

- 1 **APPEARANCES:**
- 2 The Honorable Charles R. Hawkins, Chairman
- 3 Mr. Stephen S. Banner
- 4 Mr. Kenny F. Barnard
- 5 The Honorable Robert S. Bloxom, Secretary of Agriculture and Forestry
- 6 Mr. Clarence D. Bryant, III
- 7 The Honorable Kathy J. Byron
- 8 The Honorable Barnie K. Day
- 9 Mr. Fred M. Fields
- 10 The Honorable Patrick S. Gottschalk, Secretary of the Department of
- 11 Commerce and Trade
- 12 Mr. Scott M. Harwood, Sr.
- 13 Mr. L. Jackson Hite
- 14 The Honorable Clarke N. Hogan
- 15 Mr. Jordon M. Jenkins, Jr.
- 16 The Honorable Daniel W. Marshall, III
- 17 Mr. Buddy Mayhew
- 18 The Honorable Harrison A. Moody
- 19 Ms. Connie Lee Greene Nyholm
- 20 The Honorable Edward Owens
- 21 Mr. David S. Redwine, DVM
- 22 Mr. Kenneth Reynolds
- 23 The Honorable W. Roscoe Reynolds
- 24 The Honorable Frank M. Ruff
- 25 Mr. Bryant L. Stith

1 **APPEARANCES: (cont'd)**

2 The Honorable William C. Wampler, Jr.

3 The Honorable Thomas C. Wright, Jr.

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6 COMMISSION STAFF:

7 Mr. Neal Noyes, Executive Director

8 Mr. Ned Stephenson, Deputy Director

9 Mr. Timothy F. Pfohl, Grants Program Administration Manager

10 Ms. Stephanie Wass, Director of Finance

11 Ms. Britt E. Nelson - Manager of Program Assessments

12 Ms. Sara Williams - Grants Coordinator, Southwest Virginia

13 Ms. Sarah Capps - Grants Coordinator, Southside Virginia

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15 OFFICE OF THE ATTORNEY GENERAL:

16 Mr. Francis N. Ferguson, Deputy Attorney General, Counsel for the
17 Commission

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1 SENATOR HAWKINS: Good morning,
2 everyone. It's 10:00, so we'll go ahead and get started. Good morning to
3 everyone. Thank you all for being here.

4 Neal, would you call the roll?

5 MR. NOYES: Mr. Banner?

6 MR. BANNER: Here.

7 MR. NOYES: Mr. Barnard?

8 MR. BARNARD: Here.

9 MR. NOYES: Secretary Bloxom?

10 SECRETARY BLOXOM: Here.

11 MR. NOYES: Mr. Bryant?

12 MR. BRYANT: Here.

13 MR. NOYES: Delegate Byron?

14 DELEGATE BYRON: Here.

15 MR. NOYES: Mr. Day?

16 MR. DAY: Here.

17 MR. NOYES: Ms. DiYorio?

18 MS. DIYORIO: (No response.)

19 MR. NOYES: Mr. Fields?

20 MR. FIELDS: Here.

21 MR. NOYES: Secretary Gottschalk?

22 SECRETARY GOTTSCHALK: Here.

23 MR. NOYES: Mr. Harwood?

24 MR. HARWOOD: Here.

25 MR. NOYES: Mr. Hite?

1 MR. HITE: Here.
2 MR. NOYES: Delegate Hogan?
3 DELEGATE HOGAN: Here.
4 MR. NOYES: Mr. Jenkins?
5 MR. JENKINS: Here.
6 MR. NOYES: Delegate Johnson?
7 DELEGATE JOHNSON: (No response.)
8 MR. NOYES: Delegate Marshall?
9 DELEGATE MARSHALL: Here.
10 MR. NOYES: Mr. Mayhew?
11 MR. MAYHEW: Here.
12 MR. NOYES: Mr. Moody?
13 MR. MOODY: Here.
14 MR. NOYES: Ms. Nyholm?
15 MS. NYHOLM: Here.
16 MR. NOYES: Mr. Owens?
17 MR. OWENS: Here.
18 MR. NOYES: Senator Puckett?
19 SENATOR PUCKETT: (No response.)
20 MR. NOYES: Mr. Redwine?
21 MR. REDWINE: Here.
22 MR. NOYES: Mr. Reynolds?
23 MR. REYNOLDS: Here.
24 MR. NOYES: Senator Reynolds?
25 SENATOR REYNOLDS: Here.

1 MR. NOYES: Senator Ruff?

2 SENATOR RUFF: Here.

3 MR. NOYES: Mr. Stith?

4 MR. STITH: Here.

5 MR. NOYES: Mr. Thompson?

6 MR. THOMPSON: (No response.)

7 MR. NOYES: Senator Wampler?

8 SENATOR WAMPLER: Here.

9 MR. NOYES: Delegate Wright?

10 DELEGATE WRIGHT: Here.

11 MR. NOYES: Delegate Kilgore?

12 DELEGATE KILGORE: (No response.)

13 MR. NOYES: Chairman Hawkins?

14 CHAIRMAN HAWKINS: Here.

15 MR. NOYES: Mr. Chairman, we have a quorum.

16 SENATOR HAWKINS: All right. Do we have a

17 motion to approve the Minutes of July 30th in Bristol? It's been moved and

18 seconded that the Minutes be approved. All in favor, aye? (Ayes.)

19 Opposed? (No response.) The Minutes are approved.

20 Before we get to the Agenda, I would like to make an
21 introduction because we have the new President of Averett College in
22 Franklin County, and I'd like to recognize her.

23 UNIDENTIFIED: Thank you very much, and glad
24 to be here.

25 SENATOR HAWKINS: Now, let's get to the

1 Agenda.

2 Senator Wampler.

3 SENATOR WAMPLER: Mr. Chairman and
4 members of the Commission, Special Projects met this morning, and I draw
5 your attention to tab number three, and we took up one matter that we would
6 recommend to the full Commission. There was not a working majority or a
7 quorum present, and we made a recommendation to the full Commission.
8 This had to do with the application that was heard from our last meeting and
9 it was deferred from the last meeting from VCU, specifically the Cancer
10 Research Initiative, and they revised their application. You will have 50
11 clinical referrals within the Southside region. What VCU hopes to do is to
12 turn direct services to Southside, and also a very strong component is trying
13 to get information referrals relative to cancer health risks to citizens of
14 Southside at various locations that they want to place that information in.
15 There was some information or some discussion about whether you do that,
16 that information referral, just to libraries or from other venues, perhaps. It
17 was much improved application.

18 If there are no questions concerning that, then I'd make a
19 motion that we approve the application presented, which is roughly \$1
20 million.

21 SENATOR HAWKINS: Is that in the form of a
22 motion?

23 SENATOR WAMPLER: Yes.

24 SENATOR HAWKINS: It's been moved and
25 seconded. Any discussion? All those in favor say aye? (Ayes.) Opposed?

1 (No response.) Motion carries.

2 SENATOR WAMPLER: There is one other
3 technical matter, and we have two motions. It was brought to our attention
4 by Mr. C. D. Bryant concerning two additional grants, two existing grants,
5 and I would call them technical in nature. They were grant 1669, and I'd
6 move these in a block, Mr. Chairman. It had to do with administrative duties
7 relative to a vendor who was named in the previous grants. I'll read this into
8 the record.

9 "Move to amend grant number 1669 to remove the vendor
10 restrictions thereby permitting the grantee, Concerned Friends, to choose
11 from among all vendors and select the best one for the project."

12 Did I state that correctly, C. D.?

13 MR. BRYANT: Yes, sir.

14 SENATOR HAWKINS: The Chair will defer to
15 Mr. Bryant.

16 MR. BRYANT: This project has the name of the
17 vendor in the grant and the previous grant, which was 1157, which we have
18 a contract with ROI, that contract has been breached, so we need to take the
19 name of the vendor out, 1669, and leave it up to the project.

20 SENATOR HAWKINS: Does everyone
21 understand the motion?

22 SENATOR WAMPLER: I've made the motion,
23 and we need a second.

24 SENATOR HAWKINS: There's a second.

25 SENATOR WAMPLER: The second part of that

1 motion is grant number 1157. "At the request of the Grantee, Virginia Tech
2 Foundation, I move that the Commission authorize the Executive Director
3 and Commissioner Bryant to act on advice of counsel in determining the
4 final disposition of a \$51,000 claim made by Renewable Oil International,
5 LLC."

6 SENATOR HAWKINS: Is that included in the
7 block?

8 SENATOR WAMPLER: Yes.

9 SENATOR HAWKINS: It's been moved and
10 seconded. Any further discussion? All those in favor say aye? (Ayes.)
11 Opposed? (No response.) The motion carries.

12 SENATOR WAMPLER: Mr. Chairman, I'll be
13 very brief. There were a couple of other applications throughout the year
14 that we did not act upon. We didn't have enough cash remaining in the
15 budget. As other projects are either funded or not funded, there may be
16 additional cash that becomes available to Special Projects to take up other
17 matters. Maybe we can take it up specifically at the January meeting for
18 other vendors.

19 SENATOR HAWKINS: Thank you.

20 SENATOR WAMPLER: That concludes my
21 report.

22 SENATOR HAWKINS: Delegate Hogan.

23 DELEGATE HOGAN: Thank you, Mr. Chairman.
24 This morning we decided to move our grant application process back to
25 more or less December 1, if that's agreeable with the Staff. We heard some

1 discussion about the Last Mile trying to find, try to work that into the next
2 phase for the upcoming applications.

3 SENATOR HAWKINS: All right, thank you.
4 Next is Education, Senator Ruff.

5 SENATOR RUFF: Thank you, Mr. Chairman.
6 The Education Committee met on October 16th in Roanoke. We saw 43
7 applications that came before us, for a total of \$17 million. Of those we
8 moved several proposals because they involved areas that we had not
9 previously dealt with. We felt like maybe a broader discussion of those
10 areas would better serve the Commission, trying to deal with at this time,
11 and that will be for further discussion.

12 At this time I'd make a motion that we approve the 19
13 applications, and those 19 applications total \$9,659,334. That includes a
14 total of \$4,750,000 going to the four-year scholarships. That's the motion.

15 SENATOR HAWKINS: There's been a motion,
16 and it has been seconded. Any discussion? All in favor say aye? (Ayes.)
17 Opposed? (No response.)

18 SENATOR RUFF: Mr. Chairman, we also made
19 the decision that grants would automatically expire, with the full
20 Commission's approval, 36 months after they're approved, unless extended
21 by the Commission. So, I'd ask that that be the policy from now on, and I'd
22 so move that.

23 SENATOR HAWKINS: It's been moved and
24 seconded. Any discussion? Does everyone understand the motion? All
25 those in favor say aye? (Ayes.) Opposed? (No response.) Motion carries.

1 SENATOR RUFF: Mr. Chairman, the last
2 recommendation is that the Southwest Virginia Higher Education Center be
3 named as the Administrator for the four-year scholarships, with a fee to the
4 Center not to exceed 6.5 percent of the grant, and I so move.

5 SENATOR HAWKINS: It's been moved and
6 seconded. Any discussion? Does everyone understand the motion? All
7 those in favor say aye? (Ayes.) Opposed? (No response.) The motion
8 carries.

9 Next, Southside Economic Development, Ed Owens.

10 MR. OWENS: The Southside Economic
11 Development Committee met on October 16th, and we saw 12 applications
12 totaling \$9.3 million. We're recommending to you today eight applications
13 totaling \$7,469,594, and that's shown behind tab number five.

14 I move that we vote on these in a block.

15 SENATOR HAWKINS: There's a motion and a
16 second that we move these in a block. Any discussion?

17 MR. OWENS: Mr. Chairman, I have a
18 recommendation to pull out one of these in the block.

19 SENATOR HAWKINS: Which one is that?

20 MR. OWENS: 1738.

21 SENATOR HAWKINS: It's my understanding the
22 motion at this time is to adopt the block, with the exception of item 1738. Is
23 that correct?

24 MR. OWENS: Yes.

25 SENATOR HAWKINS: Is there a second to that

1 motion? All right. Any discussion? What we have before us is a motion for
2 the block and recommendation, with the exception of item 1738 being
3 removed. All in favor say aye? (Ayes.) Opposed? (No response.) The
4 motion carries. We can carry this over to the January meeting.

5 MR. OWENS: Mr. Chairman, 1738 dealt with a
6 short-term lease of property at the Danville Community that will have to be
7 given up in a couple of years. There is space in South Boston, and I think
8 that the parties all agree it would make more sense to do it at the Higher Ed
9 Center without having to make extensive renovations. If that doesn't work
10 out, we can come back, but I just think we should table it till the January
11 meeting and work out the details.

12 Mr. Chairman, there are two subjects that the Southside
13 Economic Development Committee discussed. One is that all grant
14 applications will expire automatically at 36 months unless extended by the
15 Commission in writing, and withholding of disbursements to those counties
16 with unfilled TROF obligations.

17 SENATOR HAWKINS: A motion has been made
18 and seconded. Does everyone understand what the motion does? Are there
19 any questions? Why don't you explain that?

20 MR. OWENS: Mr. Chairman, our motivation
21 would be that some grant awards have not been fulfilled, and we want the
22 money to be used as quickly as possible in the community, and the first part,
23 the 36-month expiration on the grant. The second part is that there have
24 been some TROF applications that have not been met and information has
25 not been sent back, and we're trying to get the TROF obligations met and/or

1 reimbursed for those grants.

2 SENATOR HAWKINS: They can resubmit these
3 in another application?

4 DELEGATE MARSHALL: The money goes back
5 to the localities?

6 MR. OWENS: Yes, goes back to the applicants.

7 SENATOR HAWKINS: It's been moved and
8 seconded. Any discussion? Does everyone understand the motion? All in
9 favor say aye? (Ayes.) Opposed? (No response.) The motion carries.

10 MR. OWENS: That completes my report.

11 SENATOR HAWKINS: Thank you, sir.

12 Delegate Kilgore is not here, so I'll turn this over to Senator
13 Wampler.

14 SENATOR WAMPLER: Mr. Chairman, the
15 Southwest Committee did not, we had one major project that we were
16 prepared to act on and one that is not at maturity, and we ask that that
17 application remain with the Committee and we'll act on it at a later date.

18 There is one other matter, and having the Southwest
19 Committee, Southwest representation would like to ask, and I'll put this in
20 the form of a motion, that an application considered by the Education
21 Committee and referred to the Long Range Planning Committee relating to
22 the Virginia Intermont College application be referred back to the Southwest
23 Committee for further discussion and perhaps action at a later date. I'd make
24 that in the form of a motion to the full Commission to refer that back to the
25 Southwest Committee.

1 MR. BANNER: Second.

2 SENATOR HAWKINS: It's been moved and
3 seconded. Any discussion? Does everyone understand the motion? All in
4 favor say aye? (Ayes.) Opposed? (No response.) The motion carries.

5 SENATOR WAMPLER: Mr. Chairman, this will
6 require a motion, and I'm going to defer to the Staff to explain, and this
7 involves the indemnification piece, and I would ask Staff to brief the full
8 Commission on this and what we'd accomplish with it.

9 The first motion would be with regard to the indemnification
10 process in the amount not to exceed \$999,000.

11 MS. WASS: Regarding the indemnification
12 contract this year, we've been working on this and with Troutman Sanders,
13 and we have a contract for the indemnification services through the end of
14 the program. At the current rate of payments we estimate three more years,
15 but we do have flexibility in the contract. So, at the three-year rate, the
16 proposal we have from Troutman Sanders would be \$331,500 per year, and
17 the final year it would be \$336,000. The total three-year contract is
18 \$999,000, and after that you authorize the Executive Director to execute the
19 contract with Troutman Sanders.

20 SENATOR HAWKINS: Does everyone
21 understand the report and the expenditure to pay off the indemnification? Is
22 that a motion?

23 SENATOR WAMPLER: Mr. Chairman, there is a
24 motion, and I'll read it. "I move to authorize the Staff to negotiate and
25 execute a contract with Troutman Sanders for indemnification processing

1 services for 2009, 2010 and 2011 at a total cost not to exceed \$999,000."

2 SENATOR HAWKINS: Is there a second? All
3 right. Does everyone understand the motion? Any discussion? All in favor
4 say aye? (Ayes.) Opposed? (No response.) The motion carries.

5 SENATOR WAMPLER: Mr. Chairman, there is
6 another motion I'll make with regard to the unobligated balances for the
7 indemnification.

8 MS. WASS: The 2007 indemnification has an
9 unclaimed balance of \$783,234 from the 2007 indemnification to the FY08.

10 SENATOR HAWKINS: My understanding is that
11 this is a normal process to transfer funds in this manner.

12 SENATOR WAMPLER: I'd move to approve the
13 budget amendment transferring \$783,234 from the 2007 indemnification to
14 undesignated.

15 SENATOR HAWKINS: Is there a second? All
16 right. Any discussion? All those in favor say aye? (Ayes.) Opposed? (No
17 response.) The motion carries.

18 SENATOR WAMPLER: Mr. Chairman, there is
19 another matter, and I'm going to call on Ned to briefly brief us. That's in
20 regard to the liability clause in trying to set the issue up. I think the
21 Commission is moving trying to have stricter adherence to the clawback
22 provisions. I think local government has some concerns, and I would say,
23 Mr. Chairman, it was maybe not as rigid as we currently are, but move
24 toward a closer position to the liability of local governments relative to the
25 Governor's Opportunity Fund. We couldn't come up with an agreement

1 yesterday, but I think in the next quarter it will be our recommendation to
2 say what's the current clawback provision.

3 MR. STEPHENSON: The Tobacco Region
4 Opportunity Fund uses a contract that is executed typically by the Tobacco
5 Commission with a given county or locality to a company that promises to
6 create jobs. In exchange for the contract the Commission pays a cash
7 incentive that goes to the county. All these contracts now contain what we
8 call a "County Liability Clause". It appears in your books behind the
9 Executive Committee tab. Basically, the County Liability Clause provides a
10 county is liable to refund grant money to the Commission in the event the
11 company fails on its promise; irrespective of whether or not the company
12 makes that refund, the county is at risk.

13 In your books there is a letter from one single locality that
14 objects to this clause, and they're not alone. There are others who have
15 objected to it. We've heard from a number of counties, and Senator
16 Wampler stated that the Executive Committee yesterday voted to affirm the
17 use of this clause at present, but instructed the Staff to work with Economic
18 Development Partnership to arrive at language that might soften it and try to
19 cure the problem to which the counties are objecting.

20 SENATOR HAWKINS: Did we not adopt new
21 language yesterday?

22 MR. STEPHENSON: The language yesterday, the
23 current language in the contract, you affirmed it with continuous use until
24 further notice.

25 SENATOR HAWKINS: All right. Let me make a

1 couple of statements here. We're not trying to put an undue hardship on
2 anyone that we deal with. We just need to have some method so they
3 understand the money that we're giving them to work with, that they do it.
4 And, we have to have someone to hold accountable, and if not, we might as
5 well just write a check, if we don't have some fiduciary responsibility, and
6 this gives us at least some ability to make sure that which we are giving
7 money to complies. Any locality or anyone who is a grant recipient can
8 appeal to this body, we can forgive the entire loan if we think there is a
9 hardship. We have to have some method to hold people accountable for that
10 which we write checks for. If we don't do that, then in my personal opinion,
11 we're not living up to our responsibility to the Commonwealth or to our
12 communities.

13 Senator Wampler.

14 SENATOR WAMPLER: I don't know if you want
15 to entertain any further questions.

16 MR. DAY: I have a question for Counsel. What
17 happens if one board enters this agreement and then an election occurs and a
18 new board is in place?

19 MR. FERGUSON: Mr. Chairman, without going
20 beyond any further than the top of my head trying to answer this, my initial
21 reaction is that if the contractual obligation that the prior board had
22 authorization to enter into, then that contractual obligation carries over in the
23 future. It's not the same as legislative action cannot be changed by a
24 subsequent board. Any legislative body cannot bind a future legislative
25 body in terms of legislative actions or enactment. Clearly, in an

1 administrative and in an executive capacity to execute contracts, they have
2 the ability to bind that locality to that obligation. So my answer, with some
3 fear of being corrected, but not much, is that the next board would be bound
4 by that obligation.

5 MR. NOYES: Ned, correct me if I'm wrong. This
6 matter is before the Commission at this meeting because we did not formally
7 vote to adopt the language in that previous meeting. Is that correct, Ned?

8 MR. STEPHENSON: That the entity that objects
9 to this clause asserted that we did not formally vote on it, although we have
10 voted before the Committee on three occasions and gave perhaps a
11 consensus, you did not vote. We're trying to make it abundantly clear that
12 this is the will of the Commission.

13 SENATOR HAWKINS: Then we need to vote.

14 SENATOR WAMPLER: I don't know if the Sub-
15 committee needs to make it clear, but there was discussion centered around
16 this same locality. The locality with a million-dollar grant from the Tobacco
17 Commission for a project and the locality would match that one million,
18 what kind of prorations might occur to ease the liability of the county. That
19 was the general topic of discussion.

20 The other major point would be, to cure it you would not award,
21 to absolutely cure it, you would not award dollars until after the fact and
22 agreements had been effected. However, the discussion along that line is,
23 you could kill the deal. I think it's fair to say that the Executive Committee
24 tried to come up with a recommendation, and we could not. Mr. Secretary
25 said he would work with the Partnership trying to find something a little bit

1 less rigid as far as the liability question.

2 SENATOR HAWKINS: I think that's correct.
3 We're trying to work as best we can with localities and work in tandem with
4 the Partnership to try to be on the same page with everybody. Maybe by the
5 next meeting we can have some language that we can adopt, a stop-gap
6 measure, at least that's my understanding. All right.

7 SENATOR WAMPLER: Mr. Chairman, there are
8 two other items that fit under this category. Ned might have to explain this,
9 also. Maybe we can take them in a block.

10 SENATOR HAWKINS: Let's do them in a block.
11 The next area we're talking about is to freeze all disbursements on all grants
12 henceforth approved for any applicant that has unresolved TROF obligations
13 outstanding.

14 MR. STEPHENSON: Mr. Chairman, the
15 Commission in Executive Session has made 177 TROF awards under these
16 contracts, and we've had some difficulty in trying to get a number of them,
17 or we have a number of them in what I'll call "unresolved." By unresolved I
18 mean that the duty to report the number of jobs created has not been
19 fulfilled, or that it has been fulfilled and has been found to be inadequate and
20 a proper refund has not been made.

21 In a couple of earlier meetings, some grants like Southside were
22 approved with a contingency the disbursement would be frozen until they
23 cured the unfulfilled TROF agreement. We've worked with the parties
24 trying to get those items resolved so a new grant could be funded. It was
25 before the Executive Committee yesterday to use that same freeze on all

1 grants issued by the Commission today forward to induce these communities
2 to cure these old and stale unfulfilled TROF agreements. That's what the
3 Executive Committee approved yesterday, and that's before you today.

4 DELEGATE MARSHALL: Just so I'm sure, the
5 localities or the agreement with a company is subject to providing the
6 Tobacco Commission that these jobs will be created. So we're going to
7 freeze the locality's money unless that company provides that information?

8 MR. NOYES: The grantee must provide the
9 information, it may come from the county.

10 DELEGATE MARSHALL: What happens if we
11 hold the locality hostage because the company will not do what they're
12 supposed to do?

13 SENATOR HAWKINS: Someone has to be
14 accountable, and we've got to have someone we can talk to. When we write
15 a check, we need to try to be able to talk to somebody. We've got to put in
16 place something that works. If the locality feels or the county feels they're
17 not being treated fairly, they can appeal to us or to the full Commission and
18 get some sort of ruling. We've got to have something in place.

19 DELEGATE HOGAN: When we give these funds
20 to the locality it's their obligation to make arrangements with the company
21 that they need to make arrangements with. They've got to have some means
22 of talking to each other. Who are you going to hold accountable?

23 SENATOR HAWKINS: Hopefully the localities
24 understand we've got to have some rules to go by and we'll try to work with
25 them, even if it's a hardship.

1 MR. HARWOOD: Mr. Chairman, my concern is
2 that is this going to be a hard and fast rule? I know in my locality in one
3 case we have a situation where the company actually is going bankrupt and
4 has disappeared and no one is anywhere, or we can't seem to get information
5 that's needed.

6 SENATOR HAWKINS: My understanding, the
7 TROF Committee can make an exception so there is a vehicle to handle
8 some problems. We're trying to be as fair as we can with the locality and
9 with everyone, and in that situation the TROF Committee can override that.

10 MR. MAYHEW: Mr. Chairman, we'd do this on a
11 case-by-case basis?

12 MR. NOYES: Previously approved grants are
13 grandfathered.

14 SENATOR HAWKINS: Is there a motion?

15 SENATOR WAMPLER: One more item for
16 consideration, the last item the Executive Committee discussed under this
17 provision of liability would be to use Virginia Employment Commission
18 records as the basis for verification of all TROF obligations. The discussion
19 was, do you want the company to send a letter to certify that they have met
20 the obligations, or do you wish to use a quarterly report? The employer is
21 required to file with the Employment Commission that as a basis for the
22 verification. I think that the discussion, or the more liberal interpretation, or
23 the easier way is to certify it from the Chief Executive Officer, or whatever
24 is required by law to be filed.

25 There was a brief discussion about if a start-up company uses

1 temporary employees and should we err on the side of allowing that to be
2 considered. If you use a temporary agency to bring employees in, that
3 wouldn't show up on the Virginia Employment Commission forms. I think
4 that's a fair representation?

5 MR. STEPHENSON: Yes.

6 SENATOR HAWKINS: Any discussion?

7 MR. DAY: When, in this instance that we're
8 talking about, when is an employee created? If they hire 100 people and six
9 months later lay off 75 of them, is the 100 threshold met?

10 SENATOR HAWKINS: Not according to me.
11 When you write a check, it shows up on the form.

12 Ned.

13 MR. STEPHENSON: You raise a very good
14 point, Bernie. The definition of a job is a little murky. We're using VEC
15 records showing the number of persons who got paid. It does require some
16 degree of subjectivity in determining whether the promise was met when the
17 number of employees is rising and falling over a period of time. We
18 typically average the number of employees during each calendar quarter and
19 compare that to the promise that was made to try to reach a conclusion as to
20 whether it was substantially met. I will tell you that the Staff has been
21 lenient in favor of companies in making these subjective calls.

22 SENATOR HAWKINS: We're not trying to make
23 it so difficult. We've just got to work together to make sure that they meet
24 some standards.

25 Now, is there any other discussion?

1 SENATOR WAMPLER: Mr. Chairman, I just
2 want to make this point. Let me read this. The motion includes, "Move to
3 make the following policy directives to Staff with respect to the TROF
4 program:

- 5 1. to retain the use of the "County Liability Clause" as it
6 appears behind tab 6 in your package.
- 7 2. to freeze all disbursements on all grants henceforth
8 approved for any applicant that has unresolved TROF
9 obligations outstanding.
- 10 3. to use Virginia Employment Commission records as the
11 basis for verification of all TROF obligations."

12 SENATOR HAWKINS: That's the motion. It's
13 been seconded. Any further discussion? All those in favor say aye? (Ayes.)
14 Opposed? (No response.) The motion carries.

15 That completes the motions. Thank you, sir.

16 MR. NOYES: I have a couple of housekeeping
17 announcements. Boxed lunches for commissioners and staff in Room 102.

18 Commission pictures will be taken on January 13th prior to the
19 Commission meeting in Richmond. We will provide you with details
20 moving forward.

21 Finally, Sarah Capps' office is now open in Chatham, and the
22 contact information will be shown on our Web site.

23 Thank you, Mr. Chairman.

24 SENATOR HAWKINS: Thank you. The next
25 Commission meeting is in Richmond, and look forward to seeing you all

1 there.

2 Are there any public comments?

3 MR. MAYHEW: Mr. Chairman, this is
4 housekeeping, but next time it would help if we had some, both at the
5 subcommittee and full Commission meetings, I think we need a better sound
6 system so that everybody can hear in the room. I'm sure those in the back of
7 the room have a hard time hearing, and I know I do. Sometimes you're
8 sitting here, and it's just very difficult to hear what someone is saying, so
9 could we somehow try to remember that for our future meetings, and I think
10 it would help everyone to be able to hear, provide some kind of sound
11 system to make it easier to try to follow along.

12 SENATOR HAWKINS: Point well taken.
13 Particularly, we need to make sure that our backs aren't to the audience, and
14 I know it's difficult for people to hear us, but your point is well taken.

15 MR. MAYHEW: I just feel that that would be an
16 improvement.

17 SENATOR HAWKINS: All right. Any public
18 comments? Going once, going twice, we're adjourned.

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20 PROCEEDINGS CONCLUDED.

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24 CERTIFICATE OF THE COURT REPORTER

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I, Medford W. Howard, Registered Professional Reporter and Notary Public for the State of Virginia at large, do hereby certify that I was the court reporter who took down and transcribed the proceedings of the **Virginia Tobacco Indemnification and Community Revitalization Commission Full Commission Meeting when held on Thursday, October 30, 2008 at 10:00 a.m. at the Institute for Advanced Learning and Research, Danville, Virginia.**

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

Given under my hand this 15th day of November, 2008.

Medford W. Howard

Registered Professional Reporter

Notary Public for the State of Virginia at Large

My Commission Expires: October 31, 2010.

Notary Registration Number: 224566