

2009 SENATE FINANCE AND TAXATION

SB 2035

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2035

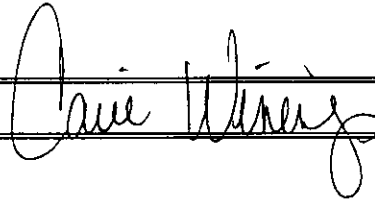
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/13/2009

Recorder Job Number: 6877

Committee Clerk Signature



Minutes:

Chairman Cook: Opened hearing on SB 2035.

Senator Rich, Wardner, District 37, Dickenson: This bill is a recommendation of the group "Empower North Dakota" to the interim Energy Development and Transmission Committee, which is a group that the legislature put into statute last session in which you have representatives from every energy group. They talk about energy policy in North Dakota.

Renewable fuels as well as fossil fuel. This bill allows/puts power plants that use beneficiated coal within the sales and use tax exemption. (Gives a brief description of beneficiated coal). This also includes the severance tax of 37.5 cents. This exemption is on coal purchased for coal beneficiation which is used in an agricultural commodity processing facility. The fiscal note really explains what the bill does. (Reviews Fiscal Note)

Tim Dawson, Legislative Council: Neutral testimony to explain the bill. Proceeds to work through the bill and explain it section by section. Basically, it is to treat beneficiated coal the same as regular coal.

Senator Triplett: When they say that there is no negative fiscal impact and it states that it could be zero, isn't it true that the crux of the bill is to make North Dakota coal equal to

Wyoming coal?

Tim Dawson: I will pass on that question and defer it to the appropriate person.

Vice Chairman Miller: Where is it defined in code what beneficiated coal is? Why do we treat that different than just calling it coal?

Tim Dawson: Coal beneficiation means improving the physical environmental or combustion qualities of coal, but does not include crushing or treating with dust suppressing or freeze proofing agents.

Vice Chairman Miller: When was that definition created?

Tim Dawson: It is in section 57-60-01, the last changes to that were in 2007.

Senator Dotzenrod: Referring to page 4, section 4, line 10, asks if anyone that has these facilities have taken the offer? To reduce a tax to zero, are there not some impacts that will be felt locally that need to be covered by some other revenue?

Tim Dawson: I am not an expert on where severance tax revenue goes; this does apply to agricultural commodity processing facilities. Before it only applied to sugar beet refining purposes.

Chairman Cook: Note that the Tax Department binder, Tab 4, Page 55, explains where the severance tax goes.

Marcy Dickerson, State Supervisor of Assessments, and Director of Property Tax

Division: I would like to respond to Senator Dotzenrod's question. The reason that this was enacted for these plants years ago was because sugar beet plants quit using North Dakota coal and went to out of state coal. So they exempted coal to be used in agricultural processing plants and or sugar beet plants to get them to use North Dakota coal. It was extended to adjacent states for constitutional purposes to avoid violation of the commerce clause. No one has ever taken advantage of the existing language to my knowledge. The purpose of including beneficiated coal under that exemption is because we are supportive of beneficiated coal

being burned in these plants just the same as natural coal. We want North Dakota coal to be consumed.

David Straley, Manager of North Dakota Govt/Public Affairs for North American Coal Corporation: See Attachment #1 for testimony in support of bill.

Senator Triplett: Do you know if the passage of this bill by itself would allow the use of beneficiated coal in those facilities that are not currently using it, or would they have to have upgrades or make changes to their systems in order to use this coal vs. natural coal?

David Straley: Yes, physically we can make the changes needed in order for these facilities using out of state coal to stop using their coal and put ours in.

Senator Triplett: What facilities have you worked with in order to make those transitions?

David Straley: We have worked with and outreached from Great American Energy's standpoint the North Dakota state institutions that use out of state coal; NDSU, UND, Richardton ethanol facility, anyone who has a coal fired burner, or natural gas. We are just getting our construction going and getting our product under us and get in to penetrate these markets. What we see from a new product standpoint is that we have to prove ourselves in the market and get in the door and show results.

Chairman Cook: you mentioned the university system in North Dakota; the tax code does not have any effect on that does it?

David Straley: That is correct, the portion of the bill that the changes would apply to are just the agricultural commodity processing facilities.

Senator Dotzenrod: North American Coal is the biggest coal company in the state, and I assume that most of the coal you are mining is sold to France to burn the coal and produce electricity? And you started this new company, Great American Energy, and currently building

these facilities near Underwood. Are you producing beneficiated coal right now? Or is it something you are going to be producing?

David Straley: Yes we are producing, but with physical limitations we are only able to do a small amount for use in the aftermarket. We are working at getting larger facilities producing and selling by hopefully the 2010 time frame.

Senator Dotzenrod: It sounds expensive to get the coal to its beneficiated state.

David Straley: The facilities are in the millions of dollars to dry large quantities of coal and it is a very intensive energy process, meaning we are going to have to buy power back from our partner.

Senator Dotzenrod: So you have a market for this product you are producing?

David Straley: Right now we have not sold a single ton to date, because we are trying to get through the door or proving our product. We have tested it in facilities. We believe the market is there....they have to trust us again.

Senator Triplett: Do you know the life of the contracts that they have in buying the coal they are currently using?

David Straley: Yes, we have some knowledge on the different facilities. Most of them are a relatively short time frame. Pricing usually dictates shorter than a five year time frame.

Senator Oehlke: How many new employees is that going to generate? What kind of impact is that going to have economically for North Dakota?

David Straley: We estimate spending 20 million dollars on this project. We believe this can create 15 to 20 new employees as well as the construction jobs created by the construction of the facilities numbering in the hundreds.

Al Christianson, Great River Energy: Here in support of this bill. Coal Creek Station is in the process of developing/implementing its coal drying technology throughout the whole unit. It

is a 300 million dollar process for our plan. What we saw with this is that we are going to have extra capacity. We are also building a plant in Spiritwood, North Dakota, and we plan on using beneficiated coal there. Our first customer is going to come online in late 2009, early 2010 for about 600,000 tons of this coal. This bill will help in the agricultural processing by lowering the severance tax out of that bill. There is a cost to do beneficiation, there is a cost for the coal, and our BTU's are a little lower, so we have to compete with Powder River Coal. We think we can get back into this market. We also think the environmental benefits are important, and the facilities that could not use our coal before due to not meeting emissions standards, could use ours again. 20% of the?, over 50% of the mercury, and 30-50% of the SO2 would be reduced.

Senator Dotzenrod: You are here mainly for the exemption?

Al Christianson: We are here because we need to replace out of state coal with North Dakota coal. We have the resources.

Vice Chairman Miller: Really, your main objective for supporting this bill is helping an industry get its legs under it to help North Dakota get more competition in the coal market?

Al Christianson: Yes, it is definitely why we want to do that. We developed this technology to help North Dakota and it is helping Great River Energy because it is increasing efficiency at our power plant. We want to be competitive. We do own the other half of Great American Energy.

Senator Triplett: The severance tax has a reason for existing, and looking at where it goes, as far as the counties that benefit, have you spoken to the counties about how it will affect them?

Al Christianson: No, not to my knowledge. If we cannot compete with Powder River Coal, we will never see that severance tax anyway.

Senator Triplett: I would think the local governments would want to weigh in on this one way or another.

Chairman Cook: They do not get severance tax on coal that is sold into processing agricultural plants right now because it is coal, all this does is clarify that it is not just sugar beet plants; it is all ag processing plants, and it applies to beneficiated coal. Is it not possible that beneficiated coal could compete so well with Powder River Coal that maybe in the future we would realize that we could raise the severance tax and still allow you to compete? (Not that I would want to do that!)

Al Christianson: The answer to that question could cause me great pain.

Senator Anderson: Testimony is that the bill would only apply to severance tax used by the agricultural commodity processing facilities, but yet in sections 2 and 3 we are talking about adding the beneficiated coal into electric and power. I am guessing that is merely for adding without taking anything away from severance taxes, is that correct?

Al Christianson: That is correct.

Sandy Tabor, Vice President of Policy Development for Lignite Energy Council: I am here to let you know that all the members support this bill. It not only has the potential to develop the Great American Energy project, but there is another company (GTL) that has a slightly different way of developing beneficiated coal that is working in partnership with Great Northern Power Development (looking at natural gas plants). They would like to open their plant here in North Dakota, and that would bring in new jobs and new opportunities to the southwestern part of the state. They too think that they can help lignite become competitive with Powder River Coal for use in our agricultural processing area.

Chairman Cook: Further Testimony in support? (No) opposed? (No) neutral? (No)

Hearing closed on SB 2035.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2035

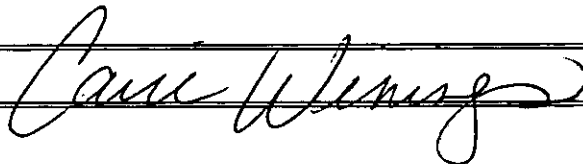
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/13/2009

Recorder Job Number: 6918

Committee Clerk Signature



Minutes:

Chairman Cook: Opens general discussion during committee work on SB 2035.

Senator Oehlke: The beneficiated coal according to Straley, I visited with him a couple of days ago, I asked him a couple of days ago the reason they could do it and compete? If all they were doing is making beneficiated coal and selling it, it would cost too much, but they can beneficiate it because they can do it as a sideline almost (a byproduct) with their other operations. That is why they can get the coal down to 7 ½ % or 8% where it can compete with

PRC coal out of Wyoming. Even with that it is not quite as good, but it is close enough to sell.

Vice Chairman Miller: I don't know what a ton of coal is selling for, but the way I see it, beneficiated coal is getting taxed almost over 60 cents a ton when you add the severance tax on the raw product and then either 1 ½ % for the gross receipts or 20 cents a ton after that. You have to remember that when you are beneficiating coal you are removing water and you are paying some amount for water. We have to consider how to make beneficiated coal more viable.

Senator Dotzenrod: The total amount of coal we are getting from Wyoming that is being burned per year, 4 million tons per year, if we replace that with beneficiated coal, and you gave up severance taxes on all of that, that would only be a loss of \$1,500,000?

Chairman Cook: there is no fiscal note on the bill, I don't think, that is assuming that you could get the business and have the tax on it.

Senator Dotzenrod: Which is a faulty assumption. If someone were to argue that we are giving up that revenue, it really isn't that much. Some of that revenue is not lost according to page 56 of the Tax Department Binder that we get 20 cents on each ton.

Senator Anderson: I can't see why there is this much interest in it and so much testimony if there isn't something being planned that we don't know about. That is fine...I am skeptical you understand. I don't think anyone is trying to pull the wool over our eyes, but I do think something is afoot. Mr. Straley did mention that one of the benefits to North Dakota is jobs.

Vice Chairman Miller: I think the main thing is that they want to take away the market from Wyoming and make sure that it gets in the hands of North Dakota coal. There is a market for beneficiated coal out there, but not if they keep buying Wyoming coal. We need to try and make it as cheap as we can.

Senator Triplett: My concern is what incentive do you use? Maybe this is the only way they could think of, but I agree with Senator Dotzenrod said that severance tax is imposed for a reason, because it is a onetime harvest, and once it is taken from the ground it is gone.

Not that I have an opposition to giving a tax benefit, but I am not sure that the severance tax is the right way to get there.

Chairman Cook: What other vehicle could we use?

Senator Triplett: I don't know. We need to think about it.

Chairman Cook: I don't look at it that way, I look at it as though we are treating beneficiated coal the same way we treat natural coal.

Vice Chairman Miller: We are still going to be able to tax them at 20 cents per ton. That is new revenue.

Senator Triplett: You are saying we are not removing anything because no one is using it yet, and no one is currently using the existing.

Chairman Cook: They are either using Powder River Coal or they are using North Dakota coal. Powder River coal they get nothing, North Dakota coal they get the benefit.

Senator Triplett: They get the benefit?

Chairman Cook: Of exactly what we are offering here to beneficiated coal.

Senator Triplett: That is only true because nobody is making use of it.

Chairman Cook: Yes, but if American Crystal Sugar started using regular North Dakota coal, this tax exemption applies.

Discussion: Between Chairman Cook and Senator Triplett concerning the how the tax is currently used and would it be used etc.

Senator Dotzenrod: Following on with that, we are not experiencing any lost revenue now, but if they do start using beneficiated coal and we do establish a pattern that goes on for a number of years, with no severance tax being collected, those people in the areas around that would get the 70% of the tax might want that to take care of some of the things that are impacted by the industry like road repairs etc. They are not here objecting.

Chairman Cook: You just said something again; you said that because it is beneficiated that there is no revenue to us, but there currently there is no revenue. If they were using natural coal there still would be no revenue. They get their share from all of this coal mine that is used in co-generation. That is where they get their money.

Senator Anderson: I want to go back to what Senator Triplett said and ask if anyone else had a feeling on it. Most exemptions that are granted have a time limit on them, and I can see

that under the exemption for coal used by state and political subdivisions because we would be taxing ourselves. Maybe this isn't the place for that. Maybe there should be some other kind of exemption.

Chairman Cook: Am I under the assumption that you want them to be as competitive as possible and you want this to happen?

Senator Triplett: Of course, I just think we might want to give them something different than what they are asking for.

Vice Chairman Miller: One thing to remember is that when you are buying raw coal, you are paying for water. When you eliminate that severance tax, you are preventing them from paying for tons of water. That would be a reason to look at the severance tax.

Senator Triplett: It is a small point at the moment because it is a small market right now, but the market could grow over time and then we need to consider that these changes get locked in and the legislature doesn't change them later. I think this is the opportunity to get it right when no one is taking advantage of the exemption that is currently there. I want to do this right. We need to make sure that the fiscal note is correct and look at the long term.

Senator Dotzenrod: If we take 4 million tons of coal away from Wyoming and replace it with 4 million tons of beneficiated coal, there would be no severance taxes collected on it, but there isn't any now, but there would be this 20 cents or 1 ¼ gross receipts (whichever is greater), so the net effect of doing that is more state revenue than we have currently.

Chairman Cook: Where are you getting the 20 cents?

Senator Dotzenrod: On page 56 of the binder, Tab 4.

Chairman Cook: O.K., I want to make sure that it is a tax they would still pay; it should say that in the fiscal note if it is.

Vice Chairman Miller: One should note that that money gets divided to the county too.

Senator Dotzenrod: Let's remember that this only applies to the agricultural processing plants.

Chairman Cook: That is a question that I wanted to ask all of you, do you want to expand that exemption? We need to look at that.

Chairman Cook: Closed discussion and adjourned.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2035

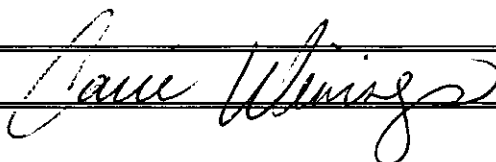
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/20/2009

Recorder Job Number: 7323

Committee Clerk Signature



Minutes:

Chairman Cook: Called the committee to order.

Senator Oehlke: This proposed amendment to SB 2035

Chairman Cook: SB 2035 deals with beneficiated coal and there was testimony that \$4 million of Wyoming coal is brought into North Dakota and the goal is to get them to use North Dakota coal. Beneficiated coal is a lot more efficient and 30% less water, the bill as it is does not apply to coal that's used by these facilities, so the intent was to expand this. Senator Triplett, you work with them to expand this?

Senator Triplett: Something about the steam plants at UND and NDSU.

Chairman Cook: Asked if there were other questions

Senator Triplett: There was concern about using severance tax and decided it's not going to work. Sandy Tabor suggested a Sunset Clause at the end so it could be reexamined in 3 or 4 sessions to see if it was working or if counties think it is taking too much away from them. Kathy Strombeck was going to work up an amendment with regards to that.

Chairman Cook: Suggested the intern draw up an amendment to take that action.

Senator Triplett: She would use the brief break to check on the amendment because Kathy would get in touch with her when it was finished.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2035

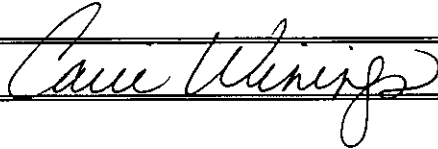
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/26/2009

Recorder Job Number: 7678

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened hearing on SB 2035.

Senator Triplett: Explained proposed amendments to the bill. This is a small reaction to my concerns, but it is all we could come up with. There was one line added to the amendment for clarification (nothing that effects voting on the bill).

Vice Chairman Miller: One concern I have is the possibility if the effects of the bill is that it will just be getting going and it will be too soon for the study to see the full effects, but maybe we will be able to see the gradual increase.

Chairman Cook: That is a good point. Ultimately, the goal is for the report to generate discussion as to whether or not this is needed in the future.

Senator Triplett: It is actually three biennium's out, and that was a request of the folks from GRE and North American Coal. So there will be a fair amount of lead time. The point to us is that the tax exemption is not expected to close the gap between Wyoming coal and North Dakota coal. They will be relying on other things that will help make up the difference.

Chairman Cook: In the changing times in America with electric generated power, it is an important for time for our state to continue to watch tax policy of electric generation. I have

some real concerns about the cost of electricity in the future. You did say there was a sunset clause?

Senator Triplett: The tax department is comfortable with this.

Chairman Cook: And there is a sunset?

Senator Triplett: There is a sunset clause.

Chairman Cook: In 2015?

Senator Triplett: Yes.

Senator Triplett: Moved approved on amendment 90195.0202 with the additional amendment we had written in.

Senator Hogue: Seconded the amendment.

Chairman Cook: All in favor of the amendment? Yes.

Senator Triplett: Moved a DO PASS as amended.

Senator Hogue: Seconded.

A Roll Call Vote was taken. Do Pass. Yea: 7, Nay: 0, Absent: 0

Vice Chairman Miller will carry to the floor.

FISCAL NOTE
Requested by Legislative Council
01/28/2009

Amendment to: SB 2035

1A. **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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engrossed SB 2035 allows the same tax treatment and exemptions for beneficiated coal as are allowed coal in its natural state. It also authorizes a study and provides a sunset date.

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.*

The fiscal impact - if any - would be a revenue loss from extending provisions to beneficiated coal that would otherwise be taxable. It is not know if there will be any qualifying projects that will take place in the 2009-11 biennium. The study requirements contained in Section 5 of Eng. SB 2035 will enable the Legislative Assembly to review the effectiveness of these provisions after a few biennia, and either allow or extend the sunset contained in Section 6.

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.*

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.*

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.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/29/2009

FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: SB 2035

1A. **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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

SB 2035 allows the same tax treatment and exemptions for beneficiated coal as are allowed coal in its natural state.

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.*

Section 1 clarifies the existing sales tax exemption for beneficiated coal. Sections 2 and 3 allow power plants to be treated the same for the purpose of sales and use tax exemptions if they use beneficiated coal or coal in its natural state. Section 4 allows the existing sales and use tax and coal severance tax exemptions that are in place for coal in its natural state used in certain qualifying agricultural commodity processing facilities to also cover the use of beneficiated coal in those types of plants. The fiscal impact - if any - would be a revenue loss from extending these provisions to beneficiated coal that would otherwise be taxable. However, the availability and substitutability of coal in its natural state could mean the negative fiscal impact is zero.

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.*

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.*

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.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	12/31/2008

PROPOSED AMENDMENTS TO SENATE BILL NO. 2035

Page 1, line 5, replace "and" with "to provide for a study and report to the legislative council;"
and after "date" insert "; and to provide an expiration date"

Page 4, line 8, after "states" insert "or any facility owned by the state or a political subdivision"

Page 4, line 11, after "states" insert "or any facility owned by the state or a political subdivision"

Page 4, line 15, after "facilities" insert "or any facility owned by the state or a political
subdivision"

Page 4, after line 15, insert:

**"SECTION 5. TAX COMMISSIONER STUDY - LEGISLATIVE COUNCIL
REPORT.**

1. During the 2009-11 and 2011-13 bienniums, the tax commissioner shall conduct a cost-benefit analysis of the coal severance tax exemption authorized under section 57-61-01.4.
2. The tax commissioner shall report the findings and recommendations of the analysis to the legislative council's interim energy development and transmission committee during the 2013-14 interim. *an interim committee designated by the Legislative Council*
3. The report must be based upon information available to the tax commissioner and must include an analysis of the costs and benefits to the state and the taxpayers who qualify for the exemption under section 57-61-01.4.
4. The tax commissioner shall establish the procedure by which the tax commissioner will compile the data and the format in which the tax commissioner will provide this data to the interim committee.
5. The tax commissioner may use confidential tax information filed by or on behalf of a person pursuant to a tax law of this state to compile this report. Confidential tax information must be provided to the interim committee in a manner that will not divulge information specific to any taxpayer."

Page 4, line 16, replace "This Act is" with "Sections 1 through 4 of this Act are"

Page 4, line 17, after "2009" insert ", and before July 1, 2015, and are thereafter ineffective"

Renumber accordingly

January 22, 2009

JCB
1-27-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2035

Page 1, line 5, replace "and" with "to provide for a study and a report to the legislative council;" and after "date" insert "; and to provide an expiration date"

Page 4, line 8, after "states" insert "or any facility owned by the state or a political subdivision"

Page 4, line 11, after "states" insert "or any facility owned by the state or a political subdivision"

Page 4, line 15, after "facilities" insert "or any facility owned by the state or a political subdivision"

Page 4, after line 15, insert:

"SECTION 5. TAX COMMISSIONER STUDY - LEGISLATIVE COUNCIL REPORT.

1. During the 2009-11 and 2011-13 bienniums, the tax commissioner shall conduct a cost-benefit analysis of the coal severance tax exemption authorized under section 57-61-01.4.
2. The tax commissioner shall report the findings and recommendations of the analysis to an interim committee designated by the legislative council during the 2013-14 interim.
3. The report must be based upon information available to the tax commissioner and must include an analysis of the costs and benefits to the state and the taxpayers who qualify for the exemption under section 57-61-01.4.
4. The tax commissioner shall establish the procedure by which the tax commissioner will compile the data and the format in which the tax commissioner will provide this data to the interim committee.
5. The tax commissioner may use confidential tax information filed by or on behalf of a person pursuant to a tax law of this state to compile this report. Confidential tax information must be provided to the interim committee in a manner that will not divulge information specific to any taxpayer."

Page 4, line 16, after "DATE" insert " - EXPIRATION DATE" and replace "This Act is" with "Sections 1 through 4 of this Act are"

Page 4, line 17, after "2009" insert ", and before July 1, 2015, and are thereafter ineffective"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2035: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2035 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "and" with "to provide for a study and a report to the legislative council;" and after "date" insert "; and to provide an expiration date"

Page 4, line 8, after "states" insert "or any facility owned by the state or a political subdivision"

Page 4, line 11, after "states" insert "or any facility owned by the state or a political subdivision"

Page 4, line 15, after "facilities" insert "or any facility owned by the state or a political subdivision"

Page 4, after line 15, insert:

"SECTION 5. TAX COMMISSIONER STUDY - LEGISLATIVE COUNCIL REPORT.

1. During the 2009-11 and 2011-13 bienniums, the tax commissioner shall conduct a cost-benefit analysis of the coal severance tax exemption authorized under section 57-61-01.4.
2. The tax commissioner shall report the findings and recommendations of the analysis to an interim committee designated by the legislative council during the 2013-14 interim.
3. The report must be based upon information available to the tax commissioner and must include an analysis of the costs and benefits to the state and the taxpayers who qualify for the exemption under section 57-61-01.4.
4. The tax commissioner shall establish the procedure by which the tax commissioner will compile the data and the format in which the tax commissioner will provide this data to the interim committee.
5. The tax commissioner may use confidential tax information filed by or on behalf of a person pursuant to a tax law of this state to compile this report. Confidential tax information must be provided to the interim committee in a manner that will not divulge information specific to any taxpayer."

Page 4, line 16, after "**DATE**" insert " - **EXPIRATION DATE**" and replace "This Act is" with "Sections 1 through 4 of this Act are"

Page 4, line 17, after "2009" insert ", and before July 1, 2015, and are thereafter ineffective"

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

SB 2035

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2035**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9711

Committee Clerk Signature

Minutes:

Chairman Belter: We will open the hearing on SB 2035.

Tim Dawson, Legislative Council: The bill before you is engrossed Senate Bill 2035. I think I will just walk you through this one. Sections 1, 2 and 3 of the bill exempt a power plant that uses beneficiated coal from sales and use tax in the same way that a plant that uses normal coal would be exempt. You can see on page two the bill adds to the definition of power plant, a plant that generates electricity from beneficiated coal; these plants are exempt from sales tax. Then at the bottom, you will see that the definition of repowering has been changed to include a plant repowering to use or that uses beneficiated coal. Section 3 deals with the use tax and that has the exact same changes that were done in section 2 in relation to the sales tax so it relates to sales and use tax. Section 4 exempts (on page 4) coal and beneficiated coal as used in agricultural processing plants or governmental facilities from severance tax. The Senate, and this is why the bill is engrossed, added the or any facility owned by the state or a political subdivision or, as I have summed them up, governmental facilities. Those words were added in the Senate. When it came out of the Energy Development and Transmission Committee, it only related to the agricultural processing plants. Also, the Senate added section 5, which is a study by the Tax Commissioner and a report to the Legislative Council of

a cost to benefit analysis of the coal severance tax exemption authorized under section 4 of the bill. The Tax Commissioner will report this to an interim committee designated by the Legislative Council, which will probably be the Taxation Committee. When you look at section 6, new in this engrossed bill is a sunset for sections 1-4 and the sunset will be July 1, 2015. The Senate added the sunset, the governmental facilities, and the study. That concludes my description of the bill.

Chairman Belter: Any questions?

Representative Schmidt: I hope this isn't a dumb question. I know what a beneficiary is, but what is beneficiated?

Tim Dawson: Beneficiated coal is some process that improves the combustion of that coal. It is coal with improved physical, environmental or combustion qualities.

Representative Schmidt: Does that explain it in the bill?

Tim Dawson: I think a definition of beneficiated coal was added to the code last session and that was the definition that was added, improving the physical, environmental or combustion qualities of coal that does not include crushing or treatment with dust suppressants or freeze proofing agents is what was added.

Representative Headland: Section 4, can you elaborate a little bit on state-owned? I am assuming we will be talking about a political subdivision, a city-owned power plant or something like that?

Tim Dawson: I wasn't there for the discussions on that. I don't know what cities would, the University of ND comes to mind; they make their own power.

Representative Winrich: Do any of our producers in ND process coal into beneficiated coal?

Is that a ND product?

Tim Dawson: I am not sure exactly what is going on. I know there is a big project in the works with beneficiated coal and that is why this all came about and the term came about. They are trying to keep it on the same par as regular coal.

Chairman Belter: There are a couple of industry people here. When they stand up, we can ask them. Any other questions? Further testimony in support of SB 2035?

Sandi Tabor, Lignite Industry Council: I actually wasn't planning on doing anything but standing up and saying, "me, too", but David Straley of North American Coal could not be here today. He has been in contact with the chair about holding the hearing open so that he can come and testify when he gets here. What I can do is to give you at least a brief explanation of what the bill does and maybe answer some of the questions that have been raised. SB 2035 was introduced to extend the severance sales and use tax exemption for coal used in

agricultural commodity processing plants or in institutions owned by the state or political subdivision. There was a question about political subdivisions. Maybe Al Christianson can answer more specifically about what political subs might be able to take advantage of beneficiated coal. State institution-wise, it is UND and I believe at Camp Grafton, they still use a coal fired boiler. Those types of institutions might be able to use beneficiated coal. This section of the bill, which originally gave the exemptions from taxes for the sugar beet plants, was actually done when I was just a baby lobbyist. It was because my company, Knife River Coal Mining Company, at the time was in serious jeopardy of losing their coal contracts to sugar beets out in the eastern part of the state. The concept has been around for a long time. The expansion not to include all agricultural processing plants comes in part because of some of the ethanol plants we are seeing. Red Trail Energy is one in particular that initially was going to try and burn lignite but just couldn't use the natural form of lignite coal in the boiler. We are hoping through the beneficiated process, which improves the quality of the coal and

takes out a lot of the moisture content, that they will be able to switch back over to the beneficiated lignite. The question was asked what beneficiated coal is. It is a drying process. We have two different groups right now that are talking about it, one is Great River Energy and North American, through a new partnership they have formed called American Energy. That group has been working very diligently on establishing beneficiated coal processes. Great River Energy is actually changing over all of their plants at Coal Creek Station so they can use beneficiated coal in their process because it will burn better. The other group that is looking at beneficiated coal is called GTL Energy. They are working with Great Northern Power Development in the South Heart area to set up a plant that will do beneficiation research, but also provide beneficiated coal to the Great Northern Power Development Project. GTL Energy is kind of an interesting project because once they get operational, they will be bringing in coal from all over the world, including China and India, which are very significant users of lignite type coal in their generating processes. They are going to bring this coal from all over the world and actually work on how to improve the quality through this beneficiated process and a briquetting type process they have been working on. The bill has implications beyond what North American and GRE would like to see. It also has some implications for Great Northern Power and GTL Energy. Tim touched briefly on the amendments from the Senate. Let me expand a little bit, especially about the Tax Commissioner's study and the reporting. This was done at the request of Finance and Tax in the Senate because there was some concern about the impact on the local coal counties losing some of the severance taxes, especially if this takes off. We talked to them and said we can't project what will happen as this beneficiated process goes forward, but what we should do is have someone do an analysis of the impact. That is also why they put the 2015 sunset date in. It is kind of a trigger to make sure that a) the study is done and b) that we have a discussion with you all about how we move forward in

the future, especially if beneficiated coal does take off with our institutions. That is why section 5 and the sunset clause were put in. With that, I will try and answer questions. Just so you know, the Lignite Council does support this bill.

Al Christianson, Great River Energy: We are here to ask for your support for this bill. It is very important to a fledgling industry. We are in the process of doing about a \$300 million retrofit to Coal Creek Station to turn all 8 million tons of coal that we burn a year into beneficiated coal with a process that was developed and patented by two of our local engineers. We are also commercializing that worldwide. It not only dries the coal and increases the BTUs; it also reduces the emissions. It takes out half the mercury, 30% of the SO₂ and 20-30% of the knots. We are also going to burn it at our Spiritwood Station that is under construction east of Jamestown; we will be burning 600,000 tons of that. Since we are putting that big investment in, we thought we would like to compete against the Powder River coals that have come into ND. In the past, lignite does have this tax provision in it, but it hasn't been used because of the issues Sandi talked about. People have had trouble burning it in their facilities. UND used to burn it; they went to Powder River Coal. We think we can compete with them so we are asking you for your support and I would be more than happy to answer any questions that I can.

Chairman Belter: To go through this process, what does that cost?

Al Christianson: It varies by what you are going to do. For Coal Creek Station, our facility was designed to burn coal at 7200 BTUs; the coal coming out of the ground is 6200 on an average so we are going to dry the coal for them and beneficiate it to 7200 BTUs, which is a sweet spot. For Spiritwood, we are going to go to 7500; you can actually take it up to just about compete with Powder River. It varies; the costs are there but we are using waste heat for most of the energy. The biggest investment is in the capital, the \$300 million to do the 8

million tons. The actual energy that is put in there isn't very much because it is waste heat.

This is a small amount of tax we are going to get, but every little bit helps to compete with Powder River Coal. That is our hope is to take ND institutions to beneficiated coal, to do the value added ag to that. That is where our hope is.

Representative Froseth: Is any of this beneficiated coal coming down from the federal level—mandates for cleaner coal and less pollutants?

Al Christianson: In a way it is coming down, but what we are doing at Coal Creek Station and Great River Energy is our way to meet some of the mandates on the emission levels, instead of having to put in other equipment that is more costly and may not meet them. This beneficiated does our phase 1 for us in the environmental stuff so yes, it is. That is why the other companies area looking for it, that and the fact that most of the other companies are burning less quality coal than the boilers were designed for so they are having an immediate penalty over all the years. It is kind of like if you get this better coal, you get an annuity check back you never had before; you gain that percentage. We are getting a 4% efficiency gain on our plant, which is a huge amount of money. To compete in the industry, Red Trail has issues meeting knots; UND has trouble meeting their sulphur emissions so those are all the things we think we can help. It is all coming down from the environmental side.

Representative Pinkerton: In Minot we had a boiler which essentially failed because of quality issues with the lignite coming in. This beneficiated coal would make quite a difference there because if you had a better product going in...

Al Christianson: Yes it would and we are actually doing a couple of test burns in Minot right now. The thing about it is it is like a manufactured product so it is consistent. You can take the experts and set your boiler to burn this product where coal coming out of the ground has considerable variability. We will see anything from 5400 BTUs to 7000 BTUs on mine run coal

and the sulphur moves all over. This comes out consistently as a product at the end of the beneficiation process.

Shane Goettle, ND Department of Commerce: (Testimony 1) I will be quick. I just wanted to point out that this bill was endorsed by the Empower Commission and I will save myself getting up on the next bill 2037, which was also endorsed by the Empower Commission. I refer you to my written testimony.

Chairman Belter: Any further testimony in support of 2035? Any opposition? Any neutral testimony? If not, we will close the hearing on SB 2035.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2035**

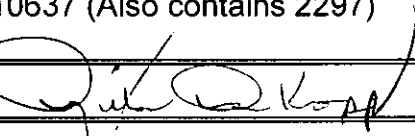
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10637 (Also contains 2297)

Committee Clerk Signature



Minutes: (1:27)

Chairman Belter: Let's go to SB 2035. Dave, do you want to explain the amendments.

David Straley, North American Coal Council: I apologize. I was playing the role of dad with sick kids the day you had the hearing on 2035.

Chairman Belter: Give Dave an amendment there.

David Straley: I don't have my written testimony here, but I do have just a brief description of what these amendments would do and how they would apply to the bill. I know Sandi Tabor gave a version of my testimony, as well as Al Christianson from Great River Energy. Probably the quickest and easiest way to explain this as you do your committee work is we have had an exemption given for just regular old coal for 28 years in the code. Now we are coming up on the next generation of what we call beneficiated coal, where we actually have a different definition of beneficiated coal, coal that we dry and improve the characteristics of it. We would like those same exemptions given for beneficiated coal to make the coal better. What this amendment would do is allow those same agricultural processing commodity facilities, your Red Trail facility, your Spiritwood station, any of the sugar beet refiners in the state of ND—all of those are considered agricultural processing commodity facilities. We would like those, whether they actually use the coal right at their spot or the beneficiated coal right in their

station or with the new generation of facilities coming on, rather than burning the coal in the facility, they co-locate right next to a facility that actually burns the coal specifically for generating steam and they send the steam over through a pipe 50 to 100 yards and then they use that as their heating source. There are two facilities that this would apply to in the state of ND, one is operation today and that is Blue Point Ethanol; they would consume approximately, if they were to burn beneficiated coal, they would burn approximately 100,000 tons a year. The other facility that this would apply to is your Spiritwood Station when it is completed to be operational the first quarter of 2010. That is specifically where these amendments would apply. The bottom line is rather than it applying with these facilities that actually have to burn the coal themselves, we allow them with this amendment to generate the steam next door and sell the steam version of beneficiated coal. That is what these amendments would do.

Representative Winrich: The steam is going to be generated by some other producer/business that is doing something else but has steam to export?

David Straley: That is exactly correct—kind of the new generation as we see it. In order for the ethanol industry to compete in their environment; they need the cheapest source of heat that they can get. It makes sense for our industry to co-locate, meaning what we call (inaudible) combine heat and power. We generate power at a station; we throw in some beneficiated lignite and generate extra heat specifically for generating steam at the agricultural processing commodity facilities. An important note to the committee, this would not apply to the regular power going out of Spiritwood. It would still have to be an agricultural processing facility.

Representative Brandenburg: Wouldn't this also apply to Red Trail? Wouldn't they use beneficiated coal?

David Straley: The bill as written without these amendments would apply to Red Trail so you can see the spot we are trying to save is rather than putting industry at odds with each other, where eight out of ten apply, these other two do not. We are trying to get everybody in the same boat but they will all be able to compete (inaudible) because they use beneficiated coal or coal at Red Trail.

Representative Headland: I would move the amendments.

Chairman Belter: We have a motion to move the amendments from Representative Headland and a second from Representative Brandenburg to move the .0301 amendments to 2035. Is there any discussion? **A voice vote resulted in the .0301 amendment motion passing.** We have a motion for a "do pass as amended" from Representative Headland and a second from Representative Drovdal. Any discussion? **A roll call vote for a "do pass as amended" on SB 2035 resulted in 10 ayes, 0 nays, 3 absent/not voting. Representative Headland will carry the bill.**

VR
3/11/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2035

Page 1, line 4, after the second "coal" insert "or beneficiated coal used to produce steam that is"

Page 4, line 7, after "in" insert ", or coal used to produce steam that is used in,"

Page 4, line 10, after "subdivision" insert "of the state"

Page 4, line 12, after "in" insert ", or used to produce steam that is used in,"

Page 4, line 14, after "subdivision" insert "of the state"

Page 4, line 18, after "subdivision" insert "of the state or to produce steam that is used in any of those facilities"

Renumber accordingly

Date: March 10, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2035

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 10301

Action Taken Do Pass Do Not Pass Amended

Motion Made By Headland Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: March 10, 2009

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2035

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Headland Seconded By Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton		
Representative Froseth	/		Representative Schmidt	/	
Representative Grande	/		Representative Winrich	/	
Representative Headland	/				
Representative Weiler	/				
Representative Wrangham					

Total (Yes) 10 No 0

Absent 3

Floor Assignment Rep Headland

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

REPORT OF STANDING COMMITTEE

SB 2035, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2035 was placed on the Sixth order on the calendar.

Page 1, line 4, after the second "coal" insert "or beneficiated coal used to produce steam that is"

Page 4, line 7, after "in" insert ", or coal used to produce steam that is used in,"

Page 4, line 10, after "subdivision" insert "of the state"

Page 4, line 12, after "in" insert ", or used to produce steam that is used in,"

Page 4, line 14, after "subdivision" insert "of the state"

Page 4, line 18, after "subdivision" insert "of the state or to produce steam that is used in any of those facilities"

Renumber accordingly

2009 TESTIMONY

SB 2035



SB 2035

Presented by: David Straley, Manager of ND Govt/Public Affairs

North American Coal Corporation

Before: Senate Finance and Taxation Committee

Date: Tuesday, January 13, 2009

TESTIMONY IN SUPPORT OF SB 2035

Chairman Cook and committee members, my name is David Straley, and I am here today representing The North American Coal Corporation. We urge your support for a "Do Pass" recommendation of Senate Bill 2035.

North American Coal is the largest lignite coal producer in the State of North Dakota with operations in both Mercer County (The Freedom Mine) and McLean County (The Falkirk Mine). North American Coal is part owner in a Limited Liability Company doing business as Great American Energy. The purpose of Great American Energy is to sell coal that has been beneficiated, in our situation—dried, to any and all energy facilities in and around North Dakota that are

currently using out-of-state coal as their primary fuel source. Great American Energy is currently constructing drying facilities near Underwood, North Dakota in hopes of having a beneficiated (dried) coal product to market soon.

Although it is hard to determine exactly how much out of state coal is being consumed in North Dakota as it not being tracked by any department, we believe it to be substantial. This bill, if enacted into law, would help us displace that out-of-state coal being used in North Dakota.

I know there are others here today to support the technical aspects of this bill and how the tax code is referenced, but I support the clean-up language within Sections 1, 2, and 3. As for Section 4, the exemption clarified in this bill would only apply to the state severance tax on coal or beneficiated coal that is used by agricultural commodity processing facilities, both in North Dakota and adjacent states. We believe this definition would cover all agricultural commodity processing facilities such as ethanol, biofuels, and sugar beet refineries. We believe these are primarily the facilities that use out-of-state coal.

We urge a "Do Pass" recommendation on Senate Bill 2035. This concludes my testimony, and I would be happy to answer any questions you may have.

Proposed Amendment to SB 2035

Page 4, line 8, after “states” insert “or any facility owned by the state or political subdivision”

Page 4, line 11, after “states” insert “or any facility owned by the state or political subdivision”

Page 4, line 15, after “facilities” insert “or any facility owned by the state or political subdivision”

Renumber accordingly

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILLS 2031, 2032, 2033, 2035, & 2037
FEBRUARY 25, 2009, 9:00 A.M.
HOUSE FINANCE AND TAXATION COMMITTEE
FORT TOTTEN ROOM
REPRESENTATIVE WES BELTER, CHAIRMAN**

SHANE GOETTLE – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bills 2031, 2032, 2033, 2035, and 2037. All five of these bills have been recommended by the Commission and were approved by the interim Energy Development and Transmission committee. A complete list of bills recommended and supported by the Commission is below:

- House Bill No. 1032 - Siting Jurisdiction for Certain Gas Pipelines.
- House Bill No. 1352 – State Energy Policy.
- Senate Bill No. 2031 - Property Tax Reduction for Wind Towers.
- Senate Bill No. 2032 - Sales and Use Tax Exemption for Wind Towers.
- Senate Bill No. 2033 - Income Tax Credit for Renewable Energy Devices.
- Senate Bill No. 2034 - Oil Extraction Tax Exemption for Tertiary Recovery Using Carbon Dioxide.
- Senate Bill No. 2035 - Sales and Use Tax Exemption for Beneficiated Coal Plant and Severance Tax Exemption for Beneficiated Coal in Agricultural Commodity Processing.
- Senate Bill No. 2036 - Coal Conversion Tax Exemption for Repowering Beneficiated Coal Plant.
- Senate Bill No. 2037 - Sales and Use Tax Exemption for Gas From Oil Wells.

Senate Bills 2031, 2032, and 2033 extend our state's tax incentives for wind energy development to 2015. The combination of favorable property tax treatment, sales and use tax exemptions, and income tax credits has allowed North Dakota to be competitive with neighboring states as companies decide where to locate new wind farms. Periodic reviews are in order and the sunset of 2015 will allow a future consideration of whether these incentives are still appropriate.

SB 2035 gives equal tax treatment to beneficiated coal as coal in its natural form.

SB 2037 clarifies that the sales and use tax exemption for gas gathering equipment applies to oil wells.

Mr. Chairman and members of the Finance and Taxation Committee, I respectfully request your favorable consideration of Senate Bills 2031, 2032, 2033, 2035 and 2037. That concludes my testimony and I am happy to entertain any questions.