

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 **Executive Committee Meeting**

10 Wednesday, May 20, 2015

11 4:30 P.M.

12
13 New College Institute
14 Martinsville, Virginia

1 **APPEARANCES:**

2 The Honorable Terry G. Kilgore, Chairman

3 The Honorable Frank M. Ruff, Vice Chairman

4 The Honorable Charles W. Carrico, Sr.

5 Ms. Mary Rae Carter

6 The Honorable Maurice Jones, [by phone]

7 Secretary, Department of Commerce & Trade

8 The Honorable Daniel W. Marshall, III

9 Mr. Donald W. Merricks

10 The Honorable James W. Morefield

11 The Honorable Edward Owens

12 Dr. David Redwine, DVM

13 The Honorable Gary D. Walker

14 The Honorable Thomas C. Wright, Jr.

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2 **APPEARANCES (cont'd):**3 COMMISSION STAFF:4 Mr. Timothy S. Pfohl – Interim Executive Director & Grants
5 Program Administration Director

6 Mr. Ned Stephenson – Deputy Executive Director

7 Ms. Stephanie S. Kim – Director of Finance

8 Ms. Sarah K. Capps - Grants Program Administrator,
9 Southside Virginia10 Ms. Sara G. Williams – Grants Program Administrator,
11 Southwest Virginia

12 Ms. Suzette Patterson – Grants Program Office Manager

13 Ms. Carolyn Bringman – Performance Data Analyst

14 Ms. Stacey Richardson – Executive Assistant

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16 COUNSEL FOR THE COMMISSION17 Ms. Elizabeth Myers, Assistant Attorney General
18 Richmond, Virginia.

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20 Mr. Evan Feinman – Executive Director effective May 26, 2015

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DELEGATE KILGORE: All right, I'm going to call the Executive Committee meeting to order and I welcome you all here. Tim, please call the roll.

MR. PFOHL: Delegate Byron? (No response.) Senator Carrico?

SENATOR CARRICO: Here.

MR. PFOHL: Ms. Carter, Secretary Jones designee?

MS. CARTER: Here.

DELEGATE KILGORE: I believe the Secretary is going to call in.

MR. PFOHL: Delegate Kilgore?

DELEGATE KILGORE: Here.

MR. PFOHL: Delegate Marshall?

DELEGATE MARSHALL: Here.

MR. PFOHL: Mr. Merricks?

MR. MERRICKS: Here.

MR. PFOHL: Delegate Morefield?

DELEGATE MOREFIELD: Here.

MR. PFOHL: Mr. Owens?

DELEGATE OWENS: Here.

MR. PFOHL: Dr. Redwine?

DR. REDWINE: Here.

MR. PFOHL: Senator Ruff?

1 SENATOR RUFF: Here.

2 MR. PFOHL: Mr. Walker?

3 MR. WALKER: Here.

4 MR. PFOHL: Delegate Wright?

5 DELEGATE WRIGHT: Here.

6 MR. PFOHL: You have a quorum, Mr.
7 Chairman.

8 DELEGATE KILGORE: Do I have a
9 motion that we approve the minutes, the April 13th minutes?

10 DELEGATE MARSHALL: So moved.

11 DELEGATE OWENS: Second.

12 DELEGATE KILGORE: We have a motion
13 and a second. All those that approve the minutes say aye.
14 (Ayes.) Opposed? (No response.) All right, the minutes are
15 approved. All right, in April we were discussing the budget
16 and we decided we would wait until today to make some final
17 recommendations to Stephanie. Please turn to page 111.

18 MS. KIM: If you recall at the April
19 Committee meeting we went through a couple of amendments
20 and one piece you wanted to take a look at we were looking at
21 a three percent corpus invasion or a seven percent corpus
22 invasion and we were actually invading this coming June.
23 Normally for the FY15 budget, which would end June 30th, we
24 invaded the corpus and you approved an invasion of eight
25 percent and what we're planning to do is to invade again this

1 June to fund the following fiscal year's budget. And actually
2 we can have our money before the year starts instead of at the
3 end of the year. So what we're looking at is a three percent
4 corpus invasion, which would make it a total of eleven percent
5 for the fiscal year or a seven percent corpus invasion, which
6 would bring it up to fifteen percent. If you look on there,
7 there's an option A and option B.

8 DELEGATE KILGORE: The money
9 difference if you look at the bottom there would be about
10 twelve million dollars and some change?

11 MS. KIM: Yes.

12 MR. PFOHL: Mr. Chairman, the three
13 percent invasion, which would be the lowest in the history of
14 the Commission since we securitized is in enabled by a one-
15 time anomaly of the general account balance funding a
16 significant portion of the option A budget. Option A budget is
17 roughly level funding with the current fiscal year. As I
18 described in April, the budget includes an addition of a
19 proposal for a megasite prospect, which you see suggested at
20 twelve million in option A and \$25 million in option B. That's
21 where the proposed difference lies between the \$48 million
22 option A and the nearly \$61 million in option B.

23 SENATOR RUFF: Mr. Chairman, if a
24 mega project comes along, would we be unable to access the
25 funds again before the next fiscal year?

1 MR. PFOHL: We would be able to invade
2 again on July 1st, this July 1st.

3 MS. KIM: Nothing happens until next
4 June. The invasion would not actually happen until next
5 June. We would approve it July 1, nothing happens until
6 June of next year.

7 MR. PFOHL: July 1, 2015 starts the new
8 fiscal year and we can do another invasion as early as July 1,
9 this summer, correct?

10 MS. KIM: No, they will not transfer the
11 funds until June. Treasury will not transfer the funds until
12 June.

13 MR. PFOHL: A year later?

14 MS. KIM: Yes. That's currently how
15 we've been operating. If we approve a budget for the corpus
16 invasion, it doesn't happen until the last month of the year. If
17 we do not invade now before June 30th, you can approve a
18 corpus invasion for the next fiscal year but it will not happen
19 until June 2016.

20 MR. MERRICKS: My understanding if we
21 don't take the invasion now at seven percent level, it's forever
22 gone, next June and another invasion. My point was whether
23 it's sitting over here or here, I'd rather have it sitting where we
24 can use it if we need to even though we're showing it in the
25 megasite fund, we still can switch things around to a

1 Committee that doesn't have enough money.

2 DELEGATE KILGORE: Like Special
3 Projects or Education.

4 MR. MERRICKS: I'm thinking that we
5 will never be able to get it if we don't transfer it now; that was
6 my point.

7 DELEGATE KILGORE: You're exactly
8 right. As Chairman, I agree with option B, but I'm not sure I
9 agree with the megasite prospect, maybe not \$25 million,
10 maybe \$18 million, take seven or so and move it to Special
11 Projects or to be determined. Leave it out there to be
12 determined, that way you can use it where you need it. It's
13 put in the general account. I would say my preference would
14 to be to utilize option B but leave instead of \$25 million take
15 \$15 million and leave the other ten in the account. We might
16 need something for education or even TROF.

17 DELEGATE MARSHALL: In TROF we
18 move money around and that's good to have.

19 DELEGATE KILGORE: That's a great
20 problem to have. Then the full Commission by majority we
21 can move those dollars where they're needed.

22 SENATOR RUFF: There's no difference in
23 the income wherever it sits? If no difference in the income,
24 you still get the interest on it.

25 MS. KIM: Yes.

1 DELEGATE MARSHALL: If we move the
2 money and put it into the general account then at our next
3 meeting we need to move money out of the general account,
4 does it take the majority of the board, two-thirds to do that?

5 DELEGATE KILGORE: It would take the
6 majority, maybe we should ask our lawyer. Being somewhat
7 of a lawyer, we're taking a two-thirds vote now and to transfer
8 it I think it would be a simple majority.

9 MR. STEPHENSON: The law requires a
10 two-thirds vote to invade. You fixed your bylaws to require a
11 two-thirds vote of yourselves to budget more than ten percent.
12 The distinction one is in the law, the other is in the bylaws.
13 The invasion is controlled by the law but budgeting the money
14 for use is controlled by the bylaws. Yes, it does presently
15 require two-thirds.

16 MS. CARTER: Secretary Jones is on the
17 line.

18 DELEGATE KILGORE: Welcome,
19 Secretary Jones.

20 SECRETARY JONES: Thank you.

21 DELEGATE KILGORE: We're behind as
22 usual. Do you have any comments about the budget?

23 SECRETARY JONES: No, I think I'm
24 familiar, I think you and I talked earlier. I wanted to make
25 sure if there was any issues with the Executive Director.

1 DELEGATE KILGORE: We're going to
2 cover salaries and benefits. Before we recommend adopting a
3 budget –

4 MS. KIM: We may need to amend the
5 administrative budget depending on what you decide.

6 DELEGATE KILGORE: I guess we can do
7 that tomorrow with the full Committee.

8 MS. KIM: You can recommend a seven
9 percent corpus invasion. We can make amendments to the
10 budget now and then adopt a recommended budget as
11 amended.

12 DELEGATE KILGORE: Here's what we'll
13 do then. The one we talked about the megasite, that prospect
14 under B. Do I have a motion that we instead of 25 we put 15
15 in there?

16 DELEGATE MARSHALL: Mr. Chairman,
17 would the first motion need to be seven percent and I so move.

18 DELEGATE CARRICO: Second.

19 DELEGATE KILGORE: We have a motion
20 and a second. Any discussion on that?

21 SECRETARY JONES: What are we voting
22 on now?

23 DELEGATE KILGORE: Invaded seven
24 percent, option B. All those in favor of that motion say aye.
25 (Ayes.) Opposed?

1 SENATOR CARRICO: The motion will be
2 changed to 25 million to 15?

3 DELEGATE KILGORE: Yes. Any
4 discussion? All those in favor say aye. (Ayes.) That moves
5 that money into the general account by default it does that.

6 SECRETARY JONES: If we do not utilize
7 those monies for the megasite investment this fiscal year the
8 money stays if you will set aside or is there the ability to use it
9 for something else?

10 DELEGATE KILGORE: There'd always be
11 the ability to use some or use it for something else by vote of
12 the Commission.

13 SECRETARY JONES: All right.

14 SENATOR RUFF: If we cannot budget
15 over seven percent as I understood what Ned said for us to
16 pull that money now would be subject to a particular
17 Committee it would have to be a two-thirds vote?

18 DELEGATE KILGORE: That's correct.

19 MR. STEPHENSON: That's by your own
20 bylaws.

21 SENATOR RUFF: I just wanted to clarify.

22 DELEGATE KILGORE: I think the other
23 area, any other area of the budget if you look under option B,
24 starting with the use of the funds, where do we need to make
25 an amendment?

1 MS. KIM: That goes to the administrative
2 budget.

3 DELEGATE KILGORE: Right, the
4 administrative budget. We need to have a motion on Tim and
5 approve the salary of the new Executive Director.

6 DELEGATE OWENS: A motion on Tim,
7 what do you mean?

8 DELEGATE KILGORE: Since Tim will no
9 longer be the Executive Director. Beginning Tuesday Tim will
10 go back to his previous job as the grants director.

11 DELEGATE OWENS: Then I move that
12 we approve Tim Pfohl as the Grants Program Director.

13 DELEGATE KILGORE: All right, all those
14 in favor of that motion say aye. (Ayes.)

15 MR. STEPHENSON: If I may help the
16 Chair, can you clarify the date? I think the appropriate date
17 would be May 25.

18 DELEGATE KILGORE: All those in favor
19 of that say aye. (Ayes.) Now, as far as his salary, making
20 \$110,000.

21 MR. PFOHL: \$95 base pay plus the
22 fifteen supplemental.

23 DELEGATE KILGORE: I'd hope we
24 continue to pay him that.

25 DELEGATE MARSHALL: I move we

1 continue his salary at the same level.

2 DELEGATE OWENS: Second.

3 SECRETARY JONES: I'll second that.

4 DELEGATE KILGORE: Any discussion
5 on that?

6 MR. PFOHL: I think for clarification, my
7 base salary is one figure and then the other is supplemental.

8 SECRETARY JONES: The total would be
9 the two of those combined.

10 MS. MEYERS: I believe we need another
11 second for that motion the Secretary seconded.

12 DELEGATE KILGORE: We have it
13 correct, Ned?

14 MS. MEYERS: I think it's correct.

15 DELEGATE KILGORE: We're going to
16 keep Tim at the same salary he's earning now, total
17 compensation of \$110, any more discussion on that? All
18 those in favor say aye. (Ayes.) Opposed? (No response.)

19 The next motion would be the governor
20 has the authority to appoint the Executive Director and we
21 have authority to set the salary and the salary the Chief of
22 Staff sent over was \$125,000. I checked with Secretary Jones
23 and others and that's in line with what other agency heads
24 earn. \$125,000 base salary.

25 DELEGATE MARSHALL: So moved.

1 DELEGATE OWENS: Second.

2 DELEGATE KILGORE: Any more
3 discussion on that?

4 MR. STEPHENSON: Effective on the 26th
5 of May.

6 DELEGATE KILGORE: All those in favor
7 of making that effective May 26 say aye. (Ayes.) Opposed?
8 (No response.)

9 MS. KIM: Now the administrative budget
10 will have to be increased by \$30,500 to include the increases
11 in salary and fringes are not included in the budget.

12 DELEGATE OWENS: I make that motion
13 to adjust the administrative budget.

14 DELEGATE KILGORE: I have a motion
15 and a second to adjust the administrative budget under
16 salary. All those in favor say aye. (Ayes.) Opposed? (No
17 response.) Are there any more changes on the budget before
18 we recommend adopting the budget?

19 MR. PFOHL: Mr. Chairman, the grant
20 that the Commission awarded to the Commonwealth Center
21 for Advanced Manufacturing is going to expire this fall. That
22 was done as a Special Projects grant four years ago. We
23 received a preliminary proposal from CCAM to extend that
24 relationship. On the advice of counsel, we're planning to
25 address with a Special Projects grant application. That will

1 put additional pressure on the Special Projects Committee this
2 year. I bring that up in terms of the general account fund
3 because you might want to consider increasing the Special
4 Projects budget.

5 DELEGATE KILGORE: What I would say
6 is that we'll do that on a have need basis because folks see all
7 that money sitting in Special Projects and then assuming that
8 is available. But I'd say leave it as it is right now. If we need
9 to adjust, we can do it as we go forward. You have the budget
10 before you?

11 DELEGATE MARSHALL: I move we
12 accept it.

13 DELEGATE KILGORE: It's been moved
14 and seconded. All those in favor say aye. (Ayes.) Opposed?

15 DELEGATE WRIGHT: No. I'm voting for
16 the same reasons I've voted for years because I don't like the
17 allocation of money, Southwest/Southside and you know that.

18 DELEGATE KILGORE: You think you
19 should get more?

20 DELEGATE WRIGHT: Yes, much more.

21 DELEGATE KILGORE: Page 37.

22 MR. PFOHL: The new legislation that
23 becomes effective July 1 calls for the Commission to update
24 its strategic plan. This was talked about in April. The
25 Commission has been receiving some information from the

1 Center for Rural Virginia, which has conducted stakeholder
2 input sessions with the planning districts across the Tobacco
3 Region. We just received a copy of that report from the Center
4 in the last two weeks. The important informative piece for the
5 strategic plan update we want to talk about some of the work
6 Carolyn is doing to identify performance evaluation measures
7 in conjunction with some of the Virginia Commonwealth
8 University faculty with their Center for Urban Analysis.

9 We're suggesting Mr. Chairman that a
10 strategic planning committee be appointed by you so we can
11 get that process moving this summer.

12 DELEGATE KILGORE: Yes, we need to
13 do that. If you have a desire to serve on the Strategic
14 Planning Committee, let me know. It would be great to work
15 on that. That would be the guide for us I would assume over
16 the next two or three years.

17 MR. PFOHL: We do have some names
18 from the previous Committee, people that were on it.

19 MR. STEPHENSON: Mr. Chairman, if it
20 would help the process, I think we have a preliminary list from
21 the last meeting and it seems like you'd be empowered to go
22 ahead and make those appointments between the meetings. I
23 don't have the list with me. If it would please the Committee,
24 we could do that next week.

25 DELEGATE KILGORE: All right, we'll do

1 that next week.

2 DELEGATE MARSHALL: Mr. Chairman,
3 this is going to be something that's pretty important for us. I
4 would suggest we look for a facilitator to kind of guide us
5 through this process, someone who is unique. I think we
6 should ask staff to look for a group person or facilitator,
7 maybe the Secretary knows someone.

8 DELEGATE KILGORE: It probably would
9 be a good idea for your first strategic planning to try to get
10 people that are interested, that's a good suggestion.

11 MS. CARTER: This will be done under
12 the new legislation right?

13 DELEGATE KILGORE: Yes.

14 MS. CARTER: Under the new legislation
15 if I recall correctly, there are certain agencies that are asked to
16 participate. Will there be any local or one in the region that
17 wants to be a part of it, developers or people with chamber of
18 commerce.

19 MR. STEPHENSON: The Code specifies
20 there shall be.

21 MR. PFOHL: Those people involved in
22 this, in those stakeholder input sessions conducted by the
23 Center for Rural Virginia and that is input as we outline the
24 process that will help identify the steps in that process,
25 graphing or setting up a strategic plan and working with those

1 stakeholders.

2 DELEGATE KILGORE: How long do we
3 have to do this?

4 MR. PFOHL: Legislation specific.

5 SECRETARY JONES: The legislation
6 doesn't say how long. I think it's either every two years or
7 three years.

8 DELEGATE MARSHALL: I was hoping we
9 would have this done so we could report back to the full Board
10 by September.

11 DELEGATE KILGORE: I don't know that
12 you'll have it done by then.

13 MR. FEINMAN: The timeframe that the
14 Executive Committee determines will determine how robust
15 we can move.

16 DELEGATE KILGORE: I would hope we'd
17 have it finished by January and absolutely done at that time.
18 I don't think we need to rush it. We might want to bring in a
19 couple of economic developers and other folks like that.

20 SECRETARY JONES: I do think, Mr.
21 Chairman, we have a deadline for getting it done. It's certainly
22 by the end of the year we ought to have it done.

23 MR. MERRICKS: Mr. Chairman, if I was
24 on the Board, I would hate to think I'd have to come up with a
25 couple of months so I think the end of the year is a more

1 realistic time.

2 DELEGATE KILGORE: You all can think
3 about that between now and bring it to the full Committee and
4 come up with a good outline maybe by October sometime.
5 R&D.

6 MR. PFOHL: At the R&D Committee
7 meeting last week, Delegate Byron, the Chairman, wanted to
8 look at two aspects of the R&D program and in particular the
9 vetting process and the potential for making grants not just
10 straight grants but some form of investment or loan in the
11 private beneficiaries so Committee Chair Byron has named
12 those people as we go forward.

13 DELEGATE KILGORE: 2015 Tobacco
14 Legislation. Do you want me to do it?

15 MR. STEPHENSON: I'd be happy for you
16 to do it. All right, Mr. Chairman, everyone I think is aware
17 that there is a new law that got signed by the governor last
18 week effective July 1. That law includes thirteen material
19 changes for the operation of the Tobacco Commission. Eleven
20 of those are incumbent upon staff to implement. Two of those
21 go to the General Assembly. Staff has been scrambling to try
22 to begin to implement as many of these as possible on the
23 timeline. Today we talked a little bit about the TROF policy
24 and the requirement in the Code that will be done tomorrow
25 morning. There's also some others that we must face and one

1 and walk through the plans the staff has to implement this
2 program.

3 The first one is for each grant and
4 obviously this is all grants that we make; agribusiness,
5 megasite, economic development, everything that goes out of
6 the house specifically including TROF.

7 DELEGATE MARSHALL: Is education, is
8 grants that the student gets, is that a grant?

9 MR. STEPHENSON: It is.

10 SECRETARY JONES: It doesn't include
11 the education grants, that's why the wording economic
12 development.

13 DELEGATE KILGORE: It does for each
14 economic development.

15 MR. STEPHENSON: Well, therein lies the
16 question. What constitutes an economic development grant?
17 Some might say everything we do is economic development.
18 So we need clarity on this.

19 DELEGATE KILGORE: That was not the
20 legislative intent, was it Mr. Secretary?

21 SECRETARY JONES: That was not the
22 intent.

23 MR. STEPHENSON: Can the Committee
24 help the staff understand what is the intent so that we serve it
25 up correctly?

1 MS. MEYERS: If I might interrupt, the
2 wording is what the wording is and if that's not what the
3 intent was, what the words are.

4 DELEGATE KILGORE: For each
5 economic development grant or award.

6 MR. MERRICKS: It doesn't say that. The
7 wording should be addressed.

8 DELEGATE KILGORE: I think if you read
9 that each economic development grant or award.

10 SENATOR RUFF: That's very strict.

11 MR. STEPHENSON: I'm suggesting that
12 the clarity we need to get from the Commission on two-thirds
13 vote to omit scholarships so everybody understands. It does
14 say all, all is all.

15 SECRETARY JONES: The language is
16 clearly intended to exclude the education. That's the reason
17 for the qualifier economic development. Otherwise that
18 qualifies it.

19 SENATOR RUFF: I agree with that.

20 DELEGATE WRIGHT: I wish to note an
21 exception. I think our counsel has told us the legislation
22 means what it says and Ned has given us a way to correct this
23 problem.

24 DELEGATE KILGORE: I don't think we
25 have to correct it.

1 DELEGATE WRIGHT: You may not but
2 someone else may think so. He said it involved two-thirds
3 vote by the Commission and to exclude scholarships. The
4 Commission should be careful because we've got some laws
5 that have been passed.

6 DELEGATE KILGORE: Do you think it
7 would be in our best interest to borrow or to make a motion
8 that education grants or education scholarships do not fall
9 under this.

10 MS. MEYERS: No, because it is, the
11 statute says what the statute says. Now, you made a very
12 good point putting qualified language economic development
13 in a grant award. I think any attorney could argue that means
14 the words mean what they mean and they don't use
15 unnecessary words. I just would agree that the use of that
16 language could be interpreted to exclude education.

17 DELEGATE WRIGHT: It could or could
18 not?

19 DELEGATE KILGORE: It could.

20 MS. MEYERS: It could. Unfortunately,
21 I'm not a judge.

22 DELEGATE MARSHALL: Put a bill in
23 next year, get an attorney general's opinion. If you got the
24 Tobacco Commission in a two-thirds majority overrule the law.

25 MR. STEPHENSON: It's on my desk but

1 it says you must do this for all grants unless there's a two-
2 thirds majority vote not to do it.

3 DELEGATE KILGORE: However a match
4 of fifty percent may be considered by two-thirds majority vote
5 of the Commission.

6 MR. STEPHENSON: So you have the
7 power to override this on a two-thirds vote. I'm suggesting we
8 knock scholarships out by a two-thirds vote and we're done.

9 DELEGATE KILGORE: Bill Carrico could
10 make a motion tomorrow that scholarships not be required to
11 have that and if two-thirds of us vote for it, then we're within
12 the law.

13 DELEGATE WRIGHT: Should that
14 include education and not just scholarships?

15 MR. PFOHL: We've got the issue of
16 community college financial, which are all very well matched.
17 In fact, I would suggest that even for undergrad scholarships
18 we're already getting a match. We're putting up two thousand
19 and I don't know of too many four year schools you can go to
20 for \$2,000 a year. We may be hammering the net here but the
21 competitive education we talked about already required dollar
22 for dollar match.

23 MS. CARTER: Again, this might be a
24 legal question, how can we vote on this now under this
25 legislation that won't be effective until July?

1 MS. MEYERS: She's saying the
2 legislation that authorizes you to do a two-thirds vote will not
3 require the thousand dollar match. It doesn't go into effect
4 until next month. If there is a specific request that does not
5 require a match then the two-thirds vote to accept that.

6 MR. PFOHL: Mr. Chairman, the staff has
7 documented a match for any of these four-year scholarships,
8 community college financial aid, the match is already there.

9 SECRETARY JONES: This language,
10 there's a reason and legal interpretations give every word a
11 meaning and there's a reason why there's a qualifier here.
12 This was specifically talked about. In fact, I believe in one of
13 the committee hearings I was asked this question specifically
14 and we said no, the education piece were not presumed in this
15 language. If we need to clarify it, I think it's unnecessary. I
16 would defer to counsel on that but this was clearly language
17 that was put in with meaning and that meaning was to
18 exclude the education piece.

19 DELEGATE KILGORE: I think this
20 quandary we're in now Mr. Secretary, we can't even act until
21 after July 1st either way.

22 MR. STEPHENSON: When the new law
23 comes into effect, staff is thinking that if an application comes
24 to us and there is not sufficient match, we would serve it up to
25 you with a no award recommendation every time and you can

1 do what you please but we will not recommend any that are
2 not properly matched.

3 The next one might give you some
4 heartburn but I've given you some options. Do you want us to
5 stop the application and you not see them?

6 DELEGATE KILGORE: No, because it's
7 out there and if it's a great project, suppose it's General
8 Motors coming in and you can't get enough money to match it,
9 we would like to see that one. We still need to bring the
10 application forward with no award, claw back.

11 MR. STEPHENSON: No problem.

12 DELEGATE KILGORE: Does everybody
13 agree with that? All right.

14 MR. STEPHENSON: The next item
15 describes a dollar for dollar match and there's a couple of
16 issues with it. We basically try to control that internally by
17 only dispersing our share so when the invoice is presented
18 and we're in for thirty percent, we'll dispense thirty percent of
19 that invoice and that's the practice we try to adhere to and I
20 don't think the Committee should have any problem with that.

21 DELEGATE OWENS: Even on the TROF,
22 the reimbursement right now?

23 MR. STEPHENSON: If I could hold that
24 TROF discussion Ed, because that's a special case and we're
25 going to get into that in a minute and that's a little different

1 than some other grants.

2 MR. MERRICKS: Ned, if somebody's
3 putting up a match; they spend their money first, we spend
4 our money second, but you're saying we're going to pro-rate
5 it?

6 MR. STEPHENSON: Generally, yes. It
7 doesn't often happen that somebody else spends their money
8 first and when we come along we are often hit first because
9 they bought something and can't pay for it until they get our
10 money. We're saying that's fine, you bought something for a
11 hundred thousand, here's our forty. You've got to get your
12 other sixty from wherever you said it's coming from. We're
13 suggesting that if we're going to pay our share of the project
14 cost that project cost be limited to the cost incurred after the
15 application. In other words, they can't say I'm already four
16 million dollars into this project so I've already taken care of my
17 matching funds, now I need four million more.

18 DELEGATE KILGORE: You're saying the
19 match, the money match after we award then that's when
20 their match starts?

21 MR. STEPHENSON: We only count
22 money they put in after the date of application, not what they
23 spent over the last nine years and they often say I just bought
24 the land and that's my match and that's before you even
25 approved anything.

1 SENATOR RUFF: I have a little concern
2 about that. Most of the counties in their comprehensive plan
3 and have worked out where the best economic sites are and
4 have put money into those sites one way or the other. I'm not
5 sure that there's any magical date that should be involved.

6 DELEGATE KILGORE: Ned, did you not
7 have a bullet back, land being contributed to a project has a
8 value as of the date of application then we were thinking that
9 would be counting as a match in funds.

10 MR. STEPHENSON: I do have that, that
11 pertains to what is the value of the match but I'm trying to pin
12 down what is acceptable as a match. If it's something that
13 they already own or when they acquired it we can do that but
14 we want to be clear on that.

15 MR. MERRICKS: Are you saying that
16 they have the property and they bought it ten years ago and if
17 we were going to give money they could use that money to
18 reimburse what they bought ten years ago?

19 MR. STEPHENSON: No, I'm saying if
20 they have a project and the project cost is \$8 million and they
21 come and say we bought this piece of ground thirty years ago
22 and we're going to give that as matching funds to induce you
23 to give the rest, is it okay for something they bought thirty
24 years ago? If it is, we'll do it or one year ago.

25 MR. PFOHL: I would suggest we focus on

1 the current value of the land that's being contributed to the
2 project regardless of when it was bought and for how much it
3 was bought. Current appraised value that they're
4 contributing for that site then a date of application.

5 DELEGATE MARSHALL: Let's define
6 current value. Is that by the locality or by certified appraiser?

7 MR. PFOHL: Appraised.

8 MR. STEPHENSON: So time of
9 acquisition does not matter, is that the conclusion?

10 MS. CARTER: How is it done now with
11 the application?

12 MR. PFOHL: I think that's generally the
13 approach we're using now. If land is being contributed and it
14 may have been bought thirty years ago and the land was at a
15 very different value but what is the value of it today and the
16 date of application is what we consider as a match.

17 MR. STEPHENSON: I'm trying to
18 separate value from time of acquisition. Value is no
19 discussion but if we accept match regardless of when it was
20 spent, then we'll be governed by that.

21 DELEGATE KILGORE: We're not saying
22 that.

23 DELEGATE MARSHALL: Are we talking
24 about land and not a building, just land?

25 MR. STEPHENSON: It may be land or it

1 could be improvements, what was spent six months before
2 they applied. It could be any manner of expenditure that was
3 made prior to the time that you saw it.

4 DELEGATE MARSHALL: What about
5 equipment sold, it could have been depreciated.

6 MR. STEPHENSON: Time of acquisition
7 of the match.

8 DELEGATE KILGORE: Current practice,
9 how we do it now.

10 MS. CAPPS: Under the scenarios that
11 you're discussing where you assign a value to the asset, we
12 would consider that as and you could –

13 DELEGATE KILGORE: Only at 25%.

14 MR. MERRICKS: That's what it is, in-
15 kind.

16 MR. STEPHENSON: But the in-kind is
17 yet a separate discussion. Whether it's in-kind of cash, value
18 of it and when you acquired it, if you want to go back
19 indefinitely we can. If you want to cut it off to date of
20 application, we can.

21 SENATOR RUFF: I would say indefinitely
22 because I don't think you can arbitrarily pick any date.

23 DELEGATE KILGORE: But that would be
24 considered in-kind?

25 MS. MEYERS: I would simply say I agree

1 with Senator Ruff. When you have skin in the game, I don't
2 think it matters when that skin, whatever you're going to put
3 up doesn't matter –

4 MR. STEPHENSON: With respect to skin
5 in the game, I'm asking for guidance on what the matching
6 funds affects grant advances. We approve a project and I have
7 a hundred thousand to get started.

8 MS. CARTER: Is that usually under
9 TROF?

10 MR. STEPHENSON: Usually not under
11 TROF. Big projects for which an applicant doesn't have money
12 to get started and they ask for an advance and we make an
13 advance. It might be a case for saying the advance is okay but
14 you've got to match it.

15 MS. CARTER: Since you have had a
16 dollar for dollar match, it's a no-brainer, you have to have a
17 match.

18 DELEGATE MARSHALL: That's what the
19 new legislation says, a dollar for dollar match, of course, is
20 money.

21 MS. CARTER: But you've got to have a
22 match.

23 DELEGATE MARSHALL: Land is not
24 money.

25 MS. CARTER: 25% would be in-kind, the

1 land would be in-kind and they've got to come up with the
2 75% unless the Tobacco Commission has determined not to.

3 DELEGATE MARSHALL: The question is
4 are we the first dollars or the second dollars.

5 MR. PFOHL: Mr. Chairman, the
6 Commission has a long standing advance policy that says we
7 will advance no more than 25% of the grant and only for
8 expenses that will be incurred in the coming 90 days. We will
9 not release money unless we have insurance that the match
10 will be there. I won't sign the grant reimbursement if there's
11 not assurance of that.

12 MR. STEPHENSON: Are you all right
13 with that? No match on the advance?

14 MS. CARTER: You have to have a match
15 no matter what.

16 MR. PFOHL: You have to have an
17 assurance on the match before any dollars are sent out.

18 MR. STEPHENSON: The next item is
19 particularly important and deserves attention. The new Code
20 says the match resource must come from a non-Commission
21 source. Ed, your question by one definition this would really
22 exclude TROF to automatically comply with this because
23 there's a private entity with capital investment that far
24 exceeds the amount of the TROF award so if you follow that
25 definition TROF is unaffected by this.

1 DELEGATE OWENS: My question was do
2 we advance the money before they put up the money or before
3 they actually spend money themselves? With TROF do we
4 actually spend our money first?

5 MR. STEPHENSON: We spend our
6 money one of two ways on TROF. If they want the money up
7 front, there must be a letter of credit guaranteeing their
8 performance under the contract. If there's no letter of credit,
9 they still get the money but they get it after they perform.

10 DELEGATE OWENS: So it's
11 reimbursement?

12 MR. STEPHENSON: There's no
13 reimbursement because there is no use requirement of TROF
14 dollars. There's a job promise and if they deliver the jobs,
15 we'll disperse the grant and they can do what they want with
16 it. We bought the jobs.

17 MS. CARTER: Mr. Chairman, I'm very
18 confused here. We're talking about new legislation, correct?

19 DELEGATE KILGORE: Yes.

20 MS. CARTER: The new legislation says
21 you have to have a dollar for dollar match for all grants, all
22 economic development grants. In the legislation it says if you
23 have 25% in-kind, the rest is either in a surety bond where it
24 is dollar for dollar. When you talk about getting a TROF grant,
25 how do we do that within the parameters of this?

1 MR. STEPHENSON: The TROF offer is
2 made in exchange for a promise to make a capital investment
3 and we approve a hundred percent of those and see that that
4 actually happens. The capital investment that gets made is
5 the matched funding from a non-Commission source.

6 MS. CARTER: I'm assuming under these
7 grants that no one gets any grant money until they can prove
8 the match.

9 MR. STEPHENSON: Or deliver, either
10 one.

11 MS. CARTER: The TROF grants will now
12 be changed because of this legislation?

13 MR. STEPHENSON: I'm suggesting that
14 it won't be changed because currently there must either be a
15 performance bond or a specific performance in order to get the
16 money and either way, we're complying with the law, so the
17 TROF there will be no change. Your money will not move
18 unless you've got your investment or bond.

19 MS. CARTER: So there's only three ways
20 that the grant can ever be dispersed with the new legislation, a
21 performance bond, 25% in-kind and the rest in performance
22 bond, land or hard cash, have I missed something here?

23 MR. PFOHL: Unless two-thirds.

24 MS. CARTER: I think we need to stay
25 focused on what the new legislation is and that's pretty to the

1 point. We need to figure out where we're going to put in our
2 application so everybody understands those are the only
3 matches they can get.

4 DELEGATE KILGORE: They'll
5 understand pretty quickly when there's no award.

6 MS. CARTER: It certainly helps to state
7 what the understanding is and what all the Commissioners
8 understand, new ones that come on board.

9 MR. PFOHL: We'll use our guidelines
10 published on our website and even within the application
11 forms themselves, here are the rules; if you have questions,
12 call.

13 MR. STEPHENSON: Here's something
14 that may deserve some discussion. The law says from non-
15 Commission sources, which means funding from anywhere
16 except us and usual sources are federal, state, local,
17 foundation. The question arises as to whether this
18 Commission wants to make the match funding tighter than
19 what the law says and require that they come from the
20 locality. I'm not suggesting that if you wanted to do that.

21 SENATOR RUFF: No.

22 MR. STEPHENSON: I'm going to go
23 through the next one rather quickly but I just want some
24 understanding of what happens if we use a performance bond.
25 Performance bonds come in many different forms. Sometimes

1 they're called surety bonds and there's a bunch of other
2 names they come by. Basically they're the same and there's
3 three parties to a performance bond. The principal, that's the
4 guy that's going to run the project and there's the obligee,
5 which typically would be the grantee and not the Commission.
6 The Commission will not be the holder or the obligee on the
7 bond or we won't be party to the bond and the grantee will be.
8 The surety, which is the bonding company and the form of
9 the bond and the quality of the bond will be chosen by the
10 grantee, invented by the grantee, not by the Tobacco
11 Commission. I just want to make sure that is acceptable to
12 you as we start into this performance bond world, no
13 objection.

14 MR. MERRICKS: These sureties Ned, a
15 lot of times they're issued by an insurance company. We're
16 not going to take a C-rated insurance company for a bond?

17 MR. STEPHENSON: According to what's
18 before you, the grantee, which is the county or the IDA would
19 choose the bonding company and they will satisfy themselves
20 that it is okay but we're not going to have an opinion about
21 that.

22 MR. WALKER: What you're saying is that
23 the IDA or the county would be on hook for the grant if they
24 don't do this properly –

25 MR. STEPHENSON: If they buy a C-rated

1 bond and the bond fails, the county is on the hook.

2 MR. MERRICKS: We're the ones
3 requiring the bond. If I want a bond, I want a good bond. I
4 think we should say A or better rated.

5 MR. STEPHENSON: If the Commission
6 gets into that business then we have to develop standards for
7 what constitutes an acceptable bond and that's the strength of
8 your credit decision. And we can do that but that's another
9 whole world.

10 DELEGATE WRIGHT: Just for
11 clarification so I can answer questions from some of the
12 localities, what can they expect to pay for a performance
13 bond? I know it's based on the amount of a bond, but some of
14 these localities just can't make it.

15 MR. STEPHENSON: Several percent of
16 the bond.

17 DELEGATE MARSHALL: Can the
18 performance bond be paid by the proceeds of the grant?

19 MR. STEPHENSON: I think so, yes, sir.

20 DELEGATE MARSHALL: So the TROF
21 grant then the locality can pay for that performance bond out
22 of the proceeds of that TROF or –

23 MR. STEPHENSON: If the company
24 promises a fifteen million dollar capital investment and in
25 exchange for that we made a half million dollar TROF grant,

1 their match is thirty to one, way over fifty percent because of
2 fifteen million dollar capital investment and we've got a half
3 million dollar grant. That's why TROF deals are not affected
4 by this because they're already heavily matched.

5 DELEGATE WRIGHT: My question dealt
6 more with allocation. Pittsylvania County or City of Danville,
7 if they want to use their allocation as performance bond, that
8 could be used as part of the funds, is that the case?

9 MS. MEYERS: I'm not sure if that's –

10 DELEGATE KILGORE: Non-Commission
11 sources.

12 MS. MEYERS: Performance bonds are
13 just one way. You don't have to go through the performance
14 bond and incur that additional expense.

15 DELEGATE MARSHALL: My thought is
16 it's no different than having a legal expense just a cost of
17 doing business to get that bond.

18 DELEGATE WRIGHT: But it's an
19 additional cost for these counties and localities that are pretty
20 well stretched.

21 DELEGATE MARSHALL: What I'm saying
22 is that the localities would be able to deduct that from that
23 bond, from that grant if we're going to give them a million and
24 the bond is a hundred thousand bucks.

25 DELEGATE WRIGHT: I wanted to be

1 sure that's correct.

2 MS. MEYERS: The bond is still non-
3 Commission sources giving a dollar for dollar match.

4 DELEGATE OWENS: You'd have to raise
5 between four and eight percent of the grant. You shouldn't be
6 able to get a grant to pay for the bond. That's using
7 Commission money to buy something and you're putting up
8 the matched funds.

9 SECRETARY JONES: I think there was a
10 question about whether you could take the Commission grant
11 and use it indirectly by using a performance bond and that's
12 certainly in my humble opinion would be, I hope we won't go
13 that road. The whole point is that if you have skin in the
14 game from the applicant and using any Commission dollars to
15 match either directly or indirectly if I heard that correctly.

16 MR. STEPHENSON: The last one and I
17 hope to go through this pretty quickly, that which is
18 acceptable as an in-kind contribution and that which is not.
19 Cash, we talked about real personal property based on an
20 appraisal within twelve months no matter when they bought it
21 or what they paid for it, it is the appraised value that will be
22 counted. What is not acceptable for a match contribution
23 grant administration services and that's a longstanding
24 Commission policy. The other two if you want to talk about
25 tax abatement and localities often will want to say we're going

1 to forego the real property taxes for five years and that's our
2 contribution. It depends on whether you want to accept that
3 or not.

4 DELEGATE KILGORE: Have we been
5 accepting it?

6 MR. PFOHL: I don't think it's been an
7 issue. Tax abatement and fee waivers are typically only
8 involved in TROF projects.

9 MR. STEPHENSON: I'm also aware that
10 we're making TROF awards at the same time that the county
11 is waiving taxes so effectively we're paying the tax, that's the
12 bottom line. It depends on whether you want to let that
13 happen or not.

14 MR. PFOHL: Mr. Chairman, as Ned and I
15 were preparing this, my opinion on tax abatement and waivers
16 was money the locality never had and was never going to have
17 and they've forgiven it and foregone it and why would we allow
18 that to be considered matching funds.

19 MR. MERRICKS: I would agree with that.
20 You haven't seen creativity until you can see what's coming
21 up.

22 MR. STEPHENSON: Don, I couldn't have
23 paid you to say that and that's the reason why staff needs to
24 hear from you and we get all this.

25 MR. MERRICKS: There's got to be skin in

1 the game. It's got to be real and I understand the localities
2 situation but it's got to be real.

3 MR. WALKER: Just on clarification, the
4 county does have that tax and they can refund it to the
5 business but then they have to collect that money.

6 MR. STEPHENSON: I'm not sure. I know
7 that tax the matching funds, the money that comes from you.

8 SECRETARY JONES: Yes, that is right,
9 localities can use tax abatement to match in the governor's
10 opportunity fund. We might want to check in with VEDP to
11 see how they handle it.

12 DELEGATE KILGORE: It should only be
13 used once if they're going to match.

14 SECRETARY JONES: That's right. We
15 need to be careful in using the match in governor's
16 opportunity fund. I would tend to think we ought to be on the
17 stricter side to start with because we can always loosen the
18 strings but no going back.

19 MS. MEYERS: I might make a suggestion
20 but I'll need to do some research on that on how in-kind
21 contributions defined in the Code because that's what the
22 statute has allowed and the question of interpretation of what
23 constitutes in-kind.

24 MR. STEPHENSON: Lastly, and I know
25 you're happy about that, the Code said all these things must

1 be true unless there's a two-thirds majority vote to override. I
2 think the process will be that a grant will come forward, if it
3 doesn't comply with the law, staff will bring it to the
4 Committee with a recommendation and you might approve it
5 and send it to the Commission. The question that will come to
6 the staff, what is the criteria for winning an award without a
7 match or without other features required by law. I don't know
8 if you want to try to publish that criteria or say we don't want
9 to see it. We're going to have that question.

10 DELEGATE KILGORE: There's no other
11 answer.

12 MR. STEPHENSON: Thank you for your
13 involvement. This is helpful to guide us and we're scrambling
14 trying to get these things in place so that you can function
15 starting in July with the new rules.

16 DELEGATE KILGORE: Public comment?

17 MR. STEPHENSON: Well, the TROF
18 policy that's in your book on page forty. You saw this policy in
19 April and you agreed to all of it and you asked us to restore
20 the three grant limit and we've restored that clause in the
21 policy and it's before you for a recommendation to the
22 Commission tomorrow and I would invite that motion.

23 DELEGATE MARSHALL: So moved.

24 DELEGATE KILGORE: It's been moved
25 and seconded. Any discussion? All those in favor say aye.

1 (Ayes.) Opposed? (No response.)

2 DELEGATE WRIGHT: Would you explain
3 to me what this does? I'm not sure.

4 MR. STEPHENSON: This policy
5 memorializes that which you've been doing for several years.
6 One of the inspector general criticisms was that we did not
7 have a TROF policy even though our minutes have reflected
8 over the years how we operate. So we distilled all these
9 minutes into this policy to write that which we are doing. This
10 was required by law by this new legislation that there be a
11 TROF policy and it included collection procedures for claw
12 backs. And we wrote all that into the new policy. There's
13 nothing in it you're not used to already.

14 DELEGATE WRIGHT: I must be getting
15 this confused with the Executive Director is able to approve
16 certain amounts without Commission approval.

17 MR. STEPHENSON: That's all in that
18 policy.

19 DELEGATE WRIGHT: I just wanted an
20 explanation on that and especially for new members how it
21 works. So this policy takes the authority away from the
22 Tobacco Commission and gives it to the Executive Director
23 under certain conditions.

24 MR. STEPHENSON: It does and that
25 came about because historically the TROF Committee

1 approved or disapproved of grants electronically on advice of
2 counsel back when the Commission first started. In more
3 recent years, we were advised by new counsel that violated the
4 FOIA code so we could not vote on things electronically and
5 that left us one or two choices. Either the Commission had to
6 meet in full every time there was a TROF deal or we had to
7 empower the Executive Director to approve the grants, which
8 is what we did.

9 DELEGATE KILGORE: The reason we
10 did that is because a lot of these TROF applications were time
11 sensitive. You either get in the game or you lose a prospect
12 and getting all four TROF Committee members together in
13 Richmond or wherever sometimes was troublesome.
14 Sometimes this was happening about every week.

15 DELEGATE WRIGHT: I understand the
16 reason for having to do it, just uncomfortable with it that
17 there's been problems in the past. Anytime money comes out
18 of the Commission, without a vote of the Commission
19 concerns me. I don't think it's good business. That's all I
20 really have to say about it.

21 MR. FEINMAN: It may set the Delegate's
22 mind at ease a little bit. I plan to sit down with Tim and Ned
23 working out performance measures just to see if we can
24 further constrain or to make sure this is only for projects that
25 have already met all of the numerous criteria that we need to

1 meet. These would be things that just by virtue of the way
2 they're scored go to capital investment or jobs. We can't give
3 up too much flexibility or we'll fall behind.

4 DELEGATE KILGORE: I appreciate those
5 remarks.

6 MR. FEINMAN: Who is on the TROF
7 Committee?

8 DELEGATE KILGORE: The four of us
9 right here. Myself and Tim and Senator Ruff and Delegate
10 Marshall. And I'm the Chairman.

11 DELEGATE MARSHALL: Does that solve
12 it or give you more heartburn?

13 DELEGATE WRIGHT: I think at one time
14 Southside had somebody on the TROF Committee.

15 SENATOR RUFF: I would point out Ned
16 does email us on any of these things and if we know of an
17 issue in our area, we can let him know.

18 DELEGATE KILGORE: All you have to do
19 is call and say stop. There's a motion, I believe. All those in
20 favor of adopting the TROF Policy say aye. (Ayes.) Opposed,
21 no?

22 DELEGATE WRIGHT: No.

23 DELEGATE KILGORE: Any public
24 comment?

25 MS. NELSON: I'm Patty Nelson, Chief

1 Operations Officer at the Southern Virginia Higher Education
2 Center. I deal with a lot of Tobacco Commission grants and I
3 did get nervous about the definition of an in-kind
4 contribution. I don't know if all this conversation around
5 Southside Economic Development and Southwest Economic
6 Development grants or also if it's education grants. A couple
7 of years back we had to go for the dollar for dollar match in
8 education grants and I think you saw the grant applications
9 drop in the amount and maybe in the number. When you talk
10 about in-kind I would like you to think how you define that.
11 For example, in the COE that we're the fiscal agent for we
12 have equipment that we're purchasing and the manufacturer
13 or vendor that we're buying the equipment from gives us a ten
14 percent discount because it's for education or because we've
15 developed a good working relationship, does that ten percent
16 qualify as in-kind or we can only have 25% of our match in-
17 kind but we've also been given the authority to some of the
18 service or some of the work the current staff is doing for the
19 Center of Excellence can be used as a match as long as it's not
20 for administrative expenses of the grant. Like we're developing
21 a new industry and we're meeting constantly with our
22 partners, those are in-kind matches, I would define that as an
23 in-kind match. So as you define your in-kind match, don't
24 put such a burden on us that we can't pull it off under the
25 Education Committee. I'm not clear on your conversation

1 today as to whether that in-kind definition that you're
2 developing would adversely impact education grants. I just
3 wanted to throw that out to you. I'd be glad to discuss it or
4 get more information about emailed to get a clarification.
5 Thank you.

6 DELEGATE KILGORE: Thank you.

7 Anyone else?

8

9 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 Executive Committee meeting when held on Wednesday, May 20, 2015 at 4:30 p.m. at the New College Institute, Martinsville, Virginia.**

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

Given under my hand this 15th day of June, 2015.

Medford W. Howard
Registered Professional Reporter
Notary Public for the State of Virginia at Large

My Commission Expires: October 31, 2018.
Notary Registration Number: 224566