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**VIRGINIA TOBACCO INDEMNIFICATION  
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501  
Richmond, Virginia 23219

**Full Commission Meeting**  
Thursday, April 27, 2006  
10:00 a.m.

Sheraton Richmond West Hotel  
Richmond, Virginia

- 1    **APPEARANCES:**
- 2    The Honorable Charles R. Hawkins, Chairman
- 3    The Honorable Terry G. Kilgore, Vice Chairman
- 4    Mr. Thomas W. Arthur
- 5    Mr. Stephen S. Banner
- 6    Mr. Clarence D. Bryant, III
- 7    The Honorable Kathy J. Byron
- 8    Mr. J. Carlton Courter, III - Commissioner of Agriculture and Consumer
- 9                    Services
- 10   The Honorable Allen W. Dudley
- 11   Mr. Patrick Gottschalk - Secretary of the Department of
- 12                    Commerce and Trade
- 13   Mr. Scott M. Harwood, Sr.
- 14   Mr. L. Jackson Hite
- 15   The Honorable Clarke N. Hogan
- 16   Mr. Jordon M. Jenkins, Jr.
- 17   The Honorable Joseph P. Johnson, Jr.
- 18   Ms. Minnie B. Lane
- 19   Mr. Buddy Mayhew
- 20   The Honorable Harrison A. Moody
- 21   Ms. Connie C. Nyholm
- 22   The Honorable Edward Owens
- 23   The Honorable Philip P. Puckett
- 24   The Honorable Frank M. Ruff
- 25

1     **APPEARANCES: (cont'd)**

2     Mr. Bryant L. Stith

3     Ms. Jody Wagner

4     Mr. Thomas E. West

5     The Honorable Thomas C. Wright, Jr.

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8     COMMISSION STAFF:

9     Mr. Ned Stephenson, Acting Executive Director

10    Mr. Timothy Pfohl, Grants Program Administration Manager

11    Ms. Stephanie Wass, Director of Finance

12    Ms. Britt Nelson - Grants Coordinator, Southside Virginia

13    Ms. Sara Griffith - Grants Coordinator, Southwest Virginia

14

15    OFFICE OF THE ATTORNEY GENERAL:

16    Mr. Francis N. Ferguson, Deputy Attorney General,

17                    Counsel for the Commission

18    Ms. Stephanie Hamlett, Senior Assistant Attorney General,

19                    Bond Counsel

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1                                   SENATOR HAWKINS: Good morning, everyone.  
2 Welcome to our full Commission Meeting this morning, which was  
3 supposed to be in Roanoke, but has been changed to Richmond. We're going  
4 to have to rearrange our schedule somewhat, and let me give you an  
5 understanding of what's going on today. The Senate Finance Committee is  
6 meeting now, which is 10:00, and that means that Senator Wampler will not  
7 be with us today. The Senate itself goes into session at 12:00 voting, so I  
8 need to leave here as quickly as I can, the Senate Finance Committee, as  
9 well, is in session.

10                               What I'd like to do is to rearrange the Agenda and go through  
11 the committee reports first, then come back to the other part of the Agenda.

12                               Ned, would you please call the roll?

13                                   MR. STEPHENSON: Mr. Arthur?

14                                   MR. ARTHUR: Here.

15                                   MR. STEPHENSON: Mr. Banner?

16                                   MR. BANNER: Here.

17                                   MR. STEPHENSON: Mr. Bryant?

18                                   MR. BRYANT: Here.

19                                   MR. STEPHENSON: Delegate Byron?

20                                   DELEGATE BYRON: Here.

21                                   MR. STEPHENSON: Commissioner Courter?

22                                   COMMISSIONER COURTER: Here.

23                                   MR. STEPHENSON: Mr. Day?

24                                   MR. DAY: (No response.)

25                                   MR. STEPHENSON: Delegate Dudley?

1 DELEGATE DUDLEY: Here.  
2 MR. STEPHENSON: Mr. Fields?  
3 MR. FIELDS: (No response.)  
4 MR. STEPHENSON: Secretary Gottschalk?  
5 SECRETARY GOTTSCHALK Here.  
6 MR. STEPHENSON: Mr. Harwood?  
7 MR. HARWOOD: Here.  
8 MR. STEPHENSON: Chairman Hawkins?  
9 SENATOR HAWKINS: Here.  
10 MR. STEPHENSON: Mr. Hite?  
11 MR. HITE: Here.  
12 MR. STEPHENSON: Delegate Hogan?  
13 DELEGATE HOGAN: Here.  
14 MR. STEPHENSON: Mr. Jenkins?  
15 MR. JENKINS: Here.  
16 MR. STEPHENSON: Delegate Johnson?  
17 DELEGATE JOHNSON: Here.  
18 MR. STEPHENSON: Delegate Kilgore?  
19 DELEGATE KILGORE: Here.  
20 MR. STEPHENSON: Ms. Lane?  
21 MS. LANE: Here.  
22 MR. STEPHENSON: Mr. Mayhew?  
23 MR. MAYHEW: Here.  
24 MR. STEPHENSON: Mr. Montgomery?  
25 MR. MONTGOMERY: (No response.)

1 MR. STEPHENSON: Mr. Moody?  
2 MR. MOODY: Here.  
3 MR. STEPHENSON: Ms. Nyholm?  
4 MS. NYHOLM: Here.  
5 MR. STEPHENSON: Mr. Owens?  
6 MR. OWENS: Here.  
7 MR. STEPHENSON: Senator Puckett?  
8 SENATOR PUCKETT: Here.  
9 MR. STEPHENSON: Senator Ruff?  
10 SENATOR RUFF: Here.  
11 MR. STEPHENSON: Mr. Stallard?  
12 MR. STALLARD: (No response.)  
13 MR. STEPHENSON: Mr. Stith?  
14 MR. STITH: Here.  
15 MR. STEPHENSON: Mr. Thompson?  
16 MR. THOMPSON: (No response.)  
17 MR. STEPHENSON: Secretary Wagner?  
18 SECRETARY WAGNER: Here.  
19 MR. STEPHENSON: Senator Wampler?  
20 SENATOR WAMPLER: (No response.)  
21 MR. STEPHENSON: Mr. West?  
22 MR. WEST: Here.  
23 MR. STEPHENSON: Delegate Wright?  
24 DELEGATE WRIGHT: Here.  
25 MR. STEPHENSON: You have a quorum, Mr.

1 Chairman.

2 SENATOR HAWKINS: Thank you all, and I  
3 welcome you all again this morning. I understand the reception went very  
4 well last night, and I apologize for not being there, but I had some other  
5 obligations that I had to fulfill.

6 What I'd like to do, with the permission of the Commission, is  
7 to drop down and start with the Southwest Economic Development  
8 Committee report of Delegate Kilgore.

9 DELEGATE KILGORE: Good morning. If you'll  
10 turn with me to Tab Number 2, the Southwest Economic Development  
11 Committee met on April 24th, and we approved the projects in Tab Number  
12 2. The restricted is \$2,059,410. Unrestricted, I believe, is \$175,000.

13 Mr. Chairman, I would move that we approve those in a block.

14 SENATOR HAWKINS: It's been moved and  
15 seconded that that motion be approved in a block from the Southwest  
16 Economic Development Committee. Any discussion? Any questions? All  
17 in favor say aye? (Ayes.) Opposed? (No response.) Motion passed.

18 DELEGATE KILGORE: Mr. Chairman, are you  
19 going to move on to Special Projects?

20 SENATOR HAWKINS: Please, you'll be standing  
21 in for Senator Wampler. Senator Wampler is at the Capitol at this time, and  
22 Delegate Kilgore will take on that responsibility. It's an awesome task to  
23 replace Senator Wampler, I know, but I'm sure you're up to it.

24 DELEGATE KILGORE: I'll try, Mr. Chairman.  
25 The Special Projects Committee met at 11:00 on April 24th in Abingdon.

1 We had a long meeting, and we moved as fast we could through it. If you  
2 would turn to Tab Number 3, in that meeting we approved \$6,243,813 of  
3 restricted monies and \$3,098,100 of unrestricted monies. That was the  
4 Committee's recommendation after hearing the presentations, Mr. Chairman,  
5 and I so move.

6 SENATOR HAWKINS: It's been moved and  
7 seconded.

8 DELEGATE DUDLEY: Mr. Chairman.

9 SENATOR HAWKINS: Delegate Dudley.

10 DELEGATE DUDLEY: Mr. Chairman, can the  
11 Project Mentor be separated from the block?

12 SENATOR HAWKINS: We'll move that project  
13 and separate that out.

14 DELEGATE KILGORE: That'll be Grant Number  
15 1055.

16 SENATOR HAWKINS: 1055, that is removed  
17 from the block. The other, which is the entire package, including bio-diesel?

18 DELEGATE KILGORE: Yes.

19 SENATOR HAWKINS: Any discussion on the  
20 block that is presented to us? All in favor say aye? (Ayes.) Opposed? (No  
21 response.)

22 Now we'll go back to 1055, the Halifax County Industrial  
23 Development Authority, Project Mentor.

24 DELEGATE KILGORE: Mr. Chairman, I'd move  
25 that we approve that project.

1                   SENATOR HAWKINS: It's been moved and  
2 seconded the project be approved. Any discussion on this project? I'll make  
3 some comments, if you will not mind, for a second.

4                   One of the things we're running into is that we are having  
5 problems dealing with these large investments. Our task is to improve the  
6 economy in this region, and we're going to have to start coming up with a  
7 mechanism with some sort of boundaries to be able to address these projects.  
8 If we allow something like this to disappear because of lack of funds  
9 because of the rules and regulations we have in place, and we've got money  
10 in the bank, then certainly that doesn't bode well with me. Regardless of  
11 localities, we are to create jobs and economic development, and these are  
12 major investments in creating long-term stability in our communities. I  
13 commend Special Projects who have been working on this piece, and also  
14 Southside. We're going to have to come up with a mechanism that allows us  
15 a little more flexibility to be able to deal with some of the recommendations  
16 that may be made today.

17                   Having said that, do you have any comments?

18                   DELEGATE DUDLEY: Mr. Chairman, one of the  
19 reasons I asked to remove this from the block is that the recommendation  
20 that came out of Southside Economic Development Committee is different  
21 than the proposal that we approved in Special Projects. I'd like to hear those  
22 together.

23                   SENATOR HAWKINS: That's fine.

24                   DELEGATE KILGORE: Would you like for me to  
25 withdraw the motion at this time, Mr. Chairman, and wait until --

1 SENATOR HAWKINS: -- Delegate Dudley,  
2 would you like to take that in tandem with Southside's Economic  
3 Development report?

4 DELEGATE DUDLEY: Please.

5 SENATOR HAWKINS: With your permission.

6 DELEGATE KILGORE: Mr. Chairman, we'll  
7 remove that one from the Southside block and vote on these.

8 SENATOR HAWKINS: You're trying to tax my  
9 abilities to think, I appreciate that challenge. What I would recommend  
10 doing, with the permission of Mr. Arthur, is to go ahead and bring up the  
11 Southside Economic Development piece and pull out that one aspect of that  
12 for discussion at this time. Is that all right with you, Mr. Arthur?

13 MR. ARTHUR: That's not a problem, Mr.  
14 Chairman.

15 SENATOR HAWKINS: Would you like to bring  
16 us up to date on what your recommendation for the Halifax piece is?

17 MR. ARTHUR: Sure.

18 SENATOR HAWKINS: Sorry about that, Tom.

19 MR. ARTHUR: Mr. Chairman, the Southside  
20 Economic Development Committee met this morning, and this is one of the  
21 projects that we had to address because the magnitude of the project far  
22 exceeded the funding allocation for Halifax County. If you'll recall, at the  
23 Executive Committee meeting we discussed means of handling these  
24 projects, and I presented four methods in which to approach the funding of  
25 these items. One of which was Item A, which was to spend forward funds

1 and commit the county years into the future. Also, having changed the  
2 words in the Special Projects directions which would allow us to consider  
3 each project on its own merits, which we would take away basically the  
4 restrictions of the three jurisdictional districts' requirements and let Special  
5 Projects look at them all on their own merits. We took this to Special  
6 Projects as a means, and by splitting the funding between Southside  
7 Economic Development's allocation and Special Projects, Special Projects  
8 agreed to fund the 1.9 with the caveat we would approve the rest of it out of  
9 future allocations for Halifax County. As it turned out, we've taken that  
10 requirement, plus the fact that Halifax County was ready and willing to  
11 accept their future limitations on what they're going to have. We're going to  
12 ask to remove 500,000 of their allocation to pay forward until, it ends up  
13 now 3.8, because it's not 8 million anymore, and it's down to 6. Therefore,  
14 that would be paid out in the year 2011. Based on the fact that we are in a  
15 transition between the direction of the Special Projects Committee as it was  
16 presented to the Executive Committee, I think you directed Staff at that time  
17 to look into changing those words.

18           Since this project has also never come time-sensitive to costs,  
19 we had bounced this around now for almost a year. The Southside  
20 Economic Development Committee approved the project to go in tandem  
21 with the Special Projects to meet the requirements. We so move that the  
22 Commission support both representations.

23                           SENATOR HAWKINS: Delegate Dudley, your  
24 conflict with the proposal would be expressed how? What do you see in  
25 conflict, or what's the problem?

1 DELEGATE DUDLEY: The difference, and I  
2 reluctantly went along with the presentation that was given in Abingdon, but  
3 one of the caveats in that was that \$600,000 from future allocations be used  
4 to reimburse back to this pre-funded money, and that was reduced this  
5 morning to 500,000 a year. It should have gone the other way, in my  
6 opinion, and it should have gone back to full refinance. I think there's still  
7 some confusion that even paying the money out in advance under future  
8 allocation does not fully repay the amount that they're getting. There is an  
9 additional 1.9 million dollars that will never be repaid. It's kind of like they  
10 want their cake and eat it, too, by reducing the amount that they're going to  
11 repay out of the future allocations.

12 SENATOR HAWKINS: If we were in the banking  
13 business and looking for a return on our investment in a monetary manner  
14 where you had a board of directors looking for a dividend for this  
15 investment I would probably agree, but we're not in that business, in my  
16 mind.

17 DELEGATE HOGAN: Mr. Chairman, I don't  
18 mean to interrupt, but --

19 SENATOR HAWKINS: -- Delegate Hogan, I'd  
20 hate to deny you that opportunity.

21 DELEGATE HOGAN: I'd ask Ned to confirm this  
22 point of clarification. My understanding is that the motion that came out of  
23 Special Projects did not specify a dollar amount to come out of Halifax on  
24 an annual basis. It said come up with the 4.1 however Southside Economic  
25 Development deemed appropriate. I guess I would ask for clarification from

1 the Staff, referring to the Minutes, I think you ought to be able to clarify that  
2 right quick.

3 MR. STEPHENSON: Mr. Chairman, I'd have to  
4 refer to the text in the Minutes, but my memory is as Delegate Hogan stated,  
5 that it was an approval of Special Projects of 2.1, subject to Southside  
6 providing the rest of the money. I mean 1.9.

7 DELEGATE HOGAN: Was it 1.9?

8 SENATOR HAWKINS: The dissent, or the  
9 discussion, is the amount of payback in a timely manner, when the money is  
10 paid back. Is that correct?

11 DELEGATE HOGAN: Mr. Chairman, this may be  
12 expensive, but I think the concerns that have been raised by Delegate Dudley  
13 and others in this process over the last year, I'd put this in another way. I  
14 saw an article in the paper from Hampton Roads about the Ford plant  
15 closing, and I wonder how many people here would like to come to Halifax  
16 if the existing plant that would be affected, plus these new jobs, which  
17 amounts to over five hundred, and explain to the people that they lost their  
18 jobs, while we didn't do what we could to hold onto them. With someone  
19 who has had to deal with a lot of plant closings over the last four or five  
20 years, this is one preemptive thing we can do to keep from having another  
21 one. I would hope people would consider that first and some of these other  
22 semantic concerns second.

23 SENATOR HAWKINS: We need to make sure  
24 we're fulfilling our fiduciary responsibility that we have and make sure that  
25 the monies are invested in the proper manner. We have to be confident in

1 that regard. We need someone to make sure that what we do is proper and  
2 correct. Also underscoring, or when we were given a charge to manage  
3 these monies for the Commonwealth, our main charge was to develop the  
4 economy that was collapsing and making sure that there were opportunities  
5 for growth and prosperity in rural Virginia. To do that we need to invest in  
6 projects such as this, in my mind, that allow an expanding tax base for  
7 communities, as well as job opportunities for communities, and which  
8 allows a little diversity within the community, and that's basically what we're  
9 trying to do.

10           There'll be some other discussion today on a couple of other  
11 projects that will show us some future guidelines as far as what we can do  
12 and be able to develop some new economies. If we sit back and miss  
13 opportunities for job creations, particularly in areas that have very high  
14 unemployment and very low employment with people at the lower end  
15 trying to get by on what would be considered modest incomes, I think we  
16 will certainly fail the charge that we've been given.

17           Having said that, any other comments?

18                           DELEGATE KILGORE: Mr. Chairman, I'd say  
19 that we had a discussion in Special Projects, and the VEP was in line with  
20 the project and some other groups. I'd renew my motion in conjunction with  
21 the motion.

22                           SENATOR HAWKINS: We'll deal with the  
23 Southside piece when we do the Southside presentation, and then we'll team  
24 up your presentation with Special Projects, if you would not mind. Your  
25 item, then, is Item 1055, the Halifax County Industrial Development

1 Authority, 1.9 be approved. Any discussion on this motion?

2 Delegate Wright.

3 DELEGATE WRIGHT: Mr. Chairman, I  
4 reluctantly voted against this in the Economic Development Committee  
5 meeting this morning. Really, the only reason I voted against it, basically,  
6 was the Staff didn't recommend it, and they say basically the request exceeds  
7 the Commission's budget policy, precedent and guidelines. Another thing is  
8 that I think we've had ample time to prepare some policy and guidelines to  
9 cover this type of contingency. To me, that should have been done. This  
10 project has been discussed several times, and it seems to me that we should  
11 have prepared and had foresight to have the policy in place to take care of  
12 this type of problem. I'm not saying we shouldn't do it, but every locality  
13 should feel they'll be treated the same in the future, and that's my only  
14 concern.

15 SENATOR HAWKINS: I can assure you that each  
16 locality will be treated fairly, as far as I'm concerned, regardless of location  
17 of the project itself. I can also assure you that we are in the process of trying  
18 to develop ways that we can have the flexibility to do these things, and  
19 Special Projects is one of the areas that we've been able to gain a little more  
20 vision of the overall problems that are facing the economies. I think your  
21 point is one we'll have to address later on when we start determining how we  
22 manage particularly the trust fund that we have set up. The reason we're  
23 here is to make these decisions, and we have a Commission of 31 people that  
24 sit around this table that are willing to vote on the various projects that have  
25 this type of economic impact. We're set up to be able to manage these things

1 very well. Those comments, I think, are ones that we have to start to build  
2 on, and we probably have to correct, or we need probably a little bit different  
3 structure. From the beginning we were trying to figure out how we could  
4 manage these large requests. Special Projects has now been given more  
5 flexibility than it had before in which to deal with these things. With that,  
6 I'm not sure what we can do, other than say that no project that would close  
7 down an opportunity for our communities to be able to expand their tax base  
8 and offset the agricultural losses that we have seen.

9 Any other comments? The motion is before us. All those in  
10 favor say aye? (Ayes.) Opposed?

11 DELEGATE DUDLEY: No.

12 DELEGATE WRIGHT: No.

13 SENATOR HAWKINS: Two no votes. Before  
14 you leave, I'd like to make one comment. This is probably the single most  
15 important thing that we have dealt with since our 58 corridor initiative on the  
16 telecommunications piece. If you look at the potential that we're putting in  
17 place with this investment and be able to develop alternative fuel sources,  
18 not only alternative fuel sources, but developing an agricultural commodity  
19 market for products that would be produced on our farms and sold to these  
20 facilities to produce energy and ethanol and bio-diesel and all the things  
21 we're dealing with. Brazil is about 90 percent self-sufficient now because  
22 they invested in these projects 20 years ago. If we plan to wean ourselves  
23 from foreign oil and start looking at things realistically, this is the type of  
24 investment that will make a difference throughout our entire region. As a  
25 matter of fact, not just the State of Virginia, because if this develops the way

1 it should, the Shenandoah Valley, with the turkey business, should be able to  
2 take advantage of this type of opportunity. And I'm excited about it.

3 The only thing I think we need to do is make sure that we're in  
4 tandem with the resource going on at Virginia Tech. What I'd like to do  
5 today is set up a commission and ask Mr. Mayhew and Mr. Bryant to serve  
6 with Senator Ruff as kind of an oversight and have Tech and the Farm  
7 Bureau participate, to figure out and to make sure that the investments we're  
8 doing which are long-term, that we work out the problems and work with  
9 Tech with our suggestions and our money, and we can make sure that it's  
10 invested properly.

11 Having said that, since we've already voted on these items,  
12 thank you.

13 DELEGATE KILGORE: Mr. Chairman, I would  
14 like to take a point of personal pleasure to recognize Delegate Crockett Star,  
15 who is here with us today.

16 SENATOR HAWKINS: Welcome, and thank you  
17 for coming. I understand you made this trip down here to find out how we  
18 operate, and hopefully it's pleasant.

19 DELEGATE KILGORE: She said it was  
20 interesting.

21 MR. STEPHENSON: Mr. Chairman, I would like  
22 the record to reflect that the restricted grants that you just voted on are being  
23 awarded subject to an affirmative legal opinion relative to our trust fund.

24 SENATOR HAWKINS: Everything we're dealing  
25 with has to be approved by the Attorney General's Office, and everything we

1 vote on is built around the assumption that the Attorney General will have an  
2 opportunity to review these with the recommendation as to if it meets the  
3 standards that have been put in place by the Code of Virginia, as well as the  
4 law.

5 MR. STEPHENSON: In particular, Mr. Chairman,  
6 not only the Attorney General, but that we have the approval of bond  
7 counsel.

8 SENATOR HAWKINS: We have to be very  
9 careful, because, as you know, the securitized money will be spent in a  
10 certain way, and that's restricted, so we need to make sure that we're in  
11 compliance with that.

12 By the way, as a point of sidebar, we probably did the smartest  
13 thing we've ever done when we securitized. I think we did the right thing at  
14 the right time. We are guaranteed now access to some money that may be in  
15 jeopardy in the future. I applaud each and every one of you for your  
16 foresight and leadership in securitizing these monies.

17 Moving on, Southside Economic Development report, Mr.  
18 Arthur.

19 MR. ARTHUR: Thank you, Mr. Chairman. We  
20 met this morning at 8:30 to clean up several items that have been laying  
21 around and bounced back and forth between several sub-committees and got  
22 back to us in time for a decision at hand. We've already approved one, and  
23 that's the Project Mentor. The other one was for Patrick County, who wanted  
24 to use part of their allocation for a Broadband wireless initiative in the  
25 county. As I said, that was kicked back and forth because we had not

1 decided in the past how we would do the last mile. We voted this morning to  
2 approve the money for Patrick County, and I submit the motion to do so.

3 SENATOR RUFF: Second.

4 SENATOR HAWKINS: It's been moved and  
5 seconded that the motion be approved. Any discussion on that motion? All  
6 those in favor say aye? (Ayes.) Opposed? (No response.) Thank you.

7 Delegate Hogan, do you want to do the Technology report?

8 DELEGATE HOGAN: I think we have one issue  
9 to take action on, and I would ask Ned to read that motion. I assume that  
10 Mr. Hite made the motion, and I assume Ned has discussed it, and I'd ask  
11 Ned to read that motion and make an explanation.

12 MR. STEPHENSON: Thank you, Delegate  
13 Hogan. The Technology Committee met yesterday afternoon and considered  
14 a certain grant request in the amount of two million dollars being made to a  
15 group entitled, Virginia Community Capital Incorporated. This is a 501 C 3  
16 non-profit community development bank created by the General Assembly.  
17 The motion was to award a two million dollar grant to Virginia Community  
18 Capital Incorporated for the purpose of it extending loans to Mid-Atlantic  
19 Broadband Incorporated, with certain grant conditions being imposed on that  
20 grant. Those conditions are number one, that it not exceed two million  
21 dollars. Number two, that the loan may be drawn by MBC from Virginia  
22 Community Capital in increments of \$250,000 each. Number three, that all  
23 loans to MBC must be disbursed by April, 2008. Number four, all loans to  
24 MBC must be fully amortized within ten years. Number five, a maximum  
25 rate of interest shall be charged, no more than two percent. Number six,

1 annual reports be submitted to the Tobacco Commission on the status of the  
2 loans. Number seven, all unused funds be subject to call by the Tobacco  
3 Commission. The Technology Committee recommends the approval of this  
4 grant, subject to these conditions.

5 SENATOR HAWKINS: Delegate Hogan.

6 DELEGATE HOGAN: Mr. Chairman, there was  
7 some concern on the Committee exactly how the loan would be structured. I  
8 would say that, as is the case with all acts by this Commission, any loans  
9 would be subject to the approval of the Attorney General's Office, and that's  
10 a standing rule, and that should give comfort that this loan would be  
11 reviewed and be made in the proper order. I'm not sure that I need to make a  
12 motion, since it's already the policy of the Commonwealth.

13 SENATOR HAWKINS: For clarification we can  
14 add that into the list of things and conditions that would be acceptable. Any  
15 discussion on the recommendation? It's been moved and seconded that the  
16 recommendation be adopted. All in favor say aye? (Ayes.) Opposed? (No  
17 response.)

18 All right, Delegate Kilgore, Executive Committee report.

19 DELEGATE KILGORE: Thank you, Mr.  
20 Chairman, I'll have eight motions as it relates to the Executive Committee's  
21 action on April 20, 2006 where we met here in Richmond. This should be in  
22 Tab 6. The first amendment and discussion and motion that I would make is  
23 that I would move to transfer three million dollars from special projects to  
24 Southside Economic and award the same to Halifax and Danville and  
25 Pittsylvania County, one million and two million, respectively, for prior

1 commitments that this Commission made for Riverstone and the Institute.

2 The reason this was included, the three million for debt services  
3 included in Special Projects line item to separate it from restricted monies  
4 Southside Economic Development. It does properly belong in the Southside  
5 Economic Development. I so move.

6 SENATOR HAWKINS: Any discussion? It's been  
7 moved and seconded that it be adopted. All in favor say aye? (Ayes.)  
8 Opposed? (No response.)

9 DELEGATE KILGORE: The second motion I'll  
10 make, Mr. Chairman, is that I'd move to reduce the Technology Committee  
11 line item by \$2,547,891 and the Special Projects Committee line item by  
12 \$1,021,676. The reason I do this is this is from the unrestricted category,  
13 and the reason we're doing this, we're anticipating a shortfall in the April,  
14 2006 MSA payment.

15 SENATOR HAWKINS: Unfortunately, that is a  
16 fact we have to deal with. Any discussion on that particular proposal? It's  
17 been moved and seconded that that proposal be agreed to. All in favor say  
18 aye? (Ayes.) Opposed? (No response.)

19 Delegate Kilgore.

20 DELEGATE KILGORE: The next motion that I  
21 make is that I will move to amend the '06 budget to increase the TROF line  
22 item by the amount of third quarter interest, upon its arrival in late April.  
23 And it should be \$580,000.

24 SENATOR HAWKINS: Any discussion? Is there  
25 a second? It's been moved and seconded that the motion be agreed to. All

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

2 DELEGATE KILGORE: Mr. Chairman, I'm going  
3 to skip the budget and go to the corpus invasion, and then I'll come back to  
4 the budget. I'd like to make a motion to approve the Resolution as shown in  
5 Tab 6, and you'll find that Resolution, and I'd ask that a copy of the  
6 Resolution be given to our reporter, and it approves the corpus invasion of  
7 \$26,120,841.70. It's the exact amount required to fully fund the '06 and '07  
8 budget. I would so move and ask that the Resolution be part of the record  
9 and be given to the reporter.

10 SENATOR HAWKINS: Any discussion on this  
11 transfer? It's been moved and seconded, all those in favor say aye? (Ayes.)  
12 Opposed? (No response.)

13 Delegate Kilgore.

14 DELEGATE KILGORE: Now we'll go back to the  
15 budget. The budget should be included in Tab 6. We had discussions on the  
16 budget in the Executive Committee. If you'll look at the '07 proposed  
17 budget, the '06 budget as amended, you will find some of the changes that  
18 were suggested. We did keep the indemnification, and we kept that on an  
19 ongoing basis in '07, and I believe it's \$10,711,000. If you all would look  
20 over that, and if there's any questions I'll be glad to have Stephanie come up  
21 and answer those questions.

22 SENATOR HAWKINS: The budget was mailed to  
23 all Commission members. Has everyone had an opportunity to go over the  
24 budget? If there is anyone that has not, we can go on with the discussion. I  
25 want to make sure that everyone understands the budget. Is there any

1 discussion? Does anyone want to review the budget before we move on? I  
2 hope everyone has had a chance to review it. Any questions?

3 DELEGATE WRIGHT: Mr. Chairman, can we  
4 vote separate on these motions?

5 SENATOR HAWKINS: You want to separate it?

6 DELEGATE WRIGHT: Yes, I'd like to vote  
7 separately. I want to make sure we vote on the budget itself.

8 SENATOR HAWKINS: That's what we're going  
9 to do, vote on the budget itself.

10 DELEGATE KILGORE: I haven't moved  
11 anything in the block, we've been voting as we go along. I made a motion to  
12 approve the budget, so that's the motion before you.

13 MR. BRYANT: When would be the appropriate  
14 time to offer an amendment on the budget?

15 DELEGATE KILGORE: Now.

16 SENATOR HAWKINS: Right now.

17 MR. BRYANT: In the Agribusiness Committee we  
18 discussed reducing the number of years for payment. In the Agribusiness  
19 Committee we had discussed reducing the years of payout for the  
20 indemnification. That was based on the fact that we would save two million  
21 dollars, what we would pay the vendor on this payout period, versus ten  
22 years. We bring it back to the year 2010. That would be or extend, that  
23 would be a four-year payout after this year. It went to the Executive  
24 Committee, and I was not able to attend that meeting. My understanding is  
25 that it did not get a favorable vote in that Committee. I do not understand

1 the thinking of the Committee on not being willing to save two million  
2 dollars. I'm not bringing this up because I'm trying to push additional money  
3 to indemnification necessarily, but I do think that the fact that we would save  
4 two million dollars, we need to discuss that. That is not just a small amount  
5 of money.

6 SENATOR HAWKINS: You're right, and I'm  
7 sorry you weren't able to attend that meeting when we had that discussion. It  
8 was the feeling of the Executive Committee at the time that we put in place a  
9 ten-year payout, and that mirrored the federal payout system some time  
10 back. Prior to that there was no set payout schedule, so we did put in place a  
11 payout schedule ten years that was adopted by the Commission. If we went  
12 to the four-year payout, it would require several more millions of dollars in  
13 the initial payments, which would deny access to those monies. With the  
14 Special Projects looking at the bio-diesel piece, which has a long-term  
15 agricultural impact, rather than having that compete with other ongoing  
16 projects, and trying to figure out what our priorities were, and some other  
17 things were going on, I and others felt it would be in the best interest long-  
18 term to invest in bio-diesel and stay on the schedule that we had in place that  
19 we had adopted, which mirrors the federal payout, which does not remove  
20 itself from the normal process that everyone is willing to accept, and take the  
21 monies we're able to invest into a project that probably would bring more  
22 prosperity to the farms than just an infusion of a few more dollars on the  
23 spending of the indemnification piece. That was the rationale behind it.

24 MR. BRYANT: My understanding, after talking to  
25 Stephanie, this would not be a problem in order to bring it back to 2010. I'd

1 ask Stephanie if she would address the Commission on what she had  
2 discussed with me.

3 SENATOR HAWKINS: Before that, the  
4 discussion I remember, that's what the reaction is built upon, that at that time  
5 the accelerated payments would deprive us of access to several million  
6 dollars that we could use to offset the demands on Special Projects for bio-  
7 diesel. If that's something different than what I understood, I'd like to hear  
8 it.

9 MS. WASS: Depending on how much the  
10 Commission needs for the bio-diesel in the future, there'll be another two  
11 million dollar unrestricted carryforward from Special Projects. There will be  
12 some surpluses at the end of the fiscal year, but we don't know the amount  
13 yet, but there's indemnification or unclaimed indemnification that we'll be  
14 able to release in July, July of '06. Also, fourth quarter interest will be  
15 surplus, and we don't know that amount until July.

16 SENATOR HAWKINS: Also, the MSA payments  
17 are questionable. I'd like to make a suggestion to see if this would facilitate  
18 the discussion. If, in fact, we carry on this year with the structure we have in  
19 place to fund the bio-diesel, and if we have some extra funds we can put  
20 those toward the bio-diesel, and then next year, if the funds are available to  
21 us, we can start looking at a quicker payout, and give us one year to work on  
22 this bio-diesel concept and with the concept that may take place, and then  
23 next year bring back up the question of accelerated payments when we don't  
24 have a conflict between two projects we're working on. Is that something  
25 that would be agreeable?

1 MR. BRYANT: I would agree to that, yes.

2 SENATOR HAWKINS: Any other comments  
3 about that concept? The bio-diesel, we really don't know where that's going  
4 yet, and I'd like to have some extra money to invest in it if we need to.

5 Mr. Bryant, does that satisfy your concerns?

6 MR. BRYANT: Yes.

7 SENATOR HAWKINS: I'll make you a  
8 commitment if in fact next year we can accelerate, we will, if that's a benefit  
9 to the agricultural community.

10 Delegate Kilgore.

11 DELEGATE KILGORE: Any other questions on  
12 the budget? I believe I made a motion, and there was a second.

13 SENATOR HAWKINS: Delegate Wright.

14 DELEGATE WRIGHT: Mr. Chairman, my  
15 comment will be very brief. Due to the fact that I don't agree with, or I don't  
16 see, I don't think it's an equitable allocation of funds in the budget, I will  
17 vote against it. I just don't want to rehash my remarks.

18 SENATOR HAWKINS: The problem, equity is in  
19 the eyes of the beholder. You certainly have made your point over the last  
20 several meetings. When dealing with the monies for Halifax, without any  
21 flexibility we wouldn't be able to fund this. So I understand your position,  
22 but we will agree to disagree.

23 Any other comments? The motion before us is to adopt the  
24 budget as amended. All those in favor say aye? (Ayes.) Opposed?

25 DELEGATE WRIGHT: No.

1 DELEGATE DUDLEY: No.

2 SENATOR HAWKINS: Two no's. Thank you, sir.

3 DELEGATE KILGORE: The next one, Mr.

4 Chairman, as it relates to Grant #981 VECTEC. I'd make a motion to  
5 amend the subject grant and change the location from Chase City to South  
6 Boston. I think we accommodated something as it relates to Chase City in  
7 another budget amendment, or that we've already passed.

8 SENATOR HAWKINS: Delegate Hogan and  
9 Senator Ruff, has this been laid to rest?

10 SENATOR RUFF: Yes, once we take this vote it  
11 will be laid to rest.

12 SENATOR HAWKINS: This is one of those  
13 pieces that just keeps on giving. It's been moved and seconded that the --  
14 Delegate Wright.

15 DELEGATE WRIGHT: I'd like to say that I've  
16 checked with my constituents in Chase City, and they have approved this,  
17 and I'll vote likewise.

18 SENATOR HAWKINS: You're doing something  
19 extremely well, I'm impressed. All those in favor quickly say aye? (Ayes.)  
20 Opposed?

21 MR. HITE: No.

22 DELEGATE KILGORE: On Grant #967, the  
23 Southwest Virginia Education and Training Network --

24 SENATOR HAWKINS: -- We rushed through  
25 that, I apologize. Mr. Hite, would you like to make a comment about that,

1 prior to your vote?

2 MR. HITE: No, my vote speaks for itself.

3 SENATOR HAWKINS: We've recorded the vote,  
4 so please go ahead.

5 DELEGATE KILGORE: On Grant #967 I'd make  
6 a motion to approve the waiver of the standard contract language regarding  
7 clawbacks for the Southwest Virginia Education and Training Network. The  
8 standard language that we usually have in clawback provisions conflicts  
9 with what's required by other funding sources for this Education and  
10 Training Network. I would so make that motion to waive the standard  
11 contract language.

12 SENATOR HAWKINS: Is there a second? All  
13 right. Any discussion on that motion?

14 MR. ARTHUR: Mr. Chairman.

15 SENATOR HAWKINS: Mr. Arthur.

16 MR. ARTHUR: Delegate Kilgore, did we stipulate  
17 that this verbiage only applies to this one grant?

18 DELEGATE KILGORE: That's correct.

19 MR. ARTHUR: That wasn't in the motion.

20 DELEGATE KILGORE: I'll take that as a friendly  
21 amendment.

22 MR. ARTHUR: One grant only.

23 DELEGATE KILGORE: Yes.

24 SENATOR HAWKINS: Any other discussion, or  
25 any other questions? All in favor say aye? (Ayes.) Opposed? (No

1 response.)

2 Delegate Kilgore.

3 DELEGATE KILGORE: I think that's all of my  
4 motions.

5 SENATOR HAWKINS: Thank you, sir. Mr.  
6 Arthur, I think you have an amendment before you.

7 MR. ARTHUR: Yes, thank you, Mr. Chairman. I  
8 move we amend the '07 budget to increase the restricted funds in the  
9 Southside Economic Development budget by \$3,227,000 to fund Project  
10 Mentor in Halifax County, which we have previously approved.

11 SENATOR HAWKINS: This is the amendment to  
12 the budget that we have just passed?

13 MR. ARTHUR: Yes.

14 SENATOR HAWKINS: Any discussion?  
15 Delegate Kilgore?

16 DELEGATE KILGORE: Do we have to  
17 reconsider this?

18 SENATOR HAWKINS: No, this is an amendment  
19 to the budget we have adopted. This is a stand-alone. Is there a second? It's  
20 been moved and seconded, any discussion on the amendment itself to the  
21 budget? Does everyone understand the amendment to the budget?

22 MR. ARTHUR: Mr. Chairman, just a  
23 housekeeping issue.

24 SENATOR HAWKINS: All those in favor of the  
25 housekeeping amendment to the budget say aye? (Ayes.) Opposed?

1 DELEGATE WRIGHT: No.

2 SENATOR HAWKINS: Your vote is recorded.

3 All right, we'll have to go back to the top. At this time there are  
4 members of the Senate that probably will have to leave and go to the  
5 Capitol. At this time anyone that needs to go back to the Capitol, please go  
6 ahead and go, and I'll join you as soon as possible.

7 Going back to the top of the Agenda, approval of the Minutes of  
8 the January 10, 2006 meeting. All those in favor of approving the Minutes  
9 of January 10, 2006, say aye? (Ayes.) Opposed? (No response.) Thank  
10 you.

11 Executive Director's Report. Ned.

12 MR. STEPHENSON: Thank you, Mr. Chairman,  
13 and a belated welcome to all of you, and I'm glad you're here this morning  
14 and not wandering around in Roanoke and looking for our meeting.

15 A couple of people I'd like to recognize that are with us this  
16 morning, in particular, Secretary Gottschalk, who joins us this morning. I  
17 believe this is his first meeting, and we welcome him to the table. I've  
18 watched his work over the last 100 days, and if that's any indication of what  
19 we'll see in the next four years, I think we're in for some wonderful help  
20 from the Secretary.

21 I also welcome Secretary Wagner, and she is no stranger to the  
22 Tobacco Commission, but she is attending our meeting today as a member.  
23 Jody, we certainly thank you for the work that you've done for us in the past  
24 and look forward to having you here as well.

25 Ladies and gentlemen, there are a few things that the

1 Commission is involved in that I would like to bring you up to date on, just  
2 for your general information. The first is that you may remember in  
3 December, 2004, you approved some funds for the purpose of conducting a  
4 study to identify an automotive mega site somewhere within the tobacco  
5 region. That study took about a year, and it was concluded in December of  
6 '05. I think we sent a report to all of you, and it was rather lengthy. In  
7 essence, this group took an inventory of all the sites in Southside and  
8 Southwest Virginia and attempted to shake them down to the five most likely  
9 mega sites that could be developed for a large industrial use. The sites that  
10 came out of that study appear before you, and the acreage in those parcels.  
11 You can see that they are looking at very large parcels of land, with an idea  
12 that we might possibly be in the development of an automotive assembly  
13 plant.

14 SENATOR HAWKINS: Ned, what sort of money  
15 is going to be required for this sort of operation?

16 MR. STEPHENSON: Chairman Hawkins, I've  
17 done some reading and had conversations with people in this community,  
18 and from what I see in other states the number of dollars are very, very large,  
19 and sometimes in other states reaching into the hundreds of millions of  
20 dollars to bring an automotive assembly plant here.

21 SENATOR HAWKINS: Even dealing with the  
22 Governor's Opportunity Fund, this would far exceed any ability of the  
23 localities or a region to pay back that money in the normal process?

24 MR. STEPHENSON: It would take all of us, the  
25 localities and the Commission, the General Assembly and the Governor's

1 Opportunity Fund, it would take everyone.

2 SENATOR HAWKINS: That's something we need  
3 to keep in mind, because at some point we will be asked to make a decision  
4 as to how a large block of money can be obligated for areas much removed  
5 from our current location in some of our areas. I know there are comments  
6 and feelings about the formularies and certain entitlements of monies that  
7 come to the localities, but once we get into this debate and we decide to  
8 make a commitment, those things will have to be on the table for discussion.  
9 We need to be aware of that.

10 MR. STEPHENSON: The second phase of this  
11 study is now underway, and these are some of the things that are involved in  
12 the second phase of the study. You can quickly see that there are a lot of  
13 hurdles that have to be jumped before one can say that a particular site is a  
14 candidate for development, part of the effort we are undertaking with this  
15 study. We recognize that it may not be that we attract an automotive  
16 assembly plant, but there are many other opportunities that do require large  
17 acreage for a large industrial site, and we are trying to position the  
18 Commission to have an inventory and a certain level of intelligence on these  
19 sites so that we would be ready when the time came.

20 There's been much in the news recently about automotive  
21 assembly plants. We know that Ford in Norfolk is closing their plant, but I  
22 want to recite to you or recall to your mind the recent news about a Kia  
23 automotive plant that was located in Georgia. The Economic Development  
24 community has been much a-buzz about that announcement. Some of the  
25 background that you may not know is that that particular plant was destined



1 others, but there are a few highlights that I thought might be of interest to  
2 you that I extracted from this report.

3 SENATOR HAWKINS: Would you make a copy  
4 of that and send it to each of the Commission members, and I think it would  
5 be of benefit to everyone.

6 MR. STEPHENSON: I will. Some of what I am  
7 going to tell you is old news to some of you long-time members, but for  
8 some of the newer Commission members I think it would be very helpful for  
9 them to understand how we got to where we are today. I have before you on  
10 the screen our neighboring states' share of the MSA pot nationally. You can  
11 see for our neighboring states they receive approximately the same amount  
12 of money that Virginia did in the two-percent range. The largest states in the  
13 nation, of course, were California and New York. Virginia's share was two  
14 and a fraction percent, similar to our neighboring states.

15 These are the things that states did with their tobacco monies.  
16 It's everything from grower payments, social services, bond debt, these are  
17 the things that state legislators elected to do with their tobacco monies. The  
18 three that are shown in red are the top three in the nation that states did with  
19 their tobacco monies. Most of them went into healthcare, bond debt, and  
20 some used tobacco dollars to service the bond debt, and basically it means  
21 they still have the money in a trust fund if they have not allocated it yet. The  
22 category called miscellaneous, which is a little deceiving, what that means is  
23 that a tremendous amount of tobacco money went to everything in the world  
24 except what you see listed on board, it went all over the place.

25 You might be interested in how Virginia compares to the rest of

1 the nation in terms of what we did with our tobacco money. It shows you  
2 there what Virginia has done, and as you know, 40 percent of ours went to  
3 healthcare, compared to a national average of 32 percent, but here's where  
4 the difference is most pronounced. Tobacco control, and that is the smoking  
5 cessation program, and Virginia donated ten percent to the foundation, and  
6 the national is five.

7 SENATOR HAWKINS: Ned, doesn't that also  
8 meet the understanding of the commitment we made for the MSA payments,  
9 a certain amount of money would be allocated to the healthcare piece, and  
10 without that component the deal would not be valid?

11 MR. STEPHENSON: I would have to defer to  
12 someone else on that point. I understood each state was free to choose what  
13 it would do with the tobacco money.

14 MR. FERGUSON: We have no restrictions under  
15 the MSA itself. There was an expectation that some portion of it would be  
16 used to offset healthcare costs from tobacco-related illnesses. The MSA is  
17 not required with that.

18 MR. STEPHENSON: Of greatest interest to me  
19 are the last two lines on the page, and particularly the bottom line.  
20 Nationally, grower payments were not the choice of General Assemblies  
21 across the nation. There were a few, less than one percent, compared to  
22 Virginia, which has paid about fifteen percent of its payment to growers.

23 Also, the next to the bottom line, in economic development, a  
24 very small portion of the states chose to use their funds for economic  
25 development. Our General Assembly, through this Commission, has used 35

1 percent of your funds for economic development. I think that speaks so  
2 strongly and so well of the foresight of the Assembly in creating this  
3 opportunity that we are about today. So you should feel good about some of  
4 the decisions we've made about having a chance to do that.

5           Very quickly, Virginia's share of the MSA for the year 2006,  
6 about \$118,000,000, and you can see where the money went. The  
7 Commission has \$30,000,000, half of what we had last year, because the  
8 other half went to pay our bond holders.

9           This book also compiles a lot of information about who sold  
10 bonds, when and how much.

11                           DELEGATE WRIGHT: Mr. Chairman.

12                           SENATOR HAWKINS: Delegate Wright.

13                           DELEGATE WRIGHT: Ned, I've got a question  
14 about your first slide. Can you go back there for a second? It's the amount  
15 that each state got. How was Virginia's percent of the money determined?

16                           MR. FERGUSON: Mr. Chairman, that number  
17 was based upon a formula, which I cannot recite to you, because it was a  
18 done deal before Virginia was allowed to participate. Essentially, it's  
19 primarily population driven, but it's also heavily influenced by the amount  
20 each state pays for Medicare and Medicaid-type reimbursements. Because  
21 we are a relatively low Medicaid state, that tended to depress our percentage  
22 somewhat, against what our actual population percentage would be.

23                           SENATOR HAWKINS: Does that answer your  
24 question?

25                           DELEGATE WRIGHT: Yes.

1 MR. STEPHENSON: Fifteen out of forty-six  
2 states chose to sell bonds and securitize their tobacco revenues, and they're  
3 listed here before you.

4 The next slide shows you the dollar volume of bonds that have  
5 actually been sold appear in this report. I think it's very interesting, and you  
6 can see that in 2005 \$390,000,000 bond sale from the Virginia Tobacco  
7 Commission appears. According to this report dated April of this year, there  
8 have not been any since. Secretary Wagner told me maybe there had been,  
9 so there's a little conflict there, but the important point to note is that most of  
10 the tobacco bonds that were sold have been sold, and we did very well to get  
11 ours into the marketplace before this market went away. That's the history  
12 on the bonds.

13 The revenue that flows to the Commission appears before you.  
14 Historically and prospectively, you can see that in late 2005 our revenue  
15 dropped to about half, due to the bond sale. Another thing that's important  
16 from this slide is that there is a general decline in the total tobacco revenue  
17 dollars available to the Commission. I think we'll see that trend continue  
18 into the future. That ends my report, and I'll see that this information is sent  
19 to all of you.

20 There are a couple of items that I want to make note of in our  
21 budget that you just approved. Here is a brief historical picture of the  
22 indemnification payments that have been made last year, this year, and will  
23 be made next year. The point I want you to be aware of is that the amount of  
24 money paid to our growers is in decline, and some of you in your  
25 communities may get a phone call as these checks are issued this summer

1 and next year. We discussed this at length before the committees, and it's in  
2 the budget, but I just wanted you to be aware that these disbursements will  
3 be less.

4           There is one last item I wish to report to you that I think is  
5 important for the entire Commission to hear. At the request of Chairman  
6 Hawkins, the Southside Economic Development Committee met for the  
7 express purpose of dealing with the allocation formula that was conceived in  
8 the year 2000 and has been used since then. We had a hundred percent  
9 committee attendance at this meeting, along with Dr. Wayne Purcell who  
10 was the original author of the allocation formula that you now use. There  
11 was an exhaustive discussion that day about the formula and whether to  
12 change it and what should be done about it. Staff made a presentation, and  
13 at the end of the day there was not a single motion from anyone within the  
14 Committee to make changes in the formula. The formula we have had since  
15 the year 2000 has been thoroughly investigated, and it is the preferred  
16 method of distribution, up to this point. I think it's important for the  
17 Commission to know that, because the formula continues to be a topic of  
18 conversation.

19           SENATOR HAWKINS: We need to also  
20 understand we have modified some of the way we fund things that are  
21 removed from the formula, like Education, Economic Development, some  
22 degree Special Projects, and some of the other things that we have done  
23 outside of the formula that would come off the top of the overall money that  
24 we receive. The formula is still in place, but it takes two-thirds vote of the  
25 Commission to modify or change it. We've been able to do that when

1 needed, when it has presented itself. So it is not a true formulary-driven  
2 Commission. If that was the case, there would be no Commission, because  
3 there would be no need for a Commission, we'd just write a check. This  
4 gives us the ability to be able to govern the monies that we receive, and  
5 that's the way it should be, in my opinion.

6 DELEGATE WRIGHT: Mr. Chairman?

7 SENATOR HAWKINS: Delegate Wright.

8 DELEGATE WRIGHT: Mr. Chairman, I must say  
9 that I disagree with that statement.

10 SENATOR HAWKINS: I'm not surprised.

11 DELEGATE WRIGHT: That there would be no  
12 need for a Commission, and just write the check to the locality. We would  
13 still have to approve the grant requests, and we couldn't just hand the money  
14 over, that's part of our charge.

15 SENATOR HAWKINS: Well, if what I've seen in  
16 the way of allocations that are starting to drift in from some of our localities,  
17 there's a lot of creative effort going on to meet the figures that they consider  
18 their right. But we'll get into that later, as far as the entitlements. What I've  
19 found in the history of the Commission, the first block of monies went to  
20 meet a need people immediately identified with. After three or four years,  
21 there are creative things about what they can do with the Commission dollars  
22 in the way of tobacco money and the requests coming through. Without the  
23 ability to be able to do some sort of shifting back and forth to meet the need  
24 of localities whose funding did not meet the needs of that particular area  
25 would be very stagnant. Your point is well taken.

1 MR. ARTHUR: Mr. Chairman?

2 SENATOR HAWKINS: Mr. Arthur.

3 MR. ARTHUR: I'd like to ask a question. I seem  
4 to recall some year or so ago we put a lot of money into the Partnership,  
5 basically to promote the tobacco region for perhaps a large industry. I'm  
6 going back to where you were talking about they were looking for large  
7 tracts of land. Have you ever gotten a report back from the Partnership as to  
8 what our money went for, or is it still being used, or what happened to that?

9 MR. STEPHENSON: Mr. Arthur, that predates me  
10 a little bit, so I may need help from some older brains that remember those  
11 things. I don't know whether Tim or Stephanie could talk about that. There  
12 seems to be some doubt about whether the Commission paid any money to  
13 the Partnership.

14 SENATOR HAWKINS: I can't remember any  
15 money; I may be wrong.

16 MR. ARTHUR: We were going to organize a  
17 committee to promote Southside or promote --

18 MR. STEPHENSON: -- I understand that.

19 MR. ARTHUR: We put some money into it and  
20 decided not to do it by that route as an independent agency, but to use the  
21 state agency. I seem to recall that, but I may be wrong in reaching that point.

22 SENATOR HAWKINS: Why don't you review  
23 that and have Staff look at it and see if the Minutes reflect that, because I  
24 don't remember.

25 MR. ARTHUR: That was going to be my

1 suggestion, because we need some type of report back if it really in fact  
2 happened.

3 MR. STEPHENSON: Noted. In closing --

4 SENATOR HAWKINS: -- Mr. Harwood.

5 MR. HARWOOD: I'd like to make a comment.

6 This fall I happened to be in Florida and came across an editorial in the Fort  
7 Myers newspaper, and they were highly critical of the Florida Tobacco  
8 Commission because they had used much of their money, or they used little  
9 or no money for tobacco control and education purposes. The majority of  
10 the money went straight to the state coffers for budgetary purposes. I would  
11 like to compliment this Commission on the way we have handled ourselves  
12 and the way we spend money. I think we can pat ourselves on the back, and  
13 the Staff, and I hope we would continue in that direction.

14 SENATOR HAWKINS: Every time the General  
15 Assembly is in session we're in jeopardy, because it takes a majority of vote  
16 in both houses to change everything, as we all know. We've been very  
17 fortunate to be able to continually sell the product that we're producing,  
18 which is economic development. I think most people in the General  
19 Assembly understand the monies that we're using are being used wisely.  
20 Once we drift off of that path, we'll find ourselves in jeopardy.

21 MR. STEPHENSON: Mr. Chairman, in closing  
22 my remarks I wish to say that the Commission can never be accused of being  
23 faint-hearted about pursuing its mission. In the last five days you have had  
24 five committee meetings, heard seventy grant requests, formed a budget,  
25 approved the third largest yield you approved ever behind MBC and bio-

1 infomatics. In the last ninety days your Staff has conducted two workshops  
2 that were well attended in each region. We've had policy sessions with the  
3 Southside Committee. We've talked to seventy grantees, and tomorrow  
4 morning we're going to dump fifty of them on McGuire Woods for  
5 processing the legal opinions. So, we have plenty going on.

6 On behalf of your Staff, I have the privilege of conveying to  
7 you our thanks for an opportunity to be of service. Thank you, Mr.  
8 Chairman.

9 SENATOR HAWKINS: Thank you for your  
10 report.

11 The next up will be Frank Ferguson, Status of the April 06 MSA  
12 Payments. Before that, Frank, I'd like to thank the Staff, and we have a great  
13 Staff of people that work long hours trying to put together the requests that  
14 come in to them. They have to oversee 31 personalities and 31 different  
15 individuals and 31 agendas, 31 attitudes and 31 approaches in order to do  
16 their job, and that's a given. In order to do that, requires patience and lots of  
17 work and a lot of duplication. I understand fully what they go through and,  
18 Ned, I want to thank you and the Staff for what you all do.

19 Frank.

20 MR. FERGUSON: Good morning, Mr. Chairman.  
21 I want to take a couple of minutes to sort of update everyone on the whys  
22 and the wherefores of our shortfall MSA payment this year. I would like to  
23 note, to start with, as Mr. Stephenson noted in his report, we have had a  
24 declining revenue stream under the MSA over the years since 2000, and that  
25 was, frankly, expected. It was a result of what's primarily called devolume

1 adjustment under the MSA, Master Settlement Agreement. That means as  
2 cigarette sales drastically go down, there is an adjustment to the MSA  
3 baseline revenue projections that's negative in terms of payments to the  
4 states. I believe it's anticipated that that will continue. One piece of good  
5 news is that the base figure does go up, continues to go up for several more  
6 years, though it's a bigger pot to start with.

7 As indicated, Virginia has received about 118,000,000 for this  
8 year, or payments that were received last week, April 17th. Those were for  
9 the sales from '05. The reason you heard about the shortfall, and the reason  
10 the budget adjustment had to be made, we were expecting about  
11 \$134,000,000. The \$16,000,000 difference is the result of several  
12 manufacturers withholding a portion of their payment, based upon what is  
13 known under the MSA as NPM, which is the non-participating manufacturer  
14 adjustment. That adjustment that we talked about before is a potentially  
15 very large adjustment on any given date, depending on how it's applied, and  
16 it's never been properly applied in the past. It is certainly our contention that  
17 it has not been properly applied, at least at this point to date. The way it  
18 works is this, the volume adjustment is based upon a reduction in domestic  
19 sales of cigarettes. The NPM adjustment, on the other hand, is based upon a  
20 market share loss from the participating manufacturers to non-participating  
21 manufacturers. That adjustment works in a way that is different than all the  
22 other adjustments. Volume adjustment, for example, if the reduction of the  
23 national sales is from, or national payments, is from \$7,000,000,000, for  
24 example, to 6 1/2 billion, that \$500,000,000 difference is spread out among  
25 all the states, based upon their allocable share, and Ned told you our share is

1 2.04 carried 7 more decimal points percent of the total payment.

2           The NPM adjustment, on the other hand, works differently. The  
3 NPM adjustment, if it is applied, is applied only among those states that  
4 have failed to diligently enforce the escrow statute. The escrow statute is the  
5 statute that the General Assembly passed in 1999 that requires non-  
6 participating manufacturers to pay on an annual basis on a per-stick basis an  
7 amount of money into an escrow account that is state specific. It is intended  
8 to be essentially the same amount of money that they would have had to pay  
9 under the MSA fund, had they joined the MSA. Without getting into a  
10 discussion as to whether or not that is true, if a state does not diligently  
11 enforce that statute, and we don't assure that those payments are made timely  
12 and those NPM companies fulfill their obligations under that statute, then  
13 potentially an adjustment to that state's portion of the MSA money becomes  
14 applicable. However, there's been no determination by any competent  
15 forum, court or otherwise, that any state, including Virginia, has failed to  
16 move to enforce. It's our position that money was withheld improperly until  
17 that determination has been made.

18           The reason it happened this year and has not happened in years  
19 past is because one of the other prerequisites to an NPM adjustment has  
20 occurred for the first time. That's what you may have read in the paper  
21 during March. The determination by the national firm, the Brattle Group,  
22 that the MSA was in fact a significant factor in the resulting loss of market  
23 share from participating manufacturers to non-participating manufacturers.  
24 That is a prerequisite for the application of the NPM adjustment, as of the  
25 first time that occurred. That determination applies to the 2003 sales year.

1 So the adjustment that has been withheld by some of the companies is  
2 actually for 2003 sales. This issue is going to be a reoccurring issue, unless  
3 and until there is a final resolution of this NPM adjustment issue that is in  
4 the MSA, the NPM adjustment provision. That effort is ongoing, and the  
5 states and the companies continue to try to come to some mutually agreeable  
6 way to avoid this conflict each year.

7 Philip Morris, Virginia's hometown manufacturer among the  
8 participating manufacturers, they made their full payment, and they still  
9 reserve their right to claim an offset refund in the future based upon the  
10 NPM adjustment, but they made theirs. The primary basis for the  
11 \$16,000,000 shortfall is the withholding by RJR and Lorillard. Of that  
12 money, 15 1/2 million is accounted for by their withholding. The other half  
13 million is from the smaller participating manufacturers, most notably the  
14 Commonwealth brands out of Kentucky. There are a few of the smaller ones  
15 that have bankruptcy and that sort of thing, but we have some of that each  
16 year and that's relatively a few dollars. It's RJR and Lorillard's withholding  
17 of a portion of the MSA payments that were due, based upon their  
18 contention that they're due this NPM adjustment, that resulted in 15 1/2 of  
19 the 16 million shortfall. We have filed suit as of Tuesday. Under the  
20 original MSA suit to have the Circuit Court of the City of Richmond, which  
21 is the court of jurisdiction for the MSA payment matters in Virginia to  
22 resolve the matter. We're confident we're correct in our interpretation of the  
23 MSA, and that we have diligently, in fact, enforced the escrow statute, but  
24 that will be an issue for litigation, and the court will have to make that  
25 determination. There'll probably be preliminary issues as to whether or not

1 it should be subject to arbitration, as opposed to judicial determination. I  
2 don't expect that \$16,000,000 will be coming in to the state coffers in the  
3 next 30 days. It might come in within the next 12 months, we just don't  
4 know. We do expect to get it sooner or later.

5 SENATOR HAWKINS: Thank you. I think that  
6 underscores some of the things we're looking at.

7 I'd like to stop for a moment and recognize Secretary Jody  
8 Wagner. Jody Wagner guided us through this securitization, and without  
9 your effort concerning what we were involved with, I'm not sure we would  
10 have been able to get the deal that we received, and I thank you for that.

11 Frank, is that it?

12 MR. FERGUSON: Yes, sir.

13 SENATOR HAWKINS: All right. I'm going to  
14 have to leave to go to the Senate, and I'll turn it over to Delegate Kilgore.

15 DELEGATE KILGORE: Steve, Indemnification  
16 Update.

17 MR. ROSENTHAL: Mr. Chairman and members  
18 of the Commission, I'll be brief. The 2006 Phase 1 program is underway.  
19 Verification forms and applications for payment are being mailed today and  
20 tomorrow for approximately 52 1/2 thousand eligible claims. This includes  
21 forms and applications being mailed to approximately 6,000 1999 crop year  
22 quota holders, which a former application was not submitted previously. We  
23 worked through these claims to locate the current addresses and verified  
24 claims and ownership information on how to get these folks their money.  
25 Once the claimants had received their verification forms we worked with the

1 U. S. Department of Agriculture and the local farm service agencies, held  
2 work sessions throughout the region to provide assistance about any claims  
3 or any questions. Other work sessions are scheduled in your areas for May  
4 8th in Jonesville and Gate City. May 9 will be in Abingdon. May 10 will be  
5 in Chatham and Halifax, and on May 11, Lawrenceville.

6 As you approved, the January deadline for submission of  
7 verification forms is May 19. We plan to transmit the payment data to the  
8 Department of Agriculture by Monday, June 5, and payments will be mailed  
9 by the end of that week. I totally want to thank the Department of  
10 Agriculture and the FSA for helping us cure up for this year. Both have been  
11 very cooperative, and we've had a number of meetings.

12 The second item, Mr. Chairman, is that our contract with the  
13 Commission calls for an extensive audit of the work we do. Let me thank  
14 Ned Stephenson and Stephanie for helping us work through what turned out  
15 to be a very lengthy process trying to get an auditor on board. We're pleased  
16 to report to the Commission the auditor is on board, and we're in the process  
17 of what's going to be a three-year audit process.

18 That's my report, Mr. Chairman, and I'll be happy to answer any  
19 questions.

20 DELEGATE KILGORE: Any questions of Steve?

21 Delegate Dudley.

22 DELEGATE DUDLEY: Steve, in the dealings  
23 you've had with indemnification payments, would it be possible for you to  
24 identify the number of claims that may be under 1,000 pounds quota, or  
25 under 2,000 pounds quota, for some relativity?

1 MR. ROSENTHAL: Could we do that for you?  
2 Certainly.

3 DELEGATE DUDLEY: The reason I ask that  
4 question is that Mr. Bryant talked about an earlier payout schedule, and that  
5 may be one thing we need to look at, satisfying some of these smaller  
6 claims, which in turn I would think would give us a much lower contract  
7 price for Mr. Rosenthal in terms of renewal, because they'd be handling  
8 fewer claims. Is that something we could look at?

9 DELEGATE KILGORE: Delegate Dudley, I guess  
10 that is something we can look at. Steve, can you provide that information  
11 for those that are a thousand pounds or under?

12 MR. ROSENTHAL: We can, we can provide that  
13 information. That might require some sort of statutory change, if you're  
14 going to divide up what claims are entitled to indemnification and which  
15 ones are not.

16 DELEGATE KILGORE: I think he's saying you  
17 pay those out quicker, you pay the smaller ones out, and if you could pay  
18 them quicker, and if you had to stretch the other ones out over a ten-year  
19 period of time, the bigger ones, you could do that. I believe that's what he's  
20 saying. C. D.

21 MR. BRYANT: I think Frank Ferguson would  
22 probably make a comment about that, and it wouldn't be advisable for the  
23 Commission to take a course where you'd take a certain amount of pounds  
24 and not make a payment.

25 DELEGATE KILGORE: I think we will make

1 payment, but accelerate them because of handling if it's less than a thousand  
2 pounds, and get the money to that particular grower.

3 MR. BRYANT: Is that what you're saying?

4 DELEGATE KILGORE: I agree, I know my  
5 phone would ring off the hook, and I represent most of those people who  
6 have under a thousand pounds.

7 DELEGATE DUDLEY: Mr. Chairman, I was led  
8 to believe that the federal buyout program was like that. If you had a certain  
9 level of allocation, that would all be paid out in one year. Is that not correct?

10 MR. LEWIS: My experience in the buyout,  
11 Delegate Dudley, it's a ten-year buyout and the accelerated buyout, whether  
12 you have zero or one pound or a thousand pounds. It's planned over ten  
13 years, and you have the option in year one or in succeeding years for  
14 advancement, a buyout with the local banking institution.

15 DELEGATE KILGORE: Any further comments or  
16 questions? All right, thank you.

17 MR. STEPHENSON: Mr. Chairman, if we're  
18 wrapping up, I'd like to recognize Staff member Laura Moffitt, she's there by  
19 the door. Laura, would you raise your hand? Would you give us a word  
20 about lunch, please?

21 MS. MOFFITT: Boxed lunches will be served in  
22 the private dining room.

23 MR. STEPHENSON: Laura is credited with  
24 moving this entire affair from Roanoke to Richmond on three days' notice,  
25 and we thank her for that work.

1                   Mr. Chairman, other than the public comment, I think we're  
2 through.

3                   DELEGATE KILGORE: Do we have any public  
4 comment, or is there anyone that would like to come before the Commission  
5 for public comment? Now is the time, if you wish to do that. Hearing none,  
6 I believe the next Commission meeting date is set for Thursday, July 27th in  
7 the Hotel Roanoke.

8                   Do I have a motion we adjourn? We're adjourned.

9  
10                   PROCEEDINGS CONCLUDED.

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19                   CERTIFICATE OF THE COURT REPORTER

20  
21

22                   I, Medford W. Howard, Registered Professional  
23 Reporter and Notary Public for the State of Virginia at large, do hereby  
24 certify that I was the court reporter who took down and transcribed the  
25 proceedings of the **Virginia Tobacco Indemnification and Community**

1 **Revitalization Commission Full Commission Meeting when held on**  
2 **Thursday, April 27, 2006 at 10:00 a.m. in the Sheraton Richmond West**  
3 **Hotel, Richmond, Virginia.**

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

6 Given under my hand this 3rd day of May, 2006.

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Medford W. Howard

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Registered Professional Reporter

14

Notary Public for the State of Virginia at Large

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18 My Commission Expires: October 31, 2006.

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