

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**BUDGET SECTION**

Wednesday, December 18, 2019

Senate Chamber, State Capitol

Bismarck, North Dakota

Senator Terry M. Wanzek, Chairman, called the meeting to order at 10:05 a.m.

**Members present:** Senators Terry M. Wanzek, Brad Bekkedahl, Dick Dever, Robert Erbele, John Grabinger, Joan Heckaman, David Hogue, Ray Holmberg, Jerry Klein, Gary A. Lee, Tim Mathern, Dave Oehlke, Nicole Poolman, Larry J. Robinson, Rich Wardner; Representatives Thomas Beadle, Larry Bellew, Josh Boschee, Mike Brandenburg, Jeff Delzer, Karla Rose Hanson, Michael Howe, Keith Kempenich, Lawrence R. Klemin, Gary Kreidt, Scott Louser, Bob Martinson, Lisa Meier, Corey Mock, David Monson, Mike Nathe, Jon O. Nelson, Chet Pollert, Mark Sanford, Jim Schmidt, Randy A. Schobinger, Don Vigesaa

**Members absent:** Senators Karen K. Krebsbach, Ronald Sorvaag; Representatives Bert Anderson, Tracy Boe, Richard G. Holman, Mike Schatz

**Others present:** Representatives Dick Anderson, Willow City, and Glenn Bosch, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Senator Robinson, seconded by Senator Dever, and carried on a voice vote that the minutes of the September 26, 2019, meeting be approved as distributed.**

**STATE BUDGET INFORMATION****General Fund Status**

Mr. Joe Morrissette, Director, Office of Management and Budget, presented a report ([Appendix B](#)) on the status of the general fund and the balances of selected special funds. He presented the following information on the status of the general fund for the 2019-21 biennium:

Unobligated general fund balance - July 1, 2019		\$65,000,000
Balance obligated for authorized carryover from the 2017-19 biennium		130,404,813
Total beginning general fund balance - July 1, 2019		\$195,404,813
Add		
General fund collections to date	\$1,396,667,204	
Remaining forecasted general fund collections	3,491,046,125	
Total estimated general fund collections		4,887,713,329
Total estimated revenues available		\$5,083,118,142
Less		
Legislative appropriations - One-time	(\$48,639,068)	
Legislative appropriations - Ongoing	(4,794,924,098)	
Authorized carryover from previous biennium	(130,404,813)	
2019-21 authority spent in 2017-19 pursuant to emergency clause	106,000	
Total appropriations		(4,973,861,979)
Estimated ending general fund balance - June 30, 2021 - Before transfers		\$109,256,163
Transfer to budget stabilization fund <sup>1</sup>		0
Estimated ending general fund balance - June 30, 2021		\$109,256,163

<sup>1</sup>Pursuant to North Dakota Century Code Chapter 54-27.2, any end-of-biennium balance in excess of \$65 million must be transferred to the budget stabilization fund, up to a maximum of 15 percent of general fund appropriations. The budget stabilization fund is estimated to be at the maximum balance at the end of the 2019-21 biennium.

In response to a question from Representative Nathe, Mr. Morrisette said biennium-to-date general fund revenues have exceeded the legislative forecast by approximately 5 percent. He said if actual general fund revenues continue to exceed the legislative forecast by 5 percent for the rest of the biennium, the estimated ending general fund balance would be approximately \$285 million. He said the ending fund balance also will be affected by the amount of legacy fund earnings transferred to the general fund at the end of the biennium.

**Balances of Selected Special Funds**

Mr. Morrisette presented the following schedule detailing estimated fund balances of selected special funds as of November 30, 2019:

Budget stabilization fund	\$666,658,558
Legacy fund	\$6,587,176,827
Foundation aid stabilization fund	\$421,779,369
Tax relief fund	\$128,396,485

Mr. Morrisette said the balance of the strategic investment and improvements fund on June 30, 2019, was \$1,134,504,636. He said of this amount, \$395,955,967 is obligated which provides for an unobligated balance of \$738,548,669.

In response to a question from Representative Bellew, Mr. Morrisette said he will provide information to the committee regarding the balance of the common schools trust fund.

**STATE AGENCY APPLICATIONS FOR FEDERAL GRANTS**

Mr. Morrisette presented information ([Appendix C](#)) on state agencies that applied for federal grants estimated to be \$25,000 or more pursuant to Section 54-27-27. He said the following agencies have applied for a federal grant estimated to be \$25,000 or more:

Agency	Time Period of Grant	Amount
Department of Human Services	January 2020 - December 2022	\$20,850,542
Attorney General	January 2020 - December 2022	\$442,908
Attorney General	August 2019 - September 2021	\$376,010

Mr. Morrisette said the Game and Fish Department received a \$40,000 federal grant to study white-nose syndrome in bats and the Attorney General received two federal grants for State Crime Laboratory equipment and software (\$442,908) and implementation and replacement of a Federal Bureau of Investigation incident reporting system (\$376,010).

In response to a question from Representative Mock, Mr. Morrisette said the applications for federal grants have not been reviewed by the Emergency Commission. He said an agency may need to seek Emergency Commission and Budget Section approval if a grant is received and the agency does not have sufficient appropriation authority.

**IRREGULARITIES IN THE FISCAL PRACTICES OF THE STATE**

Pursuant to Section 54-14-03.1, Mr. Morrisette presented information ([Appendix D](#)) on irregularities in the fiscal practices of the state. He presented the following fiscal irregularities for the period September 2019 through November 2019:

Agency	Fiscal Irregularity	Amount
Department of Transportation	Temporary workload adjustment	\$5,000
State Treasurer's office	Temporary workload adjustments for three employees	\$2,250
Commission on Legal Counsel for Indigents	Temporary workload adjustment	\$750
Department of Human Services	Equity adjustment	\$1,365
Parks and Recreation Department	Temporary workload adjustments for three employees	\$4,500
Attorney General	Equity adjustment	\$1,000
Department of Human Services	Equity adjustments for two employees	\$5,922
Department of Human Services	Workload increase	\$700

**AGENCY REQUESTS APPROVED BY THE EMERGENCY COMMISSION**

Chairman Wanzek directed the Budget Section to consider agency requests ([Appendix E](#)) that have been authorized by the Emergency Commission and forwarded to the Budget Section pursuant to Chapter 54-16.

Mr. Morrisette provided information regarding the following requests authorized by the Emergency Commission and which require consideration by the Budget Section:

- **Department of Public Instruction (Request #1946)** - Request is to increase federal funds spending authority by \$17,793,798, including \$16,918,463 in the grants - other grants line item and \$875,335 in the operating expenses line item, to accept and expend funds from the United States Department of Education for a state comprehensive literacy plan aligned with the state's PK-12 strategic vision initiatives.
- **State Department of Health (Request #1947)** - Request is to increase spending authority from special funds available from life safety and construction review fees by \$55,000 in the salaries and wages line item and to add 1 full-time equivalent (FTE) position by converting a temporary part-time position to an FTE position to review construction plans for long-term care facilities and hospitals.
- **State Department of Health (Request #1948)** - Request is to increase special funds spending authority by \$3.54 million in the operating expenses line item to accept and expend funds from the Helmsley Charitable Trust to replace an estimated 1,733 automatic external defibrillators (AEDs) for law enforcement personnel in the state and to provide related AED training.

In response to a question from Representative Kempenich, Ms. Amanda Peterson, Assistant Director, Office of Academic Support, Department of Public Instruction, said most funds for the striving readers grant have been allocated to school districts. She said the comprehensive literacy state development grant differs from the striving readers grant and school districts will be able to receive funds through both grant programs.

**It was moved by Senator Robinson, seconded by Representative Kreidt, and carried on a roll call vote that the Budget Section approve Requests #1946, #1947, and #1948 which were approved by the Emergency Commission.** Senators Wanzek, Bekkedahl, Dever, Erbele, Grabinger, Heckaman, Hogue, Holmberg, Klein, Lee, Mathern, Oehlke, Poolman, Robinson, and Wardner and Representatives Beadle, Bellew, Boschee, Brandenburg, Delzer, Hanson, Howe, Kempenich, Klemin, Kreidt, Louser, Martinson, Meier, Mock, Monson, Nathe, Nelson, Pollert, Sanford, Schmidt, Schobinger, and Vigesaa voted "aye." No negative votes were cast.

### **RECOMMENDATIONS FOR REVOLVING FUND - PREPAYMENT OF PLANNING FEES REQUEST**

Mr. Morrisette presented an Office of Management and Budget (OMB) recommendation regarding a request ([Appendix F](#)) from the revolving fund for prepayment of consulting and planning fees for capital improvements pursuant to Section 54-27-22. He said money in the revolving fund is available for studies, planning, architectural programming, schematic designs, and cost estimates relating to proposed new capital improvements and major remodeling of existing facilities. He said any funds distributed for approved projects will be repaid to the capital improvements preliminary planning revolving fund if the project is approved and funds are appropriated for the project. He said OMB is recommending up to \$80,000 from the revolving fund be used by the Highway Patrol for prepayment of planning fees for the construction of a new public safety training facility with options to locate additional entities in the facility or for the renovation of the existing law enforcement training academy facility. He said House Bill No. 1011 (2019) directs the Highway Patrol to develop alternatives to relocate the housing and classroom portions of the law enforcement training academy.

In response to a question from Representative Klemin, Mr. Morrisette said the 2019 Legislative Assembly transferred \$100,000 from the general fund to the preliminary planning revolving fund. He said there was existing money in the fund and the current fund balance is approximately \$170,000. He said if the Highway Patrol request is approved, sufficient funding would remain in the fund to provide for the preliminary planning of other projects.

In response to a question from Representative Pollert, Representative Vigesaa said during the 2019 legislative session the Government Operations section of the House Appropriations Committee reviewed issues with the law enforcement training academy facility and discussed options to relocate the facility.

In response to a question from Representative Delzer, Mr. Morrisette said the Highway Patrol identified four alternatives for the renovation of the existing facility or the construction of a new facility with options to consolidate offices of the Highway Patrol and Bureau of Criminal Investigation in the new facility. He said the estimated planning costs were not separated for each alternative.

Colonel Brandon J. Solberg, Superintendent, Highway Patrol, said the Highway Patrol has been researching options for a new law enforcement training facility since 2011. He said the 2013 Legislative Assembly authorized funding for the construction of a new emergency vehicle operations course and gun range. However, he said, funding has not been approved for the construction of a new classroom and dormitory facility.

In response to a question from Representative Kempenich, Colonel Solberg said the request would provide funding for preliminary planning for all four alternatives.

Representative Klemin said the directive included in House Bill No. 1011 does not include a review of consolidating other Highway Patrol and Bureau of Criminal Investigation offices into the new facility.

Colonel Solberg said the Highway Patrol previously was reviewing options to consolidate offices and included those options as part of the review of relocating the training facility.

Senator Wardner said now is an opportune time to study various alternatives to identify potential long-term savings. He said it is important to have data on all alternatives to make a decision that will best benefit the state.

In response to a question from Representative Mock, Colonel Solberg said the review of alternatives for relocating the training facility will include a review of potential locations for the facility including the cost to purchase land.

**It was moved by Senator Wardner, seconded by Senator Grabinger, and carried on a roll call vote that the Budget Section approve the Highway Patrol request to use \$80,000 from the revolving fund for prepayment of planning fees related to the construction of a new public safety facility or the renovation of the existing law enforcement training facility.** Senators Wanzek, Bekkedahl, Dever, Erbele, Grabinger, Heckaman, Hogue, Holmberg, Klein, Lee, Mathern, Oehlke, Poolman, Robinson, and Wardner and Representatives Beadle, Boschee, Brandenburg, Hanson, Howe, Louser, Martinson, Meier, Mock, Monson, Nathe, Nelson, Sanford, Schobinger, and Vigesaa voted "aye." Representatives Bellew, Delzer, Kempenich, Klemin, Kreidt, Pollert, and Schmidt voted "nay."

## LEGACY AND BUDGET STABILIZATION FUND ADVISORY BOARD REPORT

Representative Kempenich, Chairman, Legacy and Budget Stabilization Fund Advisory Board, presented a memorandum entitled [Legacy and Budget Stabilization Fund Advisory Board - Status Report to the Budget Section December 18, 2019](#) regarding the investment of funds in the legacy fund and budget stabilization fund pursuant to Section 21-10-11. He said the market value of the budget stabilization fund as of September 30, 2019, was \$669 million. He said the asset allocation of the budget stabilization fund is 98.8 percent short-term fixed income and 1.2 percent cash and cash equivalents. He said the 1-year net return of the fund was approximately 5 percent as of September 30, 2019.

Representative Kempenich said the market value of the legacy fund as of September 30, 2019, was \$6.36 billion. He said the legacy fund's 1-year net return as of September 30, 2019, was 3.79 percent compared to a target return of 4.88 percent. He said the 5-year net return as of September 30, 2019, was 6.32 percent compared to a target return of 5.68 percent.

In response to a question from Representative Nathe, Representative Kempenich said the low net return amount earned by the budget stabilization fund primarily is due to the investment of the fund in short-term investments. He said most states with a rainy day fund invest the fund in short-term investments.

In response to a question from Senator Heckaman, Representative Kempenich said the prudent investor rule requires the budget stabilization fund to be invested in short-term investments because the money in the fund may be needed to address a budget shortfall. He said most investments are committed for 6 months or less.

In response to a question from Chairman Wanzek, Representative Kempenich said the volatility of legacy fund earnings makes it difficult to budget for the transfer of legacy fund earnings to the general fund. He said the Legacy and Budget Stabilization Fund Advisory Board is reviewing options to provide for legacy fund transfers to the general fund to be based on a percent of the fund's market value.

## COMPARISON OF ONGOING GENERAL FUND REVENUES AND APPROPRIATIONS

The Legislative Budget Analyst and Auditor presented information ([Appendix G](#)) regarding ongoing general fund revenues and appropriations in the state budget. He said the oil boom and bust cycle during the 1980s created budgetary challenges that lasted until the mid 1990s. He said the Legislative Assembly responded to the budget challenges by implementing the following changes:

- Created a permanent oil tax trust fund to reduce the general fund's direct reliance on oil and gas tax revenues;
- Established a budget stabilization fund; and
- Provided separate constitutional allocations of oil and gas tax revenue for K-12 education funding.

The Legislative Budget Analyst and Auditor said state revenues increased significantly during the oil boom that began in 2008. He said the increase in oil and gas development activity also prompted increased state spending for property tax relief programs, infrastructure development, public safety, and human service programs. He said the Legislative Assembly changed the oil and gas tax revenue allocation formulas to allocate revenue to various state funds as a way to set aside money until the next biennium. He said the decline in oil prices during the 2015-17 biennium resulted in a 50 percent decrease in oil and gas tax revenues and nearly a 30 percent decrease in general fund revenues. He said the policy of setting aside oil and gas tax revenues for the next biennium helped to lessen the impact of the budgetary challenges.

The Legislative Budget Analyst and Auditor said ongoing general fund revenues have been less than ongoing general fund spending since the 2015-17 biennium. He said, approximately 8 percent, or \$400 million, of the general fund budget is related to oil and gas tax revenues received during the biennium. He said the ongoing budget also includes \$947 million of indirect oil and gas tax revenue as transfers from other funds. Of the \$5,071 million ongoing budget, he said, \$1,347 million, or 27 percent, is related to oil and gas tax revenues. He said ongoing general fund appropriations exceed ongoing general fund revenues by \$840 million for the 2019-21 biennium after excluding the estimated transfer of \$100 million of legacy fund earnings. He said options to address the gap between ongoing revenues and ongoing appropriations include additional general fund revenue growth, general fund tax increases, general fund spending reductions, using additional oil and gas tax revenues, and using additional legacy fund earnings.

In response to a question from Representative Bellew, Representative Delzer said a portion of the \$455 million transfer of legacy fund earnings to the general fund at the end of the 2017-19 biennium increased the balance of the budget stabilization fund.

In response to a question from Representative Bellew, the Legislative Budget Analyst and Auditor said funding from the common schools trust fund and foundation aid stabilization fund are used to reduce general fund appropriations for state school aid.

In response to a question from Senator Bekkedahl, the Legislative Budget Analyst and Auditor said he will provide information regarding how much of the state budget is attributable to oil.

In response to a question from Representative Nathe, the Legislative Budget Analyst and Auditor said the information presented includes a 4 percent annual increase in projected future general fund revenues.

Representative Pollert said he asked the Legislative Budget Analyst and Auditor to compile the revenue information so legislators can better understand the budget position of the state. He said a future meeting of the Legacy Fund Earnings Committee will include a review of increases in funding provided to political subdivisions.

### **NATIONAL GUARD SERVICE MEMBER, VETERAN, FAMILY, AND SURVIVOR SUPPORT PROGRAM**

Brigadier General Jackie Huber, Adjutant General's office, presented an update ([Appendix H](#)) on the National Guard service member, veteran, family, and survivor support program. She said the program was created by the 2019 Legislative Assembly to allow the National Guard to more efficiently provide programs to service members, veterans, families, and survivors. She said no funds have been received to date for the program.

Brigadier General Huber said the North Dakota National Guard Foundation provides funds for programs to provide assistance to service members, veterans, and their families. She said the foundation has provided an average of approximately \$32,000 each year for the programs.

### **STATUS OF AGENCY CONTINUING APPROPRIATIONS Attorney General's Office**

Mr. Troy Seibel, Chief Deputy Attorney General, Attorney General's office, introduced Ms. Becky Keller, Director of Finance, Attorney General's office, who presented information ([Appendix I](#)) regarding the continuing appropriations authorized for the office. Ms. Keller reviewed the revenues, expenses, and justification for the following continuing appropriations:

- Assets forfeiture fund
- Attorney General refund fund
- Lottery operating fund
- Twenty-four seven sobriety program fund

- Special operations team reimbursement fund
- Multijurisdictional drug task force grant fund

In response to a question from Senator Bekkadahl, Ms. Keller said most expenditures from the Attorney General refund fund are for costs of operating the Consumer Protection Division.

In response to a question from Senator Heckaman, Ms. Keller said she will provide information to the committee regarding the estimated costs for the Attorney General's office to regulate electronic pull tab machines.

### **Tax Department**

Ms. Glenda Anderson, Chief Fiscal Officer, Tax Department, presented information ([Appendix J](#)) regarding the continuing appropriation authorized for the multistate tax audit fund. She said the department participates in the Multistate Tax Commission audit and nexus programs which conduct audits on behalf of the state. She said collections as a result of the audits are deposited in the multistate tax audit fund and money in the fund is used to pay the Multistate Tax Commission audit and nexus program fees. She said excess revenues in the fund are transferred to the general fund at the end of each fiscal year and transfers of \$1.42 million were made to the general fund during the 2017-19 biennium.

### **UPDATE ON DRIVER'S LICENSE SITES**

Ms. Robin Rehborg, Deputy Director for Driver Safety, Department of Transportation, presented information ([Appendix K](#)) regarding driver's license wait times and other customer service issues. She said recent demand for REAL ID driver's licenses and identification cards has increased demand for services at driver's license sites. She said the department is working to address wait times by increasing the number of staff at certain sites, increasing the number of Saturdays certain sites are open for individuals to obtain a REAL ID, temporarily relocating the Fargo site, increasing opportunities for individuals to take road tests at private businesses, modernizing operations, and reviewing options to construct new sites in Minot and Williston.

In response to a question from Senator Grabinger, Ms. Rehborg said the Department of Transportation is reviewing options to increase services in rural areas. She said one option being reviewed is the use of a permanent mobile team to provide services in rural communities.

In response to a question from Representative Mock, Ms. Rehborg said individuals will continue to have the option to obtain a regular driver's license or a REAL ID. She said beginning in October 2020 individuals will need a REAL ID to board a plane.

Representative Brandenburg expressed concern regarding customer service issues at driver's license sites. He said some individuals have traveled over 100 miles to take a road test and were denied the opportunity to take the test.

Representative Nelson expressed concern regarding the closing of driver's license sites in rural areas of the state.

In response to a question from Representative Nelson, Ms. Rehborg said the demand for REAL ID licenses should decrease after October 2020. She said the department is reviewing business processes to determine the appropriate staffing needs for driver's license sites.

In response to a question from Representative Beadle, Mr. Brad Schaffer, Driver's License Division Director, Department of Transportation, said the amount charged to obtain a REAL ID is the same as a regular driver's license. He said the processing time for an individual obtaining a REAL ID is approximately 3 to 4 minutes longer than a regular driver's license. He said the department has been proactive in notifying individuals about obtaining a REAL ID.

### **DEPARTMENT OF CORRECTIONS AND REHABILITATION - PRISON POPULATION PLAN**

Mr. Steven Hall, Director of Transitional Planning Services, Department of Corrections and Rehabilitation, presented information ([Appendix L](#)) regarding the prison population plan and the prioritization of inmates. He said the maximum operational capacity for men is 1,624 and for women is 224. He said the female population exceeded the maximum capacity from June 2019 through September 2019 and a prioritization plan was utilized. He said the prioritization plan is not being used but inmate populations are nearing maximum capacities.

Ms. Donnell Preskey, Government/Public Relations Specialist, North Dakota Association of Counties, provided comments ([Appendix M](#)) regarding the prioritization of inmates. She said when a prioritization plan is used, the counties are responsible to house certain inmates sentenced to the Department of Corrections and Rehabilitation. She said from June 2019 through September 2019 there were 79 female inmates in 18 counties that spent a total of 870 days in county facilities due to the prioritization plan. She said the cost to the counties for these inmates totaled \$65,250.

In response to a question from Senator Mathern, Ms. Preskey said inmates at county correctional facilities are not eligible to receive Medicaid benefits.

## **ANNUAL FULL-TIME EQUIVALENT POSITION REPORT**

### **North Dakota State University Extension Service**

The Legislative Council staff distributed a report from the North Dakota State University (NDSU) Extension Service ([Appendix N](#)) regarding FTE position adjustments made pursuant to Section 11-38-12. The report states the agency reduced 2.90 FTE positions between December 1, 2018, and November 30, 2019, resulting in a total of 240.75 FTE positions as of November 30, 2019.

### **Northern Crops Institute**

The Legislative Council staff distributed a report from the Northern Crops Institute ([Appendix O](#)) regarding FTE position adjustments made pursuant to Section 8 of House Bill No. 1020 (2019). The report states the agency added 2 FTE positions between December 1, 2018, and November 30, 2019, resulting in a total of 14.80 FTE positions as of November 30, 2019.

### **Upper Great Plains Transportation Institute**

The Legislative Council staff distributed a report from the Upper Great Plains Transportation Institute ([Appendix P](#)) regarding FTE position adjustments made pursuant to Section 8 of House Bill No. 1020 (2019). The report states the agency did not adjust any positions between December 1, 2018, and November 30, 2019, resulting in a total of 43.88 FTE positions as of November 30, 2019.

### **North Dakota State University Main Research Center**

The Legislative Council staff distributed a report from the NDSU Main Research Center ([Appendix Q](#)) regarding FTE position adjustments made pursuant to Section 15-12.1-05. The report provided states the agency added 2.45 FTE positions between December 1, 2018, and November 30, 2019, resulting in a total of 241.25 FTE positions as of November 30, 2019.

### **Branch Research Centers and Agronomy Seed Farm**

The Legislative Council staff distributed a report from the branch research centers and the Agronomy Seed Farm ([Appendix R](#)) regarding FTE position adjustments made pursuant to Section 8 of House Bill No. 1020 (2019). The branch research centers reported no changes in FTE positions were made between December 1, 2018, and November 30, 2019, maintaining a total of 109.50 FTE positions as of November 30, 2019. The Agronomy Seed Farm reported no changes in FTE positions were made between December 1, 2018, and November 30, 2019, maintaining a total of 3 FTE positions as of November 30, 2019.

## **HUB CITY ALLOCATION USE OF OIL AND GAS GROSS PRODUCTION TAX FUNDING**

The Legislative Council staff distributed written reports ([Appendix S](#)) from the hub cities of Williston, Dickinson, and Minot regarding the use of funding received during fiscal year 2019 from hub city allocations from the oil and gas gross production tax under Section 57-51-15.

## **COMMITTEE DISCUSSION AND STAFF DIRECTIVES**

Representative Delzer said a representative from the State of Alaska presented information to the Legacy Fund Earnings Committee regarding the Alaska Permanent Fund. He encouraged committee members to review the presentation.

No further business appearing, Chairman Wanzek adjourned the meeting at 12:35 p.m.

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Brady A. Larson  
Assistant Legislative Budget Analyst and Auditor

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:19