Child Support Enforcement Business Relations Task Force
February 9, 2010
10:00 a.m. – 2:50 p.m.

Task Force Members in Attendance: Paula Bachmeier, Bill Devlin, Jim Fleming, Harlan Fuglesten, Jim Goetz, Dale Haake, Jeb Oehlke, Mike Rud, Mike Schwindt, Representative Robin Weisz

Task Force Member Absent: Senator Judy Lee

Staff: Barbara Reierson, Brianne Skachenko

Visitors: Bob Graveline, Jack McDonald, Steve Spilde, Pat Ward

Fleming said that Schwindt would be late for the meeting because he was on Joel Heitkamp's radio show regarding the Fargo class action suit. Later in the meeting Schwindt reported that the radio show included questions from listeners.

Fleming said one change was made to the agenda. Item number 3 was added: Format of Final Report. No other changes or additions were made to the agenda.

1. Approval of Minutes

The minutes of the December 1, 2009, meeting were approved. Fleming said that Task Force documents will not be out on the Web site for another week or so. The staff person who does this is working on another project.

Fleming distributed the bill drafts he created as a result of discussions during the December 1, 2009, meeting. For discussion purposes he drafted seven separate bills.

2. Review of Action Steps and Assignments from Prior Meeting – **Tab 15**

Public Utilities

Fleming said the ND Child Support Enforcement program (CSE) is matching with public utilities. When matching, CSE could send the obligor list to, for example, MDU or MDU could send its customer list to CSE. The match with the electric cooperatives is being done behind the scenes by the billing vendor so neither the cooperative nor CSE sees the other party's data.

Fleming talked about the class action suit in Fargo. News reports were that 14,000 people submitted claims associated with traffic fines. CSE said it was interested in doing a data match with this claimant file. The federal court first said it wouldn't allow the city of Fargo to honor CSE's subpoena until all the details had been worked out. CSE worked out the details with the city and the federal court authorized the match. The court's order said it exercised its discretion to release the information to CSE. The match identified 118 obligors who owed $1.3 million in arrears. Over $14,000 was subject to a lien. This was a favorable decision for CSE. Representative Weisz asked if the match helped find

addresses for obligors. Fleming said the people that collected the information from claimants didn't always add the social security numbers (SSNs) to the electronic database and they would charge to add the SSNs after the fact. CSE was able to do some matching for addresses but not all individuals had dates of birth or SSNs. This was a two-part project and liens were prioritized so the city could pay out claims. Locate took a backseat in time.

Fleming said that CSE is looking at matching with electric cooperatives that don't use the common billing software used by most of the electric cooperatives. CSE has matched with one of these companies and will continue to match with it. City water departments were discussed during the last meeting and they will be looked into.

Fuglesten said the electric cooperatives have a good relationship with CSE. They feel comfortable with the match as it has been developed.

Lien Registry

Fleming said that the lien registry would mean that liens would be done centrally, rather than county by county, and that judgments would not have to be docketed monthly to keep them updated. The Wisconsin lien registry was used as a model. The lien registry would be Web based. Specific information is entered to query the lien registry and results can be printed. This would show whether or not an obligor has an obligation. The inquirer would then know if the property was free and clear of a child support lien. Wisconsin uses its lien registry for titled personal property and real property. Fleming reviewed the handout that included follow-up questions he had directed to Wisconsin CSE following the last meeting:

Question 1): The arrears are in aggregate for the threshold. There is only one docket at a time. When an inquiry is done you get one figure back per person, not one figure per court case. The lien registry is streamlined and user friendly.

Representative Weisz asked if the lien registry encompasses all liens. Fleming said no; it is limited to child support liens only.

Question 2): Priority is first in time, first in right. Lien subordination comes into play when, for example, an obligor wants to refinance. For example, an obligor gets a mortgage, arrears accrue, and later the obligor wants to refinance. CSE doesn't do many subrogation agreements.

Goetz asked if an obligor is on the lien registry only if the obligor owes arrears. Fleming said that is correct; an obligor is only on the lien registry if arrears are owed. Arrears information is updated nightly. If an obligor made a payment to State Disbursement Unit (SDU) and paid off the arrears, the next day the lien registry would show no arrears and that the property is free and clear. The lien registry is a way for a lender to check to see if an obligor made right with the SDU. The lender could get a printout that would show this.

Goetz asked what happens if the lender closes on a loan on a property in another county and by the time the mail reaches the other county CSE has put a lien on the property. Is the lender now in second place? Fleming asked when a mortgage is effective. Bachmeier

said when it is filed. In Goetz's scenario the lender would be in second place. McDonald said that is why it is important to get documents filed. Bachmeier said this is a problem if the property is in a remote county. Goetz said lenders won't want to do loans to obligors. If the lien registry applies to personal property, lenders may not want to make loans because of this potential problem. Bachmeier said manufactured homes are a nightmare because it can take 30 days to process. Goetz said the lien registry concept needs restructuring or it will stop commerce. Fleming said the intent is not to impair commerce. The draft bill adds protections for motor vehicles. Goetz said a lender may have to wait a month for a title to come in. At times a lender trusts the person enough to not get the title until closing. When working with the Motor Vehicle Department it can take three weeks to get a title. The lender has an interest in the property but it is not perfected until the lien. The CSE lien would beat the lender's lien then. Oehlke asked if there are the same issues with other liens. Goetz said there is to an extent. He asked if anyone else gets in front if the lien is not perfected. Bachmeier said there is the same issue with tax liens. Tax liens are only downloaded at night. However, the Tax Department doesn't affect personal property. Her company does searches in the other county. Her company sends them to a title company for a prerecording search. The only personal property they deal with is mobile homes.

Question 3): Bachmeier said they have to ensure they are first in line. The changing of arrears isn't an issue. Goetz questioned that. Representative Weisz asked what happens if the property is not secured by title (e.g., grain). The lender makes a loan based on the grain but now is in second position and a large amount of arrears have since accrued. This is the downside if the arrears keep growing and the lender is in second position. Fleming said the bill draft applies only to titled personal property and real property so grain wouldn't be included. Grain isn't titled personal property or real property. Goetz's earlier car example would be involved. Goetz said the bill draft talks about untitled property. He said he thought you file in the county where the person lives, not where property is. McDonald said you file where the personal property is located (e.g., where the tractor is). Fleming said this is true now for statutory liens. CSE files with the Secretary of State or the recorder. CSE doesn't file in the county.

Bill #1 February 9, 2010

Fleming discussed the lien registry bill draft (Bill #1 February 9, 2010). Sections 1 and 2 are in current law and would need to be amended, repealed, or changed. Section 3 includes some changes but more conforming changes would be needed. Section 4 is the lien registry. A Web look up is needed to make this work. During the last meeting the Wisconsin Web site was visited. The Wisconsin Web site is secure. CSE would look at having user IDs to access the site so users could be tracked if needed (e.g., to determine if the site was used inappropriately). Goetz asked if a friend or family member could go online and search. Fleming said they could but later if there was a complaint about inappropriate use the user could be tracked. Goetz asked how you know who is accessing the site if the user is at an internet café. Fleming said a user would need to sign up for a log on and unique password.

Bachmeier asked if there would be a fee to access the site. Fleming said CSE has no authority to charge a fee at this time. Bachmeier said they pay for all other searches now.

Representative Weisz said anyone can walk into a court house now and see this information. Why is this different? Fleming said it doesn't have to be but CSE is used to protecting data as much as it can. Now a person has to travel and go to see the information. With an online registry anyone can look online from anywhere in the world. It is just so much easier to get information online. In the past a legislator's arrears made the news and concerns were raised about why this was made public. The lien registry has regular ongoing updates to arrears. McDonald said more and more information is electronic. Now if you are willing to pay a fee you can access any of this information. The same arguments are now being made about court information. You can see bankruptcy records online if you pay for them. Bankruptcy court information includes debts, creditors, and tax information. For the lien registry to work the information must be as available as possible. Fleming said it would be made available to anyone who needs it. They would just need IDs and passwords. Goetz asked if you could go in and inquire if, for example, you are thinking about giving your brother a loan but you haven't talked with him yet about it. You are considering the loan but want to see if he owes child support.

Representative Weisz asked when a lien is issued. Fleming said lien criteria is two months arrears or $2,000, whichever is less. The obligor receives a copy of the notice of lien. An obligor can contest the lien.

Fleming said public shaming is a way to get payments. In North Dakota there is statue regarding most wanted posters. The criteria are: $10,000 in arrears (which is much higher than other states), must give the obligor notice, and must give the family notice in case they want to opt out.

McDonald said these are judgment debts. They are like credit card debt and you can see those debts. Goetz said it's all out there now. Representative Weisz said all you are adding is there is a child support lien for this amount so why should people be able to see less with a child support lien than with other judgment liens?

McDonald suggested getting feedback from peace officers who carry out executions. They deal with exemptions all the time when executing on judgments. They may also be interested in seeing this draft. Bachmeier asked if CSE can do executions. Fleming said CSE does do executions now.

Fleming asked if public access language should be added to the bill. Then commerce isn't impaired. Representative Weisz said this is what it is. Fleming said there is the possibility that investigations of public officials will include lien registry searches. Goetz said things like bankruptcy are investigated now. Devlin said property and back taxes are also investigated now.

Oehlke asked if there are any additional considerations if the obligor is a minor. Fleming said the court files look the same. The minor's name is in the caption. Oehlke asked if there are issues with providing this information on minors. Fleming said minors have no additional protections, that age isn't an issue.

Fuglesten asked if the Wisconsin Web site has user IDs. Fleming thought it did but he will check. He thought the Wisconsin site didn't set qualifiers for users but that they had user IDs that left footprints.

Fleming said in North Dakota CSE has stayed away from public shaming. Fuglesten asked if there are concerns about backlash. Is there a need to find a balance between wholesale access and some measures to see that the information is used appropriately? Goetz said a lot of people (e.g., employers, bankers) already know if someone is not paying child support. Representative Weisz said someone could sign up as someone else and in the before example make it look like the opposition was digging up the information on a political official. How does CSE know a person is who they say they are? Fleming said CSE wouldn't get the IDs of people. Representative Weisz said if you plan to use footprints of evidence of inappropriate access you have to know who the person is. It must be left open or have extremely specific access rules.

Fuglesten asked if names will start popping up on Google searches if they are on the lien registry. Goetz though they probably would. Representative Weisz said with bankruptcy information names pop up now on Google. Fuglesten thought that if it required password access it probably wouldn't show up on Google. Fleming said the lien registry is a portal, not a Web page. Currently CSE can list obligors on the Web who have been convicted of nonpayment. Some people have done searches and then reported to CSE where the obligor is.

Fleming said If the group's recommendation is have access totally open there may be concerns from the front office or the Governor's office. If the recommendation is that the lien registry be a public site the bill draft should say this. Devlin thinks that with open records it is harder to restrict public information. The people most likely to complain about access are obligors. Bachmeier said a solution for obligors is to pay their child support.

Fleming said Section 4, the arrears registry, is now in law. Haake asked if the arrears registry automatically triggers a lien or if action has to be taken to create a lien. Fleming said a lien is not automatically created. A process has to be gone through. Not every obligor on the arrears registry is pursued. As an example, a disputed paternity action could last months and later the individual is found to be father. A large amount of arrears may have accrued by then but the obligor says he will now support the child. CSE may chose not to create a lien because of the arrears that go back in time.

Haake said this means there is a difference between arrears and a lien. This raises the question of who should be on the lien registry – anyone with arrears or only obligors with liens. Fleming said he had initially envisioned anyone with arrears but he sees what Haake is saying. Haake said he didn't see a problem with an open record if a lien has been perfected but he does have concerns about showing information about someone in arrears and CSE hasn't done a lien. A filter is needed.

Representative Weisz asked if the arrears registry and lien registry would be two registries. Fleming said as the bill was drafted the arrears and lien registries are the same. They, however, really are two different things. Now CSE can docket any judgment if it is not paid. McDonald said this is creating one more record for people to check. People might

want to check the arrears registry now. This would mean people would need to check two registries.

Goetz asked if you buy something from a neighbor (e.g., a hunting bow or a car), how do you know it's free and clear? Fleming said the bill draft addresses liens on titled property. There is no titling of hunting bows. There is wisdom in having information publically available. The information needs to be available.

Representative Weisz suggested that only liens that have been filed be on the lien registry. This isn't the same as the arrears registry. Fleming said CSE now has to file a notice of lien. In Wisconsin it is an automatic lien. Ward suggested changing the first sentence to 'any obligor against whom a lien has been perfected is on the lien registry.' This would mean that instead of a statutory lien CSE would still have to file a lien.

Fuglesten asked what happens if a lien is filed and arrears change. Haake thought all liens are filed on the court site. Fleming said not all are. For example, automobile liens are filed with the Department of Transportation. Ward asked if the central indexing system is a centralization option.

Fleming asked the group if the lien registry should create a lien or simply be a Web site to list liens. Haake said it should be a list of liens. When CSE feels justified in doing a lien, it becomes a public record. Fuglesten asked if it is a one-time filing. Fleming said if a lien is done, arrears go to $0, and later arrears again accrue, a second lien would be done. This is similar to what is done now with account liens. Ward said this is the same as mortgages or anything else.

Fleming said if this is to work for real property, changes are needed. Otherwise, CSE will still need to get a judgment lien and docket it every month in the individual county. The next bill draft will have to deal with this real property issue. CSE would like the lien registry to apply to real property anywhere (i.e., instead of having to file by county) and to not require monthly docketing of arrears. McDonald suggested that real property work like mortgages. Fleming would like it to be statewide without docketing. Bachmeier said CSE shouldn't have to re-file when balances and interest accrue.

Schwindt said Fleming will do a bill draft for next meeting that reflects that the arrears registry is not the same as the lien registry. They are close but are not the same.

Oehlke asked if people could look at the arrears registry to see what support is owed. Fleming said the arrears registry is not a document. The CSE automated computer system just tabulates it and then generates alerts to the case worker to look at enforcement measures. Schwindt said the arrears registry is not available to others.

Goetz said if there are liens on property you have to let people know. If there is a lien it has to be public information. McDonald said with suppliers' liens you may have to wait 60 days so you have an unnoticed lien. Unnoticed liens are a huge problem for banks. Ward said you need to keep everyone on a level playing field.

Fleming asked what happens if it takes time to get a title and you are left unsecured. You did due diligence but how do you deal with this? He will ask Wisconsin CSE if they have dealt with or addressed this issue. Goetz said you only take precedence on transactions not closed. Schwindt said he thought New Jersey was set up so that if you got the certification back you could move forward and still be in first place.

Fleming said all obligors can get their balances 24/7. Bachmeier said getting a certificate is something different. Fleming said screen prints are accepted in Wisconsin. Bachmeier said in North Dakota the courts have said screen print aren't enough. There is a $50,000 case in Burleigh County right now. Oehlke suggested the bill draft include that a screen print is evidence of the date.

Fleming will contact Wisconsin regarding the group's questions (e.g., how they handle the purchase/financing process where time has lapsed). Bachmeier asked if homestead property is exempt. Fleming said it is.

Fleming will do a bill draft that says the lien registry will include only obligors who have a lien. He will also include a confidentiality provision that says the information is available to the public.

Fleming said CSE is using the lien law more often and there are enforceability problems now. If you disregard a lien, what is your liability? If you violate a lien, is it on you? What are the duties and liabilities if you disregard a lien? CSE can use a demand to foreclose on a lien.

Fleming said the bill draft has a delayed effective date so people can get used to using the lien registry and can use the Web site to practice.

Fleming said the last 4 sections of the bill draft are existing law.

Fleming asked if the lien registry should be on the agenda for the next meeting. He asked if asked if there was a reason not to keep it on agenda. There was no response so Fleming will do a new bill draft for the next meeting.

Representative Weisz asked for some clarification about titled personal property vs. personal property language in the bill draft. Fleming said line 8 is only titled personal property.

Fleming said attaching mineral interests would be a good collection tool for CSE.

Insurance Community

Fleming said that both the federal Office of Child Support Enforcement and the Child Support Lien Network conduct insurance matches.

Bill #2 February 9, 2010

Fleming said the bill draft (Bill #2 February 9, 2010) is from the last legislative session. This was drafted after the match was changed from a mandate to voluntary. The amendment language is underlined. The amendment language is what the bill would look like if the match was mandatory.

Ward said the draft looks like versions from the last session and asked if there was anything new in this version. Fleming said there was not. This was the last proposed amendment. Earlier in the legislative session lots of good questions raised and this bill draft was an attempt to account for those questions. Ward said there were six issues.

Haake recommended the match stay as voluntary participation and that we try to make the match as workable and painless for carriers as we possibly can. He addressed areas of concern. One is the cost to insurance carriers which is an indirect tax to all policy holders. If ISO is used as a claims search route it costs $6,400 a year minimum. When you add personnel costs it goes much higher.

A second concern is that while information from the policy holder is quite readily available, insurance companies don't generally use SSNs. SSNs were used more in the past. Third party claims are the largest number of claims and third party information is lacking, especially SSNs. Trying to get SSNs can have adverse outcomes for insurance companies. If you ask a third party claimant for an SSN to match with CSE, as you are required by law to do, he/she will get alarmed. People have security and privacy concerns. Asking for SSNs would drive a great many claimants to attorneys. Insurance companies try to work directly with people to resolve things. That is becoming more and more difficult now. When you start probing you raise suspicion and then more claims are handled by attorneys. When that happens there are delays in settlement and increases in costs and claims. The average settlement then goes up. There are efforts to build claims and pay attorney fees. These costs are passed on to policy holders. When truly a lien is discovered, it really gets more expensive. There is a stronger potential for a settlement to be higher to cover the lien. There are increased defense costs for insurance companies. The choice for the insurance company is to stand its ground or go to a jury verdict. Jury verdicts are unpredictable and expensive. It is not uncommon for soft tissue simple accident to cost $30,000 to defend or compromise. This is a higher cost. Most important, this is an area where you intrude on an innocent party's turf. The insured who had accident isn't the obligor but when there is a lien there is a strong risk the obligor will dig in his/her heels regarding the settlement. The insured is exposed during the settlement period. The insured has suits pending and the chance of an excess verdict. Jury verdicts are highly unpredictable. That is why Haake is concerned about mandatory participation. He questions the constitutionality of this for the party who is exposed during the settlement period.

Haake talked about uninsured and underinsured people. A person should be compensated for a loss but not made better. The third party didn't pay for the insurance. Fleming said this is the same as wages. CSE does income withholding against wages. Ward said wages are different because they are a fixed amount based on services rendered. Insurance is for intangible amounts. He does a lot of mediations. He tries to settle close to value. What can happen is, for example, there is a $25,000 claim. Whenever there is a lien, it complicates the settlement. This happened to Haake's

company. The obligor owes $5,000 child support so now the obligor wants the $25,000 plus $5,000 to pay the arrears. A lot of people have minimum coverage and since the settlement blew up, the innocent party is now exposed because they have a settlement bigger than their insurance coverage. This won't happen all the time but it will happen. This will affect the routine settlement of insurance claims.

Representative Weisz asked if people are subject to other liens now. Haake said workers compensation and hospital but those liens derive from damages out of the accident. Representative Weisz asked if there were any other statutory liens now. Haake said no. Representative Weisz asked about mechanics lien. Haake said no. Bachmeier said paying debts still comes into this. For example, if a person has a big Visa bill he/she will have that in mind as they look at settlement. Ward agreed people may be thinking about other debts.

Haake said injuries don't fit in clean columns like workers compensation where specific injuries are worth specific dollar amounts. Typically, insurance companies wind up negotiating and both sides give. This means insurance companies pay more money.

Fuglesten asked if requiring the SSN is the big problem with making the match mandatory. Haake said that is a separate issue below the surface. His insurance company is a voluntary participant now and they did have trouble with a claim. At this point they have to record the SSN for a data match.

Ward said courts moved away from using SSNs. He has concerns if the match is mandatory (Section 6) and you make insurance companies directly liable. This would mean insurance companies would have to pay out the money a second time.

Fleming said that North Dakota isn't the first state to propose requiring SSNs or mandating the match. Many states have. Some of the biggest insurance companies want a mandatory requirement for their protection. Haake has legitimate concerns but other states haven't had issues with premiums going up. If a person wants the money from the settlement they need to cough up the data. The claimant who refuses to provide the information is walking away from their cause of action. Ward doubted that argument would hold up in court. Representative Weisz suggested the law require that all claims require an SSN.

Fleming said when the bill was under discussion during the last legislative session he talked with ISO and ISO said the SSN was not a deal breaking concern. Haake said he also talked to ISO. ISO doesn't have an issue but they aren't the claims representative at somebody's house and they don't care what it costs for a settlement. He doesn't think ISO has any data on increased costs associated with this. Fleming said big ticket injuries will involve attorneys anyway. Haake said there will be issues while you are sitting at a table with a non-obligor claimant. When people feel uncomfortable, they get attorneys. His company voluntarily participates and plans to continue to voluntarily participate. The match should not be mandatory.

Goetz asked how North Dakota's car premiums rank. Haake said North Dakota is in the bottom three or so nationwide. Haake said other states have mandatory matching

legislation. Voluntary participation should be encouraged and made more appealing to voluntary users. Regarding Section 6, there shouldn't be a fine if the program is voluntary.

Haake said if the claimant is not the obligor, having to get the SSN makes an insurance company less willing to participate in the match. Representative Weisz again asked what if all claimants were required to provide SSNs. Haake said that as a practical matter it would still result in increased litigation (e.g., to ask if the law really required them to provide an SSN). Once a person goes to an attorney it is easy for the attorney to end up representing the person. Fuglesten said it sounds like non-obligors lose trust when asked for personal information.

Oehlke asked about requiring a drivers license number. Haake said that would probably be more palatable. Fuglesten suggested asking for a drivers license number when the insurance company is ready to issue the check. Haake said this would be less intrusive.

Bachmeier asked if insurance companies don't ask for any ID now before paying out money. Haake said the company knows who it is dealing with so no ID is needed.

Fleming said the draft legislation doesn't say SSN is required; it is one of many data elements that can be provided. Fuglesten said the draft bill requires an SSN. Fleming agreed; he had been looking at the language of a different section.

Spilde said he has the same concerns Haake does. When you drive a claimant with a marginal claim is to an attorney, it is a problem. An attorney may or not be aware of the lien.

Schwindt asked where the group goes next. What are some good ways to deal with these situations? The insurance match is a unique income source for families. Oehlke's idea about requiring the drivers license number was a good suggestion.

Schwindt stated he preferred there was never a need for penalties. Unfortunately, someone will do something with malice aforethought so there is a need for penalties. He has signed off on penalties to employers less than half a dozen times. He always prefers to work with people rather than to penalize them. What's an alternative for Section 6?

Haake said there is a difference between an honest mistake and a deliberate act. If one obligor accidently got dropped and was not recorded, the insurance company shouldn't be penalized. Schwindt said CSE recognizes that mistakes are made, however, it is hard to prove 'intent.' 'Repeated pattern' is something CSE is willing to take into consideration. If CSE were to penalize when it shouldn't, the program would be stopped by the Legislature or the Governor (i.e., we would lose the tool).

Haake said when the industry talks about unfair claims handling they look at patterns of noncompliance. Fleming asked who licenses insurance agents. Would this type of behavior be grounds for disciplinary action? Is there a standard of conduct for insurance agents? Haake said they are under the regulatory authority of the Insurance Commissioner but didn't know if there is a statute on point. Only agents are licensed, not

adjusters. Ward said there is an unfair claims practice statute. Haake didn't think that statute would address this issue.

Fuglesten asked about using the language 'intentionally' or 'willfully.' Schwindt asked how you prove either of those things. Fuglesten said that was an issue for CSE. It could involve looking at patterns. Haake said he could agree to the language 'deliberate' and 'intention.' Schwindt asked members to give suggested language to Fleming and he'll substitute language in the bill draft.

Fleming asked about the following situation. A claimant who is an obligor has a brother who is an insurance agent. The obligor doesn't want his claim reported so his brother doesn't report it. There is not a pattern of behavior but there is a deliberate decision not to report. How does CSE deal with those situations? Haake doesn't believe the statute addresses that. He thought though that there would be something the Commissioner would have power to do. Fleming asked if CSE could do something in these situations. Is the group opposed to that? Ward asked if he meant making the agent personally liable. He didn't think the insurance company would let the agent keep his job. Fleming asked what happens if he is an independent agent. Haake said independent agents don't settle claims, adjusters do. Fleming asked if the bill draft could also address one- time misconduct. Ward said the bill draft says 'insurer' and not 'individual'. Some companies use independent adjusters. Fleming said CSE can bring a contempt action against a third party (e.g., employer). Ward said he will circulate this issue for ideas. Spilde said this is an issue if the match is mandatory, rather than voluntary.

Haake said the bill draft $500 threshold is pretty much meaningless. The vast majority of personal injury claims for auto accidents are for more than $500. He suggested either eliminating the dollar amount or raising it a meaningful level.

Haake said his comments addressed issues in the bill draft. He was not saying he is in agreement with the mandatory requirement. Schwindt said the insurance match involves more than personal injury claims. Haake said he understands that but personal injury is what he is concerned about. Ward said the $500 was added because the bill draft had home and property claims in it. Haake said he didn't know what would be presented today so he hadn't reviewed past bills.

Financial Community

Fleming said during the last meeting four fee alternatives were discussed. The projected costs handout was reviewed. There are 149 in-state financial institutions. Current reimbursement is up to $25 per quarter. It is likely more financial institutions would seek reimbursement if reimbursement increased. The maximum amount on the handout was the reimbursement suggested by Goetz.

Bill #3 February 9, 2010

Fleming discussed the bill draft (Bill #3 February 9, 2010). One option discussed last meeting was for the cost to be borne by obligors. A parallel is that employers who do income withholding can deduct $3. Under the bill draft an option would be for account

liens to have a fee. This would provide financial institutions with money for freezing an account. Following an account lien CSE can seize the money but often the freeze is a way to start negotiations. After a 30 day protest period CSE can do written demand for the money. The frozen account is not just left sitting out there. The bill draft would also allow a fee for the demand. This is an additional fee. Last week a banker asked Fleming if the law prohibited a financial institution from charging the obligor a fee now. Fleming did not know the answer to that question. Goetz didn't know if he could charge a fee now for the freezing and seizing of an account.

Fleming talked about Section 3 of the bill draft, the reimbursement section. This reimbursement could be in addition to or instead of other fees from a freeze and seize, or a deduction order. These transactional costs are in three places in the bill draft. Section 5 includes the increased appropriation.

Goetz said the cost projections for the general fund assume all financial institutions will request reimbursement. How many are requesting reimbursement now? Schwindt said currently 25 financial institutions request reimbursement. Goetz agreed more financial institutions may participate if the reimbursement is higher. Getting reimbursement is only right. If you were asked to paint the Governor's house you wouldn't be expected to do it for free. Financial institutions should not be expected to do the data match for free. Financial institutions shouldn't make money off it but their costs should be reimbursed.

Regarding fees, Goetz thinks we should let the market do what the market needs to do. Instead of listing a fee amount in the bill draft, say 'a fee' and let the bank and customer work it out. The fee is an additional encouragement to make an obligor pay child support. Schwindt asked if he meant like an NSF. Goetz said yes.

Goetz said the match software will cost him an upfront fee and a $450 per year maintenance fee. There are other costs associated with running the data match. The bill draft should say 'in addition to.' He has to include staff salaries, retirement, and health insurance in his costs. If you say 'a fee' you don't have to go back to the Legislature later because inflation has made the numbers meaningless. People should be paid fairly - at least reasonable costs should be reimbursed.

Representative Weisz asked who is liable if an account if frozen in error and later released. Goetz said if he makes a mistake he pays; if the state makes a mistake the state maybe should pay. Representative Weisz asked who pays the obligor fee if the lien was in error. Fleming said when CSE makes a distribution error CSE makes good on the error. CSE tries to recover the money but does advance money to correct the error. Representative Weisz asked if CSE makes an error if the state will pay the fee back to obligor. Fleming said if, for example. the son is on Mom's account to pay her bills the son is a legal account owner so CSE had the right to place the lien. We would release the lien. Does he want CSE to pay back the fee to the obligor? Goetz asked what happens if as a result in this example the nursing home assesses a late fee. Who pays that? Representative Weisz said these are issues. Schwindt asked if they are show stoppers. Representative Weisz said they probably are not but are questions that will be raised by the Legislature.

Fuglesten said letting the financial institution set the fee solves one problem of the bill draft in that if you subtract the fee it puts the bank in the position of deciding who will pay the fee. The reasonable fee would be determined by the bank. Goetz said there will be arguments about reasonable costs and suggested the language be 'reasonable not to exceed actual costs.' He said a previous handout about reimbursement showed that most states allow $250 for in-state financial institution data matching. 17 states allow $250 per quarter. Goetz suggested reimbursement be up to $250 per quarter. However, each year that amount will diminish in value. For example, each year staff, deservedly, earn more money. Everything goes up every year. How long ago was the $25 set? Schwindt said in 2001 he had talked with Goetz about the $25 and Goetz going to the Legislature if he felt the reimbursement should be higher.

Schwindt said actual costs will have to be proved. Goetz said he pictured submitting his invoice and, for example, cost of computer run time. This could end up being pretty detailed. Goetz said CSE has a reimbursement sheet now. Reierson said that because of the current reimbursement level the auditors said costs do not have to be proved. Instead, financial institutions certify their costs. Goetz said maybe this cost could be audited as part of other bank audits.

Schwindt suggested the bill draft say reimburse actual costs not to exceed $250 per quarter. He suggested that the fee for the freeze and seize be no amount and that the minus be struck in Section 3, subsection 3 of the bill draft. Legislative committees will also be addressing these issues. He will be happy to recommend the suggested fees if the group supports them.

Goetz said he would be meeting with a banking group and will ask for their support. Schwindt said we may not yet be in the position of asking for support but he has no problem with Goetz sharing the information. Fleming will do a new bill draft. Hopefully, that bill draft will be voted on during the next meeting.

Employer – Business Community

Income withholding fee:

Bill #4 February 9, 2010

Fleming said currently income payers can withhold $3 per month for doing income withholding. There is similar language in the gaming statute. Both are in the bill draft (Bill #4 February 9, 2010). What amount does the group suggest for income withholding instead of the current $3 fee? Be aware that if the obligor maxes out under the federal Consumer Credit Protection Act (CCPA) there is less room for a fee. Goetz suggested it read 'fee' period and each employer would set the fee.

Oehlke said during the last Legislative session someone attempted to increase the employer garnishment fee from $3 to $5. It went absolutely nowhere. There was no interest in this because the creditor would be getting less reimbursement. The sponsor had no luck selling the idea.

Devlin asked how many employers now charge a fee for income withholding. Is anyone complaining? Schwindt said a few employers charge a fee. He hears about a couple per year. He doesn't hear objections from employers; he hears objections from obligors who complain they have to pay child support and a fee. Representative Weisz asked if any large employers are charging the fee. Schwindt said he hadn't heard.

Representative Weisz said letting the employer set the fee is different than letting a financial institution set a fee for a lien. If you don't like a bank's fee, you can move your money to another bank. An employee, especially in the current economy, doesn't have that same freedom. He does not think the Legislature would support the idea of employers setting the fee for income withholding. As a legislator he has never gotten a complaint about the income withholding fee. Oehlke said he has not heard any complaints. He said the bill last session wasn't about child support garnishments; it was about other creditors' garnishments.

Schwindt said this will be filed for now to look at again in a few years. Devlin agreed this should be dropped because it is not a fight that is needed.

Electronic remittal of payments:

Bill #5 February 9, 2010

Fleming said the bill draft (Bill #5 February 9, 2010) addresses employers with more than 24 employees. There is a delayed date so businesses would have time to get procedures in place. Oehlke asked if any software is needed. Fleming said only a browser is needed.

Representative Weisz asked what happens if an out of state employer doesn't comply. Fleming said the law governs this. Representative Weisz asked what our recourse is if an out of state employer doesn't comply. Fleming said CSE would discuss the requirement with the employer and if there was not a finding of good cause for not remitting electronically, under N.D.C.C. 14-09-09.3 CSE could bring a contempt action for late fees. Representative Weisz asked if we could enforce if the business is headquartered out of state. Oehlke said yes, if it has a physical presence in the state. Schwindt said the bill draft provision is the same as the Job Service provision. Fleming said the employer would be deemed not to have paid. Harlan asked, even if they did pay by check? Fleming said CSE would cash the check and let the employer know what action CSE would take in the future. Schwindt said this is why there is a good cause provision. It provides an escape hatch if the requirement needs to be waived for a period of time.

Representative Weisz asked how many employers have fewer than 24 employees. Oehlke said more employers are smaller than this. Fleming said if a large employer sends a payment for a large number of obligors the remittal takes a lot of time and is a problem. That is why CSE would like large employers to remit payments electronically.

Fuglesten asked for clarification of the 24 employees. Does this mean 24 at any time? What if an employer downsized and now has fewer than 24 employees? Fleming said the bill draft language was copied from the Job Service law. Oehlke speculated the language was an effort to get consistency. Anyone can choose to remit electronically. He thinks this

was to ensure uniformity in reporting. For example, an employer has 24 employees and so is remits electronically. One month they drop to 23 employees. Do we want them to stop remitting electronically? The next month they again have 24 employees. Fleming's read of the language was it is 24 employees at any one time. Representative Weisz thought the language of the bill draft is okay as is and should be left as it is.

There was a vote to determine if the Task Force recommended Bill #4 February 9, 2010. All Task Force members present agreed; none of the members present disagreed.

Goetz asked if all these bill drafts will eventually become one bill. Schwindt said they will but the Task Force will approve them in pieces.

New hire reporting:

Bill #6 February 9, 2010

Fleming reviewed the bill draft (Bill #6 February 9, 2010).

New hire reporting – health insurance:

Fleming said Section 1 of the bill draft (Bill #6 February 9, 2010) requires employers to report any health insurance coverage. Per the group's discussion at the last meeting, not a lot of questions are being asked on the new hire report. The new hire report is more of a screening: does the employee have health coverage – yes or no. If the answer is yes, the employer will get further questions from CSE. Medical support is increasingly important to CSE.

New hire reporting – W-4:

Fleming said Section 2 of the bill draft requires electronic reporting of new hires. Because Section 1 of the bill draft requires the reporting of availability of health insurance, the W-4 will no longer work for the reporting of new hires. Under the law employers with more than 24 employees can transmit in many different ways.

New Hire reporting – electronic reporting:

Fleming said Section 3 of the bill draft says that if an employer has more than 24 employees, new hires must be reported electronically. There is a delayed effective date. Goetz asked if the reporting is through a portal. Fleming said it is.

Fleming said CSE has submitted a number of newsletter articles to employer groups since the last meeting. As an example, Rud's ND Retail Association, ND Petroleum Marketers Association, and ND Propane Gas Association newsletters included articles. The North Dakota Grocers Association provided a $450 booth free of charge for their annual trade show. Unfortunately, turnout was low because of the weather but, fortunately, our Fargo CSE office was able to cover it. Currently programmers for Web development are available so CSE is exploring employer portal development (e.g., single sign on). As long

as employers have turnover there will be a need for continuing education and a learning curve.

Rud asked if the new hire reporting form is on the Web. Reierson said it is.

There was a vote to determine if the Task Force recommended Bill #4 February 9, 2010. All Task Force members present agreed; none of the members present disagreed.

New hire reporting – independent contractors:

Bill #7 February 9, 2010

Fleming reviewed the bill draft (Bill #7 February 9, 2010) regarding the reporting of independent contractors. A 1999 OAG report said New Hampshire, which is similar in size to North Dakota, saw over $1 million in collections as the result of the reporting of independent contractors. Often these people are like employees but have relationships as independent contractors. Bachmeier asked if this included realtors. Fuglesten said with the recent ice storm the electric cooperatives used many independent contractors. Many of these independent contractors have their own business and would be reporting new hires under those businesses. Reporting these independent contractors would be burden for the cooperatives. Fleming said that one of the recommendations coming out of the last meeting was that emergency situations not be reported.

Fleming said Section 7 is the definition of a contractor. At times people form their own corporations and they are the only officers. They technically are not an 'individual'; they are an organization owned exclusively by an individual. The bill draft references service delivery and the 1099 Misc. This means the requirement is limited to people who are in the trade or business for which business is being provided.

Fuglesten asked about a person who does janitorial at night. Fleming said if it is the employer's business the janitor would be issued a 1099 as an individual. Goetz said if he hired someone to clean his business he would have to report them and if he hired someone to clean his house he wouldn't have to report them. Fleming said the requirement is tied to the employer's business. If you hire someone to repair your roof at home you would not report the person. The 1099 Misc. is for services provided in the course of the employer's business.

Oehlke referenced Section 5 of the bill draft.

Goetz said he doesn't collect tax IDs until the end of year. How will that work?

Representative Weisz asked what happens regarding rent. Fleming said rent is a different box on the 1099 Misc. Representative Weisz said some would argue that rent is a service. Fleming said he would see if there were different words in the 1099 Misc. instructions that could be used instead in the bill draft.

Goetz said a farmer would have to report custom combiners. Representative Wiesz said if you lease a tractor from neighbor you have to file a 1099. Oehlke said this is leasing

chattel, not buying a service. Fleming asked about a person hired to provide a personal service. Someone indicated, no.

Representative Weisz said there is a need for a definition of 'service.' Fleming said it is box 7 on the 1099 Misc. He could reference the box number in the bill draft but if IRS changes the form we are stuck. He would say rents are not included.

Fleming said the reporting timeframe is 20 days so in Goetz's earlier example it does not work to report at the end of the year.

Fleming said the bill draft says the independent contractor does not need to be reported if it is an emergency or is not anticipated to be on recurring basis. How do you know if will be a recurring relationship within 20 days?

Representative Weisz asked what happens if the independent contractor refuses to provide the required information. Now when this happens he sends something to the IRS saying this. Goetz asked if he has to report if he hires a cabinet maker to make cabinets at the bank. Fuglesten said if it is a one-time occurrence the person would not have to be reported.

Haake asked for clarification of 'person.' Fleming said a person is a legal and natural person.

The decision was to leave in the requirements regarding recurring and the 1099 Misc amount.

There was a vote to determine if the Task Force recommended Bill #7 February 9, 2010. All Task Force members present agreed; none of the members present disagreed.

3. Format of final report

Fleming reviewed the handout regarding a possible final report format. This format was used with a task force that dealt with state administration. He report shows areas of consensus and areas of disagreement. It would include as much common ground as there is. The report would go to Carol Olson, DHS Executive Director. There is a cover letter template that could be sent to the legislative committees. Fuglesten said the format looks fine.

Schwindt asked if there were any other items to cover. None were raised.

4. Next Meeting

Schwindt proposed that the next meeting start at 9:00 a.m. Devlin said he would like the meetings to start earlier and to end earlier. Schwindt said the next meeting will start at 8:30 a.m.

Bachmeier asked that meetings not be scheduled close to the end of the month.

The next meeting is scheduled for March 29th at 8:30 a.m. Schwindt asked members to pencil in that date and May 11th.

Fleming said there is another error in Task Force member list so a new list will be developed.