

- 1 The Honorable Terry G. Kilgore, Chairman
- 2 The Honorable Frank M. Ruff, Vice Chairman
- 3 The Honorable Kathy J. Byron
- 4 The Honorable Charles W. Carrico, Sr.
- 5 The Honorable James S. Cheng
- 6 The Honorable Joseph P. Johnson
- 7 The Honorable Daniel W. Marshall, III
- 8 The Honorable Donald W. Merricks
- 9 Ms. Connie L. Nyholm
- 10 The Honorable Edward Owens
- 11 Ms. Cindy Thomas
- 12 Mr. David S. Redwine, DVM
- 13 The Honorable Thomas C. Wright, Jr.

14

15 COMMISSION STAFF:

- 16 Mr. Neal E. Noyes – Executive Director
- 17 Mr. Ned Stephenson – Deputy Executive Director
- 18 Mr. Timothy Pfohl – Grants Program Administration Director
- 19 Ms. Stephanie S. Kim - Budget Director
- 20 Ms. Sarah Capps - Grants Coordinator, Southside Virginia
- 21 Ms. Jessie Stampler - Assistant Grants Coordinator

22 Southwest Virginia

23

24

25 DELEGATE KILGORE: I'm going to call
26 the Executive Committee to order and ask Neal to call the roll.

1 MR. NOYES: Delegate Byron?
2 DELEGATE BYRON: Here.
3 MR. NOYES: Senator Carrico?
4 SENATOR CARRICO: Here.
5 MR. NOYES: Secretary Cheng?
6 SECRETARY CHENG: Here.
7 MR. NOYES: Delegate Johnson?
8 DELEGATE JOHNSON: Here.
9 MR. NOYES: Delegate Kilgore?
10 DELEGATE KILGORE: Here.
11 MR. NOYES: Delegate Marshall?
12 DELEGATE MARSHALL: Here.
13 MR. NOYES: Delegate Merricks?
14 DELEGATE MERRICKS: Here.
15 MR. NOYES: Ms. Nyholm?
16 MS. NYHOLM: Here.
17 MR. NOYES: Mr. Owens?
18 MR. OWENS: Here.
19 MR. NOYES: Dr. Redwine?
20 DR. REDWINE: Here.
21 MR. NOYES: Senator Ruff?
22 SENATOR RUFF: Here.
23 MR. NOYES: Ms. Thomas?
24 MS. THOMAS: Here.
25 MR. NOYES: Delegate Wright?
26 DELEGATE WRIGHT: Here.

1 MR. NOYES: We have a quorum, Mr.
2 Chairman.

3 DELEGATE KILGORE: Do I have a
4 motion we approve the minutes of 9/26/12?

5 DELEGATE JOHNSON: Second.

6 DELEGATE KILGORE: I have a motion
7 and a second to approve the minutes. All those in favor say
8 aye. (Ayes.) Opposed, no? (No response.) Ned, at this time, I
9 think you were talking about counsel to the Commission.

10 MR. STEPHENSON: Ladies and
11 Gentlemen of the Commission, I have a gentleman that I want
12 to introduce to you this afternoon. I'd like to introduce you to
13 Eric E. Ballou. Eric is a principal with the law firm of
14 Christian Barton. This morning, the Tobacco Commission and
15 the Attorney General and Eric's firm entered into a retainer
16 agreement for them to serve as counsel for the Tobacco
17 Commission. (Applause.)

18 DELEGATE KILGORE: Welcome.

19 MR. BALLOU: Thank you for the
20 opportunity to serve the Commission. We look forward to it. I
21 understand we have a litany of responsibilities and we look
22 forward to addressing those. We also understand we're serving
23 in the footsteps of Frank Ferguson.

24 DELEGATE KILGORE: I hope you'll
25 provide contact information to those that need to contact you
26 periodically.

1 MR. BALLOU: Absolutely, thank you.

2 DELEGATE KILGORE: Thank you. All
3 right, Ned, TROF appeals. Give us an update on Washington
4 County and then hear from Washington County and have them
5 come forward and make their pitch.

6 MR. STEPHENSON: You are aware that
7 from time to time in the administration of your TROF contracts
8 with a conclusion reached that results in a claw-back of
9 money. One particular company in Washington County that
10 the Tobacco Commission staff reviewed the contract and
11 findings and resulted in a refund obligation due to the
12 Commission. We have worked through the County IDA and
13 asked for that refund. The company representative, who I
14 have not yet met, I'm hoping Mrs. Fordham is in the audience
15 today. The company is Columbus McKinnon. We had one
16 session where the company had engaged a consulting firm
17 represented by Rob Baratta and came and met with us. Our
18 findings were not changed by that meeting. We did give the
19 company and Rob Baratta a chance to come and address the
20 Committee today to see if you would like to change those
21 findings.

22 I will give you some brief parameters for
23 you to consider. The number of jobs promised by Columbus
24 McKinnon was seventy and the Commission staff found 24.
25 The capital investment promise was \$5 million. The staff
26 found \$1 million. When you calculate those shortfalls, there's

1 \$203,000 refund being asked of Columbus McKinnon. I think
2 Rob is waiting to speak to you.

3 MR. BARATTA: The County IDA is here
4 also.

5 MS. PARKER: First of all, let me say that
6 I'm not employed by the IDA but I am here to represent them
7 here today. Our last meeting was in December and as a result
8 of that meeting and after speaking to my attorney, I believe the
9 IDA were satisfied they met the job creation requirement and
10 we have more details on that. There is a discrepancy on the
11 investment requirement. The company's position is that they
12 have a list of things that was invested in and it's just not being
13 reflected on the Commission's revenue total. I am always an
14 advocate for local industry and to help avoid repayment but it
15 may really require the company's willingness to sit down and
16 go over this just to see what things are not reflected on the
17 report to the County in terms of taxes and so forth.

18 DELEGATE KILGORE: I think Ned said
19 they only created 24 jobs and were supposed to create seventy.
20 And you're saying in your last meeting with them they have
21 created seventy?

22 MS. PARKER: Yes and that may result
23 from a discrepancy in reporting from the Virginia Employment
24 Commission but I'll let the company address that issue. The
25 IDA is satisfied in terms of job creation but there should be
26 some creative ways we can bring the two parties together.

1 MR. BARATTA: Mr. Chairman, counsel
2 couldn't be here today and I'll try to do my best. Concerning
3 job numbers, as we all know, jobs are self reported through the
4 Virginia Employment Commission from the company. We
5 certified to the Washington County IDA those numbers. They
6 are for purposes of the Tobacco Commission contract, there's a
7 math error in the contract itself and we sat down with the IDA
8 and showed them and first of all the expectation of the jobs
9 and added them and it comes out wrong. And somewhere, it's
10 still seventy as a figure. And for the time period, we have a
11 baseline of 174 full time and ended up with 242.44 full time
12 jobs and 1.8 jobs short for the goal. For the IDA, we came up
13 with a different number 240 and depending on which quarter.
14 So we're not going to hit the job numbers. In addition, we
15 happen to have a salary number of \$655,200 in additional
16 salary. We were basing that and still are on some overtime. In
17 the same period in terms of the Tobacco Commission our
18 average through quarterly salary was 1.44 million, which is
19 about a half million dollars more than we promised to do.
20 Those are all reported to the VEC as part of those public
21 records.

22 DELEGATE KILGORE: These numbers
23 are on the VEC records?

24 MR. BARATTA: What we reported to VEC
25 and why we sat down with the Washington County IDA, we
26 went over these in great detail with them. They were satisfied

1 in those terms. Now, getting to the capital investment. The
2 company was founded in 1875 and it's one of the leading
3 manufacturers of equipment moving hoists. They have twelve
4 factories throughout the U.S. and the world, six in the U.S.
5 right now and one in Damascus, Virginia. In 2007, with the
6 downturn in the economy, the company was contemplating
7 restructuring and was going to consolidate some of those
8 factories, both in the U.S. and overseas. The company and the
9 Commonwealth of Virginia entered into an agreement to stay in
10 the state of Virginia and also to relocate a product line. As a
11 result of that, they closed the company plant in Michigan and
12 moved the equipment and all production to Damascus. As
13 part of that, they spent \$6.4 million to date doing all that and
14 another 400,000 coming up in the next quarter. So by the
15 time it's all said and done and supporting seventy jobs, there's
16 approximately 6.8 million into all this. Unfortunately, the
17 contracts that we're here about and considering the way the
18 contract was structured, if you can't find it, you can't count it.
19 When you consider the machinery, tools and dies and
20 equipment that's been moved from Michigan, depreciated and
21 when it arrived in Damascus, it was different, not on the
22 books. Bottom line is \$6.4 million in investment and I think
23 we exceeded that investment. I'll be glad to answer any
24 questions.

25 DELEGATE KILGORE: Any questions
26 from the Committee?

1 DELEGATE MARSHALL: Ned, when did
2 we take this up?

3 MR. STEPHENSON: The TROF grant was
4 approved effective for the period of March of 2009 to March of
5 2012 and that was the 36 month performance period required
6 under the contract.

7 DELEGATE MARSHALL: The twenty-four
8 jobs, how did you all come up with that figure?

9 MR. STEPHENSON: We routinely ask the
10 Virginia Employment Commission for data on all of the TROF
11 companies and on the face of that information we reached a
12 conclusion of how many jobs there were. We have repeatedly
13 understood from the company by letter and email that it had
14 met its job commitments according to the company. We had
15 asked for proof thereof on many occasions and don't get it. I'm
16 more eager than ever to have that information and put it in my
17 hand but today I don't have it.

18 DELEGATE MARSHALL: The date from
19 the Virginia Employment Commission was when or what
20 month?

21 MR. STEPHENSON: The contract
22 specified March of '09 to March of '12 as being the period of
23 time in which the company must perform and we have the
24 VEC data for that period of time.

25 MR. BARATTA: I provided him the data
26 and the sheets from VEC, first and second quarter, what the

1 jobs turned out to be, which we shared with Washington
2 County. They had a chance to review it and verify it.

3 MR. STEPHENSON: I'd be happy to take
4 a look at it.

5 DELEGATE KILGORE: I think the big
6 issue is the investment and how we get to \$6.8 million or is it
7 one million, the taxes.

8 MR. STEPHENSON: The contract
9 provides that capital investments are indicated by that which
10 appears on the Commissioner of Revenue's tax rolls. The
11 reason being, that's what gives the localities a return. The tax
12 rolls show a 1,033,318 on a promise of five million. Again,
13 we've asked for information to show us that tax roll larger than
14 that and I just don't have it.

15 MR. BARATTA: If you're relying on tax
16 rolls, you'll never get there because the equipment, capital
17 equipment we put in there is not what's taxed. Some of that is
18 already depreciated and some if it's already taxed as an asset.

19 DELEGATE KILGORE: But it was moved
20 from Michigan to Virginia? It's now in Virginia?

21 MR. BARATTA: Correct.

22 MS. KIM: So that's been depreciated, the
23 total it's depreciated fifty percent, never depreciates below fifty
24 percent. If we can get the company to sit down and if we look
25 over this list and itemize it, we allow the Commissioner of
26 Revenue to look at that and there maybe could be some things

1 that could be reported to Washington.

2 DELEGATE KILGORE: What do you
3 think, Ned?

4 MR. STEPHENSON: What they need to
5 know, the contract provides that we need a letter from the
6 Commissioner of the Revenue attesting to the taxable assets of
7 record in the name of the company. When we get that, we are
8 satisfied. We don't quibble usually.

9 MR. BARATTA: What we do with the
10 other million capital investment that's been made by the
11 company, do we forget about that? We've got \$6.4 million
12 expended in capital the company's put in there.

13 MR. NOYES: 1.03 does appear on the
14 Commissioner of Revenue's books and any adjustment the
15 Commissioner of Revenue makes if that's what you're
16 suggesting that could be considered as, if you make something
17 and it never appears on the Commissioner's books whether it
18 qualifies in terms of the contracts.

19 MR. STEPHENSON: I think what Mr.
20 Baratta is saying is that the 1.03 million might come up but
21 not as far as five million, there's a shortfall.

22 MR. BARATTA: Correct. Especially when
23 you replace equipment that is there already. We're making
24 additional investment in replacing equipment.

25 DELEGATE KILGORE: After we get all
26 that information and jobs, if the Commissioner could go back

1 and I think that's what Ned is saying, the Commissioner go
2 back and look at that.

3 MR. STEPHENSON: We rely on the
4 Commissioner. Mr. Chairman, if I may speak freely?

5 DELEGATE KILGORE: Speak freely.

6 MR. STEPHENSON: It happens fairly
7 often among hundreds of contracts that we have, our
8 companies are eager to earn the incentive based on capital
9 investments but those assets do not show up on the tax rolls.
10 And we're diligent in enforcing the contracts and all these
11 companies signed these documents up front knowing what the
12 contract said. When we get to that time and not on the tax
13 rolls, we call their hand on that and we expect them to do that.

14 MS. PARKER: To help the company out
15 further, recently there's been new investment made at the
16 Damascus plant and in the near future. Again, to find a way
17 to close that gap, would you be willing to consider allowing us
18 to continue to count new investment outside the performance
19 period in the contract in order to help the company?

20 MR. STEPHENSON: Mr. Chairman, we
21 are frequently asked for time extensions when the contract is
22 conflict. It's been our practice not to offer any extensions until
23 the facts are agreed to under the old contract and then we will
24 consider a time extension.

25 DELEGATE KILGORE: Does that answer
26 your question? I think he's trying to help you out here. So

1 from what I gather, as I look through the VEC, you don't have
2 that before you?

3 MR. STEPHENSON: It was handed to me
4 a few minutes ago.

5 DELEGATE KILGORE: Go look through
6 that and get the jobs and then we'll make a determination on
7 the capital investment and the Commissioner of Revenue and
8 somehow see how that works out and then come back to Ned.
9 Any questions?

10 DELEGATE BYRON: We're all for
11 progress and pro-jobs and reinvestment in these communities
12 but the lack of flexibility and know we have parameters
13 because if we don't have some type of flexibility and if you can't
14 depreciate equipment in my mind and I understand how they
15 account for this and how it's depreciated. I don't understand
16 when you look at the investment and they've gone way above
17 the jobs on the salary amount, in fact double, why is the
18 equipment and the Commissioner of Revenue going to, and
19 what they're going to earn tax dollars from, why wouldn't we be
20 willing to understand within this period of time that being an
21 opportunity or an alternative, it doesn't make sense to me.

22 MR. NOYES: It's reported to the
23 Commissioner of Revenue. However that determination is
24 made by the Commissioner of Revenue we always do it.

25 DELEGATE MARSHALL: You cannot
26 depreciate a piece of equipment from Michigan to zero to

1 Washington County. The Commissioner of Revenue and your
2 machine and tool tax, you're not going to get all the way down
3 to zero percent. Evidently, the machinery and tools you
4 brought from Michigan is not on the rolls in Washington
5 County. To me, that's the issue. What's put in is not being
6 taxed.

7 DELEGATE JOHNSON: Our mission at
8 this Commission is to create jobs and they are creating jobs, I
9 think the value of the equipment, why are we worrying about it
10 when it comes to Columbus McKinnon, I think the jobs created
11 is what we're trying to build jobs for and whether or not 29 or
12 19, 20 for 2010 or 2010 Mercedes Benz, that's the way I look
13 at it.

14 MR. OWENS: Understanding the fact
15 that when we put these TROF agreements together, there's a
16 certain portion that said how many jobs are you going to create
17 and a certain portion said the capital investment and then
18 taxable capital investment, is that correct?

19 MR. STEPHENSON: Yes.

20 MR. OWENS: Can you tell me what
21 portion of this is actually taxable of the 6.4, is that taxable as
22 a business investment?

23 MR. BARATTA: We don't know that figure
24 right now. We have to get Commissioner of Revenue in on
25 that.

26 MR. OWENS: Are you counting

1 equipment and operating costs in your 6.4 million?

2 MR. BARATTA: Not operating costs.

3 MR. OWENS: Any other costs?

4 MR. BARATTA: There's costs to install
5 the equipment and getting it running and that's a small
6 portion of it.

7 MR. OWENS: So you depreciated it six
8 million and you brought it to Washington County but it's not
9 on the books of Washington County.

10 MR. BARATTA: Some of it is and some is
11 not. We found that some of our tools and dies, some we did
12 with Washington County, it's an offset. We've got to go back
13 and try to figure out what's out there that are not on the rolls.

14 SENATOR CARRICO: From what I
15 understand, this equipment was brought from Michigan to
16 Virginia and you're now accounting for 1.03 million investment
17 and there's 240-some jobs created.

18 MR. BARATTA: Seventy new jobs.

19 SENATOR CARRICO: I understand the
20 equipment relocated from Michigan is not on the books of the
21 Commissioner but if you look at this in the sense that if this
22 went from Virginia to Michigan, we wouldn't even have 1.03
23 million on the books. I believe we have a situation here where
24 it's relocation concerning the machinery and tool tax, which
25 was on the books at the fifty percent or something.

26 DELEGATE MARSHALL: But on the other

1 hand, if they would have told us up front like Mr. Owens said,
2 creating seventy jobs and only invest one million, so that's the
3 other side of the story. The other side of the story is just like
4 the tax base that helps and when you consider all that that's
5 involved with it. Just like the city of Danville about forty
6 percent is machinery and tool tax.

7 DELEGATE KILGORE: It looks to me like
8 when you consider jobs and then if you're the Commissioner,
9 that one million is going to come up substantially. So that's
10 just going to come up. So you're going to get back with Ned,
11 you get with him between now and May and we can then make
12 a determination in May what we can do based on the numbers
13 that Ned had. Does that sound like a fair way to go here?

14 MR. BARATTA: Thank you.

15 MR. NOYES: The Commissioner of
16 Revenue certifies it.

17 MR. STEPHENSON: Mr. Chairman, I
18 hate to belabor this but I feel compelled to make this point so
19 there's a full understanding. In the accounting world, there is
20 what's called book depreciation and tax depreciation. Book
21 depreciation is what they carry on their financial statements
22 and we don't care about that. Tax depreciation is what occurs
23 when the tax system and our contract provides that we
24 recognize the costs un-depreciated. We do not discount it for
25 the tax depreciation. The point being is that those machines,
26 whatever they cost and whatever they are worth and

1 apparently not on the tax rolls and probably should be. That's
2 what we've been trying to get at and cost, not depreciated.
3 That's all spelled out in the contract.

4 MR. BARATTA: The Washington County
5 IDA, we can get with the staff on the job issue and provide all
6 that.

7 MR. STEPHENSON: I'll do it this week.

8 MR. BARATTA: I've talked to the counsel
9 for the company and we're anxious to get this straight.

10 DELEGATE BYRON: Mr. Chairman,
11 there's a lot of localities that somehow that support businesses
12 and when we consider the value of those jobs and
13 strengthening the business community, employers that we
14 have and considering jobs and wages and taxes, I think we
15 should really try to find a solution here.

16 MR. BARATTA: We'll work with the
17 County Commissioner of Revenue and come back and hope we
18 can have it all solved. I appreciate your time.

19 MR. NOYES: Next we have Scott County,
20 John Fuller.

21 MR. FULLER: Most of you are familiar
22 with the TROF agreements in Duffield, Virginia. This company
23 moved out in the dead of night and we ran down the principals
24 and because they're a corporation, we had no success in
25 collecting any money. They had operated for about a year
26 successfully, provided product to another company, anyway,

1 they moved out. We acknowledged an agreement done last
2 year when the Tobacco Commission and Scott County EDA in
3 which we paid the sum of 25,000 against the 75,000 award.
4 So the agreement we signed last year provided that we pay an
5 additional 25,000 on March 15th of this year and 25,000 in
6 March of 2014. Scott County is a poor county and we have
7 trouble making ends meet anyway. We know of instances
8 where these TROF agreements have gone bad and has been
9 negotiated down.

10 We're here today to request that the
11 Commission consider an adjustment in that so that we can,
12 maybe we can have a happy ending on this thing. We're
13 prepared today to make a payment of \$12,500, fifty percent of
14 the amount. We ask that you give some thought to that.

15 DELEGATE KILGORE: So you're asking
16 for forgiveness in paying half?

17 DELEGATE MARSHALL: Are you asking
18 for a loan or time?

19 DELEGATE KILGORE: They're asking for
20 forgiveness, that's the proper word.

21 MR. FULLER: We would ask for your
22 consideration of this and we're prepared to do that today and
23 close this thing out and move on.

24 MR. STEPHENSON: The remaining
25 obligation as I understand it is to owe us 25,000 this March
26 and another 25 next March. There were three installments.

1 So your remaining obligation is 50,000.

2 DELEGATE KILGORE: So they want to
3 pay 12,5 on that fifty.

4 MR. FULLER: We're willing to go fifty
5 percent.

6 DELEGATE KILGORE: This March and
7 then the next?

8 MR. FULLER: Yes and the next. 12,5
9 and we're done.

10 MR. OWENS: The original obligation was
11 150 and we had an agreement to cut it in half?

12 DELEGATE KILGORE: No, 75.

13 MR. STEPHENSON: Twenty-five has
14 already been paid leaving fifty as the remaining balance. Mr.
15 Fuller is saying he wants to pay 12,5 now and bring the total
16 from 25,000 up to 37,5, he would have paid half of the full
17 grant.

18 MR. FULLER: Your math is better than
19 mine, Ned.

20 DR. REDWINE: Mr. Chairman, Mr. Fuller
21 and Delegate Kilgore, I've said this before and all of us here,
22 this puts us in a tough position when you're talking about
23 what you're talking about because none of us want to penalize
24 the county. None of us have these things in place for the
25 purpose of taking money from the counties. None of us can
26 predict what these companies will do and we have to run a

1 business assessment that will grow and provide jobs. I do feel
2 an obligation and I think Mr. Stephenson said before there's
3 about a hundred of these things hanging out there and then I
4 worry about setting a precedent. I agree Scott County is not a
5 wealthy county. I do know they negotiated this last year. Am I
6 correct, Mr. Fuller and Mr. Kilgore, that the Board of
7 Supervisors is aware and was aware they put this in the
8 budget to make this payment every year, so that's my
9 understanding they put it in the budget, and the initial 25,000
10 was paid. Last year 25,000 was paid by the EDA and the
11 County Board of Supervisors was aware they'd have to pay 25
12 the next two years and put it in the budget.

13 MR. FULLER: They did that but we also
14 had, we wanted to try to negotiate it down.

15 DELEGATE KILGORE: But they were
16 aware of it. They want to try to negotiate it down.

17 MR. FULLER: Yes.

18 DELEGATE BYRON: Mr. Chairman,
19 when you borrow money from banks or the county or
20 whatever, the only reason I know the only money you get, you
21 have to pay it back timely. If you don't pay that back, you're
22 penalized.

23 DELEGATE KILGORE: This company did
24 go out in the middle of the night and it was a bad deal.

25 DR. REDWINE: The money will come
26 from that company and this is a different situation, there is no

1 company. This company just disappeared. When we do
2 business it's always signed off by someone, which is usually
3 the EDA or IDA. If the county says if this blows up, we'll back
4 it. I guess I'm a little bit perturbed and I live there and I want
5 to be a friend. I guess what I'm doing is looking for somebody
6 to tell me and we had a long meeting about a year or two ago
7 about policy on these things and the question is are we going
8 to enforce the policy or are we going to hear all one hundred of
9 these things because they'll all come before us.

10 MR. STEPHENSON: It's quite a large
11 number. We deal with a great deal of this at the staff level that
12 you never see.

13 DELEGATE KILGORE: A lot of that is
14 paid by the company.

15 MR. STEPHENSON: It is a significantly
16 unpleasant part of this program, I can assure you.

17 SENATOR CARRICO: He said he was
18 prepared to pay 12,5 of the 25,000 and then in March of 2014,
19 pay another 25, 000. I understand Dr. Redwine the position
20 and you're saying there's a hundred or so of these still out
21 there as far as an obligation. Could you do the business of
22 March of this year, since you're prepared to pay it and let's see
23 how it goes before 2014?

24 DELEGATE KILGORE: You're saying pay
25 the 12,5 this year?

26 MR. FULLER: We've had a number of

1 successful TROF agreements that have been consummated
2 and fulfilled and this is one that went bad and we had no way
3 of knowing it.

4 MS. NYHOLM: It would be more
5 favorable to extend the time than to not follow the policy.

6 DELEGATE MARSHALL: I'll make a
7 motion that we extend this payment to 12,500 a year.

8 DELEGATE KILGORE: Instead of 25.

9 DELEGATE MARSHALL: They pay 12,5
10 for four years. That gives us our money but it gives them a
11 longer period of time and we get our money.

12 DELEGATE KILGORE: Well I paid on the
13 house for thirty years.

14 DELEGATE BYRON: Four years is a long
15 time. Does that four year period prevent them from getting
16 another TROF?

17 DELEGATE KILGORE: No. They've been
18 successful in the past on some TROFs.

19 DR. REDWINE: Before we vote, can I ask,
20 I've got a question. Mr. Fuller and Mr. Kilgore, I'm with you on
21 your mission and I understand that. The payment schedule is
22 not really the problem, is it?

23 MR. FULLER: No.

24 DR. REDWINE: The amount of money if
25 you knew you have to pay fifty thousand as Delegate Marshall
26 said, you'd just as soon pay it in two years to get it done and

1 over? The County and I say this because I served on the Board
2 for eight years down there but if you're going to have to pay
3 fifty either way, it probably would be just as simple to pay 25
4 and then 25 instead of paying 12 for four years.

5 MR. FULLER: I'm trying to pay fifty
6 percent.

7 DELEGATE KILGORE: 37,5 total.

8 MR. FULLER: Yes.

9 DR. REDWINE: You've heard his motion
10 and if that were passed that would still only be 75 total. I
11 guess I'm asking you, is that any different?

12 MR. FULLER: I appreciate the motion but
13 the total amount over a long time. It still gives you a total of
14 75.

15 DR. REDWINE: I understand what he's
16 saying.

17 SENATOR CARRICO: I don't know how
18 often this comes up but I understand the company walked out.
19 They were there for a while and walked out. And the County
20 is asking to pay half of the obligation but they can't get the
21 other half from the company. So I'd make a substitute motion
22 that we agree to it and cut the loss and go on.

23 SENATOR RUFF: Mr. Chairman, you're
24 setting a precedent for us.

25 SENATOR CARRICO: How many
26 companies walk away?

1 MR. NOYES: There's any number of
2 them.

3 DELEGATE BYRON: I'd like to make a
4 substitute motion that in light of the comments made that we
5 hold the County accountable.

6 MR. OWENS: Second.

7 DELEGATE KILGORE: We have a
8 substitute motion and a second. Any more discussion? All
9 those in favor say aye. (Ayes.) Opposed, no?

10 SENATOR CARRICO: No.

11 MR. NOYES: And that substitute motion
12 was that we uphold the TROF policy.

13 MR. STEPHENSON: Mr. Chairman, I
14 think it's appropriate that we spend a few minutes talking
15 about the administration of your TROF program in light of
16 recent conversations. I think your staff is simply seeking some
17 guidance from this Committee on matters like this. I'll tell you
18 that the TROF contracts are written to require that companies
19 who make promises for jobs that they occur within a specific
20 timeframe and that each of those people get a paycheck and
21 that has to show up in the VEC and that your staff diligently
22 enforces the terms of that contract. The contract also provides
23 as you've heard before that the capital investment is
24 constituted by what shows up in the Commission tax rolls
25 within a certain time period in the name of the company and
26 not in some contract or something. And your staff diligently

1 enforces those terms.

2 The basis for your TROF award is that
3 half of the award is based on the job count and half of it based
4 on the capital investment and the return to the locality and
5 therefore to the Commission on the jobs is the personal income
6 tax revenue derived from those salaries. The return to the
7 locality and to the Commission on the capital is the property
8 tax revenue derived from what's on the tax rolls. Because we
9 are diligently enforcing these, we often find there are shortfalls
10 and we require that they make these refunds and we always
11 give them an opportunity to appeal to you so you can give
12 them some relief if you want to. I think your staff would
13 welcome guidance as to whether you want to diligently enforce
14 these terms and whether the terms are to your liking and
15 whether you want to dismiss entirely the capital promised
16 aspect and look only at the jobs or whether you want to give a
17 trade or whether you want to give the staff instructions to
18 weigh certain claw-backs. This is unpleasant for the localities
19 and economic development directors and it's difficult for the
20 Commission. It doesn't present well for what we're trying to
21 do. So we're looking for guidance from you to overcome these
22 problems.

23 DELEGATE KILGORE: I thought the
24 more important aspect of the TROF in my opinion and I think
25 we're more interested in job creation than capital investment.
26 I know the counties would like to get more taxes but a lot of

1 jobs are created and that I think is of the utmost importance
2 when you talk about three hundred jobs, I just think in a case
3 like that, that's more important. That's something we need to
4 look at in the future.

5 MR. NOYES: If it is the decision of this
6 Committee to focus on jobs and to drop the capital investment
7 provision, recognize that the amount available as an incentive
8 would drop as well, which is okay if that's what you're doing. I
9 didn't want you to think we're just on the job portion.

10 MR. STEPHENSON: Please be aware that
11 often there's TROF transactions where the capital investment
12 promise was \$300 million and 40 jobs. If we dismiss the
13 capital investment portion and look at 40 jobs, we would miss
14 that badly.

15 DELEGATE BYRON: First of all, I think
16 that as much as we appreciate staff's direction in all this, I
17 think it's important that in dealing with and I think
18 Commission members need to have input into decisions that
19 would affect families. One way, I have to wonder about the
20 process before it gets to the TROF members. How are we
21 determining all the diligent check outs, checking out
22 applicants and doing due diligence before they bring it to us
23 and that all these parameters and due diligence is completed.
24 We have to make sure they meet their requirements. I know
25 this can be painful but we have to do what we have to do.

26 DELEGATE MARSHALL: In the formula,

1 when you look at jobs in consideration of the pay of the jobs,
2 the benefits, do you look at that?

3 MR. STEPHENSON: Yes, we look at the
4 wage that is passed to us by the company because the wage
5 that is actually paid by the company appears on the Virginia
6 Employment Commission's tax return. So we have reliable
7 evidence as to the wage promises are met, but we do not look
8 at benefits.

9 DELEGATE MARSHALL: Do you look at
10 the unemployment rate?

11 MR. STEPHENSON: We factor in the
12 unemployment rate of the locality so if the company is going to
13 go, we factor in the fiscal information from the locality, we
14 factor in the nature of the industry and whether there are
15 indirect jobs associated with those jobs and I think that's
16 probably it. We have a model that takes into consideration all
17 the factors and produces a suggested incentive and 99% of the
18 time your Committee approves that incentive right off the top.

19 MS. NYHOLM: How do you count the
20 jobs, is it over a period of time or how do you do that?

21 MR. STEPHENSON: That's a problem
22 because the job, the head count fluctuates all the time, and to
23 cure that we say to the company, you're promising a hundred
24 jobs, you must get to that level and sustain it for any three
25 calendar quarters in a three year period. If you can get there
26 and hold it for three quarters, you're done.

1 MS. NYHOLM: They don't have to be
2 consecutive, any quarters?

3 MR. STEPHENSON: Three consecutive
4 quarters, yes. And then some companies and they will ring
5 your bell and get to three quarters and we cut them loose and
6 two years later they collapse and vice versa.

7 DELEGATE KILGORE: Anything else,
8 Ned?

9 MR. STEPHENSON: One brief remark.
10 Mr. Chairman, I failed to recognize a young lady. And this is
11 Megan Martz Gilliland, she's from Christian and Barton,
12 counsel with them and we met Mr. Ballou and she will be
13 working with him on our behalf.

14 DELEGATE KILGORE: Nice meeting you,
15 thank you.

16 MR. NOYES: The tour bus is leaving at
17 3:30 sharp outside the hotel. Those on the pre-approval list
18 and IDs are required.

19 MS. KIM: It's outside, Economic
20 Development Committee, Patrick County's allocation, 2647.

21 DELEGATE KILGORE: We have a motion
22 and a second, all those in favor of transferring 250,000 say
23 aye. (Ayes.) Opposed? (No response.)

24 MR. NOYES: It's not on your agenda but
25 in May or September we had a request to supply funds to the
26 Attorney General for the 2003 NPM for the nationwide

1 arbitration. The request originally was a million dollars and to
2 date the Commission has paid 650. Members here should be
3 aware that the settlement hasn't been cheap. Any or all of the
4 remaining 350,000 that was requested will likely be required to
5 wrap up this mediation effort. The remaining current balance
6 of approximately 200,000 is not yet drawn. The 650 the
7 Commission has provided, it's very possible that some or the
8 entire invested amount may be needed as legal expenses. We
9 heard about this in September and Ms. Curwood was present
10 and she's here today if there's any question. I think it will be
11 necessary.

12 DELEGATE KILGORE: You think it's
13 necessary?

14 MS. CURWOOD: Yes. We're working
15 diligently on this and that's where we are right now through
16 the arbitration. It hasn't happened yet but we think it will and
17 we'll know in thirty days probably whether it is or not. We
18 don't want to come back to try our case. We don't want to
19 have to prepare for that but that's why we're going through the
20 arbitration.

21 DELEGATE KILGORE: Any questions?

22 SENATOR RUFF: Mr. Chairman, with the
23 Attorney General's office, I made the commitment that I would
24 make a motion right after we got counsel. I feel like I'm
25 obligation to make a motion that we commit the
26 reimbursement up to an additional 350,000 will be paid

1 towards the nationwide arbitration.

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

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7 PROCEEDINGS CONCLUDED.

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19 CERTIFICATE OF THE COURT REPORTER

20

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

1 **Monday, January 7, 2013 at 2:15 p.m. at the Hilton**
2 **Garden Inn – Downtown in Richmond, Virginia.**

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

6 Given under my hand this 22nd day of January,
7 2013.

8

9

10

Medford W. Howard

11

Registered Professional Reporter

12

Notary Public for the State of Virginia at Large

13

14 My Commission Expires: October 31, 2014.

15 Notary Registration Number: 224566