

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

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

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9                                   **Executive Committee Meeting**

10                                  Thursday, May 2, 2013

11                                  3:00 p.m.

12                                  Hotel Roanoke & Conference Center

13                                  Roanoke, 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    The Honorable Charles W. Carrico, Sr.

7    The Honorable Mary Ray Carter, Deputy Secretary of the  
8        Department of Commerce and Trade

9    The Honorable Joseph P. Johnson, Jr.

10   The Honorable Daniel W. Marshall, III

11   The Honorable Donald W. Merricks

12   Ms. Connie Greene Nyholm

13   The Honorable Edward Owens

14   Dr. David S. Redwine, DVM

15   The Honorable Thomas C. Wright, Jr.

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18   COMMISSION STAFF:

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20   Mr. Neal Noyes, Executive Director

21   Mr. Ned Stephenson, Deputy Executive Director

22   Mr. Timothy J. Pfohl, Grants Program Administration Director

23   Ms. Stephanie S. Kim, Director of Finance

24   Ms. Sarah K. Capps, Grants Program Administrator –  
25        Southside Virginia

1 **APPEARANCES Cont'd**

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3 Ms. Sara G. Williams, Grants Program Administrator –  
4 Southwest Virginia

5 Ms. Carolyn Bringman, Performance Data Analyst

6 Mr. Benjamin Dawson, Grants Assistant - Southside Virginia

7 Ms. Jessica Stamper - Grants Assistant - Southwest Virginia

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10 COUNCIL FOR THE COMMISSION:

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12 Mr. Eric Ballou, Esquire

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1 DELEGATE KILGORE: Welcome, everybody. Neal,  
2 would you call the roll?

3 MR. NOYES: Delegate Byron?

4 DELEGATE BYRON: Here.

5 MR. NOYES: Senator Carrico?

6 SENATOR CARRICO: Here.

7 MR. NOYES: Deputy Secretary Carter?

8 DEPUTY SECRETARY CARTER: Here.

9 MR. NOYES: Delegate Johnson?

10 DELEGATE JOHNSON: Here.

11 MR. NOYES: Delegate Kilgore?

12 DELEGATE KILGORE: Here.

13 MR. NOYES: Delegate Marshall?

14 DELEGATE MARSHALL: Here.

15 MR. NOYES: Delegate Merricks?

16 DELEGATE MERRICKS: Here.

17 MR. NOYES: Ms. Nyholm?

18 MS. NYHOLM: Here.

19 MR. NOYES: Mr. Owens?

20 MR. OWENS: Here.

21 MR. NOYES: Dr. Redwine?

22 DR. REDWINE: Here.

23 MR. NOYES: Senator Ruff?

24 SENATOR RUFF: Here.

25 MR. NOYES: Ms. Thomas is not here, and Delegate

1 Wright had to leave.

2 We have a quorum, Mr. Chairman.

3 DELEGATE KILGORE: Thank you. The first order  
4 of business is the approval of the 1-7-2013 Minutes. Do I hear  
5 a motion?

6 DELEGATE JOHNSON: So moved.

7 DELEGATE KILGORE: We have a motion and a  
8 second to approve the Minutes. All those in favor say aye?  
9 (Ayes.) Opposed? (No response.) The Minutes are approved.  
10 Now we're going to talk about the fiscal year 2013 budget  
11 transfers. Stephanie Kim.

12 MS. KIM: The first one is regarding an earlier  
13 committee meeting of Special Projects to transfer \$300,000.00  
14 from general accounting Special Projects for MBC.

15 MR. NOYES: The motion that was approved was  
16 subject to be approved.

17 DELEGATE KILGORE: Will you tell us what that  
18 involved?

19 DELEGATE MARSHALL: We had a request, and we  
20 didn't have enough money for MBC.

21 MR. NOYES: There was no other sub-committee.

22 DELEGATE MARSHALL: This is the geometric  
23 sequencing project in Danville that cost \$2 million. Staff's  
24 original recommendation was to approve \$1.7 million, so we  
25 found \$300,000.00 from another spot, and we're going to move

1 that over so that we can invest the \$2 million in that in MBC's  
2 project in Danville.

3 DELEGATE KILGORE: That was the motion, and at  
4 the direction of Special Projects?

5 DELEGATE MARSHALL: Yes, and I so move.

6 DELEGATE KILGORE: I have a motion and a  
7 second. Any more discussion on that transfer? That would  
8 be transferred to Special Projects?

9 DELEGATE MARSHALL: Yes.

10 MS. KIM: That's right.

11 DELEGATE KILGORE: All those in favor say aye?  
12 (Ayes.) Opposed? (No response.)

13 MS. KIM: The second one is to transfer back from  
14 TROF to R&D \$5 million, and that project failed. The money  
15 was transferred to TROF for that deal, and the deal fell through  
16 and transferred it back to R&D.

17 DELEGATE KILGORE: That's back to R&D from  
18 TROF?

19 MS. KIM: Yes, \$5 million.

20 DELEGATE KILGORE: We're transferring it back  
21 from TROF to R&D because in the deal closing that project  
22 never came to fruition?

23 MS. KIM: Yes, sir.

24 SENATOR RUFF: Where do we stand on the TROF  
25 funds? Do we have enough?

1 MR. NOYES: I believe so.

2 DELEGATE KILGORE: The problem with TROF,  
3 you're closing a lot of deals. So, I've got a motion from TROF  
4 back to R&D, \$5 million that was borrowed to close this deal in  
5 the first place. I've got a motion and a second. All those in  
6 favor say aye? (Ayes.) Opposed? (No response.)

7 MS. KIM: The next one is to clear out the  
8 Technology and the Reserve Funds that have portions of grants  
9 that are de-obligated; \$2,612.00 from Technology and  
10 \$4,972.00 from the Reserve Fund to be transferred to the  
11 general account.

12 MR. OWENS: So moved.

13 DELEGATE KILGORE: We have a motion and a  
14 second to transfer that to the general account. All those in  
15 favor say aye? (Ayes.) Opposed? (No response.)

16 MS. KIM: The next one is FY14. Probably the best  
17 thing is to go through the budget first and then we'll go back to  
18 FY13.

19 DELEGATE KILGORE: Before we do that I just want  
20 to announce that we have our counsel here, Eric Ballou. Let's  
21 give him a hand.

22 (Applause)

23 Thank you for coming; I'm sure we'll be calling on you  
24 shortly.

25 MR. BALLOU: It's a pleasure to be with you here

1 this afternoon, and it could be the only reason I'm getting  
2 applause is because you haven't seen the first invoice.

3 DELEGATE KILGORE: We thought you were free.  
4 We also have with us from the Office of the Inspector General,  
5 something that the General Assembly formed several years ago,  
6 we have Mr. Dean Sutton here with us. If you want to move up  
7 closer to hear everything you're welcome to do that. You can  
8 sit up here if you'd like to. Thank you for coming.

9 All right, now we're going into the budget FY2014. This is  
10 the budget we'll be voting on at the Full Commission meeting on  
11 the 23<sup>rd</sup>. What we're looking for is recommendations and/or  
12 changes by the Executive Committee so that we can make a  
13 recommendation to the Full Commission.

14 MS. KIM: That proposed budget is on Page 41 of  
15 your packet. On the top of the page you'll see the source of the  
16 funds we'll be using for the FY14 budget, \$67.6 million, 34.8 per  
17 cent, the corpus invasion in FY14. Then \$32.8 million will be  
18 the interest earnings from the past year, and that will be applied  
19 to the FY14 budget. Total use of the funds, 66.8 million, 2.3  
20 million for administration, and the rest for the various  
21 Economic Development programs.

22 DELEGATE KILGORE: What's the percentage for  
23 administration?

24 MS. KIM: Next slide. Administration is three and a  
25 half percent of the total proposed budget. You'll note the

1 contractual services is significantly lower in FY14 than FY13,  
2 and that's primarily because we had agreed to fund the OAG  
3 litigation in the prior year, and also we now do not have  
4 indemnification administration; that item has gone down.  
5 Then there is also \$445,000.00 transferred out of  
6 appropriations. In a performance budget system it's  
7 reasonable to pay for.

8 DELEGATE KILGORE: Is everybody up-to-date?

9 MS. KIM: You have to pay your proportional share,  
10 that's not an option.

11 MR. NOYES: That's not an option.

12 DELEGATE KILGORE: Not an option, okay.

13 MS. KIM: Indemnification, as you know, that  
14 program is completed and we made available \$308.8 million for  
15 13 years, and that transfer has been complete from Troutman,  
16 and we're still handling a few late claims and receiving some  
17 phone calls regarding some uncashed checks that we're trying  
18 to get to the right people for people that died and we've had a  
19 change in ownership of land or a change of ownership.

20 DELEGATE KILGORE: How many dollars are left in  
21 that account?

22 MS. KIM: At this point there is about \$578,000.00  
23 left.

24 DELEGATE KILGORE: Some of that involves people  
25 you can't find?

1 MS. KIM: Or they turned in their claim form. You'll  
2 see the program budget for each of the different areas. As you  
3 know we are funding in the two different areas. If you'll notice,  
4 we are funding one line item we added under Education,  
5 Advanced Manufacturing, and that would be within the  
6 Education Fund. Then at the bottom you'll see right now \$10  
7 million, and that was for --- last year it was in three parts. This  
8 is the second part of that. In the past we have combined that  
9 into the TROF fund for disbursement, so I did the same this  
10 year.

11 DELEGATE KILGORE: Can we still carry the  
12 Megapark?

13 MR. NOYES: Twelve and a half million.

14 MS. KIM: The Endowment balance, \$387.2 million.  
15 They have not done the FY13 corpus invasion yet, which will  
16 leave 38.7 million to fund the current year beginning June 30<sup>th</sup>.  
17 A ten percent corpus invasion has been proposed in FY14,  
18 which will be 34.8 million, leaving a balance of 313.6 million.

19 The investment earnings for March, 2012 to February,  
20 2013, which is the period of time we use for accumulated  
21 interest transferred into the fund each year, 32.8 which will  
22 fund the FY14, all funds in the general fund, and we don't earn  
23 anything on the general fund.

24 On March 31<sup>st</sup> the cash balance 249.3 million, but of this  
25 amount 210.7 million is obligated but not yet disbursed. So far

1 this fiscal year we have disbursed 88 million.

2 There was a motion made from the Executive Committee to  
3 recommend to the Full Commission the FY14 corpus invasion  
4 10 percent to fund the FY14 budget and then the amendment to  
5 move \$10 million to the utility/rent or the TROF funds for  
6 disbursement in FY14 and then adoption of the FY14 budget.

7 DELEGATE MARSHALL: Mr. Chairman, under use  
8 of funds for administration, it says transfer payments this year  
9 was 394,000, and next year it's 445. What are those dollars  
10 used for?

11 MS. KIM: That consists of three things: Central  
12 Agency service charges, which are calculated bi-weekly on a  
13 very convoluted formula of number of transactions and dollars  
14 and number of checks. There is also enforcement paid to OAG,  
15 Department of Taxation for the MSA enforcement. Then there  
16 is also a new amount for performance budgeting system, which  
17 is statewide, and each agency has to pay their proportional  
18 general fund share.

19 DELEGATE MARSHALL: Furniture and equipment,  
20 we spent 34,000 last year or this year and we budgeted 38,600  
21 for next year.

22 MS. KIM: Right. The majority of that, or about  
23 32,000, is for the grants management software license, and that  
24 goes up about 5 or 6 percent every year. We also need routine  
25 computer replacement for each year. They don't all die in one

1 year, but routine replacement.

2 DELEGATE MARSHALL: The last item, the 10  
3 million.

4 MS. KIM: That's a utility grant transferred to TROF.

5 DELEGATE MARSHALL: For Mecklenburg.

6 DELEGATE BYRON: Furniture and equipment, and  
7 talking about 34,000, then a license you say?

8 MS. KIM: The way they calculate the licenses,  
9 because of the amount of the contract even though there is a  
10 software license it's better to capitalize as an asset.

11 DELEGATE KILGORE: Is that the way the auditor  
12 makes us classify --

13 MS. KIM: -- Yes, I did question them on it. Those  
14 licenses are yearly.

15 DELEGATE KILGORE: They require you to do that?

16 MS. KIM: That's the state, that's the line item,  
17 servers and furniture, that's considered in the same category.

18 DELEGATE KILGORE: Any other questions?

19 SENATOR RUFF: Do you want separate motions?

20 DELEGATE KILGORE: Yes. One would be to do  
21 the corpus invasion, 10 percent. In the past we've had 15  
22 percent, and we're trying to make a conservative effort to try to  
23 go back to 10 percent.

24 SENATOR RUFF: Mr. Chairman, I move that we  
25 invade the corpus by 10 percent.

1 SENATOR CARRICO: Second.

2 DELEGATE KILGORE: We have a motion and a  
3 second. Any more discussion on that motion? All those in  
4 favor say aye? (Ayes.) Opposed? (No response.) All right.  
5 Do you have an amendment?

6 MS. KIM: Transferring the 10 million from another  
7 line item to TROF, included in the TROF.

8 MR. OWENS: I move we transfer the \$10 million  
9 from the other line to TROF.

10 MR. NOYES: Mr. Chairman, to clarify this for the  
11 record and members of the public, there really isn't another line  
12 item.

13 DELEGATE KILGORE: It says other here if you look  
14 at the bottom of the page. I have a motion to transfer the \$10  
15 million from that line to TROF. I've also got a second. Any  
16 more discussion on that? All those in favor say aye? (Ayes.)  
17 Opposed? (No response.)

18 Is that the only amendment?

19 MS. KIM: For the current year.

20 DELEGATE KILGORE: That's your only  
21 amendment?

22 MS. KIM: Yes.

23 DELEGATE KILGORE: Anybody on the Committee  
24 have any amendments or suggestions?

25 SENATOR RUFF: One question I have, do we still

1 have any deals coming due for the settlement or national  
2 settlement?

3 MS. KIM: Yes.

4 SENATOR RUFF: What is that?

5 MS. KIM: I don't know what the total bill is. They  
6 still have funds available from what you approved in the fiscal  
7 year. There are litigation costs.

8 DELEGATE KILGORE: How much is that?

9 MR. NOYES: They have an agreement but it hasn't  
10 been ratified.

11 MS. KIM: I think it's just been ratified, but the  
12 lawyers have to finish up.

13 SENATOR RUFF: Mr. Chairman, I move the budget  
14 as amended to be recommended to the Full Commission on May  
15 23<sup>rd</sup>.

16 DELEGATE KILGORE: On May 23<sup>rd</sup> to the Full  
17 Commission.

18 SENATOR RUFF: Yes.

19 DELEGATE KILGORE: All right. We've got a  
20 motion and I've got a second to make a recommendation from  
21 the Executive Committee to the Full Commission. Any  
22 discussion?

23 DEPUTY SECRETARY CARTER: The  
24 manufacturing money.

25 MR. NOYES: The workforce program.

1 DELEGATE BYRON: I'm not sure that we had a  
2 meeting or time to discuss this, or not now, but I certainly  
3 support advanced manufacturing and workforce training. I  
4 thought we left off in our last meeting with we accepted the  
5 report, not more than just accepted. I didn't think we had  
6 given any direction or had any follow-up or maybe part of the  
7 discussion about another committee or us now jumping in and  
8 finding out more details of how we're going to go forward.

9 MR. NOYES: You're correct. The next step is our  
10 three ad-hoc committees making recommendations to the  
11 Education Committee on curriculum, resources and marketing.  
12 And those are the three areas that were pointed out. At which  
13 point, the Education Committee will manage that budget and  
14 hear requests for advanced manufacturing projects.

15 DELEGATE BYRON: Who are the ad-hoc  
16 committees?

17 MR. NOYES: They've been discussed by me with the  
18 Chairman and Vice Chairman. We haven't yet notified those  
19 individuals as far as who would like to serve on the committees.

20 DELEGATE BYRON: Any committee members that  
21 are on the ad-hoc committees?

22 MR. NOYES: Yes, commissioners.

23 DELEGATE BYRON: Because this is a new area for  
24 all of us, and I would like to entertain the idea of us having a  
25 committee that would specifically look at it as we go forward in

1 Southside and Southwest areas and the training involved.

2 MR. NOYES: The presumption is this would be done  
3 by the Education Committee with members from Southside and  
4 Southwest forming a new committee.

5 DELEGATE BYRON: That's what I'd like to have a  
6 discussion about. When will we have that, or will that be done  
7 later?

8 DELEGATE KILGORE: If we set up a committee  
9 we'd have to make sure that everyone is informed. So, I think  
10 we've approved the budget.

11 MR. NOYES: The concern I would have about  
12 forming a new committee is that there is in the regular budget  
13 for Education and there remain funds for non-advanced  
14 manufacturing projects, and there are some programs.  
15 However, that's roughly 3.1 or 3.5, depending on how much the  
16 Committee recommends for financial aid for the community  
17 colleges in the four-year program. That 3.1 is available for any  
18 purpose, including advanced manufacturing, and it's not  
19 limited to non-advanced manufacturing programs. Whereas,  
20 the 10 million that's budgeted for advanced manufacturing has  
21 to be spent for workforce development in that particular area.  
22 If you have two committees you're muddling what is possible for  
23 advanced manufacturing out of the competitive amount, the  
24 12.5.

25 DELEGATE BYRON: My concern, and certainly no

1 reflection on the job that Senator Ruff is doing on the Education  
2 Committee, Education is such a broad, particularly looking at  
3 scholarships, and we've looked at a lot of different things. And  
4 when we start looking at workforce training and the sort of  
5 issues you have, then at some time have a little separation  
6 between that and the other issues that you're looking at in  
7 Education that specifically focuses on the business demand  
8 and demand of the training together. That's a different focus  
9 than just education.

10 DELEGATE KILGORE: I would agree, and I think it  
11 does have, it has a different scope, and if it's in Education, that  
12 will be the charge to Senator Ruff to carry that out. Maybe the  
13 educational institutions are not the best, and this can be  
14 tweaked out some. Maybe the Education Committee is the one  
15 to make sure we deliver workforce training. I mean, I don't  
16 know who that's up to.

17 MR. NOYES: It's going to be up to some  
18 commissioners to make a recommendation. What the Boston  
19 consulting study group provided was a very specific direction  
20 and guidance as to how many people in Southside and  
21 Southwest were needing certain skill sets. It's not like we're  
22 going to be doing other than machinists and machine  
23 maintenance and welders, those are the three that fit best, or  
24 the three industry sectors, aerospace, automotive and heavy  
25 equipment. We know there are X number of welders that are a

1 deficit in southern Virginia. If that number, say, is 300, we  
2 don't need to find programs for 500. The 300 number meets  
3 the target. There is not a whole lot that needs to be decided  
4 because we have that road map or a framework that says X  
5 number of CNC operators in Southwest Virginia and X number  
6 in Southern Virginia.

7 DELEGATE KILGORE: There would be opportunity  
8 for others other than educational students.

9 MR. NOYES: Any eligible --

10 SENATOR RUFF: -- Mr. Chairman, I would disagree  
11 slightly with the Executive Director. We will look at and  
12 consider what's needed or what's perceived to be needed and  
13 what industry needs, and we will make adjustments. We're not  
14 going to be in lock step with what the consultant says.  
15 Certainly there are going to be some variations, and we're going  
16 to need more of this or that in another area. We might tweak  
17 some kind of training in that area that's different.

18 DELEGATE MARSHALL: Who makes applications?  
19 Do the community colleges make an application?

20 DELEGATE KILGORE: Any eligible applicant.

21 DELEGATE MARSHALL: Who is eligible?

22 MR. NOYES: Non-profits, for-profit and public  
23 entities.

24 DELEGATE MARSHALL: The facility over in Alta  
25 Vista, are they eligible, too?

1 DELEGATE KILGORE: Not-for-profit.

2 MR. NOYES: They receive grants.

3 DELEGATE MARSHALL: Do they have to have a  
4 match?

5 MR. NOYES: Everybody has to have a match.

6 DEPUTY SECRETARY CARTER: I agree with  
7 Delegate Byron in a number of things, but workforce  
8 involvement is becoming more and more positively driven, and if  
9 we're going to set, say, \$7 million or \$10 million, and it may be  
10 easier for the applicant and for the commissioners to  
11 understand a little more what is happening with the \$10 million  
12 and not being familiar with Education funds but a separate  
13 workforce development.

14 DELEGATE KILGORE: I think that's what we're  
15 saying, separate and apart, but not adding \$10 million to the  
16 Education budget in the area of advanced manufacturing.

17 SENATOR RUFF: Only if you pass.

18 MR. NOYES: It's 10 million in '14 and 10 million in  
19 '15.

20 DELEGATE BYRON: Mr. Chairman, the Chairman  
21 of the Committee is saying that this is going to be driven by the  
22 Boston consulting group and we're going to evaluate the  
23 demands and time in the area and the interest, all of the above.  
24 I think part of the concern, or maybe a lack of ability to just go  
25 along with everything, is the fact that we never really dug into it.

1 I think if we would have done that it would have been a lot  
2 easier, because the Staff looked into the details and looked at it  
3 and microscoped it and the details of it, but we have not. So  
4 when it comes before us in summary fashion we don't know  
5 what the details are.

6 DELEGATE KILGORE: You know, the Board, the  
7 Education meeting in asking whether there should be an  
8 Education meeting before and members of the Education  
9 Committee talked about what workforce is and all the  
10 alternatives or talked about the report.

11 SENATOR RUFF: Are we going to have enough time  
12 to do this?

13 DELEGATE KILGORE: Is that okay with you?

14 MR. PFOHL: Excuse me?

15 DELEGATE KILGORE: Can we have a meeting pre  
16 or before these applications get rolling, or we can determine how  
17 we're going to proceed on this advanced manufacturing and  
18 things of that nature.

19 MR. PFOHL: The Education Committee set several  
20 new requirements in the meeting of April 10<sup>th</sup> and we'd be happy  
21 to do a workshop for a prospective applicant.

22 SENATOR RUFF: Mr. Chairman, are we going to  
23 have enough time on the 22<sup>nd</sup> to go through this with any  
24 Commission members that want to be part of this?

25 MR. PFOHL: Absolutely.

1 MR. NOYES: We can go through it.

2 SENATOR RUFF: There seems to be questions  
3 about how this process is going to work.

4 DELEGATE KILGORE: The Chairman is asking  
5 whether we --

6 SENATOR RUFF: -- Are we going to have enough  
7 time is what I want to know.

8 DELEGATE KILGORE: I would encourage as many,  
9 or send it out to the Committee, those that are not here. Where  
10 you do most of your work is in the sub-committee, and we need  
11 as many as we can.

12 Now, back to the subject at hand. Let's get back to the  
13 budget. It's been moved and seconded. All those in favor of  
14 the budget recommendations to the Full Commission that we  
15 just talked about say aye? (Ayes.) Opposed? (No response.)  
16 All right.

17 Also, we're going to set up a meeting on the 22<sup>nd</sup>, we don't  
18 know what time; we didn't know there was going to be one.

19 MR. STEPHENSON: Mr. Chairman, the Education  
20 Committee is already scheduled to meet on the 22<sup>nd</sup> at 4:00 p.m.  
21 I don't know whether you want to confine this to the Education  
22 Committee or have a separate meeting.

23 SENATOR RUFF: Mr. Chairman, that's why I  
24 questioned the 22<sup>nd</sup>. We'll have a meeting prior to the  
25 Education Committee.

1 MR. STEPHENSON: There is a Southwest meeting  
2 at 3:00 p.m. and Education at 4:00 p.m.

3 DELEGATE KILGORE: Can we start at two and  
4 break at three and then go back at four? Why don't you start  
5 your first Education meeting at two? Southwest might take  
6 longer.

7 DR. REDWINE: Considerably longer.

8 DELEGATE KILGORE: All right.

9 DELEGATE BYRON: I don't know that it matters  
10 but if you did the 2:00 one and then the workforce and your  
11 grantees at 4:00.

12 DELEGATE KILGORE: Workforce at two. Did you  
13 get that, Tim, workforce at two?

14 MR. STEPHENSON: Members of the Committee,  
15 you are aware, I'm sure, that four members of the TROF  
16 Committee approve TROF deals between Commission meetings  
17 routinely, and you have an established rule that if any single  
18 locality receives three such TROF awards in a fiscal year the  
19 fourth one must appear before the Full Commission for  
20 approval. The City of Danville has received three TROF awards  
21 in the current fiscal year, and they have made a request for a  
22 fourth one that has been before the TROF Committee, and it has  
23 been approved. So I'm bringing that to you as the Executive  
24 Committee for a recommendation to the Full Commission. The  
25 TROF Committee approved the transaction in Danville, and it is

1 according to all of the rules and there is nothing unusual about  
2 it or off of guidelines.

3 DELEGATE KILGORE: It's going to create jobs?

4 MR. STEPHENSON: It does, and it's routine, and  
5 the only aspect of it that is different is that it is the fourth deal in  
6 Danville. I'll be happy to go through the details. I can go  
7 through the details of the transaction, or I'll follow your advice.

8 DELEGATE MARSHALL: I understand the TROF  
9 has already approved.

10 DELEGATE KILGORE: We've already approved it,  
11 but we don't have the authority to approve more than four.

12 DELEGATE MARSHALL: Then I'd make a motion we  
13 approve the TROF request.

14 MR. STEPHENSON: I think the proper motion  
15 would be that you recommend that to the Full Commission for  
16 approval.

17 DELEGATE BYRON: How much was it?

18 MR. STEPHENSON: The award to Danville is 1.125  
19 million. The previous deal for Danville was 625,000.

20 DELEGATE KILGORE: It comes within your  
21 guidelines that were set up by the TROF in previous years?

22 MR. STEPHENSON: Yes.

23 DELEGATE KILGORE: All right. We have a motion  
24 and a second. Any further discussion? All those in favor say  
25 aye? (Ayes.) Opposed? (No response.)

1 MR. STEPHENSON: Mr. Chairman, long ago you  
2 placed \$10 million into the budget, into the TROF budget in  
3 anticipation of the utility deal in Brunswick County, and that  
4 deal has not yet been approved. Technically the TROF  
5 Committee has the authority to approve the deal; however, it is  
6 \$10 million on top of 10 million that was done last year, and out  
7 of an abundance of caution I bring that transaction to the  
8 Executive Committee seeking your approval of that \$10 million  
9 in favor of Brunswick County for the benefit of that facility.

10 You remember there was much conversation about it?

11 DELEGATE KILGORE: Like two hours last year.  
12 This is the pipeline that goes to Brunswick County.

13 MR. STEPHENSON: This is the second \$10 million  
14 award of a total of three contemplated.

15 DELEGATE KILGORE: Are you asking this  
16 Committee to approve the TROF Committee approval?

17 MR. STEPHENSON: The TROF Committee is not  
18 acting on this.

19 MR. OWENS: Mr. Chairman, what are you asking?

20 MR. STEPHENSON: I am speaking out of an  
21 abundance of caution. It is \$10 million, and I'm thinking out of  
22 caution to ask if the Executive Committee approves that?

23 DELEGATE KILGORE: I think we approved it last  
24 year.

25 MR. STEPHENSON: You did.

1 MR. NOYES: You approved it through --

2 SENATOR RUFF: -- Mr. Chairman, that still  
3 requires all approvals by federal and state agencies.

4 MR. STEPHENSON: I'm not aware of that  
5 contingency, Senator Ruff, being a part of this approval. We  
6 certainly may. There is a provision that the FCC must approve.

7 MR. PFOHL: They had hearings in Richmond this  
8 week.

9 DELEGATE KILGORE: All right. All those in favor  
10 say aye? (Ayes.) Opposed? (No response.)

11 MR. STEPHENSON: Mr. Chairman, many of you are  
12 aware that between Commission meetings a lot of work goes on  
13 with these TROF contracts to determine whether or not the  
14 company complies with the contracts. One of the duties we've  
15 assigned to our staff member Carolyn Bringman is to try to  
16 assess the progress the Commission is making with various  
17 programs, and she has a short report for you to try to show you  
18 over the course of time what the success rate has been with  
19 these TROF contracts and what kind of clawbacks have  
20 occurred in those deals that have matured.

21 I'll invite your attention to Page 43 of the package, and I'll  
22 ask Carolyn to please make her presentation.

23 MS. BRINGMAN: All right. This report has two  
24 parts. In the left-hand side you have a summary of all the  
25 awards that have been made from FY08 through 2013. On the

1 right-hand side there is a summary of all the awards that have  
2 reached conclusion. So each summary, a summary of all the  
3 awards, jobs promised, capital investment promised. For a  
4 summary of awards that have reached conclusion, the number  
5 of awards, the amount of the awards and the jobs promised and  
6 the jobs delivered and the capital investment promised and  
7 capital investment delivered and any clawbacks, if any. So for  
8 the last six years, there were 26 awards totaling \$59.6 million.  
9 There was a promise of 13,700 new jobs and \$2.6 billion capital  
10 investment. So, of those 126 awards for the last 6 years, 48  
11 totaling \$10.1 million reached completion. So before that 66  
12 percent of the jobs promised were delivered and 77 percent of  
13 the total capital investment promised was delivered.  
14 Commission staff had a 100 percent compliance of all contracts.  
15 To date there is \$2.4 million from clawbacks.

16 There are a number of things I could point out, and  
17 number one is there was one award that reached completion,  
18 and that was one where no jobs were delivered and no capital  
19 investment delivered. The county refunded all the money,  
20 the second one as part of the enterprise shortfall in 2005, and  
21 we made those awards in 2007, and that was to make up the  
22 difference. So there was no job promise on that one.

23 MR. NOYES: To make up the difference between the  
24 companies' expectations of these grants and what the  
25 legislature provided as funds for those grants and as part of

1 those deals we made those folks whole.

2 MS. BRINGMAN: Yes, in total it was 70.1, it was  
3 over \$7 million. We also have two awards that have reached  
4 conclusion and we're in the process of collecting the buy-out.  
5 The first is from Scott County. It's 50,000. The second one is  
6 Engineering Practices of Virginia, and that's in Smyth County.  
7 The grant was actually made to the town and not the county.  
8 And to date we're to receive about 2500 from the clawback, and  
9 that's been forwarded to the Attorney General's office for  
10 collections.

11 Are there any questions?

12 MR. STEPHENSON: Mr. Chairman, I have before  
13 me this afternoon --

14 DELEGATE KILGORE: -- Hold on. Kathy has a  
15 question.

16 DELEGATE BYRON: I just want to know about the  
17 feedback, and going a step further I wouldn't mind knowing  
18 about my community, and I'm curious about the details. If the  
19 money is given back, maybe there should be some discussion.

20 MS. BRINGMAN: Yes. The ones that are included  
21 as part of the summary, and in the case of Scott County and  
22 Saltville we're in the process of getting the clawback.

23 DELEGATE BYRON: It's still pending, it doesn't go  
24 on that sheet?

25 DELEGATE KILGORE: What's good for TROF is

1 here you've got 126 awards, \$59 million, 13,000 jobs and 2.7  
2 billion in investments. That's pretty good.

3 MR. NOYES: We're getting between 66 and 70  
4 percent. So, that's good work.

5 MR. STEPHENSON: Mr. Chairman and members of  
6 the Committee, from the report we've got a 66 percent  
7 performance for job count, meaning many fall short, and  
8 70-some percent on the investment. I think you're aware from  
9 some earlier meetings that the Commission Staff works a lot  
10 with these companies that fall short. I have before me this  
11 afternoon six companies who are in default with their TROF  
12 contracts. I have to confess to you that we do all that we can to  
13 get them to comply with the contract, but it's very common that  
14 unless there are consequences to these companies or to the  
15 localities, they will not pay you, and we only get paid at the point  
16 of pain. You have instructed Staff to freeze disbursements to  
17 any localities that have a TROF contract that has defaulted, and  
18 we've done that very sparingly. It's not pleasant, and it's not  
19 welcome by anyone. I don't think it presents well for the  
20 Commission, but it is the tool of last resort, and it does produce  
21 immediate results.

22 I have six contracts here before me today, all of which are  
23 in default and all of which have a story they want to tell you, and  
24 I've heard the stories. Some of them are good, some of them  
25 are not so good, but the common denominator in all of these

1 contracts is that the Commission did not get what it paid for  
2 and the contracts are in default and they will not return the  
3 money.

4 I'll be happy to take each one and go through it with you,  
5 or in the alternative if you want to simply instruct me to freeze  
6 and then collect the money I know how to do that, but I'm just  
7 reluctant to take these rash steps without the full knowledge  
8 and consent of the Executive Committee, because I can tell you  
9 it's very unpopular with the economic development directors  
10 and boards of supervisors and with some of the citizens that are  
11 caught into these TROF contracts. We have exhausted our  
12 efforts, and we just can't get results.

13 DELEGATE KILGORE: Briefly go through the list.

14 MR. STEPHENSON: I have CGI in Russell County.  
15 I have Columbus McKinnon in Washington County. I have  
16 First Fruits Beverage in the Town of Marion. I have Ariel  
17 Machine in Patrick County and I have Griffith Lumber  
18 Company.

19 DELEGATE KILGORE: Can you tell me what's owed  
20 on each one?

21 MR. STEPHENSON: I can. CGI in Russell County  
22 owes \$125,000.00. Columbus McKinnon in Washington  
23 County owes \$203,000.00. First Fruits in the Town of Marion  
24 owes \$34,000.00. Ariel Machine in Patrick County, I cannot  
25 get any investment or job information, so the entire grant is

1 \$390,000.00. I doubt they owe all that back, but I cannot get  
2 the information. Likewise, Griffith Lumber, I can't get a  
3 response. That was \$70,000.00. I can't get the information, I  
4 don't know.

5 Mr. Chairman, I'm really seeking some guidance from the  
6 Committee, as I mentioned before, for dropping the hammer on  
7 some of these contracts.

8 DELEGATE JOHNSON: Mr. Chairman, I move that  
9 the Staff be instructed to use the best judgment in trying to  
10 collect these, and if it gets to the point they're not able to, then  
11 let the hammer fall.

12 SENATOR CARRICO: May I ask a question? How  
13 much Ned, did you say the first group owes, First Fruits in  
14 Marion?

15 MR. STEPHENSON: First Fruits has 34,000 on  
16 account of job shortfall, and the investment information I've  
17 been provided is inclusive. So I can't get the information.

18 MR. NOYES: Thirty-four, so far.

19 SENATOR CARRICO: Late yesterday I received an  
20 e-mail from the Town of Marion. The number they gave me was  
21 55,000. Basically they were saying they were acting as an  
22 agent for First Fruits and didn't meet the obligation.

23 DELEGATE KILGORE: But they signed the  
24 agreement, that's where the grant comes from. The locality  
25 they agreed and their job is to make sure that they investigated

1 them, including the job creation and the investment. They  
2 signed the agreement.

3 SENATOR CARRICO: In their e-mail, and the  
4 reason I asked was there is a little bit of discrepancy in the  
5 amount --

6 DELEGATE KILGORE: -- There might be, and there  
7 may be some information Ned needs to have and they haven't  
8 given us that information. But that's what he found at this  
9 time to be the case. It may be 55,000 or it may be 34.

10 MR. STEPHENSON: I can give some detail on this  
11 particular one, and it's common with many of the grants. The  
12 contract specifically states that the delivery of capital  
13 investments is determined by a letter from the Commissioner of  
14 Revenue attesting to the taxable assets of record in the name of  
15 the company and the locality. I cannot get them to supply that  
16 to me.

17 DELEGATE KILGORE: You mean from the  
18 Commissioner of Revenue.

19 MR. STEPHENSON: That's what I asked for, and  
20 when they reply the math is automatic and it's very simple,  
21 everybody knows that. I just can't get them to respond.

22 SENATOR CARRICO: I just received this late last  
23 night, and it's pounding in my head. It says it was an  
24 estimated 21,150 owed, which was to meet the capital  
25 improvement project and repay 55,250. I'm not sure how all

1 these numbers worked out.

2 DEPUTY SECRETARY CARTER: Ned, on all these  
3 accounts you're having difficulty with the Commissioner of  
4 Revenue?

5 MR. STEPHENSON: No, I generally don't  
6 communicate with the Commissioner of Revenue; they're not  
7 part of the contract. Our contract is with the locality, and we  
8 tell the locality to get together with the Commissioner of  
9 Revenue to get the Commissioner of Revenue information.

10 DEPUTY SECRETARY CARTER: With all six of  
11 these accounts you're having difficulty?

12 MR. STEPHENSON: It's a very common problem.  
13 On some of these I actually do have the Commissioner of  
14 Revenue information but it's another issue. I cannot  
15 emphasize enough when I say that unless there are  
16 consequences these defaults don't get reconciled.

17 DR. REDWINE: Mr. Chairman, it depends on who  
18 you ask about these situations, but the numbers that we've  
19 dealt with in the past have been the numbers provided by the  
20 Commissioner of Revenue. I know from personal experience  
21 that when it gets down to doing that it's a fairly simple thing to  
22 do, as much as we don't want this to reflect bad on the  
23 Commission, and my experience is that nothing makes that  
24 happen faster than freezing the disbursements.

25 DELEGATE JOHNSON: Mr. Chairman, that's what

1 I'm concerned about. If we deal honestly with these people I  
2 think they should do the same with us, and if they don't, then  
3 they should pay the price.

4 SENATOR RUFF: I would second that.

5 DELEGATE KILGORE: I have a motion and a  
6 second. Any more discussion?

7 MR. NOYES: The motion is that when the Staff has  
8 exhausted all efforts, at that point the disbursements shall be  
9 frozen.

10 DELEGATE KILGORE: Is that what the hammer  
11 means?

12 MR. NOYES: That's what the hammer means.

13 DELEGATE BYRON: Mr. Chairman, I would just  
14 like to say that it would be helpful in the area that we each  
15 represent,, I would appreciate Ned notifying me when there's  
16 one in my area and if there's a controversy around trying to get  
17 the right contacts and get information. Not everyone wants to  
18 deal with that, but I would appreciate it if there's something in  
19 my particular area, notify me and maybe there's a relationship  
20 there to assist at least to try to get that information. In my case  
21 I would appreciate it.

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

25 MR. STEPHENSON: Mr. Chairman, we have a

1 gentleman who has asked for some time on the agenda today to  
2 speak to you about his TROF contract you worked on a couple of  
3 times in the past. I have John Kilgore here. He's asked for a  
4 few minutes to talk to you, and it's about a contract with a  
5 company called Benjamin Case.

6 MR. KILGORE: I'm John Kilgore. I appreciate your  
7 time. The county had signed an agreement, and it was a total  
8 of 75,000 for the company. The Commission agreed we could  
9 come before you and ask for relief. Now, as Ned has pointed  
10 out, the county has paid 66 2/3 percent of the 50,000, and I  
11 think the balance is around 16 something. We found one year  
12 where they were on the tax rolls and then they were off the tax  
13 rolls and couldn't figure out how they got on the tax rolls that  
14 quick, but they were on it for one year, then they were off. We  
15 tried to work with the commissioner through this process, and  
16 sometimes the figures in the Commissioner's Office are  
17 different, and sometimes we'd get the information. I wanted to  
18 let you all know that.

19 I also wanted to bring to your attention about the TROF,  
20 and in general, in Scott County return on investment of \$7.4 for  
21 one. You've got 7.4 for every dollar invested in TROF in Scott  
22 County. I do appreciate the TROF. I think it's a good  
23 program. Because of the TROF we've been able to do some  
24 things that we wouldn't get money for otherwise. So, we  
25 certainly appreciate it. Anything you can do for us, we'd

1 appreciate it.

2 DELEGATE KILGORE: How much do they owe?

3 MR. STEPHENSON: Sixteen thousand, three  
4 twenty-five.

5 DELEGATE KILGORE: That's out of 50?

6 MR. STEPHENSON: Yes.

7 SENATOR CARRICO: Mr. Chairman, having been  
8 here in the Committee the last time Scott County was here,  
9 they've met and made a good faith effort paying back those  
10 dollars. Seventy-five thousand, they've already paid back fifty,  
11 sixteen three twenty-five is all that's owed, and they were on the  
12 tax rolls for one year. Saying that, I happened to read an  
13 article in one of the papers that Scott County has the least  
14 amount of debt, which shows that they are good fiduciaries of  
15 the money. With the economy the way it is in Scott County  
16 right now and all this on the taxpayers, I make a motion that we  
17 forgive the 16,325.

18 UNIDENTIFIED: Second.

19 DELEGATE KILGORE: There's a motion and a  
20 second.

21 DELEGATE MARSHALL: We've done it before? Are  
22 we setting a precedent? Have we done it before?

23 MR. STEPHENSON: The Commission has waived  
24 payment from time-to-time due to certain circumstances, and  
25 the way I understand it the Committee has power to do that.

1           SENATOR RUFF: Mr. Chairman, if my county is  
2 delinquent I explain to them the reality if they want full  
3 consideration in the future. If we agree to this, can I expect a  
4 check sent back to them in partial payment?

5           DELEGATE KILGORE: You'd have to make a  
6 motion. Any more discussion?

7           MR. OWENS: Well, if we do this --

8           DELEGATE KILGORE: -- A compelling argument.

9           MR. KILGORE: We paid two-thirds of it. They  
10 came in and were in for a year or so and we tried to get  
11 repayment, then a year later find out they were closed and no  
12 record on the books in Virginia. They just moved out. This is  
13 one of the things we've dealt with. They went to the authorities  
14 in Virginia and they did get a grant, and the authorities then  
15 decided not to go after them. That's a brief story.

16           Another thing Bill talked about, and I appreciate that, we  
17 worked with Tim and Sara and de-obligated 109,000.

18           MR. OWENS: Is this one of the old agreements?

19           MR. STEPHENSON: The text of the agreement is  
20 evolving all the time. This agreement is an older agreement,  
21 and the language in it is somewhat weak.

22           SENATOR RUFF: Mr. Chairman, we just voted and  
23 had a motion, and the Staff fully understands what our intent  
24 was. It would be very ironic; this would undermine exactly  
25 what we just did.

1 DELEGATE MERRICKS: This is a bad situation,  
2 and we all recognize that, and what we want to do is try to be  
3 accommodating, but when you have policies and then you start  
4 back pedaling on the policy, my thinking is to give some  
5 incentive to if we come to this and say we're going to forgive and  
6 understanding that amount of money is going to be taken away  
7 from the allocation.

8 DELEGATE KILGORE: We don't have that in the  
9 Southwest.

10 MR. NOYES: That's punishing every locality in  
11 Southwest for what's happened in a single subdivision. I  
12 understand what you're saying.

13 DELEGATE MERRICKS: But we're just  
14 backpedaling on a policy. It's not their fault.

15 MR. NOYES: They signed the agreement.

16 DELEGATE MERRICKS: That's right.

17 MR. STEPHENSON: The newer contracts and the  
18 language is stronger, and in the older contracts we were very  
19 liberally enacting this for the locality. The language is weak.

20 DELEGATE KILGORE: We have a motion and a  
21 second.

22 DEPUTY SECRETARY CARTER: John, if we don't  
23 do this, where would the money come from?

24 MR. KILGORE: The Board of Supervisors. We're in  
25 a budget process now, and it has to be approved by the end of

1 June. It'll come out of the budget.

2 DEPUTY SECRETARY CARTER: I know it's tough to  
3 get businesses going, and it would be tough if you had to do this  
4 for somebody else, different kind of circumstances, I know. Are  
5 all of these companies still in existence, Ned?

6 MR. STEPHENSON: No, one has left.

7 DEPUTY SECRETARY CARTER: Then five we're still  
8 dealing with?

9 MR. STEPHENSON: Yes.

10 SENATOR CARRICO: Was it 309,000?

11 DELEGATE KILGORE: A hundred and ninety.

12 SENATOR CARRICO: It's just the fact you have a  
13 county that's struggling and a county that doesn't have that  
14 many businesses in it doing everything they can for their jobs.

15 SENATOR RUFF: Then, Mr. Chairman, what is the  
16 incentive for any county or any town to do their due diligence if  
17 we're going to say the company didn't make it, so there's no  
18 reason for any of the counties or towns that are sitting out there  
19 to do anything?

20 DELEGATE MARSHALL: Within the last 30 or 45  
21 days the City of Danville had a situation like this. They didn't  
22 come asking for a discount. The company just didn't meet the  
23 threshold.

24 DELEGATE KILGORE: Okay. We had a motion  
25 and a second. We'll have a roll call vote.

1           MR. NOYES: A yea vote is for releasing Scott County  
2 from this matter, and a no vote is not to release.

3           MR. NOYES: Delegate Byron?

4           DELEGATE BYRON: Yes.

5           MR. NOYES: Senator Carrico?

6           SENATOR CARRICO: Yes.

7           MR. NOYES: Deputy Secretary Carter?

8           DEPUTY SECRETARY CARTER: Yes.

9           MR. NOYES: Delegate Johnson?

10          DELEGATE JOHNSON: Yes.

11          MR. NOYES: Delegate Kilgore?

12          DELEGATE KILGORE: No.

13          MR. NOYES: Delegate Marshall?

14          DELEGATE MARSHALL: No.

15          MR. NOYES: Delegate Merricks?

16          DELEGATE MERRICKS: No.

17          MR. NOYES: Ms. Nyholm?

18          MS. NYHOLM: No.

19          MR. NOYES: Mr. Owens?

20          MR. OWENS: No.

21          MR. NOYES: Dr. Redwine?

22          DR. REDWINE: No.

23          MR. NOYES: Senator Ruff?

24          SENATOR RUFF: No.

25          MR. NOYES: Delegate Wright is not here. Five yea

1 votes, six nay votes. Motion fails.

2 DELEGATE KILGORE: All right, Ned.

3 MR. STEPHENSON: Mr. Chairman, it may be  
4 worthwhile for the Committee, maybe we should do it another  
5 day.

6 DELEGATE KILGORE: Let's leave it for another day.

7 MR. STEPHENSON: I invite your attention quickly  
8 to Page 45. This is the completely revised TROF Performance  
9 Agreement, and I'll hit on three or four highlights and move on.  
10 This describes in great detail and the jobs are those reported on  
11 the tax return filed with VEC. It says the investments are  
12 taxable assets of record with the Commissioner of Revenue,  
13 specifically jobs promised must be met, new, with emphasis on  
14 both met and new. We have all kind of things going on with  
15 people. It has to be met new jobs. It describes events of  
16 default, such as plant closure, failure to provide information  
17 and failure to provide 25 percent of the target within 18 months,  
18 because we have companies that get the money and we have to  
19 wait three years. We try to write the contracts to accommodate  
20 as many creative arguments that companies come up with to  
21 elude their responsibility. We were using this on a hundred  
22 percent of the contracts at the time.

23 MR. NOYES: This document has been reviewed by  
24 counsel.

25 MR. BALLOU: Yes.

1 DELEGATE MARSHALL: Who prepared this?

2 MR. STEPHENSON: Russell Slayton in  
3 Mecklenburg County during the time prior to the appointment  
4 of counsel.

5 DELEGATE MARSHALL: There is so much in there  
6 that there is no way that we can decipher it today, but I would  
7 move that we adopt it.

8 DELEGATE KILGORE: Is that a motion to adopt it,  
9 or would it be recommended to the Full Commission?

10 MR. STEPHENSON: I think this Committee, an  
11 affirmative vote would be adequate. The agreement does more  
12 from time-to-time and situations change. These changes are  
13 sweeping, and I think it would be a healthy endorsement for the  
14 Committee to consider that, but if you want to postpone that,  
15 that's all right with me.

16 MS. NYHOLM: On the employment obligation, is  
17 this for any employees at all?

18 MR. STEPHENSON: Connie, the counting of jobs is  
19 a very elusive count. The definition of full-time equivalent,  
20 there are many definitions of what that is. We take the position  
21 that if you didn't get a paycheck, you didn't have a job. If  
22 unemployment insurance tax returns reports everybody that  
23 got a paycheck counted, that's not full-time.

24 MS. NYHOLM: At this point in time, with the  
25 Obama healthcare act, I think the way we hire and pay

1 employees that's going to be a problem.

2 DELEGATE MERRICKS: A lot of companies are  
3 using temporary agencies.

4 MR. STEPHENSON: We will honor temporary  
5 employment if the tech agency will give us a memo indicating  
6 how many man hours and if so in the period in question. We  
7 have it from time-to-time, and we accept that.

8 DELEGATE BYRON: Companies are using more  
9 and more temporary employees. Do you use the forms that are  
10 sent in that include the amount of employees that, or in general  
11 how many people you have --

12 MR. STEPHENSON: -- We pull that information  
13 directly from VEC, and the source document is the form that  
14 you described.

15 DELEGATE BYRON: The form that I'm referring to  
16 is --

17 MR. STEPHENSON: -- The Virginia Form FC 20  
18 every business in Virginia uses.

19 DELEGATE BYRON: If there's a discrepancy  
20 between, is it just a guide? Then they can come back to you  
21 with more accurate figures.

22 MR. STEPHENSON: The numbers on the Form VEC  
23 20 are signed by the company under penalty of perjury; they are  
24 exactly correct.

25 DELEGATE BYRON: As a business owner, I could

1   perjure myself by putting the wrong information on there, but  
2   you may have a different number on the 20<sup>th</sup> of the month than  
3   you do on the 12<sup>th</sup> of the month, exactly how many people you  
4   had on that 30-day period or 6-month period.

5               MR. STEPHENSON: That's right, but that form was  
6   designed to capture the head count in the pay cycle. It might  
7   be complicated, how it's done. How many employees does the  
8   company have must define the time period, whether it's the day  
9   or the week or the month, and that form takes into account all  
10  of that information. Otherwise, we get into arguments with  
11  companies about how many they've got, and they present us  
12  with all the information and social security numbers and  
13  printouts, and that goes on and on. But this document is  
14  definitive.

15              DELEGATE BYRON: I would say also, I don't know  
16  as far as the accuracy they're referring to in that, and it seems  
17  to always be an issue. The form we're talking about may not be  
18  the form I'm referring to, as far as how many employees you  
19  have.

20              MR. STEPHENSON: It's the most definitive source  
21  we know about, but we would like to have a better one, but it's  
22  very definitive and it's inarguable when we lay it out on paper,  
23  find the employer.

24              DELEGATE BYRON: Getting back to the contract, is  
25  there a question about that?

1           MR. STEPHENSON: The older contract said if you  
2 promised to hire 50 people, let's say, or we are going to create 50  
3 jobs, and there's no definition of a job, no definition of how that  
4 would be measured, and companies were very creative in  
5 coming up with ways of measuring these jobs to prove they had  
6 met the requirements. We go back to the concept if you didn't  
7 get a paycheck, you didn't have a job. Once we went to VEC  
8 there were vast differences between the claims of the number of  
9 jobs and the number of people who actually got a paycheck.

10           DELEGATE KILGORE: Is there a motion? We've  
11 got a motion and a second.

12           DEPUTY SECRETARY CARTER: Have you reviewed  
13 the contract?

14           MR. BALLOU: I worked with it in another context,  
15 but I haven't reviewed this specific contract as against the  
16 changes that are being recommended from this.

17           DELEGATE KILGORE: Can you do that between  
18 now and the Full Commission meeting?

19           MR. BALLOU: I can.

20           DELEGATE MARSHALL: Under Section 7, and if  
21 you go back to, we were talking about the bad players. If you  
22 go back and look at the performance and then go back to the  
23 Commissioner of Revenue and how much taxable investment,  
24 should we put in Section 7 a time frame that they have to show  
25 that they spent X number of dollars and that's part of the

1 agreement?

2 MR. STEPHENSON: There are time frames  
3 embedded in this agreement to direct the Commissioner of  
4 Revenue as to exactly what time period they are to report to us.  
5 It is a time period that traditionally is 36 months from the  
6 approval of the contract, a three-year time frame.

7 MS. NYHOLM: What about the taxable assets? If a  
8 locality wants to forgive taxes on the assets, why don't we allow  
9 that when they're the ones who are subject to the tax and  
10 they're the ones who are subject to the --

11 MR. STEPHENSON: -- If you will look there in the  
12 language, it says notwithstanding the localities' election to  
13 waive the taxes. So if the county wants to do it back they can  
14 and still count.

15 MR. OWENS: Does that mean don't have to pay the  
16 taxes and the county reimburse them?

17 MR. STEPHENSON: The distinction there, Ed, is  
18 that if the county wants to rebate the taxes back to the tax  
19 payer, we'll still count those assets. However, if those assets  
20 are exempt from taxation by state law we will not count them,  
21 because they were never going to pay that tax under any  
22 circumstance.

23 DEPUTY SECRETARY CARTER: I remember about  
24 four years ago we had some questions about net new jobs. Is  
25 that defined in that document?

1 MR. STEPHENSON: It specifically states that the  
2 jobs promised must be in addition to those that existed at the  
3 time that the contract was awarded, and there is other language  
4 to make sure that it's net new. This is a living document and it  
5 can stand to be improved, so we welcome that.

6 DELEGATE KILGORE: Eric is going to look at it and  
7 see if we can improve it, and we'll take that up at the full  
8 meeting.

9 All right, Ned. What do we have next?

10 MR. STEPHENSON: I'm going to move on if I may,  
11 and I have Paul Ashworth here representing Olde Dominion.  
12 Let me give you a brief synopsis of this. Over the course of time  
13 you have made four grants to the Pittsylvania County for the  
14 Olde Dominion Ag Foundation and to the Farm Bureau totaling  
15 \$3.2 million. As I understand it, this is for the Ag complex in  
16 Pittsylvania County. As I understand it, Olde Dominion Ag  
17 Foundation has condominiumized the office property on this  
18 real estate and it wants to sell one of those condominiums to the  
19 Pittsylvania County Farm Bureau, and the sales proceeds, as I  
20 understand it, will be paid over to the first mortgage holder.  
21 That I think is the question before you, but I will defer to Paul on  
22 the details.

23 MR. ASHWORTH: Thank you, Mr. Chairman. Paul  
24 Ashworth, and I am president of the Foundation. Just as has  
25 been described, the complex was constructed in two phases.

1 Phase 1 is the office complex, and Phase 2, which you funded,  
2 was the conference center which is near completion now. As  
3 Ned has indicated, the front portion of that has been  
4 condominiumized. The current tenant of that from the  
5 beginning wanted to own it rather than rent. What we seek  
6 your approval to do is to sell that condominium with the  
7 buy-back clause in the contract, take the proceeds of the sale of  
8 that and then be able to acquire some adjoining land that  
9 adjoins the complex as it sits now, which will be needed for  
10 additional parking and for RVs and for anything related to the  
11 arena. This has been going extremely well, and this has been  
12 in the works for some time, and we're here today to seek your  
13 approval.

14 DELEGATE KILGORE: How much are you going to  
15 sell it for?

16 MR. ASHWORTH: Three hundred and twenty to  
17 forty thousand.

18 DELEGATE KILGORE: Three hundred and forty  
19 thousand?

20 MR. NOYES: Are there improvements to the  
21 complex?

22 MR. ASHWORTH: The adjoining 50-acre plot we  
23 have an option on currently is available to us at \$288,000.00.

24 MR. NOYES: So there is a balance?

25 MR. ASHWORTH: We've got to make some

1 improvements, some rough grading we need to get done and  
2 some other improvements to the land before it's usable.

3 DELEGATE KILGORE: Any other questions?

4 DELEGATE MERRICKS: Are you going to be  
5 swapping asset for asset?

6 MR. ASHWORTH: Yes, sir.

7 DELEGATE MARSHALL: It says here on this last  
8 sheet who gets the money. It says the first mortgage?

9 MR. ASHWORTH: First Mortgage, we got a letter  
10 from them. The funds from Phase 1 is the office complex which  
11 was built with money borrowed by the Foundation and was  
12 approved for the project is Phase 2 which is left with the office  
13 complex.

14 DELEGATE MARSHALL: What you want to sell, the  
15 Tobacco Commission didn't put money into that?

16 MR. ASHWORTH: That's correct.

17 DELEGATE MARSHALL: Then why are you here?

18 MR. ASHWORTH: Because as we proceeded  
19 through this and tried to make this happen with attorneys, we  
20 need clarification on clawbacks that applied to the rest of the  
21 complex. The questions that were asked when it became an  
22 issue, and I'll just tell you we have nothing to hide, everything is  
23 completely in the open and all of our records are available.  
24 We're here to make you fully aware what we intend to do and  
25 some ideas for this, part of the plans from the beginning.

1           MR. NOYES: I think Delegate Marshall's question is  
2 appropriate.

3           MR. STEPHENSON: This is a little technical, and I'd  
4 have to defer to counsel to help us with this. Technically the  
5 language in the grant agreement requires that all assets  
6 acquired or approved grant funds are subject to the  
7 Commission's lien. This is the sale of part of the assets that  
8 are subject to the Commission's lien. There have been  
9 statements made about whose money paid for what, but the  
10 grant agreement provides that the Commission has the lien on  
11 all of it. I think it's appropriate that Paul ask for your consent  
12 to sell off a piece of that which you hold the lien on.

13           MR. ASHWORTH: If you recall, back early in the  
14 process, and this was under two separate construction  
15 contracts just for the purpose of being able to keep those  
16 segregated. So we made every effort to try to make that  
17 separation completely clear to everyone so there wouldn't be an  
18 issue. We're here today to try to get that clarified.

19           DELEGATE MARSHALL: If this would have been  
20 two separate buildings it would have been a whole lot cleaner.  
21 What you're saying is that the original building that you wanted  
22 that condo in the front and a separate loan taken out and that  
23 money which was tobacco funds used in the construction of  
24 that and the original building that you want to now, basically,  
25 do a like-kind exchange or swap.

1           DELEGATE KILGORE: The problem I'm having with  
2 it, we're protected right now, but I don't know about later. By  
3 us making an investment there, \$3.4 million or \$3.2 million, the  
4 value of the condo, and if we hadn't made that investment your  
5 condo wouldn't be worth 340,000.

6           MR. ASHWORTH: The purpose is to improve the  
7 whole complex and continue to grow with the 50-acres, and  
8 we're going to have some build-ups for the arena and the RV  
9 parking, and we're getting a lot of interest in that. So we're  
10 trying to keep the project growing, and it's growing  
11 tremendously as we speak, and we're trying to facilitate  
12 continued growth in the project.

13           MR. OWENS: Was any part of the complex not  
14 Tobacco Commission funded used as leverage toward those  
15 other grants?

16           MR. PFOHL: That's probably a fair statement.  
17 Their investment in the office complex was presented as a  
18 match to us. There was also a match from the Danville  
19 Regional Foundation to build the arena. There was a match in  
20 the office component and match in the structures that we built  
21 as well.

22           MS. NYHOLM: The match in the office component  
23 with the Tobacco funds, that was an equity contribution to get  
24 the loan; that match was equity.

25           MR. PFOHL: I think so.

1           MR. NOYES: Used as a match in relationship to one  
2 of the four Tobacco Commission awards.

3           DELEGATE MARSHALL: You're still going to have a  
4 match.

5           MR. OWENS: So the 50-acres, did that go back into  
6 the agreement, our agreement, or 50 acres free and clear?

7           MR. STEPHENSON: You have a lien on the existing  
8 real estate and you release that and they buy something else  
9 and you don't have a lien on the something else unless they give  
10 it to you. It might be the solution here and grant the  
11 Commission the same standing in the new purchase as it now  
12 has on the old. I don't know if that would work for you.

13           DELEGATE MERRICKS: Is the lien we have a  
14 recorded lien?

15           MR. STEPHENSON: It is not recorded, it's a lien and  
16 it's an unperfected lien.

17           DELEGATE MERRICKS: You call it what you want  
18 to, but I call it not a lien. What they're trying to do is swap an  
19 asset for an asset, and I realize you're swapping an improved  
20 asset for an unimproved. I think if there were to be an  
21 agreement to make that so that we have all assets clear, include  
22 that in the lien of all assets, then that would be what we were  
23 trying to do. Would that be agreeable with you?

24           MR. ASHWORTH: I think it would be; I'd have to,  
25 but I think --

1 DELEGATE MARSHALL: -- That supersedes the  
2 Tobacco lien anyway, so we're in the same boat, just a different  
3 boat, or same water, just a different boat.

4 DEPUTY SECRETARY CARTER: Eric, do you see a  
5 downside to this agreement for the Commission?

6 MR. BALLOU: I do not. It seems to me to be a way  
7 in which to sort of be able to preserve the interests of the  
8 Commission made in the original grant in terms of how the  
9 project has evolved and in terms of the current situation and  
10 preserving the Commission's grant and assets.

11 DEPUTY SECRETARY CARTER: The agreement  
12 we're talking about now, do you feel comfortable with it?

13 MR. BALLOU: I feel comfortable with it, or the  
14 overall direction it's going, but I want to look at the actual  
15 words, a little hard because I've just glanced at it.

16 MR. NOYES: What we need to do before further  
17 action, our counsel will have the opportunity to do that, and  
18 then you find out from your renter if there's a problem with this  
19 approach.

20 MR. ASHWORTH: I think that's fair. What do you  
21 suggest as far as when we come back to you?

22 MR. NOYES: We'd need that language for our  
23 counsel to review.

24 MR. BALLOU: I'm available overnight.

25 DELEGATE KILGORE: We need to do that between

1 now and the Full Commission.

2 MR. NOYES: How about if we say motion to proceed  
3 on the basis Delegate Merricks said and subject to review by the  
4 Tobacco Commission counsel and guidance to the Executive  
5 Director.

6 DELEGATE MARSHALL: That's the motion?

7 DELEGATE KILGORE: We have a motion and a  
8 second. All those in favor say aye? (Ayes.) Opposed? (No  
9 response.) All right.

10 We'll need a motion for Executive Session.

11 DR. REDWINE: I move that we go into Executive  
12 Session in accordance with the provisions of the Virginia  
13 Freedom of Information Act for the purpose of consultation with  
14 legal counsel pertaining to specific advice, which is Virginia  
15 Code Section 2.2-3711(A) (7) and also a personnel matter.

16 DELEGATE KILGORE: We have a motion and a  
17 second. All those in favor say aye? (Ayes.) Opposed? (No  
18 response.)

19

20 NOTE: Whereas, the Executive Committee is  
21 in Executive Session at 4:28 p.m.

22

23 NOTE: Thereupon, the Executive Committee  
24 reconvenes in Open Session at 5:22 p.m., viz:

25

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

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

15 DELEGATE KILGORE: We'll need a roll call.

16 MR. NOYES: Delegate Byron?

17 DELEGATE BYRON: Yes.

18 MR. NOYES: Senator Carrico?

19 SENATOR CARRICO: Yes.

20 MR. NOYES: Deputy Secretary Carter?

21 DEPUTY SECRETARY CARTER: Yes.

22 MR. NOYES: Delegate Johnson?

23 DELEGATE JOHNSON: Yes.

24 MR. NOYES: Delegate Kilgore?

25 DELEGATE KILGORE: Yes.

1 MR. NOYES: Delegate Marshall?

2 DELEGATE MARSHALL: Yes.

3 MR. NOYES: Delegate Merricks?

4 DELEGATE MERRICKS: Yes.

5 MR. NOYES: Ms. Nyholm?

6 MS. NYHOLM: Yes.

7 MR. NOYES: Mr. Owens?

8 MR. OWENS: Yes.

9 MR. NOYES: Dr. Redwine?

10 DR. REDWINE: Yes.

11 MR. NOYES: Senator Ruff?

12 SENATOR RUFF: Yes.

13 MR. NOYES: So certified by the members of the  
14 Committee.

15 DELEGATE KILGORE: Senator Ruff, do you have a  
16 motion?

17 SENATOR RUFF: Motion to affirm the Executive  
18 Director's intent to compensate Commission employees for  
19 un-reimbursed work-related legal expenses within the limits of  
20 his authority under the By-Laws.

21 DELEGATE KILGORE: We've got a motion and a  
22 second. Any further discussion? All those in favor say aye?  
23 (Ayes.) Opposed? (No response.)

24 Do we have a motion?

25 SENATOR CARRICO: The motion would be to the

1 effect that with regard to the LENOWISCO/Scott County  
2 Agreement, no use of grant-funded assets as generally  
3 presented to the Commission at this meeting, to the Committee  
4 at this meeting, as described in the settlement agreement and  
5 the lease agreement.

6 DELEGATE KILGORE: I have a motion and a  
7 second. Any further discussion? All those in favor say aye?  
8 (Ayes.) Opposed? (No response.)

9 Are there any other motions? All right.

10 Do I have a motion to adjourn?

11

12 PROCEEDINGS CONCLUDED.

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1 CERTIFICATE OF THE COURT REPORTER

2

3

4 I, Medford W. Howard, Registered Professional  
 5 Reporter and Notary Public for the State of Virginia at large, do  
 6 hereby certify that I was the court reporter who took down and  
 7 transcribed the proceedings of the **Virginia Tobacco**  
 8 **Indemnification and Community Revitalization**  
 9 **Commission Executive Committee Meeting when held on**  
 10 **Thursday, May 2, 2013 at 3:00 p.m. at the Hotel Roanoke**  
 11 **and Conference Center, Roanoke, Virginia.**

12 I further certify this is a true and accurate transcript,  
 13 to the best of my ability to hear and understand the  
 14 proceedings.

15 Given under my hand this \_\_\_\_ day of May, 2013.

16

17

18

19

20

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Medford W. Howard

21

Registered Professional Reporter

22

Notary Public for the State of Virginia at Large

23

24

25 My Commission Expires: October 31, 2014.