

**2013 SENATE NATURAL RESOURCES**

**SB 2312**

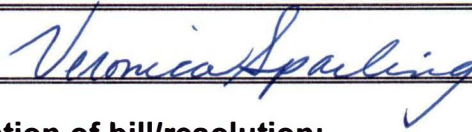
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2312  
February 7, 2013  
18486

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to coal leases on state land

### Minutes:

Attachments

Vice Chairman Burckhard opened the hearing on SB 2312.

All committee members were present.

Senator Howard Anderson, District 8, introduced the bill. See attachment #1.

Vice Chairman Burckhard questioned whether the wording "as seems fair" was too broad. Senator Anderson said it wasn't too broad. The industry is interested in what is fair to them and fair to the state.

David Straley, representing the North American Coal Corporation, presented written testimony. See attachment #2. He pointed out a typographical error on page 5 of his testimony. In the very center of the page it should say "\$2.50 a ton" rather than "\$1.50 a ton". (typo mentioned 06:40 to 06:55) (Ends at 09:00)

Sandi Tabor, Vice President of Government Affairs at the Lignite Energy Council, spoke in support of the bill. The Council is responsible for 17,000 jobs in the state and they generate about 3.5 billion dollars of business activity annually.

Jay Volk, Environmental Manager of BNI Coal, presented attached testimony #3 in favor of the bill. (Ends at 13:30)

Dale Neizwaag, representing Basin Electric Power Cooperative and Dakota Gasification Company, spoke in support of SB 2312. Basin Electric serves 9 states and about 134 member cooperatives. Getting reliable coal and at a reasonable price is paramount with their members. (Ends at 14:35)

Senator Hogue asked whether other states are making similar requests. Mr. Neizwaag was not sure but said he could find out.

There was a question about what effect this bill would have on the price of coal. There was no conclusive answer given. (Ends at 16:14)

Al Christainson, representing Great River Energy, spoke in favor of the bill. They buy about 8 million tons of ND lignite and it will affect their bottom line if they have to pay higher royalties. Fair market value is fine with them.

Senator Hogue asked for clarification: is the 8 million tons from state owned lands or is that the total?

Mr. Christianson said that is the total from Falkirk Mine which is a mix of state, federal and private.

There was a discussion about how quickly and how widely the prices fluctuate. (Ends at 18:32)

Shane Goettle, representing MDU Resources, spoke in support of the bill.

Opposition:

Neutral:

Jeff Engleson, representing the Department of Trust Lands, stated it may have a negative or a positive effect. It does give the board more flexibility to deal with the markets.

There were questions about how much coal land does the state own and how much royalty revenue does the state receive from coal? The last few years it has been in the 3 million dollar range. Last year oil and gas was in the 250 million dollar range.

Senator Unruh referred to Mr. Engleson's comment that there was no minimum for any other minerals. She asked if it was safe to assume that they had fair market value for those as well.

Mr. Engleson said they try not to establish the market but they want to receive the market value.

Vice Chairman Burckhard closed the hearing.

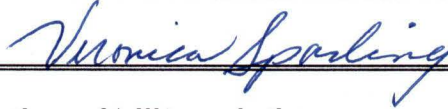
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2312  
February 14, 2013  
18942

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to coal leases on state land

### Minutes:

attachments

Chairman Lyson opened the discussion of SB 2312.

Senator Unruh submitted attachment #1. She stated it was in response to a question posed during the hearing. It covered state royalties in Wyoming.

Senator Unruh explained that this bill allows the State Land Board to adjust the rate on the taxes on the coal to bring them back to fair market value if they wish. It doesn't require them to do so.

There was no opposition expressed. The State Land Board was neutral.

Senator Triplett: Do Pass

Senator Hogue: Second

Senator Triplett feels the language is vague, but she is not concerned because the State Land Board is obliged to maximize profit.

Roll Call Vote: 7, 0, 0

Carrier: Senator Unruh

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/26/2013**

Revised  
Bill/Resolution No.: SB 2312

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0		\$0		\$0	
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0		\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill would make two changes to the leasing of coal assets managed by the Land Board. The first would remove statutory royalty minimums and permit the board to negotiate a rate, and the second change would permit the board to renegotiate existing coal leases on trust or state land.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If the bill is adopted, the Land Board could offer leases for less than the current statutory minimums, but it is not known if the Land Board would do so for new leases. It is also not known whether a lower royalty rate would result in more coal being produced which could generate greater returns. The actions of the Board and results of those actions cannot be anticipated. Similarly, it is unknown if the Land Board would change royalties on the 52 currently active coal leases, thus the fiscal impacts cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

On behalf of permanent trusts and special funds, the Land Board collectively manages 52 coal leases totaling 4404.28 net acres, of these 1280 acres are in reclamation status. The leases have generated a five-year annual average revenue of \$3.2 million. There is potential to lease more coal acres for production if the royalty rate is adjusted, thereby generating more income, but it is not possible to calculate the additional revenue.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

not applicable

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

not applicable

**Name:** Lance Gaebe

**Agency:** Department of Trust Lands

**Telephone:** 701 328 2800

**Date Prepared:** 02/01/2013

Date: 2-14-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2312

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Triplett Seconded By Hogue

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Unruh

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2312: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **DO PASS**  
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2312 was placed on the  
Eleventh order on the calendar.



**2013 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2312**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

SB 2312

March 14, 2013

19908

☐ Conference Committee

*Emineth*

Relating to coal on state land

## Minutes:

2 "attached testimony."

Rep. Damschen: We will open the hearing on SB 2312

Senator Anderson: The Company that brought this to us is working in my district and the current law provides a fixed royalty for the coal coming out of the state land and is higher than the current royalty that is in the general market. We felt like there was some disincentive on the coal on the state land. The choice was to give them the authority to set the royalty rates at a fair rate. We modified the bill to say in current contracts that were in place they could raise or lower those based on what they thought was fair.

David Straby North American Coal Corporation; the federal government allows the rate deduction in the Fort Union coal because they were becoming noncompetitive in the marketplace as well. Note that the federal **regulations** place a slight limitation on the lower end." Except that in no case shall the royalty be reduced to 0%." (Testimony 1)

Rep. Kelsh: What is the anticipated fiscal effect would be to the state?

David Straby I will provide you copy. You will hear from the state land board, the fiscal note was undeterminable.

Rep. Silbernagel: Is 2% the going rate and is the federal land fee higher than that?

David Straby: Yes the blended average is 70-100% as private coal and then there is a slight mix of state and federal coal most of the federal coal is less than the state coal. The blended average is less than 2%.

Jay Volk: Environmental manager of the BNI coal located near Center N.D. I hear to ask for support of SB 2312 which gives authority to the board, university and school lands and the state land board to determine and negotiate the fair market value for coal leases on state coal. (Testimony 2) I ask for your support of SB 2312.

Rep. Brabandt: BNI must stand for Baukle Noonon?

David Straby: Yes it was in the early 90's

Dale Niezwaag: We are also in support of SB 2312.

Al Christenson: From Great River Energy; we also support this bill.

Sandy Tabor: Lignite Energy Council; We also support the bill.

Rep. Damschen: We will close the hearing.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources

Pioneer Room, State Capital

SB 2312  
March 14, 2013  
19968

☐ Conference Committee

*Minutes*

Relating to coal leases on state land.

**Minutes:**

"attached testimony."

Rep. Porter: We will open SB 2312. We have a motion from Rep. Froseth and a second from Rep. Silbernagel for a do pass to SB 2312. Motioned Carried.

Yes 11 No 0 Absent 2 Carrier: Rep. Froseth

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/26/2013**

Revised  
 Bill/Resolution No.: SB 2312

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If the bill is adopted, the Land Board could offer leases for less than the current statutory minimums, but it is not known if the Land Board would do so for new leases. It is also not known whether a lower royalty rate would result in more coal being produced which could generate greater returns. The actions of the Board and results of those actions cannot be anticipated. Similarly, it is unknown if the Land Board would change royalties on the 52 currently active coal leases, thus the fiscal impacts cannot be determined.

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- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

not applicable

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

not applicable

**Name:** Lance Gaebe

**Agency:** Department of Trust Lands

**Telephone:** 701 328 2800

**Date Prepared:** 02/01/2013

Date: 3-14-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2312

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Todd Porter	✓		Rep. Bob Hunsakor	✓	
Vice Chairman Chuck Damschen	✓		Rep. Scot Kelsh	✓	
Rep. Jim Schmidt	-		Rep. Corey Mock	✓	
Rep. Glen Froseth	✓				
Rep. Curt Hofstad	-				
Rep. Dick Anderson	✓				
Rep. Peter Silbernagel	✓				
Rep. Mike Nathe	✓				
Rep. Roger Brabandt	✓				
Rep. George Keiser	-				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep Froseth

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2312: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
SB 2312 was placed on the Fourteenth order on the calendar.



**2013 TESTIMONY**

**SB 2312**

#1

Senate Bill 2312  
Senate Natural Resources Committee  
9:AM Thursday, February 7, 2012  
Ft. Lincoln room

Chairman Lyson and Members of the Senate Natural Resources Committee, I am Senator Howard Anderson from District 8 and the prime sponsor of SB 2312.

**SB 2312 – Coal Royalties on State Lands**

North American Coal is operating in my district (Dist. 8), and has been active in obtaining rights to mine coal and actually mining coal near Underwood since the 1970's, and in North Dakota since 1957.

They have been leasing and mining coal from private, state and federal entities during this time. Given the nature of coal mining operations and how the existing law works, the State of ND is becoming uncompetitive on leasing of coal reserves.

SB 2312 removes the set royalty for coal on lines 12, 13 and 14 and gives the State Land Board the discretion and authority to negotiate a fair market value royalty for coal under ownership by the state of ND.

Then on lines 20 and 21 it gives the board the authority to adjust the royalty of existing leases in the best interest of the state.

This statute has not been updated in almost 40 years, and you're going to hear from experts after me that can fully explain the history, some of the changes between then and now, and why the bill is important. These changes may actually result in more coal being mined and increased revenue for North Dakota.

**David Straley – The North American Coal Corporation**  
**Senate Natural Resources Committee**  
**Testimony on February 7, 2013**

**SUPPORT of SB 2312**

Chairman Lyson and members of the committee, my name is David Straley and I represent The North American Coal Corporation and its subsidiary, North American Coal Royalty Company. I am here today to ask your support of Senate Bill 2312 which gives authority to the Board of University and School Lands, (State Land Board), to determine and negotiate the fair market value for coal leases on State Coal.

The North American Coal Corporation has been operating in North Dakota for over 55 years. Beginning with the Indianhead Mine in an open market, retail sales of coal concept, we have since grown our operations to dedicated mine-mouth customers. Through the Falkirk and Freedom Mines, our company provides well over 20 million tons annually, and has done so since the 1990s, and we are currently developing other coal reserves in North Dakota for marketing purposes. On February 18, 2013, North American Coal will celebrate its one hundredth anniversary of mining coal in the United States. We are proud to do business here and look forward to continuing to do business in a state where coal is welcomed and appreciated.

First, it is important to note that the State Land Board was given the authority in 1889 by the ND Constitution to manage the school trust lands in North Dakota to the ND Department of Trust Lands. The State Land Board is comprised of the Governor, Secretary of State, Superintendent of Public Instruction, State Treasurer, and Attorney General. The law was originally enacted in 1903 and amended once in 1975 to what is before you today. For the record, the price of coal in 1975 was approximately two dollars fifty cents per ton, which equates to fifteen cents per ton or six percent of the sales price (attached).

Given the current statute, the State of ND is becoming uncompetitive in royalties paid on state coal. The statute sets a floor price being paid in royalties to the State which are based on two factors: a minimum amount of \$0.15 per ton, or 6 percent of the sales price at the time of mining. We are asking for your support to allow the State Land Board to have the authority to determine and negotiate a fair market value of both existing as well as upcoming leases on state coal. It is our intent to pay a fair market value for the coal, and we interpret the "fair and in the best interest" language of the statute to mean just that.

North American Coal has successfully worked with the State Land Board to negotiate a reduction of coal royalties in the past. In the early 1990's, the State



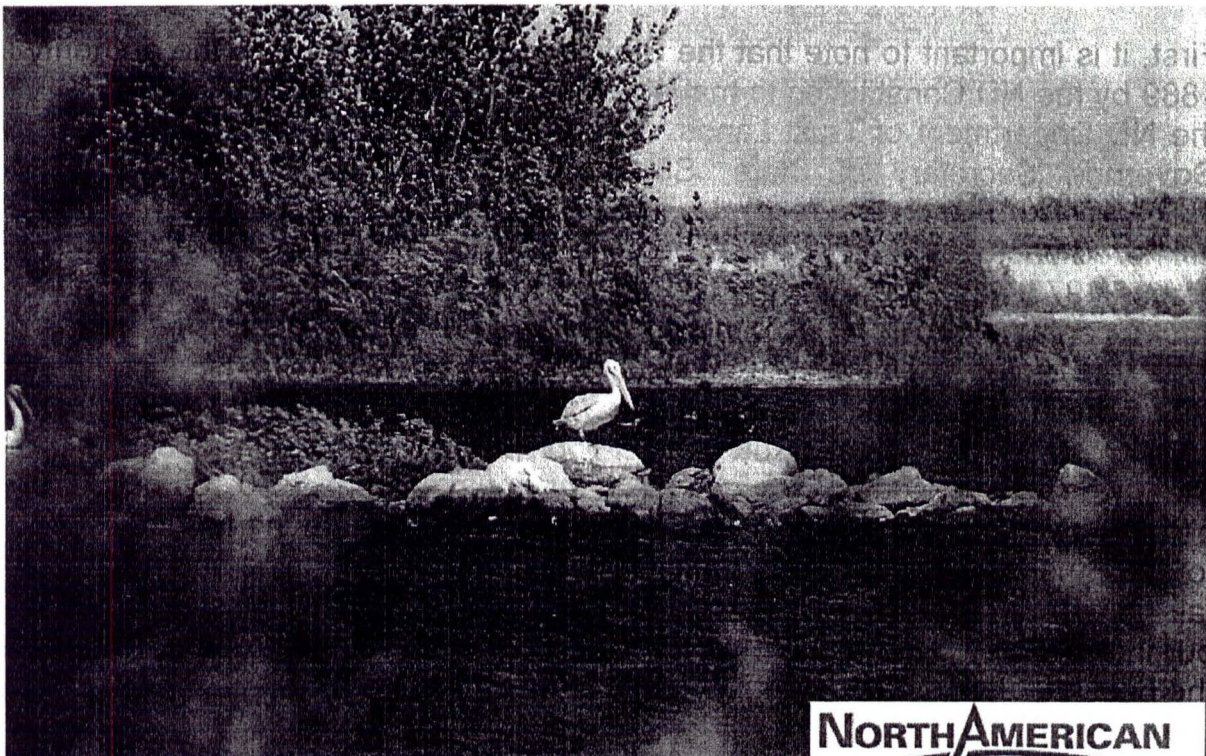
Land Board agreed to reduce their royalties from originally negotiated 12.5 percent down to eight percent, and then down to six percent, with the same reasoning that the state was at risk for having their coal bypassed.

Also to be noted, the federal government allows for a rate reduction on Fort Union Coal because they were becoming uncompetitive in the marketplace. All lignite in North Dakota is part of the Fort Union Coal Reserve. The federal royalty rate reduction can be found at federal law at 30 U.S.C.A. § 209 (attached), and in federal regulations at 43 C.F.R. § 3473.3-2 (attached). Please note that the federal regulation places a slight limitation on the lower end: "except that in no case shall the royalty be reduced to zero percent."

Currently, the Bureau of Land Management (BLM) uses a process to determine a fair market value of their coal. They use the price paid for coal leased from private coal reserve holders and the price paid for leases to State coal as their factors. Using a blended or weighted average, the feds then set their price at this amount. Currently, that rate is just over two percent of the sales price of coal.

Chairman Lyson and members of the committee, I respectfully ask for your support of Senate Bill 2312 and am willing to answer any questions. Thank You!

## **SHOULD THIS LAND BE MINED FOR COAL?**



**...it already was.**

**NORTHAMERICAN**  
**COAL**  
CORPORATION

Westlaw.

30 U.S.C.A. § 209

Page 1

**C**

United States Code Annotated Currentness

Title 30. Mineral Lands and Mining

Chapter 3A. Leases and Prospecting Permits (Refs &amp; Annos)

Subchapter II. Coal

→ § 209. Suspension, waiver, or reduction of rents or royalties to promote development or operation; extension of lease on suspension of operations and production

The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, gilsonite (including all vein-type solid hydrocarbons), phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. Provided, however, That in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas. For purposes of this section, the term "tar sand" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this chapter, including those within an approved or prescribed plan for unit or cooperative development and operation. Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalty ties.

## CREDIT(S)

(Feb. 25, 1920, c. 85, § 39, as added Feb. 9, 1933, c. 45, 47 Stat. 798; amended Aug. 8, 1946, c. 916, § 10, 60 Stat. 957; June 3, 1948, c. 379, § 7, 62 Stat. 291; Aug. 4, 1976, Pub.L. 94-377, § 14, 90 Stat. 1091; Nov. 16, 1981, Pub.L. 97-78, § 1(3), (7), 95 Stat. 1070, 1071.)

## HISTORICAL AND STATUTORY NOTES

## Revision Notes and Legislative Reports

1948 Acts. House Report No. 1541, see 1948 U.S. Code Cong. Service, p. 1640.

page 3



Westlaw

43 C.F.R. § 3473.3-2

Page 1

**C****Effective:[See Text Amendments]**

Code of Federal Regulations Currentness

Title 43. Public Lands: Interior

Subtitle B. Regulations Relating to Public Lands

Chapter II. Bureau of Land Management,  
Department of the Interior

Subchapter C. Minerals Management(3000)

Group 3400. Coal Management (Refs &  
Annos)Part 3470. Coal Management Provi-  
sions and Limitations (Refs & Annos)☐ Subpart 3473. Fees, Rentals, and  
Royalties

☐ § 3473.3. Rentals and Royalties.

→ **§ 3473.3-2 Royalties.**

(a)(1) A lease shall require payment of a royalty of not less than 12 1/2 percent of the value of the coal removed from a surface mine.

(2) A lease shall require payment of a royalty of 8 percent of the value of coal removed from an underground mine.

(3) The value of coal removed from a mine is defined for royalty purposes in § 3483.4 of this title.

(b) The royalty rates specified in paragraph (a) of this section shall be applied to new leases at the time of issuance and to previously issued leases at the time of the next scheduled readjustment of the lease.

(c) The authorized officer shall have the discretion,

upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year in accordance with § 3485.2 of this title.

(d) An overriding royalty interest, production payment or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in a Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he/she shows that he/she has made substantial investments for improvements directly related to exploration, development and mining on the lands covered by the transfer that would justify a higher payment.

(e) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof, except that in no case shall the royalty be reduced to zero percent. An application for any of these benefits shall be filed with the authorized officer in accordance with part 3480 of this title.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982; 50 FR 8627, March 4, 1985; 55 FR 2664, Jan. 26, 1990]

SOURCE: 44 FR 42643, July 19, 1979; 51 FR 34218, Sept. 26, 1986; 62 FR 44369, Aug. 20, 1997; 70 FR 58876, Oct. 7, 2005, unless otherwise noted.

page 4

Senator Barth moved the reading of the bill in its entirety be dispensed; Senator Vosper seconded and the motion was carried unanimously.

Mr. Thomas Smith, counsel for the State Land Department said Senate Bill 2150 was introduced at the request of his department and gave a brief background. He stated that in 1939 the Legislature enacted a 5% mineral reservation. In 1941, Section 38-09-01 was amended to provide for a 50% mineral reservation; oil, gas and other minerals. In 1960, the Constitution was amended to provide for 100% mineral reservation. The Supreme Court has interpreted this to include coal. He said his department presently is holding onto approximately 2,000,000 potentially valuable coal acres. Of that 2,000,000 they now have under lease 4,500 acres. SB 2150 amends two sections, Chapter 15-05 and repeals two other sections. The first section it repeals, 15-05-02 pertains to the rental for coal and regulations governing it. They have incorporated that concept into Section 15-05-01 by amendments, Mr. Smith said.

Mr. Smith, continuing, said starting on line 23, page 21, provides that the royalties shall be at a minimum of not less than 15¢ per ton or 6% of price per ton of coal, whichever is greater. This concept as to royalty is what is being in the private market today. We arrived at 6% because we thought it was a fair and equitable percentage as a minimum, Mr. Smith said. He said the value of coal mined today is approximately \$1.50 a ton. Six percent of that price would figure out to 15¢ per ton. He said they also provide for delayed rentals; the delayed rentals are again drawn in the terms of a minimum of 25¢ an acre. He said the amendment, in addition to that, provides that the delayed rentals shall not be deducted from the royalty once mining is instituted. SB 2150 also repeals section 15-05-03, he said and described what that section provided. These sections to which he referred have been on the books since 1903, he said, and they believe that they do need some revitalization and bringing them up to modern concepts.

\$ 2.50  
a  
ton  
(4yrs)

A lengthy discussion on the rights of the surface owner followed. Mr. Smith reminded the committee that their department is operating under a moratorium and that they had not made a coal lease for two years. We are the state and we are operating in a proprietary capacity, he said, and we operate under a mandate. He suggested that some other entity should probably take care of these people. There then ensued a lengthy discussion on the severance tax. After this discussion of rights, Mr. Smith said that the legislature could kill this bill and it would not prevent them from making a lease. He said they are trying to do what is in the best interests of the school lands and that they are bringing this up as far as their responsibility in maximizing income to the schools and charitable institutions. He said he felt it is the legislature's responsibility to go into the other areas discussed.

**Jay M. Volk, Ph.D. – BNI Coal**  
**Senate Natural Resources Committee**  
**Testimony on February 7, 2013**

**SUPPORT of SB 2312**

Good morning Chairman Lyson and members of the committee. My name is Jay Volk. I am the Environmental Manager of BNI Coal which is located near Center, ND. I am a native of Mandan ND, a proud graduate of North Dakota State University, and an employee of 8 years with BNI Coal. I am here today to ask your support of Senate Bill 2312 which gives authority to the Board of University and School Lands, (State Land Board), to determine and negotiate the fair market value for coal leases on State Coal.

A native ND mining company, BNI Coal started mining in 1930 in north western North Dakota and has been mining coal for the Milton R Young Station since 1970 at its Center Mine location. BNI Coal supplies 4 to 4.5 million tons of lignite coal annually to the Young Station and employees 165 people with a local spend of \$55 million.

BNI Coal controls over 600 million tons of lignite reserves near the Center Mine; reserves that are dominated by private coal owners and intermixed with Federal and State owned surface and/or minerals. Prior to developing a reserve, BNI carefully calculates and weighs the many variables that ultimately derive fuel costs; variables such as strip ratio, coal quality, environmental impacts and reclamation costs just to name a few. Equally important is the consideration of royalties paid at each rate (private, federal, or state); in which current state royalties are 3x to 4x higher than the fair market value. To put this difference in perspective, a 15' coal seam could be economically recovered while removing an additional 30 feet of overburden at royalty rates represented at fair market value.

Given the current statute, The State of ND is becoming uncompetitive in royalties paid on state coal. We are asking for your support to allow the State Land Board to have the authority to determine and negotiate a fair market royalty rate of both existing and upcoming leases on state coal. This ability to negotiate a fair market royalty rate, such as is done with the federal government in the royalty rate determination process for our region, will ultimately maximize the recovery of the state's resources. For example, BNI recently opted not to lease a state owned parcel within our current mining permit as it has high overburden coupled with 3x to 4x royalty rates making the coal uneconomical to recover. Likewise, we have recently leased five state owned tracts in which three tracts are dominated by outcropped coal; coal that is lower in quality and usually higher in reclamation costs, variables that will ultimately lead to BNI deciding to what extent we will



ultimately mine. Variables as these could be managed if the State Land Board would have the authority as proposed in Senate Bill 2312 to determine and negotiate the fair market value for coal leases.

Chairman Lyson and members of the committee, I respectfully ask for your support of Senate Bill 2312. This concludes my testimony and I would be pleased to respond to any questions. Thank you.

**Question:**

What are the State Royalties in Wyoming?

Set by Statute:

**"...royalty of not less than five cents (\$.05) per ton on coal..."**

W.S. 1977 § 36-6-101 (see attached)

Note: Almost half of the coal produced in the United States comes from Wyoming, where there costs to mine are considerably less. Approximately one billion tons per year is produced in the US and marketed worldwide.

**Combined Questions regarding Utilities:**

What are the royalty savings for an electric utility?

First, it is important to note that this bill gives the State Land Board authority to adjust the rate, not automatically do so. But, assuming the bill passes and the State Land Board reduces the rate to today's fair market value, what cost savings would there be and where would it go?

As one example from one mining company, the average royalty cost on 2012 State owned coal at 6% of the sales price is \$0.996 cents per ton. During the same time period the federal government determined a fair market rate of 2.2% of sale price or \$0.37 per ton. This means that the utility paid \$0.63 per ton over market value for the State owned coal which was passed directly on to the consumer.

Royalty costs are a straight pass-through cost that is paid directly by the consumers of the electric utility. As the fiscal note points out, the State has 52 active coal leases totaling 4404.28 net acres, of these 1280 acres are in reclamation status (see attached).

This example should be indicative of the cost for State coal mined for other utilities in North Dakota as well (within a close proximity).

West's Wyoming Statutes Annotated Currentness

Title 36. State Lands (Refs & Annos)

Chapter 6. Mineral Leases

Article 1. In General (Refs & Annos)

**§ 36-6-101. Terms of leases; extensions; rules and regulations; rent and royalties; assignment of leases; grazing and agricultural leases; cooperation with United States or its lessees, in cooperative or unit plans**

- (a) The board of land commissioners may lease any state or state school lands for oil and gas for a primary term up to ten (10) years and as long thereafter as oil or gas may be produced in paying quantities, and may extend the term of existing oil and gas leases in good standing for as long as oil or gas may be produced in paying quantities.
- (b) The board is further authorized to make and establish rules and regulations governing the issuance of oil and gas, coal and other mineral leases and covering the conduct of development and mining operations.
- (c) Mineral leases may be issued upon such monthly or annual minimum rental payment basis as shall be fixed by the board, which payment shall be annually applied against such royalty as shall accrue for the same lease year by the terms of such lease, which royalty, as to lands leased for oil or gas shall not be less than five percent (5%) of all oil and gas produced and saved from and not used in operations on the lands under the lease, and royalty of not less than five cents (\$.05) per ton on coal produced from the lands under any such lease for coal purposes, such royalty to be paid on mine run of coal. No mineral lease issued under the provisions of this section shall be assignable or transferable except with written consent of the director, subject to criteria established by the board, and he shall require the lessee's full compliance with and observance of all rules and regulations adopted by the board and for the lessee's compliance with all other terms of the lease. All mineral leases issued pursuant to this section shall be separate and distinct from each lease of the same land for grazing or agricultural purposes, issued by the board, and rules and regulations adopted by the board as herein authorized, shall provide for joint use of such lands for grazing and agricultural or mineral purposes without undue interference by the lessees under any such class of leases with lessees under any other such class.
- (d) The director, subject to criteria established by the board, on behalf of the state, and its lessee or lessees in any such mineral lease are hereby further authorized to join, in the interest of conservation and greater ultimate recovery of oil and gas, in fair and equitable cooperative or unit plans of development or operation of oil and gas pools, with the United States government and its lessees, or permittees, or others, or any of them, and the director, subject to criteria established by the board, is hereby authorized to modify and change any and all terms and conditions of any such oil and gas lease or leases, heretofore or hereafter issued, as mutually agreed by the lessor and lessee in any such lease, as required to conform to the terms of any such lease to such cooperative or unit plan and as required to effectuate proper operations thereunder, which changes may include extension of the term of years otherwise applicable to any such lease, for the full period of time during which such cooperative or unit plan may remain in effect.
- (e) When a cooperative or unit agreement is terminated or ceases to be effective as to lands upon which there is no production of oil or gas, the lease covering such lands shall remain in effect for a period of two (2) years from the date such lands ceased to be subject to said agreement, or for the remaining length of the term of the original lease, whichever shall be the greater, and so long thereafter as oil or gas is produced from said lands in accordance with the requirements of the original lease.
- (f) The terms of any lease issued under this section for land on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for one (1) year and so long thereafter as oil or gas is produced in paying quantities.

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**David Straley – The North American Coal Corporation**  
**House Energy and Natural Resources Committee**  
**Testimony on March 14, 2013**

**SUPPORT of SB 2312**

Chairman Porter and members of the committee, my name is David Straley and I represent The North American Coal Corporation and its subsidiary, North American Coal Royalty Company. I am here today to ask your support of Senate Bill 2312 which gives authority to the Board of University and School Lands, (State Land Board), to determine and negotiate the fair market value for coal leases on State Coal.

The North American Coal Corporation has been operating in North Dakota for over 55 years. Beginning with the Indianhead Mine in an open market, retail sales of coal concept, we have since grown our operations to dedicated mine-mouth customers. Through the Falkirk and Freedom Mines, our company provides well over 20 million tons annually, and has done so since the 1990s, and we are currently developing other coal reserves in North Dakota for marketing purposes. On February 18, 2013, North American Coal will celebrate its one hundredth anniversary of mining coal in the United States. We are proud to do business here and look forward to continuing to do business in a state where coal is welcomed and appreciated.

First, it is important to note that the State Land Board was given the authority in 1889 by the ND Constitution to manage the school trust lands in North Dakota to the ND Department of Trust Lands. The State Land Board is comprised of the Governor, Secretary of State, Superintendent of Public Instruction, State Treasurer, and Attorney General. The law was originally enacted in 1903 and amended once in 1975 to what is before you today. For the record, the price of coal in 1975 was approximately two dollars fifty cents per ton, which equates to fifteen cents per ton or six percent of the sales price (attached).

Given the current statute, the State of ND is becoming uncompetitive in royalties paid on state coal. The statute sets a floor price being paid in royalties to the State which are based on two factors: a minimum amount of \$0.15 per ton, or 6 percent of the sales price at the time of mining. We are asking for your support to allow the State Land Board to have the authority to determine and negotiate a fair market value of both existing as well as upcoming leases on state coal. It is our intent to pay a fair market value for the coal, and we interpret the "fair and in the best interest" language of the statute to mean just that.

North American Coal has successfully worked with the State Land Board to negotiate a reduction of coal royalties in the past. In the early 1990's, the State



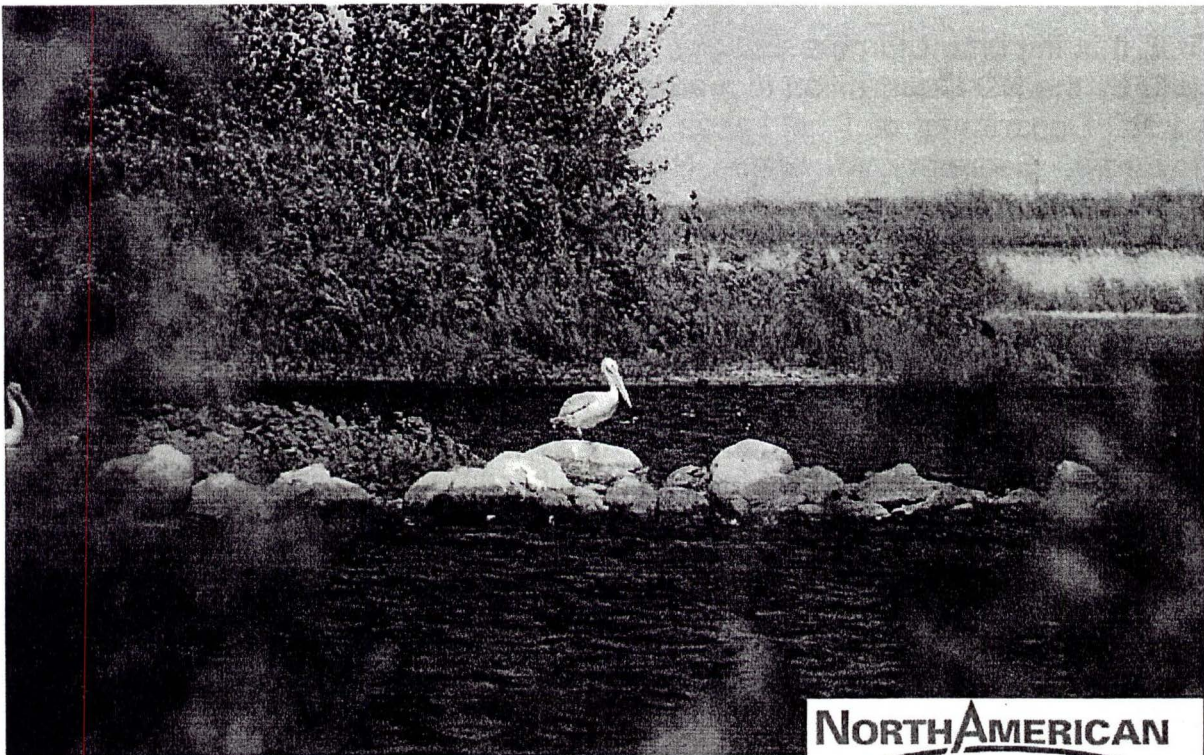
Land Board agreed to reduce their royalties from originally negotiated 12.5 percent down to eight percent, and then down to six percent, with the same reasoning that the state was at risk for having their coal bypassed.

Also to be noted, the federal government allows for a rate reduction on Fort Union Coal because they were becoming uncompetitive in the marketplace. All lignite in North Dakota is part of the Fort Union Coal Reserve. The federal royalty rate reduction can be found at federal law at 30 U.S.C.A. § 209 (attached), and in federal regulations at 43 C.F.R. § 3473.3-2 (attached). Please note that the federal regulation places a slight limitation on the lower end: "except that in no case shall the royalty be reduced to zero percent."

Currently, the Bureau of Land Management (BLM) uses a process to determine a fair market value of their coal. They use the price paid for coal leased from private coal reserve holders and the price paid for leases to State coal as their factors. Using a blended or weighted average, the feds then set their price at this amount. Currently, that rate is just over two percent of the sales price of coal.

Chairman Porter and members of the committee, I respectfully ask for your support of Senate Bill 2312 and am willing to answer any questions. Thank You!

## **SHOULD THIS LAND BE MINED FOR COAL?**



**...it already was.**

**NORTH AMERICAN**  
**COAL**  
CORPORATION

Westlaw

43 C.F.R. § 3473.3-2

Page 1

**C****Effective:[See Text Amendments]**

Code of Federal Regulations Currentness

Title 43. Public Lands: Interior

Subtitle B. Regulations Relating to Public Lands

Chapter II. Bureau of Land Management,  
Department of the Interior

Subchapter C. Minerals Management(3000)

Group 3400. Coal Management (Refs &  
Annos)Part 3470. Coal Management Provi-  
sions and Limitations (Refs & Annos)↳ Subpart 3473. Fees, Rentals, and  
Royalties

↳ § 3473.3. Rentals and Royalties.

→ § 3473.3-2 Royalties.

(a)(1) A lease shall require payment of a royalty of not less than 12 1/2 percent of the value of the coal removed from a surface mine.

(2) A lease shall require payment of a royalty of 8 percent of the value of coal removed from an underground mine.

(3) The value of coal removed from a mine is defined for royalty purposes in § 3483.4 of this title.

(b) The royalty rates specified in paragraph (a) of this section shall be applied to new leases at the time of issuance and to previously issued leases at the time of the next scheduled readjustment of the lease.

(c) The authorized officer shall have the discretion,

upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year in accordance with § 3485.2 of this title.

(d) An overriding royalty interest, production payment or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in a Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he/she shows that he/she has made substantial investments for improvements directly related to exploration, development and mining on the lands covered by the transfer that would justify a higher payment.

(e) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof, except that in no case shall the royalty be reduced to zero percent. An application for any of these benefits shall be filed with the authorized officer in accordance with part 3480 of this title.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982; 50 FR 8627, March 4, 1985; 55 FR 2664, Jan. 26, 1990]

SOURCE: 44 FR 42643, July 19, 1979; 51 FR 34218, Sept. 26, 1986; 62 FR 44369, Aug. 20, 1997; 70 FR 58876, Oct. 7, 2005, unless otherwise noted.



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30 U.S.C.A. § 209

Page 1

**C**

United States Code Annotated Currentness

Title 30. Mineral Lands and Mining

Chapter 3A. Leases and Prospecting Permits (Refs &amp; Annos)

Subchapter II. Coal

→ § 209. Suspension, waiver, or reduction of rents or royalties to promote development or operation; extension of lease on suspension of operations and production

The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale, gilsonite (including all vein-type solid hydrocarbons), phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. Provided, however, That in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas. For purposes of this section, the term "tar sand" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this chapter, including those within an approved or prescribed plan for unit or cooperative development and operation. Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties.

## CREDIT(S)

(Feb. 25, 1920, c. 85, § 39, as added Feb. 9, 1933, c. 45, 47 Stat. 798; amended Aug. 8, 1946, c. 916, § 10, 60 Stat. 957; June 3, 1948, c. 379, § 7, 62 Stat. 291; Aug. 4, 1976, Pub.L. 94-377, § 14, 90 Stat. 1091; Nov. 16, 1981, Pub.L. 97-78, § 1(3), (7), 95 Stat. 1070, 1071.)

## HISTORICAL AND STATUTORY NOTES

## Revision Notes and Legislative Reports

1948 Acts. House Report No. 1541, see 1948 U.S. Code Cong. Service, p. 1640.

Senator Barth moved the reading of the bill in its entirety be dispensed; Senator Vosper seconded and the motion was carried unanimously.

Mr. Thomas Smith, counsel for the State Land Department said Senate Bill 2150 was introduced at the request of his department and gave a brief background. He stated that in 1939 the Legislature enacted a 5% mineral reservation. In 1941, Section 38-09-01 was amended to provide for a 50% mineral reservation; oil, gas and other minerals. In 1960, the Constitution was amended to provide for 100% mineral reservation. The Supreme Court has interpreted this to include coal. He said his department presently is holding onto approximately 2,000,000 potentially valuable coal acres. Of that 2,000,000 they now have under lease 4,500 acres. SB 2150 amends two sections, Chapter 15-05 and repeals two other sections. The first section it repeals, 15-05-02 pertains to the rental for coal and regulations governing it. They have incorporated that concept into Section 15-05-01 by amendments, Mr. Smith said.

Mr. Smith, continuing, said starting on line 23, page 21, provides that the royalties shall be at a minimum of not less than 15¢ per ton or 6% of price per ton of coal, whichever is greater. This concept as to royalty is what is being in the private market today. We arrived at 6% because we thought it was a fair and equitable percentage as a minimum, Mr. Smith said. He said the value of coal mined today is approximately \$1.50 a ton. Six percent of that price would figure out to 15¢ per ton. He said they also provide for delayed rentals; the delayed rentals are again drawn in the terms of a minimum of 25¢ an acre. He said the amendment, in addition to that, provides that the delayed rentals shall not be deducted from the royalty once mining is instituted. SB 2150 also repeals section 15-05-03, he said and described what that section provided. These sections to which he referred have been on the books since 1903, he said, and they believe that they do need some revitalization and bringing them up to modern concepts.

A lengthy discussion on the rights of the surface owner followed. Mr. Smith reminded the committee that their department is operating under a moratorium and that they had not made a coal lease for two years. We are the state and we are operating in a proprietary capacity, he said, and we operate under a mandate. He suggested that some other entity should probably take care of these people. There then ensued a lengthy discussion on the severance tax. After this discussion of rights, Mr. Smith said that the legislature could kill this bill and it would not prevent them from making a lease. He said they are trying to do what is in the best interests of the school lands and that they are bringing this up as far as their responsibility in maximizing income to the schools and charitable institutions. He said he felt it is the legislature's responsibility to go into the other areas discussed.



**Jay M. Volk, Ph.D. – BNI Coal**  
**House Energy and Natural Resources Committee**  
**Testimony on March 14, 2013**

**SUPPORT of SB 2312**

Good morning Chairman Porter and members of the committee. My name is Jay Volk and I am the Environmental Manager of BNI Coal which is located near Center, ND. I am here today to ask your support of Senate Bill 2312 which gives authority to the Board of University and School Lands, (State Land Board), to determine and negotiate the fair market value for coal leases on State Coal.

A native ND mining company, BNI Coal started mining in 1930 in north western North Dakota and has been mining coal for the Milton R Young Station since 1970 at its Center Mine location. BNI Coal supplies 4 to 4.5 million tons of lignite coal annually to the Young Station and employees 165 people with a local spend of \$55 million.

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Given the current statute, The State of ND is becoming uncompetitive in royalties paid on state coal. We are asking for your support to allow the State Land Board to have the authority to determine and negotiate a fair market royalty rate of both existing and upcoming leases on state coal. This ability to negotiate a fair market royalty rate, such as is done with the federal government in the royalty rate determination process for our region, will ultimately maximize the recovery of the state's resources. For example, BNI recently opted not to lease a state owned parcel within our current mining permit as it has high overburden coupled with 3x to 4x royalty rates making the coal uneconomical to recover. Likewise, we have recently leased five state owned tracts in which three tracts are dominated by outcropped coal; coal that is lower in quality and usually higher in reclamation costs, variables that will ultimately lead to BNI deciding to what extent we will ultimately mine. Variables as these could be managed if the State Land Board