NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

POLITICAL SUBDIVISION TAXATION COMMITTEE

Tuesday and Wednesday, January 12-13, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Jason Dockter, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Jason Dockter, Larry Bellew, Mark A. Dosch, Craig Headland, Lawrence R. Klemin, Ben Koppelman, William E. Kretschmar, Mike Lefor, Alisa Mitskog, Gail Mooney, Naomi Muscha, Mike Nathe, Nathan Toman, Robin Weisz; Senators Brad Bekkedahl, Randall A. Burckhard, Dwight Cook, Jim Dotzenrod, Tim Mathern, Jessica Unruh

Members absent: Representative Kathy Hogan

Others present: Senator Donald Schaible and Representative Jim Schmidt, members of the Legislative Management, were also in attendance.

See Appendix A for additional persons present.

It was moved by Senator Mathern, seconded by Senator Burckhard, and carried on a voice vote that the minutes of the December 1-2, 2015, meeting be approved as distributed.

CONTRACTOR SALES AND USE TAX STUDY

Chairman Dockter called on the Legislative Council staff for presentation of a bill draft [17.0009.02000] relating to the elimination of sales and use tax on items purchased by or for an exempt entity and installed by a contractor. She said based on the committee's comments from the previous meeting, a slight change was made to the first version of the bill draft to remove the qualifier that the exempt entity own the property "upon the completion of the contract." She said the bill draft now requires the exempt entity to own the property, and the improvements to the property, at the time the contract is entered into in order for the sales and use tax exemption to apply to items ultimately used by the exempt entity.

Chairman Dockter called on the Legislative Council staff for presentation of a bill draft [17.0055.01000] relating to the elimination of use tax on items purchased by an exempt entity and installed by a contractor. She said the bill draft essentially pulls in the same language provided in the previous bill draft [17.0009.02000] with the exception of including the provisions related to the sales tax exemption. She said a contractor purchasing items on behalf of an exempt entity under the provisions of this bill draft would be liable for payment of sales or use tax on those purchases.

In response to a question from Representative Schmidt, the Legislative Council staff said the estimated fiscal impact of the bill draft [17.0009.02000] pertaining to both sales and use tax would be the same as the amount previously noted for the first version of the bill draft. She said the estimated fiscal impact of the bill draft [17.0055.01000] relating to the elimination of use tax on items purchased by an exempt entity and installed by a contractor would be less because this bill draft does not allow for a sales tax exemption.

In response to a question from Representative Klemin, the Legislative Council staff said the language in both bill drafts would not be contradictory in the event both would ultimately pass.

Senator Mathern said he would be more comfortable moving forward with the bill draft pertaining to only a use tax exemption due to the decreased fiscal impact.

Representative Weisz said he preferred the bill draft exempting both sales and use tax and said the decision ultimately comes down to whether the committee believes an exempt entity should be paying sales or use tax either directly, or indirectly, as a fee passed through by a contractor. He said if it is the committee's intent that an exempt entity be able to obtain items without the payment of sales or use tax, the identity of the purchaser should not impact the taxable status of those purchases. He said the additional contract fees charged to an exempt entity to recover sales and use tax amounts paid by contractors are ultimately passed along to property taxpayers if the exempt entity is a political subdivision. He said the additional contract fees charged to an exempt entity to recover sales and use tax amounts paid by contractors are a wash in regard to any fiscal impact if the exempt entity is a state entity.

Representative Klemin said he agreed with Representative Weisz that in the case of a political subdivision, the cost of paying sales and use tax charges passed through by contractors ultimately results in an additional tax burden for property owners.

In response to a question by Senator Mathern, Mr. Ryan Rauschenberger, Tax Commissioner, Tax Department, said information could be provided to the committee pertaining to the estimated amount political subdivisions could potentially refrain from collecting in property taxes if contractors were no longer passing through additional contract fees to compensate for sales and use taxes paid on materials used in contracts with exempt entities. Commissioner Rauschenberger said various assumptions and hypotheticals could be applied to arrive at some estimated figures.

ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled *Statutory Definitions of Primary Sector Business* identifying the various definitions of a primary sector business and a bill draft [17.0057.01000] relating to the provision of a uniform definition of a primary sector business. The Legislative Council staff said the memorandum outlines the nine instances the phrase primary sector business is defined in the North Dakota Century Code. She reviewed the variations between the definitions and said the bill draft provides for a uniform definition of primary sector business. She said the original intent behind the definition in each section should not be impacted as any deviations in the definitions were accounted for by providing exceptions or additions to the new language in the uniform definition.

Chairman Dockter called on Mr. Paul Lucy, Director, Economic Development and Finance Division, Department of Commerce, for comments on the bill draft. Mr. Lucy said another possible approach to the bill draft would be to provide a single definition of primary sector business in one section of the Century Code and then reference that section in each of the other sections currently defining the phrase. He said any deviations from the definition in the referenced section could be incorporated back in by building those deviations into the definition of a qualified business in each section.

Senator Cook said he would be interested in the original intent behind the deviations in each section in order to determine whether it was necessary for those deviations to remain.

In response to a question from Representative Koppelman, Mr. Lucy said he did not foresee any issues arising from the use of a standard definition.

In response to a question from Senator Burckhard, Mr. Lucy said using a standard definition for primary sector business should not cause problems when applying the requirements to different sized cities as the portion of the definition relating to the creation of new wealth is determined on a statewide basis rather than on a regional or community basis.

Chairman Dockter instructed the Legislative Council staff to prepare a bill draft providing for a definition of a primary sector business in a single section of the Century Code to be referenced in all other sections in which the term currently appears.

Chairman Dockter requested the Department of Commerce be prepared to provide comments on the bill draft pertaining to the intent behind any deviations between a uniform definition and the current language in the Century Code to determine if it is necessary for those deviations to remain.

SOCIAL SERVICES FINANCING STUDY

Historical Background - Transition to a State-Administered Child Support Program

Chairman Dockter called on Mr. James Fleming, Director, Child Support Enforcement Division, Department of Human Services, for a presentation (Appendix B) comparing the operation of the child support system before and after state administration, including any notable impacts or cost savings. He provided the background of the transfer of responsibility for administering child support from the county level to the Department of Human Services as a result of the passage of 2007 Senate Bill No. 2205. He said county offices had already consolidated into eight regional offices prior to the transition to state administration. He said county employees were transferred to the state level as a result of the transition and the Department of Human Services was required to maintain an office in each of the eight existing county regions. He said Senate Bill No. 2205 also included the requirement that the savings brought about by the transition be identified in the 2008 social service budgets and that the counties provide recommendations on how those savings could be passed along to taxpayers. He said since 2007, the cost effectiveness of the program has increased from $5.59 for every dollar spent to $6.20 for every dollar spent. He said incentive funds are available to states performing better in comparison to other states. He said each state is required to report on five federal measurements and a state's performance is tracked based on that information. He said North Dakota is currently ranked second in the nation based on these reporting standards.

Mr. Fleming said staffing levels have remained fairly consistent since the transition to state administration. He said in July 2007, the child support division comprised of 172.2 full-time equivalent (FTE) positions. He said this number dropped to 164.2 FTE positions during the 2009-11 biennium and increased by 1 FTE position in 2011 as an attorney was added to help implement changes under the federal Affordable Care Act. He said other than the addition of an attorney in 2011 staffing levels have remained consistent since 2009. He said variations in workloads between the eight regions have been almost entirely eliminated since the transition. He said this was partially achieved by transferring vacant positions among the eight regions based on need and has allowed regional offices to provide a more consistent and comparable level of services across the state. He said bringing consistency and efficiency to the system was one of the goals of transferring child support administration to the state level. He reviewed the differences between the total budgeted and funded amounts for the program both before and after state administration and said about 80 percent of the program's expenses are payroll expenses.

In response to a question from Representative Weisz, Mr. Fleming said the 10 percent drop in caseloads from 2007 to 2015 is mostly due to a change in the way the program receives Medicaid referrals. He said Medicaid referrals have essentially ceased over the last 2 years. He said this is just a temporary reduction and referrals are expected to resume. He said the temporary caseload reduction has allowed the program to avoid other staffing increases that may have otherwise been necessary to keep up with the increased activity in the western part of the state. He said the reduction has also allowed the program to do more with each individual case. He said though federal guidelines only require the review of child support obligations every 3 years, the program has been able to increase its efforts for more frequent reviews. He said more frequent reviews are especially important in cases where an obligor has been laid off from a higher-paying position, as is commonly seen in the western part of the state, and is unable to find a similar paying position going forward. He said the process of modifying a child support obligation is very labor intensive but can greatly benefit an obligor struggling to maintain child support payments based on an income level the obligor is no longer able to obtain. He said the program has increased efforts to collect payments on child support arrears and maintains a high level of current support collections.

In response to a question from Senator Cook, Mr. Fleming said the shift to state administration had been considered for a number of years prior to 2007. He said a bill for state administration was introduced during the 2005 legislative session but was ultimately hoghoused into a bill providing the state office authority to require counties to specialize certain functions. He said there was also a task force formed to review the concept of state administration and to address concerns that the child support program was not as responsive as it needed to be. He said the impression at the time was that the program would benefit from greater efficiency under a consolidated structure. He said various constituent examples were also received illustrating how a parent's experience could vary from one county to another, which was a situation causing confusion and frustration among some parents. He said the perception was that switching to a state-administered structure would bring greater efficiency and consistency to the program. He said these results were achieved by equalizing staff between the eight regions and offering a higher level of services. He said internal policy changes have also resulted in staff following similar steps at each regional office.

Senator Cook asked if county employees were receptive or resistant to becoming state employees. In response, Mr. Fleming said he reviewed recent payroll filings to those from before the transition as the same question had crossed his mind. He said of the 120 employees on the payroll in 2008, 68 are still on the payroll today. He said a number of the pretransition staff members who are no longer on the payroll are absent due to retirements. He said the remainder of the pretransition staff no longer on the payroll appeared to be staff who were newer to the program at the time of the transitions and who may have decided not to stay for other reasons. He said employees seemed to be more uneasy just prior to the transition than after it actually occurred. He said the 2007 legislation was very sensitive to protecting county employees by ensuring items like benefits, salary, and leave all transferred. He said staff became accustomed to the transfer quickly and realized the transfer did not mean each employee had to think the same way or approach everything in an identical manner. He said the current program is very healthy and state administration did not take away from the program.

In response to a question from Senator Dotzenrod, Mr. Fleming said roughly 80 percent of the child support cases in this state are enforced and established by the child support program. He said the amount of funding the program receives is not based on the amount of money the program collects from child support obligors. He said the program is funded 66 percent with federal dollars and 34 percent with state dollars. He said any additional funding is in the form of incentive funds, which the program is required to expend first. He said the amount that can be received in incentive funds is limited and said even if the program collected twice what it does today, the amount that could be received in incentive funds likely would not exceed $100,000. He said funding is virtually independent from the amount of collections made through the program.

In response to a question from Senator Mathern, Mr. Fleming said prior to state administration, there was a question regarding who would have the final say on subjective decisions. He said there were occasional disagreements between directors and state's attorneys and the state's authority to supervise the program did not override the counties authority to administer the program. He said this situation would occasionally lead to a bit of a stalemate and produce inconsistent results between the regional offices. He said following state administration, each county is still able to provide input on various questions, but a consensus is ultimately arrived at and applied consistently across the regional offices.

In response to a question from Senator Cook, Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, said the decision regarding how to transfer the responsibility for child support administration from the counties to the state took about 10 years of discussion and study.

In response to a question from Representative Headland, Mr. Traynor said overall county commissioners welcomed the transition.

In response to a question from Representative Nathe, Mr. Traynor said he did not recall how many mills were eliminated per county at the time of the transfer but said the savings resulting from the transfer were passed along to the property taxpayers.

Association of Counties - County Ending Fund Balances

Chairman Dockter called on Mr. Traynor for a presentation (Appendix C) of a sampling of information regarding county ending fund balances and the number of mills each county has been able to reduce from its budget as a result of 2015 Senate Bill No. 2206. He said a county fiscal year operates on a calendar year basis so data regarding a county's finances for the prior year is generally not available until mid to late January of the following year. He said, as a result, the data he is providing is still considered preliminary and any gaps in information are due to some counties not having enough finalized data to feel comfortable in providing even preliminary figures. He said updated information would be provided to the committee once counties receive the last of their receipt and expenditure data. He said 37 counties did provide information and those figures account for 82 percent of all property tax levied for social services statewide.

Mr. Traynor said the assumption of state grant costs under 2015 Senate Bill No. 2206 was expected to reduce county mill levies by an average of 2.31 mills. He said the preliminary data reflects a greater reduction of 2.83 mills, or roughly an 18 percent reduction. He said the increased reduction is partially due to the availability of emergency grants under Senate Bill No. 2206. He said about eight counties received emergency grants.

In response to a question from Senator Burckhard, Mr. Traynor said Steele County has been able to drive its mill levy down over the last 2 years by using its ending fund balance after each year.

In response to a question from Senator Bekkedahl, Mr. Traynor said Stutsman County was one of the counties that typically utilized the emergency poor levy. He said counties were not expecting to have access to the emergency grant funding provided in Senate Bill No. 2206, so this may be the reason Stutsman County ended up with a larger cushion than it anticipated.

In response to a question from Representative Nathe, Mr. Traynor said it was his understanding that a full repeal of a county's social service levy authority was the direction the study was taking. Representative Nathe said there is some concern among legislators that if the state takes over social service costs, the counties may find a way to build those social service mills back in under some other levy authority. He asked if any thought had been given to how safeguards might be provided to prevent this from occurring. He said legislators have seen previous attempts at property tax relief get watered down. In response, Mr. Traynor said he thinks the information provided in his handout is reflective of what happens when a county's costs are reduced. He said it results in a county lowering its mills. He said he firmly believes that county commissioners are ethical and conservative in their budgeting and will not attempt to add any additional tax burden to taxpayers unless a disaster or unforeseen circumstance arises. Representative Nathe said he hoped counties could appreciate legislators' reluctance after what happened following the buydowns in 2009 and 2011. He said he encouraged counties to look for ways to reassure legislators that any savings resulting from state assumption of costs would be passed along to taxpayers. Mr. Traynor said this is the message that has been taken to the county commissioners and he thinks they have been hearing it.

In response to a question from Representative Nathe regarding whether counties would be able to retain their ending fund balances if the state assumed social service costs or whether those funds would be put toward another use, Mr. Traynor said this topic remains to be discussed. He said it would be beneficial for counties to retain some sort of cushion, just as the state retains a cushion, in case any unforeseen circumstances arise. He said if a plant were to close in Stutsman County, resulting in an influx of economic assistance cases, Stutsman County would require resources to deal with that type of situation.

In response to a question from Representative Lefor, Mr. Traynor said for tax year 2015, counties were allowed to levy up to 20 mills for their 2016 budget needs. He said prior to the passage of 2015 Senate Bill No. 2144, counties essentially had unlimited levy authority. Representative Lefor said he agreed with Representative Nathe that legislators need some assurance that taxpayers would realize a reduction in property tax as a result of the state assuming social service costs. In response, Mr. Traynor said if a county's 20-mill levy authority goes away, counties will not be able to use that levy authority for social service purposes or for any other purposes.

Senator Cook said it is the responsibility of all political subdivisions, not just counties, to refrain from backfilling. He said ultimately, it is up to property taxpayers to determine the level of services they want to pay for.

In response to questions from Representative Headland, Mr. Traynor said standards for social services are federally mandated to a degree, but there are also state controls in regard to eligibility requirements. He said he could not speak to the reasons why some counties might be less willing to relinquish control than others. He said some county commissioners might be more comfortable knowing they have a social worker available in the middle of the night to deal with something like a child abuse situation rather than having to try to coordinate the delivery of those services through a regional center.

In response to a question from Senator Mathern regarding whether counties may wish to retain some levy authority to provide services above and beyond what the state requires, Mr. Traynor said the answer to that question would likely depend on how legislation for state funding would be structured. He said if a formula provided sufficient funding for additional services he would not see the necessity for a county retaining any levy authority for social service purposes.

In response to a question from Senator Cook, Mr. Traynor said his impression from prior discussions is that counties would not retain any social service levy authority. He said if a county wished to secure additional funds for a social service program, the county would have to use its general fund levy authority to do so.

Senator Cook said as populations continue to move into counties from other states, he no longer believes county governments should be funding social services through property tax revenue. He said the landscape of social services has changed to the point where it should be state funded. He said the committee needs to find a solution to effectuate this shift in a way that provides better services to individuals and provides those services in a more efficient manner.

Chairman Dockter said he agreed with Senator Cook's statements.

In response to a question from Representative Koppelman, Mr. Traynor said he could provide the committee with the amount of dollars that would have been generated in relation to the mill reductions provided in his handout.

In response to a question from Representative Nathe regarding whether counties have discussed the efficiencies that could be gained if the state took over the delivery of social services, Mr. Traynor said most county officials do not believe the state could do a better job than the counties. He said there is fear among some county commissioners that services would decay over time if local control over the delivery of social services was lost.

In response to a question from Representative Mooney, Mr. Traynor said the costs counties were asked to provide as a foundation for developing a reimbursement formula take into account all costs. He said these costs include expenditures for light, rent, and heat as well as salary and payroll benefits for staff. He said as far as he can determine, the reimbursement formula would accommodate everything the 20-mill allowance would accommodate.

In response to a question from Representative Nathe, Mr. Traynor said the base year of county expenditures includes the costs of providing indigent burials. He said the reimbursement formula uses the actual costs for all expenditures in the base year as the starting point for the funding formula.

Social Service Districts and County-Funded Services

Chairman Dockter called on Mr. Steven Reiser, Director, Dakota Central Social Services, for a presentation (Appendix D) regarding the Dakota Central Social Services District and a master list of county-funded services throughout the state. He provided a brief history of the Dakota Central Social Services District and a county-by-county listing of county-funded services. He also described any add-on home- and community-based services funded by counties after any similar services are provided through Medicare waivers or service payments for the elderly and disabled and any in-kind services provided by counties such as the provision of office space for food pantries.

In response to a question from Representative Dosch, Mr. Reiser said any costs in a county's base year budget will be factored into the reimbursement formula. He said this includes any elective or add-on service costs. He said it would likely be difficult for counties to provide add-on or expanded services under the reimbursement formula in future years if they were not providing those services in the base year.

In response to a question from Senator Mathern, Mr. Reiser said he is not able to generalize as to each county's spending between revenue from social service levies and other levy authority. He said in his three-county district, some of the budget for social services is derived from other levy authority. He said in other counties, like Sheridan County, all of the funding for social services is derived from the social service levy.

In response to a question from Senator Mathern, Mr. Reiser said he thinks most counties would be alright with eliminating their social service levy if the starting point for the formula includes all county expenditures in the base year.

In response to a question from Representative Koppelman regarding whether inequities would begin to form later on for those counties not providing add-on services in the base year, Mr. Reiser said there are likely inequities across the state right now. He said a county would have to make a case to its county commissioners if it wanted to expend general fund dollars for additional services in the future. Representative Koppelman said a question that might be worth asking is whether there is a core level of services the state should be funding with any additional services to be funded with a county's general levy authority.

In response to a question from Representative Nathe, Mr. Reiser reviewed the benefits that resulted from the consolidation of McLean, Mercer, Oliver, and Sheridan Counties into the Dakota Central Social Services district. He said the consolidation did not necessarily result in a decrease in the dollars expended per case, but it did result in greater efficiencies and a more evenly divided caseload between the staff in each county.

Representative Headland said he also had some misgivings about funding elective services for one county but not another based on base year expenditures. He said he can see the state funding mandated services but does not know if the state should be required to fund elective services. In response, Mr. Reiser said some of the elective services counties are providing result in savings to the county. He said a good example of this is the provision of home- and community-based services. He said the provision of these services allow individuals to stay in their homes longer and thus avoid more expensive institutional care. He said he could see why legislators may be concerned with whether it is fair for one county to be able to provide more services than another county.

Representative Klemin echoed the concern regarding which add-on services should be taken over with state funding.

In response to a question from Senator Mathern, Mr. Reiser said local offices may be able to provide some of the services provided at human service centers but others would be extremely difficult for local offices to take on. He said a good example would be the retention of a physiologist or psychiatrist. He said it would be very difficult to retain this type of staff in a place like McClusky, North Dakota.

In response to a question from Representative Nathe, Mr. Reiser said it would be difficult for counties to increase their add-on services in anticipation of increasing their reimbursement amounts because the expenditures used to calculate base year amounts have already occurred.

Representative Mooney said one of the commonly provided add-on services across each of the counties seemed to be home- and community-based services. She said it does not seem as though the formula would allow this type of service to be state funded going forward if a county was not already providing the service. In response, Mr. Reiser said a county would either have to make cuts to other programs or seek funding from its general levy authority to provide this service going forward if the county had not provided the service in the base year.

County Social Service Sharing Arrangements

Chairman Dockter called on Ms. Kim Jacobson, Director, Traill County Social Services, for a presentation (Appendices E and F) pertaining to county social service sharing agreements. She reviewed the history of shared services between counties and detailed services currently being shared between counties through both formal and informal arrangements. She reviewed the maps published by the North Dakota County Director's Association illustrating the variety of commonly shared services between counties.

In response to questions from Senator Mathern, Ms. Jacobson said one instance of collaboration between counties that did not seem to work out was a partnership between Traill County and Steele County. She said Traill County did not feel as though it was receiving enough services from the shared agreement. She said to her knowledge, there has not been any discussion of replacing a human service center or moving services from the human service centers to the county level. She said there are some services typically provided at human service centers that may be provided on a 1-day per week basis at the county level.

In response to a question from Representative Headland, Ms. Jacobson said county caseworkers are not subject to quotas but there are caseload recommendations that are used as a guide for managing caseloads. She said the Traill County Commission expects caseworkers to maintain a high productivity rate and will take caseloads into consideration when deciding whether to fill position vacancies. She said it is standard practice to assess whether duties can be reassigned between existing staff members before a vacant position is filled.

In response to questions from Representative Mooney, Ms. Jacobson said when foster children are placed out of state, monthly face-to-face visits with those children are still required. She said there are a variety of arrangements that can be used to meet the requirements for face-to-face visits including partnership arrangements between counties in this state and other states. She said costs for placements are typically reimbursed through Medicaid and the costs for face-to-face visits are incurred by each county.

In response to a question from Senator Mathern, regarding whether there is any qualitative research gathered and reported on county services to determine whether children are getting quality services, Ms. Jacobson said there are federal reporting requirements in various areas but it is not broken down to the county level. She said she may be able to speak to any strengths or weaknesses in Traill County but is not aware of any data relating to how other neighboring or consolidated counties may be performing. Senator Mathern said it would be useful to know whether counties sharing services had more positive or negative outcomes than counties that did not share services.

In response to a question from Representative Nathe, Ms. Jacobson said the caseload per FTE position depends on the program type and the program site. She said the caseload for foster care caseworkers can range from around 10 to 12 cases where the caseload for long-term care or economic assistance caseworkers can reach up to several hundred cases.

In response to a question from Senator Cook, Ms. Jacobson said each county social service position is subject to the merit system. She said each position is assigned a grade and that grade fits within a determined maximum and minimum range on the state pay scale. She said the county director prepares county social service budgets, which are presented to the board, and ultimately to the county commission, for final approval. She said the county commission does not have broad authority regarding the pay rate for county social workers. She said the county commission has decisionmaking authority over whether to fill a position and over selecting a pay rate for the position which falls within the state range.

Chairman Dockter called on Mr. Randi Suckut, Wells County Commissioner, for a presentation (Appendix G) regarding the history of shared services between Foster, Eddy, and Wells Counties. Mr. Suckut said Foster, Eddy, and Wells Counties began sharing services approximately 25 years ago. He said the initial sharing began with a shared director position. He said anticipated costs savings was one of the motivating factors behind the sharing arrangement. He said the counties also found that allowing workers to specialize in certain program areas reduced employee's stress levels in comparison to those employees who were required to be knowledgeable in all program areas. He said each county retained its own social service board to oversee individual county needs and employees, but a tri-county board was also formed to oversee the shared needs and employees relating to the tri-county agreement. He described the shared services and the amounts each county pays for shared services. He also described the ways each county expected to gain further efficiencies by consolidating as a district. He said he does not expect any additional cost savings to result from a consolidation, but he does expect to see time savings. He said the only detriment he identified with consolidations is the potential difficulty of finding a director willing to work and travel between multiple counties. He said he does not expect a consolidation between Wells, Foster, and Eddy Counties could ever bring about the same level of efficiencies found in some of the larger counties. He identified the dollar amount of savings realized in each of the three counties due to the sharing arrangement.

In response to a question from Senator Mathern, Mr. Suckut said he would lean toward an incentive arrangement to encourage counties to consolidate rather than any type of mandate.

In response to a question from Senator Cook, Mr. Suckut said if Wells, Foster, and Eddy Counties ended up consolidating into a district, each county would still retain its own individual office.

In response to a question from Representative Mooney, Mr. Suckut said if a consolidation occurs, delivery of services would still originate from within each of the three counties but the district would operate under one budget and employee paychecks would be distributed from the selected host county.

In response to a question from Representative Headland regarding whether it would be possible to find greater efficiencies if the delivery of social services were privatized, Mr. Suckut said benefits in terms of wages and retirement plans from the state and county are sometimes second to none and you might not find that with private enterprises. He said he is not aware of any counties using private service providers to provide social services or the availability of any private service providers.

In response to a question from Senator Cook, Chairman Dockter directed the Legislative Council staff to research whether there any provisions in law prohibiting a county from using a private service provider.

Representative Headland said he knew of some townships that use private contractors for road needs. He said Stutsman County used to have its own road crew but then turned to the private sector to meet those needs. He said he finds it curious that counties have never looked to private industry to fill some of their social service needs.

Senator Cook said every county is required to have a housing authority and the majority of counties have a private management firm manage housing authorities.

Chairman Dockter said Morton County outsourced its human resource payroll needs for a time and instructed the Legislative Council staff to research the ability to privatize social services.

Representative Mooney asked if research could also be conducted on the availability of private services, especially in some of the smaller rural areas. She said she would have concerns about looking at privatization if it is determined that these services are not even available in many rural areas of the state.

Chairman Dockter said the committee will receive information regarding the ability to privatize social services and the prevalence of private service providers.

In response to a question from Representative Nathe, Mr. Suckut said he did not think state funding of social services would result in a disincentive for counties to consolidate.

Social Services Funding Formula

Chairman Dockter called on Governor Jack Dalrymple for a presentation relating to activities of the County Social Services Finance Working Group. Governor Dalrymple said he would be passing the funding formula discussion off to Joe Morrissette, working group member and Deputy Tax Commissioner, Tax Department, as Mr. Morrissette has been completing much of the work on the formula and would be able to provide a more detailed description. He said by way of background, the concept of providing for state funding of county social service costs was in response to a meeting held last spring with a number of legislative leaders and appropriation committee members. He said it was determined at that meeting that it was not worth advancing this concept unless a funding formula could be developed that was both feasible and workable. He said Ms. Maggie D. Anderson, Executive Director, Department of Human Services, was present at the meeting and delivered some very high-level concepts as to how a funding formula might be approached. He said by the end of the 2015 legislative session, legislators agreed it would be worth pursuing the concept of state funding and asked the Department of Human Services to begin gathering data on county costs. He said a tremendous amount of county expenditure data from 2014 has been collected and relayed to the County Social Service Finance Working Group and the working group has taken the first steps toward developing a potential funding formula. He said the data collected by the working group reflects the most comprehensive look at total county expenditures for social services that has ever been available. He said the funding formula, which Mr. Morrissette will review, appears promising, particularly in regard to the costs of the transition, which seems to be quite affordable. He said the committee needs to remember that the real motivation for transitioning the costs of social services revolves around the opportunity to provide significant property tax relief. He said in that regard, the fiscal impact for the current year would likely be around $130 million in property tax savings statewide and the amount of property tax relief realized by the time the formula would actually be implemented would be closer to $150 million. He said the shift to state funding would represent significant and permanent property tax relief.

Governor Dalrymple said he commended legislators for the tremendous amount of progress that has been made in tax policy, beginning with shifting the cost of K-12 education away from the taxpayers, which began with an average statewide general fund school levy of approximately 200 mills and was reduced to an average general fund levy of 70 mills. He also noted the property tax reform the legislature effectuated during the 2015 legislative session by implementing overall caps for county, city, and other political subdivision levies for the first time in state history. He said he sees the transition from county to state funding of social services as another opportunity for property tax relief though there is still a lot of work that needs to be done. He said he thinks some good first steps have been taken and so far it has been worth the effort.

Chairman Dockter called on Mr. Morrissette for a presentation (Appendices H and I) regarding the concepts behind the proposed social services funding formula. He said in regard to the base year, the working group reviewed actual county expenditures for calendar year 2014 as this is the most recent information available. He said calendar year 2015 information should be available sometime in February and the working group's data can be updated at that time. He said base year expenditures reflect all county administrative costs including staff costs. He said the formula is currently broken out into two separate formulas, one for economic assistance programs and one for social service programs. He said costs will be pooled on each side of the formula and a calculation applied to that amount to arrive at a total county payment. He walked the committee through the example provided on his flowchart and a breakdown of what the formula would look like when applied to the base county as well as the small, medium, and large county examples.

In response to questions from Senator Cook, Mr. Morrissette said the working group had tentatively discussed an effective date of January 1, 2018, for the transition to state payment. He said if a proposal came before the legislature during the 2017 legislative session, 2015 base year expenditure numbers would be available. He said 2016 numbers would not be available until February 2017. He said the starting point for the formula is inclusive of all costs at the county level. He said in regard to whether counties may come up with additional programs between now and 2017, this may be a reason to use 2015 as the base year.

In response to a question from Senator Mathern, Mr. Morrissette said the formula does not assume any change in the structure of human services. He said county employees would remain as county employees. He said there have been discussions on how to deal with counties that decide to consolidate, similar to how school district consolidations were handled under the school funding formula.

In response to questions from Representative Nathe, Mr. Morrissette said whether the formula would be revisited every biennium would be a legislative decision. He said he could provide the committee with a breakdown of the counties currently falling into groups one through six under each formula.

In response to questions from Representative Klemin, Mr. Morrissette said since the formula looks to historical expenditures in the base year, if counties are not providing certain services in the base year, reimbursement would not be provided for those services in future years based on the current operation of the formula. He said the working group has not discussed the option of counties being able to vote to increase taxes to provide certain additional services.

In response to a question from Chairman Dockter, Mr. Morrissette said a county might have a relatively high economic assistance caseload but a lower social services caseload so these caseload counts would be looked at separately under the formula.

In response to a question from Representative Weisz, Mr. Morrissette said some counties might be receiving a slight increase over what the formula would provide due to the hold harmless provisions applied if a county's historic spending levels are less than what the formula would have provided with an inflationary adjustment. He said both minimum and maximum percentages are applied.

In response to a question from Representative Dosch, Mr. Morrissette said the working group has not discussed the funding source for state reimbursement payments. He said the working group's directive was simply to develop the funding formula.

In response to a question from Representative Mathern, Mr. Morrissette said the working group has not specifically discussed any separate variables regarding reservations.

Representative Nathe asked if the committee could receive information regarding how caseloads have been growing from year to year as a means to determine what might be expected for future caseloads.

Chairman Dockter said caseload information could be requested from the Department of Human Services.

ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Chairman Dockter called on the Legislative Council staff for presentation of a memorandum entitled *Economic Development Tax Incentive Study - Evaluation Chart* identifying the incentives selected for review and summarizing the questions to be considered when analyzing incentives. She said the committee has eight questions to consider pursuant to statute when reviewing the selected incentives. She said at the previous meeting the committee requested some form of checklist to assist the committee in tracking its progress in evaluating each incentive. She said the top portion of the evaluation chart lists the incentives selected for review by the committee and the left portion of the chart lists the eight questions to be considered by the committee during its review of each incentive. She said 5 of the 18 selected incentives listed on the chart have been placed in a bill draft [17.0058.01000] for proposed repeal. She said the electrical generating facilities sales tax exemption, biodiesel fuel blending credit, biodiesel sales equipment credit, biodiesel fuel production facility or soybean or canola crushing facility construction or retrofit credit, certified nonprofit development corporation credit, microbusiness credit, and wage and salary credit were selected for inclusion in the bill draft based on the limited number of taxpayers using these incentives. She said the bill draft was brought forth based on the committee's hope that the committee would receive testimony on the value of each incentive from those parties using or hoping to use the incentives.

Chairman Dockter said the committee would continue to receive comments from interested parties on each of the selected incentives throughout the interim. He said written testimony would also be accepted from any parties who could not appear in person and the committee would refrain from making any final decisions on incentives until all of the pertinent information had been received and reviewed.

Department of Commerce

Chairman Dockter called on Mr. Justin Dever, Co-Deputy Commissioner, Department of Commerce, for a presentation (Appendix J) regarding the costs and benefits associated with various economic development tax incentives to determine an estimated return on investment, information pertaining to the indirect or induced economic impacts of various incentives, and information pertaining to any complementary or duplicative government programs that may be available to taxpayers qualifying for the incentives selected for review by the committee. He said due to some delays in procuring the necessary software, and delays in receiving data from Job Service North Dakota, he would not be providing information pertaining to estimated return on investments or indirect or induced economic impacts of incentives at today's meeting. He said this information could be provided to the committee at a later date when these issues have been resolved. He reviewed the data in his handout provided for the angel fund, seed capital, and agricultural commodity processing facility investment tax credits and thanked the Tax Department for the quick turnaround in providing information (Appendix K) summarizing the investment and credit activity of certified angel funds. He reviewed the total amount of investments received by angel funds certified by the Department of Commerce and the amount of tax credits received as a result of these investments. He also noted the number of companies located in this state and outside of this state that received investments from angel funds. He said some of the companies located outside of this state might have a presence in North Dakota through some other means. He said there is a gap in the information provided from 2007 through 2011 due to certain reporting requirements not being in place until 2011. He also summarized information relating to the seed capital investment credit and the agricultural commodity processing facility investment tax credit and provided information (Appendix L) regarding the number of companies that had been certified for the agricultural commodity processing facility investment tax credit. He reviewed the various government programs and additional tax incentives that may be available to taxpayers qualifying for the angel fund, seed capital, or agricultural commodity processing facility investment tax credits.

In response to a question from Senator Burckhard regarding biofuel incentives, Mr. Dever said North Dakota produces about 300 million gallons of ethanol each year.

In response to a question from Representative Weisz, Mr. Dever said Job Service North Dakota would be able to provide more information regarding any in-state presence out-of-state companies receiving angel funds investments may have in this state. He said he believes North Dakota is the only state that allows a tax credit for investments in companies that are not directly tied to this state.

Chairman Dockter directed the Legislative Council staff to request a representative of the Department of Commerce provide this information to the committee at a future date.

In response to a question from Representative Klemin, Mr. Dever said the Department of Commerce could put together some recommendations for statutory changes that would make it more feasible for these incentives to be evaluated in the future. He said Job Service North Dakota does require a business have at least 10 employees before business specific information can be disclosed.

In response to a question from Senator Mathern, Mr. Dever said certification requirements for companies are outlined in the language in each statute.

In response to a question from Representative Headland, Mr. Dever said the language in statute requires an angel fund to be established for the purpose of investing in at least three primary sector businesses. He said at the time of certification the Department of Commerce does not know what those three investments are. He said an angel fund is certified for a 3-year period. He said at the time the angel fund is recertified, the angel fund must disclose the companies the fund has invested in. He said the Department of Commerce has declined to recertify angel funds that have not made investments in companies in this state.

In response to a question from Representative Weisz, Mr. Dever said an angel fund might receive certification without yet having invested in three primary sector businesses in North Dakota because at the time of certification the angel fund must simply have the intention of investing in three primary sector businesses located in this state.

In response to a question from Senator Bekkedahl, Mr. Dever said any zeros listed on the angel fund chart pertain to information referenced prior to 2011 when the additional reporting requirements were implemented.

Regional Economic Models Incorporated

Chairman Dockter called on the Legislative Council staff for a summary of the pricing options relayed by Regional Economic Models Incorporated (REMI) representatives following the previous committee meeting. She reviewed the amount of funds that may be available through the Legislative Council. She said this amount reflects the amount available for the biennium and said, generally, an effort is made to allow each interim committee equal access to these funds. She said the amounts quoted for various consulting and software purchase arrangements by REMI representatives are as follows:

- Option one includes the cost to purchase REMI's Tax-PI software, which is a tier above the software currently used by the Department of Commerce, for an agency such as the Tax Department or Legislative Council that does not currently have an existing contract with REMI. She said the cost for the first year would be $136,000 and the renewal fee would be $28,500 in each following year for a total cost of $164,500 for the first 2-year period.
- Option two includes the cost of upgrading the Department of Commerce's existing version of REMI software to the more robust version of REMI's Tax-PI software for a price of $90,000. She said the cost to add a secondary user from another agency, such as the Legislative Council or the Tax Department, would be an additional $28,500 per year for a total cost of $118,500 for option two.
- Option three entails both the rental of software and access to consulting services. She said the cost to purchase a 6-month rental period of the software would be $54,700. She said if the software was purchased without the addition of consulting services, the agency using the software would need available staff to help customize the model and run the analysis on each incentive so there may be a bit of a learning curve associated with this option. She said if the committee does not believe adequate staff resources are available, there is also an option of purchasing consulting services in addition to a 6-month rental of the software. She said consulting services would consist of REMI staff conducting the modeling for each incentive, running the analysis, writing a final report, and presenting that information to the committee. She said the price quoted for consulting services for just one incentive is $30,000. She said the price quoted for REMI to provide consulting services for all 18 incentives is $60,000. She said the resulting total for option three for the rental of software and consulting services for just one incentive would be $84,700 and the price for the rental of software and consulting services and for all 18 incentives would be $114,700.

The Legislative Council staff said based on the committee's previous interest in possibly exploring the use of dynamic fiscal notes in the future, she did inquire as to whether any amounts paid for a software rental during the interim could be applied towards an eventual purchase of REMI software. She said REMI representatives confirmed that the $54,700 rental fee could be offset against a future purchase price of $136,000. She said even if funds for the interim rental originated from the Legislative Council, REMI representatives stated that another agency, such as the Tax Department, could still apply the amount expended for the rental toward the ultimate purchase price of the software.

The Legislative Council staff said she also followed up with a representative from Utah regarding Utah's rental arrangement with REMI. She said the representative from Utah said a user does not need to bring any specialized knowledge to the table to use REMI software. She said the Utah representative said the software is very user friendly and REMI staff is available to answer any questions and walk a user through any metrics or help illustrate any assumptions that should be made. She said overall, representatives from Utah had very positive things to say about REMI.

The Legislative Council staff said REMI representatives said it would take about 4 to 6 weeks to customize software for this state and said if the committee decided to go with the rental and consulting service option that a final report on all 18 incentives would be ready within 6 months from the date an agreement is entered.

Representative Dockter said the committee will be deciding whether it wishes to proceed with a recommendation to the Chairman of the Legislative Management for the purchase of software or consulting services to assist in the committee's study of economic development tax incentives.

In response to a question from Senator Cook, the Legislative Council staff said she would follow up regarding whether any changes to the Century Code would need to be made to effectuate the use of dynamic fiscal notes for state budgeting purposes.

Senator Cook said he would not be opposed to expending funds to hire a consultant to complete a portion of the assessment work the committee is tasked with in its study. He said the rental of REMI software and purchase of consulting services would also allow the committee to see what a dynamic fiscal note would look like and possibly help answer the question of to what degree the legislature may wish to use dynamic fiscal notes.

Representative Klemin said he agreed with Senator Cook that hiring a consultant to conduct the analysis, rather than having to train the staff of the selected agency on the use of REMI software, would be the most economical approach. He said this was especially true if the cost of renting the software could be deducted from any future purchase of the software. He said it is also possible that the price quoted by REMI representatives is negotiable, especially in light of the state's current economic situation.

Chairman Dockter said he agreed with Representative Klemin's concerns regarding the potential for needing additional agency staff to conduct the review if consulting services were not secured. He said he would be open to contacting REMI representatives to see if there was any leeway in the quoted prices.

In response to a question from Senator Cook, Chairman Dockter said it was his impression that if the committee recommended acquiring a software rental in addition to consulting services that the software rental would be placed with the Legislative Council rather than some other agency.

Chairman Dockter said it was possible that a subcommittee would be formed to decide what would be placed in a REMI model should the committee recommend, and receive approval for, the purchase or rental of software.

In response to a question from Senator Dotzenrod, the Legislative Council staff said a report prepared by REMI could be as detailed as the committee wished. She said the committee would have input in directing the deliverables to be addressed in the report, just as they would if using any other type of consulting services.

Chairman Dockter said the committee would request a baseline of criteria for REMI to address and the subcommittee would provide further direction regarding what the committee wants to accomplish.

Chairman Dockter called on Mr. Dever to comment on the Department of Commerce's experience in working with REMI. He said the Department of Commerce is using a different version of REMI software than the one the committee is considering today. He said the Department of Commerce uses REMI software to determine indirect, induced, and employment impacts. He said the version of REMI software the Department of Commerce uses does not provide information on what incentives mean in terms of state tax revenue.

Senator Mathern suggested that representatives from various agencies be included as members of the working group should a working group be formed.

Chairman Dockter said this could certainly be taken into consideration if the software purchase goes forward.

Senator Cook said it would be important to have the Tax Department and the Department of Commerce available at the outset to make sure proper data is input into the model if the software is ultimately purchased.

Angel Fund Investment Tax Credit

Chairman Dockter said the committee would be opening up testimony from interested persons in regard to a number of the economic development tax incentives the committee will be reviewing this interim. He invited comments from interested persons regarding the angel fund investment tax credit.

Mr. Keith Lund, Vice President of the Grand Forks Region Economic Development Corporation and past president of the Economic Development Association of North Dakota, provided testimony (Appendix M) on behalf of the Economic Development Association of North Dakota. He testified in favor of retaining the angel fund and seed capital investment tax credits, and said these tax credits are important tools in supporting entrepreneurship, innovation, and startup companies in this state. He said tax credits also help diversify North Dakota's economy by encouraging the development of new businesses. He also expressed support for the retention of biodiesel credits and said it is beneficial to have these credits in place for instances in which a company may be conducting a state-by-state review of incentives when deciding where to locate or expand a plant. He also expressed support for retaining the electrical generating facilities sales tax exemption noting electrical generation supports jobs in this state and helps maintain competitive energy costs for new and existing businesses. He said wind-powered generation also helps the economies of rural communities due to the payments that are received by landowners.

In response to a question from Representative Lefor, Mr. Lund said the Economic Development Association of North Dakota does not quantify the effects of various tax incentives in terms of job creation. He said the Economic Development Association of North Dakota works in partnership with the Tax Department and the Department of Commerce to try to determine the value of an incentive on a statewide basis.

In response to a question from Senator Cook regarding whether any of the incentives the committee is reviewing should be changed, modified, or eliminated, Mr. Lund said there are likely many examples of how incentives could be modified. He said the process of addressing eight questions for each incentive subject to review is a good exercise.

Mr. Al Christianson, Director, Business Development & Government Affairs, Great River Energy, and Board Director for Midwest AgEnergy Group, provided testimony (Appendix N) regarding the value of the angel fund investment tax credit. He said the credit was an important tool used during the financing stage of the Dakota Spirit AgEnergy biorefinery. He said the biorefinery currently employs 38 permanent FTE positions in Stutsman County. He said the biorefinery also benefits the local economy through the purchase of 23 million bushels of corn annually from farmers.

In response to a question from Senator Cook, Mr. Christianson said it was his personal opinion that North Dakota dollars should not be leaving this state to help other states.

In response to a question from Representative Weisz, Mr. Christianson said this incentive is important from a profitability standpoint. He said a certain amount of equity has to be raised in order to bring a plant online. He said the angel fund and agricultural commodity processing facility investment tax credits were the two incentives that helped bring investors to the table. He said he did not think the Dakota Spirit AgEnergy biorefinery would have received the necessary equity investments without the availability of these two tax credits.

Mr. John Cosgriff, Incubator Manager, North Dakota State University Research and Technology Park, spoke in favor of the angel fund and seed fund investment tax credits. He introduced Mr. Corey Kratcha, Co-Founder and Chief Executive Officer of c2renew and c2sensor.

Mr. Kratcha said these companies are two early-stage companies being commercialized in this state and hopefully taken worldwide. He said c2renew is a biocomposite company that uses different agricultural waste products from a number of growers and c2sensor is a precision agricultural data company that manufactures hardware used by producers to receive precision data from their fields. He said both companies received angel funding. He said without the support and backing of tax credits, many individuals would shy away from investing in higher-risk start-up companies. He said angel fund investments in out-of-state companies can come back and add value to this state. He said his companies have benefited from working with out-of-state companies that have received investments from angel funds in this state.

In response to a question from Senator Mathern, Mr. Kratcha said he does not specifically track the amounts received and returned from angel fund investments. He said he looks at the value of the jobs his companies have created and the value of the partnerships that are made with other companies. He gave an example of the partnership with Red River Commodities and described the manufacture of coffee cups from coffee waste products. He said one of his companies could have done better if it was located in Ohio but he has a strong affinity for North Dakota and wants to keep his operations in this state.

In response to a question from Senator Bekkedahl, Mr. Kratcha said it is difficult to say whether removing the ability of angel funds to invest in out-of-state companies would be so detrimental as to greatly diminish the usefulness of angel funds. He said there is some value to being able to place money where it will be best used. He said as there are a limited number of angel funds it would be nice if more of the investment dollars were directed to this state.

In response to a question from Representative Nathe, Mr. Kratcha said he would have stayed in this state even without the ability to access angel funds but without that access it becomes very difficult to raise money.

In response to a question from Chairman Dockter, Mr. Kratcha said some of the investors in his companies have also used the seed capital investment tax credit. He said the availability of this incentive occasionally tips the scales for an investor who otherwise might not invest. He said he is also looking at taking advantage of some of the sales and use tax exemptions as he is looking to expand by building a new facility in Colfax, North Dakota.

Mr. Cosgriff responded to some of the previous angel fund questions and said angel funds are critical to startup companies. He said the fact that some angel funds invest outside of this state may be looked at as unfortunate by some but it can also be looked at as an opportunity. He said angel fund access to capital brings companies to the funding source so the ability of angel funds to invest in out-of-state companies has the potential of attracting out-of-state companies to this state. He said he encourages the committee to continue the angel fund and seed capital investment tax credit and he would look at the ability for angel funds to invest in out-of-state companies as a positive rather than a negative. He said the ability of angel funds to invest in out-of-state companies puts North Dakota at the front of the pack rather than the back.

In response to questions from Senator Cook, Mr. Cosgriff said he thought the 45 percent angel fund credit was very generous. He said, as this state does not have a large population of what he would call ready to invest angel investors, it is critical to induce investments in these funds. He said angel fund investing is more like planting trees than planting crops. He said investors do not see a return on their money right away. He said the lag in receiving a return on investment is mitigated by the fact that investors can receive a tax credit for their investments. He said many first time angel fund investors are interested in investing for a second time. He said in response to the effect previous income tax reductions have had on the use of the credit, he said he has seen a corresponding drop in investments. He said the more the tax rates drop, the less impact the credit has.

In response to questions from Representative Nathe, Mr. Cosgriff said co-investment activities are common. He said he realizes it may go against the grain to provide an incentive that may result in out-of-state investments but you can never tell where a company that received investment dollars will eventually end up. He said, in regard to ways to improve the credit, the credit is very generous but is it difficult to sit across the table from an investor you know can write a $500,000 check and have to tell them that they should only be writing it for $100,000 due to the $45,000 yearly limitation on credits. He said though the state may spend a large amount on tax credits, there is a multiplier effect to incentivizing early investments in startup companies. He said $16 million in tax credits offered by this state could turn into a hard $38 million invested in various companies. He said he anticipates that the receipt of angel fund investments will likely leverage about 5 to 10 times more investments in a company over the life of that company. He said overall he thinks the program works well.

In response to a question from Senator Mathern, Mr. Cosgriff said a requirement for out-of-state companies receiving investments from in-state angel funds to demonstrate some connection or benefit to this state could certainly be valid. He said most of the out-of-state companies angel funds he has dealt with have invested in have had some nexus to this state. He said the Sun Valley Angels of Wahpeton fund invested in a few out-of-state companies that interacted with ComDel Innovation in Wahpeton. He said relationships between in-state and out-of-state companies receiving angel funds do occur.

Ms. Katie Andersen, Mayor, Jamestown, spoke in favor of the angel fund investment tax credit. She said she appreciates the spirit of the law directing the review of incentives. She said it is important to reflect on incentives to determine their effectiveness. She said evidence from Jamestown's third quarter sales tax revenue is evidence of the effectiveness of incentives. She said a 25 percent reduction in sales tax revenue was seen across the state from third quarter 2014 to third quarter 2015. She said Jamestown, however, saw a 5.8 percent increase in sales tax collections for the same period. She said this is mostly due to the fact that Jamestown was able to incentivize businesses to locate in Stutsman County and help diversify the economy with great businesses like the Dakota Spirit AgEnergy biorefinery. She said there are 440 acres left to develop in the area and she would like to encourage other businesses to locate that would complement the development already in place. She said incentives are a good tool to use to incentivize business development and help an area remain competitive with other markets. She said the angel fund investment tax credit is one of these tools. She said she wonders if some of the out-of-state investments made by angel funds are made to bolster the overall health of the fund.

In response to a question from Chairman Dockter, Mayor Anderson said about 90 jobs have been created as a direct result of incentives in the Spiritwood Energy Park area. She said additional indirect and induced jobs have also been created.

Ms. Jane Priebe, Director, Economic Development, Wahpeton, spoke in favor of the angel fund investment tax credit. She said she agreed with many of the previous statements made by other individuals testifying in favor of the incentive. She said if ComDel Innovation had not had access to angel fund dollars, and had investors been prohibited from investing in other out-of-state companies, ComDel Innovation would not have had the success it has had today. She said she is in support of angel funds investing in out-of-state companies for purposes of diversifying. She said the angel fund investment tax credit is an important economic development tax incentive the state should keep in its toolbox.

Representative Mitskog said she would be interested in receiving additional information on the connection out-of-state companies receiving angel fund investments may have to this state.

Seed Capital Investment Tax Credit

Chairman Dockter invited comments from interested persons regarding the seed capital investment tax credit.

Mr. Kratcha said some of the investors in his companies also take advantage of the seed capital investment tax credit.

Agricultural Commodity Processing Facility Investment Tax Credit

Chairman Dockter invited comments from interested persons regarding the agricultural commodity processing facility investment tax credit.

Mr. Christianson provided testimony (Appendix O) in favor of the agricultural commodity processing facility investment tax credit. He said Great River Energy is the parent company of Dakota Spirit AgEnergy and Blue Flint Ethanol. He said these companies received some investments as a result of the agricultural commodity processing facility investment tax credit. He said farmers realize an advantage when an ethanol plant locates to the state because a home area market is being added. He said the credit was a very important tool in putting together the financial packages for these companies. He said the Department of Commerce ran a REMI model for the Blue Flint Ethanol plant roughly 8 years ago.

In response to a question from Chairman Dockter, Mr. Christianson said the data produced using the REMI model was actually understated as the Blue Flint Ethanol plant ended up using more corn from in-state sources than was originally projected. He said the data produced using the REMI model for the Dakota Spirit AgEnergy project was very close to the project's actual numbers during the initial year of operation.

In response to questions from Senator Cook, Mr. Christianson said he does not think it would have been possible to pull together the $175 million in equity without the availability of the angel fund and agricultural commodity processing facility investment tax credits. He said he was not sure of the amount received in credits between these two projects but he could find out and forward that information to the committee.

Mr. Zachary Smith, Director, Communications and Government Relations, North Dakota Association of Rural Electric Cooperatives, spoke in favor of the agricultural commodity processing facility investment tax credit and the electrical generating facilities sales tax exemption. He said the agricultural commodity processing facility investment tax credit is good for the association's members, which consist largely of farmers and ranchers.

Ms. Deana Wiese, Executive Director, North Dakota Ethanol Producers Association, provided testimony (Appendix P) in support of retaining the agricultural commodity processing facility investment tax credit. She said the agricultural commodity processing facility investment tax credit has been instrumental in establishing and growing the state's ethanol industry. She said the incentive has been successful in serving the purpose for which it was established to encourage investment in value-added processing for North Dakota commodities. She described the incentive's return on investment, the contributions made to the state's economy as a result of the ethanol industry, and the average addition of jobs per ethanol plant. She said it is unlikely that the ethanol industry would have been able to attract enough investment for its five current plants without the availability of the agricultural commodity processing facility investment tax credit. She described the negative impacts that may result from repealing the incentive and urged the committee's support for the incentive going forward.

Electrical Generating Facilities Sales Tax Exemption

Chairman Dockter invited comments from interested persons regarding the electrical generating facilities sales tax exemption.

Mr. Christianson provided testimony (Appendix Q) in support of the electrical generating facilities sales tax exemption. He described the operation of Great River Energy's Coal Creek Station, the dryfining process, and the number of construction jobs and FTE operation and maintenance jobs needed to build and operate the dryfining system. He said incentives like the electrical generating facilities sales tax exemption have a significant impact on the financing needed to implement new technologies like dryfining. He said the incentive will also be a very important tool going forward in light of the challenges electrical generating facilities may be facing as a result of the federal Environmental Protection Agency's (EPA) Clean Power Plan. He said electrical generating facilities will likely be spending a huge amount of money to remain operational as a result of the new federal requirements. He said Coal Creek Station has about 300 direct employees and the coal mine supplying Coal Creek Station has about 350 employees. He said the electrical generating facilities sales tax exemption will be needed in the future in light of the multiple additional items generating facilities will likely be financing to remain operational.

Mr. Don Boehm, Manager, Multistate Tax, Basin Electric Power Cooperative, provided testimony (Appendix R) in support of the electrical generating facilities sales tax exemption. He said Basin Electric Power Cooperative uses the sales tax exemption extensively and has used it nine times at five locations since 2009. He said the nine projects he referenced represent a $1.1 billion investment in this state. He provided the number of jobs and additional tax revenue generated due to some of the projects that received a sales tax exemption. He said consumers also benefit from the sales tax exemption because the less cost that goes into a construction project, the less cost that has to be passed on to power consumers. He said Basin Electric Power Cooperative is not aware of any unintended consequences that have arisen as a result of the sales tax exemption. He said while the availability of this incentive is not the sole factor Basis Electric Power Cooperative considers when determining where a project will be located, it does carry weight.

In response to a question from Representative Cook, Mr. Boehm said of the nine projects he referenced, two are wind-powered electrical generating facilities and the remainder are gas-fired electrical generating facilities.

In response to a question from Representative Mitskog, Mr. Boehm said it would be advantageous to the electrical generating industry to have access to tax incentives for transmission projects as well but at this time industry representatives are not asking for those types of incentives. He said the industry is happy with the incentives that are currently in place.

Mr. Jason Bohrer, President and Chief Executive Officer, Lignite Energy Council, provided testimony (Appendix S) in support of the electrical generating facilities sales tax exemption. He said the sales tax exemption on the billions invested in lignite-fired electrical generating facilities has saved millions of dollars for North Dakota's ratepayers. He said the state and the region also benefit from the improvements incentivized by this exemption as North Dakota is one of the few states that meet all of the federal ambient air quality standards. He said the sales tax exemption is an important tool that helps utilities continue to invest in low-cost power. He said now is not the time to eliminate any incentives that might drive investment decisions or power production out-of-state or disadvantage the lignite industry as the industry supplies 16,000 high-paying jobs in this state and contributes $100 million in tax revenues each year.

In response to a question from Senator Mathern, Mr. Bohrer said the impact of the sales tax exemption is dependent more on each business's accounting structure rather than whether the operation is an investor-owned utility or a cooperative. He said either project would be beholden to the same obligations to secure financing and would go through the same comparative analysis when determining whether to build facilities in this state or elsewhere. He said both investor-owned utilities and rural electric cooperatives would pass on the savings resulting from the sales tax exemption to ratepayers.

In response to a question from Senator Cook, Mr. Bohrer said the lignite industry may need to have further discussions with legislators as a result of the Clean Power Plan in order to maintain the coal industry. He said the electrical generating sales tax exemption is the type of incentive that makes a marginal project feasible. He said it is not the type of incentive that allows a facility to experiment with next generation technology. He said looking forward to potential carbon dioxide solutions, there may be the potential for some retrofit technologies to be applied. He said the sales tax exemption may not be the best incentive for carbon dioxide. He said meeting the challenges of Clean Power Plan regulations may require a different package of incentives to address carbon dioxide specific issues. He said he does not know what this type of incentive package would look like at this point but he knows it would require more than just the electrical generating facilities sales tax exemption.

Mr. Bohrer provided written testimony (Appendix T) on behalf of Ms. Stacey Dahl, Manager, External Affairs, Minnkota Power Cooperative Incorporated, illustrating the company's support of continuing the electrical generating facilities sales tax exemption.

Mr. Jay Skabo, Vice President, Electric Supply, Montana-Dakota Utilities Co. (MDU), provided testimony (Appendix U) in support of the electrical generating facilities sales tax exemption. He said savings resulting from the sales tax exemption are passed along to MDU's customers. He said the Public Service Commission sets rates based on the amount of revenue a company can collect. He said taxes are included in the rate base and the sales tax exemption reduces this base. He said if a company has lower revenue, the Public Service Commission can approve lower retail electric rates for the company's consumers. He said MDU has used the sales tax exemption three times in the last 6 years. He said at the Cedar Hills wind farm alone, the exemption resulted in savings of

$1.8 million, which was passed along to consumers. He said the savings realized at the Heskett Station was $1.4 million and the savings realized during the construction of the Thunder Spirit wind farm was roughly $6 million to $7 million. He said compliance with the federal Clean Power Plan will likely require additional generation and the addition of these units will be costly. He said it is important to retain the sales tax exemption as a way to reduce these unknown costs and the impact costs may have on consumers. He said a reduction in the sales tax on a project can create significant upfront savings, which can be the deciding factor on the financial viability of a project and whether a project goes forward. He said if the sales tax exemption is eliminated it will not help projects go forward in this state in the future. He said this is especially true in light of the fact that Montana does not have a sales tax.

In response to a question from Senator Mathern, Mr. Skabo said the benefit derived from the sales tax exemption would accrue to the company's entire customer base, with the exception of those customers in Wyoming as Wyoming is on its own system.

In response to a question from Representative Kretschmar, Mr. Skabo said with the addition of a recently acquired wind farm, MDU produces 20 percent of its electricity from wind, roughly 70 percent from coal, and roughly 10 percent from natural gas.

Mr. Mark Nisbet, North Dakota Principle Manager, Xcel Energy, provided testimony (Appendix V) in support of the electrical generating facilities sales tax exemption. He said the sales tax exemption had a measurable impact on Xcel Energy's choice of two North Dakota projects from its last round of requests for proposals. He said Border Wind Farms in Rolette County is expected to generate $605,000 in local tax revenue, create 10 full-time jobs, and employ 450 individuals during peak construction of the facility. He said the wind farm project recently commenced in Courtenay, North Dakota will generate an estimated $850,000 in local tax revenue, create 10 full-time jobs, and employ roughly 200 individuals during the construction phase. He said ratepayers benefit from lower overall project costs and the state benefits from jobs and long-term property tax revenue. He said landowners also benefit by receiving a steady source of income.

Mr. Loren Laugtug, Director, Legislative and Regulatory Affairs, Otter Tail Power Company, provided testimony (Appendix W) in support of the electrical generating facilities sales tax exemption. He said Otter Tail Power Company is the operator and a co-owner of Coyote Station near Beulah, and has wind assets in Barnes, Steele, and Cavalier Counties. He said a project at Coyote Station recently fell short of the $25 million threshold needed to qualify for the sales tax exemption, but the company feels the sales tax exemption is important for maintaining the competitiveness of Otter Tail Power Company's business customers in regional and world markets. He said the company engages in least-cost resource planning and the tax advantages available in the three states in which the company operates are taken into consideration when making decisions to locate a facility in a particular state.

In response to questions from Representative Klemin, Mr. Laugtug said it was not his intention to imply that the $25 million threshold for the sales tax exemption was too high. He said once a company meets the threshold requirements, all of the qualifying materials are exempt from sales tax.

Ms. Angela Pitale, Regional Director of Business Management, NextEra Energy Resources, LLC, provided testimony (Appendix X) in support of the electrical generating facilities sales tax exemption. She said NextEra Energy Resources, LLC owns and operates 11 wind farms in this state, representing a capital investment of approximately $1.8 billion. She said the company employs roughly 75 FTE positions in this state and annually expends approximately $6 million in payroll, $2.2 million in property taxes, and $5 million in lease payments to local landowners. She said the company is currently looking at investing an additional $700 million in future energy projects in this state. She said the continuous pattern of expiration and renewal of the sales tax exemption creates uncertainty for the industry and impacts investment decisions. She said North Dakota continues to be competitive for additional energy infrastructure investments. She said wind generation projects provide important economic benefits to this state and its citizens including lease payments to land owners, payroll and employee benefits, and local property taxes and construction jobs. She said her testimony includes an article relating to a study conducted by North Dakota State University on the economic benefits of the Langdon Wind Energy Center.

In response to a question from Senator Burckhard, Ms. Pitale said the utilities NextEra Energy Resources, LLC contracts with would have a better idea of where the energy produced in this state is ultimately used.

Ms. Betsy Engelking, Vice President, Geronimo Energy, provided testimony (Appendix Y) in support of the electrical generating facilities sales tax exemption. She said Geronimo Energy is a Minneapolis-based company that develops wind energy primarily in the Midwest. She provided the committee with a chart to help illustrate how the company makes location decisions and how taxes play into that decision. She said a wind project costs essentially the same regardless of where it is built. She said the three main factors taken into account when deciding where to locate a wind farm include the availability of wind resources, the cost of interconnecting the plant to the transmission system, and the tax burden associated with the location. She said the chart provided assumes a 200 megawatt wind farm, all other factors being equal, and illustrates the effect of repealing the electrical generating facilities sales tax exemption. She said repealing this exemption would result in a wind project in North Dakota costing approximately 2.5 percent more than a wind farm in Minnesota. She said the cost of the project in South Dakota would remain higher than the cost in either Minnesota or North Dakota but South Dakota is currently working to make its tax environment more favorable to wind projects. She said if this state misses out on gaining an additional wind project, it would also miss out on additional sales and property tax revenue which totals approximately $21 million over the 25-year life of a wind project. She said the Courtenay wind project is anticipated to provide roughly $1.5 million per year in landowner payments as well as 10 permanent jobs, payments to the local community, and multiple additional jobs during the construction phase.

In response to a question from Senator Mathern, Ms. Engelking said all landowners that fall within a project's footprint receive a payment. She said this is true whether or not the landowner has a turbine located on the landowner's property. She said payments are broken down into a per turbine payment and a per acre payment. She said for the Courtenay project, Geronimo Energy also provides $40,000 per year to the local community.

In response to questions from Senator Bekkedahl, Ms. Engelking said with some of the new technology being developed, the energy that can be obtained from turbines is less dependent on wind speed. She said Geronimo Energy builds in eight different states in the upper Midwest. She said tax costs in all of these states are taken into account when determining where to locate a project. She said when Geronimo Energy begins to look at where it will develop new projects in 2017, any expiring credits will have an impact.

In response to a question from Representative Nathe, Ms. Engelking said there are not many states in which Geronimo operates where credits sunset on a regular basis.

In response to questions from Representative Klemin, Ms. Engelking said Stutsman County has regulations in addition to the state regulations. She said Geronimo Energy always complies with the most stringent set of regulations in a given area. She said land use or zoning regulations can factor into where the company decides to site a facility if those regulations happen to be extremely restrictive. She said this is not a common problem.

In response to a question from Representative Headland, Ms. Engelking said the beauty of a wind tower is in the eye of the beholder. She said landowners related to the Courtenay project have been very receptive. She said the company generally does not locate where it is not wanted. She said many of the landowners the company works with are very interested in the economic gain they can receive from hosting a wind project.

In response to a question from Senator Cook, Ms. Engelking said she is not aware of the exact number of wind turbines in South Dakota. She said South Dakota has expressed interest in acquiring additional wind resources so the state is actively looking at its incentive package.

Mr. Todd Simmons, General Manager, Wind Operations, ALLETE Incorporated, provided testimony (Appendix Z) in support of the electrical generating facilities sales tax exemption. He reviewed ALLETE Incorporated's operations in this state and said the company is seeking further business opportunities related to wind in this state. He said though the sales tax exemption is not the sole reason ALLETE Incorporated may choose to undertake projects in this state, he said it is a contributing factor. He said this state's energy policy has played an important role in supporting technology advancement. He said ALLETE Incorporated supports the continuation of the electrical generating facilities sales tax exemption.

In response to a question from Senator Cook regarding whether ALLETE Incorporated would have invested in this state without the availability of the sales tax exemption, Mr. Simmons said that would be a question for the company's taxation staff. He said he would find the information and provide an answer for the committee.

In response to a question from Senator Mathern, Mr. Simmons said this state's taxation policy in regard to the energy sector is generally viewed as favorable. He said additional information on this topic would need to be provided from the company's taxation staff.

In response to a question from Representative Headland, Mr. Simmons said he has occasionally heard comments about the impact of wind towers on an area's landscape. Mr. Simmons said an individual's opinion on the topic also seems to vary based on whether the individual is a participating landowner.

Representative Mooney said she lives near some wind towers and finds them quite lovely. She said when comparing aesthetic impacts, an individual could always compare the aesthetics of wind towers to the aesthetics of the western part of the state as a result of the oil boom.

Mr. David Straley, Director, Government and Public Affairs, North American Coal Corporation, spoke in support of the electrical generating facilities sales tax exemption. He said North American Coal Corporation is also in support of retaining the sales tax exemption. He said the exemption would continue to be important, especially in light of the potential effects that may arise due to the federal Clean Power Plan.

Mr. Smith spoke in favor of the electrical generating facilities sales tax exemption. He said the North Dakota Association of Rural Electric Cooperatives appreciates the friendly regulatory climate in this state. He said he has heard from utilities that the sales tax exemption makes a difference in the cost to ratepayers both on the investor-owned utilities side and the cooperative side. He said the sales tax exemption helps keep the costs of electricity down.

Mr. Alan Anderson, Commissioner, Department of Commerce, and Chairman, EmPower North Dakota Commission, provided testimony (Appendix AA) in support of the electrical generating facilities sales tax exemption and the biodiesel-related incentives. He noted the jobs and revenue created by electrical generating facilities. He said he would not only urge the committee not to consider the repeal of the electrical generating facilities sales tax exemption but would also urge the committee to consider removing the sunset date tied to the exemption. He said even though the biodiesel and soybean or canola crushing incentives are currently not being used, it may be beneficial to maintain these incentives for instances in which an opportunity arises. He said, as an example, a large soybean processing plant project recently announced plans to locate in South Dakota but had considered North Dakota as a potential site.

In response to a question from Senator Cook, Mr. Anderson said South Dakota has about half of the wind capacity found in this state at just over 800 megawatts.

In response to a question from Representative Schmidt, Mr. Anderson said not every acre in this state is economically feasible for wind production. He said this state ranks first in the nation for wind potential but not for wind production.

In response to a question from Representative Schmidt, Mr. Nisbet said about 20 percent of the state's wind potential is already developed but he does not have the exact acre count relating to this percentage.

In response to a question from Representative Nathe, Mr. Anderson said he is not aware of whether the state has lost any wind projects as a result of the sunset on incentives.

Senator Cook said the committee needs to make sure it does not make any recommendations that may hinder an individual's ability to obtain electricity.

Biodiesel Fuel Credits and Soybean and Canola Crushing Credits

Chairman Dockter invited comments from interested persons regarding the biodiesel fuel blending credit, the biodiesel sales equipment credit, and the biodiesel fuel production facility or soybean or canola crushing facility construction or retrofit credit.

Mr. Scott Rising, Legislative Director, North Dakota Soybean Growers Association, provided testimony (Appendix BB) in support of the biodiesel fuel and soybean and canola crushing credits. He said unfortunately he is unable to illustrate the success of the crushing credits because, for the most part, these credits have not been used. He reviewed the importance of developing additional value-added agricultural processing capability across the state and shared various facts pertaining to soybean production. He said this state recently lost out on a new soybean processing plant. He said the plant is expected to be a $250 million to $300 million facility and ultimately located in Aberdeen, South Dakota. He said opportunities to gain a plant like the one that located to Aberdeen are rare and this state needs to retain incentives that show North Dakota is open for business. He said although other factors impacted the company's decision to place the facility in South Dakota, the situation illustrates how economic development is a proactive business. He said it does not work to be reactive, especially in cases where you may not even be aware that a company is considering this state for possible expansion or location.

Representative Mitskog said the facility that was lost had considered locating in her home community. She said it is important for the state to reflect on its losses. She said she thinks these incentives need to remain on the books.

In response to a question from Representative Headland, Mr. Rising said he is not aware of other local incentives that may have been offered to the facility in Aberdeen. He said other factors played a role in attracting the facility to that location and described those factors.

In response to a question from Representative Lefor, Mr. Rising said he could provide information on the incentives available in other states he works with that are not available in this state.

Certified Nonprofit Development Corporation Investment Tax Credit

Chairman Dockter invited comments from interested persons regarding the certified nonprofit development corporation investment tax credit. No comments were received.

Microbusiness Income Tax Credit

Chairman Dockter invited comments from interested persons regarding the microbusiness income tax credit. No comments were received.

Wage and Salary Credit

Chairman Dockter invited comments from interested persons regarding the wage and salary credit. No comments were received.

COMMITTEE DISCUSSION AND DIRECTIVES

Chairman Dockter said the committee would not be taking any action on the incentives discussed at today's meeting. He said the committee would continue to receive comments from interested parties. He said the Legislative Council staff would be tracking the committee's progress in addressing the eight considerations outlined in statute for the evaluation of incentives and incorporating additional information into each of the incentive background memorandums. He also reviewed the three options regarding the purchase or rental of REMI software and consulting services previously outlined and the procedure for forwarding a recommendation to the Chairman of the Legislative Management regarding these options.

In response to a question from Representative Klemin, Chairman Dockter said the purchase and rental options could technically be classified into four options, as the option did exist to recommend the rental of REMI software without any attached consulting services for a quoted price of $54,700.

It was moved by Senator Cook and seconded by Representative Headland that the Legislative Council staff forward a letter to the Chairman of the Legislative Management requesting approval of an amount up to $114,700 for the 6 month rental of REMI software and the provision of consulting services for the analysis of all 18 economic development tax incentives being reviewed by the committee and to authorize the committee Chairman to negotiate with REMI representatives regarding pricing.

It was moved by Senator Cook and seconded by Representative Headland that the Legislative Council staff forward a letter to the Chairman of the Legislative Management requesting permission for the committee Chairman to appoint a subcommittee to work with REMI representatives if approval and funding are granted for the acquisition of REMI software and consulting services.

Senator Mathern said he would be interested in the makeup of the working group and encouraged having members of various state agencies represented on the working group, along with a member of the majority and minority party.

Chairman Dockter said he would take Senator Mathern's comments into consideration should the motion be approved by the committee and the recommendation for the working group approved by the Chairman of the Legislative Management.

Representative Klemin said he thinks the acquisition of software and consulting services is worthwhile, but is concerned with using more than a third of Legislative Management's available resources to do so, especially at a time when agencies may possibly have to make cut backs in their budgets due to revenue shortfalls.

Chairman Dockter said this is a consideration the Chairman of the Legislative Management will likely take into account should the motion pass.

Senator Unruh said all of the incentives the committee is looking at are tools that can be used to diversify various sectors of the economy. She said evaluating whether these incentives are working is a worthwhile endeavor, especially considering the state's current economic condition. She said if expending funds to acquire software and consulting services would help the committee make an informed evaluation she thinks it would be money well spent.

Senator Cook said it might be beneficial to delay additional discussions regarding the makeup of the working group until after a decision is made on the acquisition of REMI software. He said he anticipates a lot of hands-on work being required in regard to the information the subgroup will need to provide to REMI.

The motion directing the Legislative Council staff to forward a letter to the Chairman of the Legislative Management requesting approval of an amount up to $114,700 for the 6 month rental of REMI software and the provision of consulting services for the analysis of all 18 economic development tax incentives being reviewed by the committee and to authorize the committee Chairman to negotiate with REMI representatives regarding pricing carried on a roll call vote. Representatives Dockter, Dosch, Headland, Klemin, Kretschmar, Lefor, Mitskog, Mooney, Muscha, and Nathe and Senators Bekkedahl, Burckhard, Cook, Dotzenrod, Mathern, and Unruh voted "aye." Representatives Toman and Weisz voted "nay."

The motion directing the Legislative Council staff to forward a letter to the Chairman of the Legislative Management requesting permission for the committee Chairman to appoint a subcommittee to work with REMI representatives if approval and funding are granted for the acquisition of REMI software and consulting services carried on a roll call vote. Representatives Dockter, Dosch, Headland, Klemin, Kretschmar, Lefor, Mitskog, Mooney, Muscha, Nathe and Weisz and Senators Bekkedahl, Burckhard, Cook, Dotzenrod, Mathern, and Unruh voted "aye." Representative Toman voted "nay."

Chairman Dockter said the next meeting would likely be held in the early part of March and will likely be another 2-day meeting. He said there is the potential to have monthly meetings going forward due to the volume of information that must be covered to adequately address the committee's study of incentives and social service funding.

No further business appearing, Chairman Dockter adjourned the meeting at 3:10 p.m.

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Emily L. Thompson
Counsel

ATTACH:28