

1 **TOBACCO REGION REVITALIZATION COMMISSION**

2 701 East Franklin Street, Suite 501

3 Richmond, Virginia 23219

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8 **Incentives and Loan Committee Meeting**

9 Wednesday, November 4, 2020,

10 9:30 o'clock a.m.

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14 (Electronic Conference Call Meeting)

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1 APPEARANCES:

2 The Honorable Lashrecse D. Aird, Chairwoman
3 The Honorable A. Benton Chafin, Jr., Vice Chairman
4 Mr. Edward Blevins
5 Ms. Gretchen Clark
6 The Honorable Terry G. Kilgore
7 Mr. Robert Mills, Jr.
8 The Honorable Joseph D. Morrissey
9 Ms. Cassidy Rasnick
10 The Honorable Sam Rasoul

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12 COMMISSION STAFF:

13 Mr. Evan Feinman, Executive Director
14 Mr. Andy Sorrell, Deputy Director
15 Mr. David Bringman, Database and Performance Metrics Manager
16 Ms. Sarah K. Capps, Grants Program Administrator -
17 Southern Virginia
18 Ms. Stephanie Kim, Director of Finance
19 Ms. Joyce Knight, Administrative Supervisor

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21 COUNSEL FOR THE COMMISSION:

22 Ms. Elizabeth B. Myers, Assistant Attorney General
23 Richmond, Virginia 23219

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1 November 4, 2020

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3 MR. FEINMAN: Welcome to the Incentives and Loan
4 Committee Meeting.

5 DELEGATE AIRD: -- As you know, from our last
6 meeting, we had on our agenda to discuss the public policy
7 related to TROF, to try to finalize our policy, with respect as we
8 move forward. You all agreed that you wanted to have some
9 additional time to really look through what was being proposed,
10 and so we set this special meeting for today. We're going to first
11 go through our roll call, talk a little bit about --

12 So, Andy, do you want to go ahead and talk about --
13 do the roll call?

14 MR. SORRELL: Thank you, Delegate Aird, or Chair
15 Aird. I'll give you a little information about the need for our
16 electronic meeting this morning. Due to the Governor's declared
17 state of emergency, this meeting of the Incentives and Loan
18 Committee is being held electronically without a quorum of the
19 public body assembled in one location. The nature of the COVID-
20 19 pandemic makes it impractical and unsafe to assemble a
21 quorum in a single location, and because of the nature of the
22 emergency, it makes it impractical to assemble at a location, at a
23 single location, excuse me.

24 In addition, the focus of this meeting is to discuss or
25 transact business as it is statutorily required to continue the

1 operations of the Commission. The meeting is being held
2 contemporaneously with the notice provided to the Commission
3 members. And a recording of this meeting, as well as minutes,
4 shall be posted on the Commission's website as soon as practical
5 after the conclusion of this meeting.

6 The meeting agenda and other meeting materials can
7 also be found on the Commission's website, Revitalized VA.org.
8 There will also be opportunity for public comment at the
9 conclusion of this meeting, prior to the conclusion of this
10 meeting. And I will be happy to read some ground rules now as
11 we, as we do the electronic meeting here.

12 As I mentioned, the meeting will be recorded, as Chair
13 Aird mentioned previously. Please mute yourself unless you're
14 speaking. Meeting participants will be muted if the background
15 noises continue to be disruptive. And if it occurs frequently, we
16 may need to have the disrupter removed from the meeting and
17 they can call back in.

18 Public comment will be provided for during the
19 meeting, and if a member of the public desires to address the
20 Commission, please reserve questions until the portion of the,
21 that portion of the meeting. The Chair will ask for comments at
22 that time during the public comment session, and you can use
23 the raise-your-hand feature or use the chat box, or just speak
24 up, or you can speak on the phone, that we can make sure it's
25 read during the public comment session.

1 At the time of the public comment, please state your
2 full name, your location, and the organization you may
3 represent, if any. Please keep your comments to two minutes
4 each.

5 Thank you. That's all the preliminary information I
6 have.

7 DELEGATE AIRD: Thank you so much, Andy for that.
8 Evan, can we proceed now with the roll call.

9 MR. FEINMAN: Yes, Madam Chairwoman.
10 Delegate Aird.

11 DELEGATE AIRD: Here.

12 MR. FEINMAN: Senator Chafin.

13 SENATOR CHAFIN: Here, good morning.

14 MR. FEINMAN: Mr. Blevins.

15 MR. BLEVINS: Present.

16 MR. FEINMAN: Ms. Clark.

17 MS. CLARK: Present.

18 MR. FEINMAN: Delegate Hurst.

19 DELEGATE HURST: No response.

20 MR. FEINMAN: So, maybe, I think.
21 Secretary Layne or Ms. Jennings.

22 SECRETARY LAYNE OR MS. JENNINGS: (No
23 response).

24 MR. FEINMAN: Delegate Kilgore.

25 DELEGATE KILGORE: Here.

1 MR. FEINMAN: Mr. Mills.

2 MR. MILLS: Here.

3 MR. FEINMAN: Senator Morrissey.

4 SENATOR MORRISSEY: Here.

5 MR. FEINMAN: Delegate Rasoul.

6 DELEGATE RASOUL: Present.

7 MR. FEINMAN: You have a quorum, Madam
8 Chairwoman.

9 DELEGATE AIRD: Thank you so much, Evan.

10 You all should have had an opportunity to review
11 September the 28th meeting, meeting minutes, those were sent
12 out, as well as made available. At this time, we need to go
13 ahead and approve those minutes. Are there any questions?

14 DELEGATE KILGORE: I make a motion to approve the
15 minutes.

16 DELEGATE AIRD: We do have a motion to approve
17 the minutes. Do we have a second?

18 MR. MILLS: Second, Robert Mills.

19 DELEGATE AIRD: Thank you, Mr. Mills. That motion
20 has been moved and properly seconded. Are there any
21 questions? All in favor, please state aye. (Ayes). Are there any
22 opposed? (No response). Thank you. Those meeting minutes
23 are approved.

24 I now want to call on Andy to lead us into a discussion
25 about the TROF policy. Please go ahead.

1 MR. SORRELL: Yes, thank you, Chairwoman Aird.
2 So, what I was going to do, and since we have a
3 number of new Committee members on our Staff that reviewed
4 the or worked with the TROF Program, I thought that we would
5 provide a quick overview of the program, informational, for an
6 operation framework, and then just a quick rundown of how a
7 typical application process works.

8 This is sort of a high level overview of your packet
9 material that you received last week regarding how the program
10 works.

11 Basically, the purpose of the Tobacco Regional
12 Opportunity Fund is to help make localities in the region more
13 attractive for potential businesses that are expanding or just
14 coming into the area for the first time. The TROF Program does
15 provide performance-based monetary grants and loans to
16 localities for the purpose of supporting specific projects.

17 Projects are evaluated based upon job creation,
18 workforce participation rate, community affluence, prevailing
19 community wage, and newly created taxable assets. The TROF
20 Program is geared towards businesses that are in the traded
21 sector, that are bringing in new capital into the Region, rather
22 than our contributing to just velocity of money within the region.
23 So, this typically precludes retail and food service projects, as
24 well as the local provisions of services and noncompetitive
25 projects. We're looking for things that are bringing in new capital

1 and jobs to the community.

2 As far as the operational framework for eligible
3 applicants, those are localities and other local or regional political
4 subdivisions within the Tobacco Region. Performance
5 agreements are three-party agreements strictly among the
6 eligible applicants and its Industrial or Economic Development
7 Authority, the company, and the Commission.

8 Applications are evaluated and awards are
9 commensurate with the project's impact on the community
10 and/or the region, and it's based upon considerations of the
11 following criteria, as mentioned previously: Project
12 competitiveness, the type of industry it's in, the provision of an
13 annual average salary that's above the prevailing average wage,
14 the number of new jobs or saved jobs that the project is
15 providing, and the amount of private taxable capital investment.

16 The award amounts vary, but it's based upon the
17 parameters of the project and the availability of the
18 Commission's funds for the program. The staff uses an incentive
19 estimator that takes into account application variables, like
20 location, employment, wages, and private taxable investment.
21 However, in order for a project to be eligible, the incentive
22 estimates for grants or loans must be at least \$10,000, that
23 means before we put it into the estimator after all the criteria are
24 weighed, the incentive estimator should be providing us with a
25 number that's at least \$10,000.

1 Larger incentives for projects with higher numbers of
2 jobs that are way above the prevailing average are typically
3 available for projects that are, and those include projects in the
4 hundreds of jobs and projects that are regionally transformative.

5 As far as the type of awards for TROF projects, they're
6 typically composed of a grant and a loan portion. The incentive
7 formula provides a total amount of an award based on the
8 project's variables, and half of that total award is offered as a
9 grant and half as a zero interest loan.

10 As far as disbursement of a TROF grant or loan, TROF
11 grants may be paid in advance before the company has
12 performed or paid in arrears after the company has performed
13 and at the election of the applicant as to how that would be
14 done. TROF loans provide affordable financing to assist with
15 initial development of a project, loans, TROF are only offered
16 prior to performance. Any time a TROF award, whether it's a
17 grant or loan, is paid in advance prior to performance and require
18 that the local applicant to obtain adequate security to fully cover
19 the amount of award, if a repayment is required.

20 The performance period for TROF or projects are
21 typically 36 months, three years, from the award date of the
22 project. That is your time period that you have to meet your
23 performance obligations for jobs, for wages. An extension of
24 performance can be requested prior to the end of that
25 performance period, and the first period of extension, which is a

1 year, to me, it's considered administratively, and any subsequent
2 extensions does require Commission approval.

3 As far as the evaluation of a project performance, the
4 Staff does monitor the project performance and may require a
5 repayment if the performance is not met for projects that receive
6 awards in advance. If a project receives funds in arrears, they're
7 only provided what they earned. We do use confidential data
8 from the Virginia Employment Commission and local
9 Commissioners of Revenue to verify performance in capital
10 investment and projects that receive funds in arrears may
11 receive full or prorated payment at the conclusion of their
12 performance period once the company's actual performance is
13 determined.

14 In reference to repayment, sometimes they're called
15 clawbacks. This is an instance when funds are disbursed in
16 advance and the company does not fully obtain its performance
17 obligations for one reason or another. The Commission does
18 expect to receive repayment of some or all of the disbursed
19 funds. If a company, that might occur if a company does not
20 meet an investment minimum, an investment target, and the
21 performance does not meet its requirements, typically, that's one
22 million dollars of taxable capital investment or if the project has a
23 taxable assessment that's lower than a million dollars, it's half of
24 that amount. If they don't meet that minimum target, then they
25 do need to repay the entire grant. And that's known from the

1 very beginning of the project.

2 If they do meet that minimum investment target but
3 that aren't able to fully meet their capital investment or job
4 creation, they must repay a prorated share, and again, that's
5 only payments that are required and they receive the funds for
6 TROF loans. If the minimum investment is not met, then we do
7 add five percent onto the remaining balance of the loan that is
8 due. If the company is unable or unwilling to repay the amount
9 owed, then the Commission goes, speaks to the applicant to
10 insure that that obligation is paid, and that's part of the reason
11 why our agreements are three-party agreements between the
12 local applicant or locality. It's routine for the Commission to
13 negotiate repayment agreements with localities to avoid negative
14 budget impacts, particularly with our smaller applicants and
15 smaller localities.

16 Now, getting into our application process. Basically, it
17 starts with the incentive estimate, this is something that can be
18 requested online via the Commission's application portal. Once
19 an estimate is received, it's evaluated by Staff to determine,
20 first, if the project is eligible, and if so, what incentive amount
21 might be available. It's not required prior to submitting a full
22 application, but we do strongly suggest that it gives the
23 Commission chance to review the project to determine eligibility
24 and how much incentive may be available. Otherwise, if they
25 apply to the, for the program, they might not know if it's a, if

1 that's an eligible project and they wouldn't know the amount of
2 incentive that might be available.

3 To insure that projects are eligible from the very
4 beginning, the Staff would confirm the project's eligibility and
5 application variables from the applicant, like on the company and
6 locality and the type of industry sector, the projects in the
7 number of new or saved jobs, average annual salary that they're
8 providing, and the information on the project's competitiveness,
9 is there's competition for this project in the region, state, or
10 elsewhere, as it's filling in a funding gap that otherwise would be
11 met, the community need for the project, is there a history of
12 this particular business, and are people in the area trained for
13 that type of industry, that type of thing.

14 Once the estimate is provided, and that's good for 60
15 days, and can be renewed at the request of the applicant if a
16 project is continuing to progress. Beginning with the actual
17 application, if a company does choose to locate in an area and
18 they would partner with an eligible applicant, then we would
19 submit the official TROF program application, also be our online
20 application portal. That would then provide a copy of the full
21 application, and then along with the Staff recommendation via
22 email. That would provide this to the Committee several days of
23 review and comment on any application.

24 If no comments or concerns are received and there
25 were no unresolved issues or questions, Staff will route the

1 application to the Executive Director for approval, depending on
2 the following levels. In instances in which the award amount in
3 total for both the grant and the loan is under \$1 million, then the
4 Executive Director has the final approval authority of the project.
5 If it's over \$1 million and under \$3 million, then it's the
6 Committee that has the final approval authority. For projects
7 that are over \$3 million, the Full Commission must approve it.
8 And this doesn't mean that, this just says for the final approval
9 authority.

10 Staff routes every received application that's eligible
11 to the Committee for a red flag exercise to make sure you're
12 aware of projects going into your area, community, and let Staff
13 and others know. Once again, if you had any concerns or
14 questions that Staff is not able to address with the applicant or
15 the locality, put pause on the application, and we would bring it
16 up at the next available Committee meeting or Commission
17 meeting so that you guys could weigh in on that.

18 That is the process of how our TROF program is laid
19 out now. If there's any specific questions that relate to how this
20 works, just weigh in on it and give us your thoughts and feelings.

21 DELEGATE AIRD: Andy, before Evan jumps into that
22 discussion, I just to take a moment to ask if any of the
23 Committee members have any questions, but making sure that
24 foundationally everybody understands and if there are any
25 questions in adopting the policy decisions, it will ultimately

1 determine whether or not that continues, or if we would
2 change any of these policy decisions moving forward. I just
3 want to make sure with clarity, or take this opportunity to get
4 their questions answered before we jump into the policy
5 decisions.

6 DELEGATE RASOUL: Madam Chair. Good morning,
7 Madam Chair, members of the Committee. Thank you, Andy for
8 that presentation. My question, Andy, there obviously are a lot
9 of decisions that were made well before this newer committee
10 has been constituted and you see a variety of things in the press
11 and elsewhere. Most importantly, the question I have for you,
12 Andy, is as decisions have been made over time, have we
13 changed how we alter the decision-making process, and what
14 have we learned as far as what you presented was different from
15 maybe in where we were in years past? Just for our context, as
16 we're able to talk about our evolution.

17 MR. SORRELL: Thank you, Delegate Rasoul.

18 MR. FEINMAN: Let me give him a little overview
19 before we get into this, in the nuts and bolts of the process.
20 Madam Chair, if that's all right?

21 DELEGATE AIRD: Go ahead.

22 MR. FEINMAN: First, speaking to some of the stuff
23 that's been in the press, I think unfortunately we've had some
24 situations with reporters kind of grabbing top lines from
25 PowerPoint presentations without necessarily digging into the

1 fullness of the reports on which they're commenting, and, so, for
2 example, the recent JLARC Study included a finding that is
3 accurate, which said something along the lines of right around
4 half of the TROF-awarded projects don't materialize. What's left
5 out of that one sentence is in any instance in which the projects
6 did not materialize, no funds were deployed from the
7 Commonwealth. There isn't a situation in which projects actually
8 were awarded funds that then weren't either recovered for a non-
9 materialized project or the Commonwealth didn't get what it
10 bargained for.

11 There was one very specific TROF that was covered in
12 a recent AP story that ultimately became an issue surrounding
13 litigation and eventually we settled that because there's a
14 significant amount of risk involved in litigation, particularly when
15 you're talking about old documents, some of which had not gone
16 through the full supervision since applying to all of the
17 documents that we've been using for the last five years.

18 So, that is the general overview. More specifically, we
19 solicit a great deal more information from applicant localities and
20 from the applicant companies than we have in the past. We also
21 offer the Committee more opportunity to weigh in throughout the
22 process. And finally, we're doing a little bit more verification on
23 the competitiveness of the projects. And that's always going to
24 be speculative to some degree. And you can't know for certain
25 that somebody hasn't already resolved on Virginia when they tell

1 you they're still considering North Carolina or Alabama or
2 Arizona. In general, we are soliciting more information and
3 working harder to choose the really, truly competitive projects
4 from the projects that we're already going to land in Virginia,
5 which, of course, that's the case that's no longer an incentive
6 payment, it's merely a benefit to somebody for doing what
7 they're already going to do, which defeats the purpose. But if
8 you want to get into some of the specific procedural changes.

9 MR. SORRELL: Thank you, Evan. I was just going to
10 mention that some of the procedural changes that we've done in
11 recent years are offering loans. For a long time, the Commission
12 only offered the Tobacco Commission TROF grants. We began
13 offering loans in the 2015 time period, I guess, but in the last
14 couple of years we have included additional variables in our
15 application processes, as Evan mentioned. And that also includes
16 insuring that projects are providing a wage well above or above
17 the prevailing average for the community. I believe that
18 information was added in 2018, but we have required that in
19 2018.

20 We've also continued to refine our TROF incentive
21 estimator to account for things such as that, but also we are
22 providing additional, we're able to provide above a prevailing, the
23 prevailing average wage. And as Evan mentioned, too, we are
24 also gathering a lot more information at the estimator stage than
25 we had been in the past so that we can, you know, we never

1 want to, you know, let a project or a company go if something
2 may be possible or then ultimately it wouldn't be possible, it
3 wouldn't be eligible. So, we make sure that we ask all the very
4 important questions on eligibility at the very beginning and make
5 sure that those numbers follow through in the application that
6 they might submit before we get that over to the Committee. By
7 the time the application is submitted and the Committee is
8 reviewing it, Staff has been working on the application or has
9 been aware of the application typically for several months in
10 terms of the estimate stage and just waiting to see what things
11 would happen.

12 Staff is always willing to, if a Committee member has
13 heard about a particular project or has questions on what's going
14 on, on the project, in terms of estimates, we're happy to chat
15 with you about the project.

16 DELEGATE RASOUL: Thank you, Madam Chairwoman.
17 Further questions. Thank you, Madam Chair, appreciate that.

18 And, Andy, it's great to see that there's been an
19 evolution and also we're being creative in how we approach a lot
20 of these different projects and also finding the revenue streams,
21 as well. So, I think that that's exactly the direction we need to
22 be headed in.

23 One thing that I struggled with in our last meeting for
24 a variety of reasons. What are some thoughts that we have on,
25 sometimes we become attached, emotionally attached, and

1 they're tied to localities that we know needs some help, and so
2 it's just hard for me to have contact as to how we have
3 approached making exceptions or, and I know there are some
4 things you can't control, but how do we seem to do that, and
5 that way, we can maybe kind of streamline down, so that way
6 when we look at one project in the future, people feel as though
7 we're making certain exceptions in a fair way? I know I struggle
8 with it because there were some great projects and then from
9 that perspective moving forward what tone we should set.

10 MR. FEINMAN: Delegate Rasoul, the policy that we've
11 undertaken at the Staff level has been that if a project
12 experienced difficulties that could credibly be tied to the COVID
13 crisis in any way, shape, or form, we've essentially given them,
14 we've used the administrative authority that the Staff already
15 has to give them an extension. Somebody that's not been with
16 us a year yet, and we have the ability as Staff to delay things in
17 order to achieve the milestone requirements for as much as a
18 year to give them an additional year extension.

19 We basically have been letting people say, look, we
20 understand this crisis happening and if what you experienced was
21 something other than the standard not COVID-related business
22 risk, then you are welcome to take extra time. Of course, early
23 in the pandemic, we had no belief or reason to believe sitting
24 where we are now in November we would still be doing Zoom
25 meetings, but now we're saying, look, you know, we're basically

1 hitting the pause button during the pandemic and then we'll pick
2 you up once there's a vaccine or some other treatment that
3 would allow us to get back to normal economic times.

4 If we don't get back to normal economic times for a
5 significantly longer period of time or if in November of 2021,
6 we're still sitting here on Zoom meetings, I think we're going to
7 have to talk about broad-scale relief of obligations or some other
8 strategy, but we are a ways away from that now. So, I think
9 we've got some more leeway to see if folks can make up the lost
10 ground in Calendar Year '21.

11 DELEGATE AIRD: Do you also feel as though some of
12 the conversations that we'll have when we get down to policy
13 decisions, that can ultimately drive what Delegate Rasoul is
14 referencing in terms of making sure that the decisions we are
15 making are sound business practices versus the emotions that
16 are tied to caring a lot about some of these adversely impacted?

17 MR. FEINMAN: Yes, I think the program that the
18 Commission runs, that is the least subject to the most common
19 sort of criticism the Commission receives which is that it's not
20 necessarily an all business decision is TROF. TROF is a formula-
21 driven program with clear policies at the outset that is run in a
22 business-like fashion without people being able to make
23 emotional appeals to the Commission or Commissioners weighing
24 in on behalf of maybe some parochial concerns.

25 Further, again, we had one decision that was criticized

1 in the press recently, and that story was based on an Inspector
2 General's report, and the Inspector General spent, Andy, how
3 long, seven months going through every single scrap of
4 information the Commission had, at which point their Inspector
5 and ultimately the Inspector General concluded that we had
6 sound business reasons for making the exception we made in
7 that circumstance, as well, which was reflected in the Inspector
8 General's report. JLARC said that TROF is more than twice as
9 effective as the median State Incentive Program is. So, I would
10 hold TROF up as a pretty darn high performing program of the
11 Commission and one that has yielded significant and measurable
12 deliverance.

13 DELEGATE AIRD: Thank you so much, Evan. Are
14 there any questions about the overview before we jump into the
15 policy discussion? Okay, hearing none, do you want to go by
16 these one by one and that would allow us to have greater
17 understanding and clarity and ask for questions on each of them.

18 Evan, if you want to go ahead and proceed with the
19 policy discussion at this time.

20 MR. FEINMAN: Yes, Madam Chairwoman. If you'd
21 look at Item A towards the bottom of page 3 of your document.
22 The first question that's before this Committee is the question of
23 whether or not to continue to award TROF grants and loans being
24 advanced or to do what the majority of other state incentive
25 programs have done, which is move to payments in arrears. The

1 primary driver of that is risk. As we've noted, the Commission
2 bears little or no risks, but the localities that undertake these
3 projects do bear some risks if the project fails and then there is
4 no ability on the part of the third party or the private sector party
5 to repay any obligations when or made up front.

6 To move to a payment system where we're paying in
7 arrears, there could never be a clawback because we only pay
8 people for verifiable performance. So, it would be, or to make an
9 example, we could say, all right, you promised us you were going
10 to spend ten million bucks and hire 100 people and at the end of
11 the day you've only invested five million bucks and hired 50
12 people. That's fine, we'll give you half of what we promised you
13 upfront, there's no clawback because the payment goes out at
14 the end of the performance period.

15 The downside of that, to articulate the other view, is
16 that because there are few other incentive programs offering
17 capital upfront and because of many of the sectors that we're
18 trying to capture that are high value sectors are pretty capital
19 intensive upfront sorts of projects, manufacturing, large scale
20 distribution. It adds a lot of bang to the buck for an incentive
21 that you're getting it upfront when you, as a business person, are
22 incurring costs prior to revenue generation. So, we do have to
23 balance. We will harm the competitiveness of the region
24 somewhat, but we've got to balance that against the harm that
25 we do do to local budgets when we require clawbacks for which

1 they are inadequately secured.

2 I will also say that in each of our agreements, when
3 there is a clawback, we require that the locality both affirm that
4 they understand that they'll be responsible for the clawback if the
5 company can't do it. They have to confirm to us that they have
6 adequate security from the private sector or entity to make
7 repayment themselves. That is often turned out to not be the
8 case.

9 One of the things that I do find a little frustrating is
10 how fast and loose our local partners are sometimes willing to
11 play with whether or not they've gotten a letter of credit or
12 performance bond or some other instrument that ought to make
13 them harmless should a clawback occur. I think when they get
14 to deal-closing mode, they tend to leave that question.

15 Where we are, and we believe that we can continue to
16 operate as we have and offer them in advance or in arrears.
17 Loans obviously really don't make sense in advance, but a loan is
18 a loan. And the requirement for a loan is that you repay it. And,
19 in general, we haven't had significant issues with loans. It's been
20 the grants that tend to be clawed back.

21 At this point, I'll open it up to the Committee for
22 discussion. I know that Secretary Rasnick, and I know Secretary
23 Ball has a strong view on this question.

24 MS. RASNICK: I'm Cassidy Rasnick, Deputy Secretary
25 for Commerce and Trade. And this is really an important

1 discussion, and I thank Evan and the team for having gone into
2 this. I will say holistically, as far as economic development, Evan
3 characterized it really right. The incentive to that, if paid
4 upfront, it's really competitive and more competitive in the
5 marketplace and back-ended. It's then a decision factor in many
6 projects in the past.

7 The place that I feel some heartburn, and Secretary
8 Ball shares this feeling, as well, is the requirement that localities
9 pay back no matter what happens. The way I view this, and I've
10 had some robust conversations, I think we have a bit of a
11 disagreement, is that the Tobacco Commission and TROF awards
12 represent that the state also make an investment in the
13 company.

14 We measure return on investment for the state, as
15 well as for the localities. If they're having the localities take on
16 all of the risks is a tremendous burden on their local government.
17 We've had a few situations in which localities are mandated to
18 pay the Commission back in full because a project has gone
19 awry. That's appropriate as under-contracted, there's nothing
20 wrong about that, the way that some other economic law
21 agencies do it is a little more permissible, obviously, we want to
22 keep the state and the Commission whole wherever possible.
23 But there is risks in making investments always.

24 So, one thing for the Committee to maybe consider is
25 whether or not there is a middle ground to having the

1 Commission investments secured by the localities. There have
2 been a few obviously high profile situations where companies,
3 everybody sort of been on board with, localities the state has
4 invested in, have projects haven't panned out. So, what the
5 economic development partnership does is requiring localities to
6 pursue clawbacks to the fullest extent of the law. Sometimes
7 that means taking companies to bankruptcy court where we
8 often get, you know, cents on a dollar for that clawback. That
9 generally once you've proceeded to the fullest extent of the law
10 clears the localities for then. So, let's say a locality took an
11 investment for \$100,000. If they recover \$60,000 in court, they
12 don't have to pay that back to the state.

13 That, in my view, is sort of a balance risk model
14 where the state does take some risks, it requires the locality to
15 partner, do due diligence, as well. Obviously, that requires more
16 due diligence on behalf of the state agency and the Commission
17 would likely have to think about additional due diligence before
18 making these investments that aren't really secured by the
19 locality.

20 So, I'll just kind of put that out there for conversation.
21 The mission of the Commission is to revitalize localities and
22 communities in the Footprint, and I think that we just want to
23 think about who bears the full risk when we're making these
24 investments.

25 DELEGATE AIRD: Thank you so much. And, Evan,

1 can I ask the first question and just asking about the Staff
2 presentation. I see that the Staff recommends that the
3 Commission -- -- -- security. I guess I'm a little confused by
4 that, because I would, where the -- was considering security
5 issue (unintelligible).

6 MR. FEINMAN: The current mode of operation, the
7 locality can decide if they don't want to undertake risks to have
8 an award paid in arrears. We can also decide effectively
9 substituting our judgment for a locality, but we do from time to
10 time companies that are from other nations that might not as
11 robust a legal system as some of our more frequent trading
12 partners. We will sometimes substitute our judgment for
13 localities and say we're only going to offer this award in arrears.
14 That's the current mode of operation.

15 If there were to be a change, we could go in two
16 different directions. You could say we're going to continue to
17 offer things in advance or in arrears, but when, as Deputy
18 Secretary Rasnick laid out, when there is a clawback situation,
19 we would require them to pursue the company as much as they
20 could and then otherwise forgive any remaining effect.

21 I'm a little concerned about moral hazard there
22 because you are effectively saying or you're effectively taking a
23 locality out of the process by saying, look, if there's an upside,
24 we have to incur some legal expense, but, otherwise, there will
25 be no harm to the local coffers for a failed project.

1 We implement the policies that the Commission and
2 the Committee determines. We can take that in whatever
3 fashion you all like us to.

4 SENATOR MORRISSEY: I just want to make sure that
5 I understand this correctly, if the project goes, then the company
6 is required to pay back the clawback. If the company doesn't
7 pay back the clawback, return to the city, excuse me, to the
8 locality, despite grandiose visions -- security to pay it back. Is
9 that right?

10 MR. FEINMAN: That's correct, Senator.

11 SENATOR MORRISSEY: That appears to be a no-
12 brainer if people want to do it only in arrears. Both the company
13 and the locality sees that they are sincere, then envisioning the
14 project as successful. We all know that doesn't happen, and let's
15 all be clear. If the project goes awry, there is no way that the
16 company is going to pay back the money and the community
17 doesn't have the security.

18 I think we are derelict in our duty if we could change
19 that to arrears. I noticed in what we were given, the TROF is one
20 of the only incentives that's still there. I think it's just a no-
21 brainer doing in arrears. When I do projects for businessmen, I
22 always want the best, that's my thought.

23 MR. FEINMAN: Senator, I think that's a fair and
24 reasonable position. I will say that by and large that companies
25 do wind up, when's there's a clawback situation, do wind up

1 shouldering some or all of that repayment burden.

2 Frequently what we're dealing with is not a new entity
3 that only exists or only proposed existing in this one location, but
4 maybe a new location of leading to a Fortune 500 company. You
5 could have a data center that a major technology company
6 wanted to build that's simply, you know, their demand didn't
7 keep up with their estimate. They might have thought they were
8 going to put a million dollars in a data center and ultimately only
9 needed seven. Of course, that reduces the MNT that the locality
10 would gain from that data center. Then you'll have a Microsoft or
11 Facebook, they'll cut the check and they don't think twice about
12 it.

13 SENATOR MORRISSEY: Evan, that was a good point.
14 Tell me this though. It struck me as, given that they didn't have
15 the funds to complete the project or something happened, the
16 metrics just weren't there, they tried everything they could, I
17 just don't see them having that extra money in the kitty to pay
18 back the clawback, but you all said that it's often the case, it's
19 not true. Would you explain that a little bit?

20 MR. FEINMAN: The problem is that, you know, the
21 incentive amount is only ever a relatively small percentage of the
22 total proposed project. So, if market conditions change, but they
23 don't change, they don't swing all the way to making a project
24 not viable, but merely might mean that demand is not going to
25 keep up with what they initially anticipated. You'll often see

1 companies, and we see this with some frequency, we'll see
2 companies that believe that they're going to get to an operation
3 of X scale, but they create a viable identity, but winds up being
4 an entity that's only two-thirds the size of what they hoped, or
5 three-quarters. So, in those instances, you've got to go, or that
6 has the wherewithal to repay the one-third or one-quarter of
7 their upfront award that they did not earn and they probably
8 benefited from that extra capital at the outset. And then they
9 pay us back the difference.

10 I see Andy leaning forward. He may have some
11 harder numbers that can shed a little light on that.

12 MR. SORRELL: I thought maybe I'd provide an
13 example of a recent case. They've got the minimum investment
14 target, and perhaps didn't fully meet their goals of that capital
15 investment for employment. So, they earn actually what they
16 performed, and the payment between the company and the
17 Commission and the locality, you know, the company provided
18 that they're willing to work with us, we work out the terms of a
19 repayment agreement that's doable for the company and for the
20 Commission.

21 The terms of the repayment agreements vary
22 depending on the project and the amount owed, and typically,
23 those are a three-to-five year repayment period that they can
24 return the Commission funds at a rate that isn't harmful to their
25 business. We're interested in seeing that they continue to exist

1 and continue to expand as possible, but we want to make sure
2 that the funds are replaced. There is a case that on occasion
3 where they don't hit their target, that they do have the ability to
4 repay the Commission on payment terms that are suitable.

5 DELEGATE AIRD: I don't know if this question is for
6 you, Andy, or Evan, but can you, just to make sure I have full
7 content, can you speak to the other side, the incentive side how
8 frequently, how you see a project that has ultimately really
9 needed the incentive upfront in order to make that final decision
10 and/or is that an indicator of the financial stability of the project?

11 MR. SORRELL: I was just going to say that oftentimes
12 that in instances where the project needs the funds upfront, it's
13 for getting a building in shape or getting a building that's been
14 shuttered for a while in shape, and bringing it up to speed for the
15 new manufacturing process that might be going into a project.
16 That's oftentimes upfront, upfront capital.

17 MR. FEINMAN: That's the hard thing about all of
18 these incentive questions is you're never going to be certain that
19 you're not being taken by a private sector actor when they tell
20 you that this incentive package or that incentive package is why
21 they're in a given location. If you look at the HQ2 decision,
22 Virginia was offering far less in the way of cash incentives than
23 were many competitor states, most competitor states, but they
24 located in Virginia based on a number of fundamentals, mostly
25 how they do workforce. I think that's also often the case in the

1 projects that we attract to our Footprint.

2 If you look at the investment the Commission has
3 made in Workforce Development, we tend to, a couple of years
4 after those investments, see companies rolling in that take
5 advantage of the workforce pipeline and being creative.

6 On the other side of that, until Congress or an
7 interstate compact relieves because of a necessity to compete
8 with other states, I would not advocate that you unilaterally
9 disarm and just stop or significantly reduce our incentive
10 offerings when North Carolina, Georgia, South Carolina, Alabama,
11 Maryland are still doing it.

12 DELEGATE AIRD: Thank you so much. Are there
13 other questions?

14 DELEGATE RASOUL: Madam Chair.

15 DELEGATE AIRD: Delegate Rasoul.

16 DELEGATE RASOUL: Just to, I really appreciate the
17 comments by Deputy Secretary Rasnick trying to find a balance
18 here and a couple of things. Making sure that localities certainly
19 do their part for sure, but also not wanting to especially for some
20 of the smaller localities where the risk is just too much to bear.
21 So, finding a balance, I think is important. But specifically,
22 thinking about what we're funding upfront or in the arrears and
23 also the type of costs that we're funding upfront.

24 For me, especially, think that it's good to continue to
25 think about offering support upfront, but talk about upfront hard

1 costs and not soft costs, let some others take on some more of a
2 soft cost upfront, and then development, engineering, et cetera,
3 but then when you need money to break ground and when you're
4 going to put a shovel in the ground, to me, that continues to be.
5 So, we can continue to say that these are upfront costs that
6 we're going to help you with, but sometimes where we get a little
7 bit in the murky part, they say yes, and before they actually
8 break ground. So, that might be something for the Committee to
9 consider, as well, is what type of upfront costs we're investing in.

10 DELEGATE AIRD: Evan, are you able to speak to that
11 a bit more?

12 MR. FEINMAN: We, in general, do not require nor
13 does COF or AFED require that companies present us with a
14 budget for all of the awarded dollars ahead of time. I think, in
15 general, the view is, you know, they don't always know until they
16 break ground or until they start renovating or until they put in
17 their equipment purchase orders where costs are going to be
18 different from what they might have expected at the outset.

19 We could certainly do that, and then request that if
20 there are changes, that they review that with us. That might be
21 found to be burdensome. But to focus the conversation a little
22 bit, I think the best way to address this is to either say one of
23 three routes, would be to say we're going to stick with what
24 we're doing, which is to offer them an advance or arrears, or we
25 could take something of a middle route, and there's an increased

1 risk to the Commission and some moral hazard if we go with the
2 route of VEDP that Deputy Secretary Rasnick outlined, or the
3 third option is to go to payments in arrears, except that there will
4 be a moderate, slight to moderate diminution of the impact of
5 our dollars, but there is risk to all the actors in the equation. If
6 we do make awards in arrears, know that there's any risk, we
7 merely pay for product on delivery.

8 DELEGATE AIRD: Thank you so much. Are there any
9 other questions?

10 MR. BLEVINS: Madam Chair.

11 DELEGATE AIRD: I saw a gentleman speaking, who
12 was the gentleman?

13 MR. BLEVINS: I'm Mr. Blevins.

14 DELEGATE AIRD: All right, Mr. Blevins. It's not
15 Blevins, all right, Ms. Clark.

16 MS. CLARK: I just want to make the comment that
17 when we speak about these incentives, they are tools for our
18 economic development professionals, and we don't want to take
19 away the tools or limit the tools that they have because we are in
20 depressed, you know, depressed localities, I'm sitting in one right
21 now. And we don't need to reduce the tools that these folks
22 have, and I a hundred percent agree with Deputy Secretary
23 Rasnick's comments about finding a little ground there, because
24 these localities that really need the jobs are very much strapped
25 for cash. So, if we can give these localities more tools and more

1 flexibility while doing our own homework on the back end, I think
2 that's really important.

3 DELEGATE AIRD: Thank you, Ms. Clark.

4 Mr. Blevins.

5 MR. BLEVINS: I just wanted to comment, I guess
6 from a lender's perspective. You know, obviously, the least risk
7 approach would be for every dollar that has to be paid in arrears,
8 but if we're going to function in a lending capacity, we can't,
9 that's basically the only way to eliminate all the risk incentive
10 payments. I think it would be more practical to hang on to the
11 ability to advance before the project was completed, maybe
12 discuss parameters to make the Commission feel more
13 comfortable about the ability to collect a clawback if the project
14 didn't go as planned. I think the understanding of that from the
15 locality is very important and the ability of the locality that if they
16 got in a clawback situation. I think if we're going to approach
17 this from a lending standpoint, that should be part of our analysis
18 process. I'm just not sure that I think we limit the effectiveness
19 of the TROF finding if we take the in arrears only approach.
20 That's my comments.

21 DELEGATE AIRD: Thank you so much, Mr. Blevins.

22 I know we have so many other policy decisions, final
23 question, given the comments from Ms. Clark and Mr. Blevins. I
24 recognize when talking about this a little bit before about the
25 great need that exists in many of these localities, but I think the

1 other side of that sword is their fragility, as well. So, are you
2 able to describe an instance where the locality tries to pay back
3 and the impact that that had on that particular locality? I just
4 would like to put a fine point on that, because I think from what
5 would help these localities that are in great need, I also worry
6 deeply about putting them in a situation where they are
7 negatively impacted.

8 MR. FEINMAN: I think an example is that immediately
9 prior to my joining the Commission in 2015, there was a pre-risk
10 tolerance, a pretty aggressive IDA director in one of our major
11 Southern Virginia localities, and they had requested TROFs for a
12 lot of projects that were always pretty speculative, and they had
13 not done a good job actually getting the security that they
14 assured the Commission they were supposed to get. And they
15 wound up owing the Commission around twenty-some thousand
16 dollars, all told, which was a lot of money even for what's one of
17 our more affluent localities. We were able to work out a
18 repayment agreement for all of those, and they're all the way
19 caught up with us now, so that took about five years from those
20 projects. I think they have one other that's, or two others that
21 are in clawback a little more recent.

22 It's worth noting that in general our TROF grants are
23 often or always paired with a local grant that goes directly to the
24 company, as well. These are instances in which there's generally
25 a broad package. You've got a local set of incentives, you've got

1 a state set of incentives, in which we're sometimes the only state
2 actor, but often we're partnered with VEDP, sometimes VDOT,
3 and others, but, in general, our approach is always first to give
4 the local government as much time as they need to fully pursue
5 recovery from the company, whether that involves a lawsuit or
6 something else.

7 At the end of that, we work with them to figure out
8 what their budget can afford in terms of repayments. Usually,
9 we let them make the first offer. And, you know, it'll be
10 something like can you pay this over 15 years, well, how about
11 five? And then you kind of get to a place where they think they
12 can accommodate it. We have not ever and would not ever
13 demand repayment that would, obviously, anything coming out
14 of a local government coffer is one thing, but we would never say
15 no, we demand you lay off features or whatever, but we always
16 try to say what can you accommodate in the context of your
17 existing and keep going.

18 DELEGATE AIRD: Thank you so much. You all have a
19 Staff recommendation on your document, that is the Commission
20 will continue offering TROF grants both in advance or arrears
21 with adequate security. I think we've arrived at the juncture now
22 where we will discuss, you know, is the Committee in agreement
23 with that Staff recommendation? Do you want to alter that Staff
24 recommendation? That would take a motion. If you're in
25 agreement with that recommendation, we operate on motions.

1 DELEGATE KILGORE: I move that we adopt the
2 Staff's recommendation, Madam Chairwoman.

3 DELEGATE AIRD: Chairman Kilgore has moved to
4 accept the Staff recommendation. Is there a second?

5 MS. CLARK: Second.

6 DELEGATE AIRD: The motion has been moved and
7 properly seconded. Are there any additional questions? Hearing
8 none, all those in favor, please say aye. (Ayes). Are there any
9 opposed?

10 SENATOR MORRISSEY: No.

11 DELEGATE AIRD: You are opposed?

12 SENATOR MORRISSEY: I am.

13 DELEGATE AIRD: One in opposition. That motion
14 carries. Thank you so much.

15 Evan, you want to walk us through the next policy
16 item.

17 MR. FEINMAN: Certainly, Madam Chairwoman. The
18 next policy item regards our Prospect Incentive Funds. This is
19 essentially our dry powder for when we've got to take on hunting
20 a big project. We have a challenge setting it aside which we use
21 when our estimator tops out and we're talking about very large
22 projects. Our estimator simply doesn't contemplate, you know,
23 the real large transformative, regionally transformative projects
24 that I would say once or twice a year come on our radar. I'm
25 sad to report that we haven't landed one of those in the couple of

1 years I've been here, but we have been on the short list a
2 number of times, top two, top three.

3 Members of the Committee will recall we approved an
4 award for Project Red, which was coming both from TROF and
5 from our Prospect Incentive funds, of a \$4 million loan and \$4
6 million grant, and that project did not materialize, and that would
7 have been many hundreds of millions of dollars and many
8 thousands of jobs.

9 We currently operate with an approach that is similar
10 to, but has one distinction from VEDP's major employment and
11 investment project definition. For VEDP to become a major
12 employment investment project, it's got to be a project that's
13 promising to invest more than \$250 million and will create more
14 than 400 new full-time jobs. And we separate, a theory that we
15 should access our Prospect Incentive funds when a project fits
16 either of those boxes, recognizing that either \$400 million in
17 investment or 400 new jobs may make a megaproject for the
18 communities that we serve.

19 An additional allocation of those funds is done in
20 collaboration with VEDP, and so what we do is we work with a
21 local economic developer and VEDP to develop a package that we
22 believe will be competitive with the other states in which we
23 believe we're competing for a project, and then we bring that to
24 this Committee for approval if the award exceeds, which we'll get
25 to a little later, but if the award exceeds \$3 million, then we take

1 it to the Full Commission.

2 So, what we're asking for here is an affirmation that
3 those are the right thresholds and that you want us to continue
4 to operate in that fashion. We could certainly go to requiring an
5 and or we could modify those numbers, but those are the
6 numbers that we landed upon.

7 DELEGATE AIRD: Thank you. Senator Morrissey.

8 SENATOR MORRISSEY: Evan, how many projects do
9 you throw your pack into the room, for lack of a more artful
10 phrase, and are not successful that you feel you would have been
11 successful had you altered these parameters or these numbers,
12 400 full-time jobs and \$250 million? Do you understand what
13 I'm saying?

14 MR. FEINMAN: Yes, I do. I'm trying to review the
15 records. Probably just one in the five years I've been with the
16 Commission. There was one project in Southwest that I think we
17 fell a little short, it was fairly recent, fell a little short of these
18 metrics. But it would have been significant, but I didn't have the
19 ability. Steve Maury was calling me every couple of days can you
20 find a way to get that award up, can you find a way to get that
21 award up. We simply didn't have the authority to do it, but
22 there's some real question about whether we would have been
23 overpaying for that project at the same time. I would say it's
24 pretty rare.

25 SENATOR MORRISSY: A follow-up question. If you

1 had gotten the award up north of \$250 million and north of 400
2 new jobs, you're telling us that you would have landed at least
3 one project?

4 MR. FEINMAN: What we're asking for, those aren't
5 the award amounts. If we were allowed access to these funds for
6 a project that fell short of either of those metrics, I think we
7 would have landed that one. I think that was pretty clear. I see
8 Delegate Kilgore shaking his head and nodding his head, and he
9 knows what project I'm talking about. I think that, and that's
10 the only time I can recall that happened.

11 SENATOR MORRISSEY: Thank you, Evan.

12 DELEGATE AIRD: I think the last time we talked
13 about a project that was really close, not quite there. Is there a
14 special arrangement to be made for a particular project, is that
15 correct?

16 MR. FEINMAN: Yes, that's correct.

17 DELEGATE AIRD: Are there other questions? I'll say
18 again, we act on motions, Evan had described the Staff
19 recommendation, do I hear a motion to accept the Staff's
20 recommendation to access the fund? Is there a motion to
21 change the recommendation?

22 DELEGATE KILGORE: I'd say that we accept the Staff
23 recommendation.

24 DELEGATE AIRD: Chairman Kilgore moves the
25 motion. Is there a second?

1 DELEGATE RASOUL: Second.

2 DELEGATE AIRD: Thank you, Delegate Rasoul. Are
3 there any additional questions? All those in favor, say aye.
4 (Ayes). Are there any opposed? (No response). Hearing none,
5 that motion carries.

6 Evan.

7 MR. FEINMAN: Thank you, Ms. Chairwoman. Item C
8 speaks to the expansions of existing facilities. This, I will tell you
9 is a tough one for us. The question is, should we continue to
10 offer TROFs to expansions of existing facilities in our
11 communities? The reason that it's an open question is it's
12 extraordinarily difficult for us to determine when that expansion
13 is truly competitive. There are times in which companies have
14 many locations and that's pretty straightforward, but there are
15 other times and this Committee addressed one of them during its
16 last meeting. There's only one or two facilities, or there's
17 another reason to be skeptical that an expansion is reliant in
18 large or small part on our incentive payment. We don't want to
19 be in the business of giving people money to do what they were
20 already going to do. As I said before, it ceases to be an incentive
21 at that point.

22 What Staff is doing right now is requiring affirmation
23 and some evidence in writing from the company that there is, in
24 fact, a genuine deliberative process going on and like to see
25 evidence that they have at least gathered and analyzed some

1 metrics related to where they're expanding and where they're
2 not. That said, it still often feels like a crapshoot.

3 So, the question is, would you like us to continue to
4 make what we consider to be our best call regarding the
5 expansion and continue to offer expansion TROFs, or would you
6 want us to cease to do that or take a different approach?

7 DELEGATE AIRD: Thank you so much, Evan. I have
8 comments, but I'll ask for questions first.

9 MS. CLARK: I have a question. Are there other funds
10 available for these expansions? Are they in another category?

11 MR. FEINMAN: Other funds, like in the conditions
12 offerings?

13 MS. CLARK: Yes.

14 MR. FEINMAN: In general, no. You could certainly
15 see a circumstance in which a site development grant, or
16 something that's sort of custom done, or a planned expansion,
17 we've seen that, or a locality will say we'd like to build this shell
18 building that's 100,000 square feet, knowing that there's a
19 company that's currently sitting in a 60,000 square foot building,
20 and they want to expand. And then if they offer very favorable
21 terms to a company to locate in that building, but at the same
22 time, we would probably not take that significantly into account
23 or to demand for new industrial space, or improvements in a
24 business, or industrial park, to stand on its own two feet, but if
25 we know there's an active project, but in general, the answer is

1 no. There are some other state funds that are available for
2 supporting it.

3 DELEGATE AIRD: I'd like to make a comment.
4 Throughout this fall and throughout the framework of making
5 these policy decisions, how do we insure that we're offering
6 sound business practices? I -- to be in the expansion business?
7 I do believe that should a unique circumstance come along that
8 would merit a Tobacco Commission -- then perhaps the
9 Committee could make that exception. But to have it as a
10 standard -- most of the projects that have come before you all
11 are not qualified. I think we really need to move in a different
12 direction. That's my personal position. I'd like to have a
13 conversation around the Staff members -- -- don't know if they
14 agree with me and/or if that would be problematic.

15 Senator Morrissey.

16 SENATOR MORRISSEY: Delegate Aird, I agree with
17 you. As a general rule, I don't think the Commission should be
18 involved in the expansion process. We're getting into the private
19 sector of things. If they see the project is viable and if they think
20 that expansion is warranted, then let the private sector do that.

21 For us to get involved seems to be getting away from
22 the core values of the Commission. Maybe that's just some of
23 my libertarian instincts coming through right now, but that's how
24 I feel. I think the easy call, if we expand the project, it's going to
25 be successful, but the issue is why should we do it and why don't

1 we put our resources and energies into another area and let the
2 private sector do it?

3 So, I'm in agreement with you. I would, as a general
4 rule, be very much against getting into that expansion business.

5 MS. RASNICK: Madam Chair, I wanted to add some
6 additional context for the Commission. I will say that expansions
7 are generally very competitive, as I gave you all a bit of a view,
8 manufacturing is really a sweet spot for the Commission. Many
9 of our facilities that Virginia competes for have multiple locations.
10 We're often competing with those existing locations in other
11 states for that expansion, facilities that might have a, or a
12 business that might have a line in Pennsylvania and in Virginia
13 and in Georgia, we're often competing for what the new line is.
14 And is that going to go to Virginia or is that going to go to
15 another state? This is really a piece that I would just urge some
16 real thoughtfulness to, I would say that of our projects, about
17 two-thirds of our announcements in the Commonwealth are
18 expansion related. So, once we've got a client that knows what
19 it's like to do business in Virginia, they are more inclined to
20 expand here, but at the same time, we're also, if we lose an
21 expansion project, sometimes that puts us at risk for losing the
22 existing facility, as well.

23 So, when folks are considering -- projects, we'll think
24 about, okay, well, if Pennsylvania is the one that's really better
25 fitted for us, maybe it just makes sense to do all of our business

1 there. So, there is some dual -- to this project. It's not often
2 just a, you know, a 10 or 20 person that is trying to kind of game
3 the system. And I think the Commission considered it, where
4 that might have been a possibility in our last meeting, but it's not
5 just norm. It's sort of something that seasoned economic
6 developers can kind of feel out when a project is competitive or
7 not and I think the Commission Staff presented you all with
8 what's sort of their opinion that that was not competitive, but is a
9 requirement for most of our existing projects. It's not just going
10 to expand whether or not we incentivize it, it's that they are
11 competitive with another state.

12 DELEGATE AIRD: Thank you. Evan, can I ask a
13 clarifying, ask you to verify something that I heard a few things
14 and I appreciate those comments from the Deputy Secretary. I
15 think what I would like to have clarified, you know, there was a
16 question asked earlier about is there another thought that
17 expansions will qualify for under the Tobacco Commission, I think
18 the answer was no. But the statement was made that the state
19 has the ability to offer some support as it pertains to expansion.

20 So, Deputy Secretary, you've offered two-thirds of the
21 announcements that are made, are relative to expansion, and for
22 context, was that with the support of TROF, and did those, I
23 mean did those qualify for TROF? I wanted to make sure there's
24 an understanding of what we're talking about here which is
25 specifically as to what you're referencing.

1 DEPUTY SECRETARY RASNICK: Sure, and let me
2 clarify, thanks for pointing that out. All of our Virginia Economic
3 Development expansion, 77.1 percent are expansions, that
4 accounts for 52 percent of the 77,000 jobs created in this
5 administration, and 26.8 billion of the \$35 billion of the capital
6 investment. So, these are really serious numbers, and that is for
7 all Virginia, not just --

8 MR. FEINMAN: With regard to TROF, it's more
9 minority of our TROF incentives, I would share Secretary
10 Rasnick's concerns about getting entirely out of the expansion
11 business and would welcome or invite on instruction that we can
12 then point to with our local partners requiring greater scrutiny on
13 part of the Staff. If I wanted to get these documents, now I'm in
14 negotiation with the local developer, if instead I've got a clear
15 directive from you all for a rigorous review, and there's no
16 arguing because there's nobody on the phone.

17 DELEGATE AIRD: My last question, and then I'll open
18 it back up. My question is, so, you saying that the level of
19 scrutiny -- -- (unintelligible) sending to the discussion around
20 the threshold where there would be a unique circumstance if we
21 were able to come up with a creative approach and a decision
22 could be made to make the standards to provide corporate
23 expansion projects if they were able to meet a circumstance,
24 would the Commission be barred from considering that request?

25 MR. FEINMAN: The Commission, as a body, can

1 consider anything the Commission would like to consider. One is
2 unique, and, you know, a double-edged sword. The Commission
3 possesses in its ability to be flexible and undertake any project it
4 would like to in its wisdom to take.

5 The issue with TROF, this is a program that operates
6 based on policies that this body gives to the Staff and that the
7 Staff runs without you all's input. In that instance, whatever the
8 directive we get from you is, we will then implement that with
9 notification on a project-to-project basis to the members of this
10 Committee, but not this kind of back and forth discussion or
11 opportunity for --

12 DELEGATE AIRD: I'm sorry, you didn't answer the
13 first part, which is, are you saying today, you said that you would
14 recommend that instead of barring, considering expansions, you
15 would prefer to just allow for greater scrutiny, has that been
16 something that hasn't occurred today, I just want to understand
17 what, moving forward versus what has been done?

18 MR. FEINMAN: Yeah, I apologize for that. We're
19 engaged in as much scrutiny as we're able right now. What I
20 was suggesting was that when Andy or David or I are on the
21 phone with a local developer who, you know, they're in a
22 customer service mode when they're dealing with a company
23 that's planning on expanding. They would prefer not to bother
24 that company with requests for documentation or signed
25 affirmations, et cetera.

1 And if we are doing what we're doing now, which is
2 undertaking that scrutiny on our own steam and we get some
3 pushback from our local partners, whereas I think if this
4 Committee were to direct us to engage in robust scrutiny, and I
5 apologize this is not in your written Staff recommendations, it
6 only just occurred to me as we've been discussing it, but if you
7 were to direct us to engage in that scrutiny, that conversation
8 would go a bit more smoothly because, of course, they're not,
9 they can ask us to deviate from your direction, but our answer is
10 always going to be no, take it up with the Committee. We're
11 here, we're staff, we're here to implement the will of the
12 Committee, and so we can simply, you know, demand those
13 documents.

14 DELEGATE AIRD: Other questions on this particular
15 policy? Okay, hearing none, the Staff recommendation is
16 ultimately what has been stated, which is to demonstrate true
17 and verified from the company in writing the proposition for the
18 project or facility expansion. I would ask if there is a motion to
19 be made to accept the recommendation, it would include the
20 verbiage that Evan just mentioned, which is that we are -- --
21 that intense scrutiny, to continue with allowing for expansion
22 consideration, but obviously we operate on a motion.

23 SENATOR CHAFIN: Madam Chair, this is Ed Chafin. I
24 would like to make that motion. And I would like to also offer a
25 comment, I couldn't get my mike to unmute a moment ago when

1 you were asking for questions. May I make the comment?

2 DELEGATE AIRD: Yes.

3 SENATOR CHAFIN: Thank you. I'd like to associate
4 my comments with the Deputy Secretary's comments, and I
5 would encourage the Commissioners to not overlook an
6 intangible that is out there that we have seen time and time
7 again. And that intangible is momentum, momentum that
8 industries have and that an expansion, specifically an expansion
9 can give to a particular industry and a location. It can provide
10 momentum for future increased activities obviously, but it also
11 shores up that industry in that locality. I think that on when that
12 expansion goes to a competitor, it often spells the beginning of
13 the end if we lose that expansion. It often has been my
14 experience that it spells the beginning of the end for the industry
15 that we've worked so hard to attract. Thank you.

16 DELEGATE AIRD: Thank you, Senator Chafin.

17 SENATOR CHAFIN: I would like to make a motion.

18 DELEGATE KILGORE: Madam Chair, did he add your,
19 did he add the language that needs to, I guess, Senator Chafin,
20 did you include the language that needed to be in there, that you
21 spoke about?

22 SENATOR CHAFIN: Yes, the language recommended
23 by Evan and by Staff.

24 DELEGATE AIRD: Thank you so much. Does anyone
25 need clarification for what you're voting on at this time, or are we

1 in a good posture? Okay, the motion has been made. Do I have
2 a second?

3 SENATOR MORRISSEY: Madam Chair, the
4 recommendation at the bottom of Section C, there's no addition
5 to that recommendation, right?

6 DELEGATE AIRD: The recommendation at the bottom
7 of page 4 under C, however I am asking for me to be
8 comfortable with this recommendation that Andy or Evan work
9 out language that really makes it clear that we are directing Staff
10 to add an additional -- that will insure we want to remain in the
11 expansion business, that they are confirming that, that this
12 project or the request is absolutely suitable.

13 SENATOR MORRISSEY: Evan, is that consistent with
14 what you're proposing?

15 SENATOR CHAFIN: Yes, yes, it is, Joe, thank you.

16 DELEGATE AIRD: Thank you. Is there a second on
17 the motion?

18 UNIDENTIFIED: Second.

19 DELEGATE AIRD: Thank you. That motion has been
20 moved and properly seconded. Are there any additional
21 questions or comments? All those in favor, please say aye.
22 (Ayes). Are there any in opposition? (No response). That
23 motion carries.

24 MR. FEINMAN: Thank you, Madam Chairwoman.
25 Moving on to Item D, for TROF grants, the minimum investment

1 is effectively the threshold, but the question that is before you is
2 because the primary benefit to the locality is from Capital
3 Investments. We indicate that you have to invest in a certain
4 amount to get any amount of your award. So, for example, you
5 know, even if you promise to hire ten people and invest a million
6 and a half dollars, if you hire five people, but you only invest a
7 hundred thousand, under the current rules, we would say you
8 have not earned any of your awards.

9 The reason for that is that we prorate once you clear
10 certain thresholds, but we do not prorate all the way down, to a
11 low percentage performance for awardees. In this instance, what
12 we would suggest is that the minimum targets for a company to
13 recover their, you have to earn either award, is that they invest
14 at least \$1 million in taxable capital for projects promising \$2
15 million or more in private taxable capital, but that for projects
16 promising below \$2 million, we simply do half.

17 So, you know, if you promise us a million flat in
18 taxable capital, you need to invest at least a half million to begin
19 to earn any of your awards. That's so that in recognition of the
20 fact that the locality is bearing more of the burden, we want to
21 privilege the investment, which is the part that's driving the local
22 budgetary impact and make it clear that that should be of the
23 priority of a company when they're considering these project.

24 Right now, we really just say you've got to hit a
25 million bucks, if you're offering more than a million, and if you're

1 under one million, it's got to be half. We just think it makes
2 more sense to say it's got to be a million, it's got to be a million
3 per projects promising more than two million, and then half for
4 under two million. It's a slight change, but one that's significant
5 for a company that might have been promising 1.1 million and
6 we're not going to require they hit that one. That's one we get a
7 lot of pushback on.

8 DELEGATE AIRD: Thank you so much, Evan.

9 Are there questions on that policy item? Hearing no
10 questions, the Staff recommends adopting --

11 DELEGATE RASOUL: So moved.

12 DELEGATE AIRD: We have a motion. Is there a
13 second?

14 UNIDENTIFIED: Second.

15 DELEGATE AIRD: It's been moved and seconded.
16 Any questions or additional comments?

17 MR. SORRELL: Madam Chair, I wanted to note that
18 recommendation, when you look at the minimum target, which is
19 slightly different than the TROF grant.

20 MR. FEINMAN: Andy, given that it's two
21 recommendations, I figured we'd just do one.

22 DELEGATE AIRD: Does everyone understand what
23 just happened? Okay. It's been moved and seconded. All in
24 favor, please say aye. (Ayes). Are there any opposed? (No
25 response). That recommendation is adopted.

1 MR. FEINMAN: Thank you, Madam Chair. The next
2 item relates to the TROF loans. Since TROF loans are always
3 disbursed in advance and they need to be repaid and the penalty
4 for not hitting them is merely making us whole as regards to
5 purchasing power as a better way to put it. As regards to the
6 purchasing power of our agreement, it is a five percent penalty,
7 but we do recommend that TROF loans continue to require the
8 minimum target of half the capital investment and half the jobs.

9 So, to clarify that, it's like by way of an example, if
10 you are promising to hire 100 people and invest a million bucks
11 and we lend you \$100,000, if you don't get half of both of those
12 numbers, then you owe us the five percent penalty on your lien's
13 money, and if you do get at least half of those numbers, then
14 you can continue to repay without that five percent penalty.

15 DELEGATE AIRD: Thank you, Evan. Questions or
16 comments? Okay, do I have a motion to accept that Staff
17 recommendation? Are there questions about the Staff
18 recommendation?

19 MR. FEINMAN: To be clear, it is, that captures current
20 policy. This is an affirmation from -- --

21 DELEGATE KILGORE: I'd make a motion that we keep
22 current policy.

23 DELEGATE AIRD: Thank you, Chairman Kilgore. Is
24 there a second?

25 MR. BLEVINS: I'll second.

1 DELEGATE AIRD: Thank you. Are there additional
2 questions or comments?

3 SENATOR MORRISSEY: I served with Kilgore. I
4 may -- --

5 DELEGATE AIRD: All those in favor, please say aye.
6 (Ayes). Any in opposition? (No response). That motion carries.

7 MR. FEINMAN: Thank you, Madam Chairwoman.

8 Next, and I expect there will be some discussion about
9 this one. This goes to the minimum application parameters.
10 Each of these four items are currently required to even be
11 considered for a TROF award. If you fail any of these four items,
12 we do not offer you an estimate and we don't bring it to the
13 Committee. Citizens are always welcome to attend the
14 Committee meeting and plead their case to you all on their own.
15 But we, as Staff, do not offer the TROF estimate or an award
16 unless a company provides an annual salary above the locality's
17 prevailing wage, and that's pure wage, not their broader
18 compensation package.

19 We require that these projects must be in a traded
20 economic sector. In general, that means you make stuff that
21 you sell, and there are also some instances in which you can sell
22 services. But, in essence, you've got to be doing something that
23 you're adding energy in the Footprint in exchange for capital
24 from outside the Footprint which comes in, the theory there
25 being we're increasing the capital base, the region.

1 The third is that it's got to be of sufficient size, that
2 our estimator spits out at least \$10,000, and that gets pretty
3 small. There's a lot different ways you can staff up your salary
4 and minimum investment. But, you know, you're talking about
5 relative, it's not quite a coffee shop, which also wouldn't be
6 eligible, but, you know, a one or two person enterprise would
7 probably not bear the threshold. A ten percent rise could be
8 provided they were high wage. And so we're already coming, but
9 yet require a certain scale.

10 Finally, we require the project to be competitive, and
11 that is current policy. If there are any changes that the
12 Committee would like or if you've got any questions, we want to
13 let you know, it is pretty significant because this in many ways is
14 determining what comes before you in the first place. Unless
15 they have the wherewithal to come and participate in public
16 comments, you guys don't hear from people who we would say
17 no to on the basis of these parameters, although I will say with
18 the exception of, you were asked to make a deviation based on
19 the prevailing average wage in your last meeting.

20 DELEGATE AIRD: Thank you so much for that, Evan.
21 I think I'd like to use the first question, which is -- they do
22 appear to be quite sound, and I'm not saying that there is, but if
23 there's anything that we're not, that would -- -- --
24 (unintelligible).

25 MR. FEINMAN: They're certainly the best that I and

1 Andy and David have come up with. We endeavor to put our
2 best ideas and policies in front of you. I can't promise you that
3 they're the best in the universe, but I think we do a pretty good
4 job bringing likely and high quality projects before you. Anyone
5 who is batting a thousand in economic development is doing their
6 constituents a disservice. If we only ever made investments in
7 sure things, we'd be missing a lot of opportunities. There is
8 always some question about what the outcome is going to be,
9 when it's economic development, but we try to bring really high
10 quality and meet parameters and insure that that is the case and
11 that these projects really improve their communities.

12 The most controversial has certainly been the
13 prevailing wage component. To articulate the other view in
14 fairness, though I believe we should maintain this policy. To
15 articulate the other view while it might reduce the overall wage
16 case of the locality, but for localities experiencing unemployment,
17 a low wage job is still superior to a no-wage, no job. So, the
18 argument can be let's remove that.

19 I will tell you that a lot of what happens then is you
20 get pretty low quality jobs, particularly in the call center sector.
21 I think there are people who's been in this model relies on going
22 off, basically having their entire, whatever state incentive they've
23 gotten from whichever state and then at the conclusion of a
24 performance period and moving on, because it's very cheap and
25 telephones, and cheap computer monitors for the next place, for

1 the next incentive. We've seen that happen before. I think we
2 would see it again if we made that choice.

3 DELEGATE AIRD: Thank you so much. Are there
4 questions for Evan on these recommendations?

5 MS. CLARK: I have a question for Evan. Should we
6 include employment rate in number one? So, if the
7 unemployment rate is high, which it was at our last meeting, that
8 one particular project that did fit this mould, should we say
9 something like salary should provide an average rate of annual
10 salary above the region's prevailing average wage rate, thinking
11 of ways to give us the flexibility. Otherwise, Liz is going to give
12 us a talking to that we're not following our guidelines.

13 MR. FEINMAN: We should always listen to Liz.
14 Beyond that, I think that may be reasonable. Norton is such a
15 special place because it's such a small city. It just happens to
16 have a lot of medical personnel in it. And so I think, I would be
17 very happy to have there be an addendum or even just an
18 instruction to me. I don't even know if we need a motion to
19 always bring anything unusual before you so that you all can
20 make a call, that's pretty darn rare. That Norton situation is just
21 a funny thing related to the fairly arbitrary placement of lines
22 related to where the businesses happen to be.

23 DELEGATE KILGORE: Since I've been chairman --
24 they always come and talk to the Commissioners. They're not
25 out here -- Evan -- most of the time, they always come and ask

1 and our staff is really good about keeping everyone informed on
2 these projects.

3 DELEGATE AIRD: Thank you, Chairman Kilgore. Are
4 there other questions or comments?

5 Okay. We have a Staff recommendation to adopt the
6 application parameters in place. Is there a motion to agree to
7 that recommendation?

8 MR. BLEVINS: So moved, Madam Chair.

9 DELEGATE AIRD: Thank you. Is there a second?

10 UNIDENTIFIED: Second.

11 DELEGATE AIRD: It's been moved and properly
12 seconded. Are there any additional questions or comments? All
13 those in favor, please say aye. (Ayes). Are there any in
14 opposition? (No response). That motion carries.

15 And, Evan.

16 MR. FEINMAN: Finally, Item F, toward the bottom of
17 your packet or screen, if you're scrolling. We currently have
18 three different levels of oversight for projects. The smallest
19 award amounts, which I will also let you know encompassed
20 with the significant majority of actual awarded projects, are up to
21 \$1 million, and just bear in mind for each of these, if a company
22 and a locality opts for the loan, each of these numbers is 150
23 percent, the number that's before you. But for the grants up to a
24 million dollars. we do the notification that you guys have seen
25 come across your inboxes a couple of times every week or every

1 other week regarding projects but up to a million dollars. The
2 Staff operates per the policies that are before us and we often
3 enter into grant agreements for the TROF awards above,
4 between one million and three million, we have convened a
5 meeting of this body and you all approve that, but the
6 Commission has already delegated to this body its ability to bless
7 projects between one million and three million. So, this
8 Committee would review those, those Staff recommendations
9 and award amounts, but we would not need to do that. Staff,
10 after this meeting, would be able to proceed with one of those
11 projects without even waiting until the January meeting of the
12 Full Commission to go ahead and enter into that agreement.

13 For awards over \$3 million, we do require that the Full
14 Commission take action, and that is the current state of affairs.
15 Again, I'll just remind you that if those numbers change, if they
16 want only a loan, and so, you know, it would be a million five
17 that Staff could do for a TROF loan, and it would be a million five,
18 4.5 that the Committee can do. And then everything over that
19 would be -- Commission. I also think our estimator -- those
20 really big projects are rare, which is a shame, but it is the case,
21 and so the vast majority fall under the one million category, you
22 know, low double digit percentages fall between the one million
23 to three million, and then, you know, probably just one or two a
24 year really near that \$3 million threshold.

25 DELEGATE AIRD: Thank you so much, Evan. Are

1 there any questions for Evan? Any comments.

2 We have a Staff recommendation to clarify the
3 language, but to keep the process basically the same. We
4 operate on motions.

5 UNIDENTIFIED: Move, Madam Chair.

6 DELEGATE AIRD: To adopt the Staff
7 recommendation?

8 UNIDENTIFIED: I move to adopt the Staff
9 recommendation, Madam Chair.

10 DELEGATE AIRD: Thank you so much. Is there a
11 second?

12 UNIDENTIFIED: Second.

13 DELEGATE AIRD: That motion has been moved and
14 seconded. Are there any additional questions? All those in favor,
15 please say aye. (Ayes). Any opposition? (No response). The
16 motion carries.

17 Thank you so much, Evan, for walking us through that
18 policy discussion. I think that was our last one. So, I do not
19 have other business, do you?

20 MR. FEINMAN: No, Madam Chair. We'd like to have
21 that on the agenda just in case something comes up, but we do
22 not have any other business for you at this moment.

23 DELEGATE AIRD: Okay, thank you, Evan.

24 I believe at this time I need to call for public
25 comments. Hearing no public comments, I personally want to

1 just thank everyone for the dialogue today, again, we wanted to
2 move this meeting to a special meeting to give everyone the
3 opportunity to really thoroughly review, and that calls for a
4 robust conversation. I do believe we did that today. I want to
5 thank you all for taking time. If there's no further comments.

6 SENATOR MORRISSEY: In the future, can we allow
7 for -- on this before we take votes just like we do in legislature?
8 Seems to me to be nonsensical to vote, make our decisions, and
9 then say, hey, public, why don't you comment. I'd like the Staff
10 to consider allowing the public to comment the next time we
11 have policies to discuss. Because we're here to serve them.

12 DELEGATE AIRD: Thank you so much, Senator
13 Morrissey.

14 Evan or Andy, do you have any additional closing
15 comments?

16 MR. FEINMAN: Thank you to the Committee for a
17 robust discussion. I think we were able to discuss a lot of
18 interesting issues, and I think the Staff is really your guidance. I
19 also think Senator Morrissey's point is very well taken. That is, I
20 think largely in our -- of our transition of in person meetings
21 and somebody will raise their hand when they want to speak,
22 what we're discussing versus this digital meeting, in which we
23 really do need to give the public a clear opportunity at the
24 outset. We'll certainly insure that that's the future of origin as
25 we move forward.

1 DELEGATE AIRD: Thank you so much, Evan. By my
2 clock, it's 11:21, and we'll call this meeting to adjournment.
3 Thank you all.

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PROCEEDINGS CONCLUDED.

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CERTIFICATE OF THE COURT REPORTER

I, Medford W. Howard, Registered Professional Reporter and Notary Public for the State of Virginia at Large, do hereby certify that I was the Court Reporter who took down and transcribed the proceedings of the **Tobacco Region Revitalization Commission, Incentives and Loan Committee Meeting**, when held on Wednesday, November 4, 2020, at 9:30 o'clock a.m., (By Electronic Conference Call).

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 _____ day of December, 2020.

Medford W. Howard
CCR