

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

3 701 East Franklin Street, Suite 501
4 Richmond, Virginia 23219
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9 **TROF Committee Meeting**

10 Wednesday, April 23, 2014

11 9:00 A.M.

12
13 General Assembly Building
14 5th Floor West Conference Room
15 201 North Ninth Street
16 Richmond, Virginia 23219
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1 **APPEARANCES:**

2 The Honorable Terry G. Kilgore, Chairman

3 The Honorable Frank M. Ruff, Vice Chairman

4 The Honorable Daniel W. Marshall, III

5 Mr. Timothy S. Pfohl – Interim Executive Director & Grants

6 Program Administration Director

7

8 COMMISSION STAFF:

9 Mr. Ned Stephenson – Deputy Executive Director

10 Ms. Stephanie S. Kim – Director of Finance

11 Ms. Carolyn Bringman – Performance Data Analyst

12 Ms. Stacey Richardson – Executive Assistant

13

14 COUNSEL:

15 Eric E. Ballou, Esquire

16 Megan Martz Gilliland, Esquire

17 CHRISTIAN & BARTON, LLP

18 Mutual Building

19 909 East Main Street, Suite 1200

20 Richmond, Virginia 23219-3095

21 Counsels for the Commission

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1 DELEGATE KILGORE: All right, I'll call
2 the meeting to order, it looks like everybody's here. We have a
3 new member of the TROF Committee, which is Delegate
4 Marshall. Do I have a motion to approve the 8/13/13
5 minutes?

6 SENATOR RUFF: So moved.

7 DELEGATE KILGORE: All right, I've got a
8 motion and a second to approve the minutes. All those in
9 favor say aye. (Ayes.) Opposed? (No response.) The minutes
10 are passed.

11 MR. STEPHENSON: Mr. Chairman, we've
12 got three things I'm going to ask you to do today. The first is
13 that a small handful of new requests and secondly we have a
14 slate of non-performing old requests we have to deal with.
15 Thirdly, we want to talk to you a little bit about how to cure
16 the non-performance problem going forward.

17 I'll start with the handful of new
18 requests. We have a request from Mecklenburg for an
19 unannounced company so we will refer to them by the number
20 2875. They represent 580 jobs with a \$34,000 salary. They
21 plan to invest \$48 million and it is within your guidelines.
22 This is the third request for Mecklenburg County. The reason
23 I tell you it's the third request because in a moment
24 Mecklenburg is going to have a fourth request, which requires
25 Commission approval and you need to know that before you

1 act on that. The interesting thing about this particular one,
2 the reason it's before you and number one, it's over the
3 executive director's limit to approve. However, you can
4 approve it according to your policies. The second fact is that
5 this company is looking at more than one locality and both of
6 them have looked to the Commission for an award. I don't
7 know whether you want to make an award to both of the same
8 dollar amount or what you want to do but the information we
9 have is before you.

10 DELEGATE MARSHALL: Both requests
11 are within the footprint?

12 MR. STEPHENSON: Yes, they are.

13 SENATOR RUFF: Mr. Chairman, should
14 we hear all of the requests before we take any action?

15 DELEGATE KILGORE: Let's do that.

16 MR. STEPHENSON: The second request
17 before you is Mecklenburg, which if you were to look at the
18 one you just saw then this one would be the fourth one, which
19 requires Commission approval. The details are before you and
20 it's a \$1.6 million request, jobs and investment are stated. It
21 is within your guideline. The executive director could approve
22 this under the policy that you dictated and it's within his
23 authority to do that up to \$2 million. However, there are some
24 unusual circumstances surrounding this request. Most
25 particular, there were two previous grants made to this

1 applicant, which does push the aggregate amount to a large
2 number and it would be a fourth request, which requires
3 Commission approval. Now, note the footnote that one of the
4 earlier requests is not at this moment in compliance with the
5 terms of the contract. So there's some extenuating
6 circumstances that might influence how you wish to deal with
7 it.

8 SENATOR RUFF: Mr. Chairman, I just
9 got off the phone with the county administrator and they have
10 met the standards of the partnership and they did not
11 understand the different format and they're going to send that
12 in and they're in the process of redoing it. So I don't think
13 that's a factor. They do not want to include certain personnel
14 for 100,000 that offsets, under 64,000. They have lived up to
15 their standard, we'll have that paperwork very shortly. So I
16 think that asterisk should be a factor.

17 MR. STEPHENSON: So I understand you
18 want to hear all the requests before you act. All right, there
19 was a request from Brunswick County that you are familiar
20 with and this is a third request in a series we have seen
21 before. You have made two \$10 million grants to this entity
22 and the budget provides for a third one should you choose to
23 approve it and most of you are familiar with it and it requires
24 your recommendation to go to the full Commission for its
25 approval.

1 Mr. Chairman, that's the sum of all the
2 requests before you today.

3 DELEGATE MARSHALL: So the second
4 one is a \$1 million investment with five counties? What are
5 we saying there?

6 MR. STEPHENSON: The proposed
7 capital investment will be placed in five different counties.
8 The request is coming to us from one county that gets the
9 lion's share of the capital investment.

10 SENATOR RUFF: Pittsylvania, Halifax,
11 Charlotte and Mecklenburg.

12 DELEGATE MARSHALL: All in the
13 footprint?

14 MR. STEPHENSON: Yes.

15 DELEGATE MARSHALL: So if Brunswick
16 is going to get the \$10 million, the other four counties are
17 going to be split, Brunswick's getting a large chunk of the or
18 eighty percent of it.

19 DELEGATE KILGORE: All right. We've
20 got a \$4.2 million TROF balance right now. The \$10 million
21 doesn't count against that because we've already budgeted the
22 \$10 million.

23 MR. STEPHENSON: The ten is on the
24 balance sheet somewhere else, it will not be available until
25 July 1.

1 MR. PFOHL: FY15.

2 SENATOR RUFF: What did you say the
3 balance was?

4 DELEGATE KILGORE: 4.2.

5 MR. STEPHENSON: That's right and
6 Stephanie is reminding me that 4.2 plus the recently
7 deobligated City of Bristol \$5.5 million that was committed to
8 them is no longer. So 549.7.

9 SENATOR RUFF: Just to review our
10 rules, the third request has to be –

11 MR. STEPHENSON: The fourth one has
12 to go to the Commission.

13 SENATOR RUFF: Does anybody know
14 the timeframe on these two?

15 MS. KIM: This is one, the second one.

16 SENATOR RUFF: Mr. Chairman, the
17 larger one is ready to start moving.

18 DELEGATE KILGORE: I'd say on that
19 one within the guideline and if it hadn't been over the
20 guidelines. Is there any more discussion or do I hear a
21 motion?

22 SENATOR RUFF: I move conditionally
23 that they provide the paperwork.

24 DELEGATE KILGORE: As soon as they
25 get in compliance with the paperwork.

1 MR. STEPHENSON: If it pleases the
2 Committee, you could approve the grant today with
3 disbursement subject to coming into compliance on the first
4 round.

5 SENATOR RUFF: That's what I meant to
6 say and that's my motion.

7 DELEGATE KILGORE: All those in favor
8 say aye. (Ayes.) Unanimous.

9 MR. STEPHENSON: That would be the
10 third grant for that county, which means the fourth one must
11 go to the full Commission if that be your recommendation.
12 Going to the Commission is not a problem it's just that the
13 Commission put that limit on some years ago so they would
14 have a chance to look at it.

15 DELEGATE MARSHALL: So it's three a
16 year?

17 MR. STEPHENSON: Three approvals per
18 fiscal year.

19 DELEGATE MARSHALL: No matter what
20 size the fourth one goes to the Commission?

21 MR. STEPHENSON: Yes.

22 DELEGATE MARSHALL: This is written
23 down somewhere?

24 MR. STEPHENSON: It is.

25 DELEGATE MARSHALL: Would you send

1 that to me?

2 MR. STEPHENSON: I will.

3 SENATOR RUFF: That doesn't cause any
4 problems to that timeframe.

5 DELEGATE KILGORE: My only concern
6 on this request is you've got 2.3 asked for for one county and
7 1.4 for the same company for the other county and I know
8 there's a difference in unemployment rates and all that. Is
9 that what skews it?

10 MR. STEPHENSON: The difference in
11 amount is largely due to the unemployment rate. However, I
12 will tell you that the number of jobs and investment
13 represented to us by one county is different than those
14 represented to us by the other county.

15 DELEGATE KILGORE: Which one is
16 higher?

17 MR. STEPHENSON: Jobs are higher,
18 investment is lower. We respond to the written amount they
19 represent. We try not to do it orally because we have this
20 problem. The differences between the counties, I'll tell you
21 that in times past right or wrong under these conditions, the
22 Commission has awarded the same dollar amount to both
23 counties wherever the deal went.

24 DELEGATE KILGORE: If one said we're
25 going to create five hundred jobs and one said 580 and signing

1 whatever we agreed to signing an agreement to provide those
2 jobs, whatever it is.

3 MR. STEPHENSON: If you were to
4 approve anything for them today, I would suggest you approve
5 the guideline amount not to exceed because the job numbers
6 are bouncing around and when they finally decide what the
7 job number is that they do want to sign off on, we'll use the
8 guideline amount for that number. It's classic that people
9 overstate the jobs until it comes time to sign and then the
10 number drops.

11 DELEGATE MARSHALL: So it's the
12 number of jobs, the unemployment rate is not a factor?

13 MR. STEPHENSON: The unemployment
14 rate is a factor, a material factor in this case because one
15 county's unemployment rate is higher than the other. The
16 jobs count in one county is 690 not 580, it's the same
17 company. That's both counties quoting different numbers and
18 it happens all the time. It's because the job numbers are very
19 spongy in the early conversations but when it comes time to
20 commit and sign off on the liability, then they get real.

21 SENATOR RUFF: Is this an either/or or
22 just two?

23 MR. STEPHENSON: My suggestion
24 would be that if you want to approve this deal that you not
25 approve one piece of money for whichever county the company

1 wanted to go to.

2 SENATOR RUFF: They're just going to
3 have one location?

4 MR. STEPHENSON: One location and
5 you'd only be out one amount.

6 DELEGATE MARSHALL: Let's take away
7 if it's the same company, different companies and you've got
8 two proposals you'd have two different sets of money.

9 MR. STEPHENSON: Yes.

10 DELEGATE KILGORE: But one
11 company.

12 MR. STEPHENSON: I think both
13 counties would like to have a commitment in their pocket at
14 the negotiating table and that's what we've tried to give to the
15 counties so that they can look the company in the eye and say
16 if you're coming here, we will do this.

17 DELEGATE KILGORE: What are you
18 suggesting?

19 MR. STEPHENSON: I'm suggesting that
20 you approve if you want to and approve the guideline amount
21 not to exceed \$2.3 million whichever county the company may
22 choose.

23 DELEGATE KILGORE: If they have 690
24 that's a great investment for 2.3 million for 690 jobs at 34,000
25 a year in my opinion.

1 MR. STEPHENSON: The job number will
2 settle down. When the deal gets done and if the job is 500
3 we'll use the guidelines to trim the amount to 500 jobs, 400 or
4 six.

5 DELEGATE MARSHALL: Six hundred at
6 2.3.

7 MR. STEPHENSON: Not to exceed 2.3.

8 SENATOR RUFF: If we go out of here
9 with that 2.3 million figure in a public meeting, do they then
10 know that that is the amount no matter where they go?

11 MR. STEPHENSON: Subject to the
12 guideline and not to exceed the guidelines. The lesser of
13 guideline or 2.3, whichever is smaller.

14 SENATOR RUFF: What's unemployment
15 in Dinwiddie?

16 MR. STEPHENSON: I'll tell you in a
17 moment. Six and a half, 9.8 and that's what's driving it.

18 SENATOR RUFF: I would move we
19 approve it as Ned proposed it not to exceed 2.3 subject to the
20 guidelines or 2.3.

21 MR. STEPHENSON: The smaller of.

22 DELEGATE KILGORE: We have a
23 motion.

24 DELEGATE MARSHALL: Second.

25 DELEGATE KILGORE: We've got a

1 motion and a second. All those in favor say aye. (Ayes.)
2 Opposed? (No response.)

3 SENATOR RUFF: If they choose
4 Mecklenburg it will have to go to the full Commission for
5 approval?

6 MR. STEPHENSON: The fourth deal
7 takes it to the Commission and over \$2 million takes it to the
8 Commission. I think it's got to go either way unless the jobs
9 are really 250 and the guideline calculation drops it below \$2
10 million then Mr. Pfohl could sign off.

11 SENATOR RUFF: No, he couldn't
12 because it would be the fourth time. If Dinwiddie decides –

13 MR. STEPHENSON: Not the same
14 posture.

15 SENATOR RUFF: Is there any action we
16 can take?

17 MR. STEPHENSON: Recommendation to
18 the full Commission.

19 DELEGATE KILGORE: Do I have a
20 motion to recommend it to the full Commission?

21 DELEGATE MARSHALL: Second.

22 DELEGATE KILGORE: Motion and a
23 second. All those in favor say aye. (Ayes.) Opposed? (No
24 response.)

25 MR. STEPHENSON: That's the first

1 group on your agenda. The second group on your agenda is
2 what we call the non-performance on the older deals and it
3 happens to be nine in default. You can see the numbers. We
4 had 1400 jobs promised and there's 190, \$95 million of
5 capital promised and there's \$6 million.

6 DELEGATE KILGORE: You only got 190
7 jobs out of 1457?

8 MR. STEPHENSON: There are refunds
9 due from these nine applicants of approximately \$5.4 million.
10 I think what staff is asking you today and give us guidance as
11 to whether you want to hear all of these in front of your
12 Committee at some time or whether you want the staff to act
13 uniformly to inform those contracts with some potential
14 painful remedy.

15 DELEGATE KILGORE: When you say in
16 front of the Committee, what Committee are you talking
17 about, the Executive?

18 MR. STEPHENSON: Historically, we've
19 brought these to the Executive Committee, Mr. Chairman, but
20 I thought maybe it would be helpful if the TROF Committee
21 could make some decisions by guiding the staff the way you
22 want to navigate this. I will remind you that at the last
23 meeting we indicated, I think, that we have about a 51%
24 default rate in these TROF agreements and we have almost
25 100 of these maturing in the next three years and if the

1 default rate continues, we'll have half of those or fifty of those
2 pending in front of your Committee or the Executive
3 Committee telling you why they ought not to repay what they
4 obligated themselves to. I think the staff senses that's
5 awkward for the Committee and we're trying to offer you some
6 options to have the staff deal with as much of it as we can
7 before you have to get involved in it.

8 SENATOR RUFF: Mr. Chairman, we've
9 talked about this in this Committee and at the full
10 Commission for way too long. We've kind of tied the hands of
11 the staff so I would move that we authorize staff to move
12 forward to fulfill the contracts.

13 DELEGATE MARSHALL: I'll second that.
14 I have a question. When you say move forward, what are we
15 going to do?

16 SENATOR RUFF: Ned can describe what
17 follows on a regular basis.

18 MR. STEPHENSON: I can, up until this
19 point, staff engages in what one might call soft collection
20 techniques. We don't use the word demand in our written
21 correspondence. We ask. We say a refund is due. We give
22 them a date by which we expect it to be paid. We have
23 abundant email traffic and letters from them, phone calls but
24 at the end of the day some will respond to that and pay, which
25 they have. The default remedies that staff has available to it,

1 if you want to authorize this, are there before you. We can
2 negotiate installment repayment agreements and we've done
3 some of that at your direction in the past trying to give the
4 counties some time to pay if they're willing to do that. Some of
5 the more difficult practices would be to immediately freeze all
6 disbursements to that county until this is cured. To bar the
7 receipt of any more grant requests from that county until this
8 is cured. To enter that in the state set-off system, which
9 means any monies due them from the Commonwealth would
10 be frozen and directed to the Tobacco Commission to cure this
11 and finally and reluctantly we would submit these to Counsel
12 for collection and that means through legal means, courts if
13 necessary. That's harsh but if you want for us to collect these,
14 staff would begin to implement as few of these as we thought
15 would be effective. If not effected, we would ratchet it up until
16 it got cured.

17 DELEGATE MARSHALL: I have an idea
18 that I like it a little bit but not a whole lot. This is a Southside
19 idea, might not work in Southwest. In Southside we have
20 allocations in economic development. Has it ever been talked
21 about to allow the offset in this case the allocation would go to
22 satisfy costs. That could work in Southside. Even in
23 Southside it works in some places better than others. Some
24 places have better or maybe a little allocation. Halifax,
25 Danville, Pittsylvania have a lot of allocation.

1 MR. PFOHL: Mr. Chairman, that
2 approach is an approach the staff has considered. I think we
3 would say that is ourselves paying ourselves for the default of
4 the locality and probably not the most desirable but certainly
5 an option but eventually the money would end up in Danville,
6 ultimately the Commission money.

7 DELEGATE KILGORE: That's the
8 formulary.

9 SENATOR RUFF: Mr. Chairman, if you
10 followed that scenario out, you effectively would be freezing
11 that money also. If you're taking any money coming to them,
12 allocation money or whatever, that's still part of the equation
13 and I'm not sure it changes the dynamics.

14 MR. STEPHENSON: I believe gentlemen,
15 the second bullet on the screen if employed is going to cure
16 95% of them quickly.

17 DELEGATE KILGORE: I think so, too.

18 MR. STEPHENSON: The staff would have
19 to be disciplined to use the lightest touch possible going about
20 cure, but be willing to do more if it didn't work but I think the
21 freeze will get their attention.

22 SENATOR RUFF: It certainly did with
23 Mecklenburg. I told them the situation several years ago and
24 it wasn't as high as this.

25 DELEGATE KILGORE: We have a motion

1 and a second.

2 SENATOR RUFF: I've forgotten the
3 motion.

4 MR. STEPHENSON: If I may, Mr.
5 Chairman, I have a suggested motion. I haven't discussed it
6 with Counsel. It might help guide the Chair.

7 DELEGATE KILGORE: All right.

8 MR. STEPHENSON: Move to direct the
9 Commission staff to employ the following remedies as deemed
10 appropriate by the Executive Director for all grants under
11 which contractual obligations are owed to the Commission
12 have not been fulfilled. Within 60 days after delivery of a
13 written demand notice to the grantee and its controlled
14 affiliate to all other parties to the grant agreement A) freeze
15 disbursements and B) decline to accept applications for new
16 grants, C) enter the name of the grantee in the state debt
17 setoff system, D) refer to Counsel for appropriate steps
18 including collection procedures.

19 DELEGATE KILGORE: I have a caveat
20 for somebody to make an amendment here. Before you enter
21 them into the state debt setoff system or refer to Counsel for
22 collection, I think there ought to be some notice or we ought to
23 know about that because it's going to, because our phones are
24 going to start ringing.

25 MR. STEPHENSON: Clearly you need to

1 know ahead of time. That suggested language, I'm very open
2 to having that adjusted.

3 DELEGATE KILGORE: Are you getting
4 ready to say something?

5 SENATOR RUFF: I'm not sure that needs
6 to be in that track. I think the staff ought to keep us aware of
7 what's going on and that's part of the same motion.

8 DELEGATE KILGORE: Me personally, if
9 you're doing it in Southwest, I'd like to know that. Just like
10 the education department and the budget, I'd like to know
11 that.

12 MR. PFOHL: I think staff would be happy
13 to provide reports on the array of defaults that we're working
14 on including notice before we setoff on collection action.

15 MR. STEPHENSON: The state debt setoff
16 system has some circuit breakers in there, it's not like a
17 guillotine.

18 DELEGATE KILGORE: I'm not familiar
19 enough with it.

20 MR. STEPHENSON: There's time for
21 people to respond, appeal and get satisfied before anything
22 rash happens. It is a shot across the bow.

23 SENATOR RUFF: Let's take it back into
24 the situation like Mecklenburg, we approved a few minutes
25 ago. If you would notify them and then they might have a

1 rational explanation, you'd deal with that as you'd been
2 dealing with it in the past?

3 MR. STEPHENSON: Absolutely. We
4 wouldn't drop any hammers until all factors are on the table,
5 short of promises made.

6 SENATOR RUFF: Then I'd make that
7 motion as Ned laid it out.

8 DELEGATE KILGORE: Do you want to
9 withdraw the other motion?

10 SENATOR RUFF: Yes.

11 DELEGATE MARSHALL: Second. When
12 you say freeze all disbursements, you're talking about all the
13 Committees like R&D and Education?

14 MR. STEPHENSON: All in the broadest
15 sense you can interpret, the Commission is locked up for that
16 entity until it's cured.

17 DELEGATE KILGORE: I have a motion
18 and a second. All those in favor say aye. (Ayes.) Opposed?
19 (No response.)

20 MR. STEPHENSON: Lastly, Mr.
21 Chairman, is the third piece trying to find some solutions that
22 will cure this problem globally going forward. We've talked a
23 little bit about asking you to consider some TROF program
24 changes and the most significant of which would be to make
25 the TROF disbursement in arrears after performance has

1 occurred and not in advance in hopes that performance will
2 occur. This represents a significant change and there are
3 marketing implications for making that change. I think my
4 friends are here and might like to speak to what they know
5 about disbursing monies in arrears.

6 DELEGATE KILGORE: That would be
7 very detrimental to the program and may cost us some
8 opportunities that we would otherwise have, am I right on
9 that?

10 MS. POVAR: As you know, we have two
11 different kinds of programs. One is the GOF and one is
12 performance. There are some things to think about if you
13 want to start working with these programs. One thing to keep
14 in mind is the value of the incentive.

15 DELEGATE MARSHALL: I keep seeing
16 these ads for New York, Michigan and Texas. Are those states
17 giving their funds up front or in arrears or some of both?
18 Does this distinguish us from say TROF giving money up
19 front?

20 MS. POVAR: I think in general most
21 other states do not give pre-performance grants. Sometimes
22 it's a cash incentive. Other states have different performance
23 requirements. I believe there is two different ones. North
24 Carolina had one at one time.

25 SENATOR RUFF: I think a good

1 partnership could tell us but no matter what we do today,
2 we'll have a better understanding what the plan is.

3 MS. POVAR: The research points out
4 various programs and we can get some of that information to
5 you and maybe some changes to your program.

6 DELEGATE KILGORE: We'd be very
7 appreciative of getting anything like that and we thank you.

8 MR. PFOHL: Mr. Chairman, we
9 understand that this would be a change in terms of economic
10 development incentives and our role in that and staff has
11 given thought to providing an option to the payment in
12 reference to performance approach being protected from that
13 approach. We've done some research and we've surveyed
14 economic developers at the local level in the Tobacco Region.
15 Carolyn has some information before you if you care to see it.
16 By giving some thought to what that protective front end
17 approach would be and what that might look like. We
18 understand from survey responses our localities have or
19 typically use what I call this front-end approach, protective
20 front-end approach. If that locality is signing on for liability
21 for potential claw back, the mechanism in place as you see on
22 the screen before you one of the protections is a deed of trust
23 guarantee and so forth. We'd also like for you to think about a
24 scenario where localities would have two of those options to
25 choose from. If they want front-end payment of TROF, there

1 would be a protection mechanism required if they're willing to
2 accept back-end payment upon proof of performance and
3 that's an option they can choose themselves and we're going to
4 hear some more about that and we can be prepared to do
5 those different scenarios as well.

6 DELEGATE KILGORE: I think that
7 secured performance is a way we should look at it. It may be
8 not all inclusive but maybe some or some others or other
9 security that could be put up that may satisfy security
10 performance. I'm not sure that we, Ned, that we need to
11 determine whether the security is sufficient or not but it would
12 be up to the locality to say that security and realizing they're
13 going to be liable one way or the other.

14 MR. STEPHENSON: I think if we go this
15 route, the extent of the staff's inquiry would be to say to the
16 community have you secured performance of the contract, yes
17 or no. We would not attempt to assess the sufficiency of that
18 security, it would be left to the locality and there would be
19 risks that it may not be adequate.

20 DELEGATE MARSHALL: Where is that
21 change, is it up to the locality to pay us back?

22 MR. STEPHENSON: It doesn't really
23 change anything.

24 DELEGATE MARSHALL: Just do a box
25 check and say do you have security.

1 MR. STEPHENSON: And hope that they
2 check that box, indeed they have, we won't know. Some
3 counties as Tim indicated have already figured this out and
4 are doing this to protect themselves. They may not and we
5 don't really know. If the deal goes bad, they'll repay us and
6 exercise their security coverage and we may not even know
7 that; we don't need to know.

8 DELEGATE MARSHALL: Along those
9 lines, Tim is talking about pay me now or pay me later, it
10 would still be pay me later.

11 MR. STEPHENSON: It would be pay me
12 now and I will certify to you I am secure and we accept that
13 certification at face value.

14 DELEGATE KILGORE: The use of a box
15 on the draft.

16 MR. STEPHENSON: Have them sign that
17 they have obtained adequate security in their sole discretion.
18 We don't know whether they have it or not and we're not going
19 to ask for a copy of it and we're not going to vet it to make
20 sure they say they have it.

21 DELEGATE KILGORE: If they sign it
22 saying they have it, are there repercussions?

23 MR. STEPHENSON: There could be,
24 there's only a hair's difference between what we have now.

25 DELEGATE MARSHALL: We're not going

1 to ask them what kind of performance, whether it's a bond or
2 security on the land.

3 MR. STEPHENSON: We've thought about
4 that Delegate Marshall and if we ask them to show us the
5 security instrument or tell us about it, we're inclined that
6 we're going to look at it and tell them that we think it's enough
7 or not and that's a whole other world.

8 MR. PFOHL: Mr. Chairman, we haven't
9 fleshed this out with Counsel yet how we could tighten that up
10 within the TROF agreement. It's certainly a tool to help
11 ensure that adequate protection is available.

12 DELEGATE MARSHALL: If we do this,
13 when would it be effective, by the first of the fiscal year?

14 MR. STEPHENSON: Obviously it will
15 take a little time. I think Counsel is prepared to start writing
16 this as soon as possible and what that might take I don't know
17 or at least several weeks to get it hammered out. The deals
18 approved today would probably go out with the old
19 agreements. As soon as we could, we'd get that done. I think
20 it's a little bit disingenuous to approve these deals under an
21 agreement that's listed on the website and then switch the
22 agreement on them in mid-stream.

23 SENATOR RUFF: We're not really
24 switching the agreement, we're just clarifying things that we
25 expect. I would move that we follow that course of security

1 performance and allow the localities to establish which of
2 those vehicles they want to use to check off the box. I'd also
3 as a motion require the staff to send a letter to every
4 administrator to clarify that because we've had some problems
5 and want to try to tighten things up and better pay attention.

6 DELEGATE MARSHALL: I'll second that.

7 MR. PFOHL: Mr. Chairman, for
8 informational purposes, I talked to Secretary Jones about this
9 prospective approach and he expressed support. In his
10 words, he said we have to protect the grant.

11 DELEGATE KILGORE: All right. All
12 those in favor say aye. (Ayes.) Opposed? (No response.)

13 MR. STEPHENSON: The final item, Mr.
14 Chairman, is that for several years now the Executive
15 Committee has informally instructed staff to work out
16 repayment agreements and we've done that with success. The
17 offering part of the repayment agreement is that there's no
18 standards or limits and we've done what we thought was
19 prudent by scheduling payments out for two or three years.
20 Some companies want monthly payments for thirty years and
21 it gets crazy as to what we're asked for. We're suggesting that
22 this Committee set guidelines to the staff for repayment
23 agreements that if repayment over time is desired that it be
24 according to this schedule that is before you and that's the
25 only deal we offer. And if that's unacceptable, they can pay it

1 all now as the contract calls for rather than have staff wrap
2 around the axle with people that want crazy repayment terms
3 of different amounts. Many of them want a repayment
4 agreement that doesn't call for any money today. That's what
5 they all want. We try not to allow that.

6 SENATOR RUFF: And no interest?

7 MR. STEPHENSON: Technically, we
8 don't charge interest but we're suggesting if you can't pay
9 what you owe, we will accept 25% of it today together with
10 your promise to make the other once a year over three years
11 under a defined and signed installment payment agreement.

12 DELEGATE MARSHALL: Under this
13 scenario right here, you said earlier that if some locality owes
14 money to TROF they generally pay it back under this case
15 right here say 25% now and they won't be considered until
16 three years?

17 MR. STEPHENSON: No, if they sign an
18 installment payment or agreement and put the 25% on the
19 table, that's a complete cure and they're completely restored
20 and everything's back to normal unless they default on their
21 payments and then it goes back in the hopper again.

22 SENATOR RUFF: How about a bad
23 check?

24 MR. STEPHENSON: I've had that
25 happen.

1 DELEGATE KILGORE: All right. Do you
2 want a motion?

3 MR. STEPHENSON: It would be helpful.

4 DELEGATE KILGORE: All right, you've
5 heard the motion. Do I have a second? We have a second and
6 a motion. All those in favor say aye. (Ayes.) Opposed? (No
7 response.) That's the last item we had. Any public comment?
8 All right, there's no public comment and do I have a motion
9 that we adjourn?

10 SENATOR RUFF: So moved.

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12 PROCEEDINGS CONCLUDED.

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CERTIFICATE OF THE COURT REPORTER

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I, Medford W. Howard, Registered Professional Reporter and Notary Public for the State of Virginia at large, do hereby certify that I was the court reporter who took down and transcribed the proceedings of the **Virginia Tobacco Indemnification and Community Revitalization Commission TROF Committee meeting when held on Wednesday, April 23, 2014 at 9:00 a.m. at the General Assembly Building, 5th Floor West Conference Room, Richmond, Virginia 23219.**

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 1st day of May, 2014.

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