“Up In Smoke?”

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What would you do if you were promised $4 billion dollars over a number of years to revitalize the community? How fast would you spend it? How would you determine what to spend it on? How would you know if the spending was making a difference?

That was the situation that was facing the Commonwealth of Virginia in 1999 and that, to a large degree, is not resolved today after a decade and a half and an expenditure of about $1 billion in Southside and Southwest Virginia. This is a story of politics, mystery, and scandal. It is also a story of investment, revitalization and growth. In its telling, there may be lessons on how to go about addressing the economic forces that define a community, on the value and challenges of incentivizing business development, and on our ability to bring about positive change and demonstrate it through valid performance measurement.

My topic is Virginia’s “Tobacco Commission,” originally formed as the Tobacco Indemnification and Community Revitalization Commission (TICR), and known (or not) today as the Tobacco Region Revitalization Commission. I dare say that no other public entity in the Commonwealth has a greater combination of fiscal power and autonomy and yet, has so little known about its operations. I certainly didn’t know much about the Tobacco Commission. I was generally aware that it had money to pass out for economic development, and I knew that, while Appomattox, Bedford and Campbell County could receive and had received funds, Lynchburg was not eligible. I also knew that Tobacco Commission funds had been used to support the Center for Advanced Engineering and Research (CAER) in Bedford County’s New London Business and Technology Center and for Liberty University’s College of Osteopathic Medicine.

Late last year and into this year, I started seeing articles about the need to reform the Tobacco Commission and about business development in Danville and Wythe County that had been incentivized with tobacco settlement funds but had failed to deliver promised investment and jobs. Then there were stories tying the Tobacco Commission to the saga of former State Senator Phillip Puckett and the fight for control of the General Assembly and even a link to entrepreneur Johnnie Williams and former Governor Bob McDonnell’s legal woes. I think that it was these stories that led to some calls for reform. Finally, this May, Lynchburg native Evan Feinman was tapped by Governor Terry McAuliffe to serve as Executive Director of the Tobacco Region Revitalization Commission. This came after the adoption of legislation proposed by the Governor meant to change, if only modestly, the way that the Tobacco Commission will operate in the future. Well, I had to learn more, and in this presentation I will share what I have learned with you.

First of all, how did the Commonwealth of Virginia get the promise of $4 billion? The answer goes back into the 1990's when several states sued the major tobacco companies to recover Medicaid costs and other damages related to the expense of treating sick and dying smokers. There were a number of allegations including: that the companies were marketing to youth, that they had committed fraud relating to the health consequences of tobacco use, that they had manipulated the nicotine content of cigarettes to maintain addiction, and that they had perpetrated the hoax of the "light" cigarette, a product that was supposedly less addictive or harmful due to a lower concentration of nicotine and other chemicals. A settlement was reached in 1997 and it was to include legislative authority for the Food and Drug Administration (FDA) to regulate tobacco; that authority was being challenged at the time. The necessary legislation and, therefore, the settlement failed in Congress.

Four states, Florida, Minnesota, Mississippi, and Texas, settled separately but negotiations continued with the other states. Finally, in November of 1998, in the Circuit Court of the City of Richmond, a Master Settlement Agreement (MSA) was reached between the five largest American tobacco companies and the state Attorney Generals of forty-six states, the District of Columbia, Puerto Rico, and four U.S. territories. One of the companies was Phillip Morris, USA, a subsidiary of Altria, a Virginia Company. Ultimately, forty other tobacco product companies signed on to the agreement.

The primary purpose of the Master Settlement Agreement was to reduce youth smoking and promote public health. The agreement raised the price of cigarettes as a result of payments being made by the tobacco companies; it also placed restrictions on the advertisement, marketing and promotion of tobacco products, and provided funds that the states could use, if they chose, for youth smoking prevention. Those of us of a certain age remember the widely prevalent tobacco advertising, on television, in magazines, and on billboards (remember "Joe Camel"?). Much of that was prohibited by the agreement.

Let's talk about the money, because this was a big deal for the states. The participating tobacco companies make an annual payment in proportion to their sales (in essence, a per cigarette tax) and the resulting funds are provided to the states for the purposes of the agreement, tobacco prevention and enforcement programs. But remember, this is the states' option; there is no mandate on how the funds are used.

It was anticipated that the tobacco companies, as a result of the MSA, would make annual payments of about $10 billion to the various states. As a result of a complicated formula tied to inflation and volume adjustments, and subject to further litigation and negotiation, there has been some variability in the payments over the subsequent fifteen years; and, the payments have fallen as cigarette smoking has declined. Payments this year will total about $5.98 billion and payments since the inception of the MSA total $106 billion.

Each state that was a party to the MSA receives a proportion of the total tobacco payment. Virginia's share is 2.0447451%. How's that for precision? This equates to about $120 million a year; approaching $2 billion in payments since 2000. Although the tobacco settlement payments are meant to go on indefinitely, most analysis has used a twenty-five year timeframe, and that's the source of the estimate that Virginia would receive $4 billion from the MSA.

So, how is it going? The Federal government reports that cigarette consumption in the United States fell 42.2% from 1998 to 2014, and that per capita consumption fell even more. The CDC reported that the percentage of high school students who smoke fell from a high of 36.4% in 1997 to 15.7% in 2013. Clearly, something has happened to reduce smoking. There are arguments, however, that these numbers are still too high and that some of the reduction comes from the consumer switching to other tobacco products from cigarettes.

Should we give the states credit for this reduction in smoking? How have they used the monies from the settlement? This is tracked by organizations such as the Kaiser Family Foundation, the Centers for Disease Control, and the Campaign for Tobacco-Free Kids, and they are not impressed. The Kaiser Family Foundation reports:

> *While the MSA states that its primary purpose is to decrease youth smoking and promote public health, it does not contain any provisions requiring states to allocate settlement revenues to tobacco prevention and cessation. As a result of decisions by state legislatures, which are responsible for deciding how the money is spent, state coffers lined with this money, coupled with billions in tobacco taxes and other substantial funds from tobacco companies, have not been used for tobacco control and prevention programs. In 2015, states will receive $25.6 billion in revenue from the MSA settlement and tobacco taxes, but only 1.9% of these funds have been earmarked for tobacco control programs.*
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> *In times of economic belt-tightening, state legislatures have used funds from tobacco settlement payments to cover budget shortfalls and address fiscal priorities in areas other than tobacco prevention and cessation. In fact, few states have allocated more than a nominal amount of their tobacco settlement revenue to fund tobacco prevention and cessation programs. Instead, they often use MSA payments to fund general programming in a variety of areas such as budget financing, tax credits, and health-care programs. At 3.5% of total MSA revenues, tobacco control programs receive the least MSA funds of any of the categories of government spending recorded in the Government Accountability Office's report. As of 2014, only North Dakota and Alaska funded their programs at the minimum level the Centers of Disease Control and Prevention recommends as necessary for an effective tobacco prevention and cessation program.*

The Center for Disease Control, in its "Best Practices for Comprehensive Tobacco Control Programs," notes that the annual costs incurred from smoking in Virginia are $3.1 billion and recommends that the state spend $91.6 million annually

($63.9 million at a minimum) on tobacco cessation education and intervention. That's about thirty percent of the over $300 million that the Commonwealth received from tobacco taxes ($187.4 million) and the tobacco settlement payment ($117.4 million) in 2012. The revenues for 2015 are similar and the Campaign for Tobacco-Free Kids reports that Virginia budgeted $8.5 million for tobacco prevention this year; less than 10% of the recommended amount and about 2.7% of total tobacco revenues, a little better than the national average.

Even if it wanted to, however, the state couldn't spend $90 million a year for tobacco prevention, because the tobacco settlement funds are tied up both by statute and as a pledge on debt. Let's move on to how Virginia is using its tobacco settlement funds.

Two Southside politicians, Democrat Whitt Clement and Republican Charles Hawkins, are given credit for legislation, adopted by the General Assembly in 1999 and signed by then Governor Jim Gilmore, that controls the use of tobacco settlement funds. The legislation (Virginia Acts of the Assembly, 1999, Chapter 962) established **The Tobacco Indemnification and Community Revitalization Commission** as a body corporate and a political subdivision of the Commonwealth. This is "The Tobacco Commission."

As originally formed, the Tobacco Commission was made up of thirty-one (31) members; six (6) from the House of Delegates, four (4) from the Senate, the Secretary of Commerce and Trade, the Secretary of Finance, the Commissioner of Agriculture and Consumer Affairs, three flue-cured tobacco producers, three burley tobacco producers, a representative of the Virginia Farm Bureau Federation, and eleven citizens appointed by the Governor, three of whom must be from a list of nine submitted by the members of the General Assembly appointed to the Commission. With the exception of the administrative positions, all members must be residents of either the Southside of the Southwest of Virginia, and all are subject to confirmation by the General Assembly. The 2015 legislation reduced the size of the Tobacco Commission to twenty-eight members.

Upon its creation, the primary power of the Tobacco Commission was to determine the recipients of and distribute moneys from a **Tobacco Indemnification and Community Revitalization Fund** for two purposes: "1) to provide payments to tobacco farmers as compensation for the adverse economic effects resulting from loss of investment in specialized tobacco equipment and barns and lost tobacco production opportunities associated with a decline in quota and, 2) revitalize tobacco dependent communities."

The Tobacco Commission was also tasked to "undertake studies and gather information and data to determine (i) the economic consequences of the reduction in or elimination of quota for tobacco growers, (ii) the potential for alternative cash crops, and (iii) any other matters the Commission believes will affect tobacco growers in the Commonwealth."

According to Wikipedia, "Tobacco quotas (poundage quotas, and in some cases acreage allotments) were a supply control feature of federal price support for tobacco. Burley tobacco was subject to marketing quotas and flue-cured tobacco was subject to marketing quotas and acreage allotments." These quotas were eliminated in 2005. Think about this for a minute; the federal government, until 2005, was providing price support for a product that was creating serious health problems for its users and much of the cost related to tobacco related illness and death was falling on the states.

The economic reality for tobacco farmers, however, as stated in the 1999 legislation was, "The total asset loss value in quota and economic losses for active tobacco producers in Virginia [was] estimated to be $1.2 billion." One of the responsibilities of the Tobacco Commission was to make payments from the TICR Fund to offset the annual losses of tobacco farmers. This was done through fiscal year 2012, when the indemnification payments ceased, after payments of $309 million. Tobacco farmers received additional payments of $170 million from other sources. This represents about 30% of the total of $1 billion in grants provided by the Tobacco Commission since its inception. One critic of the Tobacco Commission reported that, "In its first year of operation, the Commission spent 80 percent of that year's money, $58 million, on no-strings payouts to 25,150 people who held now-defunct federal quota rights to grow tobacco, hundreds of whom didn't even live in Virginia." (Galuszka)

That's all that this presentation will say about the indemnification role of the Tobacco Indemnification and Community Revitalization Commission. We will move our focus to the Commission's other primary responsibility, "To promote economic growth and development in tobacco dependent communities in an equitable manner throughout the Southside and Southwest regions of the Commonwealth, in order to assist such communities in reducing their dependency on tobacco and tobacco-related business." We will examine the efforts in this area, and their efficacy, in a moment; but first, let's get back to the money.

Those of you who have been following closely will recall that it was estimated that the Commonwealth would receive $4 billion in tobacco settlement payments over 25 years. After about fifteen (15) years nearly $2 billion in payments have come to Virginia and about $1 billion has been provided in grants by the Tobacco Commission. We can understand that there is less money than anticipated because cigarette consumption has fallen, but where has the other $1 billion gone? Well, I'll tell you.

The 1999 legislation divided up the tobacco settlement moneys three ways. Fifty percent (50%) of the settlement funds goes into the TICR Fund that was mentioned previously. This is a special nonreverting fund in the state treasury; all interest earned on moneys in the fund stays in the fund and expenditures and disbursements from the fund are made upon authorization from a representative of the Tobacco Commission. The funds are not subject to any further appropriation by the General Assembly.

Ten percent (10%) of the annual payment from the tobacco settlement is deposited in another nonreverting fund in the state treasury, the **Virginia Tobacco Settlement Fund**. These moneys are controlled by the Board of Trustees of the **Virginia Tobacco Settlement Foundation**, also created by the 1999 legislation for the purpose of distributing funds "to assist in financing efforts to restrict the use of tobacco products by minors through such means as educational and awareness programs on the health effects of tobacco use on minors and enforcement of laws restricting the distribution of tobacco products to minors." This is true to the original intent of the Master Settlement Agreement, but will not be explored further in this presentation. (The Virginia Tobacco Settlement Foundation is now, since 2009, a division of the **Virginia Foundation for Healthy Youth**; its other division is known as **Virginia Youth Obesity Prevention**.)

Ok, we still need to account for the remaining forty percent (40%) of the tobacco settlement money. Where do you think it goes? Well, it goes into the State's general fund. Times were tight in 1999 and this was easy money. The surprise is that the Southside legislators were able to keep as much money as they did for their region. In 2004, the General Assembly, possibly in a fit of conscience, directed this money into the **Virginia Health Care Fund** to fund health care services including Medicaid payments, disease diagnosis, prevention and control, and community health services (kind of like what they did with the lottery funds.)

We need to talk about one more financial maneuver that affects the funding for the Tobacco Commission, the securitization of the settlement funds. It didn't take long for the states to figure out that declining tobacco sales meant declining settlement payments plus, there is always the threat that a legal challenge or legislation could derail the gravy train. Therefore, a number of states converted future tobacco settlement payments into current assets by selling bonds and pledging the tobacco settlement payments to pay principal and interest.

In 2002 the General Assembly created the **Tobacco Settlement Financing Corporation** to securitize Virginia's tobacco settlement payments. Bond sales in 2005 and 2007 totaled $1 billion and that was deposited into the **Tobacco Indemnification and Community Revitalization Fund Endowment**. The bonds are expected to be paid off in 2032; however in 2013 Moody's Investor Services placed the bonds on a watch list because the tobacco producers were threatening to reduce the annual settlement payment, claiming that the states were not fulfilling their responsibilities to collect payments from domestic tobacco companies not participating in the MSA. A January 2014 report of the Office of the State Inspector General states that, "...the viability of the bonds is a significant issue to the Commonwealth of Virginia." While the state has no liability for funding the bonds, you can imagine what a default would do to its bond rating. The bonds don't mature until 2046 and 2047 so we will just have to see what happens.

In the meantime, each year the Tobacco Commission spends the interest accrued in the endowment and a portion, between 6 and 15 percent, of the corpus of the endowment on its activities. As a 2011 review by the Joint Legislative Audit and Review Commission (JLARC) pointed out, the assets available to the Commission are "both finite and diminishing." At that time the endowment totaled $606 million; as of July 1, 2015, the endowment had a balance of only $266.6 million.

Forty-one localities in Southside and Southwest Virginia (see map) were identified by the Tobacco Commission, based on tobacco production levels in 1998, as beneficiaries of the settlement funds. In addition to tobacco, the region has also been historically dependent on the textile, furniture manufacturing and coal production industries, all of which have declined sharply over the last several decades. As a whole, this region lagged, and continues to lag the rest of the State on key economic indicators such as unemployment, per capita income, poverty and educational attainment. In 2010 it made up over thirteen percent (13.3%) of the total population of Virginia. The counties of Appomattox, Bedford and Campbell are included in the tobacco region footprint; the City of Lynchburg is not.

The annual report of the Tobacco Commission for Fiscal Year 2014 has some impressive statistics. It reports that over the fifteen years of its existence it has awarded 1800 grants totaling $1 billion. The report claims that this investment leveraged $3.5 billion in new capital investment by private employers and promises of 16,000 jobs. The grants have also facilitated the installation of 3000 miles of broadband fiber, the award of GED credentials to 12,500 residents and the award of 8,000 scholarships to students form tobacco farms. They have also funded the construction or expansion of 80 industrial parks and mega-sites in the tobacco region. (See a copy of the Tobacco Commission's annual report for a taste of its recent activity.)

This region has received its share of tobacco settlement funds in support of revitalization. Here is a sample:

Appomattox County

- Approximately $600,000 for its Workforce Development Center
- $20,000 for signage for tourism and economic development
- Nearly $500,000 in support of the water line from Concord to the Town of Appomattox (feasibility study and construction)
- $2.8 million for the Museum of the Confederacy
- $29,410 for a Buy Fresh, Buy Local initiative
- $1.17 million to help Lindenburg Industry occupy the former Thomasville Furniture plant ($113m investment & 349 jobs promised)

Bedford County

- Over $300,000 to help develop the New London Center for Business and Technology

- $17.7 million for the Center for Advanced Engineering and Research, including almost $3 million to support Babcock and Wilcox's nuclear energy test facility
- $600,000 in grants to Barr Laboratories/TEVA Pharmaceuticals (two grants in 2002 and 2008)
- Over $1 million for a 21st Century Agribusiness Initiative
- A $160,000 grant for Mail America Communications
- A $215,000 grant for Babcock & Wilcox
- Over $500,000 to support Thomas Jefferson's Poplar Forest

Campbell County

- $1.4 million for development of the Seneca Commerce Park
- $312,427 for the Campbell County Commercial Center
- Almost $250,000 for the Dearing Ford Business & Manufacturing Center
- $200,000 for Banker Steel
- $200,000 for Framatome/AREVA
- $12 million for Liberty University's School of Osteopathic Medicine
- $1.6 million for the Virginia Technical Institute in Altavista

In addition, Central Virginia Community College has received nearly $5.5 million in funding for scholarships and credential fulfillment in the three counties. Lynchburg College even received $200,000 for credential fulfillment. By my reckoning, that's approximately $37 million for this region. But remember, that's from about $700 million in revitalization grants provided by the Commission.

From the beginning, the Tobacco Commission has generated controversy and had its share of scandal. Critics have questioned the make-up of the Commission, its large number of legislators, its restriction to regional residents, and the family ties of some members.

One individual who is the focus of criticism is Delegate Terry Kilgore, the current chair of the Commission and the brother of Jerry Kilgore, Virginia's Attorney General from 2002 to 2005 and attorney for Johnnie Williams, the protagonist in the McDonnell case. Williams was trying to get a state research school to ask for tobacco funds to study anatabine, a tobacco derivative that he claimed to have health benefits. Another brother, John Kilgore, Jr., heads up the Scott County Economic Development Authority which has been awarded $14 million in grants. Their father, John Kilgore, Sr. "heads the nonprofit Scott County Telephone Cooperative's board, which has received $7 million in tobacco money to expand broadband access." (Galuszka) While no one has suggested that these relationships are illegal, there are questions on the appearance and suggestions that the Commission should include members from outside the region.

There was one definitely illegal activity related to the Tobacco Commission. It happened in 2001 but didn't really come into public notice until 2010 with the conviction of former Secretary of Finance John S. Forbes for fraud. Various sources reported that

Mr. Forbes, a member of the Tobacco Commission, also directed the Literary Foundation of Virginia, a charitable organization with a mission "to promote education in the tobacco region" (JLARC). The foundation was awarded $5 million in advance of beginning project activities. This was standard practice in the early years of the Commission; it now distributes its awards on a reimbursement basis. According to the Washington Post, Forbes admitted in federal court that, "he used $4 million of the money for a new home, personal investments, cash and to start a company, according to court documents." (Kumar)

These incidents of public controversy aside, perhaps a more substantive question would be about the effectiveness of the Tobacco Commission's actions to revitalize the Southside and Southwest communities. Has the influx of $1 billion into the region brought about substantive and sustainable economic improvement? I've already mentioned that about $300 million of the funds went as indemnification payments to tobacco farmers. That certainly helped the individual farmers to make the transition into other crops or out of farming but, in theory, those funds were merely replacing economic losses resulting from the elimination of federal price support. The remaining $700 million has been disbursed in the form of community revitalization grants. Before exploring how successful those grants have been, it will be helpful to explain how and across what sectors the grants are disbursed.

The Tobacco Commission adopted its first strategic plan in 2006. It has been revised twice, most recently in May 2012. The original plan mentioned four broad strategic categories: Building Technology Infrastructure, Building Human Infrastructure, Building Conditions for Innovation, and Building Regional Development Capacity. In the 2012 plan the technology infrastructure category was combined with the regional development capacity category and Indemnification was added as a category.

Each category description in the plan includes a rationale, objectives, strategies, outcome measures and goals. In general, the goals and outcome measures are simply measures of throughput (e.g. the number of students successfully completing GED, STEM-H academic certification and degree programs or, the number of private sector jobs retained) without any evaluation of broader results toward economic revitalization or regional transformation.

I was particularly interested in the "General Funding Policies" section of the strategic plan for the things that it says the Commission will not fund. The prohibitions include:

- Supplanting other state or federal fund
- Financing endowments
- Operating costs (one of the challenges facing the CAER)
- Regularly recurring local responsibilities (explicitly, primary and secondary education which the Commission has insisted is a State and local responsibility)
- Project administration or indirect project costs

- Projects that indirectly affect economic revitalization (e.g. community, child care and wellness centers, recreation initiatives, airports, local arts and cultural activities, historic preservation, housing and retail development) unless it is demonstrated that the investment will produce economic impacts from outside the Commission service area.

There are seven program areas in which applications are considered for community revitalization grants. The Tobacco Commission's website (http://www.tic.virginia.gov/) provides this summary of the program objectives:

- **Economic Development Programs** - building regional economic development capacity to diversify the economic base through creation or improvement of sites, buildings and utility infrastructure, workforce training facilities, tourism infrastructure etc. Two economic development committees exist, one for each region, Southside and Southwest (note that Southside Economic Development funds are distributed under a formula that allocates the funds based on tobacco employment, warehousing and quota in each locality).

- **Special Projects** - implement projects that are innovative in nature and regional in their impacts, including health care and multi-jurisdictional economic development projects.

- **Special Projects - Megasite** - The Special Projects Committee also provides funds for the development of large industrial real estate ("megasites") in order to attract major job-creating private industries projects to the Tobacco region.

- **Education** - prepare citizens for new-economy employment through General Education Development (GED) and workforce development, higher education scholarship programs for the two regions and competitive grants to community colleges and other educational entities.

- **Agribusiness** - encourage regional efforts that reduce dependency on tobacco and provide value-added crops, livestock, products, facilities, etc.

- **Reserve** - Commission dollars were used to attract non-Commission dollars (e.g., federal stimulus) to projects in Southside and Southwest Virginia. However, applications are no longer being accepted.

- **Research and Development** – provide grant funding to government or non-profit entities working with private partners, conducting research that has anticipated significant commercialization and growth potential for the tobacco-dependent region.

- **Tobacco Region Opportunity Fund (TROF)** - provides performance-based monetary grants to tobacco region localities to assist in the creation of new jobs and investments, whether through new business attraction or existing business expansion. This is similar to and is often used in conjunction with the Governor's Opportunity Fund (GOF).

Each grant program is overseen by a committee made up of Commission members. General Assembly members and cabinet officials make up a majority of each committee. It is at the committee level that grant applications are reviewed and recommendations for funding made.

How do you define "economic revitalization" and how do you measure its success? A lack of definition and measurement is one of the ongoing criticisms of the Commission, first raised formally in the report of a Blue Ribbon Review Panel, chaired by former Governor Gerald Baliles in 2008. This was the first of three reviews of Tobacco Commission activities that have been conducted. We will touch on each of them as they relate to the success of economic revitalization.

The Blue Ribbon Review Panel was created at the request of then Tobacco Commission Chair Senator Charles Hawkins who asked the panel to review the structure, operations and allocation of funds, and whether the Commission was achieving its goal of "regional transformation." The conclusion of the panel was that despite the infusion of over $400 million into the Southside and Southwest economies between 2000 and 2007 there had been no transformative effect on the regions as indicated by wages, population, unemployment, and educational attainment.

The Blue Ribbon Review Panel recommended changes to the structure and operations of the Tobacco Commission. It noted that while the Commission had adopted a strategic plan, the plan was broad in scope, had no measurable goals and outcomes, was not aligned or coordinated with the strategic plan of the Virginia Economic Development Partnership, and was generally ignored by the Commission when approving grants. It found that the size and structure of the Commission made it difficult for the Commission to make decisions based on the strategic plan and that it tended to have a bias toward local "grassroots" initiatives. The panel reported that about 40% of the grants that had been awarded by over a four year period were for $100,000 or less and suggested that there should be more of a focus on larger regional, rather than small local, projects that might better transform the economy. Furthermore, the panel reported that there had been no accountability reviews to determine whether the funded projects were meeting their stated goals. The panel called for a performance audit by JLARC. The panel's clearest call was for more investment in the education of young people and adults in the region, stating, "As education goes, so goes the future of Southside and Southwest Virginia," (Blue Ribbon Review Panel report, p. 27).

In response to the Blue Ribbon Review Panel's call for performance measures the Tobacco Commission, in 2009, on its tenth anniversary, tackled the challenge of defining "economic revitalization" and selecting metrics to measure performance. It was assisted by Chmura Economics and Analytics which produced a report titled, *Economic*

Impact of Tobacco Commission. While this sounds promising, the report's subtitle, *Defining Revitalization of Tobacco-Dependent Communities and Measuring Progress,* clarifies that the report focuses more on how to measure results rather than on any actual results.

The Chmura report said, "Economic revitalization can be defined for the tobacco-dependent communities in Virginia as, *a more stable, diversified, and growing economy that leads to higher living standards."* It then suggested six indicators, four which measure the outcomes of change and two which measure the drivers of change, as appropriate metrics to track the progress of the Commission toward its goal of revitalization:

> *1. **Outcomes** are coincident measures of activity that gauge current conditions.*
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> *a. **Job creation** as measured by the percentage change in employment reflects a "growing economy."*
> *b. **Workforce participation rate** as measured by the number of working age adults that are employed and unemployed divided by the population of working age adults reflects "a more stable economy" because higher participation rates are associated with less transfer payments such as disability and unemployment insurance.*
> *c. **Wealth** as measured by annual average wages that lead to "higher living standards."*
> *d. **Diversity** as measured by the percentage of employment in the top 10 private employers in the region is associated with "a more stable, diversified economy."*
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> *2. **Drivers** are leading indicators of activity—they point to future change in the economy and underpin revitalization.*
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> *a. **Capital investment** as measured by the total capital investment per resident of the tobacco-dependent region in Virginia leads to increased productivity in the region that, in turn, results in a "growing economy" and "higher living standards."*
> *b. **Education level** as measured by associate degree awards per capita because more citizens with an associate's degree or higher leads to a "growing economy" and "higher living standards."*

Tobacco Commission staff followed the guidance of the Chmura report and, nearly two years later, in May 2011, produced a "Performance Measures Report" on the Commission's work. The report showed little, if any, improvement in tobacco region economic metrics compared to a control group of non-tobacco counties. It rationalized, however, that the long-term economic impact of Tobacco Commission investments would take years to be reflected in the selected metrics.

In the meantime, in 2010, the General Assembly included language in the Appropriations Act, directing the Joint Legislative and Audit Review Commission (JLARC) to "evaluate and report on the performance of the Tobacco Indemnification and Community Revitalization Commission (TICR)." This was the performance audit called for by the Blue Ribbon Review Panel in 2008.

The JLARC report was released in June of 2011. The report reiterated and expanded upon many of the findings and recommendations of the Blue Ribbon Review Panel. Not surprisingly, JLARC found that economic developers and others in the tobacco regions expressed strong support for the revitalization grants, expressing the opinion that their areas would be worse off without the funding. Specific local projects were often mentioned and JLARC agreed that many projects funded by the Commission had generated significant economic benefits. The report pointed to the significant expansion of broadband access through the installation of over 1000 miles of fiber optic cable which subsequently attracted new business and jobs to the region. Also cited were Tobacco Region Opportunity Fund awards used as "deal-closing" incentives to attract private investment and jobs, in some cases enough to change local employment rates. Another success reported by JLARC was grants for workforce training and higher education. Those grants provided scholarships, student loans and internships and supported community colleges and nearly twenty workforce development and higher education centers in the region.

Nevertheless, the report's fundamental conclusion was:

> *TICR's broad statutory goal of economic revitalization of the tobacco region has remained a challenge. The aggregate impact of the commission's $756 million in economic revitalization grants does not appear to have substantially improved economic conditions in the region. Localities in the region continue to lag the rest of Virginia on key economic indicators. TICR's mixed record to date may be a reasonable outcome at this point, given the scope of the task assigned to the commission, its modest resources in comparison to the size of the regional economy, and the two national recessions during TICR's existence. However, TICR has also employed some practices that have tended to undercut its goals.*
> (p. vi)

JLARC reported that it was difficult to determine the Commission's contribution to economic revitalization for two reasons; many awards were too recent to have a measurable impact and, "TICR [did] not regularly track outcomes such as the number of jobs created and retained or new capital investment for most of its grants." (p. vi) The Commission staff only tracked outcome metrics for two programs, the TROF awards and graduate return rates for the Southside scholarship program. This represented only 11% of total Commission awards at that time. JLARC said, "Outcomes for the remaining 89 percent of TICR spending are not well documented." (p. vii)

The JLARC report acknowledged that the Commission had worked on improving outcome measurement since 2009 but advised, "...the new agency-level performance metrics are inadequate for understanding TICR's contribution to revitalization, primarily because the metrics focus only on the broad economic performance of the region and offer no details on TICR's contributions towards these changes." (ibid.) JLARC recommended that grant applicants be required to provide economic impact estimates after consultation with a third party.

Similar to the Blue Ribbon Review Panel, JLARC questioned the funding of "many small local projects that had only a marginal potential for economic revitalization." (p. vii) Examples included community centers, farmers markets, local museums, and recreation projects. My favorite was $60,000 for a covered bridge festival.

The JLARC report acknowledged that the investment in broadband infrastructure, research and development, leveraging federal matching funds and awards for education and workforce training were the Commission's most strategic decisions. This represented 53 percent of the total awards and, in JLARC's opinion, produced mixed results. JLARC stated, "TICR's other spending decisions have been unconstrained by a deliberate and focused revitalization strategy." (ibid.) It recommended that staff reference the strategic plan for each application that it reviewed and that the plan be updated every two years.

One area of focus, similar to the Blue Ribbon Review Panel, was on education. The report stated that "low educational attainment contributes to economic difficulties in the tobacco region and has been identified as a key obstacle to revitalization," (p. iii) and, "there is widespread agreement among economic development experts that improving the population's educational attainment and workforce skills are the most important priorities for long-term revitalization of the tobacco region." (p. iv) Yet, scholarships and internships funding was less than ten percent of the grants awarded, while 48% of funding went to construction and renovation work, property acquisition, water and sewer infrastructure and other site work. While these may be more immediately visible results of grant funding there will still be the need for an educated and trained workforce to occupy the development sites. Like the Blue Ribbon Review Panel, JLARC recommended more funding for workforce training and high school completion.

The JLARC report also recommended some changes to the composition of and qualifications for Tobacco Commission membership, the elimination of a formulary that provides a disproportionate share of grant funding to four Southside communities, and a slowing up of how quickly the corpus was being spent. Until recently, no action was taken by the General Assembly on the JLARC recommendations.

The third and latest review of the Tobacco Commission was released in January 2014 by the Office of the State Inspector General (OSIG). That office was created by the General Assembly in 2011 and in 2013 was given the statutory responsibility if reviewing the Tobacco Commission's accounting, financial, and administrative controls to ensure that it was lawfully achieving its purpose. For its review, the OSIG looked at revitalization grants of the period January 2011 to March 2013.

With a few exceptions the Inspector General found that the Commission's accounting, financial, and administrative controls were functioning as intended. There were, however, fifteen issues raised by the IG that included incomplete grant documentation, a lack of written policies and procedures for grant application review and administration, and an instance where a grant was approved by the Commission without a committee recommendation. These findings echoed a statement in the JLARC report from a local economic developer, "It's anyone's guess how the commission members make their decisions." (p. 66)

Other findings repeated concerns from the 2011 JLARC report; a lack of clearly defined, expected outcomes for some grant programs and the lack of a clear policy on granting repayment ("clawback") exceptions for TROF recipients that had failed to meet their goals. The Inspector General also found those instances noted earlier of perceived conflicts of interest regarding the Kilgore family and another where the Commission's Vice Chair voted to approve a grant for a not-for-profit entity of which he was a director. Finally, the IG expressed concern that, because committee meetings were held the day before, or the day of, the Commission meeting, there was not sufficient time for the Commission members to review the grant applications or the committee recommendations.

After the affair involving the resignation of State Senator Phillip Puckett, allegedly to take a job with the Tobacco Commission and swing control of the Senate to the Republicans, the Commission has drawn more attention. Governor Terry McAuliffe, assisted by Secretary of Commerce Maurice Jones, who sits on the Tobacco Commission, conducted an evaluation of the Commission and introduced legislation in the 2015 session of the General Assembly to make some changes.

As adopted, the legislation (HB 2330 & SB 1440) changed the name of the Commission to the "Tobacco Region Revitalization Commission," and implemented a number of recommendations from the 2008 Blue Ribbon Panel Review and the 2011 JLARC report including:

- Reduced the number of commission members from 31 to 28 and requires that at least 13 members have expertise in business, economic development, investment banking, finance or education.
- Requires a dollar-for-dollar match for all economic development grant awards.
- Requires a biennial comprehensive strategic plan process, including specific priorities, measurable goals and quantifiable outcomes. In developing the plan the legislation requires the Commission to receive input from local and regional economic developers and state agencies such as the Virginia Department of Agriculture and Consumer Services, the Virginia Economic Development Partnership, the Department of Housing and Community Development, and the Virginia Tourism Authority.

- Establishes a manager to determine financial viability and feasibility for distributing of money from the Commission's fund.
- Establishes an online database of all Commission awards, with project goals and expected outcomes.
- Requires a larger supermajority of the Commission to draw down the corpus on its endowment by as much as 15% a year.
- Requires that each project have an accountability matrix and that applications provide information on explicit and quantified outcome expectations.

In addition, the legislation established the Tobacco Region Revolving Loan Fund to make loans to local governments to help finance the cost of a project. This, with the matching funds requirement, should extend the life of the endowment fund.

Coincident with his ceremonial signing of the legislation changing the Tobacco Commission, Governor McAuliffe announced a new Executive Director for the Tobacco Region Revitalization Commission. Feinman is a Lynchburg native and the press release announcing his appointment said the following:

> *Evan Feinman previously served as Deputy Secretary of Natural Resources for Governor McAuliffe. Prior to his appointment, he served as Deputy Policy Director for the Governor's transition team after his election. Evan has worked on multiple campaigns at the state and federal level, and at the Commonwealth Institute, a budget and fiscal policy think tank in Richmond. Evan joined the McAuliffe campaign as policy director in late 2012. He received his bachelor's degree from the University of Virginia, spent two years on a fellowship with the Public Interest Research Groups working on energy and transportation policy, and then attended law school at Washington and Lee.*

The 2011 JLARC report suggested that the Code of Virginia should specify qualifications for Tobacco Commission staff; in particular, that the Executive Director should "possess some minimum amount of experience in economic development and grant administration" (p. 101). That requirement was not included in the recent legislation.

Will the amendments to the Tobacco Commission's enabling legislation and a new executive director make a real difference? Will there finally be a revitalization of the Southside and Southwest economies? I am doubtful. First of all, it is hard work to transform a region; and, fifteen, or even twenty-five years is certainly not enough time to do it in. And, although $1 billion is certainly a lot of money, the JLARC report offered this perspective, "The $756 million awarded by TICR over its first 11 years represents about two percent of the region's *annual* economy." (JLARC, p. iv)

Given that, is it reasonable to expect that tobacco settlement funds are adequate enough or focused enough to revitalize and transform the economies of Southside and Southwest Virginia? It is clear that the grant approval process will still be a political one, driven by General Assembly members from the tobacco region and their appointees. My guess is that there will still be a large amount of funding focused on local projects related to infrastructure, industrial parks, and community amenities. After all, these are visible manifestations of tobacco money investments with committed advocates and legislators will be able to demonstrate that they are looking out for their constituents.

Former Secretary of Commerce Michael Schewel, another Lynchburg native, commented in a *Roanoke Times* article last December, "There is nothing corrupt about this, it's just the nature of things. The legislator control of the commission and the commission's control over its own money creates a systematic bias in favor of the political process that produces its imperfect grant system. That system is not terrible, but it probably does not maximize the impact that the commission's funds could have on the tobacco region" (Crizer).

After fifteen years of investment in the tobacco region it still remains behind the rest of the state in terms of unemployment, educational attainment, and wealth. Strategic investments in broadband infrastructure, research and development, education and workforce training, while important, have not yet improved the metrics.

There appears to be a reluctance to increase investment in education and workforce development, areas where two of the three reviews of Commission activities have suggested hold the greatest promise for revitalization. This is less tangible, however, than industrial parks, shell buildings, and water and sewer infrastructure. Furthermore, it can't hold a candle to periodic public announcements of new businesses, incentivized by the Tobacco Region Opportunity Fund, choosing to locate in the region, with promises of new jobs and significant private capital investment.

Many of the promises of significant private sector capital investment and new jobs have not been fulfilled. Six out of the eight companies with TROF agreements in Danville have failed to fulfill their obligations reported the *Danville Register Bee* in June. (Cruz) This represents $63 million in projected local investment, 1,340 in expected jobs, and $5.47 million in TROF moneys that Danville may have to pay back to the Tobacco Commission. Meanwhile, over in Wythe County, the Tobacco Commission is withholding sales tax due to the county to ensure that it will receive repayment of grant money, given in 2010 to a local company that was supposed to create 84 new jobs.

Given all of these issues, I think that it is fair to ask, "Are the tobacco settlement funds making a real difference to a region sorely in need of help, or, are they just going "up in smoke?"

Thank you.

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