

## **BILL ANALYSIS**

C.S.H.B. 3554  
By: Dale  
Energy Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that rising oil and gas prices at the end of the last decade led to significant investment in new technologies and practices to increase oil and gas production and total recovery. As a result, the parties note, the state enjoyed a substantial energy boom that increased wealth across the state and led to the employment of tens of thousands of workers. However, in recent months the prices of oil and gas have declined dramatically. The parties assert that sustained low prices discourage investment in new technologies and practices to increase production resulting in the loss of jobs and revenue. C.S.H.B. 3554 seeks to encourage increased oil and gas production to protect jobs and revenue by providing for a certain tax credit.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 3554 amends the Tax Code to entitle the operator of an oil or gas well who is issued a certificate of enhanced incremental production increase by the Railroad Commission of Texas under the bill's provisions to a credit against the severance tax imposed on oil or gas produced from that well. The bill makes the total amount of the credit to which an operator is entitled equal to the lesser of an amount equal to 50 percent of the applicable severance taxes paid by the operator on the amount of the enhanced incremental production increase stated in the certificate, \$100,000, or the operator's total cost of implementation of an incremental production increase technique for which the operator has been issued a certificate. The bill prohibits an operator from claiming an amount of the credit on a report that exceeds the amount of tax due on the report and authorizes any unused amount of the credit to be carried forward and claimed on subsequent reports until the credit amount is exhausted. The bill sets the total amount of the bill's tax credits that the comptroller of public accounts may award in a state fiscal year at \$10 million. The bill requires the comptroller by rule to prescribe procedures by which the comptroller may allocate the credits and requires the procedures to provide that credits are allocated on a first-come, first-served basis, based on the date of an operator's certification. The bill requires the person responsible for paying the tax to apply to the comptroller in order to qualify for the credit. The bill requires the application to be filed not later than the first anniversary of the date the railroad commission issues a certificate to an operator and to include a copy of the certificate and any other information required by the comptroller.

C.S.H.B. 3554 authorizes an operator to request that the railroad commission certify that an

incremental production increase technique implemented by the operator has resulted in an enhanced incremental production increase from the oil or gas well or lease and the cost to the operator to implement the technique. The bill, among other terms, defines "incremental production increase technique" as a chemical, mechanical, or operational addition to a fracture stimulation, acidization, or any other recognized well completion process that has a cost of at least \$50,000, as determined by the railroad commission, and that results in an incremental production increase from an oil or gas well or lease, and defines "enhanced incremental production increase" as an incremental production increase from an oil or gas well or lease that constitutes an increase in production of at least 25 percent over baseline production from that well or lease each month for a period of at least four months and that results from the implementation of an incremental production increase technique.

C.S.H.B. 3554 authorizes the railroad commission to require an operator seeking certification to provide to the railroad commission any information the railroad commission considers necessary to make the certification. The bill requires the railroad commission to issue a certificate to the operator of an oil or gas well or lease if the railroad commission determines that an incremental production increase technique implemented by the operator has resulted in an enhanced incremental production increase from the oil or gas well or lease. The bill requires the certificate to state the amount of the increase attributable to the technique and the cost to the operator to implement the technique. The bill prohibits an operator from requesting a certificate before the first anniversary of the date on which the period of the enhanced incremental production increase for which the operator is seeking certification ends. The bill prohibits the railroad commission from issuing a certificate until 18 months have elapsed after the date on which the period of the enhanced incremental production increase for which the operator is seeking certification ends. The bill makes a certification determination made by the railroad commission final and non-appealable.

C.S.H.B. 3554 requires the comptroller and the railroad commission to adopt rules necessary to administer the bill's provisions not later than December 31, 2015. The bill makes this requirement effective on the bill's passage, or, if the bill does not receive the necessary vote, September 1, 2015.

#### **EFFECTIVE DATE**

Except as otherwise provided, January 1, 2016.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3554 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Section 91.110, Natural Resources Code, is amended to read as follows:

Sec. 91.110. OIL AND GAS WASTE REDUCTION, ~~[AND]~~ MINIMIZATION, AND ENHANCED PRODUCTION. (a) To encourage enhanced oil and gas production and the reduction and minimization of oil and gas waste, the commission shall implement a program to:

(1) provide operators with training and

##### HOUSE COMMITTEE SUBSTITUTE

**No equivalent provision.**

technical assistance on enhanced oil and gas production and oil and gas waste reduction and minimization;

(2) assist operators in developing enhanced oil and gas production and oil and gas waste reduction and minimization plans; and

(3) by rule establish incentives for enhanced oil and gas production and oil and gas waste reduction and minimization.

SECTION 2. Subtitle I, Tax Code, is amended by adding Chapter 205 to read as follows:

CHAPTER 205. TAX CREDIT FOR ENHANCED RECOVERY.

Sec. 205.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Enhanced recovery" means any secondary or tertiary production enhancement technique that enables a producer to increase production by more than five percent for a period of no less than four months.

SECTION 1. Subtitle I, Title 2, Tax Code, is amended by adding Chapter 205 to read as follows:

CHAPTER 205. TAX CREDIT FOR OIL AND GAS PRODUCED USING INCREMENTAL PRODUCTION INCREASE TECHNIQUE

Sec. 205.001. DEFINITIONS. In this chapter:

(1) "Baseline production" means:

(A) for an existing gas well, the average monthly production from that well for the four highest months of production during the calendar year preceding the year in which an incremental production increase technique is implemented; and

(B) for an oil well, the average monthly production from the lease on which that well is located for the four highest months of production during the calendar year preceding the year in which an incremental production increase technique is implemented.

(2) "Commission" means the Railroad Commission of Texas.

(3) "Enhanced incremental production increase" means an incremental production increase from an oil or gas well or lease that constitutes an increase in production of at least 25 percent over baseline production from that well or lease each month for a period of at least four months and that results from the implementation of an incremental production increase technique.

(4) "Incremental production increase" means production from an oil or gas well or lease in excess of baseline production.

(5) "Incremental production increase technique" means a chemical, mechanical, or operational addition to a fracture stimulation, acidization, or any other recognized well completion process that has a cost of at least \$50,000, as determined by

(3) "Gas" means natural gas, casinghead gas, or other gas taken from the earth or water, whether produced from a gas well or a well also producing oil, distillate or condensate or both, or other products

(4) "Producer" means a person who takes oil or gas from the earth or water in any manner, a person who owns, controls, manages, or leases an oil or gas well, or a person who owns an interest, including a royalty interest, in oil or gas or its value, whether the oil or gas is produced by the person owning the interest or by another on his behalf by lease, contract, or any other arrangement.

(5) "Oil" means crude oil or other oil taken from the earth, regardless of the gravity of the oil.

(6) "Well" means an oil or gas well.

Sec. 205.002. TAX CREDIT FOR ENHANCED RECOVERY. (a) Persons who utilize enhanced recovery to increase production at a well are eligible for a tax credit applicable against the taxes imposed by Chapters 201 and 202.

(b) The amount of the tax credit shall be as follows shall not exceed \$200,000 per well in which the enhanced recovery is implemented.

the commission, and that results in an incremental production increase from an oil or gas well or lease.

(6) "Operator" means the person responsible for the actual physical operation of an oil or gas well or lease.

Sec. 205.003. TAX CREDIT. (a) Subject to Subsection (d), the operator of an oil or gas well who is issued a certificate under Section 205.002 is entitled to a credit against the tax imposed under Chapter 201 or 202, as applicable, on oil or gas produced from that well.

(b) Subject to Subsection (c), the total amount of the credit to which an operator is entitled under this chapter is equal to the lesser of:

(1) an amount equal to 50 percent of the taxes paid by the operator on the amount of the enhanced incremental production increase stated in the certificate issued to the operator by the commission, at the rate provided by Section 201.052 or 202.052, as applicable;

(2) \$100,000; or

(3) the operator's total cost of implementation of an incremental production increase technique for which the operator has been issued a certificate under Section 205.002.

(c) An operator may not claim an amount of the credit on a report that exceeds the amount of tax due on the report. Any unused amount of the credit may be carried forward and claimed on subsequent reports until the credit amount is exhausted.

(d) The total amount of tax credits that the comptroller may award under this section in

a state fiscal year is \$10 million. The comptroller by rule shall prescribe procedures by which the comptroller may allocate credits under this chapter. The procedures must provide that credits are allocated on a first-come, first-served basis, based on the date of an operator's certification under Section 205.002.

Sec. 205.003. CERTIFICATION OF ENHANCED RECOVERY. (a) The commission shall have the authority to determine whether a producer qualifies for an enhanced recovery tax credit under this chapter. The commission may require an applicant for a tax credit under this chapter to provide the commission with any relevant information required to administer this chapter. Upon determining that a producer is eligible for an enhanced recovery tax credit, the commission shall furnish a certificate of enhanced recovery to the applicant.  
(b) For purposes of obtaining a tax credit under this chapter, applications for a certificate of enhanced recovery must be made to the commission

Sec. 205.002. CERTIFICATION OF ENHANCED INCREMENTAL PRODUCTION INCREASE BY COMMISSION. (a) Subject to Subsection (d), an operator may request that the commission certify:  
(1) that an incremental production increase technique implemented by the operator has resulted in an enhanced incremental production increase from the oil or gas well or lease; and  
(2) the cost to the operator to implement the incremental production increase technique described by Subdivision (1).  
(b) The commission may require an operator seeking certification by the commission under this section to provide to the commission any information the commission considers necessary to make the certification under Subsection (a).  
(c) Subject to Subsection (e), the commission shall issue a certificate to the operator of an oil or gas well or lease if the commission determines that an incremental production increase technique implemented by the operator has resulted in an enhanced incremental production increase from the oil or gas well or lease. The certificate must state the amount of the enhanced incremental production increase attributable to the incremental production increase technique and the cost to the operator to implement the incremental production increase technique.  
(d) An operator may not request a certificate under this section before the first anniversary of the date on which the period of the enhanced incremental production increase for which the operator is seeking certification ends.  
(e) The commission may not issue a certificate under this section until 18 months have elapsed after the date on which the period of the enhanced incremental production increase for which the operator is seeking certification ends.

(f) A determination made by the commission under this section is final and not appealable.

Sec. 205.004. APPLICATION. To qualify for the tax credit, a person who receives a certificate of enhanced recovery from the commission must apply to the comptroller. The comptroller shall approve the application of a person who demonstrates eligibility for a tax credit. The comptroller shall have the power to establish procedures in order to comply with this chapter and may require a person applying for the tax credit to provide any relevant information. The commission shall immediately notify the comptroller in writing if it determines that the enhanced recovery designation obtained by the applicant has been revoked or if it discovers any information that affects the tax credit.

Sec. 205.004. APPLICATION. (a) To qualify for the credit provided under this chapter, the person responsible for paying the tax must apply to the comptroller. The application must be filed not later than the first anniversary of the date the commission issues a certificate to an operator under Section 205.002.

(b) The application must include a copy of the certificate issued by the commission under Section 205.002 and any other information required by the comptroller.

Sec. 205.005. APPLICABILITY OF TAX CREDIT. (a) Tax credits earned under this chapter may only be applied against the severance taxes imposed by Chapters 201 and 202 of this code. The tax credit may be applied to either oil or gas severance taxes regardless of the field from which the production originates.

No equivalent provision.

(b) Tax credits provided under this chapter shall only be available if at the time the application for a tax credit is made, the well that is the basis for the tax credit is producing oil or gas from the discovery field.

Sec. 205.006. RULES AND ORDERS. The commission has broad discretion in administering this chapter and may adopt and enforce any appropriate rules or orders that the commission finds necessary to administer this chapter.

No equivalent provision. *(But see SECTION 2 below.)*

No equivalent provision. *(But see Sec. 205.006 above.)*

SECTION 2. The comptroller of public accounts and the Railroad Commission of Texas shall adopt rules necessary to administer Chapter 205, Tax Code, as added by this Act, not later than December 31, 2015.

No equivalent provision.

SECTION 3. The credit authorized by Chapter 205, Tax Code, as added by this Act, applies only to oil or gas produced on or after the effective date of this Act. Oil or

gas produced before the effective date of this Act is subject to the law in effect when the oil or gas was produced, and that law is continued in effect for that purpose.

No equivalent provision.

SECTION 3.

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 4. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2016.

(b) Section 2 of this Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 2 of this Act takes effect September 1, 2015.