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**VIRGINIA TOBACCO INDEMNIFICATION AND COMMUNITY
REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501
Richmond, Virginia 23219

Executive Committee Meeting
Wednesday, May 23, 2012
5:00 p.m.

The Institute for Advanced Learning (IALR)
Danville, Virginia

1 **APPEARANCES**

2

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 The Honorable Joseph P. Johnson, Jr.

8 The Honorable Daniel W. Marshall, III

9 The Honorable Donald Merricks

10 Ms. Connie Greene Nyholm

11 The Honorable Edward Owens

12 David S. Redwine, DVM

13 Ms. Cindy M. Thomas

14 The Honorable Thomas C. Wright, Jr.

15

16 **COMMISSION STAFF**

17 Mr. Neal Noyes, Executive Director

18 Mr. Ned Stephenson, Deputy Executive Director

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

20 Ms. Stephanie S. Kim, Budget Director

21 Ms. Sara Williams, Grants Coordinator, Southwest Virginia

22 Ms. Sarah Capps, Grants Coordinator, Southside Virginia

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1 May 23, 2012

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4 DELEGATE KILGORE: Welcome, I call this
5 meeting to order and I'll ask our Executive Director to call the
6 roll.

7 MR. NOYES: Delegate Byron?

8 DELEGATE BYRON: Here.

9 MR. NOYES: Deputy Secretary Carter?

10 DEPUTY SECRETARY CARTER: Here.

11 MR. NOYES: Delegate Johnson?

12 DELEGATE JOHNSON: Here.

13 MR. NOYES: Delegate Kilgore?

14 DELEGATE KILGORE: Here.

15 MR. NOYES: Delegate Marshall?

16 DELEGATE MARSHALL: Here.

17 MR. NOYES: Delegate Merricks?

18 DELEGATE MERRICKS: Here.

19 MR. NOYES: Ms. Nyholm?

20 MS. NYHOLM: Here.

21 MR. NOYES: Mr. Owens?

22 MR. OWENS: Here.

23 MR. NOYES: Dr. Redwine?

24 DR. REDWINE: Here.

25 MR. NOYES: Senator Ruff?

1 SENATOR RUFF: Here.

2 MR. NOYES: Ms. Thomas.

3 MS. THOMAS: Here.

4 MR. NOYES: Delegate Wright?

5 DELEGATE WRIGHT: Here.

6 MR. NOYES: You have a quorum. I need a
7 motion and a second to approve the minutes of 5-17-12.

8 DELEGATE JOHNSON: So moved.

9 DELEGATE KILGORE: We have a motion and
10 a second to approve the minutes. All those in favor say aye.
11 (Ayes). Opposed. (No response). The minutes are approved.
12 The first item we have, we have to pin this budget down. The
13 first thing we knew is we have had a meeting last Thursday
14 and there was some questions regarding the Office of the
15 Attorney General concerning reimbursement. We do have an
16 update on that.

17 MR. NOYES: Mr. Chairman, there are two
18 matters that are a continuation of our discussion last week.
19 One is additional assistance from the Commission in support
20 of the work that the OAG contractor relationship in the
21 lawsuit. If you'll recall, we had some discussion about that
22 last week. The second has to do with counsel. These are
23 separate matters. I think we should consider them separately.
24 Before going on, I want to make it clear to members of the
25 Executive Committee since counsel Ferguson's illness, the

1 Office of the Attorney General has been forthcoming and
2 cooperative in allowing Commission staff access to outside
3 counsel for transactional matters. When something comes up
4 where we need an attorney, without exception, the Office of the
5 Attorney General has been most gracious. I don't want
6 anybody to think that it's not happened. That's on
7 transactional matters. The matter of securing new counsel so
8 that counsel can be available to you members of the
9 subcommittees is a different issue but we've had no problems
10 getting transactional counsel. I apologize if any of you thought
11 that we had not had legal guidance and support of our
12 discussions and decisions you expect. You have had that and
13 OAG has done exactly what we would have hoped for them to
14 do.

15 We come now to the issue of counsel and there
16 are two ways to go. I met yesterday with Senior Deputy
17 Counsel, Charles James and with Mary Rae on the phone and
18 Mr. Cheng and there are two ways to go. We need to send a
19 very clear message to the OAG on what policy we wish to
20 pursue. Mr. James said yesterday the Attorney General is
21 open to that whatever it was we decide and we need to make
22 that decision. There are two alternatives, one is general
23 counsel. General Counsel would be an employee of the Office
24 of the Attorney General. We would house that individual, he
25 or she at our office and we would pay the salary and all other

1 costs with that individual's services. There is an MOU that's
2 missing two items. The name of that person to serve as
3 general counsel and the salary level that we are prepared to
4 support. All of the other matters in the MOU are decided and
5 agreeable but the MOU is exactly like the MOUs that the Office
6 of the Attorney General have with other state agencies. And
7 there is a difference. That's one path, general counsel. That is
8 an attorney advisor. Not only legal expertise but that
9 individual can advise you on policies and processes and all
10 other sorts of things that go on in the office.

11 An alternative to that is a relationship with a
12 firm. This is a transactional and not general counsel but
13 transactional relationship where staff would be able to go as
14 necessary to that law firm designated by the OAG and seek
15 services. In effect, that's pretty much what we had with
16 Frank. Frank functioned as general counsel and he was
17 available to us about policy and everything but what he did
18 was review those documents that needed a legal review. I am
19 agnostic on the matter. One is not necessarily better than the
20 other but a decision that sends a clear message on what your
21 preference is, that is something that is necessary. Currently
22 the Attorney General advertised for legal services and a couple
23 of weeks ago they forwarded to me and maybe last week, the
24 names of two candidates that they believe are highly qualified.
25 The staff has been invited to go talk to all of those people.

1 They forwarded two individuals and they referred those to
2 follow up interview and Ned and I would do that together. If
3 general counsel is the direction that you wish, general
4 direction that this committee chooses, we'll meet with those
5 people next week. If it's a relationship with a firm in the
6 transactional approach, then these two individuals that I've
7 been told are highly qualified, they will not be part of the
8 equation. As I said, either of them can get the job done but we
9 need to be very clear what the Commission's expectations
10 would be and I would communicate that? I can do that on
11 Friday to Mr. James.

12 DELEGATE KILGORE: Thank you. Let me say
13 that Neal has kept me and Senator Ruff in the loop and talked
14 to the AG personally about this. These are ongoing issues over
15 the last year and a half and Neal's had close contact
16 concerning these negotiations and I appreciate what he's been
17 able to do for us. I think Frank would echo what I'm saying
18 and we've advised Neal on what steps to take in relationship to
19 counsel when we needed counsel. If it comes down to a choice
20 of general counsel or a relationship with a firm is what it really
21 comes down.

22 MR. OWEN: How much are you spending on
23 transactional?

24 MR. NOYES: Ned can speak to that.

25 MR. STEPHENSON: Approximately \$65,000 in

1 the last 8 months on four specific transactions.

2 MR. OWENS: General counsel only would
3 work for us, is that correct?

4 MR. NOYES: They would only work for the
5 Office of the Attorney General and the Attorney General would
6 designate that person as general counsel for the Commission.
7 Only the OAG can appoint counsel.

8 DELEGATE KILGORE: If you have a general
9 counsel, am I not correct in saying that that general counsel
10 may not be field qualified to do bonds and things like that or
11 give advice on an R&D project and then you'd have to hire a
12 transactional attorney anyway?

13 MR. STEPHENSON: I think it's reasonable to
14 expect that any general counsel will have a certain skill set
15 personally that he will provide but when you're outside that
16 skill set you may still need to have outside counsel beyond
17 general counsel.

18 DELEGATE KILGORE: As far as a ballpark
19 figure so everybody understands, what's a ballpark figure for
20 the cost of that?

21 MR. STEPHENSON: For general counsel?

22 DELEGATE KILGORE: Yes.

23 MR. STEPHENSON: I'm hesitant to give a
24 number Mr. Chairman. It just depends on how many ancillary
25 services that person feels that they need in terms of computer

1 access and legal library.

2 DELEGATE KILGORE: North of what?

3 MR. STEPHENSON: North of 100, maybe
4 north of \$150,000 a year.

5 SENATOR RUFF: From the conversations we
6 had with former people that were being considered, it would be
7 extremely far north of \$100,000.

8 MR. STEPHENSON: I believe so Senator.

9 SENATOR RUFF: I don't want anybody to
10 think we're going to get one for \$100,000.

11 DELEGATE KILGORE: You could get
12 somebody out of law school for \$60,000.

13 MR. NOYES: Mr. James made the point that
14 that type of recent graduate probably is not in the interest of
15 the Tobacco Commission.

16 DELEGATE MARSHALL: How much were you
17 spending on average with Frank?

18 MR. STEPHENSON: For approximately 10 or
19 12 years, Frank was an employee of the Office of the Attorney
20 General and they designated his services to be available to the
21 Commission and I understand then there was a
22 reimbursement between the Attorney General's Office and the
23 Commission for whatever we used of Frank's time. In the last
24 two years of the previous 12, Frank retired from the Office of
25 the Attorney General and entered into a retainer relationship

1 with the Commission for which we paid him I believe \$65,000
2 per year for that retainer agreement with Frank as an
3 independent contractor with the Commission.

4 MR. OWENS: Is there a budgeted amount for
5 that?

6 DELEGATE KILGORE: That would be under
7 administrative.

8 MS. KIM: I think we budgeted about \$130,000
9 but there's other costs and benefits, computers, blackberry
10 but that came under administrative.

11 DELEGATE KILGORE: What's your pleasure,
12 anymore discussion?

13 DELEGATE WRIGHT: We discussed general
14 counsel's costs, but do we know what firms there are?

15 DELEGATE KILGORE: The only gauge we had
16 to go by is what Ned said over the last 8 months we paid
17 \$65,000 for transactional business.

18 MR. STEPHENSON: That was only for four
19 specific transactions and I need to add we have right many
20 needs beyond those four where we need legal advice.

21 DELEGATE KILGORE: If we go out and
22 attempt to get a relationship with a firm, would that be
23 negotiated with that firm or would the AG's office have to do
24 that? Would they negotiate what services would be rendered?

25 MR. STEPHENSON: If there is to be a retainer

1 with an outside firm using that model, that would need to be
2 negotiated with that firm as to the price of the retainer
3 agreement itself. The price when the meter runs if there is an
4 issue, a transaction that requires more work than just a phone
5 call.

6 DELEGATE WRIGHT: I'm not very
7 knowledgeable on these matters and I don't know what would
8 be the best and I haven't heard any discussion which way
9 would be better.

10 MR. STEPHENSON: If I may make several
11 observations Mr. Chairman. If we negotiate a retainer with
12 outside counsel what has happened in the past is that the
13 designated outside counsel, if there was a conflict with the
14 party with whom we were dealing would not serve so we had to
15 find at another firm because of that conflict. The second
16 observation I had is that in reading the various Commission
17 members on this issue, I have come to understand that it's
18 valuable to the Commissioners to have counsel present in
19 most, if not all of your proceedings because issues arise in
20 which you need legal advice, probably you'd like to have
21 counsel present and Frank did that for years. If there is a
22 retention agreement, we have to think about what the cost
23 would be putting those attorneys on the road to attend
24 meetings. That is just a consideration.

25 DELEGATE MARSHALL: The way I

1 understand it, the Office of the Attorney General gets a request
2 from us and they would go to a law firm, then would they give
3 us a budget not to exceed or X number of dollars an hour?

4 DELEGATE KILGORE: Probably the latter.

5 MR. STEPHENSON: It's going to be your
6 nickel anyway that you go.

7 MS. CARTER: In the meeting with Neal and
8 Ned and the way I understood Mr. James, what he was saying
9 is a general counsel would be someone that would handle the
10 day to day activities and policies and attend Commission
11 meetings so that if there are legal questions, like when Frank
12 was here, he'd be able to answer them, he or she would be
13 able to answer them. He also said that if it comes to litigation,
14 the AG's office could help. Then the transactional, whenever
15 you have things like that, like contracts, that would be
16 different than the general legal duties.

17 DELEGATE MERRICKS: If we went with a
18 general counsel, would it be the same type of arrangement we
19 had with Mr. Ferguson for the first 10 years or would it be
20 different?

21 MR. NOYES: You'd be buying an entire
22 person.

23 MS. KIM: The actual amount of time for the
24 prior year was less than \$20,000 per year. It was only for the
25 hours that we used counsel.

1 MR. STEPHENSON: I asked this week if we
2 could return to that model and the Attorney General indicated
3 that he believed that wouldn't be in the best interest of the
4 Commission, couldn't return to that model but the preferred
5 model was that we pay for the entire person and would be an
6 employee of the Attorney General's Office.

7 SENATOR RUFF: Tommy's question about
8 how much money, if we had someone on staff 100 percent of
9 the time, we'd have to pay all the benefits and may not be able
10 to deal with all the issues and I just don't believe that would
11 be in the best interest of the Commission and I think it would
12 be better to have the transactional relationship with a law firm
13 that have the expertise. I'd make a motion that we do the
14 transactional relationship.

15 DELEGATE MARSHALL: Second.

16 DELEGATE WRIGHT: I just want to be sure
17 I'm clear. That person would attend our meetings even though
18 we'd have a transactional relationship. I think it's important
19 we have somebody here.

20 MR. NOYES: We would have that capacity and
21 we would pay an hourly rate. Let's assume it's \$250 an hour,
22 I don't know that that's what the negotiated rate would be but
23 let's assume a 10 hour day, it would be \$2,500. My
24 recommendation to this Committee would be you bundle your
25 meetings and get two, three or four meetings in the same day

1 rather than doing separate days. That's how that would work.
2 We'd pay for that individual's time to attend meetings and
3 available to respond to members questions.

4 SENATOR RUFF: It's not possible to have a
5 monitor on the phone.

6 MR. NOYES: We'd still pay for the time
7 whether they're with us or not, we'd still pay them.

8 SENATOR RUFF: But then we wouldn't pay
9 the mileage.

10 MR. NOYES: That's correct.

11 MS. CARTER: We'd hire a firm that would be
12 transactional.

13 DELEGATE KILGORE: We'd have a
14 relationship with a firm.

15 MS. CARTER: And then someone from the
16 firm would be at our meetings to advise us?

17 MR. NOYES: They would be there to answer
18 questions.

19 DELEGATE KILGORE: We need to be clear
20 what we want. We might have somebody that wouldn't be at
21 every meeting.

22 MR. NOYES: I would rely on the Committee
23 chair to provide guidance on if they need an attorney.

24 DELEGATE MARSHALL: So the way this is
25 going to work, the Office of the Attorney General would send

1 out this request to bid. The bid will come back to the Office of
2 the Attorney General and they contact us for us to make a
3 decision or –

4 MR. NOYES: - The decision is there's to make.
5 They choose legal counsel in the Commonwealth and we pay
6 for it.

7 DELEGATE WRIGHT: We have to have a firm.
8 We need to have a relationship with a firm and also we need
9 people here at the meetings. We need someone here to answer
10 questions that may come up.

11 MR. OWENS: How much are we going to
12 spend?

13 DELEGATE KILGORE: We don't know. That's
14 negotiated by the Attorney General's office.

15 MR. NOYES: It will further depend on how
16 often we engage that firm to get assistance, it's a moving
17 target.

18 DELEGATE KILGORE: The question comes
19 down to general counsel we're going to be paying north of
20 \$150,000 and then also have to go back out and hire a law
21 firm in case something else comes up or do you just want to go
22 and have a relationship with a firm that has expertise in these
23 areas. I would agree with the Vice Chairman, Delegate Wright
24 that that would be the best way to go and have a relationship
25 with a firm. It would be a firm the AG selects and that's their

1 call. We don't have any say in that.

2 MR. NOYES: They also make the call on what
3 general counsel we would have.

4 DELEGATE KILGORE: They have the ultimate
5 decision making, we don't get to say we like this one or that
6 one.

7 SENATOR RUFF: I think they have to use
8 standard procedures in the open bid process. They have a list.

9 MR. STEPHENSON: If the solution is to be an
10 outside firm on retainer, I think it's reasonable to suspect that
11 the staff would craft the expectation to be delivered to us for
12 the retainer fee without further billing to include say 20
13 meetings a year, whatever we need to put in there that you
14 want, they would provide that for a retention fee and then the
15 meter would run on issues above and beyond that. I think
16 that's the model typically used for retention.

17 DELEGATE KILGORE: You probably got one
18 in your pocket.

19 MR. STEPHENSON: I do.

20 MS. CARTER: In the conversation we had, it
21 was clearly stated that the AG's office as I understand it –

22 DELEGATE KILGORE: You mean the non-
23 legislative members and the people on the –

24 MS. CARTER: - It's important to them to make
25 sure that we have these representations.

1 DELEGATE KILGORE: All right, let's move
2 along. We have a motion and a second, any more discussion?
3 All in favor of the vice chairman's motion in a relationship with
4 a law firm we'll have the staff prepare that, prepare the
5 document as to what we would need say aye. (Ayes).
6 Opposed. (No response).

7 MR. NOYES: The second Office of the Attorney
8 General issue is the request we discussed last week. No, it
9 pertains to the, this pertains to the arbitration matter and the
10 Attorney General has engaged a law firm to represent the
11 Commission, the Commonwealth. There's a request for \$1
12 million, the second \$1 million request looking to the Tobacco
13 Commission to underwrite the cost of this arbitration on
14 behalf of the entire Commonwealth. Part of the discussion last
15 week had to do with whether or not our endowment was at
16 risk and staff indicated that since we securitized, our money is
17 like an endowment and that does not mean there's not some
18 risk. The risk falls to the bondholders and they discounted
19 what they paid for those bonds based on their investment,
20 what the risk is. That's part of the story and I want to make
21 sure that the Executive Committee is aware that there's
22 another 50 percent. The whole of the Commonwealth benefits
23 from the use of those master settlement papers including the
24 good folks that we all represent. The other 50 percent does
25 benefit to some extent. I can't tell you the percentage but we

1 benefit from the other 50 percent too.

2 In our discussion yesterday with Mr. James,
3 the solution I recommended to you was discussed. I think it's
4 the right thing to do. An additional \$350,000 should be made
5 available for this arbitration matter by the Tobacco
6 Commission in advance of hearing from the Office of the
7 Attorney General at our September meeting. Why it is that
8 we're being expected to pay the full amount, an interim
9 payment to get us through roughly a third of the requested
10 amount but at that point, you'll be asked to act on the
11 additional requests. I think this is a reasonable and
12 appropriate resolution of the matter.

13 DELEGATE KILGORE: By agreeing to the 350
14 I'm not binding myself to 650 more?

15 MR. NOYES: No, you're not, you're going to
16 hear from the Office of the Attorney General ahead of the
17 September meeting and then this Committee will make a
18 recommendation to the full Commission at your September
19 Board meeting.

20 DELEGATE WRIGHT: What facts will change
21 between now and the September meeting to make us vote
22 differently than we voted before?

23 MR. NOYES: The opportunity to hear directly
24 from the Office of the Attorney General, they requested this,
25 am I right Ms. Carter?

1 MS. CARTER: Yes.

2 MR. NOYES: They requested the opportunity
3 to appear but there is no capacity now to get us through until
4 that September date. I think it's an appropriate step for us to
5 take.

6 DELEGATE KILGORE: So 350 is a lot less
7 than a million.

8 MR. NOYES: It is what the OAG will be
9 required needs between now and –

10 MR. OWENS: Hasn't the cost of the Attorney
11 General been over 350? That's not going to take care of all of
12 it?

13 MR. NOYES: It can be but the way we left it
14 last week is that there is a sufficient balance in the
15 administrative funds line item from 2012 to pay the two
16 invoices that are pending between now and July 1st. I'm
17 asking you to allow me to honor those invoices from the
18 administrative line item. My view is that we start new with the
19 350.

20 DELEGATE BYRON: If I remember right, this
21 started with the lawsuit?

22 MR. NOYES: The arbitration.

23 DELEGATE BYRON: The one they decided to
24 get involved in but they don't have to, is that right?

25 DELEGATE KILGORE: Those are your words

1 and not mine.

2 DELEGATE BYRON: My question is where
3 does their funding come from? Does it come out of the general
4 fund? My point is if we don't pay, if we don't do part of that,
5 they're going to have to look in other places. They could come
6 back to us again anyway.

7 MR. NOYES: There's no question that there
8 would be an appeal for funding beyond 350. Mr. James said
9 they don't have a line item for this effort.

10 MR. OWENS: Do you anticipate it would be
11 more than 350, if you give the 350 up front, then they can
12 come back after and get another 650?

13 DELEGATE KILGORE: That's the request; it
14 doesn't mean we have to vote yes. We can vote no.

15 DELEGATE WRIGHT: I asked my original
16 question but let me ask it another way. If we vote for 350,000
17 now, what would be our rationale for not voting for the
18 650,000 later on?

19 DELEGATE KILGORE: That's one way to look
20 at it.

21 SENATOR RUFF: Is this issue being dealt with
22 with every state?

23 MR. NOYES: Not every state but Virginia is
24 one of many states. I don't know exactly how many, maybe
25 25, 30 or 40 who are engaged in this arbitration process. I

1 think this is in Chicago. There are attorneys for every state.

2 SENATOR RUFF: Maybe the arbitration would
3 be easier.

4 MR. NOYES: That's not the question.

5 DELEGATE KILGORE: Some of this we have
6 to do and when you consider the whole master settlement
7 agreement, the criteria was to enforce the law and the non-
8 participating manufacturers would pay their fair share. I
9 guess the AG's office feels that as part of this master
10 settlement agreement, they have to get out here and force
11 those payments to come back to the state.

12 MR. NOYES: This is the level of detail that the
13 Office of the Attorney General has asked to be able to discuss
14 with members of this Committee, ahead of the decision in
15 September.

16 DELEGATE BYRON: To authorize 350,000 for
17 the Attorney General's Office.

18 MS. THOMAS: The \$1 million was funds that
19 we used before, for the litigation; did we fund 100 percent of
20 that?

21 MR. NOYES: I believe that is the case.

22 MS. THOMAS: So we've been asked to fund
23 100 percent of that?

24 DELEGATE KILGORE: You're being asked to
25 fund 35 percent of it.

1 SENATOR RUFF: No.

2 MR. NOYES: Everyone is right about that.

3 DELEGATE KILGORE: But they can be back
4 in September to ask you to do 65 percent.

5 MR. STEPHENSON: Mr. Chairman, if I may,
6 as far as Delegate Byron's motion, I'd like to offer a friendly
7 and tactful addition to the motion to set the record clear
8 exactly what we're doing. That is that \$1 million that Delegate
9 Byron's motion and that payment made to the law firm be
10 continued to be charged against the old million authorization
11 which was approved in January 2010 until that million is
12 depleted and thereafter, not to exceed \$350,000.

13 DELEGATE KILGORE: That's what I meant to
14 say.

15 MR. NOYES: We haven't burned all that
16 million yet. When that's burned then start the 350.

17 DELEGATE BYRON: Can I make a final offer?

18 MR. OWENS: Is it that we're not doing the
19 whole million or is that the only reason -

20 MR. NOYES: That's at the request of the Office
21 of the Attorney General.

22 DELEGATE KILGORE: They need to come and
23 explain what's going on. All right, we have a motion and a
24 second.

25 MR. NOYES: A budget amendment.

1 MR. STEPHENSON: You haven't voted on
2 Delegate Byron's motion as amended.

3 DELEGATE KILGORE: That motion as
4 amended, all those in favor say aye (Ayes). Opposed. (Nos).
5 We have three nos.

6 MR. STEPHENSON: A suggested motion
7 amendment to provide funding for what we just did. If I may
8 advise on the motion, you recommend to the Commission that
9 fiscal year 2013 budget amendment, \$320,000 from the
10 general account for administrative for legal fees related to the
11 MSA is my motion that I invite.

12 DELEGATE KILGORE: Where are you going to
13 get the other 30?

14 MR. STEPHENSON: Roughly that's part of the
15 million that has not been used.

16 MS. KIM: The 30,000 that would be in FY12.

17 DELEGATE KILGORE: I've got a motion on the
18 floor.

19 MR. OWENS: So moved.

20 DELEGATE KILGORE: I have a motion and a
21 second. All in favor say aye. (Ayes). Opposed. (Nos). We
22 have three nos. Okay, the next item is the TROF appeal.

23 MR. STEPHENSON: Mr. Chairman, routinely
24 we have done TROF contract negotiation transactions both
25 default and we always offer those parties two options for this

1 body. There were three last meeting who wanted to appear;
2 two of them in the last 48 hours have elected not to appear.
3 We do have one that's present today which is Scott County
4 speaking for the beneficiary company.

5 DELEGATE KILGORE: Can you give us an
6 update on what's happening?

7 MR. STEPHENSON: Very briefly Mr. Chairman
8 this is a routine TROF transaction we entered into where a
9 company promised 27 jobs and \$1 million of investment not
10 later than April 2011. The company advised in September
11 2010, the company had actually closed and couldn't fulfill
12 their obligation. The grant amount was \$75,000. The
13 Commission staff worked with the locality and entered into
14 what we call an installment payment arrangement where the
15 county agreed to repay \$75,000. Twenty-five thousand upon
16 the signing of the agreement and an additional \$25,000 each
17 of two anniversaries thereafter totaling the \$75,000 that was
18 owed. We've been paid the first installment of twenty-five and
19 two more are due.

20 MR. KILGORE: Thank you Ned, John Kilgore,
21 Director of Economic Development. We tried to work with the
22 company and tried to get money from the company and we
23 never could do that so the county settled this. We would have
24 settled it in January but we didn't for various reasons. We
25 thought maybe you'd help the county recover that money. We

1 needed to pay it or there'd be default of this agreement. We
2 been working trying to close that out. We agreed to the
3 \$25,000 and another twenty-five and a third twenty-five at the
4 end of the third year. I'm here today to ask you to consider
5 the \$25,000 as a final payment from the county. We're
6 strapped like any other county and we'd appreciate
7 consideration of that. You've done in the past with other
8 communities as far as settlement. We did employ some folks
9 in the county for about three years and the economy went
10 south. We tried to contact these people many times and could
11 never get any cooperation. I appreciate Ned working with us
12 on this over the years and it's been a difficult case. Also
13 worked with the Commissioner of Revenue and all that but we
14 hope that payment could resolve it.

15 DELEGATE MARSHALL: John, so the county
16 went ahead and paid this?

17 MR. KILGORE: Yes. They were actually
18 leasing a building. Another company moved in there now.
19 There's some additional investment without a TROF.

20 DELEGATE MARSHALL: What's the company?

21 MR. KILGORE: EFT.

22 MR. OWENS: Did they ever reach their
23 investment goal?

24 MR. KILGORE: They invested in the building
25 that they were in. I don't have any records of that but I can

1 tell you that the Commissioner of Revenue did go down and
2 assess them. I can't tell you how much it was.

3 MR. OWENS: How many jobs were there?

4 MR. KILGORE: I think they had around 18
5 jobs at one time. They never maintained that number of jobs
6 which is the key word in the agreement.

7 MR. OWENS: How long did they operate?

8 MR. KILGORE: They were in the county three
9 years; one was in Weber City and Duffield.

10 MR. OWENS: Do you know how many jobs
11 were agreed to?

12 MR. KILGORE: I think the jobs were 27.

13 MR. STEPHENSON: I think the job agreement
14 was 27, maintained for the period of the contract. The closure
15 of the business occurred during a period of the contract so
16 they defaulted on the remaining portion. I believe this was one
17 of those contracts that provided that if the investment level
18 was not at least a million dollars that the entire amount of the
19 grant was due to be refunded. That language was in a lot of
20 those contracts. That might be the case here. I'd need to
21 verify that though.

22 MR. KILGORE: I know the county had no
23 control what happened. There were some jobs there for three
24 years. We did pay the \$25,000.

25 MR. OWENS: Is this one of those that the

1 county signed by itself?

2 MR. KILGORE: One of the, the county and the
3 business signed I think.

4 MR. STEPHENSON: Yes, this is one where the
5 county, called the county line liability clause included in the
6 contract.

7 SENATOR RUFF: Ned, we dealt with this in
8 other counties and put pressure on the counties?

9 MR. STEPHENSON: Yes.

10 SENATOR RUFF: If we start going back, what
11 kind of situation will that put us in in the future?

12 MR. STEPHENSON: I quickly recognize the
13 authority of the Commission to be just that, you have that
14 power. I will say that the enforcement of these TROF contracts
15 have not been pleasant for anyone concerned and the counties
16 particularly are displeased with the enforcement level. We
17 don't beg the question if we think and we probably need to
18 think more deeply about this whole program. I'm under
19 instructions from the Committee to enforce the contract. I do
20 that diligently and that causes folks to come before you and
21 ask for release because I don't give it to them. This Committee
22 has granted some measure of relief occasionally.

23 DELEGATE KILGORE: Scott County is asking
24 for this to be resolved after the first \$25,000. Would you all be
25 willing to pay half of it?

1 MR. KILGORE: I'd have to go back and
2 discuss it with the Board of Supervisors.

3 DELEGATE MARSHALL: Did the idea of Scott
4 County to pay twenty-five each year so it would be spread out
5 over a length of time maybe instead of two years, three or four
6 years or five years?

7 MR. STEPHENSON: The idea was to relieve
8 the immediate pressure from the IDA for having to pay this
9 and also to give them time to get before you today to appeal for
10 relief. When we entered into the installment agreement, I
11 recognize the installment is a cure to the default accept the
12 installment agreement as cured. Scott County is in good
13 standing. They have done what they said they were going to
14 do. We're on course for there to be two more payments unless
15 you redirect that today.

16 MR. KILGORE: We have resolved some but
17 we're working on these TROF issues.

18 DELEGATE KILGORE: This came out of
19 Economic Development budget, not the budget that you have.

20 MR. KILGORE: Came out of our account.

21 DELEGATE MARSHALL: What is the reaction
22 of the Board of Supervisors about it?

23 MR. KILGORE: The Board of Supervisors, of
24 course, had a change in our relationship and need to get it
25 resolved today for \$25,000 but they understand the TROF

1 issue was a contract. They're asking for relief as well.

2 DR. REDWINE: Mr. Chairman, I kind of been
3 involved in this a little bit on the county level as well. It's not
4 the purpose or intent of the Commission to push the county,
5 we don't want to break anybody up and ask them to pay more
6 than they are able to pay. I say this even as a member of Scott
7 County. How many of these agreements are out there? Not
8 necessarily in default, how many are out there?

9 MR. STEPHENSON: One hundred or more.

10 DR. REDWINE: Mr. Kilgore, I worked closely
11 with him on this. I understand he's representing the county.
12 One of the first things he said was you've done this before. I
13 worry about those other 100. The county is not a well to do
14 county. They don't want things for free. They don't want to
15 hold up other economic development either. I do worry about
16 the precedent that could be set. That might be a discussion
17 involving 15 to 20 others. If we could get some kind of
18 reasonable agreement up front, I support a reasonable
19 agreement but I don't want it to look like anyone that appears
20 before this Committee and ask for a waiver.

21 DELEGATE KILGORE: I don't think we're
22 waiving anything. They already paid 25.

23 MR. STEPHENSON: Mr. Chairman, if I may
24 give a little background. The early years of the TROF contract
25 learned that the language in these contracts was poorly

1 drafted and generally unenforceable.

2 DELEGATE KILORE: Before you came?

3 MR. STEPHENSON: Yes. The Committee at
4 that time gave the staff considerable latitude to work out
5 discounted payments for some of these companies because of
6 the investment and poor wording in the agreement. Your staff
7 did that with a great many of those like latitude to adjust.
8 And more recently with the contracts stronger or clearer, the
9 staff has not done that and you've required companies pay.
10 There have been a few changes in the TROF contract from old
11 to new. Under the old system it was freewheeling, and nobody
12 had to pay anything. Now it's tightened up and there is an
13 adjustment period for all counties to recognize the difference
14 now and I think maybe Scott County got caught in the change.
15 Oh my, this is really going to happen. That may give you some
16 degree of relief.

17 MR. OWENS: Is there some figure we could
18 feel comfortable with, some percentage?

19 MR. STEPHENSON: I don't have the file with
20 me with all the details and that information is available
21 because we do, we can find out exactly what the performance
22 was and I have some of that information. When a company
23 closes and leaves it's an automatic default. If the Committee
24 instructs the staff we can determine percentages and that sort
25 of thing.

1 DELEGATE KILGORE: Scott County just
2 contributed back \$500,000.

3 DR. REDWINE: In another Committee we de-
4 obligated.

5 MR. OWEN: I make a motion that we have the
6 staff consider the percentage that was completed and when we
7 get that number we'll be able to say this is the amount they
8 were in default.

9 MR. NOYES: So the staff gets that information
10 and then modify that?

11 MR. OWENS: Yes.

12 DELEGATE KILGORE: We have a motion and
13 a second, any further discussion? All right. All those in favor
14 say aye (Ayes). Opposed. (No response). Next.

15 MR. NOYES: Members of the Committee,
16 referring to page 38, beginning of the revised strategic
17 planning document. When we parting last week we talked to
18 Delegate Byron and seek to accommodate your request which
19 he had for further modification the balance of the report
20 appeared to be fine. On page 40 you will see which is purple
21 and in two places. The language that the delegate requested
22 had some changes in there and we'll do this every two years. I
23 would welcome a motion to adopt the strategic plan as
24 presented.

25 MS. NYHOLM: So moved.

1 DELEGATE KILGORE: I have a motion and a
2 second, anymore discussion? All in favor of a motion and a
3 second to adopt the strategic plan say aye. (Ayes). Opposed.
4 (No response).

5 SENATOR RUFF: Mr. Chairman, on the
6 Education Committee the only thing we're going to deal with at
7 the September meeting on the scholarship program and
8 dealing with the rest of them in January. And that's just been
9 announced.

10 DELEGATE KILGORE: Now we're going to
11 indemnification.

12 DELEGATE BYRON: To Frank on the
13 Education Committee, I'm not aware of the schedule of the
14 Committee.

15 SENATOR RUFF: Mr. Chairman, we need to
16 deal with the scholarships because we usually review projects
17 in the fall and generally may have to pick up another time, we
18 picked that up in January.

19 MR. NOYES: If you'd refer to page 8, this
20 comes from our friends at Troutman Sanders. There are
21 situations that develop, there is a will and it's clear and there
22 is a contest around that will. This seeks to resolve it so that
23 payments can be made expeditiously. It lists the different
24 situations. I reviewed it with the Troutman Sanders folks and
25 other members of your staff. No reason not to let it go forward

1 when you have multiple errors.

2 DELEGATE KILGORE: You're saying it should
3 be approved?

4 MR. NOYES: A proposal to approve the
5 guidelines and that would allow Troutman Sanders to
6 disburse indemnification monies on a pro rata basis.

7 DELEGATE MARSHALL: So moved.

8 DELEGATE KILGORE: All in favor say aye.
9 (Ayes). Opposed. (No response). The next item is the end of
10 the payments to the farming communities. This is the last
11 year or was the last year. There's already a move in one
12 county asking us to give another year. I wanted to make you
13 all aware of that. Their county may be adopting something
14 like that and you may get a call. I just wanted to let you all
15 know that maybe coming.

16 MR. NOYES: Your budget does not provide for
17 any further indemnification.

18 DELEGATE KILGORE: How much has been
19 paid out over these years?

20 MS. KIM: Maybe over \$300 million.

21 DELEGATE KILGORE: We were the only state
22 that sent money back the way we did to our farming
23 community. We need to look at other ways through the
24 Agriculture Committee to increase production on farms. I
25 think that's something that would be wise for the

1 subcommittee to look at because there's a lot coming up in the
2 Agriculture Committee.

3 DELEGATE WRIGHT: Let me just say I serve
4 on that Committee with Chairman Johnson. We don't have
5 near the money that our committee should have to do the
6 work that's got to be done. Speaking with people in my
7 district to expand farming operations and hoping in the future
8 more money can be devoted to agriculture.

9 DELEGATE MARSHALL: R&D has a lot of
10 projects that are farm related.

11 DELEGATE KILGORE: As these projects come
12 up, maybe you should let our farming committee know so the
13 staff can reach out to the farm bureau and maybe there's
14 something in R&D that would help the farming community.
15 When the farming community sees a grant out there, whether
16 it's wireless technology or not, it's something that can help the
17 farmers. We need to get that word out.

18 MR. NOYES: The Executive Committee, page 9
19 which replicates a press release that Troutman Sanders has
20 put out concerning the indemnification program and that's
21 gone out.

22 DELEGATE KILGORE: Next meeting date,
23 September 26, 2012, location to be announced. Do we have
24 any public comments?

25 DELEGATE MARSHALL: I'd like to ask Greg

1 Sides to talk a little bit about the problem we're having.

2 MR. SIDES: I'll be brief but just to give you an
3 idea, we received funding through the Commission for several
4 grants ongoing with our mega parks. Our situation is when
5 you receive funding and you have 230 pad sites available.
6 About a month ago or so we went through a pre-application
7 process and that was a chance for us to find out what kind of
8 issues there may be. We were a little troubled to find out that
9 certain things and they brought up issues about why did we
10 need more pad sites. They were not going to issue a permit
11 because we didn't have a secured company lined up. These
12 were policies and we were working with Virginia Economic
13 Development Partnership trying to get development and ready
14 pads ready to go so we could be competitive. What I'm saying
15 is that this all proved we needed pad sites and we wanted to
16 get a permit issued and that became a disadvantage for us.

17 DELEGATE KILGORE: That wasn't the
18 purpose, mega parks and be ready.

19 MR. SIDES: They said you've got to address
20 the needs, you got to do the alternatives and you have to prove
21 you need a pad site. The alternative analysis is you need more
22 than one mega site; you've got to have a permit. What I'm
23 saying is that that whole thing, the thought raises some
24 concern when I came out of the meeting. That was shared
25 with the state and there was another meeting set up with a

1 state agency and we have to deal with those results. It seems
2 like that meeting was that in order to deal with the Corps of
3 Engineers it was kind of overwhelming about various sites and
4 it was decided it would be best for the county, we have to go
5 through this process before doing anything else. When you
6 have a delay like that, and we were almost ready and the
7 review process will take time. One of the things that came out
8 of the meeting was that and I think Neal has said that we do
9 run into unforeseen delays in this permitting process. Now
10 we're going to have to wait and we had to go through that
11 before we can get a permit. We're backed up a little bit and
12 you have to do this funding, funding for the connector road
13 and what that ends up doing is it impacts and that would
14 impact on everything right now. I expressed some concern to
15 Sarah Capps about that problem. So if we choose to go
16 forward in these grant opportunities, we're really in a hole and
17 waiting for, it all boils down to this permitting process. How
18 long it takes. What I'm saying is that's an issue I wanted to
19 make you aware of. There's other things that have to be dealt
20 with. I just wanted to make you all aware of those things that
21 are involved.

22 MR. NOYES: We're certainly very sensitive and
23 I'm sure the Special Projects Committee would desire to try to
24 accommodate situations like this as they develop. Maybe it's
25 somebody has dropped the ball, the Corps of Engineers. I

1 point out to members of the Committee this is not by any
2 stretch of the imagination the first time that the Corps of
3 Engineers has delayed the execution of one of our grants to
4 grantees. I had this experience in my former life with other
5 grantees and this has happened not all the time but it
6 happens often enough so it's not an amazing new twist. The
7 staff has the capacity. I always check with committee chairs
8 on matters like this even an extension. On issues like
9 extension so that's not unusual.

10 DELEGATE MARSHALL: The reason I asked
11 Greg, we don't want an extension. We went to get this thing
12 going and built. The whole purpose is to get that pad ready so
13 they can get a factory out there and get people employed today
14 not tomorrow. We've had these meetings and we want this
15 whole thing to be smooth with any federal agency. The
16 question is what can be done to streamline this a little bit and
17 not put more impediments and get these problems
18 straightened out. We want to start grading and get these pads
19 ready to go.

20 DELEGATE BYRON: Mr. Chairman, I'd like to
21 thank Mary Rae who set up the meeting. In my opinion the
22 amount of money we've invested in mega sites is and we may
23 have some problems and when it comes to economic
24 development, people need to be aware of this in trying to get
25 off the ground with this. We need to be upbeat in Southside.

1 We need to do everything we can to get the job done.

2 DELEGATE KILGORE: Thank you. The next
3 Committee meeting is September 26th. Are there any other
4 comments?

5 DELEGATE MARSHALL: We had a ribbon
6 cutting ceremony here about a month or so ago for a project
7 that special projects funded and that's the building for Sintec
8 and they're right behind this building. So if you get a chance,
9 take a look at it. If anybody wants a tour, that's available too.

10 DELEGATE KILGORE: All right, do I have a
11 motion to adjourn? So moved. We're adjourned.

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