

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2935 SCOMM 128: HOUSE SPEC. COMM. ON OIL AND GAS, 2001-02

Assembly's own official records establish this constitutional deficiency, the provisions of 2000 Ky. Acts ch. 446 have not been codified into the Kentucky Revised Statutes. See KRS 7.131(2).

Attachment F

Gillis v. Yount,
748 S.W.2d 357, (1988 KY)

Gary Gillis, Secretary of the Revenue Cabinet, Movant v. William D. Yount, Scott Barbour and others similarly situated, Alison Moore, J.D. Miller, Elaine Stoltzfus and others similarly situated and The Kentucky Coal Association, Respondents; The Kentucky Coal Association, Inc., Movant v. Alison Moore, J.D. Miller, Elaine Stoltzfus and all others similarly situated, William D. Yount and Scott Barbour and all others similarly situated, Respondents

Nos. 87-SC-286-DG, 87-SC-288-DG

Supreme Court of Kentucky

748 S.W.2d 357; 1988 Ky. LEXIS 13; 100 Oil & Gas Rep. 645

March 3, 1988, Decided

PRIOR HISTORY:

[**1] ON REVIEW FROM COURT OF APPEALS, 85-CA-2662 & 2717-MR, Franklin Circuit Court Nos. 84-CI-815, 84-CI-867 & 85-CI-589.

DISPOSITION:

AFFIRMING

COUNSEL:

Attorney: for Gary Gillis: Ross T. Carter, Douglas M. Dowell, Frankfort, Kentucky.

Attorney for Amicus Curiae, League of Women Voters: Frederick W. Whiteside, Lexington, Kentucky.

Attorneys for Kentucky Chamber of Commerce: Bruce F. Clark, Gayle W. Herndon, Stites & Harbison, Frankfort, Kentucky.

Attorneys for Moore Appellees: Ira A. Burnim, Washington, District of Columbia, Phillip Shepherd, Joe Childers, Lexington, Kentucky, J. Richard Cohen, Montgomery, Alabama.

Attorney for Kentucky Coal Assn.: James R. Cox, Him, Reed & Harper, Louisville, Kentucky.

Attorney for Amicus Curiae, Kentucky Farm Bureau Federation: Wayne J. Carroll, Ewen, MacKenzie & Peden, P.S.C., Louisville, Kentucky.

Attorney for Yount and Barbour: Joseph J. Leary, Frankfort, Kentucky.

JUDGES:

Opinion of the Court by Justice Leibson. Stephens, C.J., Lambert, Vance and Wintersheimer, JJ., concur. Leibson, J. concurs in this opinion, and also files a separate concurring opinion. Wintersheimer, J. concurs by separate opinion in which Leibson, J. joins. Stephenson, J. dissents by separate opinion in which Gant, J. joins.

OPINIONBY:

LEIBSON

OPINION:

[*357] These cases challenge the constitutionality of KRS 132.020(5), which classifies unmined coal separately from other real property and then taxes it "at the rate of one-tenth of one cent (\$.001) per one hundred dollars (\$ 100) of assessed value." All other real property is taxed "for state purposes" under KRS 132.020(1) at "thirty-one and one-half [**2] cents (31 1/2 cents) upon each one hundred dollars (\$ 100) of value."

The cases are consolidated. In the first case Yount and others similarly situated, a class of real property owners, claim that the statute is unconstitutional because the General Assembly has arbitrarily classified one type of real property separately from other real property. In the second case Moore and others similarly situated, a class of automobile owners, claim that the 1 mil (\$.001) rate is unconstitutional because it is an exemption and not a tax.

The Franklin Circuit Court, after trial on the merits, entered judgment (1) rejecting the claim that the separate

classification for unmined coal was constitutionally impermissible, and (2) upholding the claim that the tax rate "bestows on unmined coal a *de facto* exemption from property taxation," [*358] and thus "is unconstitutional under Sections 3 and 174 of the Constitution."

On appeal the Court of Appeals ruled in favor of the claims of *both* plaintiffs, agreeing with the trial court that this one mil rate for unmined coal was in fact an unconstitutional exemption, and then further holding that the separate classification of unmined coal was arbitrary and [**3] therefore unconstitutional under Section 171 of our Constitution which requires that "taxes ... shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax." n1

n1 The Court of Appeals held that another issue presented, the propriety of awarding attorneys' fees, was not preserved for appellate review because the appellants did not designate the attorneys as parties to the appeal. We have not considered this issue on discretionary review.

A majority of our Court has decided that the classification issue is the threshold issue on discretionary review. Having decided that KRS 132.020(5) is an arbitrary classification in violation of Section 171 of the Kentucky Constitution, as quoted above, the Court has elected not to consider whether the \$.001 ad valorem levy upon unmined coal is an unconstitutional tax rate.

Both sides agree that Kentucky law classifies ownership of unmined coal as an interest in real estate. As stated in *Williams' Adm'r v. Union Bank and Trust Co.*, 283 Ky. 644, 143 S.W.2d 297, 300 (1940): "it has long been the law of this State that minerals in place are real estate" [**4] And as stated in *Commonwealth v. Elkhorn-Piney Coal Min. Co.*, 241 Ky. 245, 43 S.W.2d 684, 686 (1931):

"The rights created by a coal lease constitute real estate for the purposes of taxation under our present statutes."

From 1792, when Kentucky's first property tax was levied, until the 1970's, coal was taxed only insofar as it was included in the value of the surface property. Then in the 1970's, the General Assembly enacted a new type of tax, the severance tax, first applicable only to coal and then extended to "the physical removal of [any] natural resource from the earth or waters of this State by any means" with certain exemptions and exceptions which

are not relevant to this case. KRS Chapters 143 and 143A.

The new tax is an excise tax "upon the privilege of severing and processing coal" and not a property tax. *Circle "C" Coal Co., Inc. v. Com.*, Ky.App., 628 S.W.2d 883, 885 (1982). Coal was the first mineral, and is perhaps the major one, subject to this new excise tax, the severance tax, but it is certainly not the only one. "Rock, stone, limestone, shale, gravel, sand, clay, natural gas, and natural gas liquids," are all classified as a "natural resource" [**5] (KRS 143A.010) and taxed at the same rate (KRS 143A.020), which is 4 1/2%. Under KRS 137.120 a similar tax is imposed upon "all crude petroleum produced in this state."

However, for purposes of ad valorem taxation unmined coal alone has been separately classified from other real estate. In 1976, the General Assembly classified coal separately from other real estate for the first time (1976 Kentucky Acts, Chapter 84, Section 7), and in 1978 the General Assembly followed this up with the new rate of one cent per thousand (one mil) enacted in KRS 132.020(5). The connection between classifying unmined coal separately from other interests in real property subject to ad valorem tax and then imposing the new one mil rate for such property is abundantly clear from review of the legislative history of the one mil rate.

The framers of the 1891 Kentucky Constitution, to protect the people, enacted significant constitutional limitations upon the powers of the General Assembly to impose state property taxes and create exemptions. 2 Debates Constitutional Convention 1890, 2372-2423 (1890). The primary source of tax revenue at the time was property taxes, and this is where the problems with unfairness [**6] were perceived, so these constitutional limitations, covered principally in Kentucky Constitutions Sections 170-175, deal *only* with the power to tax property, or ad valorem taxes. They require *inter alia*, that taxes "shall be uniform upon all property of the same [*359] class," (Section 171), that "all property, not exempted from taxation by this Constitution, shall be assessed ... at its fair cash value" (Section 172), and that "all property ... shall be taxed in proportion to its value, unless exempted by this Constitution; and ... shall pay the same rate of taxation" (Section 174). The constitutional exemptions are specified in Section 170, which states that "all laws exempting or omitting property from taxation other than the property above mentioned shall be void." It is almost impossible to see how the constitutional mandate on state property taxes could have been expressed in clearer or more positive terms.

The one mil rate (one cent per thousand) was devised as a method to avoid these constitutional

restrictions. See Joint Submission, Kentucky Department of Revenue, *Annual Report HS-88* (1975-76). The movant, Gary Gillis, Secretary of the Revenue Cabinet, candidly [**7] conceded that the legislative purpose behind a one mil rate is to create a *de facto* exemption, although arguing that this is constitutionally permissible. The only way to effect such a purpose, a *de facto* exemption, with reference to unmined coal was to first classify it separately from other real property, and to then designate one mil as the applicable rate. The statutes of 1976 and 1978 were enacted as a plan to effect this purpose.

The need to enact a one mil rate when the General Assembly wished to favor a certain type of property with a *de facto* tax exemption resulted from the decision of our Court in *Russman v. Luckett, Ky.*, 391 S.W.2d 694 (1965). *Russman* is the bellwether case on the subject of constitutional limitations on property taxes. It was a taxpayers' suit attacking the assessment procedures then in place by which "real estate and tangible personal property in Kentucky [were] assessed for tax purposes at varying percentages substantially less than 100 percent of fair cash value." 391 S.W.2d at 695. Our Constitution, Section 172, specifies that "all property, not exempted from taxation by this Constitution, shall be assessed for taxation at its [**8] fair cash value." Nevertheless, over a period of 75 years the practice had evolved of "substituting the test of 'uniformity' in place of 'fair cash value'." In *Russman*, our Court delivered to the executive branch and the legislature the message that in the area of property taxes, when called upon to do so, our Court was prepared to enforce the Constitutional mandate. We stated that there is "no authority which would recognize an implied repeal of a constitutional provision because of its continued violation by public officials. The suggestion is appalling." *Id.* at 697.

As admitted by the Revenue Cabinet, primarily in reaction to *Russman* the concept of a one mil tax rate developed to avoid the tax burden for certain types of property which did not enjoy constitutional exemption but which were perceived by the General Assembly as needing *de facto* exemption in the public interest. Because unmined coal was taxed as an interest in real estate, in order to favor unmined coal with this *de facto* exemption it was necessary to employ a two-stage procedure, first classifying it separately from other real estate, and then assigning to it the 1 mil rate. The question is, of [**9] course, whether this procedure is legitimate tax avoidance or unconstitutional tax evasion; does the method instituted to avoid the constitutional limitations in Section 172 impale upon the constitutional limitations in Sections 171 and 174? In answering that question there are several arguments in the present case

that track similar arguments in *Russman*, and that are fully answered by the *Russman* opinion.

Movants argue that the 1891 Constitution is "outmoded," that the stated purpose for and definition of taxation as stated in Section 171, raising revenue "to defray the estimated expenses of the Commonwealth," fails to take account of the present need to use taxation to promote economic development, and therefore the judiciary should aid and abet the General Assembly in structuring taxation free from constitutional restraints. The Revenue Cabinet's Brief claims:

"The politics and issues of Kentucky in 1890 are as foreign to this generation as the intrigues of ancient Rome. The revenue [*360] provisions of the Constitution shackled the hand of the legislature to keep it from embracing the corrupt and polluting grasp of wealthy corporations. Today there is no need to tighten those [**10] shackles to prevent the legislature from extending a benevolent hand to others [presumably the owners of unmined coal] who honor their debt to the Commonwealth in ways worthy of legislative consideration."

The record is not convincing that circumstances today are so different that constitutional restrictions on the power of the General Assembly with regard to property taxes are no longer viable. With special interests and pressure groups seemingly better organized, better financed and more powerful than ever before, we can hardly take judicial notice that the General Assembly should be free from constitutional restraint to manipulate the tax structure to extend "a benevolent hand" to those "who honor their debt to the Commonwealth in ways worthy of legislative consideration." The proponents of the special tax treatment for unmined coal in KRS 132.020(5) have yet to provide any hard information in the record or in briefs as to how this statute benefits anyone but the coal owners. The best that has been offered is an argument that it is part of an overall scheme for taxing the coal industry in which the severance tax paid by coal producers "more than makes up" for any potential loss [**11] of revenue.

Even if we were inclined to accept as fact that the people of Kentucky no longer need protection from the "corrupt and polluting grasp of wealthy corporations" (or the power of today's special interest groups), we are not free to strike the constitutional mandate. We have no power to ignore the plain meaning of the Constitution when we believe it expedient to do so. As stated in *Russman*:

"... we are dealing with our fundamental law. It is not outdated, or obsolete, or contrary to any policy we know

of... This law today is just as vital and enforceable as it was the day it was written into the Constitution." 391 S.W.2d at 697.

Where constitutional change is needed, the process is not by legislative enactment and judicial acquiescence, but by constitutional amendment. In *Fannin v. Williams*, Ky., 655 S.W.2d 480 (1983), we were faced with powerful arguments that the constitution should be circumvented in the public interest. Nevertheless, we recognized that it was our judicial duty to declare unconstitutional a statute supplying textbooks to children in the state's nonpublic schools.

"The people of Kentucky specified by the language of the Constitution ... that [**12] the type of expenditure authorized by the statute in question should be unconstitutional. If the people of Kentucky wish to change their position in this matter, it is their right to do so.

... If the legislature thinks the people of Kentucky want this change, they should place the matter on the ballot.

... We cannot sell the people of Kentucky a mule and call it a horse, even if we believe the public needs a mule." *Id.* at 484.

The movants argue that judicial intervention in matters of taxation usurps the legislative function. The judiciary intervenes only when called upon by the litigants to settle a case in controversy. But when so called upon it is part of the exercise of this function to enforce constitutional restrictions on legislative power. The judiciary cannot abdicate its responsibility by deferring to the legislature. As stated by Mr. Justice Roberts in *United States v. Butler*, 297 U.S. 1, 62-63, 80 L. Ed. 477, 56 S. Ct. 312 (1936), in reviewing the judiciary's "responsibility to render judgment in accordance with the principles established for the governance of all three branches of the Government":

"It is sometimes said that the court assumes a power to overrule or control the action [**13] of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress [or in our present case the General [**361] Assembly] is appropriately challenged in the courts as not conforming to the constitutional mandate the judicial branch of the Government has only one duty, -- to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former."

The opinion continues:

"This court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and, having done that, its duty ends."

In *Russman*, in language expressing the same concept, our Court stated:

"In the performance of our duty we are not, by this decision, in any sense changing the law of taxation, or the tax structure, or increasing the tax burden. We are simply declaring and enforcing the law [i.e., the Constitution], and the law [**14] is made by the people." 391 S.W.2d at 700.

The original 1891 proviso in Section 171 of the Kentucky Constitution specified that all state property taxes shall be "uniform upon all classes of property." In 1915 by Constitutional Amendment this was changed to specify "uniform upon all property of the same class." We took up the effect of this Amendment in *Martin v. High Splint Coal Co.*, 268 Ky. 11, 103 S.W.2d 711, 712-13 (1937). The legislation at issue in *Martin* attempted to exempt all real property from taxation, and then to separately classify "minerals" so as to permit continued taxation of mineral estates, and coal in particular. The situation was the reverse of the present case but the principles at issue were essentially the same. We held the statutory scheme unconstitutional. We stated:

"The question is *not* whether it is competent for a Legislature to either classify or exempt property from taxation *where* there are *no* constitutional provisions prohibiting either classification or exemption." *Id.* at 712-13. [Emphasis original.]

In *Martin*, we explained the effect of the 1915 Amendment to Section 171. The 1915 Amendment to Section 171 did not [**15] alter the fundamental constitutional injunction that all property must be taxed. *Martin v. High Splint Coal Co.*, *supra*; *Cumberland Pipe Line Co. v. Commonwealth*, 258 Ky. 90, 79 S.W.2d 366 (1935). Nor did it authorize the General Assembly to separately classify except by distinctions related to the particular characteristics of the property relevant to the purposes of taxation, and not artificial distinctions to accommodate the economic situations of a particular industry, unrelated to taxation.

According to its legislative history, the 1915 Amendment did not generate from a perceived need to favor certain classes of property in the process of taxation. On the contrary, the perceived need was to remedy "an unfair proportion of the burden of

government [being] borne by visible property [real property and other tangibles], which cannot escape taxation, and wholesale evasion by such forms of property as are easily hidden [intangibles]." Report of the Special Tax Commission, 1909, pp. 3-4. The Report states:

"The answer is found in the experience of other States which have proved that under a reasonable tax rate [for intangibles] many millions of dollars of property, [**16] previously withheld from assessment, have been listed for taxation. For the most part, men seem to prefer to deal squarely in the matter of listing their property if they can do so without suffering what they consider unnecessary confiscation." *Id.*, p. 26.

It is difficult to understand the logical underpinnings of the movants' argument that this special tax classification for unmined coal, and this special tax treatment favoring those who own unmined coal (the one mil rate), benefits economic development. The record shows that vast amounts of Kentucky's unmined coal reserves are owned by different interests than those who mine it, process it and distribute it. Those persons and corporations engaged in the production and sale of coal, generating jobs and dollars, would seemingly have a much stronger claim on the General Assembly [**362] for protective legislation than those harboring it in its natural state. The economic development arguments presented by the Revenue Cabinet and the Kentucky Coal Association, Inc. are tenuous and speculative. As we stated in the case of *Tabler v. Wallace, Ky.*, 704 S.W.2d 179, 187 (1986):

"The only apparent basis for the present legislation is that [**17] a special class ... lobbied for a statute. ... There is no social or economic basis presented to justify a special class, only their own self-interest. Other groups similarly situated do not share in their legislative windfall. Their subjective reasons will not withstand public policy analysis." *Id.* at 187.

We conclude here, as we did in *Tabler*, that "imaginative reasons that *could* exist, without anything of a positive nature to suggest that they *did* exist, do not suffice." *Id.*

Nevertheless, if we were to assume that such arguments are valid for reasons that cannot be satisfactorily explained, the critical point in this case remains that the constitutionality of the one mil tax on unmined coal does not turn on whether the General Assembly perceived that this favorable tax treatment served a public purpose, but on whether the tax classification is constitutionally permissible within the limiting language of Section 171. Thus, as stated in

United States v. Butler, quoted *supra*, our "duty" is "to lay the article of the Constitution which is evoked beside the statute which is challenged and decide whether the latter squares with the former." 297 U.S. at [**18] 63.

Under Section 171 the stated purpose for taxation is to raise revenue which, "with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year." As we stated in *Atlantic Coastline R. Co. v. Commonwealth*, 302 Ky. 36, 193 S.W.2d 749, 752 (1946):

"It is always to be borne in mind that the taxing statutes are framed to produce revenue."

And in *Gray v. Methodist Episcopal Church*, 272 Ky. 646, 114 S.W.2d 1141, 1143 (1938), a levy classifies as a tax if "for purposes of raising revenue." The 1915 Amendment does not change any of the other clauses of the Constitution restricting state property taxes; it simply permits the General Assembly to tax different classes of property separately. All property must still be taxed, and this must be a *bona fide* tax, i.e., one which has for its purpose raising revenue rather than exempting property from taxation.

From the historical material that has been presented to us (e.g., statements of some individuals contained in the Report of the Special Tax Commission, 1915, Chapter 4) it appears that many advocated for broader constitutional amendment, eliminating all constitutional restrictions [**19] on state property taxes. But it is clear from the limited nature of the amendment that was finally proposed and adopted, and the subsequent rejection of more expansive amendments, such as the proposed 1932 Amendment "to provide by law that real estate and/or tangible personal property may be exempted from taxation for state purposes (See 1932 Acts Ch. 141 rejected by an overwhelming majority)," that our people have never yet favored permitting any further inroads into the constitutional limitations on state property taxes. The cases and materials available to us refute this contention. Cases advocated by the movants in urging us to a different course, such as *Delta Airlines, Inc. v. Commonwealth, Revenue Cabinet, Ky.*, 689 S.W.2d 14 (1985), are inapposite because the taxes involved are *not* state property taxes, and thus not subject to the constitutional restrictions on state property taxes.

Quite obviously the 1891 version of the constitutional mandate in Section 171, that all classes of property shall be taxed the same, was changed by the 1915 Amendment. The question is, of course, what is the nature and effect of the change wrought by the 1915 Amendment. That the intended [**20] effect was

limited is evident from the fact that only *one* change was made in state property taxes.

[*363] We are aware that a *further* change was made giving the General Assembly more power over "local taxation," to wit:

"The General Assembly shall have power to divide property into classes *and to determine what class or classes of property shall be subject to local taxation.*" [Emphasis added].

But this grant of additional power in *local* taxation simply reenforces the conscious decision to make only *one* change in the restrictions on *state* property taxes, that change being to permit property of one "class" to be taxed at a different rate than property of another.

So the question is what was accomplished by this one change in the constitutional structure limiting state property taxes? What does the Constitution mean by "classes" for purposes of ad valorem taxes? The answer rests in the general principle that constitutional provisions permitting classification *always* carry with them the limitation that the classification scheme must be *reasonable*, not *arbitrary*, and this in turn requires classification on the basis of "an appreciable relevancy to the subject [*21] matter of the legislation." *Bd. of Educ. of Jefferson Co. v. Bd. of Educ., Ky.*, 472 S.W.2d 496, 498 (1971).

The subject matter in *Bd. of Educ. of Jefferson Co. v. Bd. of Educ. of Louisville* was the constitutional limits on classification effected by Sections 59 and 60 which forbid special and local legislation. But viewed as a problem in constitutional interpretation, the issue is essentially the same as the classification problem presented by Section 171. We stated the rule thusly:

"The General Assembly may indulge in class legislation if the classification is made to depend upon natural, real or substantial distinctions, inhering in the subject matter, such as suggest the necessity for or propriety of independent legislation in regard to the class specified. A classification based upon purely artificial, arbitrary or fictitious conditions is unreasonable and will not be permitted." 472 S.W.2d at 498.

The present problem does not turn on whether real property is a super class which cannot be subdivided for purposes of taxation, although that argument has been presented. We need only decide whether a separate tax classification for unmined coal treating it differently [*22] from all other interests in real estate, including other interests with similar characteristics such as oil and gas in its natural state, is a classification that is, or is not, related to the constitutionally permissible classification

for tax purposes. If it is "[a] classification based upon purely artificial, arbitrary or fictitious conditions [it] is unreasonable and will not be permitted." *Bd. of Educ. of Jefferson Co.*, as quoted *supra*. For instance, the General Assembly could not classify state real property for taxation according to size or location rather than value because this would be arbitrary classification. Differences of a nature which permit classification for one governmental function are not transferable to permit classification for a different function. In this case the function is taxation. The classification serves no legitimate purpose to promote the governmental function directly involved.

The kind of differences that justify separate classification for purposes of state property taxation are the kind of difference that was the motivation behind the constitutional amendment, justifying separate classification of real estate and intangible property taxes. [*23] See Report of the Special Tax Commission, 1909, *supra*. See also, *Kentucky Finance Co. v. McCord, Ky.*, 290 S.W.2d 481 (1956), recognizing that the Constitutional Amendment permits the General Assembly to classify intangible personalty separately from real estate and assign a different tax rate.

There is no difference between unmined coal and other unmined minerals for purposes of taxation unless it be in movants' claim that the economic importance of the coal industry to our state, standing alone, is sufficient to justify separate classification. But this argument is fatally flawed for two reasons:

1) Assuming that coal has a special economic importance qualitatively different from any other interest in real estate, this special classification and rate for unmined [*364] coal does not promote the coal industry but only one element in the industry, the coal owners. Indeed, the moral justification advanced for excusing coal owners from taxation is that the coal producers will make up the difference for the coal industry through the severance tax. But coal owners and coal producers are often two different taxpayers, so this reasoning does not withstand scrutiny. However, even [*24] if it did the severance tax (as an excise tax) would be unrelated to constitutional restrictions on state property taxes.

2) If the difference between unmined coal and other unmined minerals is the difference in the economic importance that the coal industry assigns to itself by reason of its size, size alone does not constitute a reason for classification unless that size produces other qualitative differences related to the purpose of the classification. *Bd. of Educ. of Jefferson Co. v. Bd. of Educ. of Louisville*, quoted *supra*.

On this point movants rely on language of the court in *Delta Airlines Inc. v. Comm. Revenue Cabinet, supra*.

The *Delta Airlines* case involved an assessment for sales and use taxes against airlines of fuel and food purchases in Kentucky. The airlines claimed that the tax was discriminatory because other transportation industries, notably trucks and other motor common carriers, received different and more favorable tax treatment from the General Assembly on their fuel purchases in Kentucky. We stated:

"This Court has determined that economic factors are valid considerations which the legislature may take into account in developing a [**25] legitimate tax classification. ...

The different tax treatment for airlines, truck lines, barge lines, bus lines and railroad lines can be justified by their different competitive environment and their different significance to the overall state economy. 689 S.W.2d at 18.

But these are *excise* taxes not subject to the constitutional restrictions on state property taxes in Section 171. Making tax distinctions for purposes of promoting some perceived state economic advantage rather than for purposes related to raising revenue is permissible in taxes other than property taxes because other kinds of taxes do not involve the same constitutional restrictions. Excise taxes may be varied from one type of taxpayer to another to promote competitive conditions or some perceived state economic advantage; classification may be structured to serve some purpose other than taxation. But the tax scheme for state property taxes expressed in the 1891 Constitution and unchanged by the 1915 Amendment, was exactly the opposite, i.e., taxation is permitted for the limited purpose of raising revenue and shall not be subject to manipulation to promote any taxpayer's (or group of taxpayers') economic [**26] advantage regardless of whether the General Assembly should perceive that some other public benefit may be derived by doing so.

A case similar in principle is *City of Corbin v. Louisville & N.R. Co.*, 233 Ky. 709, 26 S.W.2d 539 (1930). In that case the governmental entity, the City of Corbin, agreed to a contract with the railroad, and enacted an ordinance, providing reimbursement of a tax assessment in exchange for permission to utilize a portion of the railroad's property in constructing a sewer system. We held the ordinance and contract unconstitutional, stating "the railroad secured ... a right or privilege denied to other property owners similarly situated. ... The ordinance was for the benefit of one taxpayer." *Id.* at 540. Here the statute is for the benefit of one group of taxpayers, those owning an interest in unmined coal, who cannot be distinguished from other taxpayers for any reason related to the purpose for

property taxes stated in Section 171 of the Constitution, which is raising revenue "to defray the estimated expenses of the Commonwealth."

The judgment of the trial court holding the statute in question, KRS 132.020(5), is unconstitutional, and the decision [**27] of the Court of Appeals affirming this holding, are affirmed.

[*365] Stephens, C.J., Lambert, Vance and Wintersheimer, JJ., concur. Leibson, J. concurs in this opinion, and also files a separate concurring opinion. Wintersheimer, J. concurs by separate opinion in which Leibson, J. joins. Stephenson, J. dissents by separate opinion in which Gant, J. joins.

CONCURBY:
WINTERSHEIMER; LIEBSON

CONCUR:

I concur with the result achieved by the majority but wish to express my reasons separately.

This case specifically involves the constitutionality of KRS 132.020 (5) which classifies unmined coal differently from other real property and provides a tax rate of \$.001 per hundred of assessed valuation.

Unmined coal in place in the ground is real property distinct and separate from the surface estate. *Williams' Admr. v. Union Bank & Trust Co.*, 283 Ky. 644, 143 S.W.2d 297 (1940). Unmined coal is subject to taxation as real property. Severance of the coal from the surface has recently been affirmed by a majority of this Court in *Akers v. Baldwin, et al.*, Ky. 736 S.W.2d 294 (1987). Section 3 of the Kentucky Constitution does not permit exemptions from taxation. Section 171 of the constitution provides that annual [**28] taxes along with other resources shall be sufficient to support the expense of government and shall be uniform. Section 172 provides that all property shall be assessed at its fair cash value, and Section 174 provides that all property shall be taxed in proportion to its value. Clearly the Constitution requires uniformity and equality in taxation.

The proper way to distribute the burdens of government justly is to allow taxation to rest equally on all. See 2 Debates, Constitutional Convention 2372-2423 (1890); *Kentucky Finance Co. v. McCord*, Ky. 290 S.W.2d 481 (1956).

KRS 132.020(5) effectively exempts unmined coal from property taxation. The evidence in the circuit court indicates that it produces almost no revenue with only \$ 2,067 being recorded in 1983 on assets estimated at between \$ 6 and \$ 12 billion. The rate, \$.001, makes it uneconomical for local PVAs and the Revenue Cabinet

to assess or collect the tax because the cost of administering it far exceeds any possible yield.

Section 171 as originally adopted in 1891 did not authorize the legislature to create different classifications of property for ad valorem tax purposes. In 1915 Section 171 was amended by the addition [**29] of the words "of the same class" to the sentence which required uniform taxation. The legislature was specifically authorized to classify property for both state and local taxation. Uniformity of rate of property in the same class was still required and there was no permission to exempt any property from taxation. *Martin v. High Splint Coal Co.*, 268 Ky. 11, 103 S.W.2d 711 (1937).

In 1976 the legislature amended KRS 132.020 by adding § (5) which imposed a separate tax on unmined coal. In 1978, the legislature reduced the tax rate for the newly created classification of unmined coal from 31-1/2 cents per hundred to .001 per hundred. The sole issue is whether the separate classification by the legislature of "unmined coal" for the purposes of taxation is invalid. Constitutional limitations prohibit only such classification which is not arbitrary and unreasonable and has no fair and substantial relation to the permissible governmental purpose of the legislation. See *Department of Revenue v. Spalding Laundry & Dry Cleaning Co.*, Ky. 436 S.W.2d 522 (1968). The classification for taxation is a policy matter for legislative determination. Ordinarily the judgment of the legislature is [**30] to be deferred to if there is any just and reasonable basis to support such a decision. The question then becomes whether it was arbitrary and unreasonable for the legislature to create a separate classification for unmined coal and to tax it at a much lower rate than that applicable to other real property. The existence of vast unmined and untaxed coal [**366] reserves does not promote the coal industry and does not provide jobs in support of the economy of the state. It is difficult to see how the creation of a separate classification and the unusually low rate of taxation serves any governmental or public purpose. Consequently the separate classification for unmined coal is arbitrary and unreasonable and has no fair substantial relation to a permissible governmental purpose.

The words used in the constitution should be given their ordinary meaning. The plain meaning of the word "tax" is a charge upon property for the purpose of raising revenue to defray the cost of government. The debates which the framers of the Kentucky Constitution of 1890 recorded clearly show that the burden of taxation should be spread widely in order to distribute the cost of government among all forms of property [**31] and that all property not specifically exempted should bear a real part of the public responsibility for financing governmental services. 2 Debates, *Constitutional*

Convention, 2372-2423 (1890). The levy imposed by KRS 132.020(5) is not truly a tax within the meaning of Section 174 of the constitution. The legislature is prohibited by Section 3 from exempting any class of property from taxation and the legislature may not do indirectly what the Constitution forbids it to do directly. *Commonwealth v. O'Harrah*, Ky., 262 S.W.2d 385 (1953).

The tax rate enacted in KRS 132.020(5) has effectively allowed the owners of unmined coal to be free of contributing to the cost of government. It results in a *de facto* exemption from property tax. The freedom to classify property does not permit the legislature to exempt property. Therefore the statute, KRS 132.020 (5) is unconstitutional.

The determination that this statute is unconstitutional does not in any way affect other sections of KRS 132.020. It is not the place of this Court to determine the adequacy of a tax rate unless such a rate is so clearly and manifestly insufficient that it becomes in fact an exemption which is prohibited [**32] by the Constitution or that it is so high as to become confiscatory and unfair.

Leibson, J., concurs with this concurring opinion.

CONCURRING OPINION BY JUSTICE LEIBSON

The majority opinion should go further and address the second major issue in the case, the constitutionality of setting a one mil tax rate for unmined coal, as established in KRS 132.020(5), under Sections 3, 170 and 174 of our Kentucky Constitution.

We should address this problem for two reasons, one theoretical and one practical:

The theoretical reason is that classification and rate are not two different problems, but interrelated elements of a single problem. Sections 170, 171 and 174 of the Constitution are parts of a single plan to constitutionally control state property taxes, constitutionalized in Sections 170-175. The meaning of the words in any one part of the constitution plan can only be grasped by considering the entire plan, not by considering isolated phrases. To analyze the constitutional challenge, we must test it against the constitutional plan, rather than any single element in the plan.

The practical reason is that the same coal interests who promoted the separate tax classification and rate for [**33] unmined coal in the first place will now move with all deliberate speed to promote legislation intended to circumvent our decision, perceiving (I believe erroneously) that by failing to address the rate issue we implicitly recognize that a one mil rate would be valid if

the class were expanded. In short, to paraphrase from *Lexington Herald-Leader Co., Inc. v. Meigs, Ky.*, 660 S.W.2d 658, 661 (1983), I "conclude that the controversy before us is not moot" and is "capable of repetition."

Separate classification of property for taxation, per se, is innocuous. It has no constitutional significance until the property separately classified is assigned a different rate. The 1976 statute setting up unmined coal in a separate classification would have been meaningless as long as this type of real property carried the same [*367] tax rate as other real property. It was the next step in the plan, the 1978 enactment assigning the one mil rate, that converted the statute at issue, KRS 132.020(5), into a constitutional problem.

Sections 174, 170 and 3 of our Constitution provide in pertinent part:

1) In Section 174: "All property, whether owned by natural persons or corporations, shall be taxed in [*34] proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property."

2) In Section 170, after specifying constitutional exemptions: "and all laws exempting or omitting property from taxation other than the property above mentioned shall be void."

3) And in Section 3 (part of the Bill of Rights), for good measure: "no property shall be exempt from taxation except as provided in this Constitution"

The one mil tax rate on unmined coal is unconstitutional because it effects a *de facto* exemption rather than a revenue raising measure, and as such it violates these provisions established for our constitutional protection. It violates the constitutional command that "all property ... shall be taxed in proportion to its value, unless [constitutionally] exempted." And therefore its constitutional shortcomings will not be overcome by expanding the separate statutory classification for unmined coal to add other (or all) unmined minerals. It would still be an exemption and not a rate.

Whereas there are other types of property, such as stocks and bonds and similar intangibles, whose value is so easily [*35] determined and assessed that a low tax rate does not make the tax unworkable and thus effect an exemption, and whereas there may well be reasons related to raising revenue that may justify a very low tax rate for such other classes of property, the effect of a one mil rate for taxing unmined minerals in general, and coal in particular, necessarily creates an exemption because of the nature of the property. This was the legal conclusion reached by the trial court in holding the tax rate was unconstitutional because it amounted to an exemption

and not a tax, and findings of fact by the trial court leading to this conclusion stand unchallenged on this appeal. These include, in pertinent part:

1) The legislative history behind the one mil tax rate proves that it was deliberately developed as a "way ... to effectively exempt a class of property without amending ... the constitution."

2) "KRS 132.020(5) effectively exempts unmined coal from property taxation in basically two ways. First it produces a 'nil amount' of revenue. For example, in 1983, the last year for which there is evidence in the record, the total yield from the levy on unmined coal was at best, \$ 2,067. This yield was [*36] on assets that in 1983 were worth approximately six through twelve billion. Second, the .001 rate makes it uneconomical and irrational for the Revenue Cabinet and the Commonwealth's Property Valuation administrators ... to assess or collect a levy because, as the evidence reflects, the cost of administering the levy far exceeds its possible yield."

3) As a result "the Kentucky Revenue Cabinet does not enforce the mandate of KRS 132.020(5) that a property tax on unmined coal be administered, and in fact sanctions the failure of many P.V.A.'s to assess 'unmined coal' for taxation. ... In 1978, prior to the \$.001 rate going into effect, some 50 counties had assessments of unmined coal on their tax books; however, by 1983, this number had fallen to 23."

The trial court concluded that the "minuscule levy imposed by KRS 132.020(5) is not a 'tax' in the sense intended by the framers"; that the "plain meaning of the word 'tax', as used by the framers ... is: a charge upon property the purpose of which is to raise revenue to defray the costs of governmental operations."

The trial court reviewed the record of the 1890 Constitutional Convention on this subject (2 *Debates Constitutional* [*37] *Convention 1890*, 2372-2423 (1890)), and concluded: "When the framers required that 'all property ... be taxed', Ky. Const. Section 174, [*368] they intended that all property not specifically exempted from taxation bear a meaningful tax burden." The trial court further concluded that a levy must be "intended to increase the net financial resources of the Commonwealth" to be a tax, and that it is not a tax if it "would not under any reasonably foreseeable set of circumstances increase the financial resources of the Commonwealth." None of these findings or conclusions are refuted by the record.

The trial court correctly applied the principle of constitutional law stated in *Commonwealth v. O'Harrah, Ky.*, 262 S.W.2d 385 (1953), that "the General Assembly

may not do indirectly what the Constitution forbids it to do directly."

The Secretary of the Revenue Cabinet expressly agreed with a statement from the 1983 Legislative Research Commission report stating that the 1978 Act reducing the rate to one mil "for all intents and purposes exempted unmined coal from the state property tax." [Emphasis added.] He conceded that this rate is "used by the General Assembly to provide [**38] tax exemptions through statutory procedures rather than constitutional amendments." The thrust of the movants' argument is that "a *de facto* exemption in taxation" is not unconstitutional because "the general constitutional principle that the legislature cannot do indirectly whatever it is forbidden to do directly" does not "apply to the field of taxation."

On the contrary, there is no constitutional difference between a tax case and any other. We are not free to ignore the plain meaning of the words providing a constitutional limitation on taxation, any more than we are at liberty to do so elsewhere in the Constitution. As stated in 71 Am. Jur. 2d, *State and Local Taxation*, § 310 (1973):

"When the state constitution limits the power of the legislature to grant tax exemptions, it will not be permitted indirectly to grant an exemption which it is precluded from granting directly."

A *de facto* exemption is no more constitutional than a *de jure* exemption.

The movants' position is best described simply as frustration with the failure of the people of Kentucky to amend their constitution to permit the General Assembly to exempt property when persuaded that to do so [**39] will advance some perceived state economic interests. In sum, the movants concede that the one mil tax rate on unmined coal is a *de facto* exemption, but argue that: (1) "on its face, KRS 132.020(5) does not contravene Section 174 of the Kentucky Constitution"; (2) the reason behind the 1891 constitutional restrictions forbidding property tax exemptions "no longer exists"; and (3) therefore the General Assembly should be permitted to manipulate the state property tax in its unfettered discretion to "promote competitive conditions and to equalize economic advantage as with other taxes not subject to the same constitutional restrictions."

The nature of the movants' legal argument can be understood from a sentence in the Conclusion to the Brief filed by the Revenue Cabinet:

"If the General Assembly decides to tax certain property at one mil per one hundred dollars of value, then those

who don't like that policy must turn to the ballot box, not to the courts."

However, when the issue is the Constitution the law is exactly the opposite. It is written in the Constitution that no property shall be legislatively exempted from taxation and the people have the right of redress to the [**40] court to enforce this principle. It is those who wish to change this constitutional principle, and not those who can persuade the General Assembly to enact an exemption, who must "turn to the ballot box, not to the courts," by seeking a constitutional amendment. The power of the people to challenge the constitutionality of tax legislation in the courts is established by *Russman v. Luckett, Ky., 391 S.W.2d 694 (1965)*. Short of constitutional amendment, the people are not restricted to registering their complaint at the ballot box or to engaging in a tug of war with special interest groups in the halls of the legislature. The constitution is the first line of protection for our people, not the last line of retreat.

[*369] In *Commonwealth v. O'Harrah, supra*, when faced with a statute that violated the terms of the constitution although arguably of great public benefit, we said:

"Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation." 262 S.W.2d at [**41] 389.

We stated the rule is that "the courts may not countenance an evasion or even an unintentional avoidance of our fundamental law." *Id.* This rule applies even if the General Assembly is persuaded that the legislation serves the state's economic interests, and even though the legislation would appear to have popular support. Constitutional validity is not decided by a popularity contest.

The central fact in this case is that the format for state property taxes, including restrictions and limitations, is constitutionalized. The words of the Constitution are clear in their meaning: all property must share in the tax burden ("shall be taxed in proportion to its value") and there shall be no exemptions except those expressly enumerated in the Constitution. The record of the Convention bears this out:

"The more we investigated it the more clearly it appeared to us that all exemptions, other than the property of the Government, were wrong. An exemption is a tax levied

on a part of the citizens who have no interest in it, for the benefit of others who have

....A certain amount of money must be raised to meet the expenses of the State. If the burden is borne equally [**42] by all, it rests lightly on all. If you exempt one piece of property, the sum to be raised remains the same, and you thereby increase the taxes on every other piece of property." 2 *Debates Constitutional Convention 1890*, 2382.

The 1890 Constitutional Convention would never have been held except for the people's desire to protect themselves from legislation providing special privileges and immunities in general, and property tax exemptions in particular:

"Look at the ponderous volumes of private acts passed by our Legislature within the last few years, and enumerate the horde of railroad and other corporations which have been exempted from taxation, and allowed a variety of other special privileges, while battenning like vampires upon the substance of the people" 1 *Debates Constitutional Convention 1890*, 466.

"Except for the vicious legislation and the local and special laws of all kind and character passed by the Legislatures that have met in Kentucky for the last twenty years, that no proposition to call a Constitutional Convention could ever have received a majority of the votes of the people of Kentucky." 1 *Debates Constitutional Convention 1890*, 1482.

[**43]

We have been confronted with nonjudicial arguments advanced to uphold this legislation in the face of the constitutional challenge. The essence of these arguments is that the constitutional plan for state property taxes is outmoded and should be circumvented to permit the General Assembly to create *de facto* exemptions to further the state's economic development, and that separate classification and *de facto* exemption of unmined coal "is justified because of its economic importance to the state." The Revenue Cabinet argues that "the framers of the Constitution never imagined that the complex economics of a future day would require more exemptions" than the Constitution authorizes. These arguments are simply beside the point. Our Court must occasionally interpret the Constitution, but where its meaning is clear it has only the duty to enforce it. The Revenue Cabinet's Brief states:

"We have always *freely admitted* that in creating the one mil rates the legislature was probably trying to avoid the constitutional ban on exemptions. We make that

admission because there is nothing wrong with trying to avoid outdated constitutional [*370] provisions." [Emphasis added.]

Neither [**44] the General Assembly nor this Court has the power to decide when constitutional provisions are "outdated." This is not a question for the General Assembly to decide in the name of public policy, nor for the judiciary to vote up or down. Constitutional protections and limitations are the law until they are changed by the process of constitutional amendment.

As the trial court so stated, and the Court of Appeals affirmed, the one mil property tax rate when applied to unmined coal in KRS 132.020(5) is an exemption and not a rate, and as such violates our Kentucky Constitution. It is contrary to Sections 174, 170 and 3. Our Courts should declare it so now, in this opinion, rather than leaving the subject open for future debate in the halls of the legislature.

Further, the questions of whether the one mil rate for unmined coal is in fact an unconstitutional exemption and whether the classification was arbitrary and unconstitutional are so interrelated that they cannot be properly decided separately.

DISSENTBY:
STEPHENSON

DISSENT:

DISSENTING OPINION BY JUSTICE
STEPHENSON

The engine that has driven this lawsuit from the beginning to the majority opinion is that out-of-state corporations own large tracts of coal [**45] and pay a minimal tax on such property.

I am sure that if it was possible to tax the landholding corporations at a high rate and leave alone the thousands of relatively small-holding coal owners, we would not have the hue and cry over unmined coal taxes.

Unfortunately, the majority seized upon the "classification of property" issue and did not address the tax rate issue which apparently is the real issue raised in respondents' briefs.

It is also unfortunate that these cases caught a majority of the court in one of its "we know better than the legislature or anybody else" moods.

The result of the majority opinion is to effectively repeal the 1915 amendment to Section 171 of the Kentucky Constitution. If coal is not a reasonable

classification under Section 174, then I submit there cannot be a reasonable classification.

From the Kentucky Geological Survey, I find that Kentucky contains 40,409 square miles. The following counties in Eastern Kentucky contain coal deposits: Lewis, Greenup, Boyd, Rowan, Carter, Montgomery, Bath, Elliott, Lawrence, Powell, Menifee, Morgan, Johnson, Martin, Wolfe, Magoffin, Floyd, Pike, Madison, Estill, Lee, Breathitt, Rockcastle, Jackson, Owsley, Perry, [**46] Knott, Pulaski, Laurel, Clay, Leslie, Letcher, Clinton, Wayne, McCreary, Whitley, Knox, Bell, and Harlan for a total of 10,400 square miles.

The following counties in Western Kentucky contain coal deposits: Union, Henderson, Daviess, Hancock, Crittenden, Webster, McLean, Ohio, Grayson, Hopkins, Muhlenberg, Butler, Edmonson, Warren, Christian, and Todd for a total of 4,680 square miles and a grand total of 15,080 square miles of Kentucky. This is 37% of the total area of the state. A substantial portion of this is in Eastern Kentucky and has multiple seams. If an area of coal this large is not a reasonable classification under Sec. 171, then there cannot be such a classification.

An expert, a geologist from California, filed an affidavit for the respondents, stating that forty Kentucky counties produce coal. I prefer the figures from the Kentucky Geological Survey.

The majority opinion poses the question of whether a separate tax classification for unmined coal treating it differently from all other interests in real estate, including other interests with similar characteristics such as oil and gas in its natural state, is permissible. The question is answered with the statement that [**47] there is no difference between unmined coal and other unmined minerals for purposes of taxation.

This is apparently the basis for the holding of the majority that unmined coal is not a permissible separate classification.

The astonishing conclusion is not based on any argument advanced by the respondents [**371] or any authority from this court or geological authority. The parties in the *Moore* case do not argue the separate classification issue. In the *Yount* case, the only argument that unmined coal is not a permissible separate classification is that coal is *real estate*, and real estate is taxed at 31 1/2 cents. This argument is supported by authorities that have no application to the issue decided. We have said that when an act of the General Assembly has been attacked as violating the Constitution, "the burden is upon one who questions the validity of the Act to sustain his contentions." *Manning v. Sims*, 308 Ky. 587, 213 S.W.2d 577 (1948), and cases cited therein.

Also *Johnson, Governor v. Commonwealth, ex rel. Meredith*, 291 Ky. 829, 165 S.W.2d 820 (1942).

We have not been presented with a reasoned argument regarding the separate classification of unmined coal. I suppose [**48] that the majority can make up its own argument, stating that oil and gas have similar characteristics to unmined coal and that there is no difference between unmined coal and other unmined minerals. I am amazed and I am sure that geologists will be amazed at the statement that oil and gas have similar characteristics as coal. As a matter of fact, there are no similar characteristics. The brief in the *Moore* case makes the statement that unextracted oil and gas are both taxed at the same rate as other real property. This may be true in an oil field that has been drilled and proven, or on a tract that producing gas wells have been drilled. However, that is not true as to an undeveloped tract. It is relatively easy to ascertain a tract has coal underlying the surface. The geological surveys have fairly well located the coal measures and the area of the various seams. It is another proposition with oil and gas. Oil and gas do not necessarily remain in place; they are essentially fluids, or like air, that migrate underground. They are affected by rock pressure in the field. While geological surveys can classify large areas as gas or oil fields, if a producing well is not on the property [**49] there is no way to accurately tell whether gas or oil is present in an undeveloped acreage or how much could be present. The numerous "dry holes" on various properties attest to this, including dry holes drilled near producing wells.

First, the assessor cannot say with certainty that any undeveloped tract has gas or oil. Even if an educated guess can be made that this tract does have gas and oil, there is *absolutely* no way to *accurately* assess the amount and value. While theoretically oil and gas in such a state are taxable, the practical effect is that there is no tax at all assessed on oil and gas in a tract with no wells.

So much for the "similar characteristics" and different treatment statements. As to other minerals, we are not advised in the record what other minerals, if any, are mined in commercial quantities in this Commonwealth.

The experts in the *Moore* case seem to think that it will be easy to accurately assess unmined coal. The most amazing statement is that there have been purchases of large tracts of minerals in Eastern Kentucky and that "no corporation will commit itself to such a purchase without a thorough knowledge and appraisal of the properties." [**50] This expert obviously did not inform himself of all of the financial corpses littering the Eastern Kentucky coal fields after the 70's coal boom had crashed.

In the coal fields of Eastern Kentucky, there are from one to five or more mineable seams underlying the

surface; on some tracts the coal of one or more seams are not mineable. The value of the coal seam is affected by thickness of the seam, impurities in the seam, quality of the coal, and mining conditions such as top and bottom formations. It is beyond argument that the above characteristics and quality affect the value of the coal and that the characteristics and quality of a coal seam do change even in small tracts.

I assume that the majority which says that coal must be assessed at the same rate as other real estate would also say that unmined coal is entitled to an accurate assessment as to fair value.

[*372] If the majority will agree to this, then I predict a mess. Unmined coal has never been accurately assessed in Eastern Kentucky. With all of the variations as set out and which affect value, I predict that for all

practical purposes unmined coal cannot be fairly assessed. I do not believe the state has the available resources [**51] or will attempt to commit necessary resources for an accurate assessment. *Dolan v. Land, Ky.*, 667 S.W.2d 684 (1984), set out requirements for assessing real property. If this procedure is followed, I do not see how unmined coal on a given tract of land can be accurately assessed. After all, the assessor cannot see under the mountain, nor can he ascertain the quality, etc., which certainly affects value.

I was interested in the amicus briefs filed by the Kentucky Farm Bureau and the Chamber of Commerce. Both organizations have a right to be alarmed and now the majority opinion will effectively invalidate the various properties that the General Assembly has classified separately. They are:

Property Taxed	Tax Rate Per \$ 100	Statute
Livestock and domestic fowl	.001	KRS 132.020(1)
Farm Equipment	.001	KRS 132.020(1)
Agricultural Products	.015	KRS 132.020(1)
Tobacco	.015	KRS 132.020(1) KRS 132.200(6)
Business Inventory	.001	KRS 132.020(11)
Distilled Spirits	.001	KRS 132.020(10)
Motor Vehicles owned by Religious Organizations	.001	KRS 132.020(12)
Domestic Bank Deposits	.001	KRS 132.030(1)
Retirement Plans	.001	KRS 132.043
Alcohol Production Facilities	.001	KRS 132.020(1)
Tangible Personal Property located in a Foreign Trade Zone	.001	KRS 132.020(1)
Credit Union Accounts	.001	KRS 132.047
Leasehold Interests in Certain Industrial Buildings	.015	KRS 132.020(1)
Foreign Business Intangibles	.015	KRS 132.020(2)

[**52]

If unmined coal is an unreasonable separate classification, I do not see much hope for the above.

I see by the newspapers that a thoroughbred stallion is syndicated for \$ 35 million or more. This would produce a tax of \$ 3.50 which does not seem to bother the same citizens who protest here. The same rate of .001 applies to tobacco, etc. I await developments.

Finally, *Martin* is cited by the majority as authority. As I read *Martin* the 1915 amendment to Sec. 171 as to classifications is recognized but the case held the right to

classify did not give the right to exempt. The statute in *Martin* contained a specific exemption. *Martin* just does not furnish any authority for the majority holding at all.

This case represents what I consider to be a disturbing trend. People frustrated with inability to convince the General Assembly come to the courts with their problems. We are not wise enough to solve these problems even if we should. The majority goes off on a theory not briefed or argued and a subject about which it knows little or nothing.

I do not comment on the *rate* argument advanced in
Moore, as the majority seemed to address that issue, but

not decide [**53] it.

Gant, J., joins in this dissent.

ExxonMobil Production Company
P.O. Box 2180
Houston, Texas 77252-2180

April 26, 2001

ExxonMobil
Production

The Honorable Scott Ogan
House Special Committee on Oil and Gas
Alaska State Legislature

Dear Representative Ogan:

ExxonMobil would like to express its opposition to H.B. 190 "Natural Gas Pipeline Incentive / Gas Tax". We believe the bill is entirely unjustified and that its impact would be counterproductive to advancing gas commercialization within Alaska.

The basic assumption behind the bill appears to be that Alaskan gas producers have somehow been derelict in their attempts to commercialize North Slope natural gas, and that punitive tax action is warranted to force company action. The truth is just the opposite. ExxonMobil, as well as other producers, have actively attempted to advance gas commercialization projects since the original startup of the Prudhoe Bay field. Our company alone has spent over \$110 million in the pursuit of an economic project to develop Alaskan North Slope gas. Over the years, we've actively examined an original plan to develop a lower-48 natural gas pipeline, a LNG development concept, and the application of ExxonMobil's AGC-21 gas-to-liquids conversion technology in Alaska. These projects have not proceeded due to the inherent challenges of economically and competitively commercializing Alaska's remote North Slope natural gas, rather than a lack of company effort.

ExxonMobil is currently continuing our efforts to meet this challenge by joining with BP and Phillips in a concerted effort to try to advance a lower-48 pipeline project. The beginning stage of this effort is expected to cost over \$75 million, utilize the skills of 90 full-time employees, and tap the expertise of some of Alaska's, the U.S.'s, and Canada's top contractors and consultants. Our past and current efforts reflect a continuing commitment to develop Alaska's natural gas.

The imposition of H.B. 190's gas reserves tax would, in fact, be counterproductive to the advancement of this and other gas commercialization efforts. The passage of a punitive tax at the exact time that companies are actively examining investing billions of dollars in an Alaskan gas project can only have a chilling affect. As we and others have stressed, Alaska needs a stable and supportive business and tax environment to attract the large investments needed to commercialize the state's oil and gas resources. The tax imposed by H.B. 190 only increases the risk that must be considered in any project evaluation and suggests that

April 26, 2001
Page 2

companies should be penalized while continuing their search for an economic development option. It also creates a disincentive to search for additional gas resources, and sends a clearly negative message about the business climate in Alaska.

I urge you to oppose the passage of H.B. 190.

Sincerely,



R. D. Schilhab

- c. Members of the House Oil and Gas Committee
Representative Jim Whitaker
Representative Eric Croft
Representative Beth Kerttula



Resource Development Council for Alaska, Inc.

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TO: Linda Hay

COMPANY: Rep. Scott Ogden's office

FAX: 465-3265 PHONE: _____

FROM: Owens Portman Gillas Brune Jenks

RE: HB 190

MESSAGE: Please include this in Friday's

Committee packet. Thanks!



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April 25, 2001

Representative Scott Ogan

Chair, House Special Committee on Oil and Gas

Alaska State Legislature

State Capitol

Juneau, Alaska 99801-1182

Re: SSHB 190 — Natural Gas Pipeline Incentive/Gas Tax

Dear Representative Ogan:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our strong opposition to the Sponsor Substitute for House Bill 190. While our members share the Legislature's eagerness to see Alaska's North Slope natural gas resources commercialized, we disagree with the manner in which SSHB 190 deals with this issue. Furthermore, we believe this bill establishes an anti-business precedent that cuts across all of Alaska's basic industry sectors and threatens future development of our natural resources.

RDC is a private, membership-funded, non-profit trade association. Our members include individuals and leading companies from the mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native corporations, organized labor and industry support firms. Our mission is to expand Alaska's economic base through the responsible development of the state's natural resources.

Ultimately the free-market should determine when and how Alaska's North Slope natural gas reserves are developed. As partial owner of these resources, the State of Alaska has an important role to play in this process. However, SSHB 190, rather than offering an economic incentive for development, creates an artificial deadline for commercialization of North Slope natural gas and threatens the stability of Alaska's tax regime and business environment — the bill replaces the free-market with command economy disincentives. Alaska can and must do better in encouraging economic development.

Beyond the chilling message this piece of legislation sends to Alaska's oil patch, SSHB 190 sets a precedent for future moves against other resource industries. Is the Alaska Legislature prepared to tax fish that remain uncaught, hard rock minerals that remain in the ground or trees that remain uncut? Businesses do not thrive under the threat of punitive State actions. Alaska has struggled for

decades to attract new businesses and to diversify our economy. SSHB 190 drives a stake through the heart of our pledge to be "open and ready for business."

RDC understands the Legislature's mandate with regard to Alaska's natural resources spelled-out in Article VIII of the State Constitution. Unfortunately, the net effect of SSHB 190 serves the opposite purpose. Rather than encouraging maximum use and maximum benefit, this bill sends a clear anti-development message to Alaska's resource industries. Alaska's citizens will suffer the consequences.

Alaska's Constitution coupled with the State's ownership share demand that commercialization of North Slope natural gas be given the utmost attention and deliberation. Thank you for considering our position on this important issue and please feel free to contact me with any questions or comments.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

A handwritten signature in cursive script that reads "Tadd Owens".

Tadd Owens
Executive Director



Alaska Supply Chain Integrators, LLC
12150 Industry Way Building Q2
Anchorage, Alaska 99515
Bus: 907 348 1600
Fax 907 348 1652

Representative Scott Ogan

April 25, 2001

Dear Representative Ogan,

I am president of Alaska Supply Chain Integrators, which utilizes internet based software developed in Alaska to provide materials management and procurement services to companies in the Alaskan and outside markets. We have expanded to about 120 employees in our first two years and we hope to develop additional business in the near future.

I would like to voice my company's objection to the proposed natural gas reserve tax in HB 190. Alaska sits on a huge opportunity to develop its gas reserves, which represent a major share of the various producers' resource base in Alaska. Historically the producers because of economics and the lack of demand have not developed this resource. Recent world developments regarding demand have raised Alaska's chances to develop this gas, however companies cannot be expected to invest in Alaskan projects (which compete globally for development funds and user markets) when the investment risk outweighs the perceived benefit.

A gas reserve tax only increases the risks and reduces the benefits for gas owners who are diligently attempting to commercialize this resource. These companies face many obstacles and risks in their development decision. Projecting market prices over a long period of time is a substantial risk. HB 190's proposed tax would destabilize the fiscal certainty the State has provided over the last decade and sends the wrong message - as you get closer to commercialization, we will raise the "bar" and risk letting another state or country supply the needed gas resource.

Canada and Sakhalin Russia are sitting on huge gas reserves, which could service the same markets as Alaska. I believe that Alaska is in a race for development since whoever arrives first with commercialization could very well preclude further development for many years. Therefore, I would encourage the state legislature to consider "incentives" to develop the North Slope gas reserves.

I want to thank you for taking the time and energy to hear my opinion and concerns.

Sincerely,


Ronald F. Riesmeyer
President



FAXED

April 27, 2001

001-GEN-048
Via Fax 907-465-3265

Alaska State Legislative Representatives and Members of the House Oil & Gas Committee

RE: House Bill 190, Natural Gas Reserves Tax

Dear Representative Scott Ogan,

For the record my name is Mike O'Connor, President of Peak Oilfield Service Company. Peak is owned equally between Nabors Alaska Drilling and Cook Inlet Region, Inc. We currently employ approximately 900 employees.

Over the last several years, the State of Alaska, Peak Oilfield Service Company as well as many other companies have enjoyed a period of strong prosperity. The state's unemployment rate has remained low. In my estimation, this is due in large part to the positive economic environment brought about by a period of legislative cooperation and tax and regulatory stability. I know this makes a large difference as our oil and gas companies make decisions on their investment and development strategies.

House Bill 190 will change all of that, creating instability and a bad economic environment. This legislation, if enacted, will serve as a disincentive for existing and potentially new companies to make investments in the state. Anadarko is currently planning North Slope exploration and seismic studies and infrastructure development to explore for gas. At a time when so many groups are aggressively looking for ways to commercialize the gas, the suggested tax sends the wrong message.

Quite frankly, the state should be considering incentives to develop North Slope gas, instead of disincentives, such as a gas reserves tax. At a time when industry has already committed over a hundred million dollars to study and permit gas development, I find this legislation both irresponsible and punitive to the only industry that carries its weight in state funding.

I would encourage the legislature to foster an atmosphere of partnership rather than develop an adversarial relationship. The state currently owns 12.5% - why not find a partner and develop the state's percentage of the gas? Why? Because it's not economical?

Please do not pass HB 190. I look forward to hearing from you on this matter. Thanks for your time and consideration.

Sincerely,
PEAK OILFIELD SERVICE COMPANYM. R. O'Connor
President

Representative Scott Olson
Representative Fred Dyson
Fax 907 465 2199

Dear Fred,

Please note the following, when reviewing
the most burdensome bill this legislative session
is HB 190 NATURAL GAS RESERVES.

This bill seeks to force development of
natural gas whether it is economically viable
or not.

This bill effectively says "Alaska is an
UNSTABLE place to do business. This bill reminds
me of California and the Electrical Generating
Companies. This type of operation does not work.
Alaska State Legislature should be considering
incentives to develop the North Slope gas, instead
of disincentives such as the gas reserve tax. Is
this the start of taxation on other undeveloped
resources, such as mining and timber.

All businesses need stability and certainty in
Alaska economic environment to be confident in investing
large sums of money here. HB 190 proposed tax would
destabilize or disrupt the fiscal certainty the State
has provided over the last decade.

Best regards,
Tony Stewart
Eagle River, AK



FOREST OIL CORPORATION

310 K Street • Suite 700

Anchorage, Alaska 99501

(907) 258-8600 • (907) 259-8601 (Fax)

April 26, 2001

Representative Scott Ogan
Fax: 907-465-3265

Dear Representative Ogan:

I welcome the opportunity to provide comments on HB 190 from Forest Oil, an independent producer with significant interests in the Cook Inlet and an interest in future developments on the North Slope.

Briefly, the industry does not need legislative incentives to pursue development of the natural gas resources present on the North Slope. It is good business to do so. Additional taxes on undeveloped or underdeveloped resources would be counter productive and a bad precedent. I'm confident that the industry can work together with the lawmakers of the State of Alaska to insure that a commercially sound approach to bringing North Slope gas to the marketplace in a manner that can compete with the rest of the world in supplying energy to the consumer.

Thank you for thoughtful consideration of the input that you are receiving from your friends in the industry.

Very truly yours,

Gary E. Carlson
Senior Vice President

GEC/nc

Date Modified: 4/26/01
Date Prepared: 4/26/01
nc

April 26, 2001

Open Letter to My Friends on the House Oil & Gas Committee:

Rep. Scott Ogan
Rep. Hugh Fate
Rep. Reggie Joule

Rep. Fred Dyson
Rep. Vic Kohring

Rep. Mike Chenault
Rep. Gretchen Guess

Dear Representatives:

Re: House Bill 190 - Gas Reserves Tax

I believe the best way to make a point is by looking back at actual history.

Dateline 1989:

Tom McKay is a Drilling Engineer for ARCO Alaska (now Phillips Alaska). He is assigned to ramping up and drilling literally hundreds of wells on the West Sak Heavy Oil project.

These wells will produce oil and much needed revenues for both the industry and the state. The future is bright, and ARCO has announced major capital spending plans for West Sak. Then, the Exxon Valdez spill occurs, and the Legislature unwisely and punitively punishes the entire Alaska oil industry by passing the ELF oil tax increase.

ARCO responds by canceling all work on West Sak, and Tom McKay's job is suddenly eliminated because of an oil tax increase enacted by his own Alaska Legislature.

Hundreds of other high paying West Sak jobs are also eliminated as a result.

The bright future suddenly becomes grim.

Dateline 2001:

Fast forward to today.

Tom McKay is a Commercial Analyst for the North American Natural Gas Pipeline Group, a major joint work group consisting of BP, Exxon, and Phillips employees.

NANGPG, as it is called, is tasked with making a recommendation to the three producer companies for commercializing the gas resources on Alaska's North Slope.

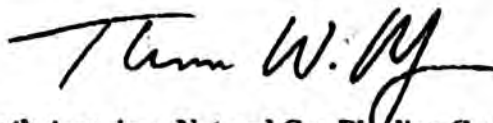
In order for this project to proceed, industry will need fiscal certainty and a stable tax policy to help bring this high-risk project into reality.

Prediction: If the gas reserves tax passes, Tom McKay's job could again be eliminated, not by market conditions, but again, by my very own legislative representatives whose primary task is to represent me and create jobs, not destroy them.

Hundreds, if not thousands of jobs could be also lost as a result if the gas pipeline is not built because of misguided government tax policy.

Please vote against HB 190. History does not need to repeat itself.

Sincerely,



Thomas McKay, P.E.
Commercial Analyst, North American Natural Gas Pipeline Group
(907) 770-8068 (work)

Our



Future

March 29, 2001

Dear Representative:

I urge you to support SSHB 190, the Reserves Tax. In 1991, the North Slope leaseholders agreed to strand our gas until at least 2005. They've spent the last ten years pretending otherwise. The Knowles Administration insists that last summer's Prudhoe Bay re-unitization eliminated these obstacles, but nobody knows for sure. Regardless, their competing projects are now beating us to our own markets. This is unacceptable. Absent the Reserves Tax, the producers won't budge.

When it comes to marketing our gas, the producers have fiddled around. The Sponsor Group LNG export study accomplished little. They said they'd spend \$75 million; they only spent \$12 million. Now, we're supposed to wait while BP, Exxon, and Phillips study overland options to the U.S., a concept facing major impediments?

Meanwhile, all three companies race to market their non-Alaskan gas. Recently, Phillips and Chevron announced separate projects that will put a combined 9 million tons of Australian LNG into California, a market that rightfully belongs to Alaska. BP just initialed an agreement to put Indonesian LNG into Mainland China and plans to develop an Egyptian LNG project, possibly for the U.S. market. Finally, Exxon strives to move Sakhalin gas into Japan.

Phillips' and Chevron's Australia-California volume would have supported a profitable Alaskan LNG project. Phillip's argues that their Australian LNG paves Alaska's way into California. Hogwash. They hijacked our market.

Make no mistake. This is a crisis. It may be only weeks before some other project usurps Alaska's rightful place in the Asian markets--and strands our gas for another decade or two. We can't afford that. Cook Inlet gas reserves are rapidly diminishing. Several studies have predicted dire consequences for Southcentral Alaska's economy, absent access to our stranded North Slope gas.

Although they claim there is no Asian market and that North Slope gas can't compete, the producers are stranding our gas precisely because there is a market and our gas can compete with the producers' foreign reserves.

The solution is obvious: We need a lever to pry our gas loose. SSHB 190 provides that lever. If the producers really are making every effort to market our gas as they insist, they will succeed, and SSHB 190 won't hurt them.

Please co-sponsor and vote for SSHB 190. This legislation must reach the House and Senate floors as soon as possible. Every hour SSHB 190 sits in Committee, some foreign project comes closer to capturing our markets, leaving Southcentral and Interior Alaska without clean-burning, affordable energy, and threatening Alaska's future.

Sincerely,

Scott R. Heyworth
Director, Our Gas, Our Future

Subject:**Date:** Thu, 29 Mar 2001 10:08:59 -0900**From:** "Scott R. Heyworth" <heyworth@alaska.net>

To: "Mike Chenault" <Representative_Mike_Chenault@legis.state.ak.us>,
"Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>,
"Carl Moses" <Representative_Carl_Moses@legis.state.ak.us>,
"Carl Morgan" <Representative_Carl_Morgan@legis.state.ak.us>,
"Ken Lancaster" <Representative_Ken_Lancaster@legis.state.ak.us>,
"Albert Kookesh" <Representative_Albert_Kookesh@legis.state.ak.us>,
"Bill Hudson" <Representative_Bill_Hudson@legis.state.ak.us>,
"John Coghill" <Representative_John_Coghill@legis.state.ak.us>,
"Jim Whitaker" <Representative_Jim_Whitaker@legis.state.ak.us>,
"Con Bunde" <Representative_Con_Bunde@legis.state.ak.us>,
"Sharon Cissna" <Representative_Sharon_Cissna@legis.state.ak.us>,
"John Davies" <Representative_John_Davies@legis.state.ak.us>,
"Fred Dyson" <Representative_Fred_Dyson@legis.state.ak.us>,
"Hugh Fate" <Representative_Hugh_Fate@legis.state.ak.us>,
"Richard Foster" <Representative_Richard_Foster@legis.state.ak.us>,
"Joe Green" <Representative_Joe_Green@legis.state.ak.us>,
"Andrew Halcro" <Representative_Andrew_Halcro@legis.state.ak.us>,
"John Harris" <Representative_John_Harris@legis.state.ak.us>,
"Joe Hayes" <Representative_Joe_Hayes@legis.state.ak.us>,
"Reggie Joule" <Representative_Reggie_Joule@legis.state.ak.us>,
"Jeannette James" <Representative_Jeannette_James@legis.state.ak.us>,
"Mary Kapsner" <Representative_Mary_Kapsner@legis.state.ak.us>,
"Scott Ogan" <Representative_Scott_Ogan@legis.state.ak.us>,
"Beth Kerttula" <Representative_Beth_Kerttula@legis.state.ak.us>,
"Vic Kohring" <Representative_Vic_Kohring@legis.state.ak.us>,
"Beverly Masek" <Representative_Beverly_Masek@legis.state.ak.us>,
"Lesil McGuire" <Representative_Lesil_McGuire@legis.state.ak.us>,
"Kevin Meyer" <Representative_Kevin_Meyer@legis.state.ak.us>,
"Lisa Murkowski" <Representative_Lisa_Murkowski@legis.state.ak.us>,
"Brian Porter" <Representative_Brian_Porter@legis.state.ak.us>,
"Drew Scalzi" <Representative_Drew_Scalzi@legis.state.ak.us>,
"Gary Stevens" <Representative_Gary_Stevens@legis.state.ak.us>,
"Peggy Wilson" <Representative_Peggy_Wilson@legis.state.ak.us>,
"Harry Crawford" <Representative_Harry_Crawford@legis.state.ak.us>,
"Pete Kott" <Representative_Pete_Kott@legis.state.ak.us>,
"Eldon Mulder" <Representative_Eldon_Mulder@legis.state.ak.us>,
"Bill Williams" <Representative_Bill_Williams@legis.state.ak.us>,
"Eric Croft" <Representative_Eric_Croft@legis.state.ak.us>,
"Ethan Berkowitz" <Representative_Ethan_Berkowitz@legis.state.ak.us>

☐ #2 letter to Juneau Representatives.doc**Name:** #2 letter to Juneau Representatives.doc**Type:** Winword File (application/msword)**Encoding:** base64**Download Status:** Not downloaded with message



WARD

**Development
& Construction Management
INCORPORATED**

Friday, April 27, 2001

The Honorable Scott Ogan, Chairman
House Special Committee on Oil and Gas
State Capitol, MS 3100
Juneau, AK 99801

RE: HB 190

Mr. Chairman and Members of the Committee:

I would like to go on record as opposed to House Bill 190, which creates a gas reserves tax.

It is my understanding that the sponsor of this legislation believes creation of such a tax would somehow act as an incentive toward the commercialization of North Slope gas. Quite frankly, I believe that it would have the opposite impact.

Over the last several years, our state's economy has been strong. Unemployment has been low, and in many businesses, including mine, have experienced prosperity.

From my perspective, a major contributing factor to our state's prosperity has been the leadership you and your colleagues have demonstrated by ensuring a stable business environment by cutting government and exercising fiscal discipline. Departing from that philosophy now by considering a gas reserves tax is foolhardy.

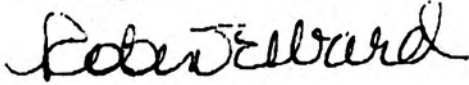
As you know only too well, the economy is strongly tied to oil and gas exploration and development. Our state's economic history has clearly shown us that when the oil and gas industry does well, so do the majority of Alaskans!

Being a businessperson in an industry as volatile as new construction and real estate, I know only too well the importance of a healthy oil and gas industry that is not afraid of investing in our state.

Let's keep the industry investing by keeping our business environment stable in the areas of taxation and regulation. All Alaskans will benefit from such.

I urge your consideration and opposition to HB 190.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robin E. Ward".

Robin E. Ward



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Oil and Gas

Committee Name

Committee on HB 190 Natural Gas Reserves Tax Dated May 8th, 2001

Bill / Subject

I am a Carlile Transportation Systems employee living in Fairbanks and I am opposed to HB 190-Natural Gas Reserves Tax.

As you already know, a large amount of the Interior's businesses are closely related to the oil industry operating on the North Slope. This winter we were one of a few trucking firms that hauled over 1,400 truckloads of insulated pipe from Fairbanks to the North Slope. That operation alone generated a large amount of revenue, not only for Carlile Transportation, but also for the majority of businesses within the Interior. It is a project like that that keeps our skilled people in the Interior and in Alaska. We need more projects like that magnitude to train our apprentices and to keep our journeymen employed in Alaska. I do not feel HB 190 provides an incentive to generate projects like Flowlines.

I feel HB 190 is sending a negative message to the gas producers. We want to send encouraging messages to bring new business into the interior. We need to generate jobs that keep our children in Alaska and improve our quality of living. We took almost 15 years to approve the GVEA's Inter-Tie. That lengthy process sent a negative message to businesses not only in Alaska, but also outside our state. It left a foul taste in the minds of business people because it took too long to approve. We do not need any more situations like the Inter-Tie. Businesses need stability and certainty in Alaska's economic environment to be confident in investing large sums of money here. HB 190 proposed tax would destabilize and disrupt any fiscal certainty the state has provided over the last decade.

In the goal of developing Alaska, we need to generate incentives to commercialize North Slope Gas. The nature of HB 190 is a punitive penalty and it will not help in achieving the common goal of commercializing North Slope Gas. This gas reserve tax will create a poor business/government relationship, which serves as a disincentive for existing and potentially new companies to make investments in Alaska. At the time when so many organizations endeavor to commercialize the gas, HB 190 is making the effort counter productive. In looking at it another way, if HB 190 passes, what kind of precedent will it set for other undeveloped resources, such as mining and timber?

Keep Alaska opened for business. Give our children an incentive and reason to stay and live in Alaska. Do not pass HB 190.

Sincerely,

Karl I. Gohlke

SIGNED:

Karl I. Gohlke
Testifier

Carlile Transportation Systems
Representing

900 Aurora Drive, Fairbanks, Alaska 99709
Address / Phone Number

**FAX COVER SHEET**

900 Aurora Drive Fairbanks, AK 99701 Phone 907-451-7155 Fax 907-456-5889

To: Scott Ogan**From:** Karl Gohlke**Fax:** (907) 465-3265**Date:** May 8th, 2001**Phone:****Pages:** 2**Ref:****CC:**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

PETRO STAR INC.

Telephone: (907) 344-2661
Fax: (907) 267-6124

201 Arctic Slope Avenue, Suite 200
Anchorage, Alaska 99518-3030

STEPHEN T. LEWIS
Chairman / CEO.

April 30, 2001

FAX Message to the Members of the House Oil & Gas Committee:

Representative Scott Ogan, Chair
Representative Fred Dyson
Representative Mike Chenault
Representative Hugh Fate
Representative Vic Kohring
Representative Gretchen Guess
Representative Reggie Joule

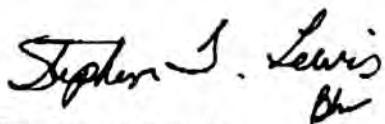
I learned about HB 190, "Natural Gas Reserves Tax", which would levy a tax on undeveloped North Slope natural gas reserves, after your scheduled hearing on Friday, April 27.

Even though I could not submit my opinion prior to or during the hearing, I would like to go on record as being opposed to HB 190 and the message it sends to current and potential new companies considering investing in Alaska's resources. The State's attitude of creating new taxes, or increasing existing taxes on natural resources, or more specifically aiming taxation toward those companies that are currently spending (or considering investing) untold dollars to develop our state resources, only creates a risky, unstable, uncertain atmosphere in which to commercialize Alaska's resources. The message being sent to the shareholders and management of these companies is that investing in Alaska is risky and the risk outweighs perceived benefits.

The commercialization of North Slope gas has almost become a reality. A group of producers has made a commitment to spend over \$75 million to determine whether there is a commercially viable project for bringing North Slope natural gas to market. Until it is economically viable to develop this or any resource, the signal you are sending is that the State of Alaska will penalize and force uneconomical resource development instead of providing incentives.

This gas reserves tax increases the risks and reduces the benefits for natural gas owners who are diligently attempting to commercialize this resource.

Thank you for allowing me to express my opinion and I respectfully request that you do not support or pass out of committee, HB 190.


Stephen T. Lewis
Chairman/CEO

PETRO STAR INC.

201 Arctic Slope Avenue, Suite 200
Anchorage, AK 99518-3030

PHONE: 907.344.2661

FAX: 907.267.6124

FAX TRANSMITTAL

Total Pages: (2)

DATE: April 30, 2001

TO: Rep. Scott Ogan	FAX# 465-3265
Rep. Fred Dyson	FAX# 465-4587
Rep. Mike Chenault	FAX# 465-2833
Rep. Hugh Fate	FAX# 465-3883
Rep. Vic Kohring	FAX# 465-3818
Rep. Gretchen Guess	FAX# 465-6615
Rep. Reggie Joule	FAX# 465-4586

FROM: Brenda L. Moser
Phone: 907.267.6110

MESSAGE: Opposition to HB 190.

* * * * *

Testimony of Jack Laasch on SS HB 190
April 27, 2001

Mr. Chairman and members of the committee my name is Jack Laasch, and I am a member of the executive board of the Alaska Support Industry Alliance. The Alliance represents those companies in Alaska that depend on a healthy oil and gas industry to provide employment for Alaskans and the sale of goods and services within Alaska.

I am writing this letter to express my views on HB 190 which proposes to enact an ad valorem tax on natural gas reserves on the North Slope.

I am opposed to HB 190 because it increases the risks that producer companies already face in developing Alaska's gas resources. It is important that companies that are instrumental in building the foundation of Alaska's economy be given every opportunity to succeed.

Alaska's Oil and Gas Industry support contractors and vendors depend on a healthy industry to provide employment and opportunities to generate revenues. These contractors and vendors also have a significant investment in Alaska.

In the past, the major producers have been willing to invest in Alaska's high risk projects. Successful development has resulted in many benefits to the communities of Alaska through contributions to charitable organizations and community enhancement projects. In addition, Alaskan companies have been contracted to provide manpower and equipment for services such as construction, maintenance, drilling, fabrication,

module assembly and many others. Since the initial discovery of North Slope gas, many hundreds of millions of dollars have been spent to commercialize this gas. Recently the producers have committed to spend an additional \$75 million on a study to determine how to bring North Slope gas to market. Many Alaskan companies will participate in this study and the subsequent contracts leading to the construction of a gas pipeline project.

I feel that the State of Alaska needs to present itself as a good partner with the industry in striving for a win win situation on both sides. In doing so the State needs to create incentives for producers to pursue commercialization of gas and hence create opportunities for Alaska's residents and the companies doing business in Alaska.

The Gas Reserve Tax does not create this incentive.

J A Larch

HB190

I'm Sally Ann Cary, Alaskan resident and Secretary of The Support Industry Alliance. I appear before you today, to offer my negative thoughts on further consideration of HB190.

If the State of Alaska is open for business this bill doesn't reinforce that message to the long term developers of our oil & gas fields nor does it foster their intent/desire to expend the enormous funds they ^{currently} spend providing jobs for workers and buying from Alaskan vendors of goods & services. It also does not send a message to other developers & business who we would like to have coming to Alaska to pursue operations and businesses.

If this bill is what is to persist then (don't confuse) such a
"Quota and punitive" tax to only oil (which has been and
is a "major" source of Alaska's employment and revenue)
expand this ill thought bill to tax: any fish that go
uncatched, any tourist who hasn't or might visit, timber
that goes uncut and any minerals unmined! Better
yet, how about air we have not breathed!!

This tax is not an incentive; it is very much the
opposite.

Sally Ann Carey
(907-561-9977)

Testimony by Bob Stinson

Subject: House Bill 190

My name is Bob Stinson, President, CONAM Construction Company and Vice President of the Alaska Support Industry Alliance. I have a few brief comments on House Bill 190.

I do not support this bill. It is not good for Alaska because it is counterproductive to sustaining the Oil and Gas Industry. Sustaining the Oil and Gas Industry is important because it is the largest contributor to the State's economy. Passage of this bill would send the wrong message to current and future gas producers who look to the State for a stable and reasonable leasing and tax policies.

If this bill is an attempt to provide an incentive to current producers of gas on the North Slope to accelerate the Alaskan Gas Pipeline Project, I think it is at least premature, and at most could cancel the project. Let me be more specific. If there were a tax on gas reserves that are imposed by a certain date if a pipeline didn't get built, why would the current Alaskan producers spend the money to try to find more gas in the interim to increase the reserves? Why would new companies look to Alaska to explore for gas if they knew they might be taxed for any newly discovered reserves without the certainty of getting it to market? Increasing reserves helps the overall economics of the project. The more gas you have, the more money you make, and the more the State makes.

I think the best way to ensure that a pipeline gets built is to work with the producers and assist in doing the things they need to do to make the project work, not to work against them in an adversarial role. What if ANWR opened? Would prospective leaseholders there assume there might be the threat of similar taxes, and decide not to invest in exploration and production of oil and gas in a place that is already one of the most expensive places in the world to produce it? I think they might look elsewhere.

This issue is premature because the feasibility process the producers are going through now has to be done regardless of the implications of a gas reserves tax. As an Alaskan pipeline contractor, who has recently designed, built *and permitted* a pipeline project, I know how long it takes to go through the process. For an 8-mile project, it took me 16 months and 2 million dollars to work through the permitting process. The current group of Phillips, BP and Exxon has committed to doing it in roughly 9 months for a 1,900-mile project, *with* the largest gas conditioning plant in the world, compressor stations, a natural gas liquids plant and more pipelines to the Lower 48. I think we need to be patient and work with the producers through this process.

This bill does not provide an incentive to build a gas line; it provides an impediment to it, and the future of the oil and gas industry in Alaska.

**Phillips Alaska, Inc.
Testimony Against HB-190
For
House Special Committee on Oil and Gas**

Mr. Chairman, for the record, my name is George Findling. I am the External Strategies Manager in ANS Gas Commercialization for Phillips. Thank you for the opportunity to provide testimony outlining Phillips' opposition to SSHB-190, version F, a bill that would add tax and lease disincentives concerning Alaska Gas commercialization into the statutes.

For the record, Phillips joins and endorses the testimony provided by the Alaska Oil and Gas Association. My comments here are to elaborate on Phillips' perspective.

To summarize, HB-190 would negatively impact the exploration for and development of Alaska's gas resources; opportunities that Phillips is proactively pursuing. We are focussing on developing a cost competitive gas project and yet this bill would go in the opposite direction by adding costs and risks to any project.

The fundamental assertion made by supporters of this bill is that it is needed to insure timely ANS gas commercialization; suggesting that Phillips is not sincerely emphasizing and moving forward on Alaska gas commercialization. We think that the facts say otherwise.

Phillips' Prudhoe Bay gas resource represents one of the largest undeveloped assets in our company portfolio. On a pro forma basis for this year, commercializing this gas would increase our company's booked reserves by more than 30%. In fact, in Phillips, Prudhoe Bay gas is what we call a "legacy asset"; if you will, one of our crown jewels. This has motivated Phillips to deploy substantial resources to prudently commercialize this asset in the shortest practical time. Further, I can assure you that the top executives in Phillips are engaged in this effort on Alaska gas.

After substantially increasing its interest in the Prudhoe Bay gas last year through its purchase of the stock of ARCO Alaska, Inc., Phillips, in concert with the BP and ExxonMobil, immediately initiated the now \$75 million North American Natural Gas Pipeline effort. The vision is to commercialize ANS gas via an overland pipeline to the L-48/Canadian market. As stated in the past, Phillips sees a fundamental improvement in the supply/demand picture in this large and growing market. We see a very real opportunity for ANS gas to be placed in the market, if a cost competitive pipeline system can be achieved. Phillips simply does not accept the assertion from the nay-sayers here in Alaska that this North American market opportunity is not real, and that this market will be captured by others. The strength of our conviction is demonstrated by the magnitude of our commitment of time and money into the effort.

Despite our optimism about the L-48 gas pipeline opportunities, Phillips has not ruled out other options. We continue to lead the Alaska North Slope LNG project. This \$15 million effort was initiated in 1998 and the Sponsor Group has made significant strides

by designing a project sized for reasonable market entry. Currently the Sponsor Group is focussed on commercial ways to next try to make this market entry project cost competitive. We want to position Alaskan LNG so that it can capture the Pacific Rim market opportunities that we believe may develop later in the decade.

In concert with the other major producers and other companies, no one is deploying more monetary and human resources to advance Alaskan gas commercialization.

An argument made by supporters of this bill is that if Phillips is sincerely and expeditiously commercializing gas, then there should be no concern, since the tax will never take effect. The problem with this line of thinking is that it does not consider all of the unforeseeable circumstances and unintended consequences that are likely to arise. These would be both out of the leaseholder's control and would frustrate our good faith efforts to commercialize the gas.

Under U.S. and Canadian laws, there are many mechanisms available to people, such as the anti-development environmentalists, to impede projects. It is realistic to imagine cases where these mechanisms are used in Alaska in the belief that greater revenues at a lower impact could be generated by triggering a gas reserves tax before the project can be realized. We can not see how it helps a project to penalize leaseholders with a tax for events out of our control. We firmly believe that there are many other unintended and negative consequences like these lurking in HB-190.

The gas sales requirements of HB-190 also are very raise additional concerns. As drafted, the bill seems to contemplate gas sales will be only be to middlemen who have some permit position rather than directly to end users or established brokers. Basically, these provisions would frustrate the operation of a free market by artificially shifting the negotiating power away from the state royalty and gas owners to a limited class of middlemen, who may have no demonstrated market. We wonder how the state can realize the highest wellhead basis for tax and royalty purposes if lessees are to sell at artificially low wellhead values under the combined influence of a limited class of permissible buyers and the specter of a gas reserves tax.

HB-190 also has flaws relative to the lease revocation provisions. Alaska long ago adopted bonus bid leasing on state specified tracts as the method to induce private parties to acquire the right and burden of exploring for and developing state oil and gas resources. The first step of this process is the competitive lease sale. A fundamental underpinning of the lease sale is that the lease terms are known as the bid is being prepared. The amount of the bid, in part, reflects the value of these terms. In reliance on the terms of the leases, the lessees then expend considerable sums to explore for and develop the leases and to market the production. It would be neither fair nor prudent for the State to change the rules now, on existing leases, after the lease sale, and after substantial investments, by imposing a requirement that the lessees enter into a gas sales contract with a middleman as a condition to continued lease retention.

Phillips also believes that requiring a gas sales contract with a middleman, as a term in new oil and gas leases, will have a long term chilling effect both on the size of bonus bids as well as the overall interest in leasing and exploring in Alaska. For example,

companies will factor in to their bids that they might lose their interest in an oil prospect that they are expeditiously developing in good faith because of an arbitrary requirement for a sales contract with a middleman for any gas associated with the oil. Further, one would wonder whether any company would have any motive to acquire oil and gas leases if such a law were on the books.

To summarize, commercializing Alaska's North Slope Gas resources will require developing a cost competitive project that can secure a sufficiently large market. Phillips is sincerely and constructively going in this direction, but we certainly see HB-190 as contrary to our efforts. HB-190 would discourage, not encourage commercialization of Alaska's gas resources because it necessarily would increase not decrease costs, uncertainties and risks. HB-190 would have many unforeseen and negative impacts: it would lead to instability and uncertainty. A project simply can not be taxed into existence. Despite its title, HB-190 is a disincentive act.

Mr. Chairman, thank you again for providing Phillips with the opportunity to express our opposition to HB-190. I would be glad to respond to any questions.

ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #202, Anchorage, AK 99503 Ofc 907-563-9229 Fax 907-563-9225
email ama@alaskaminers.org www.alaskaminers.org

TO: Name: House Oil & Gas Committee

Fax: (907) 465-3265

FROM: Tom Crafford

Fax: (907) 563-9225

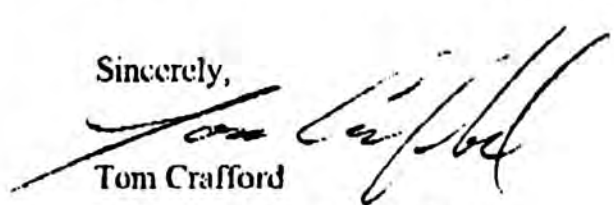
SUBJECT: Testimony RE: SSHB-190

Dear Chairman Ogan and Members of the House Oil & Gas Committee:

Due to the number of individuals testifying at the teleconference this morning, the Alaska Miners Association was unable to present its testimony re: SSHB-190. Following are the written comments that the AMA was prepared to read into the record at that time. We respectfully request that these written comments be incorporated into the record.

Thank you for the opportunity to comment.

Sincerely,


Tom Crafford

Executive Director, Assistant

PAGES TO FOLLOW 2 (Not including this cover page.)

Testimony of the
Alaska Miners Association
To the House Oil and Gas Committee
Re: SSHB-190

April 27, 2001

Mr. Chairman and members of the House Oil & Gas Committee, Thank you for the opportunity to testify today regarding HB-190. My name is Tom Crafford and I am here today representing the Alaska Miners Association.

The Alaska Miners Association does not ordinarily 'weigh-in' on Oil & Gas issues, but the AMA's objections to SSHB-190 are so strong, and our concern that this bill could establish a bad precedent that might spill over to other resource industries, including mining, is so severe that we felt we should clearly express our opposition to SSIIB-190.

A fundamental concern is that in situ taxation of any resource is bad public policy. By discouraging the thorough evaluation and delineation of a resource in advance of its development, in situ taxation fosters inefficiency and waste, the direct opposite of what SSIIB-190 purports to support. But beyond that, SSHB-190 sends the message to all resource industries that the State of Alaska is ready, willing and able to change the rules in the middle of the game. This is not a message that will attract and encourage resource industries to invest in Alaska. In recent years, American mining companies that had focussed their exploration and development efforts in foreign countries have been returning to the US because foreign countries did not provide the political, fiscal and regulatory certainty that they had come to rely upon. Legislation like SSIIB-190 goes a long ways towards eliminating a major advantage that Alaska has over much of rest of the world. With today's global competition for investment dollars, this simply does not make sense.

I know that others here are similarly testifying in opposition to in situ taxation and to the punitive approach of SSHB-190, so I would like, instead, to address my remaining comments to a different troubling point. Section 3 not only requires a lessee to agree to a lease amendment requiring the lessee to enter into a gas sales contract as a condition for extending the lease, but it establishes an extremely awkward arrangement wherein the lessee must sell

to the 'qualified bona fide purchaser' who, in the commissioner's opinion offers the 'greatest long-term return to the state.' You don't have to think too hard to figure out how a petroleum company, or any company for that matter, is going to react to having the state tell them who they must sell their product to.

Furthermore, this creates the potential for business conflicts and expensive, time-consuming legal challenges. Non-governmental organizations seeking to halt or delay gas development could file suit claiming that a sales contract did not provide for the greatest long-term return to the state. Losing bidders could file similar challenges. A producer could conceivably be forced to sell its product to a subsidiary of its major rival. None of these are situations that promote the timely and efficient development of a resource.

I hope these comments have helped to illustrate the flaws in SSIIB-190 and have helped to convince the committee that SSIIB-190 is bad for the Oil & Gas industry, bad for resource industries in general, and bad for the State of Alaska and its citizens.



Alaska State Legislature

Please enter into the record my testimony to the HOUSE OIL & GAS
committee name

Committee on HB 190, dated 4/27/01
bill # / subject

- Brian Quesnel
Lived in Kenai / Nikiski 32 years
- Airgas, 4 employees

- I am able to live here and raise my family here due to a direct relationship with the exploration and development of oil and gas reserves.
- We should be encouraging more development of these reserves, not discouraging the very ones that provide financial backbone to this State.
- By levying a penalty tax like HB190 are we trying to tell the major investors of this state we know when to spend their money better than they do? These companies like all the support companies and industries have one thing in common and that is to make a profit. Who do you think does a better job of knowing when to invest money? Those who own the money or those who only want to control the money?
- Big oil has spent billions of dollars in this state in high-risk projects. Now let us let them decide when to bring these reserves on line, even if it is possible to bring them on line. They know when to spend their money in the most fiscally responsible way.
- Lets provide a friendlier environment for future exploration and development by providing incentives rather than punishment. Alaska's future depends on stability and certainty with regard to encouraging confidence in investing large sums of money here.

I URGE YOU TO VOTE AGAINST HB 190

- Thank you

Signed:

Brian L. Quesnel
Testifier

AIRGAS, INC. / ALLIANCE
Representing (optional)

PO Box 1225, Kenai, AK 99611
Address

907-283-6118
Phone number



Alaska State Legislature

Please enter into the record my testimony to the House Oil & Gas
committee name

Committee on HB 190, dated 4-27-01
bill # / subject

The oil & gas industry is the largest in the Kenai area, employing about 700 people directly with over \$60,000,000 in payroll and spends well over \$200,000,000 for goods and services. The industries total impact is 4,273 jobs with \$176,000,000 in payroll. The Oil & Gas industry is also the largest benefactor to non-profit organizations. With that said, why would we want to force these companies to develop a resource when the risk may be higher than the reward? With this bill, these companies are being asked to invest in projects when the risk may outweigh the perceived benefits. Remember, Alaska is still competing world-wide for investment dollars and we should continue providing incentives, not dis-incentives. The proposed gas tax is more like a punitive penalty and will not help achieve the goal of commercializing North Slope gas. Alaska needs to continue providing a stable economic environment as it has for the last decade. Let's not start plucking the feathers of the goose that lays the golden eggs.

Signed: _____

Testifier

THE ALLIANCE KENAI PENINSULA
Representing (optional)

PO Box 2932 KENAI, AK 99611
Address

283-7141
Phone number

**AkPIRG****Alaska Public Interest Research Group**P.O. Box 101093
Anchorage, AK 99510507 E Street, Suite 213
Anchorage, AK 99501p: 907.278.3661
f: 907.278.9300

HB 220 – Exploration and Development Incentive Tax

Mr. Chair and Members of the House Special Committee on Oil and Gas:

AkPIRG, the Alaska Public Interest Research Group, opposes this bill for two reasons. First, in a time of fiscal shortfalls, this bill would give a tax break to developers who don't need it. Energy costs have been skyrocketing in Alaska and across the nation. Large oil and gas companies are posting record profits and do not need these types of incentives to continue exploration.

In fact, such tax incentives continue the State down the wrong path. The State should be providing incentive tax credits for capital investments and annual service costs of projects that relate either to **energy efficiency** or **alternative power generation**. Both of the avenues have been proven economically beneficial as well as environmentally preferable. Alaska successes are sparse in the realm of alternative energy but they provide ample examples of what can be done. A small wind farm up in Kotzebue is providing power to 200 homes up there at a cost cheaper than the state-subsidized diesel. The state expends \$15-17 million a year in order to make this inefficient fuel available to the bush. Clearly it is time to change. The Anchorage Post Office Processing Center is powered by the largest fuel cell generator in the nation. It is producing so much power that it sends it excess back to the grid. Both of these project examples can be scaled down to fit the needs of individual home owners.

These are the types of projects for which Alaskans should receive tax incentives. We urge you to vote against this legislation.

HB 190 – Alaska Natural Gas Pipeline Incentive Act

AkPIRG supports HB 190 because this forward-looking legislation is an effort to ensure that Alaska's resources remain the property of Alaskans. This guarantees that Alaskans will continue to receive its share in the development of these resources. In addition, it will provide for the natural gas and energy needs of Alaskans directly from the North Slope.

This is an attempt to ensure the cost to North Slope producers not to commercialize, delay commercialization, or inhibiting commercialization of North Slope natural gas is prohibitive, that is, this would prohibit companies from accruing value on commercially-viable natural gas by sitting on it in the ground.

A policy on non-commercialization, delaying commercialization, or inhibiting commercialization when commercialization is economically feasible is contrary to the spirit and intent of the Constitution of Alaska and will not benefit Alaskans. It will only serve to increase the profits of gas producers who wish to increase their share of Alaska's wealth.

We urge quick passage of this bill.

FAX 415-3265

Thank you Mr. Chairman for allowing me the opportunity to speak.

My name is Matthew Fagnani and I am president of WorkSafe, Inc. I am here to offer testimony ^{on} ~~or~~ HB 190, Natural Gas Reserve Tax. I would like to think that, as a business operator here in Alaska, I represent a very important constituent. We are small companies that are not oil service companies, yet we service oil service companies. My business is dependent on a healthy oil and gas, transportation, tourism, fishing and mining industries, among others.

I have been involved in working with the Alaskan economy since I left the military in 1992. Alaska is a beautiful place to live but does offer unique challenges to companies who choose to be involved in the Alaskan economy. As Alaskans, we are faced almost daily with ~~the~~ extreme issues and higher costs of just being remote from the rest of the lower 48 states. We have limited options to grow and expand our customers to surrounding states because of our remoteness.

Because of this, when I read about legislation like HB 190- "Natural Gas Reserve Tax" it worries me. It concerns me that oil and gas

companies will find that Alaska is not a stable market to work in. Businesses need stability and certainty in Alaska's economic environment to be confident in investing large sums of money here. HB 190's proposed tax would de-stabilize or disrupt the fiscal certainty the State has provided over the last decade.

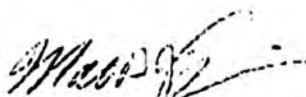
I would prefer that the Legislature work on issues that offer incentives ^{bill like this which can be viewed as} to develop the North Slope gas instead of disincentives. Incentives will put Alaskans to work. It would show that we are serious about being open for business.

^{were}
If this incentive/gas tax ~~was~~ on the other foot and you were the company being asked to develop a resource before its time and market, how would you react? As you are all aware, a business decision needs to make economic sense. These projects need to stand on their own merit. If the numbers add up, then Alaskans will have a project. The oil companies have invested billions of dollars in developing commercially viable projects. It would appear to me that they would do the same with natural gas once it becomes a viable project.

I am also concerned that this type of legislation is just bad for the State. I fear that this type of legislation would hamper growth and future interest in Alaska Project. My company and that of the other businesses in Alaska need a progressive and viable oil and gas project. *Industry.*

I would urge you to not let this bill pass out of this committee. Send a message to Alaska business that we are open for business.

Thank you for allowing me the opportunity to speak.


Matthew T. Fagnani

President

WORLD SALES, INC.



Alaska State Legislature

Please enter into the record my testimony to the House Oil & Gas Committee
committee name

Committee on HB 190, dated 4/27/01
bill # / subject

Alaska oil, north slope gas representatives make-up a major share of the development of natural gas that would go to market. These Company's can not be expected to develop a project that doesn't generate margins needed to be viable. The State needs to give incentives and tax breaks so companies and other businesses will invest more in the state via facilities & jobs for Alaskans. This tax bill don't promote good business relations from the states stand point. And I appose this Bill HB 190

Signed: Todd Pizzuto (Todd Pizzuto)
Testifier

Representing (optional)

Box 8113 NIKISKI, AK 99635
Address

907-776-8441
Phone number

Forwarded Message:

Subj:	HB 190
Date:	4/26/01 11:42:07 AM Alaskan Daylight Time
From:	TRMJR1
To:	Representative Scott Ogan@legis.state.ak.us

I am very much opposed to this bill. It will certainly discourage gas exploration at a time when proven reserves on the North Slope are grossly insufficient to supply either the Highway Pipeline or the Valdez LNG schemes. Proponents of this bill say the gas owners are warehousing North Slope gas but never mention that every day gas liquids worth \$1.5 million are recovered from the reinjected gas produced with oil at Prudhoe Bay and the natural gas based pressure maintenance project has increased ultimate recovery 35% yielding a \$95 BILLION increase in the value of oil production. Gas in the ground at Prudhoe Bay is far better for the State than money in the bank. Nationwide, natural gas sold during the first quarter of 2001 averaged \$6.45 mcf, 2 1/2 times the average price of \$2.46 during the first quarter of 2000! Thank Heaven our gas has been saved on the slope instead of being sold for "peanuts" in money losing export schemes.

I worked for an independent gas producer in Wyoming in the early 1950's when a reserves tax was proposed by the livestock interests after a heavy late spring snow had decimated the lamb and calf crop. The proposed tax was dropped when the ranchers realized that counting reserves was not at all like counting sheep because there can be a wide difference of opinion among qualified reservoir engineers and geologists due to uncertain well control, interpretation of gas in place, and reservoir continuity. The ranchers withdrew the bill after deciding it could become a Reservoir Engineers Job Security Act.

Thank You.

Tom Marshall

Retired Petroleum Geologist and former State Land Selection Officer



Resource Development Council for Alaska, Inc.

121 W. Fireweed Lane, Suite 250, Anchorage, AK 99503

Phone (907) 276-0700

Fax (907) 276-3887

e-mail resources@akrdc.org<http://www.akrdc.org>

Founded 1973

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Thaddeus J. Owens

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April 25, 2001

Representative Scott Ogan
Chair, House Special Committee on Oil and Gas
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: SSHB 190 — Natural Gas Pipeline Incentive/Gas Tax

Dear Representative Ogan:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our strong opposition to the Sponsor Substitute for House Bill 190. While our members share the Legislature's eagerness to see Alaska's North Slope natural gas resources commercialized, we disagree with the manner in which SSHB 190 deals with this issue. Furthermore, we believe this bill establishes an anti-business precedent that cuts across all of Alaska's basic industry sectors and threatens future development of our natural resources.

RDC is a private, membership-funded, non-profit trade association. Our members include individuals and leading companies from the mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native corporations, organized labor and industry support firms. Our mission is to expand Alaska's economic base through the responsible development of the state's natural resources.

Ultimately the free-market should determine when and how Alaska's North Slope natural gas reserves are developed. As partial owner of these resources, the State of Alaska has an important role to play in this process. However, SSHB 190, rather than offering an economic incentive for development, creates an artificial deadline for commercialization of North Slope natural gas and threatens the stability of Alaska's tax regime and business environment — the bill replaces the free-market with command economy disincentives. Alaska can and must do better in encouraging economic development.

Beyond the chilling message this piece of legislation sends to Alaska's oil patch, SSHB 190 sets a precedent for future moves against other resource industries. Is the Alaska Legislature prepared to tax fish that remain uncaught, hard rock minerals that remain in the ground or trees that remain uncut? Businesses do not thrive under the threat of punitive State actions. Alaska has struggled for

decades to attract new businesses and to diversify our economy. SSHB 190 drives a stake through the heart of our pledge to be "open and ready for business."

RDC understands the Legislature's mandate with regard to Alaska's natural resources spelled-out in Article VIII of the State Constitution. Unfortunately, the net effect of SSHB 190 serves the opposite purpose. Rather than encouraging maximum use and maximum benefit, this bill sends a clear anti-development message to Alaska's resource industries. Alaska's citizens will suffer the consequences.

Alaska's Constitution coupled with the State's ownership share demand that commercialization of North Slope natural gas be given the utmost attention and deliberation. Thank you for considering our position on this important issue and please feel free to contact me with any questions or comments.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.



Tadd Owens
Executive Director

I would like to thank the ^{4th} ^{and} committee for letting me testify.

My name is Jim Plaguet, I am a former business agent for the Operating Engineers Local 302, currently I am a heavy equipment operator member of local 302 ~~and~~ ^{and worked} in Prudhoe Bay this past winter. This winter organized labor had many Prudhoe Bay projects with B.P. Exploration and Phillips Alaska. Prudhoe Bay projects this past winter employed over 700 ^{plus} Fairbanks workers that helped support their families ^{financially}. Besides creating job opportunities, supporting local businesses ~~and~~ ^{and} bring business to Fairbanks companies, it further strengthen our community.

It took Alaskans working together with the industry to build the trans-alaskan pipe line and bring Prudhoe Bay oil to market. Many Alaskans

(2)

worked very hard to make the pipeline a reality. Future opportunities such as gas commercialization can only happen if there is a commitment from Alaskans and the industry to achieve our goals by working together.

We as Alaskans should be looking for ways to make development of our gas more economical, rather than seeking ways to thwart future development. Alaska should be open and ready for business and willing to provide a regulatory and tax climate in which we can compete in the global market.

I'm optimistic that as long as we make production of oil and gas in Alaska economically attractive the industry like any for profit

corporation, will aggressively pursue development of new oil fields in Alaska as well as commercialization of North Slope gas. Economically, Alaska and its residents need this continued investment from the oil industry. Working together we have seen projects recently such as Alpine, Tarn, Badami, Northstar and most recent the Meltwater oil field development. Thousands of Alaskans have worked on these projects to support their families. The industry has invested billions of dollars in Alaska. Working as a partnership with Alaskans I think they'll invest billions more.

HB 1903 proposed tax will not help in achieving our common goal of commercializing North Slope gas.

Working ~~to~~ together as a partnership will ^{achieve our common goal} and Alaskans will continue to have a bright future. Thank-you

Representative Scott Ogan, Chair

Representative Fred Dyson, Representative Mike Chenault, Representative Hugh Fato, Representative Vic Kohring, Representative Gretchen Guess, Representative Reggie Joule

Lady and Gentlemen:

My name is Maynard V. Tapp of Hawk Construction Consultants, Inc. I am also on the Board of the Alaska Support Industry Alliance (The Alliance). I have over 25 years experience in the oil and gas industry including construction of the TAPS line, international work, and over 15 years experience in Alaska.

We all agree that commercialization of Alaskan gas will be excellent for the State of Alaska, the United States, and the environment.

I think we can agree that the producers are in the business to make money from their share of resources located here in Alaska. Gas commercialization must be able to make a reasonable return on this investment (some say as high as \$18 billion). I believe the producers are ready and willing to make the commitment. It makes good business sense.

Historically, the oil and gas industry has averaged about 4.5-6% net income from their investments. If all they wanted to do is make money they could invest in the stock market which averages about 14% per year since 1900. Thankfully, they recognize the importance of this resource (oil and gas) as a major contributor fueling the economy of Alaska, the USA and the world.

These companies make investments where years if not decades elapse prior to their gaining any return on their investment. The significant amounts of money and effort involved in bringing a project of this magnitude to market is not easily justified to those holding the purse strings. The last time a group attempted to put together this project was during the Carter Administration. I have been told up to \$250 million was expended in that effort. **Who reimbursed the producers for that expenditure?**

Currently a reported \$75 million dollars is committed to study the feasibility of bringing gas to market.

By introducing a tax on the reserves on the North Slope of Alaska, we could destabilize a very sensitive calculation used to determine the viability of this project. It sends the wrong message to Alaska's partners, that we Alaskan's are so ready and willing to tax any thing that moves (or doesn't move).

Alaska's problem is its need to raise revenues to cover our state operating expenses. If we use President Reagan's and our current President Bush's models for raising public revenues, it is **NOT BY RAISING TAXES**. Is there a way the Alaska Legislature can facilitate stimulating capital investment and thereby benefiting from the growth. The governors mantra of being "open and ready for business", should guide our policies and public agenda.

We need to find ways to encourage development not scare it away.

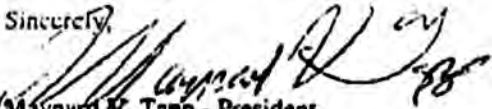
1. In the mid 1990's the State of Alaska commissioned a report by Dr. Pedro Van Moers (sp). In this report he felt that a **Tax Holiday** (property tax) would help bring gas commercialization closer. **WHY NOT FIND A TAX INCENTIVE RATHER THAN A TAX DISINCENTIVE?**
2. Does the State of Alaska have a proactive plan or organization in place to encourage gas commercialization?
3. Have we "partnered" with the Federal and Local governments to determine the fastest way to bring this project online as soon as possible?
4. Is there an office of "one-stop shopping" for the producers to go to for applying, mitigating, resolving problems associated with the project?
5. I personally have experienced a project in Alaska, where the Federal and State agencies had different agendas, and expectations. Has the state and federal government proactively addressed these issues?

All Alaskan's must work together to build an unbreakable foundation for our Oil and Gas industry.

As stated by former President Bush **"READ MY LIPS.... NO NEW TAXES"** or, to coin a new phrase **"RAISE PRODUCTION... NOT TAXES"**

Thank-you for your time and consideration.

Sincerely,


Maynard V. Tapp - President

HAWK CONSTRUCTION CONSULTANTS, INC.

Testimony before House Special Committee on Oil and Gas

**Provided by NANA Development Corporation
Friday April 24, 2001**

Chairman Ogan, members of the committee, for the record, my name is Joe Mathis, Senior Operations Manager for NANA Development Corporation. I appreciate the opportunity to testify today and provide the position of NANA Development Corporation in opposition to HB 190.

NANA Development Corporation is a major employer and contributor to the economy in Alaska. We employ 1,500 people who work for NANA's 35 subsidiary companies and business affiliates, 30 per cent of which are heavily involved in working with the oil industry. Our businesses are focused on generating profits and providing opportunities for 10,000 shareholders represented by our parent company, NANA Regional Corporation.

NANA is a leader in developing resources in the State of Alaska. Our corporation is the owner of the resources at the Red Dog Mine, the largest zinc deposit in the world, and a partial owner of the Endicott oilfield which, as you know, also contains significant gas reserves. Because of our status as a broad resource developer in the state, NANA would be negatively impacted by this legislation, as would the producers that are partners with NANA in generating economic prosperity in Alaska. It is NANA's view that HB 190 does the opposite of what the sponsors intend, which

is to facilitate the commercialization of North Slope natural gas. In fact, the imposition of a tax, if the gas were not commercialized within what seems an arbitrary time frame, would add to the risk of bringing the gas to market. Producers are already trying to get the resource to market as quickly as they can but certain economics have to be in place for commercialization. As you know, the producers have joined together to determine whether there is a commercially viable project for bringing the gas to market.

The most concerning aspect of the legislation is the dangerous signal its passage would send to all resource development activities.

Anytime there is a tax on resource reserves; there is a disincentive to explore. Exploration, already the highest risk dollars is discouraged because Alaska has decided it is willing to tax people on the product of exploration regardless of their ability to produce it. The legislation would create an environment of fear on the part of producers of all other undeveloped resources, whether oil or minerals.

In the case of Endicott, if HB 190 becomes law, NANA and other producers are going to be discouraged from exploring for more oil or gas because of the probability of also discovering gas that could be taxed even if it is not commercialized or exempted from the legislation in AS 43.58.220 (for consumption, field operations, or sold for use in production activities). NANA already pays the state a 20 percent royalty and 80 percent of the net profit from oil production at Endicott. Our analysis is that

applying these types of taxes to the existing or new gas reserves discovered may absorb most of NANA's profit on that field. This certainly doesn't encourage us to invest more money.

NANA's position is that it is simply bad public policy to consider carving out a tax on just one resource.

We are equally concerned about the potential of a future tax on mineral reserves or other undeveloped resources that the Legislature decides should be commercialized. There is a multitude of resources in remote areas that could be of great benefit to the state if developed but, again, the economics must be favorable for the producers to bring those resources to market. More important, they need to be found in the first; and less will even look if they think they will be punished for success.

I urge members of the committee to abandon this legislation and let the producers group complete their feasibility studies of the gas project. Why establish an antagonistic relationship between the state and producers before we even have information about the feasibility of the project?

We are in a competitive world; the Legislature should be in the role of providing incentives to develop the North Slope gas, instead of a disincentive such as the gas reserve tax.

Thank you for the opportunity to provide comment.

*Read
into the
Record*

Testimony regarding HB 190 before the House Oil & Gas Committee

April 27, 2001

Mr. Chairman and esteemed members of the Committee.

My name is Mary Shields and I am General Manager of Northwest Technical Services.

Northwest Technical Services provides long and short term contract and temporary employees in the State of Alaska both within and outside the oil industry. Last night we held our 20th Anniversary celebration; we have been actively involved in many work and civic related activities in our State for all of those years.

Upon reading this proposed piece of legislation, I became very concerned that the tax stability we have fought so hard to achieve in Alaska could be seriously eroded. How can we expect companies to invest in projects when the risk – a gas reserves tax - outweighs the probable benefit?

This is a lose/lose situation: it is certainly a disincentive for any firm to move forward with new exploration until a guaranteed method of transporting the gas to market is operational and it is not the way to keep Alaskan's working.

The companies involved in exploration and development in Alaska have not shied away from high-risk projects. If they had, the North Slope fields would have never been developed; exploration would have stopped before the discovery of Prudhoe Bay.

Over the years companies have spent millions of dollars in the search to find a way to commercialize our gas resources and are now in the process of spending \$75 million or more to determine whether there is a commercially viable project which will bring the North Slope Gas to the market.

**Testimony of the
Alaska Support Industry Alliance
On SSHB 190
Before the House Oil and Gas Committee
April 27, 2001**

Mr. Chairman and members of the committee. My name is Larry Houle and I am the General Manager of the Alaska Support Industry Alliance. The Alliance membership consists of 400 contractors, suppliers and individuals that provide products and services in support of the Alaska Oil and Gas industry. Our membership collectively represents almost 30,000 people working in Alaska; over 25,000 are year around Alaska residents.

None of the oil producing companies are members of the Alliance. Instead, we are the 25,000 working men and women that weld pipe, clean rooms, drill wells, drive machinery, day in and day out in Alaska's oil patch.

I am here today to confirm The Alliance's opposition to Sponsor Substitute for HB 190, a bill that proposes to tax Alaska's proven gas reserves on state leases purchased by private companies. House Bill 190 represents a huge disincentive; in fact, it is a deterrent to those Producer Companies that are today working to commercialize North Slope natural gas.

Labeled as an "incentive" we see the bill as punitive, representing poor public policy. To tax proven reserves even before they are pulled from the ground sends a strong signal to the world that Alaska is no longer "open for business." We believe the precedent set by a gas reserves tax goes beyond gas and in fact is a threat to future natural resource development in Alaska.

If this Alaska legislature is willing to apply a tax to gas reserves what is to stop some future legislature from taxing miners for claims situated on the outer limits of transportation routes or stranded timber reserves in roadless areas or even commercial fishermen not willing to fish certain runs or species?

The Alaska Support Industry Alliance has always supported commercial development of natural gas on the North Slope in Cook Inlet and wherever else resources abound in our state. We do not pretend to know what is the best method for production, the best resulting commodity or the best transportation routes. Only those who must invest and risk huge amounts of money to bring natural gas to market can determine what is economically feasible.

For more than a decade Alaska has had a stable and certain tax structure. Within Alaska's stable tax structure natural resource companies and others have invested billions of dollars. New fields and wells have been brought on line, production decline has been reversed and most importantly to my membership employment has generally been robust.

Right now contractors and suppliers are at full employment. New projects are being bid daily; optimism is truly at a high point throughout the State. An unstable tax climate, as represented in SSHB 190, will have the same effect on production as a low price climate. Less profit and more uncertainty equates to less capital investment.

Today's stable and predictable tax climate has been the key to the last decade of successful investment in Alaska. A continuation of a stable and predictable tax climate is essential for investors making decisions on future projects, especially a project as large as the commercialization of North Slope natural gas.

Increased taxes can only serve to make Alaska gas more expensive, and thereby less competitive, in a world market that has huge and abundant known gas reserves.

The Alliance membership represents what I will call your "meat and potatoes constituents." They are those men and women that get up in the morning put on the Carhartts and with sweat on their brow earn an honest daily wage. They are the drillers, derrick workers, bull cooks and cat operators, Mr. Chairman these constituents are the **first** to be laid off when oil and gas production slows. They are 25,000 Alaskan residents with families, mortgages, and car or truck payments to make.

In the **Mat-Su Valley** the Oil and Gas industry **directly** employs 353 people representing \$36 million in payroll. **Indirectly**, in Mat-Su the industry's total impact represents over 4,000 jobs and \$158 million in payroll. This figure represents almost 16% of the total regional payroll for Mat-Su.

In the **Fairbanks North Star Borough**, the industry **directly** employs 565 people, pays out \$40 million in annual payroll and spends \$190 million for goods and services. The industries **indirect** impact is 4,143 employees

representing 12% of the areas nonmilitary jobs equal to 16% of the North Star Boroughs total payroll.

(These figures are from a recent independent survey completed by Information Insights of Fairbanks and the McDowell Group. The sample year was 1999 an off year for the Oil Industry when barrels of oil were priced at \$9. Copies of the Executive Summary are available at your request.)

We believe the legislature should be considering true incentives that promote sound development and commercialization of North Slope gas. Natural resource legislation is good public policy when it reduces costs and minimizes risks while protecting our environment.

In summary, SSHB 190 in its short title makes reference to a Natural Gas Pipeline Incentive Act. We do not read "incentive" into this substitute bill. In fact the words "tax" or "taxation" appear 40 times in the 10-page document. We see the bill as punitive and destabilizing with the potential to erode any competitive advantage in the world markets that we have gained in the last decade in Alaska. HB 190, if passed, will most certainly result in the loss of jobs for Alliance contractors and suppliers...those "meat and potato constituents" living in your districts.

Thank you for the opportunity to testify today.

Testimony of the
Alaska Oil and Gas Association
On SSHB 190
Before the House Oil and Gas Committee
April 27, 2001

Mr. Chairman and members of the committee. My name is Judy Brady and I am the Executive Director of the Alaska Oil and Gas Association. AOGA is an industry trade association whose 16 members represent the great majority of the petroleum industry in Alaska: Alyeska Pipeline Service Company, Anadarko Petroleum Corporation, BP Exploration (Alaska) Inc., Chevron U.S.A. Inc., Cook Inlet Region Inc., Cross Timbers Oil Company, ExxonMobil Production Company, Forest Oil Company, Marathon Oil Company, Petro Star, Inc., Phillips Alaska, Inc., Shell Western E&P Inc., Tesoro Alaska Company, TotalFinaElf E&P USA, UNOCAL, and William Alaska Petroleum Inc.

I am here today to present AOGA's opposition to Sponsor's Substitute for House Bill 190, which proposes to enact an ad valorem tax on natural gas reserves on the North Slope and to impose a limit on the issuance or extension of oil and gas leases containing natural gas.

AOGA strongly opposes this bill as both poor economic policy and poor public policy. The Alaska Oil & Gas Association considers this legislation to be a direct disincentive to the commercialization of North Slope natural gas. AOGA's concern is that this will also be the view of market analysts who track and report local actions affecting gas commercialization on a worldwide basis for the purpose of informing potential lenders about project viability.

HB 190 represents a radical departure from sound economic and fiscal policy by substituting "pain" for "gain" as the reason to invest in the commercialization of North Slope natural gas. This bill apparently presumes that if shareholders and management are threatened and punished, they will be more likely to invest in Alaska. The bill seems to be based on the premise that an ANS gas project has *already* been found to be commercially viable and that free market incentives have failed when it comes to decisions to invest in the commercialization of North Slope natural gas.

This bill represents an odd and disruptive counterpoint to the building public/private momentum now underway as the result of industry commitment to and investment in the commercialization of the North Slope gas reserves. Of greater concern from a competitive market perspective, by signaling a significant move away from Alaska's stable public tax policy, HB 190 actually threatens to slow the momentum for the commercialization of the North Slope gas reserves.

Since the initial discovery of North Slope gas reserves in the 1960's, the oil and gas industry and others have spent over \$1 billion seeking ways to

commercialize North Slope gas. Such efforts include attempts to develop gas pipelines to the Lower-48, LNG projects and gas-to-liquids (GTL) projects. Despite these efforts, a commercially viable project has yet to be identified. However, there is more hope today than ever before that North Slope gas will become commercial because of a number of factors—most important to Alaska is that markets are changing.

This committee has heard testimony from various companies regarding the status of their commercialization efforts. The momentum, the focus and the commitment to the commercialization of North Slope gas are here now and building:

- As you know, in December 2000, the three major North Slope gas producers signed a joint work agreement on an Alaskan gas pipeline project. This project involves expenditures in excess of \$75 million with 90 employees and over 500 contractors and subcontractors. The first contract awards to Alaskan and joint venture Canadian firms were recently announced.
- Construction of BP's \$86 million gas-to-liquids five-year demonstration project in Nikiski is fully underway in Nikiski with completion scheduled for 2002.
- The Sponsor Group, comprised of Phillips, BP, Foothills Pipeline and Marubeni, is seeking a way to make an Alaska North Slope LNG project commercially viable. The effort, begun in 1998, now at Stage 2, is focusing on commercial activities needed to be cost competitive with other grass roots LNG projects potentially serving the Pacific Rim.

Some may think that a gas reserves tax would create an incentive for producers to speed up the development of this resource. But, in fact, this tax would only create an additional expense for the gas producers without improving any of the fundamental market factors that determine the economic feasibility of gas commercialization. In other words, it would bring Alaska no closer to solving the market obstacles to gas development, but would merely punish the producers for conditions outside their control. Rather than being an "incentive", HB 190 would be a direct disincentive to the commercialization of North Slope natural gas.

As proposed tax legislation, HB 190 sends a signal to the market that the State of Alaska's public policy of stable taxation is eroding. Just as the market has considered a stable tax policy to be critical to attract investment to the new commercial oil projects in the past ten years, so will the market consider a continued stable tax policy to be critical to attract the additional billions of dollars in financing necessary for new commercial gas projects.

A gas reserves tax would have other unintended and adverse effects on the prospects for gas commercialization. Today the *known* North Slope resource is estimated to be 35 Tcf of natural gas. If a project or projects are found to be

economic based on the current estimated reserves, clearly the economics would be improved significantly if, instead, there were 50 or 75 Tcf of gas over which the costs of the projects could be spread. But if HB 190 is enacted, anyone who plans to explore specifically for new gas reserves on the Slope, in the next several drilling seasons, will know that any gas they find would be subject to the reserves tax. Thus, HB 190 would deter the very exploration efforts that might prove to be essential for long term gas commercialization to come about.

Finally, HB 190 risks future investment in Alaska not only for the oil and gas industry but for other industries as well. Resource-development industries with long lead times for exploration and development require fiscal stability and certainty. The clear message of HB 190 would be: although long lead times are part of your business, if it takes you longer to develop your resources in a free market than the political arms of the government thinks it should, you will be punished even if the delay is not your fault.

Since, in the final analysis, the deciding factors will be commercial and market vitality which is most improved by reducing costs and risks, both industry and the state must focus their efforts on those factors that make Alaska's fiscal regime for gas more competitive against those elsewhere in the world.

The present Legislature — as well as the legislatures of the past decade — have strongly conveyed the message that Alaska is "open for business". Let's not change that message now, when we are in the very midst of a worldwide market competition to make North Slope gas projects economic. We should all work together to understand better how Alaska can more effectively compete in this worldwide market and how to bring about the commercialization of North Slope gas. Then let us work together to do what is necessary to make it happen.

Thank you for the opportunity to testify to you today.

**Testimony Before House Special Committee on Oil and Gas
Provided by NANA Colt Engineering, LLC
Friday April 27, 2001**

Chairman Ogan, members of the committee, for the record, my name is John Minier, President of NANA Colt Engineering. I appreciate the opportunity to testify today in opposition to HB 190.

NANA Colt Engineering is equally owned by NANA Development Corporation and Colt Engineering, and is one of the many NANA businesses heavily involved in the oil sector. We support Phillips Alaska with engineering, procurement, and construction management services for their Western North Slope activities, and we perform significant project engineering work for BP. NANA Colt supports, in some fashion, most of the North Slope and Cook Inlet operations currently underway. I personally have lived in Alaska for over 25 years, and have worked in the oil industry developing the North Slope oil and gas reserves for over twenty years. I strongly oppose House Bill 190.

I appreciate, and laud, the Legislature's effort to facilitate the commercialization of North Slope natural gas. But forcing the producers to commercialize the gas through a tax is not the way to accomplish what both the producers and their partners are already trying very hard to do.

Why would the oil support industry be opposing a bill that many believe would facilitate development of the North Slopes gas when we'd seem to be the obvious benefactors of this bill. Second, if we believe the owners are making, and will continue to make every effort to market their gas, what's the problem with this bill? It's onerous taxation and lease implications would likely never be applied.

The answers are simple. It is bad public policy to impose a tax on a specific segment of what drives the economic engine of this state. It is unnecessary. It changes to rules yet again. It says to companies "If you're looking for a stable place to do business, look elsewhere". It creates divisiveness and disincentive rather than fostering cooperation and development.

The owners have a long and proven track record of pursuing every potential avenue for gas commercialization. They have spent hundreds of millions of

dollars on studies of gas pipelines, LNG facilities, spike and super spike options, and gas-to-liquids conversion projects.

Recently, conceptual engineering contracts were awarded to various companies by the North America Natural Gas Pipeline Group. NANA Colt and our partners in the "AlasCan Group" joint venture were awarded engineering for one of the pipeline segments to send the gas to the lower 48. The producers have committed \$75 million to determine whether this project is feasible. This is yet another example of their aggressiveness and strong desire to commercialize North Slope gas.

As businessmen and women, we request better approaches than this. As citizens, we demand better than this. Why? Because our friends, our partners – the North Slope Owners and Producers – have earned, and deserve, better than this.

Thank you for the opportunity to provide comment.

BILL STAMPS
ALASKA SUPPORT INDUSTRY ALLIANCE
TESTIMONY ON HB190

April 27, 2001

Members of the House Oil and Gas Committee, good morning. I am Bill Stamps, Manager of Business Development and External Affairs for Peak Oil Field Service Company. I am also serving as president of the Alaska Support Industry Alliance this year. Today I am speaking on behalf of both my company and The Alliance.

Peak is an Alaskan based general contractor with offices in Anchorage, Prudhoe Bay, Nikiski and Valdez. We provide construction, fabrication, facility and equipment maintenance, heavy hauling and equipment support for the oil, gas and chemical industry. Peak currently employs approximately 1,100 people. All of our business is dependent on the oil and gas industry.

The Alliance membership includes nearly 400 businesses that contract directly with producer companies to provide products and services in support of oil and gas activity. Collectively we employ about 30,000 people in Alaska ... 25,000 are permanent residents of the state. The Alliance mission is to advocate safe and environmentally sound

petroleum exploration, development and production for the benefit of all Alaskans.

The Alaska Support Industry Alliance is extremely disappointed and alarmed over the introduction of House Bill 190 – Taxation on in-place North Slope Natural Gas. We believe this bill is the most onerous of the session, with provisions and messages that put our industry's health and future in jeopardy.

HB 190 amounts to coercion. It is akin to taxing the farmer for not planting a profitless crop. It is comparable to imposing a stiff fee on the commercial fisherman who is unwilling to fish for salmon in untested waters. It is the same as taxing the miner whose undeveloped claim now lies too far from reasonable transportation. It is like assessing the sawmill for not spending a fortune to airlift timber from otherwise inaccessible forest lands. HB 190 doesn't levy taxes on farmers, fishermen, miners or loggers. It singles out the oil and gas industry.

Sponsors reference the HB 190 assessment as an "incentive." This takes a myopic view of the very global, very competitive oil and gas industry. Alaska may be rich in natural gas, but so are many, many other areas of the world ... areas with infrastructure already in place, areas with less harsh environments, areas that cost less to do business in and areas that

welcome oil and gas developers with tax relief, not additional tax burdens.

Alaska gets approximately 80% of its unrestricted revenue from the oil and gas industry so we clearly are a state dependent on natural resource development. Yet with a bill such as this, the Legislature is conveying a message to developers and potential developers around the world that Alaska has no stable tax base. When developers are deciding where to invest their money in resource development they will see the tax structure in Alaska as a moving target. A gas reserves tax only increases the risks and reduces the benefits for gas owners. Let's call HB 190 what it is. HB 190 is all about the "T-word" – in fact, "tax" is noted in the bill about 40 times. This bill is a *dis-incentive*. It's also unfair and irresponsible.

Is it even legal? Original North Slope oil and gas leases were not sold with the promise, assumption or expectation that new taxes on undeveloped resources would be levied as part of the lease agreement. If that was the case, we can safely assume that far fewer leases would have been sold. How can we justify placing additional fiscal provisions on an already agreed-upon contract between the state and leaseholders? At best, this brands Alaska with an image of instability. We cannot afford

that, especially as the potential for commercializing gas comes closer within our grasp.

If we look at the historical contributions of oil and gas activity, we can be assured that Alaskans statewide stand to gain a great deal from natural gas development in the future. Even now, with declining oil production, the oil and gas industry spends over \$2.1 billion on payroll, goods and services – roughly equal to the State of Alaska's general fund spending. And that does NOT count the \$1.5 billion paid in royalties and taxes to government.

That spending gets personal when you consider the high-paying jobs that have displaced poverty in some communities. For example, within the Kenai Peninsula Borough, the industry employs over 4,000 people, with paychecks that represent 36 percent - *over one-third* - of the area's payroll. This information comes from the recent study "*Economic Impact of the Oil and Gas Industry in Alaska.*," which was released to the legislature in January.

Natural gas development will have a huge, positive impact on the State of Alaska, all of its residents, and closer to home - to Peak as a company and to our employees and their families, as it will to other members of the Alliance and their employees and families.

However, this development must be done when the companies who will be investing in that development believe the time is right and not when members of the Alaska Legislature believe it is right. A bill such as this sends a very negative message to potential investors in Alaska resource development. It also sends a very negative message to the voters in Alaska who depend on having a healthy oil and gas industry to continue to help provide a good environment in which to live and to prosper.

While the potential gains with natural gas development are profound, Alaskans also stand to lose a great deal if our lawmakers handle matters poorly, creating a business environment that is risky, not responsive. If Alaska is to bank on our natural gas, we had better project an image of stability.

As business people, we urge government to leave the economics of business to business people. We urge you to carry out your constitutional duty to "encourage the development of state resources by making them available for maximum use consistent with the public interest."

Thank you for the opportunity to comment.

April 27, 2001

Post-it® Fax Note	7671	Date	4/27	# of pages	4
To	Barbara	From	Mark Krolak		
Co./Dept.	Kevin Meyer's Office	Co.	CIRI		
Phone #		Phone #	274-8638		
Fax #	(907) 465-3476	Fax #	263-5182		

Mr. Chairman and Members of the Committee. My name is Barbara Donatelli and I am Executive Vice President of Cook Inlet Region, Inc. ("CIRI"). I am here today on behalf of CIRI to testify in opposition to House Bill 190 as proposed.

As you know CIRI is an Alaska Native Regional Corporation formed pursuant to the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). CIRI operates as a for profit corporation, serving the economic, social and cultural needs of its approximately 7,200 Alaska Native shareholders. CIRI is interested in House Bill 190, in part, because we are in the oil and gas business, as a lessor and landowner, not only of currently producing properties, but of large tracts of prospective oil and gas lands which we would like to see explored in the future. We are also interested in the bill because we are in the oilfield service business, where the success of such operations, including the employment of many shareholders, is dependent upon a robust oil industry which is duly incentivized to explore and aggressively pursue new oil and gas prospects.

The most important reason CIRI is interested in the bill, however, is not because of its direct impact on these particular business lines, which make up a limited part of CIRI's total investment portfolio. Rather, we are concerned because CIRI is an Alaskan company - in some ways a uniquely Alaskan company, as over 2/3 of our 7,200 shareholders live, work and raise their families in the state. They understand, as we do, that sending a message to the world outside that Alaska is truly "open for business", in the best and most

responsible sense of that concept, is crucial to the economic well-being of the State and its people. This bill sends the opposite message.

As others have noted, this bill, which would tax North Slope natural gas reserves in place, will not, and cannot, be expected to spur development of natural gas any faster than market forces (that is, the true market demand for natural gas in out-of-state markets) would otherwise allow. If natural gas cannot be produced and sold for a reasonable profit, it simply will not be produced and sold. This bill, rather than providing a valuable incentive to development, appears to simply place an additional tax burden on the oil industry, thereby increasing the overall cost of development and exploration in the State of Alaska. This result is detrimental to all Alaskans in that it may inhibit economic growth and vitality in the crucial resource sector of the state economy.

Even more directly, the bill provides a disincentive for producers to explore for new gas reserves, because such reserves will become immediate liabilities on a producer's books if they are not found in quantities sufficient for near-term development and sale. While the bill purports to limit its effects in this regard to the North Slope, it sends a clear message to producers statewide that they face a similar fate at the hands of the state in an era of declining oil revenues. The effect may be to lock up further oil exploration just at the time when we most need new discovery and development.

The increasing viability of large scale gas production on the North Slope offers significant opportunities for the state, and it is important that the state government, at all levels, do

what it can to encourage prompt and responsible development of this resource. However, the State should not rush to judgment with a short-term fix which has the potential to backfire in the end. Rather, the state should proceed with due deliberation giving careful consideration to all options for maximizing the prompt development of North Slope gas reserves, while at the same time avoiding any approach which burdens the industry to the point of discouraging future investment.

In summary, while CIRI supports prompt and aggressive development of North Slope natural gas reserves, we do not think that House Bill 190 is the way to ensure that this is accomplished. We respectfully urge you not to advance this bill out of this committee.

Thank you for affording me the opportunity to speak on this measure.

Testimony of the
Alaska Oil and Gas Association
On SSHB 190
Before the House Oil and Gas Committee
April 27, 2001

Mr. Chairman and members of the committee. My name is Judy Brady and I am the Executive Director of the Alaska Oil and Gas Association. AOGA is an industry trade association whose 16 members represent the great majority of the petroleum industry in Alaska: Alyeska Pipeline Service Company, Anadarko Petroleum Corporation, BP Exploration (Alaska) Inc., Chevron U.S.A. Inc., Cook Inlet Region Inc., Cross Timbers Oil Company, ExxonMobil Production Company, Forest Oil Company, Marathon Oil Company, Petro Star, Inc., Phillips Alaska, Inc., Shell Western E&P Inc., Tesoro Alaska Company, TotalFinaElf E&P USA, UNOCAL, and William Alaska Petroleum Inc.

I am here today to present AOGA's opposition to Sponsor's Substitute for House Bill 190, which proposes to enact an ad valorem tax on natural gas reserves on the North Slope and to impose a limit on the issuance or extension of oil and gas leases containing natural gas.

AOGA strongly opposes this bill as both poor economic policy and poor public policy. The Alaska Oil & Gas Association considers this legislation to be a direct disincentive to the commercialization of North Slope natural gas. AOGA's concern is that this will also be the view of market analysts who track and report local actions affecting gas commercialization on a worldwide basis for the purpose of informing potential lenders about project viability.

HB 190 represents a radical departure from sound economic and fiscal policy by substituting "pain" for "gain" as the reason to invest in the commercialization of North Slope natural gas. This bill apparently presumes that if shareholders and management are threatened and punished, they will be more likely to invest in Alaska. The bill seems to be based on the premise that an ANS gas project has *already* been found to be commercially viable and that free market incentives have failed when it comes to decisions to invest in the commercialization of North Slope natural gas.

This bill represents an odd and disruptive counterpoint to the building public/private momentum now underway as the result of industry commitment to and investment in the commercialization of the North Slope gas reserves. Of greater concern from a competitive market perspective, by signaling a significant move away from Alaska's stable public tax policy, HB 190 actually threatens to slow the momentum for the commercialization of the North Slope gas reserves.

Since the initial discovery of North Slope gas reserves in the 1960's, the oil and gas industry and others have spent over \$1 billion seeking ways to

commercialize North Slope gas. Such efforts include attempts to develop gas pipelines to the Lower-48, LNG projects and gas-to-liquids (GTL) projects. Despite these efforts, a commercially viable project has yet to be identified. However, there is more hope today than ever before that North Slope gas will become commercial because of a number of factors—most important to Alaska is that markets are changing.

This committee has heard testimony from various companies regarding the status of their commercialization efforts. The momentum, the focus and the commitment to the commercialization of North Slope gas are here now and building:

- As you know, in December 2000, the three major North Slope gas producers signed a joint work agreement on an Alaskan gas pipeline project. This project involves expenditures in excess of \$75 million with 90 employees and over 500 contractors and subcontractors. The first contract awards to Alaskan and joint venture Canadian firms were recently announced.
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Some may think that a gas reserves tax would create an incentive for producers to speed up the development of this resource. But, in fact, this tax would only create an additional expense for the gas producers without improving any of the fundamental market factors that determine the economic feasibility of gas commercialization. In other words, it would bring Alaska no closer to solving the market obstacles to gas development, but would merely punish the producers for conditions outside their control. Rather than being an "incentive", HB 190 would be a direct disincentive to the commercialization of North Slope natural gas.

As proposed tax legislation, HB 190 sends a signal to the market that the State of Alaska's public policy of stable taxation is eroding. Just as the market has considered a stable tax policy to be critical to attract investment to the new commercial oil projects in the past ten years, so will the market consider a continued stable tax policy to be critical to attract the additional billions of dollars in financing necessary for new commercial gas projects.

A gas reserves tax would have other unintended and adverse effects on the prospects for gas commercialization. Today the *known* North Slope resource is estimated to be 35 Tcf of natural gas. If a project or projects are found to be

economic based on the current estimated reserves, clearly the economics would be improved significantly if, instead, there were 50 or 75 Tcf of gas over which the costs of the projects could be spread. But if HB 190 is enacted, anyone who plans to explore specifically for new gas reserves on the Slope, in the next several drilling seasons, will know that any gas they find would be subject to the reserves tax. Thus, HB 190 would deter the very exploration efforts that might prove to be essential for long term gas commercialization to come about.

Finally, HB 190 risks future investment in Alaska not only for the oil and gas industry but for other industries as well. Resource-development industries with long lead times for exploration and development require fiscal stability and certainty. The clear message of HB 190 would be: although long lead times are part of your business, if it takes you longer to develop your resources in a free market than the political arms of the government thinks it should, you will be punished even if the delay is not your fault.

Since, in the final analysis, the deciding factors will be commercial and market vitality which is most improved by reducing costs and risks, both industry and the state must focus their efforts on those factors that make Alaska's fiscal regime for gas more competitive against those elsewhere in the world.

The present Legislature — as well as the legislatures of the past decade — have strongly conveyed the message that Alaska is "open for business". Let's not change that message now, when we are in the very midst of a worldwide market competition to make North Slope gas projects economic. We should all work together to understand better how Alaska can more effectively compete in this worldwide market and how to bring about the commercialization of North Slope gas. Then let us work together to do what is necessary to make it happen.

Thank you for the opportunity to testify to you today.