BILL ANALYSIS

C.S.H.B. 2277
By: Darby
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, there is confusion surrounding the law relating to the tax reduction for high-cost gas wells based on the median drilling and completion cost for all high-cost gas well applications received by the comptroller of public accounts as to how the comptroller should treat amended applications after the median is calculated. The parties note that including amended applications in the calculation of the median causes a recalculation of the median and may have an adverse effect on the reduced tax rates for all high-cost gas wells. C.S.H.B. 2277 seeks to address this issue by fixing the median cost of high-cost gas wells.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2277 amends the Tax Code to establish that the median drilling and completion cost for all high-cost wells for which an application for a gas production tax reduction was made during the previous state fiscal year is fixed on the date the comptroller of public accounts makes the determination of that cost. The bill prohibits the required report of drilling and completion costs contained in such an application and used by the comptroller in making the determination from being amended after March 1 of the year following the state fiscal year in which the application was made.

C.S.H.B. 2277 removes the entitlement of a gas producer to a credit against certain other gas production taxes if gas production tax is paid on gas that otherwise qualifies for the tax reduction before the Railroad Commission of Texas certifies that a well produces high-cost gas or before the comptroller approves an application for the tax reduction. The bill instead entitles the person who remitted such tax to a refund in an amount equal to the difference between the amount of the tax paid on the gas and the amount of tax that would have been paid on the gas if it had received the tax reduction. The bill limits the total allowable refund for taxes paid for reporting periods before the date the application is filed to the total tax paid on the gas that otherwise qualified for the tax reduction and that was produced during the 24 consecutive calendar months immediately preceding the month in which the application for certification that the comptroller approved was filed with the railroad commission and requires the person entitled to the refund to apply to the comptroller to receive a refund not later than the first anniversary after the date the comptroller approves the application for a tax reduction.

C.S.H.B. 2277 repeals certain provisions relating to the temporary gas production tax exemption for high-cost gas produced from oil wells or gas wells within a certain co-production project approved by the railroad commission.

C.S.H.B. 2277 repeals Sections 201.057(a)(3), (a)(4), (a)(5), (b), (d), and (j), Tax Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2277 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	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 201.057, Tax Code, is amended by amending subsections (a), (c), (e) through (g), and (i), and adding subsection (g-1) to read as follows: (a) In this section: (1) "Commission" means the Railroad Commission of Texas.	SECTION 1. Section 201.057(a)(2), Tax Code, is amended to read as follows:
(2) "High-cost gas" means[~~:~~ [~~(A)~~] high-cost natural gas as described by Section 107, Natural Gas Policy Act of 1978 (15 U.S.C. Section 3317), as that section exists on January 1, 1989, without regard to whether that section is in effect or whether a determination has been made that the gas is high-cost natural gas for purposes of that Act[~~; or~~ [~~(B) all gas produced from oil wells or gas wells within a commission approved co-production project~~].	(2) "High-cost gas" means[~~:~~ [~~(A)~~] high-cost natural gas as described by Section 107, Natural Gas Policy Act of 1978 (15 U.S.C. Section 3317), as that section existed [~~exists~~] on January 1, 1989, without regard to whether that section is in effect or whether a determination has been made that the gas is high-cost natural gas for purposes of that Act[~~; or~~ [~~(B) all gas produced from oil wells or gas wells within a commission approved co-production project~~].
[~~(3) "Commission approved co-production project" means a reservoir development project in which the commission has recognized that water withdrawals from an oil or gas reservoir in excess of specified minimum volumes will result in recovery of additional oil and/or gas from the reservoir that would not be produced by conventional production methods and where operators of wells completed in the reservoir have begun to implement commission requirements to withdraw such volumes of water and dispose of such water outside the subject reservoir. Reservoirs potentially eligible for this designation shall be limited to those reservoirs in which oil and/or gas has been bypassed by water encroachment caused by~~	*(See SECTION 3 below.)*

~~production from the reservoir and such bypassed oil and/or gas may be produced as a result of reservoir-wide high-volume water withdrawals of natural formation water.~~]

[~~(4) "High-volume water withdrawals" means the withdrawal of water from a reservoir in an amount sufficient to dewater portions of the reservoir containing oil and/or gas previously bypassed by water encroachment.~~]

(See SECTION 3 below.)

[~~(5) "Co-production" means the permanent removal of water from an oil and/or gas reservoir in an effort to lower the gas-water contact or oil-water contact in the reservoir or to reduce reservoir pressure to recover entrained hydrocarbons from the reservoir that would not be produced by conventional primary or secondary production methods.~~]

(See SECTION 3 below.)

(6) "Operator" means the person responsible for the actual physical operation of an oil or gas well.
(7) "Consecutive months" means months in consecutive order, regardless of whether or not a well produces oil or gas during any or all such months.

SECTION 2. Section 201.057, Tax Code, is amended by amending Subsections (c), (e), (f), (g), and (i) and adding Subsection (g-1) to read as follows:

(c) High-cost gas as defined in Subsection (a)(2) [~~(a)(2)[(A)~~] produced from a well that is spudded or completed after August 31, 1996, is entitled to a reduction of the tax imposed by this chapter for the first 120 consecutive calendar months beginning on the first day of production, or until the cumulative value of the tax reduction equals 50 percent of the drilling and completion costs incurred for the well, whichever occurs first. The amount of tax reduction shall be computed by subtracting from the tax rate imposed by Section 201.052 the product of that tax rate times the ratio of drilling and completion costs incurred for the well to twice the median drilling and completion costs for high-cost wells as defined in Subsection (a)(2) [~~(a)(2)[(A)~~] spudded or completed during the previous state fiscal year, except that the effective rate of tax may not be reduced below zero.
(e) The operator of a proposed or existing

(c) High-cost gas [~~as defined in Subsection (a)(2)(A)~~] produced from a well that is spudded or completed after August 31, 1996, is entitled to a reduction of the tax imposed by this chapter for the first 120 consecutive calendar months beginning on the first day of production, or until the cumulative value of the tax reduction equals 50 percent of the drilling and completion costs incurred for the well, whichever occurs first. The amount of tax reduction shall be computed by subtracting from the tax rate imposed by Section 201.052 the product of that tax rate times the ratio of drilling and completion costs incurred for the well to twice the median drilling and completion costs for high-cost wells [~~as defined in Subsection (a)(2)(A)~~] spudded or completed during the previous state fiscal year, except that the effective rate of tax may not be reduced below zero.
(e) The operator of a proposed or existing

gas well, including a gas well that has not been completed[~~, or the operator of any proposed or existing oil or gas well within a commission approved co-production project,~~] may apply to the commission for certification that the well produces or will produce high-cost gas. Such application [~~, if seeking certification as high-cost gas according to Subsection (a)(2)(A),~~]
may be made at any time after the first day of production. The application may be made but is not required to be made concurrently with a request for a determination that gas produced from the well is high-cost natural gas for purposes of the Natural Gas Policy Act of 1978 (15 U.S.C. Section 3301 et seq.) [~~or with a request for commission approval of a co-production project~~]. The commission may require an applicant to provide the commission with any relevant information required to administer this section. For purposes of this section, a determination that gas is high-cost natural gas according to Subsection (a)(2) [~~(a)(2)(A) or a determination that gas is produced from within a commission approved co-production project~~] is a certification that the gas is high-cost gas for purposes of this section, and in that event additional certification is not required to qualify for the [~~exemption or~~] tax reduction provided by this section.

(f) To qualify for the [~~exemption or~~] tax reduction provided by this section, the person responsible for paying the tax must apply to the comptroller. The application must contain the certification of the commission that the well produces high-cost gas and[~~, if the application is for a well spudded or completed after September 1, 1995,~~] must contain a report of drilling and completion costs incurred for each well on a form and in the detail as determined by the comptroller. Drilling and completion costs for a recompletion shall only include current and contemporaneous costs associated with the recompletion. Notwithstanding any other provision of this section, to obtain the maximum [~~tax exemption or~~] tax deduction, an application to the comptroller for certification according to Subsection (a)(2) [~~(a)(2)[(A)~~] must be filed with the comptroller at the later of the 180th day

gas well, including a gas well that has not been completed, [~~or the operator of any proposed or existing oil or gas well within a commission approved co-production project,~~] may apply to the commission for certification that the well produces or will produce high-cost gas. The [~~Such~~] application[~~, if seeking certification as high-cost gas according to Subsection (a)(2)(A),~~] may be made at any time after the first day of production. The application may be made but is not required to be made concurrently with a request for a determination that gas produced from the well is high-cost natural gas for purposes of the Natural Gas Policy Act of 1978 (15 U.S.C. Section 3301 et seq.) [~~or with a request for commission approval of a co-production project~~]. The commission may require an applicant to provide the commission with any relevant information required to administer this section. For purposes of this section, a determination that gas is high-cost natural gas for purposes of the Natural Gas Policy Act of 1978 (15 U.S.C. Section 3301 et seq.) [~~according to Subsection (a)(2)(A) or a determination that gas is produced from within a commission approved co-production project~~] is a certification that the gas is high-cost gas for purposes of this section, and in that event additional certification is not required to qualify for the [~~exemption or~~] tax reduction provided by this section.

(f) To qualify for the [~~exemption or~~] tax reduction provided by this section, the person responsible for paying the tax must apply to the comptroller. The application must contain the certification of the commission that the well produces high-cost gas and[~~, if the application is for a well spudded or completed after September 1, 1995,~~] must contain a report of drilling and completion costs incurred for each well on a form and in the detail as determined by the comptroller. Drilling and completion costs for a recompletion shall only include current and contemporaneous costs associated with the recompletion. Notwithstanding any other provision of this section, to obtain the maximum [~~tax exemption or~~] tax reduction [~~deduction~~], an application to the comptroller for certification according to Subsection (a)(2) [~~(a)(2)(A)~~] must be filed with the comptroller at the later of the 180th after the date of first production or the 45th day after the date of approval by the commission. If the application is not filed by the applicable deadline, the [~~tax exemption or~~] tax deduction is reduced by 10 percent for the period beginning on the 180th day after the first day of production and ending on the date on which the application is filed with the comptroller. [~~An application to the comptroller for certification according to Subsection (a)(2)(B) may not be filed before January 1, 1990, or after December 31, 1998.~~] The comptroller shall approve the application of a person who demonstrates that the gas is eligible for the [~~exemption or~~] tax reduction. The comptroller may require a person applying for the [~~exemption or~~] tax reduction to provide any relevant information in the person's monthly report that the comptroller considers necessary to administer this section. The commission shall notify the comptroller in writing immediately if it determines that a [~~an oil or gas~~] well previously certified as producing high-cost gas does not produce high-cost gas or if it takes any action or discovers any information that affects the eligibility of gas for an exemption or tax reduction under this section.

(g) As soon as practicable after March 1 of each year, the comptroller shall determine [~~from reports containing drilling and completion cost data as required on applications to the comptroller under Subsection (f),~~] the median drilling and completion cost for all high-cost wells as defined in Subsection (a)(2) [~~(a)(2)[(A)~~] for which an application for the [~~exemption or~~] reduced tax was made during the previous state fiscal year. In making its determination, the comptroller shall use the drilling and completion cost data required under Subsection (f). The [~~Those~~] median drilling and completion cost [~~costs~~] shall be fixed as of the date of the comptroller's determination and shall be used to compute the reduced tax under Subsection (c).

(g-1) The report of drilling and completion costs required by subsection (f) may not be amended after March 1 of the year following the state fiscal year in which the application required by Subsection (f) was

day after the date of first production or the 45th day after the date of approval by the commission. If the application is not filed by the applicable deadline, the [~~tax exemption or~~] tax reduction [~~deduction~~] is reduced by 10 percent for the period beginning on the 180th day after the first day of production and ending on the date on which the application is filed with the comptroller. [~~An application to the comptroller for certification according to Subsection (a)(2)(B) may not be filed before January 1, 1990, or after December 31, 1998.~~] The comptroller shall approve the application of a person who demonstrates that the gas is eligible for the [~~exemption or~~] tax reduction. The comptroller may require a person applying for the [~~exemption or~~] tax reduction to provide any relevant information in the person's monthly report that the comptroller considers necessary to administer this section. The commission shall notify the comptroller in writing immediately if it determines that a [~~an oil or gas~~] well previously certified as producing high-cost gas does not produce high-cost gas or if it takes any action or discovers any information that affects the eligibility of gas for a [~~an exemption or~~] tax reduction under this section.

(g) As soon as practicable after March 1 of each year, the comptroller shall determine [~~from reports containing drilling and completion cost data as required on applications to the comptroller under Subsection (f),~~] the median drilling and completion cost for all high-cost wells [~~as defined in Subsection (a)(2)(A)~~] for which an application for a tax reduction [~~exemption or reduced tax~~] was made during the previous state fiscal year. In making the determination, the comptroller shall use the drilling and completion cost data required to be reported to the comptroller under Subsection (f). The [~~Those~~] median drilling and completion cost [~~costs~~] shall be used to compute the reduced tax under Subsection (c) and is fixed on the date of the comptroller's determination under this subsection.

(g-1) The report of drilling and completion costs required under Subsection (f) may not be amended after March 1 of the year following the state fiscal year in which the application was made.

made.

(i) If, before the commission certifies that a well produces high-cost gas or before the comptroller approves an application for the [~~an exemption or~~] tax reduction under this section, the tax imposed by this chapter is paid on high-cost gas that otherwise qualifies for the [~~exemption or~~] tax reduction provided by this section, the person who remitted the tax shall be [~~producer or producers of the gas are~~] entitled to a refund~~credit against other taxes imposed by this chapter~~] in an amount equal to the difference between the amount of the tax paid and the amount of tax that would have been paid on the high-cost gas if it had received the [~~on the gas that otherwise qualified for the exemption or~~] tax reduction as provided under this section. No refund shall be due under this subsection unless the comptroller approves an application for an exemption or tax reduction under this section [~~on or after the first day of the next month after the month in which the application for certification under this section was filed with the commission~~]. The [~~If the application for certification is submitted to the commission after January 1, 2004, the~~] total allowable refund [~~allowable credit~~] for taxes paid for reporting periods before the date the application is filed may not exceed the total tax paid on the gas that otherwise qualified for the [~~exemption or~~] tax reduction and that was produced during the 24 consecutive calendar months immediately preceding the month in which the application for certification under this section was filed with the commission. [~~The credit is allocated to each producer according to the producer's proportionate share in the gas.~~] To receive a refund [~~a credit~~], the person entitled to the refund [~~one or more of the producers~~] must apply to the comptroller for the refund [~~credit~~] not later than the first anniversary after the date the comptroller approves the application for a [~~an exemption or~~] tax reduction under this section. [~~If a producer demonstrates that the producer does not have sufficient tax liability under this chapter to claim the credit within five years from the date the application for the credit is made, the producer is entitled to a refund in the amount of any credit the comptroller determines may not be claimed~~

(i) If, before the commission certifies that a well produces high-cost gas or before the comptroller approves an application for a [~~an exemption or~~] tax reduction under this section, the tax imposed by this chapter is paid on high-cost gas that otherwise qualifies for the [~~exemption or~~] tax reduction provided by this section, the person who remitted the tax is [~~producer or producers of the gas are~~] entitled to a refund [~~credit against other taxes imposed by this chapter~~] in an amount equal to the difference between the amount of the tax paid on the gas and the amount of tax that would have been paid on the gas if it had received a [~~that otherwise qualified for the exemption or~~] tax reduction under this section

[~~on or after the first day of the next month after the month in which the application for certification under this section was filed with the commission~~]. The [~~If the application for certification is submitted to the commission after January 1, 2004, the~~] total allowable refund [~~credit~~] for taxes paid for reporting periods before the date the application is filed may not exceed the total tax paid on the gas that otherwise qualified for the [~~exemption or~~] tax reduction and that was produced during the 24 consecutive calendar months immediately preceding the month in which the application for certification under this section that the comptroller approved was filed with the commission. [~~The credit is allocated to each producer according to the producer's proportionate share in the gas.~~] To receive a refund [~~credit~~], the person entitled to the refund [~~one or more of the producers~~] must apply to the comptroller for the refund [~~credit~~] not later than the first anniversary after the date the comptroller approves the application for a [~~an exemption or~~] tax reduction under this section. [~~If a producer demonstrates that the producer does not have sufficient tax liability under this chapter to claim the credit within five years from the date the application for the credit is made, the producer is entitled to a refund in the amount of any credit the comptroller determines may not be claimed within that~~

~~within that five years. Nothing in this subsection shall relieve the obligation imposed by Subsection (b) to pay tax when due on high-cost gas produced from co-production projects on or before July 31, 1995.~~]	~~five years. Nothing in this subsection shall relieve the obligation imposed by Subsection (b) to pay tax when due on high-cost gas produced from co-production projects on or before July 31, 1995.~~]
SECTION 2. Sections 201.057(b), (d), and (j), Tax Code, are repealed. *(See removal of Sections 201.057(a)(3), (a)(4), and (a)(5) in SECTION 1 above.)*	SECTION 3. Sections 201.057(a)(3), (a)(4), (a)(5), (b), (d), and (j), Tax Code, are repealed.
No equivalent provision.	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 3. This Act takes effect September 1, 2017.	SECTION 5. Same as introduced version.