half credit for jobs and half
12 credit for investment. And this is meaningful for some people
13 that have created more jobs but not the investment.

14 DELEGATE KILGORE: All this is in the contract.

15 MR. NOYES: All in the contract, yes.

16 MS. NYHOLM: Are these contracts unique?

17 MR. STEPHENSON: They are.

18 MR. NOYES: It's a standard contract, but the job
19 promises and investment promises are different.

20 DELEGATE KILGORE: Ned, it might be better just for
21 the flow of things if we fix this now because if we're going to go
22 through all this stuff and then jumping back, I think maybe we
23 should fix this now. I don't think there's anything here to fix
24 speaking as the Chairman.

25 MR. STEPHENSON: Well, these issues are creating a

1 lot of heartburn among these folks.

2 DELEGATE KILGORE: Yes, I follow the first, and I
3 think everybody is following the next three knows what's the
4 issue?

5 MR. STEPHENSON: The point I wanted to make is
6 that all of these issues are creating significant heartburn and
7 unhappiness among corporate citizens, our local leadership, and
8 it's very unpleasant. We are holding people to these contracts
9 hard. We always tell them if they're not satisfied with that result,
10 they can come here to this body and be heard. You have several
11 here today for that purpose.

12 SENATOR PUCKETT: Mr. Chairman, I don't know what
13 anyone would not understand with the contract they signed and
14 what you just said, Ned. If they want to appeal something, it's
15 not the staff's responsibility. You don't have to make those
16 decisions. Let them come to the Board and we'll deal with it one
17 way or the other. I don't see the big issue with it. A lot of
18 people have been unhappy about what this Board has done on
19 occasions, but we've tried to do the right thing to help people
20 who are really helping themselves and not trying to snooker the
21 Board or the Commission.

22 MR. STEPHENSON: The staff's duty is to see you get
23 what you paid for and anything other than that, you all need to
24 call the shots.

25 DELEGATE BYRON: Just for discussion purposes, it's

1 really difficult to look at some of these and say one size fits all. I
2 realize we have a contract and we start out talking about our
3 mission, which is largely around job creation. And this has been
4 going on for a few years now. Then when you take into
5 consideration the economy we've had for the last three years,
6 there are different challenges that have the manufacturing
7 community and many other industries like tobacco. So one size
8 doesn't fit all and doesn't work. Everyone wants to be
9 accountable, and we have to make sure the Commission is
10 accountable.

11 We also have good corporate partners out in the
12 communities that may have a very valid reason, but sometimes
13 the job losses that we've had has been no fault of theirs, and
14 they've been able to replace those. You have to look at things
15 differently, I think, when it comes to placing jobs and gains in
16 one area and losses in another area and they have to be
17 resolved.

18 DELEGATE KILGORE: But through due process, they
19 can come here and that's what we're saying. If there is a
20 situation like you're speaking of, Delegate Byron, then maybe
21 they should come here and whether they didn't have as many
22 jobs, made a bigger investment, something like that, we can
23 address that during the Executive Committee, I believe. I don't
24 know that we need to change the rules for staff, you know, we
25 have some leeway here or leeway there, and I don't feel

1 comfortable with that.

2 DELEGATE BYRON: I wasn't insinuating that at all,
3 and I know staff has been trying to insure to do the right job for
4 us and we need to let them know that today. I don't have a
5 problem. And maybe there's a lot more activity going on now
6 because of these economic situations we're in.

7 SENATOR PUCKETT: Mr. Chairman, I'd like to make a
8 motion that we ask the staff to adhere to the contracts both
9 parties have signed. Once something does develop, then notify
10 the corporate partner about the issue and that they need to
11 appear before the Board and the Commission. We can resolve it
12 one way or the other. We can't change the contracts, and we
13 certainly don't want the staff changing them. If it has to be
14 changed, it'll have to be changed from the agreement with the
15 corporate partner and the Commission.

16 My motion would be adhere to the contract, which
17 we've consistently tried to do. If there's an issue from the
18 corporate partner that needs consideration, bring it to the
19 Commission.

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

22 SENATOR WAMPLER: I support the motion, but would
23 just caution and ask the staff and perhaps the Secretary of
24 Commerce and Trade, it seems to me in the last several
25 appropriation acts, we've put language in the act that it prohibits

1 financial incentives on the part of the Commonwealth to any one
2 Virginia locality over the other. I don't want us to be in the
3 posture of being contrary to what the Governor of the
4 Commonwealth, that's all.

5 MR. NOYES: I can assure the Senator that does not
6 happen.

7 MS. CARTER: I'm just curious, how close does this
8 mirror the GOF guidelines?

9 MR. STEPHENSON: It does not. I won't say not at all
10 any common elements, but this program is not styled after or
11 patterned after the GOF precisely, many common elements, but
12 they're not precisely the same.

13 MS. CARTER: What would be the most significance
14 between the GOF and that?

15 MR. STEPHENSON: I'm really hesitant to speak on
16 how GOF does things because I'm not really up on that. I think
17 the major difference that I am aware of is that the Tobacco
18 Commission used to accept what we call self-certification. We do
19 not anymore. The reason for that is that we begin to examine
20 some of the self-certifications. By self-certification, I mean if we
21 have a contract that promises to produce 100 jobs and you ask
22 the company how many employees do you have, they say 100,
23 and that's a self-certification.

24 We started looking at Virginia unemployment tax
25 returns which lists who got paychecks and we find vast

1 differences in almost all of these. So we do 100 percent check on
2 demand. Companies flood me with name lists and letters and
3 nice emails about how many people they're hiring, and we
4 dismiss all of that and go straight to VEC where it lists who got a
5 paycheck, and that's the number we rely on.

6 There's a lot of heartburn surrounding that and
7 companies don't like it. We have found that it is the most
8 reliable and definitive measure who got paid. By the way, that is
9 a very lean approach to job counts because the unemployment
10 insurance tax return reports how many people got a paycheck.
11 That's not how many jobs are created. If you work three hours
12 that month and got a check for it, you're in the count, and we
13 give them that benefit.

14 MR. NOYES: Madam Secretary, another significant
15 difference is that return on investment calculation presented by
16 VEDP is not a part of our calculation. Return on investment in
17 the Tobacco Commission has to do with effects and jobs. The
18 company makes it or it doesn't make it. There's nothing that
19 says that Year Three or the return to the Commonwealth of X
20 number of dollars justifies in Year Four or whatever particular
21 project we use, the same for ROI standards.

22 DELEGATE KILGORE: We've got a motion and a
23 second. Any more discussion? All those in favor of Senator
24 Puckett's motion, say aye. (Ayes). Opposed? (No response).

25 All right, the next.

1 MR. STEPHENSON: I'm going to go through this
2 rather quickly. Contracts we have used all have the language
3 that jobs have to be created and maintained. I've given you a
4 brief example here of fixed calendar quarters and the
5 employment that is found in those calendar quarters. And I want
6 to challenge the Committee to tell me how many jobs were
7 maintained by this company during that six quarters. Anybody
8 want to hazard a guess as to how many were maintained?

9 This produces a lot of heartburn today with these
10 companies. The company will say I had 60 employees, and we
11 say, yes, you did, but only 15 of them were maintained during
12 the period, so we give them credit for maintaining because the
13 word maintain in the contract. I can tell you they don't like that,
14 they're not happy with it. I'm asking you is this what you want
15 us to do?

16 DELEGATE MARSHALL: Ned, in the contract, is
17 maintained defined by a length of time?

18 MR. STEPHENSON: In the old contract, it was not.
19 We cut a lot of slack in the old contract because the word is really
20 not defined. In the newer contract, we have made it cleaner and
21 tighter and more clear language so that there is no mistake.

22 DELEGATE MARSHALL: When did we start using the
23 new contract?

24 MR. STEPHENSON: The new contract is constantly
25 evolving. Every time a company goes through a loophole, we

1 have to write another paragraph to cure that. So the new
2 contract got started about four years ago and they've gotten
3 tighter since. The real challenge is that these are live events. I
4 just want to tell you how these things work.

5 The very first thing that happens when a company has
6 not met their mark, they say I need another year. We've been
7 very liberal about granting extensions if we want to grant another
8 year. I think the thing that happens sometimes when we grant
9 another year, well, what do we do if the employment goes down
10 instead of up? The refund liability, because it says maintained,
11 has actually gotten worse instead of better. This is just what the
12 contract says. People don't like this, but it happens.

13 DELEGATE MARSHALL: Again, if someone is in this
14 situation right here, they could always come to this Committee
15 and ask for an extension.

16 MR. NOYES: The extension is a standard thing, and I
17 have the delegation to do that for another year, but beyond the
18 fourth year, they must come here.

19 MR. OWENS: The maintenance clause in the new
20 contract, how long does that last?

21 MR. STEPHENSON: Three consecutive calendar
22 quarters is called maintenance. If they can get there and hold
23 there for three consecutive quarters, they're done.

24 DELEGATE KILGORE: So they get the third, the fourth
25 and one, three, four, and one, and they're done?

1 MS. NYHOLM: Sixty, 60, 60, and 10, it wouldn't
2 matter.

3 MR. STEPHENSON: That's correct. Many of the
4 employment counts are up and down all over the place, so we
5 say get it there and hold it there for three quarters, you've done
6 your duty.

7 SENATOR WAMPLER: Has anyone ever come to you
8 and said here's my schedule of four quarters in the remaining
9 fiscal year or does it float or is it product driven?

10 MR. STEPHENSON: It is seasonal, product driven.
11 There is turnover, there are part-time gaps, these numbers are
12 very hard to quantify. People do bring forecasts. We also
13 recognize temporary agency employment put on the line from a
14 temporary company to try to recognize everybody they can
15 muster.

16 MR. NOYES: Verified with VEC data, we do it
17 separate.

18 SENATOR WAMPLER: I don't know what the answer
19 is, but many of our customers or employers say employment
20 floats and this is what I think it's going to be for the fourth
21 quarter?

22 MR. STEPHENSON: That doesn't happen often.
23 Usually they choose the bar they believe they can hurdle. If it's
24 100 people, that's the bar.

25 DELEGATE BYRON: I have to wonder because I'm not

1 on the TROF Committee. What is the initial process of the
2 approval, is something missing there or is that a standard
3 formula that you use?

4 DELEGATE KILGORE: I can say that we get jobs
5 promised, investment promised, and run it through the formula.

6 DELEGATE BYRON: The Governor is doing the same
7 thing.

8 MR. STEPHENSON: The classic scenario, they say I'm
9 going to hire 300 people, and we do the deal on 300 people, get
10 it all lined up, and present them with a contract, define the terms
11 under which they will be counted, and within a week or so, it's
12 going to be 199 and not 300. That frequently happens once they
13 realize it's going to be looked at and counted.

14 I need to say a word about extensions so you will
15 understand. Neal says we do this liberally, and we do. I have
16 requirements for extensions. I will not grant an extension until
17 first you have accounted to me for where you are at the maturity
18 date of the contract and acknowledge to me they are the facts of
19 the case.

20 The first thing people want is more time because they
21 kick the can down the road and get rid of me. We have difficulty
22 getting people to give us the information necessary to quantify
23 where they are. Without that, we don't grant the extension.
24 These things go on for eight, ten, 12 months, can't get it out of
25 them. That's a practice of mine, and if you disagree, you can

1 change that and tell me.

2 DELEGATE JOHNSON: May I ask a question?

3 DELEGATE KILGORE: Of course.

4 DELEGATE JOHNSON: Sir, do you give any
5 consideration to the acts of God like the tornado at Glade Spring
6 wiped a business out?

7 MR. STEPHENSON: There is no clause in the contracts
8 like that, in this contract unless this body changes that. In that
9 particular case, the tornado came after the liability had arisen at
10 that company.

11 DELEGATE JOHNSON: Sir, do you put the request on
12 the fast track or do we wait until there's a regular meeting? We
13 don't call meetings to deal with these, we wait until the next
14 regular meeting, and that's sometimes a long time. This one,
15 you could be 90 and some days out.

16 DELEGATE KILGORE: Anything else on this topic?
17 Nothing on the last topic we just had.

18 MR. STEPHENSON: I'll stay the course unless you say
19 differently.

20 DELEGATE KILGORE: Does anyone have or anybody
21 want to change what staff does from the last one?

22 All right, let's go to self-certification.

23 MR. STEPHENSON: Self-certification, we talked a little
24 bit about self-certification, and if the employer says we have 100
25 employees and the unemployment tax return filed, that's a one-

1 page report every 90 days and it's filed with VEC, who then sends
2 it to us, there it is, and there's the head count that are getting
3 paid. That's what we authorize.

4 We find big differences just what we do. This one is
5 hard and this one is a little bit shocking and you need to know
6 this. Companies will say we're going to invest \$30 million, and
7 they'll send me spreadsheets and appreciating schedules and lists
8 of equipment and I don't know what other numbers on it about
9 how much they have invested. And then we go to the
10 Commissioner of Revenue and find out what's on the tax rolls.
11 We find out it's vastly different from what we're being told.

12 Our new contracts say that capital investment is what
13 shows up on the Commissioner's books. We do that because the
14 whole reason we're making these incentives is to build taxable
15 assets in the community to help build these communities.

16 DELEGATE KILGORE: Ned, do you ever follow up to
17 see if the Commissioner of Revenue actually accepts the
18 investment or do we ever follow up on that?

19 MR. STEPHENSON: Mr. Chairman, that is an issue we
20 are aware of and the unequivocal answer is no. We take the
21 position that the Commissioner of Revenue is the officer of the
22 Commonwealth empowered to decide what things are worth
23 whatever their judgment is, we take their answer, and we know
24 sometimes it's off. We do that because before we started doing
25 that, we were flooded with appraised value and assessed value,

1 market values, book values, depreciated values, and nobody
2 could tell exactly what the capital investment was. It might be
3 whatever you decide it is to be. We couldn't figure out how to
4 administer these.

5 DELEGATE KILGORE: The reason I say that is because
6 I'm wondering, I'd buy Scott County at the tax assessed value
7 and make money on it. I was just wondering how we follow up
8 on that. There's a way a company could come up --

9 MR. STEPHENSON: -- The fine print of that language
10 goes on to say that we will recognize costs as determined by the
11 Commissioner of Revenue. Some of them factor in the
12 depreciation and there's all kind of tools that they use to arrive at
13 a taxable number, the Commissioner has to first arrive at a cost
14 and that's the number that they use. Theoretically, that's
15 supposed to be the capital cost.

16 MR. OWENS: Ned, how about if it's not a taxable
17 asset and the county waives the taxes, the municipality waives
18 the taxes?

19 MR. STEPHENSON: The contract provides we're going
20 to use costs as determined by the Commissioner irrespective of
21 the locality's choice to waive the tax. Whether it's a deal or an
22 incentive or whatever or if they give the tax revenue away, that's
23 okay, but it has to be assessed because we believe that
24 somewhere down the line that asset will ultimately hit the tax
25 rolls.

1 DELEGATE MARSHALL: When did the TROF formula,
2 we looked at investments and we looked at jobs.

3 MR. STEPHENSON: And the way it's paid for the job.

4 DELEGATE MARSHALL: So we don't look at what the
5 tax rate is for the investments.

6 MR. STEPHENSON: We've done a study through the
7 tobacco region to determine what the aggregate tax rates are.
8 We use that in our model to come up with how much we're willing
9 to pay for the capital investments at that rate. It's built into the
10 model so that you're getting a return on investments based on
11 what shows up on the tax books. We take the position that if a
12 company buys equipment from Germany and software from
13 California and brings it to Halifax, you haven't done anything to
14 Halifax yet, it's only when it shows up on the tax books that it's
15 meaningful to Halifax.

16 DELEGATE MARSHALL: So if the company says I'm
17 going to hire 100 employees and pay them \$20 an hour and they
18 turn around and hire 100 employees, pay them \$10 an hour,
19 then you'll be in front of us asking us for what?

20 MR. STEPHENSON: The unemployment insurance tax
21 returns show people got a paycheck and the aggregate amount of
22 those paychecks. We bump that against the promise that was
23 made, see that they fulfill that because it is the amount of the
24 paycheck that gives rise to Virginia personal income tax, which is
25 the return to the community and to the state we're looking for.

1 DELEGATE MARSHALL: Your statement earlier was
2 that we want to get people hired, pay a livable and sustainable
3 wage, and we also want to build a tax base in the community. If
4 the localities turn around and say the tax rate is so much and
5 then discount it 25 percent, does the Tobacco Commission look
6 at, have we looked at that before?

7 MR. STEPHENSON: It often happens we provide
8 incentives to win the deal and the localities give tax revenue
9 away.

10 MR. NOYES: Our position is that that is not the
11 Commission's decision to make. We treat everybody on the
12 same basis and the counties make their judgments.

13 DELEGATE MARSHALL: But our position if they, it's
14 \$20 an hour and they pay 10, then it's our --

15 MR. NOYES: -- That's figured in.

16 DELEGATE KILGORE: Is that self-certification?

17 MR. STEPHENSON: It doesn't have to happen often,
18 but recently we go looking for the unemployment insurance tax
19 return and VEC says out of record. So I say to the company, I
20 don't know where the 100 people are and you didn't file your tax
21 return and I can't deal with this until you do. Often, and the
22 ones that are really troubling is loss of commission revenue not
23 on the tax return, and we run into that, too, when it's not on the
24 books. But when that happens, we stop and say you've got to
25 source that out, get yourself straight, David. I'm telling you

1 people don't like this stuff. It's creating serious heartburn, and I
2 just want you all to know what's going on.

3 DR. REDWINE: The spirit of the day. I'm involved in
4 this with Mr. Stephenson and our Commissioner of Revenue in
5 one of these agreements. I have a unique perspective because I
6 also serve on local government. Local government has become
7 liable for these if there is a default in the payments. We have
8 instructed or requested, firmly suggested that our Commissioner
9 of Revenue do an on-site visit, and so far, we've not gotten that
10 done. We've run around the block.

11 I'm looking for some language or instruction or
12 leverage or something from this Commission that we can use that
13 says that this Commission backs that thought and that we believe
14 the Commissioner of Revenue's job in that county is to give us an
15 independent assessment. If we can't do it or we're not allowed,
16 tell me, and I'll say we're not allowed.

17 MR. NOYES: Dr. Redwine, I think the leverage the
18 Commission has is that disbursements are frozen going forward
19 on future Commission awards until and unless we have the
20 information that is needed or referred to, to make the judgment.

21 DELEGATE KILGORE: That hurts the county board not
22 to have control and we don't have any control over a
23 constitutional officer.

24 DR. REDWINE: We can't make him do it and it doesn't
25 hurt him, but it hurts the county and all the businesses within the

1 county.

2 The other thing and the other part of this, I want to be
3 clear and I want to educate me, as well, the closer they get to
4 the investments, even if they didn't reach what they said they
5 were going to do, the closer they get, the less they pay back. Is
6 that correct?

7 MR. NOYES: The refund is pro rata and we give credit
8 for the projects that they did make.

9 DR. REDWINE: So, it's to their benefit or it's to the
10 business' advantage if we get a good independent assessment
11 that maybe is more than they actually turned in?

12 MR. STEPHENSON: That's true with respect to the
13 refund on the incentive, but it generates a tax bill for the file.

14 DR. REDWINE: The last comment I have is that we
15 spend at the local government level all of our time trying to
16 attract businesses to come in and create jobs, create
17 investments, and if we are not collecting the correct amount of
18 tax revenue from these people based on what they invested, and
19 if our Commissioner of Revenue is not doing a good job of
20 assessing it, then I don't want to say no gain, but what's the use
21 of attracting these people if we can't get the revenue, it's really,
22 the Commissioner is an integral part of economic development,
23 because that's the person we go to, to get our money, correct?

24 MR. STEPHENSON: Commissioners of Revenue, being
25 elected officials, are often maverick individuals and they don't all

1 do things the same way.

2 DR. REDWINE: All the people say amen. (Laughter).

3 MS. CARTER: Is the TROF contract, is that with the
4 locality or with the business?

5 MR. STEPHENSON: It starts, Mary Rae, the contract
6 has always been a three-party contract with the company, the
7 county, and the Commission. However, in the early years, the
8 county had no liability, things went bad, lots of them went bad.
9 The Commission changed that and requires the county to be
10 jointly and severally liable, so now we have the localities'
11 attention mostly because on the hook to make this work. That
12 has not been popular.

13 MS. CARTER: Is there a possibility we could put
14 something in that contract that the county or ask them to either
15 get them or suggest to the Commissioner to get an independent
16 audit done on the site?

17 MR. NOYES: Specific in every contract now that we're
18 going to look at what the Commissioner has listed as the value of
19 the asset. Could we change that sentence somehow, it's there,
20 and I think everybody understands that.

21 DELEGATE JOHNSON: Mr. Chairman, if the
22 Commission wants to do it, why wouldn't an appraisal by a
23 certified appraiser do the job and put it in the contract?

24 DELEGATE KILGORE: I don't think it's helping the tax
25 base.

1 DELEGATE JOHNSON: Mr. Stephenson, my thought is
2 that the only number that matters is the one on the
3 Commissioner's book, whatever that number is, that's the one
4 that counts.

5 DELEGATE WRIGHT: Mr. Chairman, it's been a few
6 years since I served at local government, but if you have the
7 situation that Dr. Redwine is prescribing, I would invite the
8 Commissioner to come to the next board meeting and perhaps at
9 budget time requesting things like help, and I'd have the news
10 media there, and I would say is it true that you are not
11 accomplishing things in your office and you're costing this county
12 money, I mean it shouldn't be too hard. That personally should
13 apply to the Commissioner and not on the Tobacco Commission.

14 DELEGATE KILGORE: All right.

15 MR. STEPHENSON: Mr. Chairman, this is the hardest
16 one we have to deal with. These contracts, many of them were
17 signed during the heyday. We all know what has happened.
18 When I called them to account for this and they are short, I just
19 can't tell you the number of stories I listen to about how come.
20 Many of the stories are very compelling. I try to listen to the
21 story. When the story is finished, I don't have the jobs this
22 contract calls for, so I'm a little bit at a loss as to what to do with
23 the recession. It's hit everybody, and it is a problem.
24 Sometimes more time doesn't fix that.

25 SENATOR PUCKETT: Mr. Chairman, I would simply

1 recommend that when you get something like that, come back to
2 this Committee.

3 MR. STEPHENSON: They're here today.

4 SENATOR PUCKETT: Again, it's not the staff that has
5 to make that decision. Just bring it here.

6 DELEGATE KILGORE: All right. Next.

7 MR. STEPHENSON: A quick word about the
8 disbursement freeze that the Commission agreed to a couple of
9 years ago. When one of these contracts goes into default, they
10 freeze. And when I say default, that means I have exhausted all
11 that I can do to get this resolved within the terms of the contract.
12 And if I can't get it resolved, then we do everything we can. We
13 reluctantly push the button on the computer, lock up the
14 disbursement. That helps, and I will tell you that is the only
15 thing that has brought any of these out of the woodwork to get
16 cured, the freeze.

17 It's important to know that freezing the disbursement
18 doesn't recover much, it doesn't even start the process to cover
19 the money, just stops your future disbursements.

20 DELEGATE MARSHALL: Stopping the money going
21 forth, is this all the different committees or just the TROF or is it
22 R and D?

23 MR. STEPHENSON: One hundred percent of all the
24 Commission's instructions throughout the localities, even those
25 that were approved two years ago, they spent the money and

1 they need a check and can't get any money. It's the only tool
2 that has brought these people to the table. You have to cure this
3 to get it credit, you have to, otherwise, nothing.

4 DELEGATE MARSHALL: I understand that. If you
5 have some company out there that's not playing by the game's
6 rules, it puts a real burden on the locality with trying to be the
7 good shepherd. So we're penalizing a potential good project
8 because of ones that with all good intentions would have had.

9 MR. STEPHENSON: You're right.

10 DELEGATE MARSHALL: They have the option to come
11 here and plead their case.

12 MR. STEPHENSON: Yes, they do. They have the
13 option to stroke the check and make it go away and deal with it
14 however they want to.

15 DELEGATE MARSHALL: That check they stroke, it
16 actually has to be a check from that locality to us?

17 MR. STEPHENSON: I don't care where the check
18 comes from.

19 DELEGATE MARSHALL: You want your money back.

20 MR. STEPHENSON: It is a phenomena that happens.
21 And if you'll look at the next bullet here, the companies may not
22 know when the refund is due because the locality is sensitive to
23 the corporate citizen's relationship, they don't want to tell them
24 and beat them up. They won't tell them they're behind, the
25 money is due. That happens.

1 MR. NOYES: Our relationship is with our grantee.

2 MR. STEPHENSON: I look to the entity that is the
3 payee of the disbursement that I made. That is the payee on the
4 disbursement check that I made.

5 DELEGATE BYRON: Up until this point, it sounds like
6 we have a contract in place that was poorly written at the time,
7 so unless we make changes today, that contract still stands. The
8 only thing that seems to have been affected much would be
9 whether or not the staff has the authority to put a freeze on
10 funds in between meetings or that becomes part of the appeal.

11 DELEGATE KILGORE: They have a right to put on a
12 freeze until they become before this committee.

13 DELEGATE BYRON: You're in the middle of something
14 or some disbursement and we only have three meetings a year
15 now or asking questions, is it frozen until the appeal?

16 MR. NOYES: It's frozen until there's been an appeal,
17 and that can be 120 days.

18 DELEGATE BYRON: That also puts the staff in a
19 position of instead just looking at numbers and you have to wait
20 for an appeal or it puts you in a position, I guess, of listening
21 deeper than you necessarily need to through all these pieces and
22 other things. If they wanted a freeze, you could just say you
23 didn't meet your requirement to the Commission.

24 MR. STEPHENSON: It's important to note that there
25 are very few frozen accounts. The staff has been very slow to do

1 that, and we cut a lot of slack sometimes waiting until meetings
2 can occur, because we know that is crippling the locality.

3 DELEGATE BYRON: That would cut down on your time
4 because you're spending a lot of time in all this, too, and then it
5 comes before us anyway.

6 MR. STEPHENSON: Then maybe we should speed up
7 the freeze. These things tend to wear you out.

8 DELEGATE MARSHALL: My concern, Ned, is now we
9 have three meetings a year. The concern is that here we are in
10 September and what happens if somebody, if a grant becomes
11 June or next week and we don't meet until January, so then are
12 they not only frozen in and localities were to get money for other
13 projects, then all that is frozen until we meet in January. Are you
14 saying to us we don't do that until we get close to the meeting?

15 MR. STEPHENSON: Generally speaking, I work with
16 the TROF recipients, work through all of this and finally get to the
17 point where they didn't meet the requirements, and then they
18 admitted it, and there's nowhere else to go and I give them their
19 appeal rights and they say I want an audience in front of the
20 Committee, we will not freeze that until they've had their
21 hearing. If they want to come and talk to you and you want to
22 give them some relief, they'll get that relief.

23 DELEGATE KILGORE: All right. Let's do this --

24 MR. OWENS: -- One quick question, is that in the
25 contract?

1 MR. STEPHENSON: It is not.

2 MR. OWENS: They don't know what's going to happen
3 until it happens.

4 MR. STEPHENSON: We give them lots of warning.

5 MR. OWENS: Do they agree to the freeze?

6 MR. STEPHENSON: They do not agree to a freeze.

7 SENATOR REYNOLDS: The freeze will give you
8 information and provide you with certain information and without
9 the freeze that would not have happened.

10 MR. STEPHENSON: They've agreed to a great many
11 things, and when those things don't happen, the freeze is the last
12 thing or the last resort.

13 MR. OWENS: It seems like maybe there should be a
14 little bit more due diligence on the prospective company before
15 they sign their name on the dotted line to get the funds.

16 MR. STEPHENSON: One would hope so.

17 MR. NOYES: I believe that to be the case.

18 MR. STEPHENSON: There are people in this room that
19 have gotten beat up by the process and need to get this in front
20 of you if that's what you want to do. The staff tries to simply
21 make sure that you get what you paid for and they can come
22 here and get relief.

23 I want to go quickly for a moment to page 66 in your
24 book. This is a list of those TROF contracts currently in default
25 for one reason or another. Four of those, the communities are

1 frozen, the rest of them are awaiting your judgment as to the
2 outcome for them. I invite your attention to the end date on the
3 contract, and you see that many of them are well beyond a year,
4 and we are slow to do this. We write and tell them and tell them
5 and tell them, finally we just run out of time.

6 You can see the extent of the default, right-hand
7 column, in terms of the percentage of achievement under the
8 contract. And this is kind of a running list of those that have,
9 that we're working with. I must tell you I probably have 25 more
10 of these on my desk.

11 DELEGATE KILGORE: Twenty-five more are going to
12 be in default?

13 MR. STEPHENSON: Yes.

14 DELEGATE KILGORE: That's everybody, we won't
15 have any meetings next year then. They're going to be frozen.

16 MR. STEPHENSON: Mr. Chairman, that concludes my
17 remarks except to say that there are several localities who have
18 special circumstances that warrant your attention and they're
19 here today and hope to have an audience with you.

20 DELEGATE KILGORE: After hearing all that, who
21 wants to be first?

22 MR. NOYES: The reason I ask that about the order,
23 there's been a request, and I've talked to the Chair about, and
24 any discussions at this time from a Washington County project be
25 deferred until January, and there is an opportunity for that

1 business to work with the county and with the Commissioner on
2 actually doing some more business. I recommend to the
3 Chairman that if that's the case that we defer action until the
4 January meeting.

5 DELEGATE KILGORE: I don't think we have to have a
6 motion on that.

7 MR. STEPHENSON: Is that only with respect to the
8 Washington County?

9 MR. NOYES: Yes. We're just deferring it.

10 MR. STEPHENSON: We also have in our audience
11 today representatives from Henry County who have a special
12 circumstance that they would like to have some time with you.

13 DELEGATE KILGORE: Come up and tell us your name.

14 MR. VANDERGRIFT: My name is Rich Vandergrift, and
15 I'm senior vice president of RGI International Metals, Inc. and
16 also vice president of RTI, Martinsville, Henry County. And I
17 appreciate your taking the time to listen to our appeal on behalf
18 of RTI, and also I appreciate the personal time that several
19 members took to tour the facility today.

20 Ned, a contract is a contract and been involved in
21 many of them from a corporate standpoint. It is what it is.
22 We're here to make an appeal for time extension only. We are in
23 arrears on our promise, the Committee has not received their
24 payback yet from the money you gave to us or invested in us.
25 We are a result of the global recession that's taken place. And

1 the sole purpose for the slower than intended ramp is due to the
2 global conditions.

3 The international titanium market and the aerospace
4 has had an impact in that recession, as part of the impact that
5 that recession has had on us. We're slow in both in the
6 investment and on the hiring of people. The Martinsville site is a
7 strategic investment for RTI. And we've never taken our eye off
8 the ball and we're continuing to build and continuing to invest to
9 the tune of about \$90 million today or a little over that. We have
10 about 170 contractors on site today and working very hard to try
11 to bring up a portion of that facility, represents some of that
12 investment prior to the end of the year.

13 DELEGATE KILGORE: How long are you asking for?

14 MR. VANDERGRIFT: I was here to ask for until
15 December, 2013, and I understand you can only authorize a
16 year.

17 MR. NOYES: The Committee can authorize a longer
18 period. The delegation to the staff is only for 12 months.

19 MR. VANDERGRIFT: I understand. Our commitment
20 was 150 employees, \$100 million to invest. We're at
21 approximately 90 million for investment. The employees on site
22 that are paid today are six, and we expect to be somewhere
23 between 20 and 35 by the end of the year. We do see a slow
24 ramp, and we will have no problem meeting the financial end, but
25 it's going to be a slower ramp with the people because we will be

1 putting in the equipment and hiring the people to meet the
2 capacity and the needs of our customers. I believe the light just
3 came on at the end of the tunnel, and it is not moving rapidly.

4 The forging area that we're trying to bring online prior
5 to the end of the year is something we need right now. The
6 balance of the hiring and the investment did not come up as
7 quickly as we hoped.

8 DELEGATE KILGORE: Why don't we do this, why don't
9 we do it for a year, the staff do it for a year, and maybe at this
10 time next year we can get a report on where we are then, that
11 way we're not committed out.

12 MR. VANDERGRIFT: Absolutely. That's very
13 generous.

14 DELEGATE KILGORE: Does that sound fair, that gives
15 us one year and let the staff do that?

16 DELEGATE MARSHALL: I'll make a motion that we
17 extend --

18 DELEGATE KILGORE: -- You don't have to make a
19 motion.

20 DELEGATE MARSHALL: You're going to extend it until
21 December, 2012?

22 MR. STEPHENSON: You'll note the dates are in your
23 book and the original maturity date on that contract was January,
24 2011, and the staff has already extended it to July of '11, and a
25 one-year extension would put you to July of 2012.

1 MR. NOYES: At the discretion of, maybe you can
2 extend it to whatever date you think. If staff does it, it's July,
3 '12.

4 DELEGATE KILGORE: Danny, if you make that motion
5 to extend it to December of 2012. That'll give us one year from
6 today, one year from this meeting until we meet, we'll be
7 meeting next September or thereabouts.

8 DELEGATE MARSHALL: So moved.

9 MR. OWENS: Second.

10 DELEGATE WRIGHT: I've got a question on page 66
11 under Investment, and I think I heard the amount mentioned of
12 90 percent investment has been satisfied, 90 million, and yet it
13 says the amount delivered is 25 percent. I'd like to know if that's
14 an example of self-certification. Ned mentioned earlier what's
15 the difference.

16 MR. STEPHENSON: The 25 percent is the amount
17 that's of record with the Commissioner of Revenue. The issue
18 there is that certain equipment does not hit the tax books until it
19 is placed in service. Much of Rich's has not been placed in
20 service.

21 MR. VANDERGRIFT: That is correct.

22 MR. STEPHENSON: Has not yet hit the tax books.

23 SENATOR RUFF: I heard the proposed motion. I was
24 there to take the tour today, working hard, and they're investing,
25 and they're not going to back out on it, and I think we ought to

1 go ahead and make it or give them until December, the end of
2 December.

3 DELEGATE CARTER: December of what?

4 SENATOR RUFF: Go ahead and extend it, you did it a
5 year, go ahead and extend it until December of 2012.

6 DELEGATE CARTER: Is that your motion?

7 SENATOR RUFF: Yes.

8 DELEGATE KILGORE: I've got a motion and a second,
9 all in favor, say aye. (Ayes). Opposed? (No response).

10 MR. VANDERGRIFT: Thank you very much.

11 MR. STEPHENSON: Mr. Chairman, I believe in the
12 audience Michael James sitting behind you, he has a presentation
13 from Lee County.

14 DELEGATE KILGORE: Michael is the new Lee County
15 economic development director for Lee County. Welcome.

16 MR. JAMES: Thank you.

17 DELEGATE KILGORE: This is your first time making a
18 presentation?

19 MR. JAMES: This is my first time, yes. I'm Michael
20 James from Lee County, and I'm here to talk about the KCG Call
21 Center. And Paul Kavanagh is here also, and he is the primary
22 owner.

23 There are two performance agreements in question in
24 January and May of '07. I want to talk about the letter of the
25 contract versus spirit of the contract. You have the letter of the

1 contract in front of you. I believe in the separation of church
2 and state, and if you would indulge me for one moment to quote
3 II Corinthians 3:6, you made a commitment to administer the
4 new covenant not of the letter but of your spirit, for the letter
5 kills, the spirit gives life.

6 The spirit of this contract was to make KCG into a
7 pillar in the county. That company was to provide jobs,
8 particularly those people that don't have a college degree or even
9 a high school diploma. It also required and enabled KCG to make
10 a significant contribution to the company, and I propose to you
11 the spirit of the contract even more.

12 Your help has enabled KCG to survive this terrible
13 economy. They are the largest nongovernment or nonmedical
14 employer in the county. They made a significant economic
15 impact on the county, no question about it. They're firmly
16 committed to the Town of Pennington Gap and their location. If
17 you go on the website, there's numerous, and I would dare say
18 KCG's website is the greatest piece of marketing for the Town of
19 Pennington Gap that I've ever seen. They have posted GED
20 classes for their employees onsite. They've been an active
21 participant in Lee County's educational programs.

22 In addition to the Commissioner of Revenue numbers,
23 they have vested about \$100,000 in the physical building that is
24 not on the tax roll and the IDA owns the building, and they have
25 invested 100,000 into the structure. They're still a viable

1 company with a viable business model. The full amount you're
2 requesting, 175,000, no question about that.

3 I've brought a couple of visual aids here to help me.
4 The first agreement was signed in February of 2007 and KCG had
5 148 employees. The letter of the contract says the three years
6 doesn't start until May when the second agreement was signed.
7 We got the first agreement and got the money and quickly
8 rounded up a staff.

9 Since then, as you can see, it's been very up and
10 down. At the end of the period, we're at 196 employees on
11 average during the entire time, or they're at 202 at the end date,
12 so they're up either 48 or 54, we backed up and started the
13 period, which was about two-thirds of the money, 185 out of 295.
14 Either 48 or 54, so we'll call it 50 and make it even. I'd like to
15 propose that we're not actually down employees, as the letter of
16 the contract indicates, we're about 50.

17 One of the highlights of the KCG's contribution, we are
18 the largest nongovernment, nonmedical employer in the county.
19 Several employees have received their GED right onsite there,
20 and they're an active participate in the VOTECH Program.
21 Twenty-seven students served during the time period in question,
22 and there are several more now because this time period ended a
23 while back.

24 Approximately \$15 million in payroll since the
25 inception, and the overwhelming majority of that is Lee County

1 residents. Many call centers have come and gone since then, but
2 KCG is still here.

3 DELEGATE KILGORE: What did the contract call for?

4 MR. JAMES: The contract called for 100 new jobs, and
5 it starts here when we got the first part of the money for around
6 50. The contract didn't start until May 29th.

7 DELEGATE KILGORE: On the high, how many?

8 MR. JAMES: Well over 300 at one time. XM merged
9 with Sirius, and that caused a problem. I'd give up my cable
10 before I'd give up my XM in the car.

11 DELEGATE KILGORE: Thank you.

12 MR. KAVANAGH: There's a couple of effects I want to
13 point out. We anticipated starting here or I never would have
14 signed an agreement saying we'd go up 100 from, to 244, and
15 that was physically impossible unless we had three shifts and
16 none of the clients we have would do that. So I never intended
17 to do that.

18 We've actually met our investment goal if you'd
19 consider what we've done for our building and we're close to the
20 1.1 million for tax rolls right now. And the money we've put into
21 our building would put us over that.

22 So really the question is jobs. If XM and Sirius Radio
23 hadn't gotten together, we'd still have over 300 people working,
24 and that's the honest to God truth. We have several clients that
25 have been with us through thick and thin and have no intention

1 of going anywhere else, which is a financial institution. We're
2 trying very hard to bring additional revenue in and add to the
3 jobs. We frankly have to. Our overhead based on different
4 things need more jobs than that. To my way of thinking, we've
5 pretty well met the spirit if not the letter of the law. We're still
6 doing that.

7 I want to say one more thing, that as long as I, and I
8 know I've said this to you before at different meetings, and I've
9 said this to you, Terry, at different meetings, and Senator
10 Wampler, everybody here is an influential person that knows that
11 other companies throughout this region, but it's really hard for us
12 to attract attention to a small company and a little town in
13 Virginia. Some people don't even know where it is. Half my
14 clients think I'm in West Virginia. If you would simply go out and
15 mention us, some of the contacts you have, and we're 50 jobs
16 away from really being a long-term success story.

17 We've been in Lee County for six-and-a-quarter years,
18 and we've had as high as 310 or 15 jobs and we've been as low
19 as 70 or 80. Three days ago, we handed out 190 paychecks.
20 The 150,000 we pump into Lee County every two weeks is
21 critical. There's almost no one that works for us that would be
22 employable in Lee County. When we moved there, over half the
23 people that had jobs left the county for work. That's no longer
24 the case.

25 What we're saying is, hey, we're a corporate citizen

1 and we're trying our darndest to do this and give or take one
2 merger that I never thought would happen, we've really done
3 everything we said we were going to do to live up to what you all
4 asked us to do.

5 MR. JAMES: I have one more statement. I'd like to
6 ask for mercy. The Merchant of Venice says the quality of mercy
7 is not strained. Blessed him that gives and him that takes.

8 DELEGATE KILGORE: What are we asking them to do?

9 MR. STEPHENSON: The ask on this was 175, and we
10 offered no interest terms and payment over five years. We also
11 offered a discounted refund if done promptly, and we would
12 consider an offer made by the county. We have tried to be
13 lenient in this particular one because those particular contracts
14 had some lack of clarity in some areas, but we caved in on those
15 things when the contracts were poorly written.

16 MR. JAMES: Two hundred and ninety-five thousand
17 total received in this grant.

18 DELEGATE KILGORE: How many are working today?

19 MR. KAVANAGH: About 165 FTEs, about 190, by far
20 the largest nonmedical, nongovernment employer in the county.

21 DELEGATE KILGORE: Taking out the prison total.

22 DELEGATE MARSHALL: So what do you want us to
23 do?

24 MR. JAMES: Well, I would love to have complete
25 mercy, but I'm a realist, and I think there's a number that you

1 guys can say you're sticking to your contract and you're making
2 sure we're holding up our end and we walk away and not limp
3 away.

4 DELEGATE MARSHALL: Discount the 25,000?

5 SENATOR PUCKETT: If I understand your charts,
6 you're at 195, 220, is that the green?

7 MR. JAMES: Technically, the time period starts here,
8 but we got eight bodies before the time period started. The letter
9 of the contract should have been 100 above the fleet of 220. We
10 think the clock starts here, the majority of the proceeds, that was
11 in February.

12 SENATOR PUCKETT: Sort of about right here when --

13 DELEGATE KILGORE: -- If you look at 140 payees,
14 you're at 202 --

15 MR. JAMES: -- Average has been 196 the entire time,
16 and the current count is 202 at the end of the time period, right
17 around that number today.

18 DELEGATE KILGORE: How does that figure net?

19 MR. STEPHENSON: I don't have the chart with me,
20 Chairman Kilgore, but I do feel compelled to say that go by
21 what's printed on the signed contract, often something else is
22 wanted, but we go by the contract.

23 SENATOR PUCKETT: The contract is 320 or 330?

24 MR. STEPHENSON: The contract calls for 220.

25 MR. JAMES: There are two agreements, starting at

1 220 and adding 100 at 320, 148.

2 MR. KAVANAGH: I thought we were agreeing to go to
3 220.

4 SENATOR WAMPLER: I'm going to try not to give the
5 local touch approach to this. For those that have not been to,
6 that's been hit pretty hard as many of our localities have, the fact
7 that you've got somebody willing to risk their capital to employ
8 200 people, that's a pretty phenomenal story in Lee County, and
9 not just our state leaders, but our federal leaders helped us
10 through the years to get there. If you claw back \$175,000, it's
11 going to sting and it's going to hurt, no question about it.

12 I don't know what Delegate Kilgore will be able to do
13 going forward, whoever may serve in the Senate, but it'll be 200
14 jobs that'll be hard to replace. I don't know if that means you'd
15 lose 175,000 after that workforce. I'm not saying we ought to
16 just erase it, be done with it, the fact that you're talking about
17 200 jobs in Lee County, that's a big deal. I don't know what the
18 answer to it is, but, and I challenge anybody to go to Lee County
19 and try to duplicate that. And it's rugged, and Ned is just trying
20 to comply with, I mean it's pretty tough.

21 MR. OWENS: What was the original grant?

22 MR. JAMES: Two hundred and ninety-five. There
23 were two grants, but the total is 295.

24 MR. KAVANAGH: I've been in the call center business
25 and worked side by side, and we've been trying to run this

1 operation --

2 MS. CARTER: -- I've been to the Wilderness State
3 Park, I agree it would be hard to replace this.

4 SENATOR PUCKETT: It looks to me like we're sort of
5 chasing the rabbit around here a little bit. Roughly 195 jobs, and
6 that's a significant amount of money. I think I heard Mike offer
7 25,000 back to clear this matter, leave those people there, and
8 leave that commitment to the community, and hopefully in the
9 near future, if we don't handicap them, maybe they can address
10 that.

11 I'm going to make a motion that we ask for something
12 in writing or I'll pass on that. I don't know who has the authority
13 to Lee County to say we'll pay 25,000 back. I think we should
14 accept that offer and get it in writing and move on.

15 DELEGATE JOHNSON: I'll second that motion.

16 DELEGATE KILGORE: We've got a motion and a
17 second.

18 MR. OWENS: The amount of money, you met the
19 obligation for the capital investment side of it.

20 MR. STEPHENSON: There was, and that particular
21 contract said if at least a million dollars was not invested, then
22 the entire grant is due and payable. There was a million dollar
23 minimum threshold. The amount of record with the
24 Commissioner of Revenue is 896,000. We overlooked that
25 requirement in this case and gave credit for the 896 against the

1 1.1 promise, which was a shortfall of some 19 percent. There
2 was a minimum investment threshold in that contract.

3 MR. OWENS: Is this the one that was a three-party
4 contract?

5 MR. JAMES: There are two performance agreements,
6 one is and one is not. The latter one is a three-party contract.
7 The first one was a two-party.

8 DELEGATE JOHNSON: Sir, mercy is not granted.
9 What's the other side of the coin?

10 MR. KAVANAGH: I don't have 175,000.

11 MR. JAMES: KCG has survived the economy.
12 Probably they should be about 160 employees right now. They
13 kept it at 190. Everybody is optimistic, probably 160 right now.
14 They're barely breaking even and slightly unprofitable at this time
15 and they're a little overstaffed. They're hopeful they're going to
16 get that next contract. They've been working on that next
17 contract.

18 SENATOR WAMPLER: Mr. Chairman, I'm going to
19 speak, and I may not have the authority to say it, but Delegate
20 Johnson's point, what will likely happen is that the corporation
21 will start selling off assets of the call center and start losing
22 employees and then you won't have the people to work. I hate
23 to see these jobs go if they start selling it off.

24 MR. OWENS: In your motion, Senator Puckett, that
25 25,000 immediately not financed.

1 SENATOR PUCKETT: That's why I asked for something
2 in writing, and I think I heard an offer to pay that, and we get
3 clarity so we'll have it in writing and then we'll act on it.

4 MR. NOYES: It's either a lump sum or instruction to
5 take the 25 over five years.

6 SENATOR PUCKETT: Here's what I think I heard,
7 we're prepared to give 25,000, and I'd like to have it in writing
8 from somebody assuming that responsibility. Then if we get that,
9 then this issue is over.

10 DELEGATE KILGORE: Any more discussion?

11 MR. STEPHENSON: Mr. Chairman, I'd like for that
12 agreement to be time limited.

13 SENATOR PUCKETT: Put that in the letter. If it comes
14 to us and it's not satisfactory, we'll have to deal with it again.

15 MR. STEPHENSON: I want closure.

16 DELEGATE KILGORE: When do you want it closed?

17 MR. STEPHENSON: Typically 30 days, but these folks
18 need to say what's possible for them.

19 DELEGATE KILGORE: Sixty days, and you can go to a
20 board meeting and do whatever you have to do.

21 MR. JAMES: We'll make it work.

22 MR. OWENS: I'd call for the question.

23 DELEGATE KILGORE: A motion has been made and
24 seconded, if there are no questions or discussion, all those in
25 favor say aye. (Ayes.) The question before you is Senator

1 Puckett's motion for 25,000 within 60 days. All those in favor,
2 say aye. (Ayes). Opposed? (No response).

3 MR. JAMES: Thank you very much.

4 DELEGATE WRIGHT: I'd like to make a comment now
5 that we've finished this proposal and so forth. I think we've got
6 to be sure that we let staff know. They had mentioned several
7 times that people come to Ned and everybody has problems and
8 people have contracts and there's a lot of people that come
9 around with the similar circumstances, and we should be very
10 careful how we handle these contracts and these deals. And it
11 makes it, in my opinion, tough on the stuff to try to comply on
12 the one hand and we on the other hand make these, I'm
13 personally uncomfortable being in this position. I just think the
14 staff dealing with these concerns for picking winners and losers
15 and I don't feel good about doing this knowing that could
16 compromise the system we have in place. I just wanted to make
17 that statement.

18 DELEGATE BYRON: I appreciate what you've just said
19 and some companies are in call centers and know how difficult
20 that is and we've got a three-year period here and some of the
21 worst times we've had and hopefully they can continue. And it's
22 just as much value as some of the other contracts, grants that
23 we approved in this Commission. It's a little different when we
24 have these ones coming back before us. I just think the
25 economy, it's just being a victim of this economy that has played

1 such an important role, might not be here if it wasn't for that.

2 SENATOR PUCKETT: I just want to make it clear we're
3 not trying to put Ned or other staff members into the decision-
4 making process, but you're going to make your vote and your
5 decision on how you feel that company or that partner has really
6 responded in this case. The thing I'm looking at here is they
7 almost made it or really pretty close, 195 jobs sitting down there.
8 And I don't want to see them leave. I think anyone that is 90
9 percent complete both their investment and jobs right now.

10 If some other companies bring something like that to
11 the table, I'm willing to support that whether it's here or
12 Southside, and this is about keeping jobs that are helping our
13 community. One of the figures we saw earlier was the payroll
14 going out down there every two weeks. That's significant for Lee
15 County or it's significant for all our counties for that matter. And
16 that's the piece I'll be looking at when somebody comes and asks
17 for help.

18 This group has been very cooperative and they've
19 been upfront with these figures. If somebody comes before this
20 body, that's what I'm going to be looking at. People are working
21 and getting a payroll and I'm going to support that. Tommy, I
22 didn't mean that you weren't.

23 DELEGATE WRIGHT: I made my comments after the
24 vote. I'm talking about in general. I don't feel comfortable with
25 the process in general, and I mentioned that before. I was

1 talking in general, and this last matter, I thought was very, but in
2 general, I thought this was very fair.

3 MR. STEPHENSON: Mr. Chairman, there are a couple
4 of communities on your list that are in a frozen status who are
5 not represented today. Absent any instruction from the
6 Committee, will remain frozen until they speak up or cure their
7 matter.

8 The Town of Saltville is frozen. The Town of Dinwiddie
9 is frozen. Patrick County is frozen. Bedford County is frozen.
10 Well, I'm sorry, Bedford County is here.

11 DELEGATE KILGORE: Come forward and tell us your
12 name.

13 MS. GUZI: My name is Kathleen Guzi, and I
14 appreciate the opportunity to be here today. And I'm the town
15 administrator in Bedford. I'm here on behalf of Teva
16 Pharmaceutical Labs, and I'm here in regard to some special
17 circumstances with this grant. Before I get into that, they
18 apologize, the corporation apologizes they couldn't be here today.
19 They are specifically looking at the Forrest location, which is
20 located in Bedford County. I want to comment, there was a
21 comment about, and I believe it was in making the localities vent
22 out, the companies that they are going to do the grant with.

23 Teva Labs has been steady growth partners since
24 1996. Since that time, there's been steady methodical growth,
25 capital investment, and in terms of a number of jobs, and they've

1 been a very good corporate citizen. They are special. We have
2 met the investment strategy, and that's \$28.2 million. They've
3 met that, in fact, have exceeded that. What we're falling short
4 on right now is jobs. They promised 129 jobs and have 64.
5 Before I move further, I want to commend the staff of the
6 Tobacco Commission.

7 We're a poster child, and we have challenge with
8 additional revenue. We have challenges with reconciling the tax
9 and we're trying to take internal measures to correct that. They
10 changed names in this whole process, and there was an
11 agreement signed in 2008, and they were part of an Israeli
12 company, and all of a sudden, now we have the global
13 marketplace. You now have the global marketplace affected
14 here, and it's been very challenging for all of us.

15 Ned has worked with us every step of the way. I was
16 going to go back and count the number of emails.

17 DELEGATE KILGORE: How much are we talking
18 about?

19 MS. GUZI: Five hundred thousand dollars. A hundred
20 twenty-five thousand. What we're requesting is a one-year
21 extension. It's supposed to have everything done by 2010. We
22 believe by 2011 or actually by today, we've already met that, but
23 there are two factors that are complicating this. Because they
24 changed the name, they changed their corporate strategy. The
25 division center as part of our Bedford location, and they ended up

1 moving that somewhere else.

2 DELEGATE KILGORE: Do we have a motion?

3 DELEGATE MARSHALL: I move we extend the time
4 until December of 2012.

5 SENATOR PUCKETT: Second.

6 MR. NOYES: December 31st, 2012.

7 DELEGATE KILGORE: All those in favor, say aye.
8 (Ayes). Opposed? (No response).

9 MS. GUZI: Thank you very much.

10 DELEGATE KILGORE: Ned, anyone else?

11 MR. STEPHENSON: Mr. Chairman, I want to thank the
12 Committee.

13 DELEGATE KILGORE: Thank you for your hard work.
14 This is just a fraction, I'm sure, of what you have been going
15 through dealing with these issues. Thank you, Ned, for your
16 diligence. This keeps people from calling us.

17 Now, we have the final indemnification payments.

18 MR. STEPHENSON: One of the Commission's two
19 charter missions is to indemnify the farmers, which we've been
20 doing since the first day. It has been long forecasted that
21 payments will be made in the spring of 2012, and that will finish
22 and complete the indemnification process the Commission set out
23 to do in the beginning. I invite the Committee to make a motion
24 for the Commission tomorrow to memorialize and announce your
25 intention to finish the indemnification program in 2012 and to

1 facilitate the process of Trotman the ability to make this known
2 to the recipients as far ahead of time as possible.

3 DELEGATE KILGORE: How much have we paid out
4 total?

5 MR. STEPHENSON: Three hundred and nine million
6 has been made available to the claimants, and a little bit of it
7 goes unclaimed every year.

8 DELEGATE KILGORE: Three hundred and nine million
9 has been made payable to the farmers quota and --

10 MS. KIM: -- From this Commission. There's also been
11 federal money in Phase II funds that also factored into the total
12 compensation of 479 million. We have to factor in the other
13 sources of payment.

14 DELEGATE KILGORE: This Commission as compared
15 to other states, we've put an additional 309 million made
16 available on the table for the farm communities.

17 MS. KIM: Yes.

18 DELEGATE KILGORE: That's pretty good.

19 SENATOR WAMPLER: We could take that up in
20 January.

21 MR. OWENS: You're just trying to memorialize it?

22 DELEGATE KILGORE: I don't know that we have to
23 memorialize it, it's already done.

24 MR. STEPHENSON: Trotman is seeking to let people
25 know in their literature and mailings that this is the policy.

1 Mr. Chairman, it's on the minds of the Committee to
2 some degree of risk that people receiving payments these many
3 years upon learning that it'll stop, your phone might ring.

4 DELEGATE KILGORE: It's going to do that anyway.

5 MR. STEPHENSON: It was considered to be worse to
6 say nothing than stop without saying anything.

7 MR. OWENS: When will the checks go out?

8 MR. STEPHENSON: Late June. There is a verification
9 and claim process that goes on ahead of that and it is in those
10 processes that Trotman seeks to say to people understand this is
11 the last year and the Commission has decided this will be the
12 end.

13 MR. NOYES: It's reasonable to do that at the meeting.

14 DELEGATE KILGORE: Between now and January, I'd
15 like for Trotman to give us a draft letter of what they intend on
16 sending out so we'll get it and have that discussion at our
17 meeting. I'd like to make sure in the letter it's known that we
18 have paid out X amount of dollars above what the federal
19 government paid. I don't know of any other state that did that.
20 It would be good to find out if any other state did that, and we
21 need to let people know we did our job.

22 All right, Ned, is that all you have?

23 MR. STEPHENSON: I have some more if you'd like.

24 All right, Neal, Policy on Trail and Park Grants.

25 MR. NOYES: I'm going to defer the discussion on this

1 until we get to the strategic planning. And the reason it appears
2 on there is that we had several projects typically for parks, trails,
3 and that sort of thing where the plan involves multiple year
4 funding with noncommission sources that are even less certain
5 than the Commission sources in the out years. The degree to
6 which the Tobacco Commission wishes to fund this type of project
7 which looks like a secular change from the staff's perspective, but
8 the project out five or six years, that can create budget
9 problems. I think we can handle that in the strategic planning
10 matters.

11 DELEGATE KILGORE: Anybody on the Committee
12 have any thoughts on the Executive Committee that you'd like
13 Neal to consider, that he can incorporate?

14 One thought I had was to, when you get into this park
15 funding and we're talking a lot of money and if you want to do
16 that, there ought to be a set amount of money, are we going to
17 say that's the amount we're going to fund for one year? And
18 that's something we can think about. If we want to do it, let's
19 set a figure.

20 MR. NOYES: Thank you, Mr. Chairman. We thought
21 maybe strategic planning was the proper place to have that
22 discussion.

23 There's been a discussion and it's been ongoing for
24 well over a year the CCAM partners with an opportunity to make
25 significant investments with companies in advanced

1 manufacturing and training. These companies have their own
2 training programs and it's across specific company lines. If
3 Southwest and Southside Virginia are going to be competitive in
4 the out years for advanced manufacturing, whether they are
5 supply trained for Rolls Royce, for any other type of technology-
6 related businesses, this needs to be part of our discussions going
7 forward in our budget process.

8 We are at the point in discussions now. Senator Ruff
9 most recently has been involved. There is to be an opportunity
10 to have an international level consulting firm, I don't know if it's
11 in the footprint of what we're offering and where we're offering,
12 because we are doing some things in advanced manufacturing.
13 Don't have a dollar figure for you. That has to be all negotiated.

14 CCAM members are involved in this and they have an
15 interest in us. What I seek from the Executive Committee your
16 permission to use funds from the General Account to pay for this
17 or at least a substantial portion. This consulting study will look at
18 opportunities in advanced manufacturing in the Tobacco
19 Commission jurisdictions. I wish I could give you a number, but
20 a meeting with this consulting firm has been arranged by CCAM.

21 Funds would come not from existing budget line items
22 from the General Account, over a million dollars is sitting there. I
23 would consult with the chair and vice chair, secure their approval
24 before entering into an agreement on this.

25 DELEGATE KILGORE: I know you've been involved

1 with the workforce issue.

2 SENATOR RUFF: I don't know that we have a good
3 handle on what we're doing and why we're doing it and we need
4 to find out from community colleges what they want to do. It
5 may be the right thing and it may not be the right thing. You
6 have a set of eyes to look at this and evaluate which way to go.
7 They may be able to give us a little bit of perspective to try to get
8 into this market.

9 DELEGATE KILGORE: I know, Delegate Byron, you've
10 been involved in this workforce issue.

11 DELEGATE BYRON: Workforce development is very
12 important. I'm very curious about it, and we also know the
13 Governor's fund gets its arms around this Federal act along with
14 all the other locals, and we have pockets of workforce
15 development everywhere.

16 My question is what is this that we're really proposing
17 to do --

18 MR. NOYES: -- Apparently just that. This is specific
19 to advanced manufacturing. What Senator Ruff and I have been
20 told unless and until you can demonstrate to a major employer
21 that you have 2,000 people, and we had a brief discussion with
22 the Education Committee about this sometime ago. Two
23 thousand people, which are geared up to provide, we would not
24 be competitive for the very type of businesses that we would
25 hope would come to our sites, where are the sources, and what

1 steps do we need to take. Where are the best places for us to
2 take this for these things to happen? This is what the outside
3 consulting group would propose, would advise us on.

4 In talking to some of the CCAM companies, what
5 they're saying is that this just isn't for members of the Tobacco
6 Commission, it would be available for companies that may be
7 looking to come to, and show the companies what it is, where we
8 are, and what steps need to be taken to satisfy them that the
9 labor force would be available. There are two very important
10 parts or aspects to this.

11 DELEGATE BYRON: Is this a capability study and a
12 business plan?

13 MR. NOYES: We don't have all that flushed out yet,
14 and the idea is to have a document that says this is the
15 curriculum you need and this is the equipment needs you're
16 going to have, this is how you deliver that to get to this point and
17 this point and this point. I think maybe that'll be on the 16th.

18 DELEGATE KILGORE: How long will this take?

19 MR. NOYES: That's one of the things we'll have to find
20 out. Certainly it's an involved process.

21 DELEGATE KILGORE: Are you going to be involved,
22 Kathy?

23 DELEGATE BYRON: I'm very interested in it.

24 DELEGATE KILGORE: I'll delegate Frank --

25 MR. NOYES: -- I'll need a motion that would allow me

1 to use funds from the General Account, how much I don't know.
2 The amount will be like six figures. We've got a motion and a
3 second. Any more discussion?

4 DELEGATE MARSHALL: You're going to check with the
5 chairman before you do that?

6 MR. NOYES: Oh, yes.

7 DELEGATE KILGORE: All those in factor, say aye.
8 (Ayes). Opposed? (No response).

9 All right, the next is the Farnborough Air Show. VEDP
10 did not have a booth at Farnborough, and it was a possibility of
11 cross-sharing. We can really ignore this item now.

12 DELEGATE KILGORE: We've got something else
13 before we go into Executive Session.

14 SENATOR RUFF: Before we leave Farnborough, I think
15 it's important people understand that when Danny and I went to
16 the show in Paris this year, five or six states had impressive
17 displays, shared the costs among various folks. Virginia had a
18 table not quite as long as this against the wall next to the door,
19 was somewhat embarrassing. Virginia entities were coming and
20 saying they'd be willing to share the costs. Even if we don't do it
21 this year, we should plan to do that down the road.

22 DELEGATE MARSHALL: They had different regions and
23 the State of Georgia had great cookies.

24 DELEGATE KILGORE: Frank or Neal, we had a
25 discussion and VEDP participation. We ought to get with some of

1 other partners. We need to have a presence there if we're going
2 to get some of these companies. So, Neal, if you could update
3 us, I think that's very important.

4 MR. NOYES: As far as the matter of the budget
5 transfer, Special Projects is page 38, and there'll be an
6 opportunity to discuss this in detail. Chairman Wampler, the
7 Committee recommendations exceed the amount available in the
8 budget by \$8,663,700, and I defer to Senator Wampler on this.
9 The amount is \$12 million more money than is available to the
10 Committee to accomplish the next phase we celebrated earlier
11 this afternoon.

12 At this time in the unbudgeted amount, the invaded
13 amount, there's a substantial balance that can accommodate
14 whatever amount the chairman and this Committee agree is
15 necessary to go forward with this recommendation. You
16 indicated, I think you can move the full \$12 million.

17 SENATOR WAMPLER: The recommendation from the
18 Committee, if I recall correctly, it was that we would transfer or
19 ask the Executive Committee to transfer \$12 million to fully fund
20 this, and I think to be consistent with the Committee.

21 DELEGATE KILGORE: Where are you getting the
22 money from?

23 MR. NOYES: The unbudgeted --

24 DELEGATE KILGORE: -- That's the same thing we did
25 with the project two hours ago.

1 MR. STEPHENSON: Not exactly the same thing, plus
2 transfers from Special Projects to Southside. And this is a
3 transfer from the unbudgeted amount to Special Projects.

4 SENATOR WAMPLER: All we're trying to do is, and the
5 full Commission can award whatever it wants to, we're just trying
6 to get the balance sheet of the Committee in proper order. What
7 we recommended was transfer \$12 million to the medical school,
8 and that's what I recall of the discussion.

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

12 Now, we'll go into Executive Session.

13 MS. NYHOLM: I move we go into Executive Session in
14 accordance with the provisions of the Virginia Freedom of
15 Information Act, for the purpose of discussing a prospective
16 business or industry.

17 DELEGATE KILGORE: Is there a second? All right,
18 moved and seconded that we go into Executive Session. Those in
19 favor of the motion, say aye. (Ayes). Opposed? (No response).

20 We're in Executive Session.

21

22

23 NOTE: The Committee goes into Executive Session at
24 approximately 6:20 p.m.; thereupon, the Committee is now back
25 in open session at 7:05 p.m., viz:

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

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

MR. OWEN: Second.

DELEGATE KILGORE: A roll call vote.

MR. NOYES: Delegate Byron.

DELEGATE BYRON: Yes.

MR. NOYES: Deputy Secretary Carter.

DEPUTY SECRETARY CARTER: Yes.

MR. NOYES: Delegate Johnson?

DELEGATE JOHNSON: Yes.

MR. NOYES: Delegate Kilgore.

DELEGATE KILGORE: Yes.

1 MR. NOYES: Delegate Marshall?
2 DELEGATE MARSHALL: Yes.
3 MR. NOYES: Ms. Nyholm?
4 MS. NYHOLM: Yes.
5 MR. NOYES: Mr. Owens?
6 MR. OWENS: Yes.
7 MR. NOYES: Senator Puckett?
8 SENATOR PUCKETT: (No response).
9 MR. NOYES: Dr. Redwine.
10 DR. REDWINE: Yes.
11 MR. NOYES: Senator Reynolds?
12 SENATOR REYNOLDS: Yes.
13 MR. NOYES: Senator Ruff.
14 SENATOR RUFF: Yes.
15 MR. NOYES: Senator Wampler?
16 SENATOR WAMPLER: Yes.
17 MR. NOYES: Delegate Wright?
18 DELEGATE WRIGHT: Yes.
19 MR. NOYES: It's certified, Mr. Chairman.
20 DELEGATE KILGORE: Do we have other business?
21 MR. NOYES: We have one other matter.
22 Ned.
23 MR. STEPHENSON: When I left the office this
24 morning, I had three out of four necessary votes on a TROF
25 award. Just to update the Committee, it requires all four votes to

1 be unanimous in the affirmative to make this happen. I only had
2 three at the time when I left this morning. Between then and
3 now, I picked up the fourth affirmative vote. The ask was 3.2
4 million. The recommendation and award was 200 odd thousand,
5 and I think Mr. Owens may want to speak to that.

6 MR. OWENS: Well, we have people here who feel they
7 have a compelling argument, 3.2 is the number that we should
8 grant them based on a few facts. They didn't come to the
9 Tobacco Commission for money before they started this project.
10 The project is over \$175 million capital investment, and they're
11 only going to have 26 direct jobs.

12 The biggest problem has been being capped off what
13 they could spend on the project by the FTC. They couldn't spend
14 but so much money. I'll let them speak to the project itself.

15 DELEGATE KILGORE: Come forward, please.

16 MR. DAILEY: Good evening, everyone. I'm Mike
17 Dailey, vice president of Business Development for Northern
18 Virginia Electric Cooperative.

19 MR. RAINEY: I'm John Rainey. I'm a senior energy
20 contracts originator.

21 MR. DAILEY: We are looking to invest \$175 million,
22 and we're looking to build a biomass in Halifax County. We're
23 looking to a biomass company and it'll be South Boston Energy,
24 LLC. We'll produce 26 new positions at the power plant, and we
25 anticipate we'll create an additional 40 jobs for the transportation

1 and lumber industry throughout Halifax County.

2 We're talking about an annual payroll in excess of 1.6
3 million per year for the facility. Mr. Owens brought up this in
4 terms of our request, why we're looking for that amount. We
5 have a real and personal property of about 166 million from the
6 Tobacco Commission application, a private investment closer to
7 178.5 million.

8 The Virginia FCC is authorized up to \$180 million
9 capital, and that's under a two percent cushion in terms of what
10 we expect the project to come in at versus what the Commission
11 is authorized. It doesn't eliminate us from going over the 180
12 million. It forces us to go back in front of the Commission, which
13 puts the project schedule in more jeopardy than what we would
14 like it to be at. That's what we're trying to accomplish.

15 MR. RAINEY: The other issue we're looking at is there
16 are other parts to this, and that's part of the 3.2 million request,
17 would make the facility more viable and more realistic. We
18 understand based on the labor calculation that Mr. Stephenson
19 calculated that basically where the 800,000 number came from.
20 We recognize that upfront, but we thought we'd make a request,
21 make the plan as viable as we could. This would be a long-term
22 asset, and that's what the additional dollars are related to.

23 Because of the cap of \$180 million, we're trying to use
24 the monies to build a component in there that we had to
25 eliminate, to try to minimize the cost of the project from the

1 contract.

2 SENATOR WAMPLER: The fuel source is what?

3 MR. DAILEY: Biomass.

4 SENATOR WAMPLER: That would be within a 50-mile
5 radius of the plant?

6 MR. DAILEY: Seventy-five miles.

7 SENATOR WAMPLER: Where I'm trying to go with this
8 is multiplier of creating fuel stock in a biomass, is that in any of
9 our calculations.

10 MR. STEPHENSON: Yes.

11 SENATOR WAMPLER: What do you think the value of
12 that is? That's a tax base and that's a given?

13 MR. STEPHENSON: The multiplier was strong. I don't
14 remember the number, but it was strong.

15 MR. DAILEY: We think that the impact on the lumber
16 and other industries will be another 1.5 million additional payroll.
17 That'll come close to the same amount we spoke of earlier.

18 SENATOR WAMPLER: What's the life cycle of the
19 plant?

20 MR. DAILEY: The initial term is 35 years. You use
21 that to depreciate it, and then you continue operating it. These
22 types of plants have been in operation for as much as a hundred
23 years if you'll look around the country with that same technology.

24 SENATOR WAMPLER: Do you put that money into the
25 rate base?

1 MR. DAILEY: Any grant source will go against the rate
2 base, and that would reduce our costs we charge the customers,
3 and we're calculating rate component, so it reduces the cost to
4 the customers.

5 SENATOR WAMPLER: You would reduce what you file
6 with the Commission and not add to your rate?

7 MR. DAILEY: That's correct.

8 DELEGATE MARSHALL: The biomass would. You're
9 pretty close to the North Carolina line. That calculation, part of
10 that is coming out of North Carolina.

11 MR. DAILEY: Some of it, yes.

12 SENATOR WAMPLER: That's a heck of a tax base if it's
13 there a long time. This would be a good anchor tenant, another
14 formulary-driven monies that would help offset this cost. Could
15 we take it out of the good of the cause or what? If we're going to
16 do it, maybe we should allocate --

17 MR. STEPHENSON: -- TROF has the money if you
18 want to do it.

19 MR. NOYES: There's no discussion that I know of with
20 the county using that allocation.

21 SENATOR WAMPLER: Once we have the cash, it
22 doesn't require a transfer.

23 MR. OWENS: Do you need a motion? I'd like to move
24 that we approve this 3.85 million direct.

25 DELEGATE JOHNSON: Second.

1 MR. NOYES: 3.185954.

2 DELEGATE KILGORE: We got a motion and a second.
3 Any more discussion?

4 DELEGATE MARSHALL: In the TROF application, do
5 we encumber the asset? So we don't know if they'll be in
6 business for the whole 35 years?

7 MR. STEPHENSON: The county being jointly and
8 severally liable and under this contract, some counties have
9 sought to protect themselves by gaining security in various
10 forms, bonds, and liens and so forth. That's the county's
11 election.

12 DELEGATE MARSHALL: So the TROF or the
13 performance agreement would create a \$75 million investment?

14 MR. STEPHENSON: Yes, all the stuff including the
15 jobs. If the county is doubtful of their ability to perform may
16 choose to secure the obligation.

17 MR. DAILEY: We're hoping it'll reduce the recession,
18 some lumber jobs. We have 90 people already in the lumber
19 business and shipping business. We already have contracts or
20 signed up that number of folks. We have well over 40 people
21 that are anxious for us to get going because there's a need to
22 dispose of these wood chips. Landowners are now requiring
23 when you go in to do logging that you take the wastes.

24 DELEGATE MARSHALL: Are you competing with other
25 plants for the chips?

1 MR. RAINEY: No. We would be taking their sawdust
2 wastes. They want to get rid of it.

3 DELEGATE KILGORE: I have a motion and a second.
4 All those in favor, say aye. (Ayes). Opposed? (No response).

5 MR. STEPHENSON: I'd like to ask the record to reflect
6 the vote of four members of the TROF panel have the power to
7 vote and bind the Commission. That would be Delegate Kilgore,
8 Mr. Noyes, Mr. Owens, and Senator Ruff, that they would vote in
9 the affirmative.

10 MR. NOYES: Just for the record, the amount is
11 \$3,185,954.

12 MR. DAILEY: Thank you.

13 DELEGATE KILGORE: Any more comments?

14 SENATOR WAMPLER: How can I do this without going
15 into the Executive Session? Maybe we should get the TROF panel
16 together at 9:30 in the morning. We'll get the TROF panel
17 together at 9:30 in the morning.

18 DELEGATE KILGORE: All right, any further comment?
19 Any other public comment? All right. Thank you for your time.
20 The reception is at Hartwood.

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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, September 28th, 2011, at 4:00 o'clock p.m., at the Southwest Virginia Higher Education Center, Abingdon, 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 5th day of October, 2011.

Medford W. Howard

Registered Professional Reporter

Notary Public for the State of Virginia at Large

MY COMMISSION EXPIRES: October 31, 2014.