AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
109–656

NONDISCRIMINATORY TAXATION OF NATURAL GAS PIPELINE PROPERTY

SEPTEMBER 14, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1369]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1369) to prevent certain discriminatory taxation of natural gas pipeline property, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1369 prohibits certain types of discriminatory taxation of natural gas pipeline property by States and localities to the extent that such taxation interferes with interstate commerce. Specifically, H.R. 1369 prohibits States and political subdivisions thereof from imposing a higher ad valorem tax burden [1] on interstate natural gas pipeline property than that placed on other commercial or industrial property. It also grants jurisdiction to the U.S. District Courts to hear claims of discriminatory taxation and provide relief to parties in the event discriminatory taxation is found.

[1] An ad valorem tax is a tax levied on property in proportion to the valued determined by an assessment or appraisal. This tax is usually levied by States, counties and cities on different types of real estate or personal property.

49–006

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1369 was introduced by Representative Chris Cannon (R–UT) on March 17, 2005. Legislation similar to H.R. 1369 was introduced and reported favorably by the Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary in the 99th and 100th Congresses.[2] In the 99th Congress, provisions of the bill were passed by the House of Representatives as part of the 1985 Budget Reconciliation Act,[3] but they were dropped during House-Senate conference negotiations. In the 100th Congress, the legislation won a majority of votes on the House floor but failed to receive the two-thirds vote required under suspension of the rules.[4] The legislation was reintroduced in the 101st Congress,[5] and the Subcommittee held a hearing, but there was no further consideration of the bill prior to the conclusion of that Congress. In the 108th Congress, Representative John Carter (R–TX) introduced similar legislation[6] to prohibit certain discriminatory taxation of natural gas pipeline property. The bill was referred to the Subcommittee on Commercial and Administrative Law, but no further action was taken.

Treatment of discriminatory taxation

Currently there is no Federal prohibition against discriminatory taxation of property owned by interstate natural gas pipeline companies despite the fact that Congress has prohibited such treatment of property owned by other industries operating in interstate commerce. For example, Congress passed the Railroad Revitalization and Regulatory Reform Act of 1976,[7] which, in part, prohibited States from imposing discriminatory assessments on the property owned by railroads and authorized the railroad industry to seek injunctive relief in Federal court against such discriminatory State assessments. Currently, a State may not assess rail transportation property,[8] motor carrier transportation property,[9] or air carrier transportation property[10] at a value that has a higher ratio to the true market value of the property than that of other commercial and industrial property in the same jurisdiction.

Natural gas pipelines lack this Federal protection against discriminatory taxation. Discriminatory taxation by a State, subdivision of a State, authority acting for a State or subdivision of a State, or any other taxing authority (including a taxing jurisdiction and a taxing district) can arise in a variety of ways. One approach consists of assessing the pipeline property at a substantially higher proportion of true market value than other commercial or industrial property. Another method consists of changing the treatment of personal and real pipeline property by excluding personal property from taxation for general commercial and industrial taxation

[2] H.R. 2092, 99th Cong. (1985) (introduced by Representative James Howard (D–NJ)). The provisions dealing with the interstate natural gas pipeline property taxation were removed before H.R. 2092 became Public Law No. 99–516); H.R. 2953, 100th Cong. (1987) (introduced by Representative William J. Hughes (D–NJ)).
[3] Consolidated Omnibus Budget Reconciliation Act of 1985, H.R. 3128, 99th Cong. (1985).
[4] 134 Cong. Rec. H 9775 (daily ed. Oct. 6, 1988).
[5] H.R. 2378, 101st Cong. (1989) (Introduced by Representative Lawrence Smith (D–FL)).
[6] H.R. 4726, 108th Cong. (2004).
[7] Pub. L. No. 94–210, 90 Stat. 31 (1976) (codified, as amended, at 45 U.S.C. ch. 17 (2000)).
[8] 49 U.S.C. § 11501 (2000).
[9] *Id.* at § 14502.
[10] *Id.* at § 40116.

but including such property for pipeline taxation. A third way involves subjecting the pipeline property to a higher tax rate than that applied to other commercial and industrial property.

This discriminatory taxation is a form of tax exportation by States. When a State taxes property of an interstate natural gas pipeline, that tax is then included in the rates charged by the pipeline for transportation of natural gas, as authorized by the Federal Energy Regulatory Commission.[11] This cost of transportation is then passed along to consumers in the form of higher charges for natural gas. Essentially, consumers within the State and throughout the country wind up paying these discriminatory taxes. Also, the nature of these taxes appears to have a regressive impact, i.e. it affects poor consumers to a much greater degree than consumers with higher incomes.[12]

Furthermore, discriminatory taxation by States on natural gas pipeline property can discourage investment in new pipelines, especially if the discrimination involves the disparate treatment of natural gas pipeline property differently from other commercial and industrial property.[13] Discouraging investment can create delays in the construction of necessary infrastructure for the transportation of natural gas. A study by The INGAA Foundation, Inc., a foundation formed by the Interstate Natural Gas Association of America, determined that a two-year delay in building natural gas infrastructure could cost consumers in the United States more than $200 billion by 2020.[14]

Jurisdiction for relief

Under current law, rail, motor carrier and air carrier transportation taxpayers may file an action alleging unlawful discriminatory taxation in Federal court.[15] To prevail, the taxpayer must establish that other commercial and industrial taxpayers are assessed at lower rates. The natural gas pipeline industry, however, is relegated to a lengthy, expensive, laborious and often uncertain State appeal process. The Tax Injunction Act[16] prohibits Federal courts from enjoining, spending or restraining taxes or levies under State law if there is a plain, speedy and efficient remedy, unless the Federal courts have specifically been authorized to hear such matters by Federal law. The courts have interpreted this statute to bar Federal intervention in a State tax matter if there is any remedy, either pre-deprivation or post-deprivation, available under

---

[11] Ad valorem taxes are incorporated as part of "other taxes", which are subsequently included in the "cost of service" calculation used to derive rates for the natural gas pipelines. See 18 C.F.R. pt. 154 & 201.

[12] To Prevent Certain Discriminatory Taxation of Interstate Natural Gas Pipeline Property: Hearing on H.R. 1369 Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 109th Cong. 38, 47 (2005) (statement of Veronique de Rugy, Ph.D., Research Scholar, American Enterprise Institute for Public Policy Research).

[13] Id. at 15 (statement of Veronique de Rugy, Ph.D.); see also Kevin Kemper, Firm Seeking Tax Formula Changes to Fuel $350 M Gas Pipeline Project, COLUMBUS BUSINESS FIRST, June 2, 2006, at A6 (explaining the effects of the excessive taxation of pipeline property on a company trying to build an additional pipeline in Ohio to increase competition).

[14] Energy and Environmental Analysis, Inc., An Updated Assessment of Pipeline and Storage Infrastructure for the North American Gas Market: Adverse Consequences of Delays in the Construction of Natural Gas Infrastructure 10 (July 2004) available at http://www.ingaa.org/Documents/Foundation%20Studies/Final%20Capacity%20Update.pdf. This cost is specifically for projects already identified, but not yet under construction. As our Nation begins to use more natural gas, this demand must be transported some way. As the demand increases, the cost will increase, specifically if there is a disincentive to build additional infrastructure.

[15] 49 U.S.C. §§ 11501, 14502 & 40116 (2000).

[16] 28 U.S.C. § 1341 (2000).

State law.[17] In addition, litigants are often denied access to Federal courts in matters of State taxation based upon the principle of comity.[18] Last year, the Subcommittee on Commercial and Administrative Law received testimony from witnesses that emphasized the lengthy, protracted and unwieldy process for appealing tax decisions in the State courts.[19]

HEARINGS

The Subcommittee on Commercial and Administrative Law conducted a hearing on H.R. 1369 on October 6, 2005. Testimony was received from the following witnesses: Veronique de Rugy, Ph.D., Research Fellow at the American Enterprise Institute for Public Policy Research; Mark Schroeder, Vice-President and General Counsel for CenterPoint Energy Gas Transmission Company; Harley Duncan, Executive Director of the Federation of Tax Administrators; and Laurence Garrett, Senior Counsel for El Paso Company, on behalf of the Interstate Natural Gas Association of America.

COMMITTEE CONSIDERATION

On June 15, 2006, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported the bill, H.R. 1369, by a voice vote, a quorum being present. On July 12, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 1369, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee's consideration of H.R. 1369.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

---

[17] See J&M Autobody v. Gavin, 27 F. Supp. 2d 115 (D. Conn. 1989). See generally Rosewell v. La Salle National Bank 450 U.S. 503 (1981); Capitol Industries-EMI, Inc. v. Bennett, 681 F.2d 1107 (9th Cir. 1982); Axelrod v. Earhart, 565 F. Supp. 549 (N.D. Ill. 1983).

[18] Under the principle of comity the courts of one State or jurisdiction generally give effect to the laws of another jurisdiction based on mutual respect and deference. BLACK'S LAW DICTIONARY 267 (6th ed. 1990).

[19] To Prevent Certain Discriminatory Taxation of Interstate Natural Gas Pipeline Property: Hearing on H.R. 1369 Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 109th Cong. 7–11 (2005) (statement of Mark C. Schroeder, Vice President and General Counsel, CenterPoint Energy, Inc. Gas Pipeline Group).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1369, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

JULY 19, 2006.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1369, a bill to prevent certain discriminatory taxation of natural gas pipeline property.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Ramirez-Branum (for the state and local impact) and Barbara Edwards (for federal revenues).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 1369—A bill to prevent certain discriminatory taxation of natural gas pipeline property

Summary: H.R. 1369 would prohibit state, local, and tribal governments from imposing taxes that discriminate against the property of natural gas pipelines.

CBO estimates that enacting H.R. 1369 would increase federal revenues by $45 million in 2007, by $214 million over the 2007–2011 period, and by $371 million over the 2007–2016 period. The bill would have no other impacts on the federal budget.

By prohibiting state, local, and tribal governments from levying discriminatory taxes on the property of natural gas pipelines, the bill would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that those governments initially would lose revenues that exceed the threshold established in UMRA for intergovernmental mandates ($64 million in 2006, adjusted annually for inflation). Over time, we expect those governments likely would change their tax policies to offset at least some of those losses.

This bill contains no new private-sector mandates as defined in UMRA.

Estimated effect on the Federal Government: The estimated budgetary impact of H.R. 1369 is shown in the following table.

	By fiscal year, in millions of dollars—									
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
CHANGES IN REVENUES										
Estimated revenues	45	51	47	39	33	32	32	31	31	31

CBO expects that enacting H.R. 1369 would reduce payments of state and local property taxes by corporations. These lower payments, would, in turn, reduce deductions made by corporations for

federal income taxes and raise taxable income. State and local governments are expected to adjust their finances as a result of these lost revenues. These adjustments would likely be a combination of reduced spending and higher taxes and fees—both deductible and non-deductible. This response by state and local governments would mute, but not eliminate, the revenue gain to the federal government. CBO estimates that, on balance, H.R. 1369 would increase federal revenues by $45 million in 2007, by $214 million over the 2007–2011 period, and by $371 million over the 2007–2016 period.

Intergovernmental mandates contained in the bill: H.R. 1369 would prohibit state, local, and tribal governments from imposing taxes that discriminate against the property of natural gas pipelines. Specifically, the bill would prohibit those governments from:

- Assessing the value of property owned by pipelines at ratios, relative to true market value, that are higher than the ratio for other commercial and industrial property in the same jurisdiction;
- Setting tax rates for pipeline properties that are higher than the rates applied to other commercial or industrial properties in the same jurisdiction; or
- Imposing any other discriminatory tax on natural gas pipelines that provide transportation or storage of natural gas.

Those prohibitions constitute intergovernmental mandates as defined in UMRA.

The bill's application to tribal governments is uncertain. Without specific language to exclude those governments from complying with the mandates contained in the bill, however, CBO assumes that they would be required to comply.

Estimated direct costs of mandates to state and local governments: Currently as many as 15 states and their local jurisdictions, and several tribal governments, engage in practices that would be prohibited by this bill. In total, those jurisdictions collect a total of nearly $500 million annually from pipeline property. CBO estimates more than $250 million of those collections result from tax policies that would be prohibited by the bill, amounts that would be lost in the short run if this bill is enacted. A significant portion of those revenues are collected by city and county governments including local school districts.

Over time, we expect that these governments would change their tax policies to mitigate at least some, if not all, of those losses. Such changes would take time to implement, however. On balance, we estimate that losses in the first year after enactment likely would exceed the threshold established in UMRA for intergovernmental mandates ($64 million in 2006, adjusted annually for inflation).

Basis of estimate for intergovernmental mandates costs: CBO relied on information from a variety of sources to prepare this estimate. Using data from states, the Federation of Tax Administrators, the National Governors Association, tribal organizations, and industry sources, CBO calculated the taxes currently collected from the pipeline industry (as noted above, about $500 million) and estimated potential losses ($250 million) based on current tax policies in the states most likely to be affected by the bill.

There are several state tax practices that would no longer be allowed under H.R. 1369, resulting in a reduction in property taxes currently levied on natural gas pipeline. Ten states, for example, have statutes that authorize the differential classification of property for the purpose of establishing assessment values and tax rates. Montana classifies property into 13 classes, each of which has different assessment and tax rates. As a result of this bill, Montana expects that they would have to reclassify pipeline property, which is currently in class 9 (public utilities) to class 12 (railroads and airline property), with an estimated decrease in annual property taxes collections totaling $24 million. Other states, such as Ohio, would no longer be able to tax such items as the tangible personal property of pipeline companies. Ohio estimates that this prohibition would result in a reduction of annual property tax collections totaling $46 million.

How quickly state, local, and tribal governments would be able to mitigate losses would depend on how quickly they could enact legislative or administrative changes to their tax policies. CBO estimates that such changes would take at least several months to implement and that net losses to states in at least the first year after the bill's enactment would exceed the threshold for intergovernmental mandates.

Estimated impact on the private sector: The bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Federal revenues: Barbara Edwards; Impact on the private sector: Craig Cammarata.

Estimate approved by: Pete H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1369, protects consumers of natural gas by requiring that States not impose higher taxes on interstate natural gas pipelines than they do for other types of commercial or industrial property in the State. This bill is intended to prohibit the discriminatory taxation of natural gas pipeline property to the extent the tax interferes with interstate commerce.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in the Fourteenth Amendment and article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Section 1. Limitation on discriminatory taxation of natural gas pipeline property

Subsection 1(a) sets forth the operative definitions of the Act. These definitions mirror those found in the Railroad Revitalization

and Regulatory Reform Act of 1976 (49 U.S.C. § 11501), with the addition of a definition for public utility property and natural gas pipeline property. Natural gas pipeline property is defined as all property, real, personal, and intangible, owned or used by a natural gas pipeline providing transportation or storage of natural gas, subject to the jurisdiction of the Federal Energy Regulatory Commission. This definition is similar to the definition of rail transportation property (as defined in 49 U.S.C. § 11501), motor carrier transportation property (as defined in 49 U.S.C. § 14502), and air carrier transportation property (as defined in 49 U.S.C. § 40116). Public utility property is defined as property (excluding natural gas pipeline property) solely used for public service purposes and owned or used by an entity that performs a public service and is regulated by any governmental agency.

Subsection 1(b) describes four acts that constitute an unreasonable burden and discrimination against interstate commerce. These acts are:

(1) assessing natural gas pipeline property at a value that has a higher ratio to its true market value than the ratio used to assess other commercial and industrial property in the same assessment jurisdiction;

(2) levying or collecting a tax on such higher assessment;

(3) levying or collecting an ad valorem property tax on natural gas pipeline property at a rate that exceeds the rate applicable to commercial and industrial property in the same assessment jurisdiction; or

(4) imposing any other tax that discriminates against a natural gas pipeline providing transportation of natural gas subject to the jurisdiction of the Federal Energy Regulatory Commission.

The provisions apply only to States, subdivisions of States, or other entities granted taxing authority by State law.

Section 2. Jurisdiction of courts; Relief

Subsection 2(a) grants jurisdiction to the United States Federal courts, concurrent with the jurisdiction of the State courts to hear actions seeking relief under Section 1.

Subsection 2(b) provides specified relief for discriminatory taxation of natural gas pipeline property claims.

CHANGES IN EXISTING LAW BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes H.R. 1369 makes no changes to existing law.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 12, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:45 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is the adoption of H.R. 1369, to prevent certain discriminatory taxation of natural gas pipeline property.

[The bill, H.R. 1369, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 1369

To prevent certain discriminatory taxation of natural gas pipeline property.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. CANNON (for himself, Mr. CARTER, Mr. SMITH of Texas, and Mr. GOHMERT) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To prevent certain discriminatory taxation of natural gas pipeline property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON DISCRIMINATORY TAXATION OF NATURAL GAS PIPELINE PROPERTY.

(a) DEFINITIONS.—For purposes of section:

(1) ASSESSMENT.—The term "assessment" means valuation for a property tax levied by a taxing authority.

(2) ASSESSMENT JURISDICTION.—The term "assessment jurisdiction" means a geographical area

used in determining the assessed value of property for ad valorem taxation.

(3) COMMERCIAL AND INDUSTRIAL PROPERTY.—The term "commercial and industrial property" means property (excluding natural gas pipeline property, public utility property, and land used primarily for agricultural purposes or timber growth) devoted to commercial or industrial use and subject to a property tax levy.

(4) NATURAL GAS PIPELINE PROPERTY.—The term "natural gas pipeline property" means all property, real, personal, and intangible, owned or used by a natural gas pipeline providing transportation or storage of natural gas, subject to the jurisdiction of the Federal Energy Regulatory Commission.

(5) PUBLIC UTILITY PROPERTY.—The term "public utility property" means property (excluding natural gas pipeline property) that is devoted to public service and is owned or used by any entity that performs a public service and is regulated by any governmental agency.

(b) DISCRIMINATORY ACTS.—The acts specified in this subsection unreasonably burden and discriminate against interstate commerce. A State, subdivision of a

State, authority acting for a State or subdivision of a State, or any other taxing authority (including a taxing jurisdiction and a taxing district) may not do any of the following such acts:

(1) Assess natural gas pipeline property at a value that has a higher ratio to the true market value of the natural gas pipeline property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1).

(3) Levy or collect an ad valorem property tax on natural gas pipeline property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose any other tax that discriminates against a natural gas pipeline providing transportation subject to the jurisdiction of the Federal Energy Regulatory Commission.

SEC. 2. JURISDICTION OF COURTS; RELIEF.

(a) GRANT OF JURISDICTION.—Notwithstanding section 1341 of title 28, United States Code, and notions of

1 comity, and without regard to the amount in controversy
2 or citizenship of the parties, the district courts of the
3 United States shall have jurisdiction, concurrent with
4 other jurisdiction of the courts of the United States, of
5 States, and of all other taxing authorities and taxing juris-
6 dictions, to prevent a violation of section 1.

7 (b) RELIEF.— Except as otherwise provided in this
8 subsection, relief may be granted under this Act only if
9 the ratio of assessed value to true market value of natural
10 gas pipeline property exceeds by at least 5 percent the
11 ratio of assessed value to true market value of other com-
12 mercial and industrial property in the same assessment
13 jurisdiction. If the ratio of the assessed value of other
14 commercial and industrial property in the assessment ju-
15 risdiction to the true market value of all other commercial
16 and industrial property cannot be determined to the satis-
17 faction of the court through the random-sampling method
18 known as a sales assessment ratio study (to be carried
19 out under statistical principles applicable to such a study),
20 each of the following shall be a violation of section 1 for
21 which relief under this Act may be granted:

22 (1) An assessment of the natural gas pipeline
23 property at a value that has a higher ratio of as-
24 sessed value to the true market value of the natural
25 gas pipeline property than the ratio of the assessed

1 value of all other property (excluding public utility
2 property) subject to a property tax levy in the as-
3 sessment jurisdiction has to the true market value of
4 all other property (excluding public utility property).
5 (2) The collection of an ad valorem property tax
6 on the natural gas pipeline property at a tax rate
7 that exceeds the tax rate applicable to all other tax-
8 able property (excluding public utility property) in
9 the taxing jurisdiction.

○

Chairman SENSENBRENNER. The Chair recognizes Mr. Cannon from Utah, the Chairman of the Subcommittee on Commercial and Administrative Law, for a motion.

Mr. CANNON. Thank you, Mr. Chairman.

The Subcommittee on Commercial and Administrative Law reports favorably the bill H.R. 1369 and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, H.R. 1369 will be considered as read and open for amendment at any point.

The Chair recognizes Mr. Cannon for 5 minutes to explain the bill.

Mr. CANNON. Thank you, Mr. Chairman.

H.R. 1369 has two purposes: first, to prevent States from imposing a higher ad valorem tax burden on interstate natural gas pipeline property than on other commercial and industrial property in the same assessment area; and secondly, to grant U.S. District Courts jurisdiction concurrent with State courts in order to prevent the imposition of taxes violating this proposed law.

The bill is not a new idea. It has been introduced at least twice before in similar bills and had the support of Members from both sides of the aisle. The natural gas pipeline industry is not the real victim when its property is subject to discriminatory taxation. The real victims are the consumers of natural gas who are forced to pay what amounts to arbitrarily inflated transit taxes to States and localities thousands of miles away where they have no representation.

These discriminatory taxes are included in the rate base and are passed on to these consumers. States that impose discriminatory taxes are essentially exporting their tax burden to the natural gas consumers well outside their State. It is important to note that H.R. 1369 does not mandate what State tax rates should be, and it does not dictate how the State should assess property in their States. It merely requires them to treat natural gas pipeline property in a similar way to their commercial and industrial property when assessing taxes.

H.R. 1369 also provides for concurrent Federal jurisdiction. It would not remove State court jurisdiction. Plaintiffs may still seek redress in State courts if they choose, but the Federal courts are available to assure an alternative that facilitates and assures uniform compliance.

I urge my colleagues to support H.R. 1369, and I yield back.

Mr. BERMAN. Would the gentleman yield for a question?

Mr. CANNON. I would be happy to yield.

Mr. BERMAN. I am curious, hearing your description of the bill. What if a State has a split level? It has one level of taxation for residential property and a different level of taxation for commercial property?

Mr. CANNON. The way the bill deals with that is that it is perfectly acceptable to have different levels or tiers of taxation for different kinds of property, but like property needs to be assessed in a like manner, so commercial property, intrastate pipelines, all need to be taxed at the same rate that a pipeline that transits though the State.

Mr. BERMAN. Oh, this is discrimination between intrastate pipelines and pipelines that go interstate.

Mr. CANNON. That is "intra" and "inter."

Mr. BERMAN. That is the discrimination you are trying to deal with?

Mr. CANNON. Right. Exactly.

Ms. WATERS. Will the gentleman yield?

Mr. CANNON. I would be happy to yield to the gentlelady from California.

Ms. WATERS. Yes. I am sorry. Who owns the pipelines? Are these pipelines owned by companies we would recognize?

Mr. CANNON. Yes. They are all the national pipeline companies.

Ms. WATERS. Such as?

Mr. CANNON. You have Williams and Company. You have got—there are a half-dozen or dozen of the major companies that have pipelines around the country. So they are the pipelines that deliver, gather gas at the well-heads, and deliver it to other parts of the country.

Ms. WATERS. Are these pipelines owned by the big companies that we normally associate with natural gas?

Mr. CANNON. Yes, natural gas and oil.

Ms. WATERS. And oil? Thank you.

Mr. CANNON. That is only natural gas, not oil.

Mr. NADLER. Would the gentleman yield for a question?

Mr. CANNON. Yes, I yield to the gentleman from New York.

Mr. NADLER. Thank you.

Mr. Cannon, I am not sure I heard your answer correctly to the question from the gentleman from California. Did you say that what we are trying to get at here is discrimination between intrastate and interstate gas lines? As I understand the bill, what the bill is trying to get at is discrimination against gas lines whether intrastate or interstate, as opposed to other types of property.

Mr. CANNON. It is both things. On the one hand, it is discrimination between "intra" and "inter," but also pipelines within the State, intrastate pipelines need to be commercial property and not different.

Mr. NADLER. If the gentleman will continue to yield, I thought the bill said that you cannot have a heavier assessment to full value ratio of a gas line as opposed to other types of commercial property. That is an interesting bill. I am not sure whether I support it or not, but there is a certain rationale for that. I don't see how you interpret this bill or that statement as dealing between intrastate and interstate.

Chairman SENSENBRENNER. The gentleman's time has expired.

The Chair recognizes the gentleman from North Carolina, Mr. Watt, who is the Ranking Member of the Subcommittee, for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Chairman, if an entity is subjected to a truly discriminatory tax, we should examine ways to eliminate those taxes. Having said that, I believe that in general the pipelines have not demonstrated a need for this legislation, and certainly not in its current form. The primary justification they appear to offer is that railroads,

motor carriers, and airlines have similar protections. Therefore, they should have that same treatment.

In short, the proponents of this bill argue that pipelines are being treated differently than some other property taxpayers, and that Congress should grant them a favored status among all other property taxpayers. The circumstances that surround congressional relief to, for example, the railroads, however, may be very different than those we face today. The railroads were facing bankruptcy. There is no indication that the pipelines face the same situation.

Under today's economic climate, passage of the bill would cause the property tax burden to shift from pipelines to other taxpayers in a number of States. In some cases, the shifts may be substantial, upwards of $35 million in Louisiana and nearly $45 million in Kansas. Similar shifts are projected to occur in the other Gulf region States devastated by Katrina and Rita hurricanes. As those States, Alabama, Mississippi, and Louisiana, struggle to rebuild in the aftermath of the hurricanes, Congress should not take action that would frustrate those goals.

In addition, I believe that H.R. 1369 will undo State constitutional provisions endorsed by the voters in about 10 States, and will generate litigation seeking relief in a number of others. H.R. 1369 will establish a standard for one type of taxes, property taxes, but ignore situations in which pipelines are the beneficiaries of tax benefits under other taxes in a compensatory tax arrangement.

If the Committee intends to approve the bill, it should be amended to remove Section 2 granting jurisdiction over controversies arising under the bill to the Federal District Courts, and I will be offering an amendment to that effect.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. CANNON. Would the gentleman yield?

Mr. WATT. I yield to the gentleman from Utah.

Mr. CANNON. Thank you. Just a couple of points here.

The real problem here is that the bill deals with the distinction between gas pipelines and other commercial property, whether it is intrastate or interstate. The problem that we are having is that States are taxing pipelines that are interstate at a much higher rate, and therefore exporting their taxes to other States.

It is true that the pipelines are not in bankruptcy. The issue that is compelling this is not the financial pain of the companies that don't own, but transport gas. The problem is the export of a tax from one State to consumers in other States. We have done the same thing, as the gentleman pointed out, for railroads. We have also done the same thing for airlines and trucking and busing, so this is about the only area of interstate transportation that we haven't created the same playing ground, the same rules for. Therefore, I——

Mr. CONYERS. Would the gentleman from North Carolina yield to me when he finishes?

Mr. CANNON. Certainly, if I could just finish one other point.

We have done a remarkable amount of good for Louisiana. It is absolutely true that Louisiana is the principal taker of taxes from places like Michigan and other areas around the country, and those are high costs that are being passed on.

So we will deal, I guess, with the issue of jurisdiction of Federal courts at the time Mr. Watt introduces his amendment, but I would just like to say that this is not unique, not different, and it is an area where we have significant abuse by the States and it is appropriate for this Committee's jurisdiction——

Mr. WATT. Reclaiming my time.

Mr. CANNON. Thank you. I yield.

Mr. WATT. I yield to Mr. Conyers.

Mr. CONYERS. Could I just ask the gentleman from North Carolina, this looks like we are looking for a problem to fix. The airlines and the railroads were in bankruptcy. They were in desperate condition. The oil and gas companies in the 21st century are not at all. I think the Katrina circumstance really has to be considered by all the Members.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Without objection, all Members may place opening statements in the record at this point.

Are there amendments? For what purpose does the gentleman from California, Mr. Berman, seek recognition?

Mr. BERMAN. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. I am just having trouble with the concept. There is nothing in the bill that says this is about intrastate pipelines versus interstate pipelines.

This is a bill to say you can't tax pipelines at a higher rate than you tax other property, and the principle, I guess, to say that a State shouldn't be able to decide that is the principle that you shouldn't be able to raise costs that consumers in other States would have to pay. But if California decided it wanted to keep a 1 percent ceiling on residential property, on property taxes to total valuation, but raise to 1.2 percent evaluation of commercial property including——

Mr. CANNON. Would the gentleman yield?

Mr. BERMAN. Let me just finish the sentence—of manufacturing property, a lot of that manufactured goods is exported. The higher cost to the manufacturer is going to be reflected under economic principles and Republican doctrine in the final cost to consumers. And we are saying the State can't make this decision? Maybe it is a stupid decision, maybe it is not, but why are we saying the State can't make that decision?

Mr. CANNON. If the gentleman would yield?

Mr. BERMAN. I yield.

Mr. CANNON. The distinction is not between commercial property and manufacturing property. It is between commercial property, so you can't tax some commercial property at one rate, and pipelines at another. The distinction on pipelines in the bill is those that are already regulated by the Federal Energy Regulatory Commission, intrastate or interstate.

So we are trying to be consistent on definitions and regulatory authority that already exists. And just prohibiting California not from burdening its manufacturers, which it does exceedingly, and Utah is very grateful for that, but also to create an environment

where a State, like California can't export. And California does not do this, by the way, but can't export its costs or its taxes to consumers in other States, which is what happens with pipelines that transit some States where their taxes are.

Mr. BERMAN. Just reclaiming my time, it happens with all kinds of processes. If one State's taxes are higher than another's, then in effect the price of that product is going to be higher because of those additional taxes. That may be a stupid decision or it may not be, but that is just a general principle of economics, and one of the arguments against higher taxes.

But I don't understand why we at the Federal level——

Mr. CANNON. That is an argument again—if the gentleman would yield, the gentleman states the argument eloquently about why taxation is hurtful to the economy. This is not about how a State taxes its manufacturers or its consumers, but rather how it taxes consumers in other States, which I think is patently unfair.

Mr. BERMAN. I don't understand, just to reclaim my time. It is users of natural gas in the State. It is users of natural gas outside the State. I don't understand why that isn't a State decision. In every other place, it is a State decision.

Mr. CANNON. If the gentleman would yield, this is a taxation imposed on Detroit and Michigan by Louisiana, which has a pipeline that goes through Louisiana and takes gas to Detroit and Michigan.

Mr. BERMAN. And Louisiana doesn't use the gas that they produce?

Mr. CANNON. They also charge their own consumers, and that is their right. We agree on that point. The question is, should people have to pay a disproportionate tax or a disproportionate gas bill in Michigan because they get their gas coming through Louisiana?

Mr. BERMAN. But if Michigan has a higher rate than some other State on the property on which automobile manufacturing plants are located, the costs of that higher rate are passed on to purchasers of cars in other States. What is the difference?

Mr. CANNON. That is exactly the case you made a moment ago, and that is the State's prerogative to do stupid things. All States, in fact sometimes do——

Mr. BERMAN. Except in the case——

Mr. CANNON. But in the case of——

Mr. BERMAN [continuing]. Of natural gas, they are not going to let them do it.

Mr. NADLER. Would the gentleman yield?

Mr. CANNON. Actually it is Mr. Berman's time.

Mr. NADLER. Would Mr. Berman yield? Thank you.

I wondered if the case, Mr. Cannon, isn't that in the case of natural gas, unlike the manufacturing case that Mr. Berman propounds, the natural gas may be produced in Louisiana, sold in Michigan, and traverses Missouri. Missouri uses none of it, but affects the price in Michigan by taxing it.

Mr. CANNON. That is exactly the case. I am not sure that it is Missouri that adds taxes.

Mr. NADLER. Whoever.

Mr. CANNON. But it is whoever.

Mr. NADLER. Someone in between.

Mr. CANNON. Once the pipeline is in place, then there is no alternative to that capital investment, and so taxes——

Mr. NADLER. But what if they have higher gas taxes?

Chairman SENSENBRENNER. The time of the gentleman from California has expired.

Are there amendments?

The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. "An amendment to H.R. 1369 offered by Mr. Watt of North Carolina. Strike Section 2."

[The amendment by Mr. Watt follows:]

Amendment to H.R. 1369 Offered by Mr. Watt (N.C.)

Strike Section 2.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, the pipelines complain that they have been treated differently than other property taxpayers and that Congress should grant them a favored status among property taxpayers. If the pipelines believe that State and Federal guarantees are being violated, they have complete and unfettered access to the State court system to seek redress of their grievances.

Therefore, my amendment removes Section 2, which stacks the deck further by granting jurisdiction over controversies arising under this bill to the Federal courts only. Under my amendment, the pipelines will still obtain the vast majority of the relief they seek. The bill would have the effect of overriding State constitutional classification systems that may tax pipelines at a higher rate than other commercial and industrial property, and establish clear guidelines for States to apply to the stricter than the constitutional standards now in place.

In other words, the pipelines can get the relief they seek from the State courts because of a legislative standard established by the bill. Removing the Federal court jurisdiction will enable State courts to deal with the pipeline issues in a manner that is consistent with the manner in which other State tax and property tax matters are handled, and avoid setting up differential and competing systems for handling disputes.

As currently written, the pipelines can simply engage in forum shopping until they get a court that they like the result from. And I don't think they should be allowed to do that. They should be required to go to the State courts just like anybody else has to go to the State courts.

With that, I ask my colleagues to support the amendment, which strikes the provision that grants exclusive jurisdiction to the Federal courts under this bill. I yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentleman from Utah seek recognition?

Mr. CANNON. To strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CANNON. Thank you.

I urge my colleagues to oppose this amendment. The legislation only allows for concurrent jurisdiction. It doesn't mandate Federal jurisdiction, so we are not removing jurisdiction from the State courts. The State courts, on the other hand, have not provided plain, speedy and efficient relief. So why should we oppose the kind of appropriate and quick relief that I think is necessary here?

Let me give you an example of a procedural quagmire that occurred. In 1994, between 1994 and 1999, a company paid taxes owed to the State and then brought a challenge into the Louisiana State court. State statute required disputes to be initiated at the administrative level first. After a lengthy administrative procedure, the administrative commission dismissed the protest. The company appealed in the State district court. The court determined the company's claims had expired due to limitations imposed by the statute.

The company appealed, and the appeals court reversed the district court finding and allowed the company to actually bring the case. In 2005, after almost 10 years, the case finally came to trial. The court found that the State had intentionally discriminated against the company without ever reaching the issue of whether there was discrimination against interstate pipelines. The court found the State's tax scheme was flawed under the constitutional equal protection clause, and the remedy was that the company should be assessed at the same percentage as the interstate pipelines paid for the years in question.

Instead of using assessments already in place in those years, the court required each locality to go back and reassess the property. Now, the company has to work with numerous different localities to re-determine their assessments for the property. The company still has no relief. This process does not seem plain, speedy or efficient. It is convoluted and inefficient. Providing for an alternative jurisdiction and means to a remedy will help alleviate some of these problems and hopefully inject judicial efficiency into the system.

This is just fairness. In fact, that is the reason we have a Federal court system. So I urge my colleagues to oppose this amendment.

Ms. JACKSON-LEE. Will the gentleman yield?

Mr. CANNON. I am pleased to yield to the gentlelady from Texas.

Ms. JACKSON-LEE. I am like Mr. Berman. I would like to just inquire. I am trying to understand the scheme of the underlying legislation.

What are you—interstate and intrastate pipelines, which would certainly go through our region, particularly Louisiana and Texas. We have heard from the distinguished gentleman from North Carolina that this possibly undermines a State that has experienced a horrific natural disaster, Hurricane Katrina.

What is the scheme? Are you trying to equalize the taxation? Or are you trying to make one less than the other? What is the underlying scheme of the bill?

Mr. CANNON. The purpose of the bill is to require States to tax like property in a like fashion, rather than exporting the tax burden. In fact, Louisiana is only an issue here because they are one

of the States that does the most extraordinary discrimination in their taxes.

Ms. JACKSON-LEE. They tax which higher? The interstate?

Mr. CANNON. The interstate, that is pipelines that go through Louisiana into other States, at a higher rate.

Ms. JACKSON-LEE. Right. Than the intrastate?

Do you continue to yield?

Mr. CANNON. My understanding is that the intrastate taxation is 15 percent; the interstate State tax is 25 percent, so it is a much higher rate.

Ms. JACKSON-LEE. I understand that, and I think there is reason to that, but do you have some relief for a State like Louisiana? You are causing them to lose money. What is the relief for them that actually need this money?

Mr. CANNON. Is your question for Louisiana, what is the relief for the State that now needs money because of——

Ms. JACKSON-LEE. No, no. This legislation, though it has an underlying premise that is reasonable, which is to equalize, but it causes a State to lose money. Do you have any relief in your bill on that issue?

Mr. CANNON. Is that relief for Louisiana?

Ms. JACKSON-LEE. Yes, or any other State.

Mr. CANNON. No. It is just a prohibition on the incremental taxes that they are charging.

Ms. JACKSON-LEE. So if it is 15 percent intrastate, you want it to be 15 percent interstate.

Mr. CANNON. Exactly.

Ms. JACKSON-LEE. I yield back. Thank you.

Chairman SENSENBRENNER. The gentleman's time has expired.

Let me ask if other Members wish to speak on this amendment? If not, the Chair will put the question.

The question is on agreeing to the Watt amendment. Those in favor will say "aye."

Those opposed, "no."

The noes appear to have it. The noes have it, and the amendment is not agreed to.

There are three votes that are pending at the present time. This looks like a——

Mr. CANNON. Mr. Chairman, I don't think there are any other amendments.

Chairman SENSENBRENNER. Okay. Are there any? Well, then, without objection, the Committee is recessed until 1:30.

Question? Okay. The gentleman from New York, for what purpose?

Mr. NADLER. Thank you.

First of all, I would ask two questions of the gentleman.

Number one, the bill says that you cannot assess it at a higher ratio to full value than commercial, than the ratio of commercial and industrial property in the jurisdiction. What would the bill do if the jurisdiction has several different sub-classifications for commercial and industrial property? Would it be the highest?

Mr. CANNON. Pardon me just a moment. Let me take a look at that.

On page 4 of the bill, you have a process for a random sampling method known as a sales assessment ratio study to be carried out under the statistical principles applicable to such a study. So I think we have provided for a process whereby that could be evaluated within the State.

Mr. NADLER. And the second question—thank you. The second question I have is, I am tempted, if this is a problem, why is it that we have heard nothing from any consumer group about higher gas prices as a result of this? Or from any Government, at the end of the pipeline, where the gas prices are higher than they should be?

Mr. CANNON. I think this bill was first passed in 1988, sponsored by Bill Hughes of this Committee. It has been a burr under the saddle since or before then. If the gentleman hasn't heard complaints it is because people sometimes accept a burr and just suffer with the consequences for a very long period of time.

Mr. NADLER. I appreciate that.

Mr. CANNON. There are a number of consumer groups that are concerned about this.

Mr. NADLER. I appreciate the candor of the gentleman.

Chairman SENSENBRENNER. Does the gentleman yield back.

Mr. CANNON. I yield back.

Chairman SENSENBRENNER. Are there further amendments?

If there are no further amendments, a reporting quorum is present. The question occurs on the motion to report the bill, H.R. 1369, favorably.

All those in favor will say "aye."

Opposed, "no."

The ayes appear to have it. The ayes have it, and the bill is reported favorably.

Without objection, the staff is directed to make any technical and conforming changes. And all Members will be given 2 days as provided by the House rules in which to submit additional dissenting, supplemental or minority views.

We have two down. We have two more bills to go. Please be prompt in returning. And, without objection, the Committee is recessed until 1:30 p.m.

[Intervening business.]

Chairman SENSENBRENNER. This concludes the business that is on the agenda. And without objection, the Committee stands adjourned.

[Whereupon, at 2:30 p.m., the Committee was adjourned.]

DISSENTING VIEWS TO ACCOMPANY H.R. 1369

We strongly oppose H.R. 1369, "To Prevent Discriminatory Taxation of Natural Gas Pipeline Property," legislation that would restrict the state and local taxation of interstate natural gas pipelines. While proponents of H.R. 1369 maintain that federal legislation is needed to limit taxation and to minimize litigation, this legislation could have the opposite effect. In fact, enactment of H.R. 1369 would result in increased litigation that would be needed to determine its meaning and impact. This legislation is strongly opposed by the National Governors Association, the Federation of Tax Administrators, the Louisiana Tax Commission and the Montana Department of Revenue.

H.R. 1369 is problematic for several reasons. First, the property tax systems to which the pipelines and other property tax are subject to do not violate state constitutions or state laws. Second, H.R.1369 would provide new ground for litigation. Third, the legislative measure would unwisely grant federal courts jurisdiction over action arising under the legislation. Finally, this legislation would have a grave impact on tax revenues.

DESCRIPTION OF THE LEGISLATION

H.R. 1369 would prohibit states from assessing interstate pipeline property taxes at a high ratio to true market value (the normal standard for assessing property), or at a higher tax rate than is the case for other commercial and industrial property. It also contains a provision that prevents "discrimination" in "any other tax" that might be levied on interstate pipelines. Finally, the bill provides that pipelines can pursue their claims under the Act in federal district court, rather than being required to pursue claims in state court and provides for specified relief for claims of discriminatory taxation of natural gas pipeline property.

BACKGROUND

Some states (probably a majority) mostly in the western 2/3 of the country value pipelines (and certain other interstate transportation and traditional public utility property, e.g., electric and gas utilities, telephone companies, railroads and airlines) on a "unit valuation" basis. In unit valuation, the entity being assessed is valued in its entirety or as an ongoing enterprise as opposed to valuing individual pieces of real estate, individual pieces of machinery or individual buildings of the enterprise. In unit valuation, an appraiser will look at several ways of arriving at value, e.g., an income approach, cost approach, market value or sales approach (if data are available) and the like. The valuation of other commercial and industrial property primarily looks at the cost approach and sales figures if available and concentrates on the value of individual parcels rather than the value of the enterprise.

Pipeline owners argue that the manner in which they are assessed for property tax purposes in some states causes them to be valued higher (in relation to market value) than other commercial property. They contend this unit valuation approach tends to capture certain intangible values (e.g., good will, patents, etc.) and to lead to higher valuations than for other property. H.R. 1369 would provide protection from these higher taxes.

Conversely, State and local governments and tax groups perceive H.R. 1369 as an effort by the pipeline industry to secure a set of protections comparable to those provided to the railroad industry in the Railroad Revitalization and Regulatory Relief (4–R) Act of 1976.[1] The situations leading to the enactment of the legislation, however, are not comparable. Specifically, the unit valuation of property does not inherently lead to higher valuations of property than other forms of property valuation, so there is no certainty that the commercial property will be higher than other property tax. Indeed, the pipelines have not offered any specifics about states, statistical studies, or concrete evidence that can be investigated regarding higher valuation. Properly applied, unit valuation should reach fair market value. The issue of intangibles is really an issue of state law and whether it allows the valuation of intangibles in the unit value. Several states that use unit value specifically allow intangibles to be excluded to the degree that a value can be placed on them.

I. The current taxation system does not pose constitutional or state law violations

While proponents of the legislation claim that the property taxes are discriminatory in nature, it is clear that the property tax systems which apply to the pipeline and other property tax payers do not violate state constitutions or state law. Those tax systems have been approved by the citizens of the states and have been found constitutionally valid when challenged. To enact this legislation would effectively overturn taxation decisions made by voters and state elected officials.

Further, the property tax system poses no federal constitutional violations. The difference in property taxation ratios is the result of a state created taxation system adopted through the normal legislative process. As the varied tax classification system was fully vetted, there was no violation of Due Process or Equal Protection provisions. In addition, as the tax is only upon property within the state, there is no encroachment upon the Commerce clause. Finally, all opportunity is afforded to the pipelines to bring forth their grievances before the state court.

II. H.R. 1369 could provide new ground for litigation

If enacted, this legislation would spawn a myriad of litigation as to how it should be applied in individual states. Although the legislation is based on 4–R legislation which has already been enacted, there is still a degree of vagueness surrounding the legislation. In fact, there is certain to be a great deal of controversy and resulting

[1] In that instance, the railroad industry was in grave danger and regulations were needed to keep the industry solvent.

litigation challenging the assessment ration of commercial and industrial property in states and the application of the legislation. The 4–R Act, which was similar to this legislation, generated quite a number of challenges to state and local tax practices. Further, that legislation brought forth cases challenging the constitutionality of the bill, whether it was constitutional, whether it constituted an abrogation of the sovereignty immunity of the states, the techniques to determine the assessment ratio of various types of property, and other matters. It is likely that H.R. 1369 will create the same amount of confusion, objections and lawsuits.

III. The legislation would unwisely grant federal courts jurisdiction over actions arising under the litigation

Granting federal courts the authority to hear matters that arise under this legislation is both unnecessary and unwarranted. First, under the Federal Tax Injunction (28 U.S.C. § 1341) federal courts should demur from hearing state taxation cases where there is a "plain, speedy and efficient" remedy available at the state level. In these matters, the state is more than capable of handling their judicial responsibility. There is no evidence that the state judiciary was unable to handle the state taxation matters. Further, each state has a variety of avenues to resolve the property tax administration matters including the state judicial systems, administrative review bodies, and the state legislature.[2]

Additionally, by allowing direct access to federal courts when challenging state and local property tax, this section of the legislation creates a certain group of litigants that will forgo the traditional state or local judicial or administrative review process. It is well known that the federal courts do not weigh tax matters in the same manner as states will, but must always consider the issues in the context of state constitutions, state laws, and the state tax system as a whole. The federal courts use a separate manner of precedent and reasoning that would create a disparity between litigants with access to the federal courts and those without access. State court management of these cases allows open access regarding tax matters and allows state taxation matters to be decided by state law experts.[3]

Finally, access to the federal court system could potentially disrupt the financial condition and threaten the financial integrity of affected local governments. Under this legislation, taxpayers would be able to withhold disputed taxes while the case moves forward. Thus would make it very difficult for local government to determine its tax base and to make decisions according or to received preliminary payment of taxes until years after they are due.

[2] In fact, the Louisiana Legislature considered legislation (House Bill 643) in the 20006 Regular Session, which would have reclassified public service pipelines as "other property" subject to assessment by local assessors at 15% of fair market value. The legislature chose to make no changes to existing Louisiana law.

[3] It is important to note that * * *.

IV. H.R. 1956 reduces states tax revenue affecting the states ability to provide traditional state and local government services and is an unfunded mandate

As a policy matter we would note that State and local governments work with the federal government, both providing essential government services like education and transportation. However, states are restricted from providing these services if their power of taxation is truncated or interfered with. Furthermore, it will be state officials and not Congress who will be held accountable if public services are reduced or personal income or property taxes are increased to compensate for the reduction in tax revenue resulting from the enaction of this legislation.

H.R. 1369 would also create an enormous unfunded mandated resulting in a several billion dollar loss for state revenues. According to the Federation of Tax Administrators, this legislative proposal would cost Louisiana approximately $37 to $40 million dollars, Montana, over $22.5 million and Kansas would lose nearly $45 million. As state governments, unlike the federal government, are required to balance their budget, the lost of such a significant amount of revenue must be replaced by either increasing taxes or cutting programs. Without the necessary state tax revenues, states would suffer a devastating financial blow.

CONCLUSION

H.R. 1369 is poorly drafted legislation that would provide unnecessary tax exemptions resulting in a huge revenue loss to states. In an era when our states are in desperate need of revenue for the protection of our citizens, it seems irresponsible that should we enact legislation that would reduce their funds. We should not pass special interest legislation that would pander to companies at the expenses of thousands of citizens.

JOHN CONYERS, Jr.
MAXINE WATERS.

ADDITIONAL DISSENTING VIEWS OF REP. MELVIN L. WATT

I do not believe there is a demonstrated need for this federal legislation. Particularly at a time when the States in the Gulf region are struggling to repair the devastation left by Hurricanes Katrina and Rita, I believe the pipeline industry and the proponents of this bill must justify measures that would retard those efforts.

In addition, the provision granting access to federal district courts represents another effort by this Congress to steer specific matters away from the states. The normal path for contesting state and local tax claims is through the state courts. Pipelines have full access to state courts, there are well-established procedures for challenging assessments as not reflecting true market value and for challenging the treatment of one type of property versus another type of property. Absent a sufficient showing that there is not a "clear, speedy and efficient remedy" at the state level to justify allowing federal court jurisdiction, I believe this provision is unnecessary and disruptive. For these reasons, I respectfully dissent.

MELVIN L. WATT.

○