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**VIRGINIA TOBACCO INDEMNIFICATION
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501
Richmond, Virginia 23219

Research and Development Committee Meeting

Wednesday, October 28, 2009
4:00 p.m.

Wytheville Meeting Center
Wytheville, Virginia

1 **APPEARANCES:**

2 The Honorable Phillip P. Puckett, Chairman

3 The Honorable Kathy J. Byron

4 Ms. Linda P. DiYorio

5 The Honorable Terry G. Kilgore

6 The Honorable Daniel W. Marshall, III

7 Mr. Buddy Mayhew

8 Ms. Connie L. Nyholm

9 The Honorable Edward Owens

10 Mr. Kenneth O. Reynolds

11 Mr. James C. Thompson

12 The Honorable William C. Wampler, Jr.

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14 COMMISSION STAFF:

15 Mr. Neal Noyes, Executive Director

16 Mr. Ned Stephenson, Deputy Director

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

18 Ms. Stephanie Wass, Director of Finance

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1 SENATOR PUCKETT: I'll call the meeting of the
2 R&D Committee to order. We have a lot of things to talk about today, so
3 we're going to move into the Agenda very quickly.

4 Neal, would you call the roll?

5 MR. NOYES: Delegate Byron?

6 DELEGATE BYRON: Here.

7 MR. NOYES: Ms. DiYorio?

8 MS. DIYORIO: Here.

9 MR. NOYES: Deputy Secretary Hammond?

10 DEPUTY SECRETARY HAMMOND: (No
11 response.)

12 MR. NOYES: She'll join us tomorrow.

13 Delegate Kilgore?

14 DELEGATE KILGORE: Here.

15 MR. NOYES: Delegate Marshall?

16 DELEGATE MARSHALL: Here.

17 MR. NOYES: Mr. Mayhew?

18 MR. MAYHEW: Here.

19 MR. NOYES: Ms. Nyholm?

20 MS. NYHOLM: Here.

21 MR. NOYES: Mr. Owens?

22 MR. OWENS: Here.

23 MR. NOYES: Senator Puckett?

24 SENATOR PUCKETT: Here.

25 MR. NOYES: Mr. Reynolds?

1 MR. REYNOLDS: Here.

2 MR. NOYES: Mr. Stith?

3 MR. STITH: (No response.)

4 MR. NOYES: Mr. Thompson?

5 MR. THOMPSON: Here.

6 MR. NOYES: Senator Wampler?

7 SENATOR WAMPLER: Here.

8 MR. NOYES: We have a quorum, Mr. Chairman.

9 SENATOR PUCKETT: Thank you. Do I have a
10 motion to approve the Minutes of the July 21st meeting? It's been moved
11 and seconded. All those approving the Minutes say aye? (Ayes.) Opposed?
12 (No response.)

13 The next item on the Agenda is the application review process.

14 MR. STEPHENSON: Members of the Committee,
15 if you'll look at your books, page 24, you can follow along. Many of the
16 interested parties have had questions about what the approval process will
17 look like. In consultation with the Chairman and the Director, we have
18 devised a deal-flow process, numbers 1 through 7, which describes how the
19 applications will be treated as they flow into the office and through the Staff
20 and the Committee Review Panel and ultimately to the Commission. There
21 is one particular step in that last list, item number 3, that I want to raise a
22 question before the Committee as to whether or not you want to include step
23 number 3. That is a step whereby this Committee gets to look at the batch of
24 applications and decide which ones, if any, are referred to the Review Panel
25 or whether you would rather Staff, the entire batch go directly to the Review

1 Panel and you see them later. That's a question for this Committee. I think
2 the issue is additional meeting times and delay in the process. However, it
3 may be worth it to you to manage those applications that go to the Review
4 Panel, Mr. Chairman.

5 SENATOR PUCKETT: Any comment or
6 questions concerning what Ned has just said and called our attention to on
7 item number 3?

8 DELEGATE MARSHALL: My suggestion is that
9 we let those go directly to the Partnership, not only for the reason as far as
10 Committee meetings, but also as far as confidentiality. One of the things
11 that I worry about, and I've talked to some of the people out here in the room
12 and some people who are not there, I see that in the Minutes, is that the
13 issues that they are going to be bringing to us is affecting somebody's wallet.
14 My suggestion is that we send them directly to the Partnership for that
15 reason.

16 SENATOR PUCKETT: Thank you, Danny.
17 Kathy.

18 DELEGATE BYRON: Just for clarification, are
19 they going to review on the same level that our Staff does, like the
20 Guidelines?

21 MR. NOYES: The VEDP process will be far more
22 in-depth in the analysis of the science and then a very high-level analysis of
23 commercialization potential, and a report on that is what will be delivered
24 back to this Committee for your deliberations and recommendations to the
25 full Commission.

1 I understand Delegate Marshall's position on the confidentiality,
2 and it's an issue that has come up a lot for discussion with the Staff. I spoke
3 yesterday with Deputy Attorney General Ferguson, and he believes we may
4 protect confidential information. If you have something that is proprietary,
5 like a business plan, information about the science that will be involved in
6 the research effort, mark it as confidential. That way, only the front sections
7 of an application which will show how much is being requested and by
8 whom and a general description of the project would be available. If the
9 applicant were to mark as confidential we can protect that, and we'll have to
10 see how that goes. Certainly information that comes back from VEDP, we
11 would anticipate that would be maintained on a confidential basis.

12 The second issue, and this came up very briefly when we were
13 visiting with Ms. Nyholm in July, has to do with occasions where this
14 Committee may wish to recommend an applicant or a project for funding,
15 for whatever reasons, without the project having gone through the full
16 vetting process. Ned and Tim, we heard from Jerry Giles, and that was
17 going to be, how many weeks was the estimate?

18 MR. STEPHENSON: Many.

19 MR. NOYES: It was like four months to six
20 months. There will be occasions when projects you may wish to consider,
21 and that six months or four months or three months, however long that
22 vetting process takes would mean an applicant would cease to be interested
23 in working with our counties and with the Commission. When I said that
24 there may be instances where the Committee would wish to make a decision
25 and not have the project go through the vetting phase, he said we never

1 discussed that; we're discussing it now.

2 MR. MAYHEW: Mr. Chairman, I thought the
3 limited amount of discussion we gave to this down at the meeting when we
4 met at VIR, this Committee after a first vetting, if you would, by the Staff
5 we'd weed out those that just didn't stand any chance at all and we wouldn't
6 have to look at those, but anything else could come to this Committee.
7 Then, as we felt needed or necessary we could call on maybe the full group,
8 maybe just one individual, to give a professional opinion about questions we
9 might have that would streamline this process. I think if we're going into
10 something that's going to drag out from four to six months, I don't think that
11 will work very well in some cases. I'd like to see if there is something that is
12 not so complicated and so foreign to what we're trying to do that we just
13 have the ability to take a look at it ourselves first. Then if we feel like it
14 needs this long vetting and additional resources applied to it, then move in
15 that direction. That's just my opinion about it.

16 MR. STEPHENSON: Mr. Chairman, one of the
17 down sides of skipping the meeting is that if Staff screens the projects and
18 ends up with 15 eligible projects, it will flood VEDP's table and produce a
19 heavy work load for them, looking at 15 different projects. Whereas, if you
20 screen them before they go to VDEP it might knock half of them out, 90
21 percent of them.

22 DELEGATE MARSHALL: Mr. Chairman, we're
23 going to have some very technical ideas, I assume, that are going to come
24 here. Some of this stuff will be rocket science, and I don't know of anybody
25 with rocket science sitting here at this table, except Mr. Kilgore. How are

1 we going to determine whether it's a good idea or what is a good idea, what's
2 going to be a game changer, as opposed to giving that responsibility to the
3 Partnership?

4 MR. OWENS: Mr. Chairman, I agree with what
5 **Delegate Marshall said. Some of it is not going to be rocket science, and
6 some of it we'll be able to get out ourselves. If we wait four to six months,
7 the technology could change in four to six months. If we really plan on
8 getting something done quickly and effectively, I just don't see us holding
9 every project for four to six months.

10 MR. MAYHEW: We'll still have the option of
11 going that way.

12 SENATOR WAMPLER: Mr. Chairman, I think I
13 recall the discussion that Mr. Mayhew brings up, and this is not perfect.
14 Also, Delegate Marshall's point, we probably are not the technical group to
15 review this. We're talking about a \$100 million allocation of Commission
16 funds, and at least for the first round I would feel more comfortable with my
17 fiduciary responsibilities of reviewing and just knowing what has been
18 submitted. Yes, it would require work on the part of this Committee, but I
19 think that we owe it to all of our stakeholders to at least understand as best
20 we can what is there. We'll learn very quickly maybe we're not the best
21 folks to take the first cut at it, and that's just my opinion. I understand the
22 complications and the challenge, and we can properly go into Executive
23 Session if there is something of a proprietary nature. I'm uncomfortable just
24 passing it straight on to the Partnership without us being at least familiar on
25 a most elementary level of what is being proposed.

1 DELEGATE KILGORE: If we're going to do that,
2 then we all have to make a commitment to meet and meet quickly to do a
3 review of the applications. I think we'll have to have an immediate call to
4 try to get things worked out and whatever we are going to do. We'll just
5 have to be able to meet quickly.

6 DELEGATE MARSHALL: In Southside
7 Economic Development we have two defined dates that we have
8 applications submitted. We're not looking at quite doing that here for R&D.
9 This is almost an open enrollment, and if we do that we need to have defined
10 dates if we're going to go that way, once a quarter or whatever the date is,
11 and we'll look at those, as opposed to just having an open enrollment.

12 SENATOR PUCKETT: Anyone else? Ned,
13 would it be unreasonable to say that the R&D Committee, after Staff has
14 made their review and recommendations, that within a seven-day period of
15 time meet? Is that unreasonable that we could meet within that time?

16 MR. STEPHENSON: It may be preferable to say
17 that if there is a conflict to allow for scheduling. To Delegate Marshall's
18 point, it is an open submission rolling application. The Staff is trying to use
19 a --- system, and we've announced a batch date of November 9. Everything
20 that gets to the floor by that date, we'll match up and deal with them and put
21 them to the Chairman and call a meeting and deal with those. We might do
22 that again 30 days later with another batch and keep these moving, rather
23 than waiting for meetings that are fixed for months, just so we can be prompt
24 with these.

25 MR. NOYES: I think what I'm hearing is that we

1 got the first batch with an application due date on November 9th. We
2 probably need to convene the Committee shortly thereafter for your decision
3 on which ones should go through the vetting process and which ones should
4 not. I would like to suggest that we should simply plan to meet ahead of the
5 Executive Committee at least four times a year, I mean this Committee, and
6 that way when we have vetted information you all would make the decision
7 on which project to recommend so we can get those projects approved the
8 next day.

9 MR. MAYHEW: With an option of having a
10 called meeting.

11 MR. NOYES: Always with the option of having
12 the discretion of having a called meeting. If we set things up so that
13 applicants have an idea that we're going to do this at least four times a year
14 and decide which ones go through vetting and also which ones are
15 recommended, that's a lot of meetings, and we can have as many other as
16 Senator Puckett decides to call as necessary.

17 SENATOR PUCKETT: We can have several, and
18 we'll have them in Southwest. No, I think I'm hearing that there is a desire
19 to have a vetting of this Committee once the Staff has initial vetting. Do we
20 need a motion?

21 DELEGATE MARSHALL: Are we going to vet
22 every application that comes, or is Staff going to call some of these out?

23 MR. NOYES: Once they meet this threshold
24 criteria that's already been stipulated, like not having one-to-one match and
25 not having a legitimate Virginia affiliation, once those basic things, it will be

1 up to the Staff to return those and continue to work, perhaps, with the
2 applicants. The ones that do pass the minimum threshold criteria, you're
3 going to see them soon after the 9th of November.

4 DELEGATE MARSHALL: This is new ground
5 for us to plow. Do you see that an applicant is going to come before us and
6 make a presentation of why their idea is good?

7 MR. NOYES: I thought that would happen prior
8 to the deliberations to recommend or not recommend the project, but we can
9 do it however the Committee wishes.

10 SENATOR PUCKETT: Any other comments?

11 MR. REYNOLDS: Mr. Chairman, it appears that
12 before we start down the road we need to revise our procedures, and we'll
13 have to do a little trial and error maybe and make sure we're on the right
14 track.

15 SENATOR PUCKETT: Is the Staff clear on those
16 instructions?

17 MR. STEPHENSON: Yes.

18 SENATOR PUCKETT: Are there any of those
19 seven items that we need to talk about? I think we talked about number 3.
20 Hearing nothing, does anyone have a problem with the other six? All right,
21 let's move some policy issues.

22 MR. NOYES: We've dealt with the first two, and
23 the third one has to do or comes up in Staff discussions with applicants and
24 the R&D Centers, VEDP. Equipment purchase. The equipment would be
25 owned by the private sector partner. The Commission policy has been to

1 allow ownership by an eligible applicant, public body or non-profit, with
2 some sort of lease arrangement that would benefit the private sector party.
3 The issue here is if we make a grant and it goes to the private sector party,
4 then at the end of that research project, that private sector party owns it and
5 disposes of it however they wish. We need clarification from the Committee
6 on what you want us to do.

7 DELEGATE KILGORE: I would agree that we
8 need to make sure that if we're in the equipment business that that equipment
9 stays within the footprint of the Tobacco Commission, Southside or
10 Southwest. We need to follow up on the eligible applicant ownership of
11 equipment. I think that would be fine, Neal.

12 MR. NOYES: There are really two issues, and one
13 is ownership and the other is where is the equipment to be located, and
14 they're really separate issues.

15 DELEGATE KILGORE: I don't think anyone on
16 the Commission, or I hope would agree that the equipment has to be located
17 within the footprint.

18 MR. NOYES: There will be large projects where
19 there will be involvement by universities which are not within the footprint,
20 and there may be an intention to move that equipment to the footprint when
21 our R&D Centers are built, but the award may happen in advance.

22 DELEGATE KILGORE: In my opinion, if we're
23 going to invest a hundred million dollars as a fiduciary of the Tobacco
24 Commission to revitalize Southside and Southwest, we have to keep it
25 within our footprint. I don't see any other way around that.

1 DELEGATE MARSHALL: The purpose is jobs
2 and jobs here. We're not trying to create jobs outside the footprint.

3 MS. NYHOLM: Neal's point that if the award is
4 made prior to building the center, then let's make it contingent upon their
5 moving with that partnership.

6 MR. NOYES: We can develop lots of different
7 language that says the equipment must stay within the footprint except if
8 there is a vote of the Commission to release somebody from that. It's
9 providing the view of this Committee to applicants for R&D funding. What
10 I'm hearing so far is no direct ownership by private sector entities of
11 equipment financed with Commission funding.

12 MR. MAYHEW: Unless the Commission decides
13 otherwise.

14 MR. NOYES: As a general policy we wish that it
15 remain in the grantee's hands. That's what we're looking for. We also wish
16 the equipment to be located within the Tobacco Commission footprint unless
17 the Commission makes a determination otherwise. One reason is that this
18 equipment is almost always school-use equipment and used for different
19 research projects. It will have a useful life that will extend beyond the
20 research project that the Commission is asked to provided assistance. For
21 folks to use that research equipment, they're going to have to come in the
22 footprint that's located here.

23 DELEGATE BYRON: Didn't the last set of
24 parameters that we put together say that projects would be given preference
25 for funding awards that would follow these guidelines?

1 MR. NOYES: We can use language to that effect,
2 but the issue of public versus private ownership of the equipment is a pretty
3 black and white issue.

4 SENATOR PUCKETT: Any other comments? I
5 believe what I hear is that we want it to stay within the footprint and would
6 be owned by the Commission unless something different is approved by a
7 vote of the full Commission.

8 MR. STEPHENSON: Not owned by the
9 Commission.

10 MR. NOYES: Owned by the grantee.

11 MR. STEPHENSON: By the eligible applicant.

12 MR. NOYES: We will clarify the instructions in
13 the applications on these matters.

14 Now, the next item, this comes up regularly in our discussions.
15 Shall Commission funds be used to pay for personnel costs for private sector
16 employees? The Commission has never done this, to my knowledge, and
17 certainly not in the last three and a half years, or for as long as I've been
18 here. What we're doing with the R&D program is different than what's been
19 done, to my knowledge, anywhere else. There will be private sector parties,
20 and we wish there to be private sector parties related to this research, and it
21 comes up in the discussion. Shall Commission funds be used to pay the
22 salaries of private sector employees?

23 SENATOR PUCKETT: Comments.

24 MR. MAYHEW: I think it needs to be as broad as
25 possible and still accomplish the goals that we have in mind.

1 DELEGATE MARSHALL: I agree. I think this is
2 not a bricks-and-mortar type of Committee. We're looking for, and we've
3 got to pay people to do this.

4 MR. NOYES: When that project comes before
5 you for a recommendation, you'll have all that budget information, and you'll
6 see in the budget if you see something that you feels is unreasonable, you'll
7 vote to recommend or not recommend that project. As a general policy, my
8 view is exactly what Delegate Marshall said. It's new ground, and we need
9 to at least allow for this possibility, unless there is some objection.

10 SENATOR WAMPLER: I guess I would ask Ned
11 this question. If you're paying for personnel costs or salaries, do we have the
12 capitalization, the hundred million dollars correct when it comes to restricted
13 or non-restricted sources of funds?

14 MR. STEPHENSON: We do presently, Senator
15 Wampler, and I'm going to bring that up in the Executive Committee and
16 show you where you are between the two funds. We have that flexibility
17 presently. However, if you burn a hundred million out of your unrestricted
18 pot, you're going to get pinched.

19 SENATOR WAMPLER: That's the only concern I
20 have. I think we are going to have a change and be prepared to spend our
21 dollars on personnel costs for researchers. However, I think we owe it to the
22 full Commission to understand how our burn rate could negatively give us or
23 severely limit flexibility on how we fund projects inside this Committee and
24 outside, and everyone else's committee.

25 MR. STEPHENSON: You'll see that number

1 shortly.

2 MR. NOYES: We can see in working with
3 applicants, because there is a dollar-for-dollar match in these projects, and
4 we would prefer our funds to be used for capital equipment rather than
5 salaries, but it may not always be possible to do that. I think the idea of
6 having the flexibility and keeping this Committee and the Executive
7 Committee fully up-to-date on where our burn rate is, is very important in
8 going forward.

9 SENATOR PUCKETT: Any other comments? Is
10 the Staff clear on that?

11 MR. NOYES: The issue of confidentiality we
12 discussed. Counsel Ferguson will be here tomorrow and perhaps can
13 address this in the full Commission meeting about some specific details; on
14 some I get very nervous about presenting anything about the law.

15 The R&D Committee has not yet addressed the issue of indirect
16 costs. We tried to address it, but we haven't addressed the policy or adopted
17 the policy. In research and development, whether it's at the federal level or
18 the private sector, there is always an allowance for indirect costs, and it's
19 standard. We have five R&D Centers, and they get exactly three ways to
20 avoid having to come back to this Commission for operating funds. One is
21 to lease space and receive some funds for that. Another is to somehow
22 charge folks that come in there beyond the lease for the use of equipment or
23 something like that, and the other is to use indirect costs. The first two are
24 not going to allow for much by way of sustainability. I think we need to
25 treat applications as a single bucket, and whatever prevailing indirect costs

1 allowed by the third-party funder, our funds are at that rate, whatever it is.
2 Alternatively you can set the maximum that you believe the Commission
3 should pay for part of a project. You can say 15 percent or 20 percent or
4 whatever percent this Committee decides, but it's going to be different.
5 What different partners will allow is going to be different in most
6 applications. It's not one size fits all unless for our funds you decide one
7 size is going to fit all. Keep the lights on, keep operations, pay key
8 personnel at the R&D Centers; indirects are necessary, and you can't do
9 R&D without it.

10 SENATOR PUCKETT: Any further comments?

11 MR. OWENS: What about the same rate that we
12 get these matches from third parties?

13 MR. NOYES: Pro rata.

14 MR. OWENS: Would that be too much,
15 sometimes one-to-one and sometimes four-to-one; we're only doing 20
16 percent of the indirect costs. Does that make sense?

17 MR. NOYES: Understanding there will be some
18 that are just one-for-one, it will be 40 percent. You all have a history of not
19 wanting to do that; that's why it needs to be decided in the policy issue.

20 DELEGATE BYRON: Some of these are really
21 good questions. We certainly haven't thought through, because we haven't
22 been talking about it before, and I know you want some guidance. In some
23 ways, I think when we get that first round some things we'll have to apply
24 and some of the circumstances to the application, and it's hard to go out there
25 and grasp how each one of these might work. It may take that to have a

1 good strong policy after we get into this.

2 MR. MAYHEW: Mr. Chairman, this may or may
3 not be directly related to what we're saying right at this moment. I just hope,
4 as we get into this, that awarding a certain amount of money to different
5 entities, the money will get used at least in the overall sense for what it was
6 intended to be used for. It's easy sometimes for large institutions, I think, to
7 have a pot of money, and the dollars get kind of mixed up in there. You may
8 have a grant application that spells out certain broad areas something gets
9 used for, and in actuality there comes a need in another areas that's not
10 particularly related to it, and some of the money that we might think is going
11 for this might wind up over here for something else, and there's no real
12 accounting of it once it's released. I'd just kind of gotten a sense of this over
13 the years, federal money and this and that, and it gets away from you. I just
14 feel like, without being picky about it, I think there ought to be some way of
15 accounting for when our money gets mixed with somebody else's that at
16 least in the broad sense it gets used for what it was intended to be used for. I
17 don't know if that makes sense or not.

18 SENATOR PUCKETT: That's something that
19 probably could be contractual when we release the money; certainly when
20 we get ready to do that, I think that's something we should be very careful
21 about and making sure that we do have some way to track this money that
22 we're putting into the project.

23 DELEGATE MARSHALL: The Economic
24 Development projects, and we have performance reviews and performance
25 standards and people have to abide by. I would assume we'll do the same

1 here in this case.

2 MR. NOYES: Yes.

3 DELEGATE MARSHALL: The federal
4 government does this. Are we trying to reinvent the wheel, or use the model
5 of what do they do as far as this? Are we going to do exactly opposite from
6 what they do?

7 MR. NOYES: Without responding to that
8 particular comment, there are benchmarks in contracts, there is a scope of
9 work that's carefully defined, and if something happens and if people go off
10 the reservation for that scope of work, I hope our Staff would not disburse
11 any funds for something that you had not recommended and the Commission
12 approved. That certainly has been the policy; if there is a change in scope, at
13 the very least we'll call the chairman of that committee, or do we need the
14 committee to consider this, is this okay, or is there a flat no. Sometimes it
15 comes back before the committee, and sometimes the Chairman says now
16 way, so I would say no way.

17 SENATOR PUCKETT: Staff, have we made that
18 clear?

19 MR. NOYES: It doesn't get any easier with the
20 next one, IP.

21 SENATOR PUCKETT: Ned, you don't seem to be
22 clear.

23 MR. STEPHENSON: Well, up until this time, Mr.
24 Chairman, any indirect costs that got submitted, the Staff screens it out and
25 sends it back. We just don't pay, it's easy. This is going to be a little

1 different, and we need guidance on a case-by-case basis. I gather from the
2 Committee's comments that the door is cracked now for indirect?

3 MR. NOYES: That's my understanding.

4 SENATOR PUCKETT: That's what I've heard
5 today, that we can, in the right situation, certainly be willing to do this.

6 MR. STEPHENSON: We'll work with that.

7 MR. NOYES: That's a good reason for the
8 Committee to hear these before they get sent for vetting. You'll know it
9 when you see it.

10 Disposition of intellectual property. This one comes up in
11 every Staff conversation with just about everybody. We're talking about not
12 background, intellectual property, that which is brought to the table at the
13 point of application. We're talking about intellectual property that maybe
14 created as a consequence in part of the Commission's work. The first
15 question is, does this Committee think that it's important to the Commission
16 that we have ownership of intellectual property rather than some other type
17 of arrangement? The other type of arrangement would be a written
18 understanding, contractual understanding that the applicant can do
19 something demonstrating there is a return to the Commission on its
20 investment; ownership is part of it.

21 DELEGATE KILGORE: I assume that we're
22 going to have some legal representation during some of the conversations or
23 contractual discussions?

24 MR. NOYES: That's been accomplished.

25 DELEGATE KILGORE: The reason I say that is

1 because in some situations there are going to be some findings, and in other
2 situations there'll be something else, and I don't think that's really clear. We
3 may want the IP percentage in this case; we may not want it in another case.
4 Would that be on a case-by-case basis?

5 MR. NOYES: I like the single bullet myself. It
6 may not be possible. I think a clear statement of the intent of the
7 Committee, that is to say we will be seeking ownership or some other form
8 of compensation for any intellectual property and have that very clear so
9 people know, and it can be negotiated by counsel, that's fine.

10 DELEGATE KILGORE: I would agree with what
11 you said.

12 SENATOR WAMPLER: Mr. Chairman, I'm not
13 as concerned about the Commission being the recipient of royalties or
14 revenues from intellectual property as I am an Economic Development entity
15 within the footprint being the recipient of it. I'm not wed to what I just said
16 totally. I think it's open-ended and we need to think through the process of
17 what is the best repository of some of these potential revenues, and I'll kind
18 of leave it that, Mr. Chairman. I don't know the answer, and I don't know
19 that the Commission is always going to be the best place to put it.

20 MR. NOYES: Senator, I understand what you just
21 said. There is compensation, and then there is ownership, and those are two
22 different things. If we own it, we're going to get compensation, or
23 somebody is going to get compensated, whether it's the Commission or not.
24 The Commission will decide that, whether it goes to the IDA or something
25 like that. There is pushback from folks pretty severe. If we say the

1 Commission may not want to own it on a pro rata basis depending on how
2 much we're investing in this effort owning the IP. I can see nothing but
3 nightmares going out for years on ownership, but compensation is another
4 thing. I suggested, as I wrote up here, it could be something as simple as
5 there will not be any costs if IP is going to be deployed, and can it be used
6 within the Tobacco Commission footprint. That could be a form of
7 compensation that gives us a competitive advantage. The real issue is, do I
8 own it, or will I be compensated on some type of basis to be determined by
9 Counsel and recommended by Counsel. When you say you're going to own
10 it, let's go wait a minute.

11 SENATOR WAMPLER: I think Neal is taking me
12 down the path, should we own it or not; I'd prefer not to own it. I think there
13 are a host of issues that really we've dealt with before that we didn't like, but
14 compensation in U.S. dollars is another matter. If you want my opinion, I
15 would prefer that we try to negotiate that form of compensation in lieu of the
16 ownership.

17 MR. NOYES: Should we ask an applicant to
18 suggest what they're comfortable with in the application and report that to
19 this Committee? How are you going to compensate us for any IP
20 development as a consequence of our investment?

21 MR. MAYHEW: Suppose that compensation
22 takes the form of multiplying the IP throughout the first round of the
23 Tobacco Commission; can that be done?

24 MR. NOYES: That would be up to this
25 Committee to decide if that's the deal you want. The ownership issue, and I

1 thank you, Senator, I don't think the Commission wants to own the IP.

2 MR. MAYHEW: I would agree with that.

3 MR. STEPHENSON: The sentence appearing in
4 the application that gives rise to this question, and if I may read it, might be
5 helpful to the Committee. "The Commission expects intellectual property to
6 be documented in favor of the Commission commensurate with the
7 Commission's contribution to the project." I would hold that documenting
8 intellectual property in favor of the Commission does not constitute
9 ownership; it simply means the Commission is going to be satisfied as to
10 who gets the benefit and who owns it, et cetera. What it does prohibit is the
11 company saying I want your money, but you're not getting anything of what
12 comes out of this. I don't think the Commission would tolerate that. The
13 words were chosen carefully, documented in favor of the Commission. You
14 have to be satisfied at whatever the value is that it's accrued where you want
15 it, the footprint, applicant, however. Neal is right, it has produced heartburn
16 among applicants who fear giving a slice of the ownership up.

17 MR. MAYHEW: Mr. Chairman, could it be a little
18 further defined than what Ned just said to the applicant, or with another
19 couple of sentences for clarification to the effect of what he just said. That
20 we make it plainer to the applicant what our intentions are?

21 MR. STEPHENSON: Along the lines as was
22 discussed?

23 MR. MAYHEW: What you just said.

24 MR. STEPHENSON: Certainly.

25 SENATOR PUCKETT: Can the Staff do that?

1 MR. STEPHENSON: Certainly we can.

2 SENATOR PUCKETT: Neal, what's the final
3 matter?

4 MR. NOYES: This is the only final matter for this
5 meeting. Halifax County IDA wishes to assume responsibility for the
6 Modeling Simulation Program, which has been funded by three different
7 committees. Southside Economic Development Committee and Chairman
8 Owens and Chairman Owens voted to move the grant that was made to
9 them, which was made to Virginia Tech, I believe it was, in favor of Halifax
10 County IDA. I've spoken to Senator Wampler of the Special Projects
11 Committee, and he indicated he felt that was a reasonable thing. This
12 Committee in July awarded \$375,000 for operations, expenses to the
13 Modeling and Simulation, and it was given to the Foundation, Southern
14 Virginia Higher Ed Foundation, who has written us saying that they wish
15 this to happen as well. If we could have a motion moving the grantee from
16 the Foundation to the Halifax County IDA. The project isn't changing; it's
17 the same project, it's just that we have some different applicants. Virginia
18 Tech is going to release its interest at some point and indicated that they
19 intended to do it during an audit review of finances now. This needs to
20 happen now.

21 SENATOR PUCKETT: It's so moved and
22 seconded. Any discussion on that motion? Does everyone understand the
23 motion? All those in favor say aye? (Ayes.) Opposed, like sign? (No
24 response.) The motion carries.

25 That brings us to the next Committee meeting. Soon after

1 November the 9th, you'll recall earlier that Neal said November the 9th is
2 when the first group we're going to have, and we'll take a look at them.
3 Senator Wampler mentioned that the Senate Finance Committee will be
4 meeting about the 17th or 18th. I guess we're looking for some suggestion
5 how soon after November 9th you want to do this.

6 DELEGATE KILGORE: We'll have to wait for
7 the Staff to go through them.

8 SENATOR PUCKETT: Approximately how
9 many applications do we have?

10 MR. PFOHL: We've received two, but we expect
11 upwards of a couple dozen perhaps, a dozen or two.

12 MR. NOYES: If the Committee will give Staff a
13 week to get all that stuff together and get them written down after that, and
14 with the help of Tim and Sara -- we'll have Michele poll the Committee
15 members, and we'll find a day approximately a week after the 9th.

16 SENATOR PUCKETT: Let's take Neal's
17 suggestion and have Staff poll everyone after we find out what the Staff is
18 dealing with, the numbers they're dealing with, and try to make it so
19 everyone is out of conflict with the next meeting. It'll be sometime soon
20 after the 9th of November.

21 Now, any public comment? Does anyone want to say anything?
22 Does anyone have a public comment you just can't hold? Hearing none, do
23 I hear a motion that we adjourn? There is a motion and a second, and we are
24 adjourned.

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PROCEEDINGS CONCLUDED.

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CERTIFICATE OF THE COURT REPORTER

I, Medford W. Howard, Registered Professional
Reporter and Notary Public for the State of Virginia at large, do hereby

CRANE-SNEAD & ASSOCIATES, INC.

1 certify that I was the court reporter who took down and transcribed the
2 proceedings of the **Virginia Tobacco Indemnification and Community**
3 **Revitalization Commission Research and Development Committee**
4 **Meeting when held on Wednesday, October 28, 2009 at 4:00 p.m. at the**
5 **Wytheville Meeting Center, Wytheville, Virginia.**

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

8 Given under my hand this day of November,
9 2009.

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20 My Commission Expires: October 31, 2010.

21 Notary Registration Number: 224566