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**VIRGINIA TOBACCO INDEMNIFICATION AND COMMUNITY  
REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501  
Richmond, Virginia 23219

Executive Committee Meeting  
Wednesday, September 26, 2012  
5:30 p.m.

Wytheville Meeting Center  
Wytheville, Virginia

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    Senator Charles W. Carrico, III

7    The Honorable Mary Rae Carter

8    The Honorable Joseph P. Johnson, Jr.

9    The Honorable Daniel W. Marshall, III

10   The Honorable Donald Merricks

11   Ms. Connie Greene Nyholm

12   The Honorable Edward Owens

13   David S. Redwine, DVM

14   Ms. Cindy M. Thomas

15   The Honorable Thomas C. Wright, Jr.

16

17   **COMMISSION STAFF**

18   Mr. Neal Noyes, Executive Director

19   Mr. Ned Stephenson, Deputy Executive Director

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

21   Ms. Stephanie S. Kim, Budget Director

22   Ms. Sarah Capps, Grants Coordinator, Southside Virginia

23   Ms. Jessie Stampler, Assistant Grants Coordinator

24         Southwest Virginia

25

1 September 26, 2012

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4 DELEGATE KILGORE: I'm going to call the  
5 meeting of the Executive Committee to order.

6 DELEGATE KILGORE: Delegate Byron?

7 DELEGATE BYRON: Here.

8 DELEGATE KILGORE: Senator Carrico?

9 SENATOR CARRICO: Here.

10 DELEGATE KILGORE: Deputy Secretary  
11 Carter?

12 DEPUTY SECRETARY CARTER: Here.

13 DELEGATE KILGORE: Delegate Johnson?

14 DELEGATE JOHNSON: Here.

15 DELEGATE KILGORE: Delegate Marshall?

16 DELEGATE MARSHALL: Here.

17 DELEGATE KILGORE: Delegate Merricks?

18 DELEGATE MERRICKS: Here.

19 DELEGATE KILGORE: Ms. Nyholm?

20 MS. NYHOLM: Here.

21 DELEGATE KILGORE: Mr. Owens?

22 MR. OWENS: Here.

23 DELEGATE KILGORE: Dr. Redwine?

24 DR. REDWINE: Here.

25 DELEGATE KILGORE: Ms. Thomas.

1 MS. THOMAS: Here.

2 DELEGATE KILGORE: Delegate Wright?

3 DELEGATE WRIGHT: Here.

4 DELEGATE KILGORE: Senator Ruff?

5 SENATOR RUFF: Here.

6 DELEGATE KILGORE: We have a quorum. Do  
7 we have a motion to approve the May 23, 2012 minutes. We  
8 have a motion and a second, all those in favor say aye. (Ayes).  
9 Opposed. (No response). The minutes are approved.

10 First of all, Martin Briley is here. Martin is  
11 sort of new, the new director of the Virginia Economic  
12 Development Partnership and he's bringing new energy and  
13 vigor to the job. Martin, would you like to come up and say a  
14 few words. I know you can't be here in the morning but it's  
15 the next best opportunity to say something to the  
16 Commissioners that are here.

17 MR. BRILEY: Thank you Mr. Chairman and  
18 members of the committee, I'm delighted to be here and  
19 appreciate your invitation. My apologies I can't be here  
20 because we have Wall Street in and I'm on that committee to  
21 maintain the bond rating we've enjoyed so well in Virginia and  
22 we have a whole day with them, otherwise I would be here  
23 tomorrow. I would say that we have enjoyed the partnership  
24 and we're working closely with Neal and Ned and all of the  
25 delegates and senators. We've had several conversations with

1 Senator Carrico and Delegate Kilgore. I know there are several  
2 projects very close to here that may be two or three years out.

3 I want to talk to you a little bit today about  
4 what's happening in terms of competition. I know in the  
5 Finance Committee the other day and Senator Ruff was  
6 present along with myself. I do want to tell you I think, what's  
7 really important is jobs and everybody's after jobs and we're  
8 making every effort to create jobs. I believe there's over \$50  
9 million that is spent on advertising, that's \$50 million for  
10 economic development in the State of New York and that's in  
11 the Wall Street Journal across the nation. In North Carolina,  
12 it doesn't seem to have any problem writing checks for  
13 projects. South Carolina, a few years ago didn't really exist  
14 but they are very competitive now and Florida is in  
15 competition for as many projects as they can get. So you can  
16 see that all the states are very aggressive in trying to recruit  
17 businesses and create jobs and create investment in our  
18 communities. Some localities put a \$2,000 bounty. The  
19 industrial office in Ireland and they'll pay \$2,000 per job up to  
20 \$200,000 and that's the bounty. Now, the question is whether  
21 that's sustainable given those numbers. The point is, that's  
22 how aggressive some localities are. There's all kinds of  
23 problems and there's all kind of solutions as far as creating  
24 jobs. We're very lucky in Virginia, accolades 1, 2 and 3 and  
25 third party confirmation and we want to maintain that. The

1 federal government is trying to figure out what's going to  
2 happen over the next five years but the good news is that  
3 Virginia has an opportunity to improve on these programs that  
4 we've put in place. We are good partners and we want to be  
5 better partners. We want to work very closely with the various  
6 universities. Since January Liz has put together an MOU and  
7 we want to engage the universities and all the personnel they  
8 have worldwide to try to sell Virginia. We're also working with  
9 the port authorities and they've done something very similar  
10 as far as enhancing our footprint in the marketplace. Virginia  
11 has a great history and we want it to be much stronger and we  
12 want to make sure our footprint is maximized and we  
13 maximize all our resources with our partners.

14                   So, I want to thank you very much for inviting  
15 me to address you all and we have an opportunity to close  
16 deals to make Virginia a better place for jobs. So, I want to  
17 thank you for your leadership and I want to thank you for  
18 your absolute interest in economic development and your  
19 participation with the Virginia Economic Development  
20 Partnership as we move forward. We want to enhance that  
21 partnership.

22                   We have some shows coming up where we've  
23 had partners in the past. We were at London at the air show  
24 and we have a strong voice in maximize all our resources.  
25 Also in Paris at the air show and that's a huge opportunity to

1 sell Virginia. I could talk for a long time about this but I won't  
2 take any more of your time. Thank you very much for allowing  
3 me to address you and I look forward to working with you in  
4 our years ahead. Thank you Mr. Chairman.

5 DELEGATE KILGORE: Thank you and we look  
6 forward to working with you all. All right, next Ned. Legal  
7 expense review and I see we've got someone from the AG's  
8 office, Ms. Kirkwood.

9 MR. STEPHENSON: Mr. Chairman, if I may  
10 invite the Committee's attention to page 7 in your book and  
11 there's a chart there that I'll make my remarks on. The chart  
12 is a synopsis of the Tobacco Commission's legal expenses for  
13 the last three years and a forecast for the current year. It's  
14 pretty much self-explanatory but I must say at this point when  
15 this went to press, I failed to include another \$240,000 that  
16 the Tobacco Commission provides to the Office of the Attorney  
17 General to provide for the diligent enforcement of the MSA. So  
18 you need to add \$240,000 to fiscal years '12 and '13.

19 A couple of things about this chart. The red  
20 items appearing on the chart are those for which the Tobacco  
21 Commission staff or the director or the Commission are not  
22 involved in the procurement of those legal services for the  
23 approval of invoices and they are somewhat removed from us  
24 in that we fund the payments. Those invoices are through the  
25 Office of the Attorney General and they are really kind of in

1 charge of those items. The black items are the ones that we  
2 had asked for to engage and we monitor the invoices and  
3 approve.

4 There are two decision points that I will ask of  
5 you today related to the legal fees.

6 DELEGATE KILGORE: The ones in black are  
7 the legal fees this year included in our budget?

8 MR. STEPHENSON: Everything you see has  
9 been included in your budget with the exception of the first  
10 line and we're about to consider that momentarily.

11 MS. KIM: The \$506,000 is budgeted. It wasn't  
12 even announced at that time.

13 MR. STEPHENSON: That will become clear in  
14 a moment when we pull all of this together. The two decision  
15 points, the first one is related to the first line here. The NPM  
16 arbitration. The attorney general's representative Susan  
17 Curwood is here to speak to that. Now, some year and a half  
18 or so ago the Office of the Attorney General requested that you  
19 pay for a million dollars worth of legal expenses for this case  
20 and you agreed and that has been exhausted. The Office of  
21 the Attorney General came to you again shortly before your  
22 May meeting this year and asked you for the second million  
23 dollars for the same purpose. At that time you consented to  
24 \$350,000 but asked the Attorney General to appear before you  
25 today to tell you why they need the additional funds being the

1 other \$650,000 which would make a second million dollars for  
2 a total of two. They are the approval amounts and actual cash  
3 flows that have occurred during the fiscal year. You have  
4 approved \$350,000 and I believe there's about \$100,000 of  
5 that that has not yet been disbursed but the burn rate is  
6 pretty fast. I'll ask in a moment Ms. Curwood to step up and  
7 hear your questions.

8                   Now, I first want to raise the second decision  
9 point for you today. The second point, ladies and gentlemen is  
10 that your staff and your director have been without general  
11 counsel for more than a year now. We do not have general  
12 counsel available to us. We cannot pick up the phone and ask  
13 for a legal question from anyone. We have requested specific,  
14 case specific consult from the Office of the Attorney General  
15 and they have assigned that to outside private counsel and  
16 those topics are listed on your spreadsheet there in front of  
17 you.

18                   I want to tell you that we have a backlog of  
19 some 25 plus legal issues at issue and waiting for legal  
20 counsel. Your staff has been muddling through whatever we  
21 could without that support. Yesterday afternoon a very large  
22 and very contested transaction appeared in front of us for  
23 which a contract needs to be written, time is of the essence. I  
24 wasn't able to do that and I know you wanted it to be done but  
25 I can't do it. Tomorrow morning Delegate Byron's committee is

1 having to approve some R&D grants and we don't have a grant  
2 agreement, we can approve grants but we can't put money out  
3 because I don't have an agreement and I don't have counsel to  
4 review that.

5 We have a lot of occasions where we have a  
6 request from Virginia Tech that you will hear tomorrow and  
7 they've asked for and these involve legal issues and perhaps  
8 you can muddle through it without counsel and maybe you  
9 should not but there are a myriad of issues. I just want to say  
10 to you that the Commission's risk is expanding greatly without  
11 having counsel.

12 DELEGATE KILGORE: I've had a couple of  
13 conversations in the last couple of days with the chief deputy  
14 and there is a, and what she's saying is we should get a full  
15 time counsel and that's basically what you're saying. That's  
16 what we need now. At one time we talked about we'd hire  
17 them if we needed them and sometimes you see somebody full  
18 time. From what I've seen of outside counsel, the money, or  
19 we'd probably save money having somebody there full time.  
20 Now counsel thinks she can get somebody pretty quick for us  
21 if that's what we want to do.

22 DELEGATE MARSHALL: What is the cost?

23 DELEGATE KILGORE: I don't know what the  
24 cost is but I think we can solve this within the next 60 days  
25 when it comes to the cost, we'll have to figure out a salary and

1 if a person wants to work with us but we'd want somebody  
2 that's pretty knowledgeable and has some experience and is  
3 flexible. I see Delegate Byron wanting to say something.

4 MR. NOYES: My understanding is that  
5 counsel or general counsel, you don't want them just sitting  
6 there and maybe they would work for us but they would be an  
7 employee of the Attorney General's Office and then not an  
8 employee of the Commission. That's the way it's been  
9 presented in the past. Now, if we did something and it  
10 involved hiring a second person and it was at that point or at  
11 the Executive Committee and then it was to ask the OAG to  
12 see if there were firms that could handle it and you did go out  
13 with an advertisement. I think there were a couple of  
14 responses to that. Going back to where we were 18 months  
15 ago with two people and everything, the number starts with  
16 two.

17 SENATOR RUFF: I would like to know why we  
18 aren't following through with what we talked about three  
19 months ago?

20 DELEGATE KILGORE: When I talked to the  
21 chief deputy, she was like we're just concerned that one firm  
22 would meet all of our needs or we're going out for this and  
23 going out for that and getting representation here on some  
24 issues and that type of thing.

25 SENATOR RUFF: Are we trying to find a

1 specialist in everything? I think we're still where we were  
2 then. I think we need a law firm that can address several  
3 issues at one time in varying degrees of responsibilities.

4 DELEGATE KILGORE: I understand, we've got  
5 to get some help.

6 SENATOR RUFF: Mr. Chairman, I would add  
7 that's why we didn't move forward with –

8 DELEGATE KILGORE: We tried, they put it  
9 out for bid, I'm not sure.

10 MR. NOYES: Two firms responded and we  
11 would be hearing and have an opportunity to evaluate the  
12 qualifications and what the recommendation is.

13 UNIDENTIFIED: I think that what I heard was  
14 that it was going back to the, it's better to have someone in  
15 house and –

16 DELEGATE. KILGORE: Why don't we do this  
17 and allow Ned or Frank and myself and the Executive Director  
18 to get, whatever we need like an agreement and get this thing  
19 done and get with the OAG and whether it's outside, inside or  
20 whatever you want to do because we just can't wait until the  
21 next full Commission meeting.

22 DELEGATE MARSHALL: With all due respect,  
23 we need somebody to represent us.

24 MR. NOYES: We can't just hire outside  
25 counsel.

1 DELEGATE KILGORE: The Office of the  
2 Attorney General represents all agencies in the Commonwealth  
3 and that's done by Code. We just don't have that choice.

4 DELEGATE BYRON; As far as an in-house  
5 fulltime counsel, and maybe cut back on some meetings but  
6 there are specific things we need legal counsel for. As far as  
7 somebody that can occupy the legal work all day long, I don't  
8 think there's a need for that. Maybe a retainer.

9 MR. NOYES: For transactional purposes, we  
10 can go through the Office of the Attorney General through Ms.  
11 Curwood and say we have this particular issue and we need  
12 counsel for this. As far as counsel like on this Lenwisco deal,  
13 there is a process we go through. We've been doing the  
14 transactional things in house since Frank became too ill to do  
15 it.

16 DELEGATE KILGORE: I'd like to go forward  
17 and get one way or the other, and get it settled. Maybe Frank  
18 and myself and Neal and Ned can get it worked out because  
19 we can't wait no matter how we handle it and I can't keep  
20 calling meetings just to try to figure out how we're going to do  
21 this. I think the three or four of us can agree on something.  
22 I'm all for saving this money. We need to get legal counsel.

23 DELEGATE JOHNSON: You need a motion for  
24 that?

25 DELEGATE KILGORE: No, I don't think so. If

1 we can just all learn to move forward, can we do it that way?

2 SENATOR RUFF: Yes.

3 DELEGATE BYRON: By law their required to  
4 provide counsel and those are the things that have to be done.  
5 Maybe we need to revise the Code and see what happens.

6 DELEGATE KILGORE: Good luck with that,  
7 trying to figure that out.

8 DELEGATE JOHNSON: Isn't that kind of  
9 dangerous doing these things without counsel present,  
10 because you didn't have legal counsel?

11 DELEGATE KILGORE: Yes.

12 DELEGATE JOHNSON: When you say you're  
13 going to do something, isn't that dangerous when you say  
14 you're going to do it?

15 DELEGATE KILGORE: Yes, it certainly is.  
16 That would mean can we get to the other part?

17 MR. STEPHENSON: Mr. Chairman, the issue  
18 before you now is what disposition you'd like to make of the  
19 Attorney General's request for an additional \$650,000?

20 DELEGATE KILGORE: I guess the question we  
21 had last time and we didn't have anybody to answer the  
22 questions. We wanted to make sure that someone would  
23 know and especially with all the feelings, we were getting,  
24 whether it's a blank check or a law firm that could come in.  
25 We want to make sure somebody would be watching that to

1 see what we were getting for our money.

2 MS. CURWOOD: Absolutely. Let me just tell  
3 you we've been involved in this case since the beginning of  
4 2006.

5 DELEGATE KILGORE: Let me interrupt, just  
6 for board members, we're on the NPM Arbitration. That's what  
7 she's going to be discussing. That's the one we gave them a  
8 million dollars last year and authorized \$350,000 at the last  
9 meeting with the request that Ms. Curwood come to this  
10 meeting and explain the need for this money.

11 MS. CURWOOD: So we've been with this order  
12 to protect this nationwide with the master settlement  
13 agreement. We are involved in it and that's where we are. The  
14 manufacturers, but what we're dealing with is a very complex  
15 civil case, it's extremely document intensive and we're dealing  
16 with roughly 50 different parties. The logistics alone of getting  
17 that done, that's what's taking so long and so expensive. This  
18 law firm has been with us since the very beginning in 2006.  
19 They've spent a great deal of resources in working with all of  
20 the other states in this arbitration and our moving forward  
21 with this process with the master settlement agreement. We  
22 weren't given a lot of information on how to do this part or do  
23 this arbitration so it's kind of figuring out how to do it as we  
24 go. The logistics of getting this many parties on board and  
25 hearings and meetings and deciding issues really amounts, it

1 just takes a lot of time. There are hearings going on now. The  
2 decision might be in late February at best. We're hoping that  
3 this arbitration will conclude by the end of next year. We're  
4 going forward with what is projected. When you consider the  
5 logistical and experts it's just a rather large project.

6 DELEGATE MARSHALL: To answer my  
7 question, the additional monies will pay us up through the  
8 end of this?

9 MS. CURWOOD: Yes.

10 DELEGATE MARSHALL: Since we securitized  
11 our money, why are we, why did we securitize the money?

12 MR. NOYES: Mr. Chairman, may I speak to  
13 that?

14 DELEGATE KILGORE: Yes.

15 MR. NOYES: The reason we're in this is  
16 because the Office of the Attorney General asked us to be in  
17 this and to support them and that's the only reason. I will say  
18 also that we are not at risk because we have securitized until  
19 about 2040.

20 MR. OWENS: How much does it cost per year  
21 to do this litigation? How much does it cost?

22 MS. CURWOOD: That's hard to answer  
23 because it's been going on for some time but now we're in  
24 constant hearings. The last few months the expenses have  
25 been about \$45,000 per month.

1 MR. OWENS: A little over a half million a  
2 year?

3 MS. CURWOOD: It's a very active issue.

4 MR. OWENS: My question is are we paying  
5 the full bill, is this money being used to pay the full bill, does  
6 the AG's office or the state participate in this?

7 MS. CURWOOD: It is the full bill. Our office  
8 was paying expenses initially and we're not able to do that any  
9 longer, this is the full amount.

10 MR. NOYES: We're acting on behalf of the  
11 entire Commonwealth, the 41 political subdivisions, this is on  
12 behalf of the entire Commonwealth.

13 MS. CURWOOD: I'd make one remark about,  
14 certainly we're representing and recognize that we're asking  
15 you to do something that you're already obligated to do. I  
16 think the initial request was made simply because, initially it  
17 was because it was the right thing to do and now that same 50  
18 percent to service these bonds and not doing this would be  
19 risky for us. This has just taken a whole lot of time which is  
20 very expensive and that's the bottom line and we just don't  
21 have any choice.

22 MR. NOYES: I want to make sure I  
23 understand something here. You indicated Virginia, State by  
24 State and Virginia comes up in February and you anticipated  
25 it will be done by the end of the fiscal year.

1 MS. CURWOOD: I think the last hearing  
2 would be sometime in June.

3 MR. NOYES: It could go on for another  
4 quarter or two quarters until there's final agreement? I don't  
5 know if it would be that long. When the arbitrator comes on,  
6 of course, there has to be a ruling and I don't know exactly  
7 how long that would be to rule but it's just a waiting period  
8 and we wouldn't be actually litigating that.

9 DELEGATE KILGORE: Where is this money  
10 coming from?

11 MR. NOYES: Mr. Stephenson has a motion.

12 MR. STEPHENSON: As staff indicated, are not  
13 all together in the budget and we have provisions made for  
14 your consideration today to raise the budget sufficiently to  
15 cover this request should you choose to cover it.

16 MS. THOMAS: I just want to be clear, we're  
17 being asked to fund 100 percent of a bill that we have no  
18 interest in because we securitized our fund.

19 DELEGATE KILGORE: I wouldn't say no  
20 interest.

21 MS. THOMAS: No matter what the outcome of  
22 this suit is, it's not going to affect our money in anyway.

23 MS. CURWOOD: It affects the Commonwealth  
24 as a whole, it falls on our bond issue, it can affect the bond  
25 rating.

1 MR. NOYES: Let me respond to that.  
2 Essentially you're right, it's not going to affect the endowment;  
3 however, the citizens of the Tobacco Commission footprint  
4 absolutely do derive a benefit from the, not just 50 percent but  
5 from the other 50 percent that we don't get, that is accurate,  
6 that is at issue in this matter.

7 MS. THOMAS: As do the rest of the State of  
8 Virginia.

9 MR. NOYES: But for the record, I want to  
10 make it clear that we do have a benefit from that which was  
11 not given to being securitized.

12 MS. THOMAS: My second point, Mr.  
13 Chairman, we're being asked to fund this, yet we still have no  
14 legal interest. We're going to have to pay additional to have  
15 legal counsel.

16 DELEGATE KILGORE: Yes.

17 MR. OWENS: If the Commission gets 50  
18 percent, then my question is why are we asked to pay the  
19 whole 100 percent of the obligation?

20 MS. CURWOOD: My understanding is that we  
21 need help and we don't have any funds.

22 DELEGATE KILGORE: What is the motion?

23 MR. STEPHENSON: The request for you from  
24 the OAG is to raise your approval of them from \$350,000 to \$1  
25 million and in addition, \$650,000. That is the ask.

1 DELEGATE KILGORE: What is the motion,  
2 how do we pay for it?

3 MR. STEPHENSON: The motion would be  
4 something along these lines, I move that the Commission  
5 continue to pay invoices from Kaufman and Canoles that are  
6 approved by the Office of the Attorney General for legal  
7 services rendered to the Commonwealth for the 2003 NPM  
8 Adjustment Arbitration. Such payments will be charged  
9 against \$350,000 authorized by the Commission for this  
10 purpose in May of 2012 until such authorization is depleted  
11 and thereafter, shall be limited to \$650,000. Stephanie has a  
12 budget amendment that will cover this if you choose to  
13 approve it.

14 MS. KIM: There is enough in our current  
15 budget for legal expenses generally. We would transfer  
16 \$197,256 from the reserve account which is now no longer  
17 making any grants, deobligate that money and then transfer  
18 another \$550,734 from unclaimed 2011 indemnification  
19 payments.

20 SENATOR RUFF: It seems like to me you've  
21 got a \$45,000 burn rate a month and 10 months would be less  
22 than a half million dollars, why are we talking about a million  
23 dollars?

24 MS. CURWOOD: We were not actively involved  
25 in, well, this is in addition, and we've come in based on what

1 happened in the past few months. We were not actively  
2 involved in our own case and in preparing this but as we get  
3 closer and during the months where our hearings will take  
4 place. This is to make sure we had enough. Certainly we'd  
5 rather not spend the money but it's really to make sure we  
6 have enough.

7 MR. OWENS: Is this money that we just write  
8 a check to them or do we –

9 MR. NOYES: We receive an invoice approved  
10 by the OAG sent to us and I sign for it.

11 DELEGATE KILGORE: So we don't just write  
12 one check for a million dollars.

13 MR. NOYES: I guess it goes into an electronic  
14 transfer or something.

15 MS. KIM: They receive monthly invoices from  
16 Kaufman and Canoles and paid after we receive approval from  
17 the AG's office for legal expenses and so forth. There are  
18 occasional invoices where we pay like the Department of  
19 Justice but where I think the states come together, overall  
20 they're paid by invoice.

21 SENATOR RUFF: Mr. Chairman, how much  
22 do we have set aside right now for those bills without any  
23 action today?

24 MR. STEPHENSON: The original offer said it  
25 was a million and that has been consumed and there was a

1 subsequent authorization for \$350,000 in May and that's been  
2 consumed, all but \$100,000. There's \$100,000 in the till  
3 available right now and the ask is for \$650,000 more.

4 MS. THOMAS: Mr. Chairman, as to Senator  
5 Ruff's question and I just want to be clear on the \$45,000 a  
6 month, is that the most it has been or the least amount it has  
7 been?

8 MS. CURWOOD: Early on it wasn't that much  
9 per month. That's just been the past few months. There's  
10 been a few higher than that but not significantly higher so far.

11 MS. THOMAS: Even if it were to be \$50,000 a  
12 month, that would be \$600,000.

13 MS. KIM: I think what she's saying as you  
14 approach this February date, the expenses will go up  
15 eventually as you approach that date.

16 MS. THOMAS: That \$45,000, if we're on the  
17 upward climb, it has been less than that. It's been less than  
18 that up to now.

19 MS. KIM: Yes.

20 MS. NYHOLM: So you've got about, when you  
21 look at \$540,000 and, \$45,000 by January, \$50,000 February  
22 and May and \$10,000, 30,000 per month, what I'm saying is  
23 it's not that far off and the bottom line is that amount of  
24 money is going to be gone very quickly.

25 MR. NOYES: Members of the Committee, I'd

1 be very surprised if that isn't chewed up by the end of this  
2 fiscal year, the \$650,000 I'm talking about. I think Ms.  
3 Nyholm has framed that question perfectly.

4 DELEGATE KILGORE: I realize that this fund  
5 pays for more than our 50 percent so what we're getting and  
6 the others haven't paid their fair share but we are where we  
7 are.

8 MS. THOMAS: It's hard to be paying that, the  
9 legal fees when we have no legal representation.

10 DELEGATE KILGORE: We will have legal  
11 representation, right Ms. Curwood?

12 MS. CURWOOD: I hope so, I'm the only  
13 attorney in our section right now.

14 MR. NYHOLM: Would the members of the  
15 Committee like to rehear the motion again?

16 MR. STEPHENSON: I move that the  
17 Commission continue to pay invoices received from Kaufman  
18 and Canoles that are approved by the Office of the Attorney  
19 General for legal services rendered to the Commonwealth for  
20 the 2003 NPM Adjustment Arbitration. Such payments will be  
21 charged against the \$350,000 approved by the Commission for  
22 this program on May 24, 2012 until such authorization is  
23 depleted and thereafter shall be limited to \$650,000.

24 DELEGATE KILGORE: I would welcome a  
25 motion on that.

1                   SENATOR RUFF: Mr. Chairman, we meet  
2 again in January, is that correct?

3                   DELEGATE KILGORE: Yes.

4                   MR. NOYES: January 8<sup>th</sup>.

5                   SENATOR RUFF: I'd make a motion that we  
6 put \$300,000 into this.

7                   DELEGATE KILGORE: Frank has made a  
8 motion that we put \$300,000 now but we revisit it in January.

9                   DELEGATE JOHNSON: Mr. Chairman, the  
10 thing that concerns me about this is that when Mr.  
11 Stephenson, and the key things about this could explode and  
12 we either pay now or we may pay more later on. We certainly  
13 need to have legal services that needs to be provided for our  
14 staff now. If we don't have that legal service, we're not  
15 providing the tools that they need to do their job.

16                   MR. NOYES: There's two questions; one is to  
17 get the help the staff needs and second is that the arbitration  
18 matter, this motion pertains to the arbitration matter.

19                   UNIDENTIFIED: Even if we do this and  
20 bearing in mind what Delegate Johnson is saying, if we don't  
21 have legal counsel.

22                   DELEGATE JOHNSON: I just want the world  
23 to know I'm willing to support and pay so the director can do  
24 what needs to be done so we don't end up in court having to  
25 spend a lot more money to defend our actions.

1 DELEGATE KILGORE Frank made a motion  
2 that we go \$300,000 more and revisit it in January and see  
3 how things are going.

4 MR. NOYES: I think we can use the same  
5 motion adding the language limited to \$300,000 now.

6 DELEGATE KILGORE: I have a motion and a  
7 second and that's to get us to January and then figure it out.  
8 I got a motion and a second, all in favor say aye (Ayes).  
9 Opposed. We have two nos.

10 MR. NOYES: Delegate Wright and Ms. Thomas  
11 voting no.

12 DELEGATE WRIGHT: I just want to make a  
13 comment and I'll be very brief. I agree a hundred percent with  
14 what Senator Ruff has said and the concerns that Delegate  
15 Johnson has about counsel. It's my recollection that in the  
16 May meeting we decided on what course of action we would  
17 take and that was to employ a law firm rather than an in  
18 house counsel. The cost of the diversity of these matters that  
19 may come before us that one person could not take care of all  
20 of it. I just want to make sure if that's the course of action  
21 we're going to take, if that is the course, that's going to be  
22 done in a very short manner.

23 MR. NOYES: That is the decision that the  
24 Executive Committee took at the May meeting and that may be  
25 revised depending on discussions but as it stands right now,

1 that is your explicit and stated desired action.

2 DELEGATE WRIGHT: As long as that is  
3 agreed upon by this Committee.

4 MR. NOYES: The OAG does the appointing for  
5 the Commission but what they decided is –

6 DELEGATE WRIGHT: - But my point is that  
7 we decided that a law firm rather than an individual.

8 DELEGATE KILGORE: That's what we decided  
9 but it has to be approved by the AG and it hasn't been  
10 approved yet. All right, budget.

11 MS. KIM: The first item is that we transfer  
12 \$197,200 from the reserve account to the administration to  
13 provide for legal expenses.

14 DELEGATE KILGORE: It's been moved and  
15 seconded. All in favor, (ayes). Opposed. (No response).

16 MS. KIM: Next we transfer \$550,734  
17 unclaimed 2011 indemnification to administration to cover the  
18 budget amendment. The budget is for \$300,000.

19 DELEGATE KILGORE: So when you transfer  
20 that, it will be there when we revisit this. All right, we got a  
21 motion and a second. All those in favor say aye (Ayes).  
22 Opposed. (No response).

23 MS. KIM: The FY13 education budget has  
24 increased by \$4,135,573 for the new college grant. A transfer  
25 of funds from unbudgeted FY13.

1 DELEGATE JOHNSON: So moved.

2 MR. OWENS: Second.

3 DELEGATE KILGORE: We got a motion and a  
4 second, all in favor, say aye. (Ayes). Opposed. (No response).  
5 All right. The next meeting date will be January 7, 2013. All  
6 right, do we have any public comments? If not, then we're  
7 adjourned.

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9 PROCEEDINGS CONCLUDED

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