

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

3 701 East Franklin Street, Suite 501
4 Richmond, Virginia 23219
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9 Research and Development Committee Meeting
10 Friday, June 8, 2012
11 10:30 a.m.
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13 The Hotel Roanoke & Conference Center
14 Roanoke, Virginia
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1 **APPEARANCES**

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4 The Honorable Kathy J. Byron, Chairperson

5 Ms. Cindy M. Thomas, Vice Chairman

6 The Honorable James S. Cheng

7 Secretary of Commerce & Trade

8 The Honorable Charles Carrico

9 Mr. Burgess “Butch” H. Hamlet, III

10 The Honorable Daniel W. Marshall, III

11 Mrs. Sandra F. Moss

12 The Honorable Edward Owens

13 Mr. Kenneth O. Reynolds

14 The Honorable Ralph Smith

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17 **COMMISSION STAFF**

18 Mr. Neal Noyes, Executive Director

19 Mr. Timothy Pfohl, Grants Program Administration Manager

20 Ms. Sara G. Williams, Grants Coordinator, Southwest Virginia

21 Ms. Sarah K. Capps, Grants Coordinator, Southside Virginia

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1 June 8, 2012

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DELEGATE BYRON: Good morning, thank you all for coming, I'll call the meeting to order. I'll ask that the Research and Development Committee come to order. Neal, would you call the roll?

MR. NOYES: Delegate Byron?

DELEGATE BYRON: Here.

MR. NOYES: Secretary Cheng?

SECRETARY CHENG: Here.

MR. NOYES: Mr. Hamlet?

MR. HAMLET: Here.

MR. NOYES: Delegate Marshall?

DELEGATE MARSHALL: Here.

MR. NOYES: Ms. Moss?

MS. MOSS: Here.

MR. NOYES: Mr. Owens?

MR. OWENS: Here.

MR. NOYES: Mr. Reynolds?

MR. REYNOLDS: Here.

MR. NOYES: Senator Smith?

SENATOR SMITH: Here.

MR. NOYES: Ms. Thomas?

MS. THOMAS: Here.

1 MR. NOYES: Senator Carrico?

2 SENATOR CARRICO: Here.

3 MR. NOYES: You have a quorum Madam
4 Chairman.

5 DELEGATE BYRON: We have the minutes
6 from our previous meeting on our website. All those on our
7 website, I hope you all read them. I'll entertain a motion to
8 approve the minutes. It's been moved and seconded, all those
9 in favor say aye. (Aye). Opposed. (No response). The minutes
10 are approved.

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12 NOTE: At this time Group A and Group B
13 have their individual discussions. Thereupon, at 12:30 p.m.
14 the meeting is reconvened viz:

15

16 DELEGATE BYRON: I'm going to call us back
17 in open session and I'd like to start with Group A. I want
18 everyone to feel free to bring out what you've discussed in your
19 group and if there's something that has not been highlighted
20 that you think needs to be added to the discussion, please do
21 so.

22 MR. PFOHL: I'll start this off.

23

24 NOTE: GROUP A consists of Delegate Byron,
25 Secretary Cheng, Ms. Moss, Mr. Owens and Senator Smith as

1 Commission members; staff members are Neal Noyes, Tim
2 Pfohl and in addition Dr. Fowlkes.

3

4 NOTE: GROUP B consists of Ms. Cindy
5 Thomas, Senator Carrico, Mr. Hamlet, Delegate Marshall, Mr.
6 Reynolds and Sarah K. Capps and Sara G. Williams.

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8 MR. PFOHL: Breakout expenditures of our
9 grant funds and match funds by fiscal quarter as well as
10 milestones to be achieved in the fiscal quarter and greater
11 attention needs to be paid to those milestones before we
12 continue to release funds. There was a discussion of adding a
13 clause to the grant grievance that we are notified of any
14 company board meetings and provided the financial reports by
15 the company that are the private partners on the research side
16 of things. Correct me if I'm wrong table by consensus and the
17 staff recommendation limiting advance payments to capital
18 expenses requiring beneficiaries clearly documenting progress
19 milestones on a quarterly basis.

20 DELEGATE BYRON: All right, now we'll call on
21 you.

22 MS. CAPPS: We agree with both those items.
23 On the milestone reporting we felt that needed to be with each
24 reimbursement request. Some R&D projects we may only see
25 one payment request a year, something like a major

1 equipment purchase, but yes, milestone reimbursement
2 requests. The second items, yes, we agree, capital expenses.

3 MR. NOYES: Don't make policy grants.

4 MR. PFOHL: Looking at point number two,
5 agreement in maintaining the floor of a minimum request
6 being \$500,000 in agreement at our table on reducing a ceiling
7 of maximum requests of \$1.5 million with an expectation that
8 not less than 25 net new jobs within three years of completion
9 of the research activity.

10 MS. CAPP: First, I want to capture a point
11 before we address the item that this group, this group would
12 like to require annual independent audits for all R&D projects.
13 That point came up before we addressed the minimum and
14 maximum threshold. As far as the maximum threshold, our
15 table is interested in keeping the maximum at \$5 million. We
16 are interested in asking in the application specifics for job
17 creation, salaries and private capital. A lot of the applicants
18 are giving that to us right now but we'd like to see that as a
19 requirement so that that information is clearly available to the
20 committee so we can analyze it with regard to the level of
21 funding requested. On the low threshold, this group is
22 interested in lowering the minimum to \$250,000 giving
23 consideration for allowing for staff to make a funding
24 recommendation for projects that do not require scientific
25 vetting. This group is recommending that R&D applications

1 from \$250,000 to \$500,000 that the staff be able to make a
2 funding recommendation without sending it forward. That's
3 specifically for those that don't require vetting.

4 DELEGATE BYRON: This is a pretty important
5 one we have on our list here so we need to have a little bit
6 more discussion on it. What Neal was telling me earlier, we
7 have the ability to work with the applicant and lower that
8 threshold and also noted when there are times where we had
9 applications that didn't go through vetting, we approved
10 immediately. There's also times when we had applications
11 that were somewhat vetted by the staff before it got to us in
12 regards to the amount.

13 DELEGATE MARSHALL: It was my suggestion
14 about leaving it at the \$5 million. If you look at the staff's
15 information here there is several awards that have been in
16 place and \$3 to \$5 million. If you go down the list that I got
17 back from the R&D Committee on 5/25 last year, if you go
18 down the list, the ones that we had actually said yes, we'll give
19 you the money, we've had several of them that have not taken
20 the money so we really haven't had a real run of the request of
21 \$3 to \$5 million. My only concern is that with, if you go back
22 to the beginning in history, we haven't had a lot of people
23 requesting \$3 to \$5 million but if you look at the ones we have
24 granted for \$3 to \$5 million, they're all pretty good projects.
25 The project at VIR, the batteries, the Virginia Tech Tire

1 Research and everyone of them we felt like was a good project.
2 If you want to take that as the first issue, then we can talk
3 about the other ones.

4 MR. NOYES: Delegate Marshall, I don't think
5 that there is any fundamental disagreement from this table.
6 In our discussion it was noted that there will be exceptions to
7 the \$1.5 million and staff can bring those just as we would.
8 The point of the \$1.5 or the intent of the 500 or the 1.5 for a
9 ceiling is to send a message to potential applicants that is the
10 sweet spot where we are looking rather than having a lot of
11 them above that \$1.5 million, that the valley of death that this
12 program seeks to address is the valley of death that most of
13 them fall between a half million and a million five. Stating the
14 \$1.5 in the program guideline does not preclude exceptional
15 programs as you're pointing out, the National Tire Research
16 Center is one. When those come, it will be assessed by staff
17 and I usually communicate with the committee chair and I say
18 I'd like to bring this one and have it considered by the
19 committee even if it falls outside the guidelines. That's the
20 way its operated and it's been a very flexible program. When
21 you send the signal that \$5 million is the ceiling, we haven't
22 had a lot of them that's actually gone through you are getting
23 a different universe because you've got a \$10 million project
24 and they are very, very difficult projects because that level of
25 match for early stage companies is a problem more often than

1 not.

2 DELEGATE MARSHALL: I would agree with
3 that but if you look at the history, it seems to work, you know,
4 the match of the \$5 million has been a, the only projects that
5 have come forth have been good projects.

6 DELEGATE BYRON: It may be that because
7 we allow that figure to be out there, we also talked about this
8 before because we don't come back with a different figure what
9 they ask because it's hard to quantify the research and
10 science and figure out some things that someone has all the
11 information, I don't want to lose any good projects either but
12 when you talk to the partnership who has a lot of experience
13 in dealing with projects, that come forward, we have a much
14 higher rate comparable to other people that are giving out
15 money like this. The question is should we maybe consider
16 lowering it, they can come back three years in a row, \$1.5 or
17 maybe \$2 million and that's still overall a project milestone.

18 DELEGATE MARSHALL: The other thing we
19 talked about, if someone comes back with a score that,
20 \$500,000 you can get the same score and get \$5 million. We
21 also talked about what we need to look at upping the score
22 that people above \$3 million and also looking at the number of
23 jobs created above \$3 million should be considered also. Not
24 only the number of those jobs but the pay of those jobs.

25 DELEGATE BYRON: For the committee

1 members in preparation for voting on some of these and just
2 based on that score for a high volume of money as well, so I
3 don't know that there's a great answer there for you.

4 MR. HAMLET: In your sort of a hybrid
5 scenario, you talked about setting the limit at \$1.5 as a
6 provision for except, on the website or your printed material, it
7 would say \$1.5 million or greater in certain circumstances.
8 The only reason I ask that question is for clarification because
9 I would hate for us to have a big project that goes elsewhere or
10 goes to venture capital groups or goes somewhere else, locate
11 somewhere else outside the footprint. I guess I'm asking for
12 clarification, is it clear enough to a potential applicant that
13 \$1.5 is absolute?

14 MR. NOYES: I hadn't thought so but certainly
15 language can be crafted that allows for projects larger than
16 \$1.5. The issue is as Delegate Byron said, that in relation to
17 other funding sources for this type of research activity, we're
18 way out of line. The \$1.5 million figure only where there is an
19 extraordinary business plan where there is at least some
20 reasonable belief that we're going to get a significant
21 employment outcome whether you look at that based on salary
22 or look at that based on raw numbers, however we do that, it's
23 reported in the staff report as you're considering applications.
24 We can craft some language if that's the desire of the
25 subcommittee or let people know that they can come in and

1 ask for more. Unless you set a number as a ceiling, unless we
2 said in that crafted language, for example, not to exceed \$5
3 million, we will get what we got when the program was
4 announced. A request for the huge amount of political
5 pressure from one institution for \$100 million. There have to
6 be parameters and the parameters that you see in the
7 recommendations are the parameters that were recommended
8 by the VEDP vetting panel which have private sector guys and
9 universities and most familiar with what other entities allow
10 for. I didn't make up the \$1.5, I'm not entirely comfortable
11 with the \$1.5 because there must be provisions for exceptions
12 for exactly the reason Delegate Marshall suggested. We have
13 to put something out. Then we have to let folks know don't
14 come in for \$5 million without a heck of a business plan and
15 without strong job creation numbers. That's their
16 recommendation. Let's see what changes.

17 Sarah has got her hand up.

18 MS. CAPP: I guess one observation I made in
19 terms of or a couple of things, I think the item on the list
20 starting with the concerns about the burn rate and I think
21 some folks are nervous about \$100 million commitment and
22 all the monies gone before we supported all those projects that
23 we want to support. If we could start by looking and making
24 sure we're dealing with accurate numbers. I think the balance
25 in the program is about \$45 million and one thing that Danny

1 recognizes is that we've got one \$5 million commitment out
2 there that may or may not come to fruition. Let's start
3 recognizing where we are and what's available. Then if you
4 look at where we committed our dollars, I have to say that
5 there are four Southside projects that are greater and we've
6 made a commitment, greater than \$1.5 million but all are less
7 than \$3 million, all four of those I think are very solid R&D
8 projects so that's just an observation.

9 MR. NOYES: We'll get our arms around an
10 exact figure. I told you that before the meeting started.

11 The issue is, is this Committee prepared to
12 agree with the VEDP's vetting panel's recommendation to
13 lower the ceiling and with the understanding that language
14 will be crafted, there are exceptional projects. Staff can get
15 those available.

16 DELEGATE MARSHALL: So the exceptional
17 projects, does that mean that if somebody comes along with
18 what they think is an exceptional project, they could get \$10
19 million or would we entertain that also?

20 MR. NOYES: I would report that or call the
21 chair. I would say do you want to look at a \$10 million project
22 that these guys think have real potential and I'd say there's 11
23 jobs and the match is not in place and my guess is, the chair
24 would say, let's see if we can't pair that back. But unless we
25 set parameters out and publish them, that's what you'll get.

1 DELEGATE MARSHALL; What does the chair
2 say?

3 DELEGATE BYRON: I'm a negotiator. I would
4 go for two. I think if we try for two as a ceiling, I really think
5 that some of the people that come to us maybe that wasn't the
6 end all, we could give five, we wouldn't want one or two million
7 dollars either and we may still open ourselves up to great
8 projects with either better budgeting, they're going to have to
9 do in phases and they'll come back for another two and then
10 approve them for the first two and then we'll do a little
11 conference or something and then if we discover their needs
12 are that great based on that, then we also have another
13 discussion. They're coming to us to other means as well, the
14 partnership, they've already come to them before the R&D
15 Committee. We hear about some of these applicants in a
16 different manner versus the ones that are just coming to the
17 website and applying for an amount of money. But if you look
18 at the \$2 million, there is at least, probably at least I'm
19 counting 8 of them that fit within the two million and the rest
20 is just pocket change. They can figure out where to come up
21 with that difference that I call pocket change. Two million
22 dollars is still a tremendous difference from the five and they
23 can come back three years in a row \$6 million for a project
24 and that does not prevent the committee coming together and
25 taking a vote to override it. We may have one coming to us

1 very shortly to do that very thing.

2 Somewhere we got to set a parameter so we
3 can get some understanding and maybe they can look at other
4 resources and find out that we're not the only folks. We got
5 people coming to us from other areas for our money.

6 MR. OWENS: In my years here, we've never
7 turned down a good project the staff has brought forward. I
8 mean whether you have a cap or not, we found ways to make
9 it happen and it's good that we have that flexibility and I
10 recommend that we keep it.

11 MS. CAPP: I was just thinking I thought
12 maybe you were wrapping up the discussion on that.

13 DELEGATE MARSHALL: We were at \$500,000
14 so we're coming down a bit more now?

15 DELEGATE BYRON: Negotiation.

16 DELEGATE MARSHALL: That's why we
17 probably need one of those from the Appropriations
18 Committee.

19 DELEGATE BYRON: In our last committee
20 meeting weren't we talking about lowering it and now it seems
21 like we're getting a little skiddish.

22 MS. CAPP: What about two and a half?

23 DELEGATE MARSHALL: I'd be happy with two
24 and a half.

25 DELEGATE BYRON: Sarah, you're the

1 negotiator now. I really think maybe your fears are
2 unwarranted but thinking that \$2.5 million, you're putting
3 yourself up there for \$7.5 million and then come back for
4 another round.

5 MS. CAPP: We also as a reminder, one of our
6 points on this item was that we want them to report to us,
7 clearly on the job creation numbers and the salaries of those
8 jobs and the private capital projections, evaluated with the
9 \$2.5 request.

10 MR. NOYES: We are told in an application
11 there's X number of jobs at the research phase and what folks
12 hope will sell the application to this committee is the
13 commercialization potential. There are not going to be
14 commercialization jobs at the end of one year and if you ask
15 them, they're going to tell you zero. I don't see the point in
16 doing that, you want to ask 72 months after the end of the
17 research did they do it and that would make sense and we
18 already do that, otherwise you're going to find 7 people doing
19 research which is what they told you in the application to
20 begin with.

21 MR. PFOHL: We're talking about I think and
22 Neal made a good point, a few good points.

23 MR. NOYES: Did you get that Medford?

24 COURT REPORTER: Yes.

25 SECRETARY CHENG: The money requested,

1 especially \$5 million and you come back three times, they're
2 really outside compared to what we see in Northern Virginia or
3 the Richmond area for the GAP financing, Valley of Death as
4 you call it and generally if someone could get a million and a
5 half and the researcher commercialization point of view, that's
6 a big huge number and people will write thick reams of
7 documentation to get that money and do a lot just to get a half
8 million dollars. So when you're out there at \$5 million, and
9 people that rely on our website to get that out, don't want
10 them to but you want them referred through the folks that we
11 know that understand and if you can come back for \$5 million
12 in three years, \$15 million in the world that I see, venture
13 capital and all that, I'm not going to and I'm not a venture
14 capitalist, anything that takes more than a few million dollars,
15 proof of concept to get outside dollars, I'm saying we're talking
16 about technology way too far on the research end of that. At
17 least what you're dealing with, VC that I'm dealing with, even
18 \$5 million is a lot to get the proof of concept close to
19 commercialization. That's just one point of view. To me \$1.5
20 million or a half a million, \$2.5, I don't know if that makes
21 that much difference. A million and five million is a big
22 difference. I think that's what VEDP would say to get outside
23 money, equity and outside partners, almost anyone can apply
24 for \$5 million.

25 DELEGATE MARSHALL: Is the three year

1 period too long? Should we cut it back to two years or one
2 year and not go years two and three?

3 SECRETARY CHENG: I think putting it out
4 there is, most other folks would not do as a venture capital.
5 They can say I have a three year plan to raise X amount of
6 money, Series A or B or something like that financing and they
7 could have it over a year or two years or if you had a company
8 with a concept and with a business plan, if I were to say I
9 want to raise a series A round of financing and it will take me
10 a year to raise \$10 million, in the next three months I want to
11 raise, next year I want to raise \$2 million and then go for
12 series B, 18 months. They have a plan mapped out but to get
13 from series A to B sometimes you have to bring a lot of your
14 old investors and sometimes you don't. If we're going to be
15 involved with something like this, you really only need to be
16 involved in one round to get commercialization. At that point
17 they should get private financing or get outside financing but
18 not a grant. This is really a big advantage to any stockholders
19 to get a grant.

20 MR. NOYES: Only if I may to the Committee
21 members, if you go to \$2.5 million and cut the number of
22 opportunities back to at least two, I'm speaking of two rounds
23 in 18 months. I'm really presenting where if \$2 million is the
24 number that is the consensus, that's fine and it gets us more
25 in the direction of what the Secretary's talking about and the

1 VEDP vetting panel is asking you to do to get you closer. If
2 you get past, \$2.5 in two years or how do you get to \$5 million
3 and \$1.5 with a three year window for something like that?

4 DELEGATE MARSHALL: I think that's a good
5 idea because ultimately we're not about research, we're about
6 economic development. We got to create jobs. We don't want
7 to create jobs in three years now but we'd like to do it today so
8 I think that's good.

9 MR. NOYES: Nobody gets more than five, do it
10 in three years or they can do it in over two years and you're
11 probably going to give more weight to the one that's tells you
12 in a serious way how they're going to get there in two years.

13 MR. REYNOLDS: In my time it surprises me
14 the number of applicants that have made progress in the short
15 period of time. I think we're hitting on the right trail here.
16 Some of these folks are, they have a good plan that works out
17 and they could do it in two years and it surprises you how
18 fast, even with private financing problems.

19 SECRETARY CHENG: They could get
20 financing elsewhere.

21 DELEGATE BYRON: Based on what Jim said,
22 you go to \$2 million twice, that ends up to be four. I don't
23 want to get hung up on this \$ 5 million figure because as you
24 said, and the amount of money, even one round and you don't
25 want to give the impression, we don't want to give everybody

1 the impression they get two shots at this. If we do one round
2 and everybody's happy and the applications are coming back
3 to us for a second round, if you've got a project that gets \$2
4 million and come back again, that's \$4 million which is a
5 substantial amount to get there anyway. Two million on two
6 rounds.

7 DELEGATE MARSHALL: So you're saying two
8 and two?

9 MR. NOYES: Two million two rounds.

10 DELEGATE BYRON: Just do number one yet,
11 was there agreement on lowering the minimum to 250?

12 MS. CAPPS: We discussed that.

13 DELEGATE BYRON: We had a discussion over
14 here and I'm sure had the same kind of discussion that you
15 did and that figure isn't quite as high, you get 50,000 once,
16 you'd get a lot of applications at that figure.

17 DELEGATE MARSHALL: Our low is 250 and
18 the consensus was that the cost of doing business with that,
19 you send all of those to vetting. Tim came over to get an
20 answer on our side.

21 DELEGATE BYRON: He was the one that said
22 don't go lower. The staff was going to be very tied up with a lot
23 of our university type grants, those type of applications and
24 may be bogged down.

25 DELEGATE MARSHALL: Our thought was

1 that if it's scientific, it might need to go to vetting but if it's
2 something the staff could vet themselves.

3 DELEGATE BYRON: There's a lot of
4 applications out there and if staff wants to address it.

5 MS. CAPP: I'll volunteer to help the folks
6 with review of the Southside ones that are less than a half a
7 million, recognizing that it could make the funding
8 recommendations, maybe not. I think there's a lot of very
9 interesting proposals out there that we could support at 250
10 or 300 or 400 thousand.

11 DELEGATE BYRON: If somebody brings a
12 project to us, I guess we could try anything once. We don't
13 want to turn away good projects if they're interested in jobs
14 and of course commercialization.

15 SECRETARY CHENG: You might not have a
16 25 job requirement for 250.

17 MR. NOYES: What we're trying to accomplish
18 is job creation so we spend 250 or 300 thousand for three jobs
19 for commercialization.

20 MR. HAMLET: On the other hand it could be a
21 piece of research that's not very expensive, not needing
22 \$500,000 or \$5 million it's going to create a job. I don't think
23 there's a correlation between the cost and the number of jobs
24 that ultimately can be produced.

25 MR. NOYES: I would concede 250.

1 DELEGATE BYRON: Let's see what kind of
2 applications we get. I'm fine with that, we can't create 25 jobs.

3 MS. CAPP: Our table took the position that
4 you all didn't feel like that should be a strict requirement,
5 want to know the number of jobs to be evaluated first.

6 DELEGATE BYRON: The jobs were not up
7 front and we said the jobs were on the tail end was
8 commercialized.

9 MR. PFOHL: Three words, remove the penalty.
10 Our grant agreement says that the clawback provision, if it's
11 commercialized outside the footprint twice the grant amount
12 and that's one of the potential, this table consents to remove
13 that penalty.

14 MR. NOYES: There's a clawback for the full
15 amount of the grant should an applicant elect to go forward
16 with commercialization outside of our footprint before they
17 have done within the footprint exactly what they told you in
18 the application. There's no three year time limit, there's a 99
19 year time limit. They could do commercialization within the
20 footprint or they could not. No penalty or no poison pill. They
21 have to first and fully do what they said they were going to do
22 in the application. That's really important to the vetting panel
23 because you don't get second and third round funding if you
24 get a penalty and I would agree with that. I think it's
25 important to remove that penalty provision.

1 MS. CAPPS: I think this table was okay with
2 removing the penalty but we are interested in keeping
3 language in the agreement mainly commercialization.

4 MR. NOYES: I'm sorry.

5 MS. CAPPS: This table wants to keep the
6 language in the agreement.

7 MR. NOYES: It would be maintained, it would
8 be first and fully, there's no argument. Removing the penal
9 aspect of this in the agreement.

10 MS. CAPPS: I think we're in agreement.

11 MR. PFOHL: Number four regarding the
12 recommendation that no TICRC funds shall be disbursed until
13 all financing specified in the application is committed and
14 available and beneficiaries should be bound by a limit of 180
15 days to secure the full balance of funds and our table all
16 supported that.

17 MS. CAPPS: Can we go back to the second
18 part of number 3 where the staff was recommending adopting,
19 the second part related to the TROF agreement?

20 MR. NOYES: I was pointing out that it more
21 fully resembles a TROF than it does the current.

22 MS. CAPPS: Yes.

23 MR. PFOHL: Our table is in agreement with
24 the recommendation the funds be committed before any funds
25 are disbursed.

1 MS. CAPP: Yes, we felt like the applicant
2 needed to have the required one to one match at the time of
3 application.

4 MR. NOYES: That's different.

5 MS. CAPP: Recognizing that any additional
6 financing that's needed may take longer, we're okay with that.

7 MR. OWENS: That's 180 days?

8 DELEGATE MARSHALL: One hundred and
9 eighty days, they've got to get a commitment up front.

10 MS. CAPP: There's one project that you all
11 supported, the recycling project. They have a one to one
12 match and they're still working on financing for the \$12
13 million project. In their case they're matching our dollars
14 three to one, not just one to one and the total cost is \$12
15 million. That's an example that they're still over 180 days.

16 MR. NOYES: That's an outline, if they have
17 the match that they promise for the project that you've been
18 asked to recommend and the Commission approve, then there
19 in. If they've got a \$100 million project asking us for a million,
20 they've got a matchable million, that's within the program
21 guidelines and they've got the \$2 million it goes forward. My
22 problem is the folks that come in saying the application is
23 intended for something or the application is pending for
24 something, all this recommendation says by all means here's
25 that project is the staff recommendation. If you choose to

1 send it for vetting go ahead and if you choose to recommend
2 approval to the Commission that's fine but don't spend the
3 first dollar until that matched dollar is committed and
4 available.

5 MS. CAPPS: We're in agreement.

6 DELEGATE MARSHALL: Let me add a little
7 more to that. We don't want to even review the application
8 until the money is a match.

9 DELEGATE BYRON: If you're afraid to lower
10 the amount, you might lose some good people but if you've got
11 someone here that made the approval, maybe they made the
12 approval grade, the approval gap, I don't know, are you
13 concerned that - -

14 SENATOR CARRICO: You're also saying now
15 that you lowered your threshold, that you're going to have
16 more people and staff gets overworked and now if they're not
17 going to have the matching dollar, they're not going to be able
18 to apply for it.

19 MS. CAPPS: I think there's two packages; one
20 where we're saying at the time of application you must have at
21 least the one to one required match before you can go forward
22 and the second one in bold on the page that before we
23 disburse any funding, you have to have a hundred percent of
24 the financing in place.

25 MR. NOYES: If I may Madam Chairman, we

1 ran a reserve program for about 18 months and that required
2 a dollar for dollar match and we couldn't pay more than 50
3 percent and some of them came in way beyond dollar for
4 dollar. Many of those applicants we got for our, I think we
5 spent about \$40 million in that program and got \$100 million
6 worth of matching funds because some of them required only
7 20 percent. There will be instances if you're fearful of losing a
8 good opportunity, there will be instances when somebody will
9 make a commitment of funds from one entity in order to be
10 successful with another. The recommendation as it appears
11 allows for that without allowing for the disbursement of funds
12 if they're not successful in getting those other funds. It
13 resembles the reserve program. However, if you really want to
14 cut down the pool of applicants, if you really want to do that,
15 save your staff time, then I'm good with saying if you don't
16 have dollar for dollar match committed and available at point
17 of application, don't apply and that's your choice.

18 DELEGATE MARSHALL: I see your point but
19 the other side is maybe it's not dollar for dollar but .50 cents
20 on a dollar but is there enough, are we worried about
21 something we don't need to be worried about?

22 MR. NOYES: We need to be clear about this
23 because what happens is that this table heard, you all may
24 not have, is that an application will be approved and it will be
25 for \$500,000 for the sake of argument. They will have

1 application intended and application pending and they will
2 wind up with \$200,000 to be successful and you have
3 committed \$500,000 and they'll say let us go ahead and spend
4 \$200,000 of this and never get that balance and you've got
5 half a project or an incomplete project. That's what's
6 happening and that's what this seeks to prevent.

7 MS. THOMAS: Is staff saying that reviewing
8 applications where the matching funds never materialized?

9 MR. NOYES: Portions of the matching funds
10 fail to ever materialize. We're basing recommendations and
11 you're basing your decisions on, to some extent on those
12 recommendations on the hope that somebody will get
13 matching funds. That's fine. Hope springs eternal,
14 disbursements do not need to. Both are good outcomes, both
15 of these options are good outcomes.

16 MS. CAPPAS: I think of the only scenarios that I
17 can think of where if you lower the threshold to 250, I think it
18 would be important to the one to one match at the time of
19 application, the only exception I can think of that we need to
20 consider is that for applications for federal funding, if there
21 can be a time delay with the award. I can think of some good
22 examples. They didn't apply until they had it.

23 SECRETARY CHENG: Some federal awards
24 are based on matches. It goes back and forth and back and
25 forth and there's an element of judgment there.

1 MR. NOYES: If there is no disbursement of
2 our funds, then the problem is prevented because you know at
3 the outset it's something, non-Commission funds are in place,
4 it's reported to you.

5 SENATOR CARRICO: You're giving them a
6 guarantee so that they can apply for a certain amount of
7 money.

8 MR. NOYES: Yes.

9 SENATOR CARRICO: One hundred eighty
10 days don't disburse the money.

11 MR. NOYES: Don't disburse the money until
12 the full matching funds are approved.

13 MS. CAPP: Then we can address the first
14 issue in working with folks who are drafting applications and
15 tell them that would be much better.

16 DELEGATE BYRON: You could end up with
17 contingencies based on the grant application and contingent
18 upon you getting the approval of the Tobacco Commission
19 grant but all ends up being leverage and that's what it comes
20 down to. You give away the leverage if you take that off the
21 top.

22 DELEGATE MARSHALL: Trying to save you
23 some money and work.

24 DELEGATE BYRON: They love work.

25 MR. NOYES: Sarah likes it more than me.

1 MR. PFOHL: Number 5 is the point regarding
2 generating substantial revenues, a private beneficiary and the
3 question is should some portion of those revenues be returned
4 to the Commission to help recapitalize the R&D grant funds.
5 Taking a slice of the earnings from the private beneficiary to
6 deal or to allow us to do future grants for other projects.
7 There's some discussion about whether or not those revenues
8 should be split with the private sponsors, like the Research
9 and Development Center, the IDA or whoever. Secretary
10 Cheng noted that a convertible note to protect our position on
11 these. Staff recommended that the application propose a
12 payment of some share of gross revenues and the staff report
13 to your committee hears proposals would rate that issue for
14 your committee to consider. I think there's some support for
15 that recommendation.

16 MS. CAPP: Our position, first we need to
17 clarify revenue versus profit against, generating profit, that
18 was a point that we discussed and then we agreed as
19 suggested by that the applicant propose that share in the
20 application.

21 SECRETARY CHENG: The point about the
22 venture capital world, especially R&D companies that are
23 really hard to value instead of saying we want stock or we
24 want this or that a convertible note is a loan that can be
25 converted into stock at a future value to be determined by

1 your next round of financing when you actually get a new
2 round of stock that you purchased. It can be valued at a later
3 date and that's one way to do it. We talked over here a little
4 bit about gross profit and net profit and that may be more
5 complicated than what Neal was saying but certainly many of
6 the well informed companies that would be coming to us
7 looking for money would suggest a convertible note type of
8 vehicle to get funding to finance projects and whatever the
9 process is but you have the upside I think and Neal may want
10 to talk about or have the company say well, how can we
11 benefit the Commission for all the risk taking and it may not
12 be tied directly to profit, it may be something else and how do
13 you get a cash trait, leave it to the company.

14 DELEGATE BYRON: It was open ended in the
15 application and an ability for them to state to us how they
16 would give back or what the rate of return would be and how
17 to design that and we weren't really trying to, as we try to
18 design it, we're not going to please everybody.

19 DELEGATE MARSHALL: If we put out a half
20 million dollars with the application and it's successful and we
21 talked at this table that we felt like if we do this, that if we do
22 this, then that's what we should receive back. We don't want
23 to be a venture capitalist but if we got back a half million
24 dollars.

25 DELEGATE BYRON: That may happen but

1 what we're talking about and an example was the tire center.

2 MR. NOYES: That's one, the four matching
3 projects should actually go forward and that's a full
4 production facility in which they're going to do research
5 talking about shipping train loads full of stuff to Europe.
6 Shouldn't we ask at point of application how they might be
7 willing to share wealth and then you have that information,
8 not telling them this is what our expectation is, simply asking
9 them and we don't need to get into, gross receipts is something
10 that is not ambiguous and if you get into profits, they'll say
11 you'll never see a profit, it won't be profitable.

12 DELEGATE MARSHALL: Five million dollars,
13 is our limit \$5 million or would that be lifted or whatever?

14 MR. NOYES: That's perfectly reasonable, that
15 would be a homerun package. We can also say forever.

16 DELEGATE BYRON: It's more than we're
17 getting now.

18 MR. NOYES: All I'm saying is that there are
19 beneficiaries out there that are making money at this stage or
20 they will be making money at this stage. National Tire
21 Research Center that facility's going to be reaching out
22 globally. Those revenues need to support operations and
23 maintenance in Halifax County to be sure. So where's the rest
24 of the money going? We know it's not going to go in Halifax
25 County. An application that tells us how revenues might be

1 shared for recapitalization is something that I think this
2 Committee would want to know about and weigh in on it. Not
3 many projects have an overflow of cash but some do.

4 MS. CAPP: We're in agreement with that. I
5 think that's something we talked about three years ago.

6 MR. PFOHL: Point number 6 to give you a
7 little bit more background on this one. Staff has been asked
8 by a number of grantees to allow our funds to be used for
9 administrative purposes like personnel or administrative
10 personnel, marketing personnel, sales force and so forth. Our
11 position is that their company is conducting the R&D now and
12 our expectation of them is that they need to get
13 commercialized, need to have marketing and sales staff and
14 administrative. I think the question is do we want or do you
15 committee members want to see our funds narrowing just on
16 scientific personnel located in the tobacco region or are you
17 willing to allow grant funds to be used on company operating
18 expenses that arguably will lead to commercialization? The
19 position of this group was that focusing on scientific.

20 MR. NOYES: Not that we're saying those other
21 expenses are not important for the project, they may very well
22 be and there's all sorts of stuff when you're an operating
23 business so let that be in kind. Saving Sarah the trouble of
24 having to argue to people that a trip to Bahrain is important
25 for their marketing efforts.

1 MS. CAPPAS: We broke this one down a little
2 further. We took the position that for a lot of these projects
3 yes, we're investing in R&D and we're also investing in the
4 company, the new company that are going to need to be
5 established and part of that management and accounting and
6 marketing all of that. So our position was that we felt it was
7 important to have or for that information for any, you can call
8 it GNA or any of the general management, administrative costs
9 must be detailed in the application and it must be per position
10 in our footprint, all these costs in our footprint. We did take
11 the position that GNA costs outside of the footprint, the group
12 felt like that and if they're not in the footprint they not be
13 reimbursed. Our position was to allow for the GNA costs be
14 considered if it was detailed in the budget.

15 MR. OWENS: So you're saying that would be
16 allowable to use Tobacco Commission funding, is there any
17 reference to that?

18 MR. PFOHL: There's not at this point and
19 grantees push back, show us somewhere where it says in
20 writing that we can't have our marketing people funded out of
21 this grant. We're looking for the Committee to address this so
22 we can show some grantees and your marketing people make
23 a great match or we don't want to use our funds for that.
24 These are jobs in the Tobacco region and if you're willing to
25 help fund them, help with the commercialization that's the

1 message we sent.

2 MR. HAMLET: Our concept was being
3 sensitive to staff having to negotiate and the stance that
4 they're taking is something that the Commission or in its
5 formal policies and that the Commission and the compromise
6 to us was have that budget and I'm not sure at application
7 time but at least post awarding of the grant when it's time to
8 go to work for that company. If there is a budget that is
9 approved and detailed enough that the company knows what's
10 reimbursable and the staff knows what's reimbursable. We
11 can see a period when there is negotiations if you will, where
12 the company wants the trip to Bahrain to be included in this
13 negotiation but before any money is spent, the details are
14 worked out so everybody is clear.

15 MR. NOYES: That's understandable but I
16 think there is an underlying assumption that this is my
17 problem, that that compromise over time is not going to be
18 changed and not going to be requested to add this person,
19 subtract this person. The compromise that this table came up
20 with, whatever the actual research costs are, we will pay for,
21 we'll pay for those and reimburse you. These other costs are
22 also eligible project costs and it's in kind where it's very clearly
23 defined. They could add another researcher or subtract a
24 researcher and those remain eligible as a research function.
25 It's a research function that we will reimburse for and not

1 what may prove to be a moving target to all other costs related
2 to the project which you don't really need that detailed budget.

3 DELEGATE BYRON: Some of the things we
4 were thinking of, I think we agree the money should be spent
5 in the footprint and that's an easy one and everybody agrees
6 on that but what happens when you get into these broad
7 expenses like marketing, companies dealing in other states are
8 going there and spending \$300 a night in a hotel and all the
9 other expenses that go with travel and the marketing account
10 and there's a need for your product so marketing is involved
11 and you're running into some of those things. It might make it
12 a lot easier if we could stick with the research and operating
13 expenses and if they're defined and deal with the research
14 that's one thing and that's what this committee needs to talk
15 about and maybe we should narrow that down and if there's
16 something else that needs to be included in that.

17 MR. OWENS: Do you need something specific
18 in the performance agreement, is that what you're saying?

19 MR. PFOHL: Program guidelines.

20 MS. CAPPS: At this table we looked at the
21 staff, some of the information that Sara and I shared with and
22 I have a printout and I don't know if this is the right time to
23 share it, but this table was supportive of all three of the
24 numbered items that we've written out here and they were
25 supportive of publishing the guidelines and publishing the

1 expectation of how they're going to be supporting the matches
2 to us and publishing what type of costs, the GNA costs that
3 are there to be considered, what the limitations are.

4 DELEGATE MARSHALL: What's the question?

5 DELEGATE BYRON: The federal stuff that, I'm
6 not familiar with those items.

7 MS. CAPPAS: It all ends up being very
8 interrelated. What I think in terms of this GNA costs, part of it
9 is who makes the call, Francios Chenard with that particular
10 project, the tire project. They're operating entirely in Danville
11 and we cover a portion of his time in addition to the research
12 dollar and I'm fine if you want to limit it only to the research.
13 The next project, solar panels, so yes, if it's all research, Scott
14 is a manager of engineering like training. His time isn't billed
15 to the project, just part of the GNA costs in Danville. I know
16 we don't want to pay GNA costs for California. The question is
17 do we consider some portion to pay for Scott's time?

18 DELEGATE BYRON: The cost of that?

19 SECRETARY CHENG: Traditionally, allowing a
20 limited amount of those expenses, administrative expenses in
21 the footprint, not the secretary, receptionist and that type of
22 thing. Is this a big problem or is there a big percentage you're
23 basing it on the time?

24 MR. PFOHL: It could potentially be a big
25 percentage as Neal mentioned it. If you get into the sales staff,

1 it could potentially become a significant portion of the grant
2 money.

3 MR. OWENS: Is that a one to one match?

4 SECRETARY CHENG: Certainly as a small
5 business person, I would want that and even there's certain
6 things the federal government would pay for. I don't know
7 what the market or how you reflect the GNA on top of
8 whatever it is but that seems pretty complex. The proforma
9 numbers that and I know they can come back and audit it,
10 but I think we, when you have an investigation of the company
11 you –

12 MR. NOYES: Reimbursement by the federal
13 government, that agency that is providing the cash makes a
14 decision on what that indirect costs is. They might say 22
15 percent or whatever.

16 MS. CAPPES: I would like to clarify in terms of
17 how we approve reimbursement requests. The issue or one of
18 the issues that, as far as the R&D grant, there are federal
19 rules where they have three types of indirect, GNA, overhead,
20 fringe and on top of that, there's an appeal process. We don't
21 reimburse, we don't count that as a match unless that money
22 is reinvested on research. On the fringe side we're accustomed
23 to seeing fringe rates at 30 percent. One thing the staff has
24 found is that we've got one company that was drafting
25 bonuses for their employees. When this table reviewed that

1 issue, they agreed that we shouldn't be paying bonuses.
2 Beyond that, all the mandatory fringe costs, overhead, that
3 gets into another phase. Then the GNA rate, instead of, with
4 all of our resources, we don't, we might use a percentage for
5 fringe if it matches up with the actual costs but for GNA they
6 would have to actually bill us, we don't go by rate, they can't
7 bill, they'd have to give us the actual costs portion.

8 MR. PFOHL: Personnel expenses and I think
9 its obvious that it needs to be said that we don't mind paying
10 for those direct project management costs, the salaries and so
11 forth and pay an indirect percentage but I would suggest
12 perhaps madam chair that a compromise might be that we
13 recognize we want the companies commercialize and we'll pay
14 direct operational management expenses not to proceed some
15 percentage of the grant, 25 or 30 percent. Right now the
16 majority of the money going into –

17 MS. CAPP: Reasonable amount. I think we
18 have to ask them, we have to get into the details, whose going
19 to get paid and how they're going to do it and that will be
20 evaluated as part of the review and if it's not there, then we
21 won't start the project and disbursing funds.

22 DELEGATE BYRON: I think we'll go with 25
23 percent.

24 MS. WILLIAMS: Then they're going to ask for
25 it.

1 DELEGATE BYRON: That might be an issue
2 already.

3 MS. WILLIAMS: Not near 25 percent. On the
4 GNA side, most of the personnel expenses are for technicians,
5 engineers, the direct, smaller than 25 percent.

6 MR. OWENS: Do you have a number that it's
7 closer to?

8 MS. WILLIAMS: Ten percent or less. The
9 majority of my grants, I haven't seen anything, they're fairly
10 good about research activity, nothing that would draw my
11 attention that this is a problem with this grant but then I have
12 a couple and especially in the cases where more of a start up
13 company where you see a lot more and you may take, you may
14 pay only for the administration but under equipment, the cost
15 of computers and their justification is that they're in our
16 research data research equipment and then you may also be
17 paying for their office supplies or whatever. I think there's got
18 to be a limit. I don't know off the top of my head what that
19 base amount is and we don't want to encourage these
20 expenses but there's some companies, especially start up
21 companies, we're funding their operation and their operation
22 is doing research.

23 SECRETARY CHENG: The overhead, GNA –

24 MS. WILLIAMS: I also have one grant where
25 the administrative assistant is making somewhere around

1 \$60,000 and for that market it's pretty high for administrative
2 assistant and capping it may help keep that salary more in
3 terms of what is fair for that job market.

4 MS. THOMAS: I'd say go with a percentage, go
5 with that because rather than say reasonable because that
6 becomes too subjective for a person reviewing the application
7 and reasonable on one application might be 20 percent on
8 another one it is different.

9 DELEGATE BYRON: a judgment thing.

10 MR. PFOHL: For direct, would be documented
11 in the record.

12 MS. CAPP: This has been great, it goes a
13 long way to help us.

14 DELEGATE MARSHALL: One question that
15 popped up and we need to put in this data or just X number of
16 years and I'll just one example. One project the application
17 was received on November 9th and are the people hanging out
18 there or are we going to say that in X number of years for
19 approval by this committee that the project should go forward
20 and not let them hang out there? Do we want to say two years
21 or four years or whatever after the date of approval the R&D
22 the project has to move forward or either the money is
23 returned?

24 MR. NOYES: They have one year to be
25 underway.

1 DELEGATE MARSHALL: The project is not
2 underway.

3 MR. NOYES: They can ask for an extension of
4 up to one year which I have the authority to do
5 administratively. That particular project or what has
6 happened with that project is they went through this huge
7 process of creating a new LLC separated from the parent
8 company and then all the attorneys from the private equity
9 folks got into it and wanted 3,000 changes to the agreement. I
10 think that problem is about to go away because the problem is
11 really centered on the penalty, the poison pill aspect. After
12 that, then they have to appear back before the Committee and
13 tell them or explain themselves why they need to get more
14 time. So there is a procedure or a policy in place for people
15 that can't get together and get underway. That's an
16 established policy. The second year they have to convince me
17 there's a good reason and that's usually having to do with
18 attorneys, they get involved and after that, I have no authority
19 to extend it. They have to appear before the Committee. We
20 track that and we tell them they have to come before the
21 Committee and if they don't agree, then they don't. That was
22 agreed to by the Commission. We don't have the authority to
23 do that.

24 DELEGATE MARSHALL: One more thing, are
25 you going to get all of this back to us in a document form so

1 we will approve it at that time because we talked about a lot of
2 things today?

3 DELEGATE BYRON: We have an application
4 deadline. The amount of the grant we talked about at 250,
5 two million two years and I don't know whether we've all
6 challenged it but there's one question right now that I have
7 about the penalties. Are we agreeing to it initially? Do we
8 need any reason to go back?

9 MR. NOYES: I would say that as far as
10 negotiating, if somebody wants to come in and ask for, if
11 somebody comes in and says we want to go by the new rules,
12 there won't be any negotiation on the new rules.

13 DELEGATE BYRON: Some of them we've
14 gotten out, we've had this discussion and if we're concerned
15 about exact language or something like that, we can agree in
16 concept as we have in the past and then get a finalization on
17 it. Number one was what the staff recommended I believe.
18 Number one was the staff recommendation; number two I just
19 stated, one, two million two years; three was removing the
20 penalty.

21 MR. NOYES: Eliminating the poison pill. No
22 time limit on the first and fully piece.

23 DELEGATE BYRON: Number four I think we
24 ended up agreeing that staff, the staff recommendation that no
25 funds are disbursed until all financing is committed and

1 available rather than the applicant going by the application;
2 number five was the one that Ms. Capps was going to put
3 verbiage in the application that, talking about the rate of
4 return, something open ended to the applicant to say that the
5 rate under the tobacco region after commercialization.

6 MR. NOYES: The program guidelines.

7 DELEGATE BYRON: Part of the application.

8 MR. NOYES: That's where the guidelines
9 would tell us.

10 DELEGATE BYRON: Number six we agreed
11 upon up to 10 percent.

12 MR. PFOHL: That the program guidelines
13 state that up to 10 percent of the grant can be used for direct
14 general administrative expenses within the tobacco region
15 footprint; all other GNA use as a matching fund.

16 MS. CAPPS: Can we elaborate on that?
17 Publishing our funding policy and the other guidelines that
18 directly apply to the R&D grants that would require greater
19 detail than the current funding policy published and included
20 in that would be spelling out what we expect from them in
21 terms of the match and be required to document the match.

22 MS. WILLIAMS: Where does it explicitly say
23 we have to document the match? It's part of the requirement
24 that you have to document the match. One, making it
25 absolutely clear that they are expected to fully document that

1 50 percent match and number two, make sure that we clarify
2 what we expect to see for that documentation, like accounting
3 reports and timely reports or that type of documentation.

4 DELEGATE BYRON: That's fine, that's the
5 guidelines we're talking about.

6 MR. NOYES: That's administrative direction
7 program guidelines.

8 DELEGATE BYRON: Everything we agreed
9 upon and recommendations and agree in concept based on
10 what was stated. Then I'll also ask for the staff to put that in
11 writing for each of us as well. Ed wants to make a motion to
12 accept those recommendations.

13 MR. OWENS: So moved.

14 SECRETARY CHENG: Second.

15 DELEGATE BYRON: All in favor of those
16 recommendations say aye (Ayes). Opposed. (No response). I
17 know it was a labor of love and I appreciate everyone being
18 here today. We're not always going to have 6 hour meetings
19 on policy issues but I think it was timely and I appreciate
20 everyone for participating. I think we got a better
21 understanding in our approach to what we're doing or our
22 goals and we'll have our guidelines and we'll go from there. I
23 want to thank everybody for their time today.

24 All right, any public comment? Anyone want
25 to say anything? All right. Our next application deadline is

1 when?

2 MR. NOYES: I believe its July 20th.

3 DELEGATE BYRON: And our next meeting
4 will be in September I think. Again, I want to thank everyone
5 for coming and I think this has been beneficial for all of us.

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7 PROCEEDINGS CONCLUDED

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