

**VIRGINIA TOBACCO INDEMNIFICATION  
AND COMMUNITY REVITALIZATION COMMISSION**

701 East Franklin Street, Suite 501  
Richmond, Virginia 23219

**Research and Development Committee Meeting**

Wednesday, September 25, 2013

3:00 p.m.

Holiday Inn Bristol Hotel & Conference Center  
Bristol, Virginia

CRANE-SNEAD & ASSOCIATES, INC.  
4914 Fitzhugh Avenue, Suite 203  
Henrico, Virginia 23230  
Tel. No. (804) 355-4335

1    **APPEARANCES:**

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3    The Honorable Kathy J. Byron, Chairman

4    Ms. Cindy M. Thomas, Vice Chairman

5    Ms. Mary Rae Carter, Deputy Secretary of Commerce & Trade  
6        for Rural Economic Development

7    Mr. Burgess "Butch" H. Hamlet, III

8    The Honorable Daniel W. Marshall, III

9    Ms. Sandra F. Moss

10   The Honorable Edward Owens

11   Mr. Kenneth O. Reynolds

12   The Honorable Frank M. Ruff, Jr.

13   The Honorable Ralph K. Smith

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15   COMMISSION STAFF:

16   Mr. Timothy S. Pfohl, Interim Executive Director, Grants  
17        Program Administration Director

18   Mr. Ned Stephenson, Deputy Executive Director

19   Ms. Sarah K. Capps, Grants Program Administrator –  
20        Southside Virginia

21   Ms. Sara G. Williams, Grants Program Administrator –  
22        Southwest Virginia

23   Ms. Stephanie S. Kim, Budget Director

24   Ms. Carolyn Bringman, Performance Data Analyst

25   Ms. Stacey Richardson, Executive Assistant

1 **APPEARANCES (Cont'd)**

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3 SENIOR ADVISOR:

4 Mr. Neal Noyes

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1 DELEGATE BYRON: The R&D Committee will come  
2 to order. Tim, if you would, call the roll, please.

3 MR. PFOHL: Delegate Byron?

4 DELEGATE BYRON: Here.

5 MR. PFOHL: Senator Carrico, are you on the phone  
6 with us? I guess not.

7 Deputy Secretary Carter?

8 DEPUTY SECRETARY CARTER: Here.

9 MR. PFOHL: Mr. Hamlet?

10 MR. HAMLET: Here.

11 MR. PFOHL: Delegate Marshall?

12 DELEGATE MARSHALL: Here.

13 MR. PFOHL: Ms. Moss?

14 MS. MOSS: Here.

15 MR. PFOHL: Ms. Nyholm is not with us.

16 Mr. Owens?

17 MR. OWENS: Here.

18 MR. PFOHL: Mr. Reynolds?

19 MR. REYNOLDS: Here.

20 MR. PFOHL: Senator Ruff?

21 SENATOR RUFF: Here.

22 MR. PFOHL: Senator Smith?

23 SENATOR SMITH: Here.

24 MR. PFOHL: Ms. Thomas?

25 MS. THOMAS: Here.

1 MR. PFOHL: You have a quorum.

2 DELEGATE BYRON: All right. Looking at the  
3 agenda, we have one grant that was talked about at the last  
4 meeting and it was tabled and we were going to give everyone  
5 time to look at it and ask for a Staff recommendation. We're on  
6 Page 36 of your book.

7 MR. PFOHL: On Page 48 there is a summary of this  
8 new request, and this is Number 2792, Region 2000 Research  
9 Institute Hot Flow Test Loop Facility. It's a \$2 million grant  
10 proposal. This is following on two previous grants for the  
11 research program two years ago to establish the B&W IST  
12 Integrated Systems Test Facility that is operating successfully  
13 in the CAER Research Center in Bedford. This grant met their  
14 stated goal of creating 10 new design, construction and testing  
15 jobs, and overall B&W has created more than 200 positions in  
16 Region 2000 dedicated to the mPower project. B&W now seeks  
17 to add the hot flow test loop test capability in a new structure  
18 that has been preliminarily designed to be built immediately  
19 adjacent to CAER. This facility would be used to conduct tests  
20 that are a requirement of the Nuclear Regulatory Commission  
21 approval process for mPower. Under this proposed  
22 development plan, Bedford County would provide the land in  
23 the New London Technology Park, CAER would own the  
24 building and any tobacco-funded equipment to be acquired  
25 under a second request for two million that would be submitted

1 in 2013-14 to complete the construction and begin purchasing  
2 and installing equipment. B&W would lease the facility from  
3 CAER and invest eight million in the balance of the equipment  
4 to be located at the Hot Test Flow Facility. B&W will fund all  
5 testing and operating expenses and create 12 new engineering  
6 and technician positions paying an average of 90 thousand  
7 annually. B&W seeks immediate approval of this request in  
8 order to secure this research facility for the tobacco region  
9 rather than other B&W sites that are known to be under  
10 consideration in other states and to have the building  
11 completed by late 2014 so that tests can be completed in time  
12 for the NRC application to be submitted in 2016. The request  
13 would seek to bypass the R&D vetting process, and given the  
14 USDA reinvestment in this project it is by far the largest  
15 investment made during the recent call for federal grant  
16 proposals. There is ample evidence that vetting would  
17 unnecessarily cause damaging delays and would most likely  
18 jeopardize the selection of Virginia for this project. Staff is  
19 recommending this request be exempted from the vetting  
20 process and receive an immediate award of \$2 million for  
21 construction costs for the structure to be owned by CAER.

22 DELEGATE BYRON: You've heard the  
23 recommendation. There are also some folks here from the  
24 County and from B&W. Are there any further questions with  
25 regard to this?

1 MR. OWENS: I'd make a motion that we accept the  
2 Staff's recommendation.

3 DELEGATE MARSHALL: Second.

4 DELEGATE BYRON: We have a motion to accept the  
5 Staff's recommendations and a second. Any further  
6 discussion from anyone? All in favor say aye? (Ayes.)  
7 Opposed? (No response.) All right, that passes. Thank you  
8 very much.

9 All right, Ned, I guess we left off talking about the grant  
10 agreement last week. Do you have any further information on  
11 that? Does counsel have information as well?

12 MR. STEPHENSON: Yes, Madam Chairman. To  
13 catch everybody up, when we adjourned last week we talked  
14 about the fact that the Commission Staff issued a grant  
15 agreement to each recipient, and we're a little bit trapped in a  
16 cycle as to what you wanted to do or delete the terms of the  
17 grant agreement. If the grant agreement gets adjusted for that  
18 particular grantee then we go through that process again. We  
19 have been through a fairly exhaustive exchange with counsel to  
20 help us write a grant agreement to accommodate as many  
21 versions as possible. Some of the tenets of that grant  
22 agreement are not entirely satisfactory to some parties, and in  
23 some cases the Commission itself, or commissioners, may not  
24 be satisfied that the agreement is strong enough to accomplish  
25 some of your goals. When we left the meeting last week we

1 agreed we would ask Counsel Ballou if he would give you a very  
2 high altitude review of some of the major tenets of this grant  
3 agreement and maybe, Madam Chairman, you could direct us  
4 from there.

5 MR. BALLOU: Thank you, very much. In light of  
6 Mr. Stephenson's introduction, I think that says the key points  
7 to be set which require to sort of go between Staff indirectly and  
8 some of the grant recipients and us so the process occurs in late  
9 spring or early summer and results are reflected in a new form  
10 of grant agreement. Many of the provisions you would find are  
11 pretty normal and routine for a grant, but knowing this is for  
12 R&D, that makes it a little bit different from some of the other  
13 projects that the Commission funds from time to time, like a  
14 mega site or a road in some places and sort of leads to some of  
15 the issues that have developed over the past several years.  
16 This Committee has started working with or coming up with the  
17 appropriate paperwork to enter the grant. The disbursement  
18 of the grant will be conditioned upon certain requirements.  
19 The money has to be spent within the Commission footprint;  
20 prior to disbursement the private company must have evidence  
21 of matching funds for 50 percent of the project costs. Funds  
22 expended prior to the award will be eligible for that. Project  
23 commercialization, if the project results in a product service  
24 commercialization of the project for service it must first and  
25 fully occur in the Commission's footprint. And that, I think,

1 has been an issue that has sort of worked through, worked its  
2 way through for the last couple of years.

3 MR. NOYES: Thank you, Eric. Committee  
4 members will remember that I expressed some concerns in the  
5 meeting earlier this month and on commercialization in  
6 reviewing and talking to Eric and Ned about the grant  
7 conditions, as Eric says, must first and fully occur within the  
8 region. I believe the cure for this is a brief or several words  
9 saying as described and set down in Exhibit A, project  
10 description. That's the only change I think is needed to that  
11 section on project commercialization.

12 Then in Exhibit A, which is project description, it will say  
13 commercialization will consist of whatever it was that the  
14 beneficiary said they felt would happen if the research was  
15 successful, some number of jobs or some amount of private  
16 capital investment. So I think that by simply adding in the  
17 grant conditions those few words, I think that will cure the  
18 problem. We talked about a three-year interval or a five-year  
19 interval. I'd point out to the Committee members the  
20 beneficiary cannot use what it learns until it has first and fully  
21 done what it said it was going to do, the application you  
22 reviewed and it was vetted; and that's forever, not for three  
23 years or four years or ten years.

24 I think this is a very firm workout that is consistent with  
25 the revitalization objectives of the Tobacco Commission, just

1 adding those words.

2 DELEGATE BYRON: There's a little confusion over  
3 here and talking about commercialization in the footprint which  
4 I thought was always one of the criteria, but then you also  
5 mentioned jobs. Is there a requirement there that whatever  
6 they project to be jobs, then they actually get the  
7 commercialization, and are you continuing that?

8 MR. NOYES: Saying very explicitly that in the  
9 application they tell us what commercialization would look like  
10 after the research and then after the research case they tell us  
11 in every application and discussed in the Staff  
12 recommendations and review is part of the vetting process by  
13 putting that language in the project description the number of  
14 jobs. They can't have first and fully done the  
15 commercialization until they do what they said they were going  
16 to do in the application.

17 DELEGATE BYRON: I have one question. Did you  
18 have any of this discussion with the Economic Development  
19 Partnership, since they do the vetting?

20 MR. NOYES: With VEDP?

21 DELEGATE BYRON: Yes.

22 MR. NOYES: I talked to Jerry about it. He said you  
23 can put in whatever you want, whatever the Committee wants  
24 to see. I'm suggesting we simply put in the project description,  
25 what it is, the beneficiary, what the applicant told us would

1 happen. That would amount to commercialization.

2 DELEGATE BYRON: The question I have is, and we  
3 were talking about contract issues, one of the problems that  
4 brought this to discussion was that each applicant seemed to  
5 have a different way their lawyer wanted to interpret our  
6 contract or add certain stipulations or things in the contract.  
7 Is this one of the areas that you're highlighting as a problem, or  
8 is this just another add-on?

9 MR. NOYES: I'm highlighting it as a problem. We  
10 say first and fully without ever putting in any place in the grant  
11 agreement what constitutes first and fully; it's never mentioned.  
12 So by simply adding to project description what it is that the  
13 beneficiary and applicant told us that it was going to look like  
14 would cure the problem.

15 DELEGATE BYRON: Any questions from members  
16 of this Committee?

17 MR. BALLOU: I'll be happy to sort of address any of  
18 these, which I think is a useful addition because the way in  
19 which the grant agreement works does refer back to Exhibit A in  
20 concept, so adding the specific language Mr. Noyes suggested,  
21 in my view, is a useful and helpful change.

22 DELEGATE BYRON: Will this cure everything? We  
23 also had a discussion about having copies of the contract also  
24 being given to the applicant when they apply for the grant, with  
25 the understanding that they have read it and understand it.

1           MR. BALLOU: I think that would be very helpful,  
2 and sometimes you see contracts, draft contracts being put out  
3 with bid documents and if any of the respondents have any  
4 issues with theirs that they need to comment on, then comment  
5 on, so you know when you're going through the grant approval  
6 and evaluation process exactly whether or not you're going to  
7 have any contract issues. Sometimes you will receive those  
8 and sometimes you may not because the applicant may go  
9 ahead and wait until later on to refer to the agreement when it's  
10 been prepared and finalized and then send it to their lawyer in  
11 an effort to streamline the process or, God forbid, lower legal  
12 costs. In that situation it's very helpful to do that, and you may  
13 smoke out any issues. I'm not saying you're still not going to  
14 have some as you get toward the grant execution time frame.

15           DELEGATE BYRON: Will this change any of the  
16 contracts that are already signed?

17           MR. NOYES: This would be for those not yet  
18 executed.

19           SENATOR SMITH: In the changes you're suggesting  
20 would the obligation then be written in stone and not be  
21 negotiated away in the future?

22           MR. BALLOU: I think that's the process, Senator. I  
23 very rarely see the specifics of any particular grant award or  
24 project unless I get a call from Staff to assist with a particular  
25 issue for language. So I think that would be a starting point, I

1 think that's the starting point and just as an effort to provide an  
2 even-handed approach to all grant recipients.

3 SENATOR SMITH: The starting point is not in  
4 stone? Is there a way, and I think that was your intent, went  
5 back a few years ago, and I understand somebody worked  
6 extensively getting something that was to be written in stone  
7 and then it got negotiated away.

8 MR. BALLOU: I think as Mr. Stephenson said in his  
9 introductory remarks what we intend to be written in stone  
10 sometimes results in changes to the grant recipients and  
11 complain about it to other members, whether on the  
12 Commission or Staff, but then they ask for relief, and that may  
13 lead to negotiation sessions which may change the terms of the  
14 grant agreement somewhat.

15 SENATOR SMITH: From additional years of  
16 experience, is it possible to write in stone the obligation and if  
17 there is any flexibility they would know it up front?

18 MR. BALLOU: Senator, is it possible to write it in  
19 stone? I conceptualize it's different with an R&D grant because  
20 you are funding a process which may be a little bit different  
21 than if you are funding a hard asset or something you can look  
22 on a survey and know you are making a road or something like  
23 that to fund the project disbursement. When it comes to this  
24 R&D funding process it seems to be that some of these  
25 provisions speak to what happens after the R&D is done and it

1 is resulting in something along the lines of, and in this case  
2 project commercialization, which in and of itself is a good thing.  
3 But it's an effort to put your arms around that, and you're not  
4 sure what that project commercialization in all cases is going to  
5 look like. While it may be written in the grant application and  
6 the wording up front is meant to be as all-inclusive as possible,  
7 one would hope those words are going to cover what's written as  
8 the commercialization that is envisioned in the grant  
9 application.

10 DELEGATE BYRON: Mr. Chairman.

11 DELEGATE KILGORE: Would that include  
12 clawback provision?

13 MR. BALLOU: It does have clawback provision.

14 MR. STEPHENSON: Madam Chairman, it may help  
15 this Committee to know that with respect to non-R&D grants we  
16 have a standard grant agreement that is issued to all grantees.  
17 We get minor push back on some form or structural issues but  
18 not on any material terms of that contract, and we routinely  
19 accommodate those cosmetic issues. We don't get any push  
20 back on the structure. R&D for some time has gotten nothing  
21 but push back. We have wanted to try to get to the point the  
22 grant is a take it or leave it grant. Here's a deal and it's up to  
23 you. That's a little bit dictatorial. These are R&D recipients,  
24 they are our partners, and we wouldn't have a program if they  
25 were not playing with us. So it's a matter of finding a proper

1 balance, demanding what we must have to accomplish our  
2 mission and honoring some of the needs of the grantee, and we  
3 seem to be trapped in that system, if you will.

4 DELEGATE BYRON: The only thing I have a little bit  
5 of concern about is this clawback and how that would work with  
6 R&D being a process. The fact that you're doing research  
7 leading up to commercialization. You may project something,  
8 but the research may change that projection as you go along.  
9 That makes me wonder in the end if you don't come out exactly  
10 as you promised and planned in the beginning how that's going  
11 to affect the application and then the clawback.

12 MR. STEPHENSON: Some of the grantees, wisely,  
13 are very reluctant to sign hard promises where R&D is  
14 concerned because it's speculative. Some of them will go  
15 ahead and sign them anyway, and where there are clawback  
16 provisions the only way we can execute on those is if they are  
17 clear and articulated and the facts are clearly known. It's hard  
18 to get through R&D.

19 DELEGATE BYRON: Any other questions from the  
20 Committee?

21 DELEGATE KILGORE: I guess the question you  
22 were asking, whether they promise so many jobs and then they  
23 get into it and they can't deliver.

24 DELEGATE BYRON: Yes.

25 DELEGATE KILGORE: Are you saying are they

1 going to be able to or should they?

2 DELEGATE BYRON: What formula is going to drive  
3 how much the clawback is, and is it based on the part on the  
4 application --

5 MR. NOYES: If I understand your question, the way  
6 the clawback works is that in this instance if they  
7 commercialize outside of the footprint before they first and fully  
8 meet the obligations of what is in the project description.

9 DELEGATE BYRON: If they stay in the footprint and  
10 never reach the goal that they intended there is no clawback?

11 MR. NOYES: Yes.

12 DELEGATE BYRON: That's why I said, or we always  
13 said, we want commercialization in the footprint, and that still  
14 is the main emphasis.

15 MR. NOYES: We did not define what first and fully  
16 meant.

17 DELEGATE BYRON: Does our legal counsel feel like  
18 we have accomplished what we need by this amendment? Are  
19 they going to understand now what their responsibilities are as  
20 well?

21 MR. BALLOU: One would hope, Madam Chairman,  
22 but I think you are still, just because of the nature of the R&D  
23 grant, the fact that you're dealing with things like the  
24 intellectual property issues, and I think these things are going  
25 to end up being a grant agreement process that requires more

1 Staff time than the fill in the blank and basically some of the  
2 others.

3 DELEGATE BYRON: Which is why I thought that if  
4 we gave some type of understanding when they apply that they  
5 understand or they have some of these questions set out at that  
6 particular time that we might be able to prevent some of the  
7 challenges.

8 MR. BALLOU: I think that's not only an excellent  
9 suggestion but it also may benefit from the grant agreement  
10 which would specifically go out with the grant materials. Also  
11 having a plain English summary that takes one or two pages so  
12 that some of the business folks if they're reading that may also  
13 be able to realize rather than having their counsel pointing out  
14 that there could be an issue, that they may stumble on that  
15 right there at the time and understand that this is something  
16 that they should consult with or seek elaboration from the  
17 Commission so you would know when you receive the grant  
18 materials whether or not you're going to have some grant  
19 administration issues as you try to write a contract.

20 DELEGATE BYRON: Any other discussion or  
21 comments from Committee members? I don't believe we need  
22 to vote on this; we've gotten some direction what we're going to  
23 do.

24 All right. Is there any public comment?

25 MS. MARTIN: I just want to thank you for looking at

1 this issue to make sure that funds received from the  
2 beneficiaries will ultimately, that commercialization at least will  
3 first and fully occur in the Tobacco Commission footprint. It's  
4 helpful to grantees to have that with the Tobacco Commission to  
5 make sure that it doesn't happen outside of the footprint.

6 Thank you very much.

7 DELEGATE BYRON: Thank you. Any further  
8 comments? If not, we're adjourned.

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10 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 certify that I was the court reporter who took down and transcribed the proceedings of the **Virginia Tobacco Indemnification and Community Revitalization Commission Research and Development Committee Meeting when held on Wednesday, September 25, 2013 at 3:00 p.m. at the Holiday Inn Bristol Hotel & Conference Center, Bristol, Virginia.**

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

Given under my hand this 7<sup>th</sup> day of October, 2013.

\_\_\_\_\_

Medford W. Howard

Registered Professional Reporter

Notary Public for the State of Virginia at Large

My Commission Expires: October 31, 2014.

Notary Registration Number: 224566