

HEARING AGENDA
SENATE FINANCE COMMITTEE
SENATOR STEVE OGDEN, CHAIRMAN
WEDNESDAY, APRIL 14, 2010, 10:00 A.M.
CAPITOL EXTENSION E1.036

- I. Call to Order
- II. Roll Call
- III. Committee Business

Identify and evaluate potential improvements to the property tax system. Consider and make recommendations relating to the following:

Methods to increase public participation in the tax rate-setting process and ensure fairness in appraisal protests and appeals;

Requirement that property appraisal values may not increase by more than inflation and/or population growth, or another amount to be determined by local taxing authorities, with a maximum cap of 10 percent;

Exemptions provided to community housing development organizations (CHDOs) to determine if changes are needed to ensure that the public benefits outweigh the revenue loss;

Methods and procedures for determining a real property interest in oil or gas in place, as contained in Texas Tax Code Sec. 23.175, including how market-based data and market-based methodology could possibly be used to ensure fair, reliable, and equitable price forecasts of oil and gas interests. Analyze the need for the creation of an Oil and Gas Valuation Advisory Committee to assist in forecasting current calendar year statewide average prices for oil and gas;

The constitutional constraints and fiscal implications of exempting real property, leased to a school, as defined by Section 11.21 of the Tax Code, from ad valorem taxation.

A. Invited Testimony

1. Introduction to Texas Property Tax Exemptions: Referencing "2009 Tax Exemptions & Tax Incidence, A Report to the Governor and the 81st Texas Legislature"
Texas Comptroller of Public Accounts - *Deborah Cartwright,*
Director, Property Tax Assistance Division
2. Methods to Increase Public Participation in the Tax Rate-Setting Process and Ensure Fairness in Appraisal Protests and Appeals
Texas Comptroller of Public Accounts - *Deborah Cartwright,*
Director, Property Tax Assistance Division

3. Requirement that Property Appraisal Values May Not Increase by More than Inflation and/or Population Growth, or Another Amount to be Determined by Local Taxing Authorities, with a Maximum Cap of 10 Percent
 - Texas Comptroller of Public Accounts - *Deborah Cartwright, Director, Property Tax Assistance Division*
 - Texas Association of Counties - *Deborah Hunt, Williamson County Tax Assessor/Collector*

4. Exemptions Provided to Community Housing Development Organizations (CHDOs) to Determine if Changes are Needed to Ensure that the Public Benefits Outweigh the Revenue Loss
 - Texas Department of Housing and Community Affairs - *Michael Gerber, Executive Director, and Kevin Hamby, Senior Counsel.*
 - Texas Comptroller of Public Accounts - *Deborah Cartwright, Director, Property Tax Assistance Division*
 - Texas Association of Appraisal Districts - *Jim Robinson, Chief Appraiser, Harris County Appraisal District*
 - Texas Association of Community Development Associations - *Steven Carriker, Executive Director*
 - Foundation Communities - *Walter Moreau, Executive Director*

5. Methods and Procedures for Determining a Real Property Interest in Oil or Gas in Place, as Contained in Texas Tax Code Sec. 23.175, Including How Market-based Data and Market-Based Methodology Could Possibly Be Used to Ensure Fair, Reliable, and Equitable Price Forecasts of Oil and Gas Interests. Analyze the Need for the Creation of an Oil and Gas Valuation Advisory Committee to Assist in Forecasting Current Calendar Year Statewide Average Prices for Oil and Gas
 - Texas Comptroller of Public Accounts - *John Heleman, Chief Revenue Estimator*
 - County Judges and Commissioners Association - *Jim Allison, General Counsel*
 - Texas Association of Counties - *The Honorable Vernon H. Cook, Roberts County Judge, and President, Texas Association of Counties*
 - Texas Oil and Gas Association - *James LeBas, Fiscal Consultant*
 - Texas Alliance of Energy Producers - *Bill Stevens, Executive Vice-President*
 - Hugh Landrum and Associates - *Tracey Foster, Vice-President*

6. The Constitutional Constraints and Fiscal Implications of Exempting Real Property, Leased to a School, as Defined by Section 11.21 of the Tax Code, from Ad Valorem Taxation
 - Texas Comptroller of Public Accounts - *Deborah Cartwright, Director, Property Tax Assistance Division*
 - Texas Charter Schools Association - *David Dunn, Executive Director*

B. Public Testimony

IV. Recess/Adjourn

Texas Comptroller of Public Accounts -

Introduction to Texas Property

Tax Exemptions:

*"2009 Tax Exemptions & Tax
Incidence, A Report to the
Governor and the 81st Texas
Legislature"*

Texas
Comptroller of
Public
Accounts



Presentation to the

Senate Finance Committee

Identify and evaluate potential improvements to the property tax system. Consider and make recommendations relating to the following: Methods to increase public participation in the tax rate-setting process and ensure fairness in appraisal protests and appeals.

April 14, 2010

Presented by:

Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

Tax Rate-Setting Process



Texas Constitution Article VIII, Section 21

- (a) Subject to any exceptions prescribed by general law, the total amount of property taxes imposed by a political subdivision in any year may not exceed the total amount of property taxes imposed by that subdivision in the preceding year unless the governing body of the subdivision gives notice of its intent to consider an increase in taxes and holds a public hearing on the proposed increase before it increases those total taxes. The legislature shall prescribe by the form, content, timing, and methods of giving the notice and the rules for the conduct of the hearing.
- (b) In calculating the total amount of taxes imposed in the current year for the purposes of Subsection (a) of this section, the taxes on property in territory added to the political subdivision since the preceding year and on new improvements that were not taxable in the preceding year are excluded. In calculating the total amount of taxes imposed in the preceding year for the purposes of Subsection (a) of this section, the taxes imposed on real property that is not taxable by the subdivision in the current year are excluded.
- (c) The legislature by general law shall require that, subject to reasonable exceptions, a property owner be given notice of a revaluation of his property and a reasonable estimate of the amount of taxes that would be imposed on his property if the total amount of property taxes for the subdivision were not increased according to any law enacted pursuant to Subsection (a) of this section. The notice must be given before the procedures required Subsection (a) are instituted.

Tax Rate-Setting Process



Tax Code, Chapter 26 – “Truth in Taxation”

- Definitions and formula for calculating effective and rollback tax rates (Section 26.012)
- Provisions for notices, hearings, and voting on tax increases (Section 26.06);
- Supplemental notices of hearings on tax increases (Section 26.065); and
- Elections to repeal tax rate increases (Sections 26.07, 26.08, and 26.085).
- The Comptroller’s Property Tax Assistance Division prepares “truth-in-taxation” manuals annually and offers training for local taxing units annually concerning tax rate calculations and public notices.



Fairness in Appraisal Protests and Appeals



Texas Constitution Article VIII, Section 18

- (a) The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, and may also provide for the classification of all lands with reference to their value in the several counties.
- (b) A single appraisal within each county of all property subject to ad valorem taxation by the county and all other taxing units located therein shall be provided by general law. The Legislature, by general law, may authorize appraisals outside a county when political subdivisions are situated in more than one county or when two or more counties elect to consolidate services.
- (c) The Legislature, by general law, shall provide for a single board of equalization for each appraisal entity consisting of qualified persons residing within the territory appraised by that entity. The Legislature, by general law, may authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations. Members of a board of equalization may not be elected officials of a county or of the governing body of a taxing unit.
- (d) The Legislature shall prescribe by general law the methods, timing, and administrative process for implementing the requirements of this section.



Fairness in Appraisal Protests and Appeals



Texas Constitution Article VIII, Section 23

- (a) There shall be no statewide appraisal of real property for ad valorem tax purposes; however, this shall not preclude formula distribution of tax revenues to political subdivisions of the state.
- (b) Administrative and judicial enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes shall be prescribed by general law.

Fairness in Appraisal Protests and Appeals



Appraisal Review Boards

- Constitutionally authorized boards of equalization required to determine protests initiated by property owners
- Determine taxing unit challenges
- Correct clerical errors in appraisal records
- Act on motions to correct appraisal rolls under Tax Code Section 25.25
- Determine whether exemptions and special appraisals of agricultural and timber land are improperly granted
- Take any other action or make any other determination that the law specifically authorizes or requires (Tax Code Section 41.01)

Constitutional Amendments – 81st Legislature

Approved by voters in November, 2009

Proposition 5: House Joint Resolution 36

- Authorized the creation of consolidated appraisal review boards [Article VIII, Section 18(c)]
- Enabling Legislation – HB 3611

Proposition 3: House Joint Resolution 36

- Authorized the Legislature to prescribe by general law: “administrative and judicial enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes” [Article VIII, Section 23(b)]
- The Constitution previously required that administrative and judicial enforcement originate in the county where the ad valorem tax was imposed
- No enabling legislation

Proposition 2: House Joint Resolution 36

- Authorized the Legislature to provide for the taxation of residence homestead property solely on the basis of the property’s value as a residence homestead, regardless of whether the residential use of the property is its highest and best use [Article VIII, Section 1(j)]
- Enabling legislation – HB 3613



Statutory Changes - 81st Legislature



House Bill 8

- Every two years, Comptroller shall review :
 - Taxpayer assistance provided by CADs
 - Appraisal district governance
 - Operating and appraisal standards procedures, and methodology
 - Final Recommendations and scores submitted to local officials
 - CADs must comply with the recommendations within one year or the results are reported to the Texas Department of Licensing and Regulation for enforcement.
 - Comptroller Rule 9.301, effective February 22, 2010, provides the framework for CAD biennial reviews.
- Created Comptroller's Property Value Study Advisory Committee
- Changed school district property value studies to a biennial schedule

House Bill 1030

- In certain counties (currently Harris and Fort Bend) appraisal review boards are appointed by the local administrative judge

House Bill 1038

- In appraising residence homesteads, CADs may not exclude from consideration other property in the neighborhood that sold at foreclosure in any of the three years preceding the tax year and was comparable at the time of sale, or declined in value because of the economy.

Statutory Changes - 81st Legislature



House Bill 2317

- Appraisal Review Board members who have served for one year are required to take a continuing education course offered by the Comptroller, that addresses:
 - requirements regarding the independence of appraisal review boards from the board of directors and chief appraiser of the appraisal district
 - appraisal methodology, including requirements of the Uniform Standards for Professional Appraisal Practice
 - legal issues
- The Comptroller's courses began on March 2 and will conclude on May 5, 2010; a total of 47 sessions will be offered statewide.

House Bill 3611

- Authorizes county appraisal districts the option to consolidate their appraisal review boards with other districts

House Bill 3612

- Established a 3 year pilot program (Bexar, Cameron, El Paso, Harris, Tarrant, and Travis Counties) as an alternative to judicial review of appraisal review board determinations
- Allows property owners to appeal appraisal review board determinations for real or personal property valued at more than \$1,000,000 (but not mineral and industrial properties) to the State Office of Administrative Hearings
- Program is limited to appeals of determinations in for a three year period (expiring January 1, 2013)
- SOAH decision is final and precludes an appeal in district court

Statutory Changes - 81st Legislature



House Bill 3613

- Requires the market value of a residence homestead to be determined solely on the basis of the property's value as a residence homestead, regardless of whether the residential use of the property by the owner is considered to be the highest and best use of the property

Senate Bill 771

- Expands binding arbitration as an alternative to judicial review
 - reduces the filing fee from \$500 to \$250 if the property owner agrees to an expedited hearing of two hours or less
 - increased continuing education training requirements for arbitrators
- Prohibits a CAD from increasing the value of a property following a year that an ARB, arbitrator, or court determined its value, unless the CAD has substantial evidence to support an increase
- A sale may not be considered a comparable sale unless it occurred within 24 months of the appraisal date, unless enough properties did not sell during that period
- Comparable sales must be time-adjusted and comparability must be determined based on similarities in location, square footage, age, condition, and other factors



Questions?

Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

deborah.cartwright@cpa.state.tx.us
(512) 936-4251

Texas
Comptroller of
Public
Accounts



Presentation to the

Senate Finance Committee

Identify and evaluate potential improvements to the property tax system. Consider and make recommendations relating to the following: Requirement that property appraisal values may not increase by more than inflation and/or population growth, or another amount to be determined by local taxing authorities, with a maximum cap of 10 percent.

April 14, 2010

Presented by:

Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

Property Appraisal Value Increases



Texas Constitution Article VIII, Section 1 (i)

Approved by Voters in 1997

(i) Notwithstanding Subsections (a) and (b) of this section, the Legislature by general law may limit the maximum appraised value of a residence homestead for ad valorem tax purposes in a tax year to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year. A limitation on appraised values authorized by this subsection:

- (1) takes effect as to a residence homestead on the later of the effective date of the law imposing the limitation or January 1 of the tax year following the first tax year the owner qualifies the property for an exemption under Section 1-b of this article; and
- (2) expires on January 1 of the first tax year that neither the owner of the property when the limitation took effect nor the owner's spouse or surviving spouse qualifies for an exemption under Section 1-b of this article.

Property Appraisal Value Increases



Statutory Authority: Section 23.23, Tax Code

- The appraised value of a residence homestead may not exceed the lower of market value or the previous years' value increased by 10 percent (plus "new improvements").
- The chief appraiser is charged with maintaining a record of both the market value and the value computed using the 10 percent valuation limit.
- A taxpayer is first eligible for the limitation on January 1 following the first tax year the property was qualified for the residence homestead exemption.
- Property appraised under the following special appraisal methods is expressly excluded from the application of this section:
 - agricultural land
 - timber land
 - recreational, park and scenic land
 - public access airport property.

Property Appraisal Value Increases



Post-Disaster Appraisal

- House Bills 770 and 1257 (81st Legislature) added subsection (f) to Section 23.23 to require that the replacement structure of a property that qualified for the 10 percent limitation and was rendered uninhabitable or unusable by a casualty or by wind or water damage be appraised at the value the structure would have had in the preceding year had the casualty not occurred.
- If the replacement structure's square footage exceeds that of the original structure or if the exterior is of higher quality construction and composition than that of the original structure, the limitation would be recalculated.
- An attorney general's opinion (RQ-0851-GA) has been requested on the application of the new law.
- The requestor asks whether homesteads restored to their previous condition after being damaged or totally destroyed would be valued at no more than 110 percent of their pre-damage value or 110 percent of their post-damage value.

Property Appraisal Value Increases



Other States

- California's Proposition 13 amendment to the state constitution adopted by voters in 1978
- Proposition 13 differs from the Texas limitation since it caps the tax rate rather than the annual increase in appraised value
- The Massachusetts' version of tax limitation is commonly known as "Proposition 2½" and passed in 1980
- The Massachusetts' law not only limits the rate to 2.5%, but also limits the annual increase in taxes to 2.5%

Questions?



Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

deborah.cartwright@cpa.state.tx.us

(512) 936-4251

Texas
Association of
Counties



April 14, 2010

To: the Honorable Members of the Senate Committee on Finance
From: Gene Terry, Executive Director, Texas Association of Counties

Thank you for the opportunity to provide this written testimony on the committee's interim charges related to promoting greater public participation in the tax rate-setting process and promoting fairness in appraisal protests and appeals and lower appraisal caps.

Promoting public participation in tax-rate setting process: Promoting greater public participation in government is essential to effective representative democracy. SB 18 by Senator Williams in 2005 expanded truth in taxation requirements for local governments. The law requires Texas counties to post multiple notices and hold at least two public hearings to notify citizens regarding the setting of tax rates if a proposed tax rate is even one cent above the effective tax rate. Sen. Williams' bill effectively stopped "de facto tax increases" by appraisal creep. Since then, numerous counties have increased the number of public hearings to three or four. County officials also take it upon themselves to encourage greater public participation through newspaper opinion pieces, speeches to citizen and civic groups and personal contact with the citizens they serve.

Ensuring fairness in appraisal protests and appeals: Counties supported the appraisal process reform measures passed by the Legislature last session and approved by voters last November. We believe these changes will ensure fairness in appraisal protests and appeals and that we will see positive results from these reforms as their use becomes more prevalent. For now, we believe the Legislature should wait to see the results before considering further reforms to the appraisal protest and appeal system.

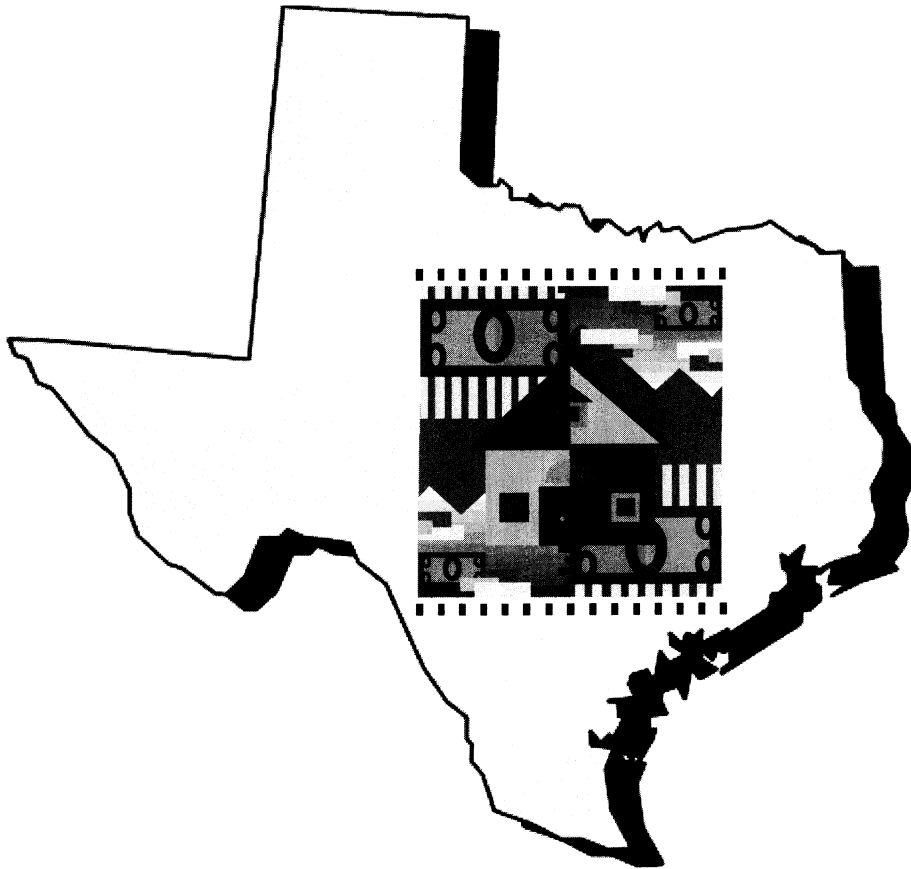
Appraisal caps: Currently, Texas has a 10 percent annual appraisal cap on residential homesteads that has been in place since 1997. Efforts to further restrict the appraised value of residence homesteads would distort the property tax system in Texas, creating inequities and undercutting the long-standing Texas constitutional standard of "equal and uniform" taxation. Other states have placed much more restrictive appraisal caps with poor results, the most prominent example being California. Such restrictive appraisal caps affect the "equal and uniform" principle by creating significant disparities in property tax burdens between owners of like properties, pitting neighbors against neighbors. Lower appraisal caps tend to benefit properties rising in value (generally in more affluent areas) and do not benefit properties maintaining or losing their value in moderate and disadvantaged areas. Lower appraisal caps on homesteads also tend to shift property tax burdens from residential property to commercial and industrial property, affecting future economic development and local real estate

markets. If lower appraisal caps were applied to both residential and commercial properties, the opposite occurs – shifting costs to homeowners in the case of economic growth or recovery, when commercial property values could be expected to rise at rates significantly higher than the limits proposed. For more information, please see the attached Executive Summary of a report prepared by Dr. Ray Perryman and the Perryman Group on the economic impact of such restraints.

Thank you again for the opportunity to provide written testimony on these important charges. Please contact me or TAC's Legislative Department if we can be of any further assistance to you.

Attachment

The Impact of Potential Restraints on
Local Government Activity
(Appraisal Caps, Expenditure Limits, and
Revenue Limits) on the Economy of Texas



The Perryman Group
510 N. Valley Mills Dr., Suite 300
Waco, TX 76710
ph. 254.751.9595, fax 254.751.7855
info@perrymangroup.com
www.perrymangroup.com

March 2005

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The Impact of Potential Restraints on Local Government Activity (Appraisal Caps, Expenditure Limits, and Revenue Limits) on the Economy of Texas

Executive Summary

The process of finding alternative mechanisms to fund public education and provide reductions in school property taxes is a dominant topic in the 2005 Session of the Texas Legislature. Texas is currently facing a near crisis situation in the area of financing the state's education infrastructure. Not only is the current tax system failing to provide adequate resources, it is also falling under increasing public and legal scrutiny as to its fairness and legality. At the same time, there is growing awareness that the property tax burden on individuals and businesses within the state is becoming excessive, and there have been numerous calls for reductions in property taxes.

In particular, the property tax and the current Texas franchise tax combine to place a particularly disproportionate burden on capital intensive firms, thus constraining our capacity for economic development. While some proposed alternatives (such as certain forms of a broad-based, low-rate business tax to replace a percentage of the school property tax) could improve the fairness and responsiveness of the Texas tax structure, other options have the potential to make a difficult situation even worse.

One set of proposals that has surfaced in Texas and elsewhere is an effort to severely limit the capacity of all local governmental units to raise additional revenues or expend additional dollars. All of these proposals stand to restrict the ability of local governments to provide necessary services or adjust to changing conditions.

The fundamental issue is how to allocate the tax burden among various groups such that it is equitable, efficient, and minimally detrimental to the economy. If taxes result in a disincentive for businesses to invest, expand, and create jobs, all Texans lose. If individuals alter their behavior patterns due to tax considerations, there can also be negative consequences for the economy. If improper constraints result in a secular decline in public services and resources, then the state will surrender the competitive edge that it presently enjoys in attracting and retaining business enterprises.

The Perryman Group (TPG) was recently asked to analyze limitations on local government activity and their effects on the economy in Texas. This report summarizes findings from this endeavor.

Local Tax Characteristics and Background

Property tax relief has become a major goal among many Texas legislators and other public officials, business and community leaders, and citizens across the state. The reasons for support may vary, but one point of agreement is that local governments are

heavily dependant on property tax receipts for their ongoing operations.

More than 80% of all tax receipts to local governments stem from property taxation. For school districts, the proportion is even higher. Thus, any highly restrictive cap on property tax appraisals or revenues, no matter how it is structured, can severely hamper the activity of local governments to meet legitimate (and often legally mandated) needs.

Property taxes have certainly risen over the past decade. Focusing only on this upward pattern, however, ignores the issues of the cost of providing local services given increasing costs of most services and growing populations. Any initiative aimed at changing the property tax parameters must incorporate provisions to assure that the capacity of local governments to fulfill their proper role in society and the economy is not impaired.

Problems with Appraisal Caps and Revenue or Expenditure Limitations

Although appraisal caps and revenue or spending limitations may have the appearance on the surface of valid methods for reducing the property tax burden, in reality, they involve many undesirable characteristics. Evidence from areas with severe restraints in place demonstrates that they lead to fiscal problems, arbitrary inequities, and detriments to economic progress.

By restricting the capacity of local governments to provide services, appraisal caps, revenue limits, and expenditure limits lead to a **reduction in the quality of life and economic performance** of

the state. If infrastructure investments are delayed, for example, productivity suffers. If school districts are unable to raise funds to meet their needs, educational quality declines. In addition, local governments are forced to operate in a less efficient manner if they are compelled to deal with perpetual fiscal crises.

The end result is a deviation from the optimal growth pattern for local areas and, hence, the economy as a whole. Some of the major channels through which these effects are manifested include the following.

- ✓ *Limitations on appraisals and revenue limitations restrict the flexibility of local governments to respond to changing needs, emergency situations, and State and federal mandates.* Texas cities and counties vary markedly in their characteristics, their needs, and their capacity to generate tax revenue under various structures. A limit on the flexibility of local governments to change tax rates in response to needs specific to their areas will clearly inhibit their capacity to respond to the requirements and priorities of their residents.

- ✓ *Appraisal caps and revenue limitations bear no relation to the legitimate demand for costs of public services provided by local governments.* Revenue limitations do not account for demographic shifts, industrial development, and other factors that legitimately impact the demand for public services. In particular, they constrain the capacity of high-growth regions to meet public service and expanded infrastructure needs.

- ✓ *Appraisal caps and revenue and expenditure limitations adversely impact bond ratings, thus limiting the ability to meet vital infrastructure needs and raising the cost structure of local governments.* Bond ratings agencies analyze outstanding debt and the capacity to raise additional funds in assigning ratings. To the extent that local governments fail to measure up as well along these parameters, bond ratings will be affected, thus restricting the ability to use such debt vehicles and increasing their costs.

- ✓ *Appraisal caps and revenue or spending limitations create a ratcheting down of revenue generating capacity in times of weak economic growth and declines in property values.* Poor economic performance can cause local government revenue to fall; property values are particularly prone to cycles, both in the general economy and in the real estate market. When revenue or appraised values drop, the new, lower level becomes the base from which future expansion is calculated. A tax structure that resets the base at the trough of every cycle will inevitably fail to adequately provide for local needs over an extended time horizon.

- ✓ *Empirical studies indicate that property values are depressed by appraisal caps and revenue/expenditure limitations.* One component of property values is related to the provision of local services. In school districts perceived to be excellent, for example, there is a positive effect on property values. In cities and counties which provide excellent services, from water supplies to law enforcement to roads, property values are higher than in areas without these

attributes. Appraisal caps and other restrictions on the ability to provide needed services depress property values.

In addition to these problems, which are common to all types of restrictions, **appraisal caps also raise specific concerns** in other areas. Currently, the annual amount by which appraised values for residences can rise is limited to 10%. This limitation is already leading to billions of dollars in value loss and reductions in available revenues.

- ✓ *Limitations on appraisals distort market outcomes and create systematic inequities among taxpayers.* Valuation change limitations of the magnitude currently under consideration have the effect of arbitrarily redistributing the tax burden. The timing of the purchase of a real estate asset can be the driving factor in the total tax bill rather than the underlying value of the property.
- ✓ *Appraisal caps tend to be regressive.* Appraisal caps lead to greater reductions in fiscal resources (1) the more rapidly property values are rising and (2) the higher priced the properties are. The result is that those in disadvantaged neighborhoods and income groups subsidize those who are more fortunate.
- ✓ *Appraisal caps discourage real estate market activity and new home purchases.* Caps on assessed values also introduce a disincentive to buy and sell property if a sale/purchase results in a significantly higher tax appraisal. Homeowners who remain in their homes could enjoy tax bills far lower than market levels; caps could keep appraised

values far below market values. There would, thus, be an incentive to remain in their current homes to maintain the favorable tax status. The real estate market would therefore be harmed. Analogously, appraisal caps discourage migration to the state by prospective homeowners.

- ✓ *Appraisal caps systematically provide incentives to use economic development resources inefficiently and limit long-term growth.* Past incentives for major corporate locations have been based on the assumption of rising property values. As changes in the tax structure affect these parameters, the implications for local governments can be substantial. In fact, local governments will have an incentive to use economic development revenues to attract retail establishments which contribute sales taxes to local coffers rather than manufacturers with highly constrained assessed property values. The result would be a shift toward lower value-added and less export-oriented enterprises, thus reducing long-term economic expansion.
- ✓ *Appraisal caps penalize business startups.* In an appreciating market, valuation change limitations benefit existing property owners at the expense of new buyers. For example, a business owner who had owned a location for many years might be paying taxes far below a competitor who recently purchased. This reduces the capacity of new owners to compete effectively, with corresponding detrimental effects on consumers.
- ✓ *Appraisal caps arbitrarily create disparities among categories of property.* If appraisal caps apply only to

residential homesteads (as in the current 10% cap), a portion of the property tax burden shifts to other types of real property which are not subject to the cap. On the other hand, appraisal caps applied to all real property would shift relative costs to homeowners in the case of economic recovery or growth, when commercial property values could be expected to rise at rates significantly higher than a 3% limit.

In addition to the problems outlined above, **revenue or expenditure limitations create further difficulties.**

- ✓ *The Consumer Price Index, which is often used as part of a formula for determining expenditure limits, is based on purchases by typical individuals and, thus, is not a reliable indicator of the cost of government services.* The Consumer Price Index (CPI) is a measure of price changes which relies on a “market basket” of goods such as food, clothing, and other goods and services purchased by typical consumers. The purchasing patterns of local governments vary greatly from the market basket incorporated in the CPI, which is determined based on typical spending by an individual or household. In a similar manner, population changes are often not clearly correlated with expenditure or revenue requirements.

- ✓ *Revenue or expenditure limitations typically result in substantial increases in State funding of local services.* Because of its heavy reliance on local governments and property taxes, Texas is more vulnerable than other states to dislocations from appraisal caps or spending/revenue

limitations. In other states implementing such constraints, state aid is far greater than it is in Texas. Revenue limitations have caused major dislocations in areas across the nation.

In summary, appraisal caps and other limits have created substantial problems in providing adequate revenues in states where they have been implemented, resulting in major disparities among taxpayers, increases in other taxes, and significant increases in State transfers to local governments. They have also distorted economic behavior and limited growth potential.

Impact Assessment Results

TPG developed alternative scenarios regarding the ultimate level of appraisal caps and expenditure or revenue limitations that might be implemented. These scenarios are based on specific legislative proposals and other parameters which are frequently discussed within the policy process. Reduced quality of local services results in foregone productivity in all aspects of the business complex. In addition, these losses compound over time.

Appraisal Caps

In order to assess the potential impact of implementing more restrictive appraisal caps, two scenarios were developed. In the first case, it is assumed that the appraised value of property remaining with the same owner can rise by no more than 3% and

that the long-term increase in baseline values occur at a constant rate. In the second, the appraised value change is again capped at 3% with baseline increases reflecting a typical cyclical growth pattern which includes reductions in Years 2 and 7, but overall expansion over ten years at the same rate as the constant growth framework.

Net Estimated Losses in Texas Business Activity Due to Appraisal Caps				
	Scenario 1: 3% Appraisal Cap and Constant Growth in Baseline Values		Scenario 2: 3% Appraisal Cap and Typical Cyclical Growth in Baseline Values	
	Year 10 After Implementation (annual impact)	Cumulative Over First 10 Years	Year 10 After Implementation (annual impact)	Cumulative Over First 10 Years
Total Expenditures	-\$4.343 billion	-\$20.979 billion	-\$5.134 billion	-\$22.594 billion
Gross Product	-\$2.071 billion	-\$10.003 billion	-\$2.448 billion	-\$10.774 billion
Personal Income	-\$1.349 billion	-\$6.515 billion	-\$1.594 billion	-\$7.017 billion
Employment	-32,175 Permanent Jobs	155,426 Person-Years	-38,037 Permanent Jobs	-167,396 Person-Years

The higher levels of decrease in business activity in the second case also illustrate the ratcheting effect of cyclical patterns. It should be further noted that (1) all of these adverse consequences accumulate and increase over time and that (2) further declines are

likely as the state's competitiveness in attracting new industry will be eroded by the lack of adequate support services.

Expenditure Caps

Net Estimated Losses in Texas Business Activity Due to Expenditure Caps		
	Cap Equal to the Annual Growth Rate in Population and the CPI	
	Year 10 After Implementation (annual impact)	Cumulative Over First 10 Years
Total Expenditures	-\$20.727 billion	-\$102.139 billion
Gross Product	-\$9.883 billion	-\$48.704 billion
Personal Income	-\$6.437 billion	-\$31.719 billion
Employment	-153,559 Permanent Jobs	-756,723 Person-Years

Note that these values are much larger than those in other scenarios as expenditure limits apply to the entire budget of a local government and not merely the portion derived from property taxes.

Revenue Limitations

Curtailing the ability of local governments to generate needed funds and otherwise respond to evolving conditions could be expected to

bring economic harms. Without sufficient revenues, the quality of local government services would decline, leading to lost productivity throughout the economy. Although not implicitly quantified, they could also ultimately result in a decline in competitiveness for new locations, expansions, and relocations of highly desirable enterprises with significant need for governmental services.

Net Estimated Losses in Texas Business Activity Due to Local Property Tax Revenue Limitations				
	Scenario 1: 3% Cap on Growth in Local Property Tax Revenue and Constant Growth in Baseline Revenues		Scenario 1: 3% Cap on Growth in Local Property Tax Revenue and Typical Cyclical Growth in Baseline Revenues	
	Year 10 After Implementation (annual impact)	Cumulative Over First 10 Years	Year 10 After Implementation (annual impact)	Cumulative Over First 10 Years
Total Expenditures	-\$10.783 billion	-\$54.592 billion	-\$11.613 billion	-\$58.796 billion
Gross Product	-\$5.142 billion	-\$26.032 billion	-\$5.538 billion	-\$28.036 billion
Personal Income	-\$3.349 billion	-\$16.953 billion	-\$3.607 billion	-\$18.259 billion
Employment	-79,889 Permanent Jobs	-404,460 Person-Years	-86,041 Permanent Jobs	-435,607 Person-Years

The following scenarios are included because they reflect one of the proposals that has been widely discussed during the current school finance debate.

**Net Estimated Losses in Texas Business Activity Due to
Local Property Tax and School District Tax Revenue
Limitations**

	Scenario 3: 6% Cap on School District Property Tax Revenues and 3% Cap on Other Local Property Tax Revenues and Constant Growth in Baseline Values	Scenario 3: 6% Cap on School District Property Tax Revenues and 3% Cap on Other Local Property Tax Revenues and Typical Cyclical Growth in Baseline Values		
	Year 10 After Implementation (annual impact)	Cumulative Over First 10 Years	Year 10 After Implementation (annual impact)	Cumulative Over First 10 Years
Total Expenditures	-\$7.211 billion	-\$35.950 billion	-\$7.766 billion	-\$38.719 billion
Gross Product	-\$3.438 billion	-\$17.143 billion	-\$3.703 billion	-\$18.463 billion
Personal Income	-\$2.239 billion	-\$11.164 billion	-\$2.412 billion	-\$12.024 billion
Employment	-53,422 Permanent Jobs	-266,348 Person-Years	-57,536 Permanent Jobs	-286,859 Person-Years

Clearly, revenue limitations stand to significantly dampen economic performance; these effects would compound and grow markedly in the future.

Conclusion

There is no doubt that the current Texas tax structure, particularly the high degree of local government reliance on property taxes, is

in need of reform. It is not keeping pace with the need for funds and it is dampening economic performance. However, it is crucial that any changes implemented represent real improvement, rather than illusory gains at the cost of future well-being.

While property tax rate reductions and corresponding shifts to a more equitable and efficient funding mechanism for public schools will notably improve the fiscal structure of the state, such initiatives must be accomplished without introducing further, and particularly more serious, problems. There are proposals surfacing which represent notable mechanisms for improving the tax system in the state. These efforts should not be accompanied, however, by the introduction of the additional and compounding problems associated with severely reducing local government resources and flexibility.

In summary, artificial limits on the flexibility of local governments to provide for the legitimate and expanding requirements of their citizens are contrary to basic economic principles of optimality, can generate substantial inequities, and needlessly reduce the capacity of local governments to function effectively and efficiently.

Texas
Department of
Housing and
Community
Affairs -
No written
testimony

Texas
Comptroller of
Public
Accounts



Presentation to the

Senate Finance Committee

Identify and evaluate potential improvements to the property tax system. Consider and make recommendations relating to the following: Exemptions provided to community housing development organizations(CHDOs) to determine if changes are needed to ensure that the public benefits outweigh the revenue loss.

April 14, 2010

Presented by:

Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

Community Housing Development Organizations



Texas Constitution Article VIII, Section 2(a)

“ . . . the legislature may, by general laws, exempt from taxation . . . all buildings used exclusively and owned by . . . institutions engaged primarily in public charitable functions. . . and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void.”

Community Housing Development Organizations



Tax Code Section 11.182. Community Housing Development Organizations Improving Property for Low Income and Moderate Income Housing: Property Previously Exempt

- Enacted in 1997
- Total exemption of real and personal property owned by community housing development organizations as defined by federal law
- Must be nonprofits organized under State laws and qualify as charitable under Tax Code 11.18(e) and (f)
- Must own the property to build or repair housing to sell without profit or rent to low-income or moderate-income individuals or families
- Must engage exclusively in building, repairing, and selling or renting such housing

Community Housing Development Organizations



Tax Code Section 11.182 (Cont.)

- Subsection (e) permits exemptions for property constructed after December 31, 2001, if
 - Financed with private activity bonds
 - Owned by limited partnerships if a CHDO controls all interest in the general partner
 - Complying with rules and laws administered by the Texas Department of Housing and Community Development (TDHCA)
 - Meeting other requirements concerning provision of services and rent reductions
 - Annual audits required

Community Housing Development Organizations



Tax Code, Section 11.1825, Organizations Constructing or Rehabilitating Low-Income Housing: Property Not Previously Exempt

- Enacted in 2003 and Applies to qualifying property not previously exempt on January 1, 2004
- 50% exemption of real property owned by a qualifying organization, except for counties with populations of 1.4 million or more where the exemption amount is local option for each taxing unit
- Qualifying organization must be exempt from federal income tax, meet requirements of Tax Code Section 11.18(e) and (f), and provide low-income housing.
- Alternatively, owner may qualify if a limited partnership of which a qualifying organization controls 100% of the general partner interest or an entity the parent of which is a qualifying organization.
- Owner must be organized under Texas law and have its principal place of business in Texas.

Community Housing Development Organizations



Tax Code Section 11.1825 (Cont.)

- Property must be rented or sold to individuals or families whose median income is not more than 60% of the greater of the area median family income or the statewide area median income as established by the US Department of Housing and Urban Development (HUD).
- Property appraised using the income approach to value by appraisal districts
- Public notice required by the appraisal district concerning the capitalization rate to be used
- Annual audit required

Community Housing Development Organizations



Legal Challenges – Recent Court Cases:

- Harris County Appraisal District v. Primrose Houston 7 Housing, L.P.
 - Held: A limited partnership with a CHDO general partner holding a 0.01% interest did not qualify for an exemption under Section 11.182(e).

- Jim Wells County Appraisal District v. Cameron Village, Ltd
 - Held: Exemption under Section 11.182(e) is limited to non-profit CHDOs; a for-profit limited partnership which is not a CHDO did not qualify

- TRQ Captain's Landing, L.P. v. Galveston Central Appraisal District
 - Held: The limited liability company that owned the property possessed the present right to compel legal title and therefore was the equitable owner eligible for the exemption under Section 11.182(e)



Questions?

Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

deborah.cartwright@cpa.state.tx.us
(512) 936-4251

Texas
Association of
Appraisal
Districts

Issues Pertaining to Exemptions for Community Housing Development Organizations (CHDOs) and Related Appraisal of Nonexempt Low-Income Housing

**By Jim Robinson, Chief Appraiser, Harris County Appraisal District (HCAD)
In Behalf of the Texas Association of Appraisal Districts**

Community Housing Development Organization (CHDO) Exemptions

Constitutional Authorization:

Art. VIII, Sec. 2(a), "... the legislature may, by general laws, exempt from taxation . . . **all buildings used exclusively and owned by . . . institutions engaged primarily in public charitable functions.** . . and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void."

Statutory Authorization:

For property that first received exemption in 2003 or earlier: Sec. 11.182, Tax Code, provides a total exemption for improved and unimproved property held for sale or rental to low or moderate income individuals or families.

For all other property: Sec. 11.1825, Tax Code, provides a partial exemption for property constructed or rehabbed for sale or rental to low or moderate income individuals or families. In most counties, the exemption is 50% of the appraised value of the property. In Harris and other counties of at least 1.4 million, the exemption is 50% of appraised value for property held for sale, and an amount set at local option for property held for rental. In counties with a 1.4 million or greater population, the exemption must first be approved by the governing bodies of the applicable taxing units.

Monitoring provisions: Sec. 11.1826, Tax Code, requires organizations receiving either type of exemption to annually provide to the chief appraiser (and the Texas Department of Housing and Community Affairs) an audit conducted by an independent auditor which includes an opinion on whether the organization has complied with all of the applicable legal requirements for exemption.

Appraisal: Secs. 11.1826, 23.21, and 23.215, Tax Code, address appraisal of property used for low income housing. These sections impact the valuation of CHDO property that does not qualify for exemption.

Problems in Implementation:

Limited Partnerships: The federal government has enacted a tax credit program to encourage private investment in low income housing. To tap this financing, some CHDO's created limited partnerships that own the financed property. The limited partnership arrangement typically consists of the CHDO as a general partner, and

several private, for profit, limited partners who receive the tax credits. Typically, the CHDO actually owns a tiny percentage of the project, while the majority is owned by the limited partners. When the CHDO exemption was enacted in 1997, it applied **only** to property “owned” by the CHDO. The section was amended in 2001 and again in 2004 to attempt to extend the exemption to tax credit limited partnerships.

When the partnership language was added, the legislature did not delete the requirement that the CHDO must own the property. Neither did it provide explicitly that the partnership was entitled to exemption in its own right. To harmonize the amendment, the First and 14th Courts of Appeal have construed the partnership language in Sec. 11.182 to apply *only* in circumstances where a partnership holds legal title but the CHDO is the equitable owner of the property.¹ To obtain the credits, the investors must have a real ownership interest in the property. It is probably not possible to structure an arrangement in which the CHDO has sufficient interest to gain exemption under Sec. 11.182 and the investors have sufficient interest to obtain the tax credits under the Internal Revenue Code.

The San Antonio Court of Appeals, in **Jim Wells County Appraisal District v. Cameron Village, Ltd.**, No. 04-06-00284-CV (Tex. App.—San Antonio, 238 SW 3d 769 (pet. denied) has ruled that a for-profit partnership cannot qualify for exemption as a matter of constitutional law. The Court stated:

“under the Texas Constitution, to qualify for a CHDO exemption as an entity engaged primarily in a public charitable function, the CHDO must own the property; a for-profit limited partnership which is not a CHDO would not qualify.”

Both **Primrose**² and **Jim Wells CAD** were appealed to the Texas Supreme Court, and the Court denied the petition in both cases.³ These cases are binding in their respective court of appeal districts, and the denial of the petition gives them strong precedential value elsewhere in Texas. In short, chief appraisers in these court of appeal districts, which include Harris, Fort Bend, Brazoria, Galveston, Bexar, Webb, and many other counties, simply cannot grant a CHDO exemption under Sec. 11.182 to property that is owned by a for-profit limited partnership.

¹ **Harris County Appraisal District v. Primrose Houston 7 Housing, L.P.**, No. 01-06-00691-CV (Tex. App.—Houston [1st Dist.] 238 SW3d 782, 2007 (pet. denied). **American Housing Foundation v. Harris County Appraisal Dist.** 283 S.W.3d 76, Tex.App.-Houston [14 Dist.], 2009. See also **TRQ Captain's Landing L.P. v. Galveston Central Appraisal Dist.**, 212 S.W.3d 726, Tex.App.-Hous. (1 Dist.), 2006, review granted 2007, appeal abated 2009.

² **Harris County Appraisal District v. Primrose Houston 7 Housing, L.P.**, No. 01-06-00691-CV (Tex. App.—Houston [1st Dist.] 238 SW3d 782, 2007 (pet. denied).

³ **TRQ Captains' Landing** was also appealed, but is abated at this time and the Supreme Court has not acted on the petition.

Sec. 11.1825, which was enacted later than Sec. 11.182, expressly provides an exemption for property owned by a partnership that is not a CHDO.⁴ There are no reported cases on this section, but the ruling in **Jim Wells CAD** calls its constitutionality into question. It is likely that another round of litigation will take place over Sec. 11.1825. Sec. 11.43(i), Tax Code, requires a chief appraiser to back-assess erroneously exempted property for up to five years. The Texas Supreme Court has ruled that this duty is not discretionary. **Atascosa County v. Atascosa Appraisal District**, 990 SW 2d 255, Tex. 1999.

Compliance Reporting: The audit requirement in Sec. 11.1826 is administratively troublesome. Small organizations claim they cannot afford the cost. Some auditors state that they are unwilling to give an opinion about legal compliance. Audits are rarely provided without prodding. There are no reported cases on this issue. On the other hand, many of the requirements of the statutes are extremely detailed. One case has denied an exemption on the basis of the organization's failure to comply with requirements regarding representation on its board of directors. **American Heritage Apartments, Inc. v. Bowie County Appraisal Dist.** 196 S.W.3d 850 Tex.App.-Texarkana, 2006.

Housing for Moderate Income Persons: This has been the subject of one reported case, which held that the fact that the organization provides housing to moderate as well as low income persons does not affect the right to exemption. **American Heritage Apartments, Inc. v. Bowie County Appraisal Dist.** (App. 6 Dist. 2006) 196 S.W.3d 850, review denied, rehearing of petition for review denied.

Appraisal: Sec. 11.1825, in addition to granting a partial exemption to CHDO property, provides specific instructions for appraisal of CHDO property. These instructions require the appraisal district to consider restrictions on rental income and to use the same capitalization rate used for other rent-restricted property in appraising CHDO property. While this provision has not been the subject of reported litigation, there is considerable disagreement around the state about the degree to which restrictions affect income and the appropriate capitalization rate. Harris CAD alone has 92 suits contesting appraisal of CHDO property.

The issue of CHDO exemptions has become the subject of heated controversy, particularly in Bexar County where the exemptions of a number of CHDOs were cancelled by the chief appraiser. A recent San Antonio newspaper article indicates that the Bexar County chief appraiser has been the subject of intense political pressure to grant these exemptions, which he arguably cannot do given the previously cited ruling of the San Antonio Court of Appeals.

On the basis of this predicament, a better option for the Legislature may well be to allow either the Texas Department of Housing and Community Affairs, or the

⁴ Sec. 11.1825(c).

Comptroller, to determine eligibility for the exemption and simply notify the chief appraiser of the decision.

Perhaps the Legislature should also reexamine the overall public policy issues related to the exemption and appraisal of these properties. The attached technical paper and related exhibits raise a number of questions that are worthy of further study.

EXEMPTIONS
Community Housing Development Organization (CHDO)
&
Related Appraisal of Nonexempt Low-Income Housing

I.

The Tax Code § 11.182 CHDO 100% Exemption

Issue: The Legislature should not reopen this exemption for low-income and moderate-income housing. The Legislature should consider the re-examination of existing (grandfathered) CHDO exemptions, to eliminate improper 100% exemptions, and to provide meaningful guidelines and oversight for those that continue.

Problems in Implementation and Administration: see *Primrose Houston 7 Housing , L.P. v. Harris County Appraisal District and Harris County Appraisal Review Board*, 238 S.W.3d 782 (Tex. App.-Houston [1st Dist.] 2007, review denied by the Texas Supreme Court - Feb. 2010) (copy attached as Exhibit A).

1. Statutory basis for claimed 100% exemption: Texas Property Tax Code (“**Tax Code**”) § 11.182 (property that received exemption in 2003 or earlier) (copy attached as Exhibit B); Tex. Tax Code Ann. § 11.182 (Vernon 2008).

1.1. Problem. HCAD must continue to administer existing exemptions, many of which are not warranted. The statute does not provide meaningful guidelines or provide for meaningful oversight, or funding for such oversight. A central appraisal district (“**CAD**”) does not have the resources to investigate each exemption to the fullest extent. Conversely, it has been shown that the financial incentives to the developers of these projects has motivated creativity. See the Legislative history, below.

2. Primrose Houston 7 Housing, L.P. (“**Primrose.**”) demanded a 100% property tax exemption for its 280 unit apartment complex on 9.77 acres

("subject property" or "subject apartments"), several miles north of downtown Houston. According to Primrose, once it had obtained its various forms of public financing, HCAD had no right or authority to inquire further or otherwise interfere with its provision of, allegedly, low-income housing. This was a common defense by developers of these projects. HCAD reviewed the application, the facts then available, and the law, and denied the exemption. Primrose filed suit in District Court. Primrose prevailed in the trial court. HCAD won the case on appeal: the exemption was denied. In February 2010, the Texas Supreme Court refused to review the decision of the First Court of Appeals.

2.1. Problem: Although the Legislature is aware of repeated abuses surrounding CHDO exemptions, Harris County taxpayers were required to fund HCAD's defense costs in this case. See Tax Code § 6.06(d) (appraisal district budget: taxing units pay proportionate shares). This is a double-dip of taxpayer dollars. That is, the beneficiaries of these exemptions are motivated to vigorously pursue them, litigate their denial, and the defense of the CAD is funded by taxpayer dollars - the same taxpayers who pay more in taxes when/if the properties are exempted.

2.2. Like Primrose, other CHDO related projects obtain public financing and Federal low income housing tax credits ("LIHTC"). Developers vie for these lucrative benefits and litigate, whether qualified or not, to also receive the 100% exemption under the Tax Code. Federal LIHTCs are awarded through the Texas Department of Housing and Community Affairs and, at the local level, through the Counties: in this case, by the Harris County Housing Finance Corporation.

2.3. Problem: With no real oversight of low income housing or CHDO exemptions, the burden of investigation rested entirely on HCAD. The law is established: **"[s]tatutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals**

rather than placing the burden on all taxpayers equally.” *N. Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991) (Emphasis added). However, in connection with CHDO exemptions, the applicant is not required to disclose facts detrimental to the success of its application. Ultimately, in litigation, the discovery process must be followed, which is expensive and time consuming. Enforcement through CAD litigation is not practical, and is tantamount to an unfunded mandate with taxpayer dollars being used to investigate poorly crafted exemptions.

3. Issue presented to the Courts: Primrose L.P. was *not a charitable organization*, it retained full marketable title to the subject apartments, and it did not qualify for the exemption under Tax Code § 11.18. HCAD was required to expose these facts, and finally disqualify Primrose, through the litigation process.

3.1. “Not a charitable organization”: Primrose was a for-profit limited partnership. It was not a “charitable organization,” as required by the Texas Constitution and Tax Code § 11.18. It was not “engaged primarily in public charitable functions,” though that is a requirement in the Constitution and Tax Code § 11.18(d). *Constitution, Art. VIII, Sec. 2(a)* (“*buildings used exclusively and owned by ... institutions engaged primarily in public charitable functions ...*”). Primrose argued that it qualified because the nominal CHDO was engaged primarily in public charitable functions. This argument was form over substance.

3.2. “Retained full marketable title”: Primrose owned, and would have still owned, the subject property *after* expiration of the restriction period attendant to its Federal LIHTCs. To the contrary, Tax Code § 11.18(f) requires continued ownership by a charitable, religious, etc. organization. Such a blatant abuse was, nonetheless, presented by Primrose to the Courts as valid and authorized by the Legislature. Other property owners who sought the exemption crafted similar, byzantine schemes: a

100% exempt property that would devolve into private ownership, at taxpayer expense.

3.3. Without the 100% property tax exemption, Tax Code § 23.215, Appraisal of Nonexempt Low-Income Housing, is applied to appraise the subject apartments. Tax Code § 23.215 prescribes a statutory methodology for the appraisal of nonexempt low or moderate income housing that is financed under the Federal LIHTC program, and it requires consideration of restrictions on the project. Section 23.215 is discussed further, below.

4. Role of the CHDO. Primrose argued that Tax Code § 11.182(e) contemplated ownership by a limited partnership, which controlled the CHDO, notwithstanding the inherent conflict with the Constitution, art. VIII, Sec. 2(a), and Tax Code § 11.18 - charitable organizations.

4.1. Did the mere insertion of a CHDO within the for-profit organizational scheme of Primrose result in an entitlement to the 100% exemption? No. In this case, Primrose's claim of entitlement to a 100% property tax exemption for 2003, and all subsequent years, rested upon an unrecorded assignment of a *de minimis* partnership interest (0.01%) to the CHDO, Southeast Partners, superimposing the CHDO in its limited partnership organizational scheme for the sole purpose of claiming the exemption.

5. In the litigation, Primrose raised the rhetorical banner of "affordable housing," while asserting that "HCAD's interpretation does nothing more than deter the construction and operation of . . . beneficial charitable operations." However, HCAD exposed the Primrose operations as an investment, not a 'charitable operation' as Primrose asserted. Ultimately, the Courts agreed with HCAD and the exemption was denied in its entirety.

6. The Federal LIHTCs Program. Primrose financed the subject apartments in part with low-income housing tax credits, or LIHTCs, which were distributed to its partners:

- “The Low-income Housing Tax Credit [LIHTC] is a credit against regular tax liability for investments in affordable housing projects”

Catherine Such, Low-Income Housing Tax Credits, Community Investments, a publication of the Federal Reserve Bank of San Francisco, Vol. 14, No.1, March 2002, at 6.

- “The [LIHTC] credit is a dollar for dollar reduction of the investor’s federal income tax liability Tax credits are generated when a **developer, either for-profit or non-profit**,¹ builds an affordable housing rental development. . . . The investor is buying a financial asset in the form of a stream of tax benefits (both credits and losses associated with depreciation and interest) with real estate supporting the asset.” (*Id.* at 3.)
- “There is an active secondary market for credits”² (*Id.* at 4.)
- As a result, “[t]he program has been very successful, creating over 100,000 [affordable housing] units annually and spawning hundreds of millions of dollars in investments.” (*Id.* at 3.)

7. It is important to note that the Federal LIHTC program has been “very successful” in stimulating affordable housing, and this success has

¹ The Internal Revenue Code requires a set-aside allocation of low-income housing tax credits to non-profit organizations. 26 U.S.C. § 42(h)(5).

² Primrose, a for-profit organization, contended erroneously that “[b]ecause non-profit entities most often are tax-exempt, they cannot benefit from tax credits”

been achieved independently of the total property tax exemption in issue in Primrose. That is, the Federal LIHTC program is not tied to or dependent on the exemption under Tax Code § 11.182.

- See, for example: *Low Income Housing Credit, Internal Revenue Service*, TPDS No. 89018M: "[A]n allocating agency is to provide no more credits than . . . necessary to ensure the project's financial feasibility"

That is, the Federal LIHTCs are provided to "ensure the project's financial feasibility" without additional consideration of a 100% property tax exemption under Texas law.

8. Documented abuse of the Tax Code § 11.182 exemption. The First Court of Appeals recounted the 2001 legislative history of the § 11.182 exemption in *TRQ Captain's Landing L.P. v. Galveston Central Appraisal District*, 212 S.W. 3d 726, 735 (Tex. App.-Houston [1st Dist.] 2006, review pending in the Texas Supreme Court):

In 2001, the Legislature became concerned that organizations were too easily qualifying for tax exemptions under subsection 11.182(b). . . . To counteract this, the Legislature enacted subsection 11.182(d) . . . and 11.182(e). . . . Recognizing the former abuse and the purpose of the reform . . . [it was] stated . . . 'It is not uncommon for abuses to occur when tax exemptions are not backed by rigorous measures, so this bill tightens regulations and enhances the reinvestment program.'

9. Although subsections 11.182(d) and (e) represented attempts to tighten the regulations, their effectiveness was disproven after only 24 months (effective January 1, 2002, through December 31, 2003); Acts 2001, 77th Leg., ch. 1191, § 1, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 1156, §§ 1, 2, eff. Jan. 1, 2004.) Tax Code § 11.182(j) was added, which provides:

An organization may not receive an exemption . . . for a tax year beginning on or after January 1, 2004, unless the

organization received an exemption under that subsection for that property for any part of the 2003 tax year.

Acts 2003, 78th Leg., ch. 1156, §§ 1, 2, eff. Jan. 1, 2004. Thus, as a direct result of recognized abuses, section 11.182 was no longer available to new applicants after December 31, 2003.

10. The Senate bill analysis pinpointed the problems which caused the elimination of § 11.182:

Acts of the 75th and 77th Texas Legislatures created the Community Housing Development Organization (CHDO) exemption whereby a non-profit organization under an unrelated federal statute could be exempted from paying ad valorem taxes on property offered in furtherance of providing affordable housing to low-income and moderate-income individuals and families. C.S.H.B. 3546 eliminates the former CHDO exemption and institutes more stringent guidelines for future exemptions. This bill also provides a grandfather exception for an organization currently receiving an exemption under Section 11.182, Tax Code.

Texas Senate Intergovernmental Relations Committee, Bill Analysis, C.S.H.B. 3546, 78th Leg., R.S. (2003).

11. The House Committee, Local Government Ways and Means, echoed the problems that required elimination of the § 11.182 exemption:

Acts of the 75th and 77th Legislatures created the Community Housing Development Provider (CHDO) exemption whereby a non-profit organization ambiguously organized under an arguably unrelated federal statute could exempt from ad valorem taxes property offered in furtherance of providing affordable housing to low-income and moderate-income individuals and families. With no particular guidelines in place, other than charitable 501(c)(3) standards, significant tax

base has been lost to local taxing units with arguably little or no net gain in affordable housing. Moreover, an unintended consequence of the exemption has been a significant non-appropriated appropriation from general revenue due to elements of the state school funding financing formula which require public schools to be reimbursed out of general revenue due to elements of the state school funding financing formula . . . for diminutions in property tax base. Projected general revenue reimbursements to school districts for CHDO-related transactions is estimated at approximately \$48 million for the 2004-2005 Biennium. Furthermore, conservative estimates of total tax base lost due [to] CHDO transactions equal at least one-half billion dollars. Committee Substitute House Bill 3546 aims to eliminate the current CHDO exemption, and limit and modify future exemptions.

CSHB 3546 eliminates and grandfathers the former CHDO exemption and institutes much stricter guidelines for future exemptions.

However, these problems persist to this day for the grandfathered § 11.182 CHDO exemptions: (i) the complete absence of guidelines and oversight, (ii) little or no net gain in affordable housing, and (iii) lost tax base.

12. An example of ongoing problems: the audit. There is an annual audit requirement for CHDO exempted properties: § 11.182(g). These audits are well-known to be perfunctory and ineffective, both by the property owners and CADs. HCAD is currently engaged in litigation of an exemption denial, arising from a dispute over such an audit.

12.1. The subsequent owner, which is not exempt, realized after purchasing what had been a low-income rental property, previously owned by an exempt owner, that the final year audit was not filed and that the exemption had been revoked for that year. The new, nonexempt owner sued HCAD to have the prior owner's exemption reinstated, and thereby avoid that tax liability. Approximately two (2) years after the year the audit

was due, the new owner arranged to have the audit filed, ostensibly by the "prior" owner. The new, nonexempt owner asserts that the statute contains no deadline to file an audit, and that the property should be exempt for that earlier year, during which time it did not own the property.

It is HCAD's position that, as a matter of law, the exemption cannot be reinstated for the new owner retroactively, and the audit was simply too late. Yet the trial court denied HCAD's motion for summary judgment (matter of law) on this defense, and the new owner/Plaintiff has requested a jury trial. The case is set for trial in the Summer, 2010.

II.

The Tax Code § 11.1825 CHDO 50 % Exemption

Issue: The Tax Code § 11.1825 CHDO 50 % exemption should not be expanded. The Legislature should consider providing for meaningful audits, guidelines, and oversight of these exemptions.

Problems in Implementation and Administration: Effective January 1, 2004, this newly adopted exemption provision, § 11.1825, went into effect. (Copy attached as Exhibit C); Tex. Tax Code Ann. § 11.1825 (Vernon 2008).)

13. Section 11.1825(c), as written, specifically allows ownership by a limited partnership. Section 11.1825 also contains provisions applicable to Harris County (population of at least 1.4 million), which require a written request for approval of a 50 % exemption from the governing body of a taxing unit, and official action by the body. In other counties, below the population threshold of 1.4 million, a 50 % exemption of the appraised value is available upon application, without the prerequisite of taxing unit approval. Tex. Tax Code Ann. § 11.1825(c), (s), (v), (w), (x), and (y).

14. The local option provision has slowed the flow of affordable housing exemption applications in Harris County. There are applications pending, and others are expected, as a direct consequence of the continued attractiveness of these ventures to developers. To illustrate, the Dallas

Independent School District was challenged in district court for denying an exemption requested pursuant to Tax Code § 11.1825: ultimately, the Dallas Court of Appeals upheld the School District's denial. *Dallas Ind. School Dist. v. Outreach Housing Corporation/DeSoto I, Ltd.*, 251 S.W.3d 152 (Tex. App. - Dallas 2008, pet. denied).

15. Otherwise, Tax Code § 11.1825 has not been interpreted by the appellate courts, and further challenges can be expected. The statute permits private ownership, contrary to both the Constitution and the interrelated Tax Code provisions (e.g., § 11.18), and it does not provide meaningful guidelines or oversight.

16. Partially exempt (50 %) properties are appraised by the income approach. This is problematic, because substantial sums are paid to the developers up-front on these projects, such as promotion, design, and construction management charges. This is not considered income to the project, but it is profitable to the developer/promoter. The profitable development of the project is therefore hidden during the income appraisal process (rental income/restrictions), required by subsection 11.1825(q).

17. Section § 11.1825(q) requires the Chief Appraiser to publish a capitalization rate, used in the income approach. This is problematic, as there has been no agreement on an appropriate rate. Attempts by the industry to have the Legislature adopt a favorable capitalization rate failed (see C.S.H.B. 1044, 78th Leg., R.S. [2003]) leaving this task, and the attendant litigation, to appraisal districts, taxing units, and taxpayers to fund.

III.

Tax Code § 23.215: Appraisal of Nonexempt Property Used for Low-Income or Moderate Income Housing

Issue: Tax Code § 23.215 calls into question the need for either of the exemptions discussed above. Tax Code § 23.215 should not be expanded. The Legislature should consider providing for meaningful guidelines, oversight, audits, and enforcement of these nonexempt, affordable housing properties.

Problems in Implementation and Administration: Tax Code § 23.215 was adopted effective January 1, 2004. (Copy attached as **Exhibit D**); Tex. Tax Code Ann. § 23.215 (Vernon 2008).) It applies to the appraisal of properties that do not receive an exemption under Sections 11.182 or 11.1825.

18. The Chief Appraiser shall appraise these properties in the manner provided by Section 11.1825(q) (50 % exempt properties): that is, using the income approach, using the CAD published capitalization rate, and considering the restrictions on renters' income and rents, if any.

19. Currently HCAD is involved in approximately 96 lawsuits challenging the mandated single, published capitalization rate used in the income approach to appraisal. Properties vary considerably, and owners argue for different capitalization rates applicable to their properties. Also, another set of variables are the restrictions on renters' income, and rent restrictions themselves, which, as applied, are nebulous. As a consequence, rents charged may approach or even exceed market rental rates. Nonetheless, owners of these properties cite the restrictions, valid or not, as requiring higher capitalization rates to lower appraised values of their properties. In addition, allegedly restricted properties can enjoy a competitive advantage over nearby non-restricted properties, leading to additional litigation.

Attachments:

Exhibit A: *Primrose Houston 7 Housing, L.P. v. Harris County Appraisal District and Harris County Appraisal Review Board*, 238 S.W.3d 782 (Tex. App.-Houston [1st Dist.] 2007, review denied by the Texas Supreme Court - Feb. 2010)

Exhibit B: Tex. Tax Code Ann. § 11.182 (Vernon 2008), Community Housing Development Organizations (properties exempt).

Exhibit C: Tex. Tax Code Ann. § 11.1825 (Vernon 2008), Organizations Constructing or Rehabilitating Low-Income Housing, Not Previously Exempt.

Exhibit D: Tex. Tax Code Ann. § 23.215 (Vernon 2008), Appraisal of Certain Nonexempt Property Used for Low-Income or Moderate-Income Housing.

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H

Court of Appeals of Texas,
Houston (1st Dist.).
HARRIS COUNTY APPRAISAL DISTRICT and
Harris County Appraisal Review Board, Appel-
lants,
v.
PRIMROSE HOUSTON 7 HOUSING, L.P., Ap-
pellee.
No. 01-06-00691-CV.

Aug. 16, 2007.
Rehearing Overruled Sept. 25, 2007.

Background: Taxpayer, a for-profit limited partnership that owned 280-unit apartment complex, filed action after county appraisal district and county appraisal review board denied application seeking ad valorem tax exemption for apartments, which was filed by non-profit corporation recognized as community housing development organization (CHDO) on behalf of taxpayer. Both parties filed motions for summary judgment. The 11th District Court, Harris County, Mark Davidson, J., denied taxing authorities's motion and entered judgment that taxpayer was entitled to tax exemption. Taxing authorities appealed.

Holding: The Court of Appeals, Terry Jennings, J., held that taxpayer was not entitled to ad valorem tax exemption.

Reversed and rendered.

West Headnotes

[1] Appeal and Error 30 ↪934(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k934 Judgment
30k934(1) k. In General. Most Cited
Cases

When reviewing a summary judgment, an appellate court takes as true all evidence favorable to the nonmovant, and it indulges every reasonable inference and resolve any doubts in the nonmovant's favor.

[2] Appeal and Error 30 ↪870(2)

30 Appeal and Error
30XVI Review
30XVI(B) Interlocutory, Collateral, and Supplementary Proceedings and Questions
30k869 On Appeal from Final Judgment
30k870 Interlocutory Proceedings
Brought Up in General
30k870(2) k. Particular Orders or Rulings Reviewable in General. Most Cited Cases

Appeal and Error 30 ↪1175(1)

30 Appeal and Error
30XVII Determination and Disposition of Cause
30XVII(D) Reversal
30k1175 Rendering Final Judgment
30k1175(1) k. In General. Most Cited
Cases
When both parties move for summary judgment on the same issue and the trial court grants one motion and denies the other, an appellate court considers the summary judgment evidence presented by both sides, determines all questions presented, and, if the appellate court determines that the trial court erred, renders the judgment that the trial court should have rendered.

[3] Taxation 371 ↪2340

371 Taxation
371III Property Taxes
371III(F) Exemptions
371III(F)1 In General
371k2337 Charitable or Benevolent Institutions, and Property Used for Charitable Purposes in General
371k2340 k. Character, Extent, and

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Ownership of Property. Most Cited Cases
Taxpayer, through non-profit corporation recognized as community housing development organization (CHDO), was not entitled to property tax exemption authorized by provision of tax code governing charitable organizations and provision allowing organization qualifying as CHDO to claim exemption from ad valorem taxes that would otherwise be assessed against real property owned by organization; taxpayer, a for-profit limited partnership that owned a 280-unit apartment complex, held legal title to apartments, taxpayer was not a CHDO, nor was general partner of taxpayer, and CHDO did not have right to compel legal title to apartments. V.T.C.A., Tax Code §§ 11.18, 11.182.

[4] Taxation 371 ↪2300

371 Taxation

371III Property Taxes

371III(F) Exemptions

371III(F)1 In General

371k2298 Construction and Operation of Exemptions in General

371k2300 k. General Rules of Construction. Most Cited Cases

Exemptions from taxation are not favored by the law and will not be favorably construed.

[5] Taxation 371 ↪2300

371 Taxation

371III Property Taxes

371III(F) Exemptions

371III(F)1 In General

371k2298 Construction and Operation of Exemptions in General

371k2300 k. General Rules of Construction. Most Cited Cases

Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally.

[6] Taxation 371 ↪2392

371 Taxation

371III Property Taxes

371III(F) Exemptions

371III(F)2 Proceedings to Establish and Enforce Exemption

371k2390 Evidence

371k2392 k. Presumptions and Burden of Proof. Most Cited Cases

Burden of proof of clearly showing that an organization falls within the statutory exception from taxation is on a claimant.

[7] Taxation 371 ↪2190

371 Taxation

371III Property Taxes

371III(C) Liability of Private Persons and Property in General

371k2186 Ownership or Possession of Property, and Persons to Whom Taxable

371k2190 k. Equitable Estates or Interests in General. Most Cited Cases

An entity holds equitable title to property, for purposes of taxation, when it possesses the present right to compel legal title.

[8] Corporations 101 ↪182.1(2)

101 Corporations

101IX Members and Stockholders

101IX(A) Rights and Liabilities as to Corporation

101k182 Corporate Property, Funds, and Securities

101k182.1 In General

101k182.1(2) k. Equitable or Beneficial Interest. Most Cited Cases

Right to compel legal title, for purposes of determining whether an entity holds equitable title to a property, arises under the following circumstances: (1) parent company A holds a full ownership interest in its subsidiary B; (2) B holds legal title to certain real property; (3) upon dissolution of B, legal title to its real property will revert to A; and (4) A has the power to dissolve B at anytime.

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[9] Taxation 371 ↪ 2340

371 Taxation

371III Property Taxes

371III(F) Exemptions

371III(F)1 In General

371k2337 Charitable or Benevolent Institutions, and Property Used for Charitable Purposes in General

371k2340 k. Character, Extent, and Ownership of Property. Most Cited Cases Where a tax exempt entity holds equitable title to property, the property is tax exempt.

[10] Taxation 371 ↪ 2340

371 Taxation

371III Property Taxes

371III(F) Exemptions

371III(F)1 In General

371k2337 Charitable or Benevolent Institutions, and Property Used for Charitable Purposes in General

371k2340 k. Character, Extent, and Ownership of Property. Most Cited Cases Community housing development organization (CHDO) status, a necessary condition to receiving an exemption from ad valorem under provision of tax code allowing tax exemptions for CHDO, can be imputed to non-CHDO subsidiaries that are wholly owned and controlled by a CHDO. V.T.C.A., Tax Code § 11.182(b).

*783 Alison Leigh Goodwin Holland, Mario L. Dell'Osso, John E. Fisher, Olson & Olson, L.L.P., Houston, TX, for Appellant.

*784 Jason Clarke Marshall, The Marshall Firm PC, Dallas, TX, for Appellee.

Panel consists of Justices TAFT, JENNINGS, and ALCALA.

OPINION

TERRY JENNINGS, Justice.

Appellants, Harris County Appraisal District and Harris County Appraisal Review Board (collectively "HCAD"), challenge the trial court's summary judgment in favor of appellee, Primrose Houston 7 Housing, L.P. ("Primrose L.P."), on Primrose L.P.'s claim that it is entitled to an exemption from 2003 ad valorem taxes it sought under section 11.182 of the Texas Tax Code.^{FN1} In two issues, HCAD contends that the trial court erred in denying HCAD's motion for summary judgment and in granting Primrose L.P.'s motion for summary judgment because Primrose L.P. is not entitled to the property tax exemption authorized by article VIII, section 2(a) of the Texas Constitution^{FN2} and the enabling legislation, sections 11.18 and 11.182 of the Texas Tax Code.^{FN3}

FN1. See TEX. TAX CODE ANN. § 11.182 (Vernon Supp.2006).

FN2. See TEX. CONST. art. VIII, § 2(a).

FN3. See TEX. TAX CODE ANN. §§ 11.18, 11.182 (Vernon Supp.2006).

We reverse and render judgment in favor of HCAD.

Factual and Procedural Background

Primrose L.P., a for-profit limited partnership, is the owner of the 280-unit Primrose Casa Bella apartment complex ("the apartments") located at 5000-5100 Airline Drive in Houston, Texas. Construction of the apartments was in large part publicly financed with low-income housing tax credits, tax-exempt bonds, and a loan from the City of Houston. Primrose L.P. is structured with Primrose Houston 7 Development L.L.C. ("Primrose L.L.C.") as its general partner with a 0.01% interest,^{FN4} MMA Special Limited Partner, Inc. ("MMA Special") as a special limited partner with a 0.00% interest,^{FN5} MMA Financial Warehousing, L.L.C. ("MMA Financial") as an investor limited partner with a 99.99% interest,^{FN6} and Prim-

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rose Skyline Apartments SLP, L.L.C. ("Primrose SLP") as a class B limited partner with a 0.00% interest.^{FN7}

FN4. Primrose L.L.C. is a Texas limited liability company.

FN5. MMA Special is a Florida corporation.

FN6. MMA Financial is a Maryland limited liability company.

FN7. Primrose SLP is a Texas limited liability company.

On December 19, 2003, Brian Potashnik assigned his 100% interest in the general partner, Primrose L.L.C., to Southeast Texas Housing Partners, Inc. ("Southeast Partners"). Southeast Partners is organized as a non-profit corporation and is recognized as a community housing development organization ("CHDO").^{FN8}

FN8. For the purposes of section 11.182 of the Texas Tax Code, a CHDO "has the meaning assigned by 42 U.S.C. Section 12704." TEX. TAX CODE ANN. § 11.182 (a)(2). Section 12704 of the United States Code defines a CHDO as: (1) a non-profit organization organized under state or local laws; (2) whose purpose is to provide affordable housing to low-income and moderate-income persons; and (3) that "maintains, through significant representation on the organization's governing board and otherwise, accountability to low-income community residents." 42 U.S.C. § 12704 (2000).

*785 This dispute arose when, on January 2, 2004, HCAD received from Southeast Partners an "Application for Community Housing Development Organization Improving Property for Low-Income and Moderate-Income Housing Property Tax Exemption" seeking an ad valorem tax exemption for the apartments for 2003 and all subsequent years.

Southeast Partners filed the application on behalf of Primrose L.P. After HCAD denied the application on the ground that Primrose L.P. did not meet the exemption requirements, Primrose L.P. filed suit in the district court. Both parties filed motions for summary judgment, and the trial court denied HCAD's motion and entered judgment that Primrose L.P. is entitled to the tax exemption.

Standard of Review

[1][2] A party moving for summary judgment has the burden of proving that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. TEX.R. CIV. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co., Inc.*, 690 S.W.2d 546, 548 (Tex.1985); *Farah v. Mafrige & Kormanik, P.C.*, 927 S.W.2d 663, 670 (Tex.App.-Houston [1st Dist.] 1996, no writ). When reviewing a summary judgment, we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex.2005). When both parties move for summary judgment on the same issue and the trial court grants one motion and denies the other, as here, we consider the summary judgment evidence presented by both sides, determine all questions presented, and, if we determine that the trial court erred, render the judgment that the trial court should have rendered. *Id.*

Property Tax Exemption

[3] In two issues, HCAD argues that the trial court erred in denying its summary judgment motion and in granting Primrose L.P.'s summary judgment motion because Primrose L.P. is not entitled to the property tax exemption authorized by article VIII, section 2(a) of the Texas Constitution^{FN9} and the enabling legislation, sections 11.18 and 11.182 of the Texas Tax Code. *See* TEX. CONST. art. VIII, § 2(a); TEX. TAX CODE ANN. §§ 11.18, 11.182 (Vernon Supp.2006).

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FN9. We note that before an organization can be considered for tax exempt status under sections 11.18 or 11.182 of the Texas Tax Code, it must first meet the applicable constitutional requirements that entitle it to seek the exemption. See *N. Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex.1991). Because of our disposition of this appeal, we do not reach the issue of whether Primrose L.P. would meet the constitutional requirements. See TEX. CONST. art. VIII, § 2(a) (providing that "legislature may, by general laws, exempt from taxation ... any property owned by ... institutions engaged primarily in public charitable functions, which may conduct auxiliary activities to support those charitable functions").

Section 11.182 allows an organization qualifying as a CHDO to claim an exemption from ad valorem taxes that would otherwise be assessed against real property owned by the organization. TEX. TAX CODE ANN. § 11.182. Subsection 11.182(b) provides,

(b) An organization is entitled to an exemption from taxation of improved or unimproved real property it *owns* if the organization:

(1) is organized as a community housing development organization;

(2) meets the requirements of a charitable organization provided by *786Sections 11.18(e) and (f);^{FN10}

FN10. Subsections (e) and (f) of section 11.18 of the Texas Tax Code provide that a charitable organization (1) may not accrue distributable profits or pay salaries exceeding a reasonable allowance for services rendered; (2) must use its assets to perform charitable functions; and (3) must adopt a bylaw or regulation mandating that upon

dissolution, the organization's assets are to be transferred to the State or a qualified charitable organization. TEX. TAX CODE ANN. § 11.18(e)-(f).

(3) *owns* the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and

(4) engages exclusively in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

TEX. TAX CODE ANN. § 11.182(b) (emphasis added).

[4][5][6] We note that exemptions from taxation are not favored by the law and will not be favorably construed. *N. Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex.1991). Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally. *Id.* Accordingly, the burden of proof of clearly showing that the organization falls within the statutory exception is on a claimant. *Id.*

Because Southeast Partners is a CHDO, it is eligible under section 11.182(b) for ad valorem tax exemptions on property it owns. See TEX. TAX CODE ANN. § 11.182(b). Here, however, it is undisputed that Primrose L.P. holds legal title to the apartments. Moreover, Primrose L.P., against whom the taxes were assessed, is not a CHDO, nor is Primrose L.L.C., the general partner of Primrose L.P.

Nevertheless, Primrose L.P. argues that it is entitled to the section 11.182 exemption because Southeast Partners owns one-hundred percent of the interest in the general partner and "maintains both control

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over and equitable title to the property.” In support of its argument, Primrose L.P. relies on our recent decision in *TRQ Captain's Landing, L.P. v. Galveston Cent. Appraisal Dist.*, 212 S.W.3d 726, 729 (Tex.App.-Houston [1st Dist.] 2006, pet. filed).

In *TRQ Captain's Landing*, this Court held that “an otherwise qualified equitable property owner may obtain an exemption from ad valorem taxes pursuant to subsection 11.182(b).” 212 S.W.3d at 736. This holding was based on the determination that subsection 11.182(e) “clearly provides for an exemption for a CHDO that is only the equitable owner of property whose legal owner is a partnership.” *Id.* at 735; see also TEX. TAX CODE ANN. § 11.182(e)(1) (providing that in order to gain exemption for certain apartments constructed after December 31, 2001, organization must “control 100 percent of the interest in the general partner if the project is owned by a limited partnership”). Therefore, we must determine whether Southeast Partners holds equitable title to the apartments.

HCAD argues that Southeast Partners, the CHDO that “allegedly controls the general partner of Primrose L.P.,” does not have equitable title to the apartments because it cannot compel or effect the transfer of legal title, nor does it hold the future right to title.

*787 [7][8][9][10] An entity holds equitable title when it possesses the present right to compel legal title. *TRQ Captain's Landing*, 212 S.W.3d at 732; *Harris County Appraisal Dist. v. Southeast Tex. Hous. Fin. Corp.*, 991 S.W.2d 18, 23 (Tex.App.-Amarillo 1998, no pet.). The right to compel legal title arises, for instance, under the following circumstances: “(1) parent company A holds a full ownership interest in its subsidiary B; (2) B holds legal title to certain real property; (3) upon dissolution of B, legal title to its real property will revert to A; and (4) A has the power to dissolve B at anytime.” *TRQ Captain's Landing*, 212 S.W.3d at 732; see also *Southeast Tex. Hous. Fin. Corp.*, 991 S.W.2d at 21-23. When a tax exempt entity holds equitable title to property, the property is tax ex-

empt. *TRQ Captain's Landing*, 212 S.W.3d at 732; *Southeast Tex. Hous. Fin. Corp.*, 991 S.W.2d at 23. Thus, CHDO status, a necessary condition to receiving an exemption under section 11.182(b), can be imputed to non-CHDO subsidiaries that are wholly owned and controlled by a CHDO. *TRQ Captain's Landing*, 212 S.W.3d at 733-34; *Orange County Appraisal Dist. v. Agape Neighborhood Improvement, Inc.*, 57 S.W.3d 597, 602 (Tex.App.-Beaumont 2001, pet. denied).

We noted in *TRQ Captain's Landing* that TRQ Captain's Landing, L.P. (“TRQ”) held legal title to the apartments at issue. 212 S.W.3d at 728-29. American Housing Foundation (“AHF”), a CHDO, later obtained ownership and control of TRQ. *Id.* AHF then formed CD Captain's Landing, L.L.C. (“CD”) and became its sole member. *Id.* at 729. Thus, CD was wholly owned by AHF. *Id.* CD purchased TRQ and obtained a 100% membership interest in TRQ's sole general partner, TRQ Galveston, L.L.C. *Id.* CD's purchase of TRQ was structured such that CD possessed a 99% limited partnership interest in TRQ. *Id.* The remaining one percent interest in TRQ was held by TRQ Galveston, L.L.C., TRQ's general partner in which CD possessed a 100% membership interest. *Id.*

CD filed an application with the appraisal district seeking an ad valorem tax exemption for the apartments under section 11.182. *Id.* In its application, CD contended that an exemption should be imputed through the partnership chain and back to AHF, the CHDO. *Id.* at 730. This Court held that because AHF had the present right to compel legal title to the apartments, it thus had equitable title. *Id.* at 732-33. Our decision was based in part on the fact that according to CD's articles of organization, AHF was CD's sole member, the members of CD could vote to dissolve CD at anytime, and, upon dissolution, CD's assets were to revert to its members, namely, AHF. *Id.* at 732. Additionally, the boards of AHF and CD were comprised of the same directors. *Id.* In the event of dissolution, TRQ and TRQ Galveston's assets would revert to their re-

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spective members, namely to CD, which in turn could be dissolved at any time by AHF, with the result that CD's assets would revert to AHF. *Id.*

Here, in contrast, Southeast Partners, the CHDO, has a 100% membership interest in the general partner, Primrose L.L.C., which has a 0.01% interest in the limited partnership, Primrose L.P., but has no interest in the limited partners, namely MMA Special, MMA Financial, and Primrose SLP. Although Southeast Partners controls 100% of the general partner interest in the limited partnership, it has no control over the outstanding 99.99% interest in Primrose L.P. Thus, Southeast Partners does not have the present right to compel legal title to the apartments and *TRQ Captain's Landing* is inapplicable.

*788 We hold that Primrose L.P., through Southeast Partners, does not meet the requirements for the property tax exemption under sections 11.18 and 11.182 of the Texas Tax Code. Having so held, we need not address HCAD's argument that the section 11.182(b) exemption was not available to Primrose L.P. because it "filed its exemption application with HCAD on January 2, 2004, well after its public financing was in place, after the section 11.182 exemption was no longer available, and without a prior request to the Appraisal District for a preliminary determination to facilitate financing before acquiring the property." See TEX. TAX CODE ANN. § 11.182(j). Accordingly, we further hold that the trial court erred in granting summary judgment in favor of Primrose L.P. and in denying HCAD's motion for summary judgment.

We sustain HCAD's two issues.

Conclusion

We reverse the judgment of the trial court and render judgment that Primrose L.P. is not entitled to an ad valorem tax exemption under sections 11.18 and 11.182 of the Texas Tax Code.

Tex.App.-Houston [1 Dist.],2007.

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END OF DOCUMENT

Date of Printing: Apr 07, 2010

KEYCITE

H Harris County Appraisal Dist. v. Primrose Houston 7 Housing, L.P., 238 S.W.3d 782 (Tex.App.-Hous. (1 Dist.), Aug 16, 2007) (NO. 01-06-00691-CV)

History**Direct History**

- ▶ 1 PRIMROSE HOUSTON 7 HOUSING, L.P., Plaintiff, v. HARRIS COUNTY APPRAISAL DISTRICT and Harris County Appraisal Review Board, Defendant., 2006 WL 4667301 (Trial Order) (Tex.Dist. Jul 12, 2006) (NO. 2005-03139)
Judgment Reversed by
- ⇒ 2 Harris County Appraisal Dist. v. Primrose Houston 7 Housing, L.P., 238 S.W.3d 782 (Tex.App.-Hous. (1 Dist.) Aug 16, 2007) (NO. 01-06-00691-CV), rehearing overruled (Sep 25, 2007), review denied (Feb 12, 2010)

Court Documents**Appellate Court Documents (U.S.A.)****Tex.App.-Hous. (1 Dist.) Appellate Briefs**

- 3 HARRIS COUNTY APPRAISAL DISTRICT and Harris County Appraisal Review Board, Appellants, v. PRIMROSE HOUSTON 7 HOUSING, L.P., Appellee., 2006 WL 3367575 (Appellate Brief) (Tex.App.-Hous. (1 Dist.) Oct. 30, 2006) **Brief of Appellants** (NO. 01-06-00691-CV)
- 4 HARRIS COUNTY APPRAISAL DISTRICT and the Harris County Appraisal Review Board of Harris County Appraisal District, Appellants, v. PRIMROSE HOUSTON 7 HOUSING, LP., Appellee., 2006 WL 4024906 (Appellate Brief) (Tex.App.-Hous. (1 Dist.) Dec. 22, 2006) **Brief of Appellee** (NO. 01-06-00691-CV)
- 5 HARRIS COUNTY APPRAISAL DISTRICT and Harris County Appraisal Review Board, Appellants, v. PRIMROSE HOUSTON 7 HOUSING, L.P., Appellee., 2007 WL 929489 (Appellate Brief) (Tex.App.-Hous. (1 Dist.) Feb. 1, 2007) **Appellants' Reply Brief** (NO. 01-06-00691-CV)

Dockets (U.S.A.)**Tex.App.-Hous. (1 Dist.)**

- 6 HARRIS COUNTY APPRAISAL DISTRICT AND HARRIS COUNTY APPRAISAL REVIEW BOARD v. PRIMROSE HOUSTON 7 HOUSING, L.P., NO. 01-06-00691-CV (Docket) (Tex.App.-Hous. (1 Dist.) Jul. 25, 2006)

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V.T.C.A., Tax Code § 11.182

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C

Effective: June 16, 2007

Vernon's Texas Statutes and Codes Annotated Currentness

Tax Code (Refs & Annos)

Title 1. Property Tax Code

Subtitle C. Taxable Property and Exemptions

Chapter 11. Taxable Property and Exemptions (Refs & Annos)

Subchapter B. Exemptions (Refs & Annos)

→ **§ 11.182. Community Housing Development Organizations Improving Property for Low-Income and Moderate-Income Housing: Property Previously Exempt**

(a) In this section:

(1) "Cash flow" means the amount of money generated by a housing project for a fiscal year less the disbursements for that fiscal year for operation and maintenance of the project, including:

(A) standard property maintenance;

(B) debt service;

(C) employee compensation;

(D) fees required by government agencies;

(E) expenses incurred in satisfaction of requirements of lenders, including reserve requirements;

(F) insurance; and

(G) other justifiable expenses related to the operation and maintenance of the project.

(2) "Community housing development organization" has the meaning assigned by 42 U.S.C. Section 12704.

(b) An organization is entitled to an exemption from taxation of improved or unimproved real property it owns if the organization:

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(1) is organized as a community housing development organization;

(2) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(3) owns the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and

(4) engages exclusively in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

(c) Property owned by the organization may not be exempted under Subsection (b) after the third anniversary of the date the organization acquires the property unless the organization is offering to rent or is renting the property without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements.

(d) A multifamily rental property consisting of 36 or more dwelling units owned by the organization that is exempted under Subsection (b) may not be exempted in a subsequent tax year unless in the preceding tax year the organization spent, for eligible persons in the county in which the property is located, an amount equal to at least 40 percent of the total amount of taxes that would have been imposed on the property in that year without the exemption on social, educational, or economic development services, capital improvement projects, or rent reduction. This subsection does not apply to property acquired by the organization using tax-exempt bond financing after January 1, 1997, and before December 31, 2001.

(e) In addition to meeting the applicable requirements of Subsections (b) and (c), to receive an exemption under Subsection (b) for improved real property that includes a housing project constructed after December 31, 2001, and financed with qualified 501(c)(3) bonds issued under Section 145 of the Internal Revenue Code of 1986, tax-exempt private activity bonds subject to volume cap, or low-income housing tax credits, the organization must:

(1) control 100 percent of the interest in the general partner if the project is owned by a limited partnership;

(2) comply with all rules of and laws administered by the Texas Department of Housing and Community Affairs applicable to community housing development organizations; and

(3) submit annually to the Texas Department of Housing and Community Affairs and to the governing body of each taxing unit for which the project receives an exemption for the housing project evidence demonstrating that the organization spent an amount equal to at least 90 percent of the project's cash flow in the preceding fiscal year as determined by the audit required by Subsection (g), for eligible persons in the county in which the property is located, on social, educational, or economic development services, capital improvement

projects, or rent reduction.

(f) An organization entitled to an exemption under Subsection (b) is also entitled to an exemption from taxation of any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, sale, or rental of property. To qualify for an exemption under this subsection, property must be used exclusively by the organization, except that another person may use the property for activities incidental to the organization's use that benefit the beneficiaries of the organization.

(g) To receive an exemption under Subsection (b) or (f), an organization must annually have an audit prepared by an independent auditor. The audit must include a detailed report on the organization's sources and uses of funds. A copy of the audit must be delivered to the Texas Department of Housing and Community Affairs and to the chief appraiser of the appraisal district in which the property subject to the exemption is located.

(h) Subsections (d) and (e)(3) do not apply to property owned by an organization if:

(1) the entity that provided the financing for the acquisition or construction of the property:

(A) requires the organization to make payments in lieu of taxes to the school district in which the property is located; or

(B) restricts the amount of rent the organization may charge for dwelling units on the property; or

(2) the organization has entered into an agreement with each taxing unit for which the property receives an exemption to spend in each tax year for the purposes provided by Subsection (d) or (e)(3) an amount equal to the total amount of taxes imposed on the property in the tax year preceding the year in which the organization acquired the property.

(i) If any property owned by an organization receiving an exemption under this section has been acquired or sold during the preceding year, such organization shall file by March 31 of the following year with the chief appraiser in the county in which the relevant property is located, on a form promulgated by the comptroller of public accounts, a list of such properties acquired or sold during the preceding year.

(j) An organization may not receive an exemption under Subsection (b) or (f) for property for a tax year unless the organization received an exemption under that subsection for the property for any part of the 2003 tax year.

(k) Notwithstanding Subsection (j) of this section and Sections 11.43(a) and (c), an exemption under Subsection (b) or (f) does not terminate because of a change in the ownership of the property if the property is sold at a foreclosure sale and, not later than the 30th day after the date of the sale, the owner of the property submits to the chief appraiser evidence that the property is owned by an organization that meets the requirements of Subsections (b)(1), (2), and (4). If the owner of the property submits the evidence required by this subsection, the

exemption continues to apply to the property for the remainder of the current tax year and for subsequent tax years until the owner ceases to qualify the property for the exemption. This subsection does not prohibit the chief appraiser from requiring the owner to file a new application to confirm the owner's current qualification for the exemption as provided by Section 11.43(c).

CREDIT(S)

Added by Acts 1997, 75th Leg., ch. 715, § 2, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 842, §§ 2, 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1191, § 1, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 1156, §§ 1, 2, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1275, § 2(120), eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 505, § 1, eff. June 16, 2007.

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V.T.C.A., Tax Code § 11.1825

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Effective: January 1, 2008

Vernon's Texas Statutes and Codes Annotated Currentness

Tax Code (Refs & Annos)

Title 1. Property Tax Code

Subtitle C. Taxable Property and Exemptions

▣ Chapter 11. Taxable Property and Exemptions (Refs & Annos)

▣ Subchapter B. Exemptions (Refs & Annos)

→ § 11.1825. **Organizations Constructing or Rehabilitating Low-Income Housing: Property Not Previously Exempt**

(a) An organization is entitled to an exemption from taxation of real property owned by the organization that the organization constructs or rehabilitates and uses to provide housing to individuals or families meeting the income eligibility requirements of this section.

(b) To receive an exemption under this section, an organization must meet the following requirements:

(1) for at least the preceding three years, the organization:

(A) has been exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) has met the requirements of a charitable organization provided by Sections 11.18(e) and (f); and

(C) has had as one of its purposes providing low-income housing;

(2) a majority of the members of the board of directors of the organization have their principal place of residence in this state;

(3) at least two of the positions on the board of directors of the organization must be reserved for and held by:

(A) an individual of low income as defined by Section 2306.004, Government Code, whose principal place of residence is located in this state;

(B) an individual whose residence is located in an economically disadvantaged census tract as defined by Section 783.009(b), Government Code, in this state; or

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(C) a representative appointed by a neighborhood organization in this state that represents low-income households; and

(4) the organization must have a formal policy containing procedures for giving notice to and receiving advice from low-income households residing in the county in which a housing project is located regarding the design, siting, development, and management of affordable housing projects.

(c) Notwithstanding Subsection (b), an owner of real property that is not an organization described by that subsection is entitled to an exemption from taxation of property under this section if the property otherwise qualifies for the exemption and the owner is:

(1) a limited partnership of which an organization that meets the requirements of Subsection (b) controls 100 percent of the general partner interest; or

(2) an entity the parent of which is an organization that meets the requirements of Subsection (b).

(d) If the owner of the property is an entity described by Subsection (c), the entity must:

(1) be organized under the laws of this state; and

(2) have its principal place of business in this state.

(e) A reference in this section to an organization includes an entity described by Subsection (c).

(f) For property to be exempt under this section, the organization must own the property for the purpose of constructing or rehabilitating a housing project on the property and:

(1) renting the housing to individuals or families whose median income is not more than 60 percent of the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(2) selling single-family dwellings to individuals or families whose median income is not more than the greater of:

(A) the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development; or

(B) the statewide area median family income, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(g) Property may not receive an exemption under this section unless at least 50 percent of the total square footage of the dwelling units in the housing project is reserved for individuals or families described by Subsection (f).

(h) The annual total of the monthly rent charged or to be charged for each dwelling unit in the project reserved for an individual or family described by Subsection (f) may not exceed 30 percent of the area median family income for the household's place of residence, as adjusted for family size and as established by the United States Department of Housing and Urban Development.

(i) Property owned for the purpose of constructing a housing project on the property is exempt under this section only if:

(1) the property is used to provide housing to individuals or families described by Subsection (f); or

(2) the housing project is under active construction or other physical preparation.

(j) For purposes of Subsection (i)(2), a housing project is under physical preparation if the organization has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the project or has conducted an environmental or land use study relating to the construction of the project.

(k) An organization may not receive an exemption for a housing project constructed by the organization if the construction of the project was completed before January 1, 2004.

(l) If the property is owned for the purpose of rehabilitating a housing project on the property:

(1) the original construction of the housing project must have been completed at least 10 years before the date the organization began actual rehabilitation of the project;

(2) the person from whom the organization acquired the project must have owned the project for at least five years, if the organization is not the original owner of the project;

(3) the organization must provide to the chief appraiser and, if the project was financed with bonds, the issuer

of the bonds a written statement prepared by a certified public accountant stating that the organization has spent on rehabilitation costs at least the greater of \$5,000 or the amount required by the financial lender for each dwelling unit in the project; and

(4) the organization must maintain a reserve fund for replacements:

(A) in the amount required by the financial lender; or

(B) if the financial lender does not require a reserve fund for replacements, in an amount equal to \$300 per unit per year.

(m) Beginning with the 2005 tax year, the amount of the reserve required by Subsection (1)(4)(B) is increased by an annual cost-of-living adjustment determined in the manner provided by Section 1(f)(3), Internal Revenue Code of 1986, as amended, substituting "calendar year 2004" for the calendar year specified in Section 1(f)(3)(B) of that code.

(n) A reserve must be established for each dwelling unit in the property, regardless of whether the unit is reserved for an individual or family described by Subsection (f). The reserve must be maintained on a continuing basis, with withdrawals permitted:

(1) only as authorized by the financial lender; or

(2) if the financial lender does not require a reserve fund for replacements, only to pay the cost of capital improvements needed for the property to maintain habitability under the Minimum Property Standards of the United States Department of Housing and Urban Development or the code of a municipality or county applicable to the property, whichever is more restrictive.

(o) For purposes of Subsection (n)(2), "capital improvement" means a property improvement that has a depreciable life of at least five years under generally accepted accounting principles, excluding typical "make ready" expenses such as expenses for plasterboard repair, interior painting, or floor coverings.

(p) If the organization acquires the property for the purpose of constructing or rehabilitating a housing project on the property, the organization must be renting or offering to rent the applicable square footage of dwelling units in the property to individuals or families described by Subsection (f) not later than the third anniversary of the date the organization acquires the property.

(q) If property qualifies for an exemption under this section, the chief appraiser shall use the income method of appraisal as provided by Section 23.012 to determine the appraised value of the property. In appraising the property, the chief appraiser shall:

- (1) consider the restrictions provided by this section on the income of the individuals or families to whom the dwelling units of the housing project may be rented and the amount of rent that may be charged for purposes of computing the actual rental income from the property or projecting future rental income; and
- (2) use the same capitalization rate that the chief appraiser uses to appraise other rent-restricted properties.
- (r) Not later than January 31 of each year, the appraisal district shall give public notice in the manner determined by the district, including posting on the district's website if applicable, of the capitalization rate to be used in that year to appraise property receiving an exemption under this section.
- (s) Unless otherwise provided by the governing body of a taxing unit any part of which is located in a county with a population of at least 1.4 million under Subsection (x), for property described by Subsection (f)(1), the amount of the exemption under this section from taxation is 50 percent of the appraised value of the property.
- (s-1) For property described by Subsection (f)(2), the amount of the exemption under this section from taxation is 100 percent of the appraised value of the property.
- (t) Notwithstanding Section 11.43(c), an exemption under this section does not terminate because of a change in ownership of the property if:
- (1) the property is foreclosed on for any reason and, not later than the 30th day after the date of the foreclosure sale, the owner of the property submits to the chief appraiser evidence that the property is owned by:
- (A) an organization that meets the requirements of Subsection (b); or
- (B) an entity that meets the requirements of Subsections (c) and (d); or
- (2) in the case of property owned by an entity described by Subsections (c) and (d), the organization meeting the requirements of Subsection (b) that controls the general partner interest of or is the parent of the entity as described by Subsection (c) ceases to serve in that capacity and, not later than the 30th day after the date the cessation occurs, the owner of the property submits evidence to the chief appraiser that the organization has been succeeded in that capacity by another organization that meets the requirements of Subsection (b).
- (u) The chief appraiser may extend the deadline provided by Subsection (t)(1) or (2), as applicable, for good cause shown.
- (v) Notwithstanding any other provision of this section, an organization may not receive an exemption from taxation of property described by Subsection (f)(1) by a taxing unit any part of which is located in a county with a population of at least 1.4 million unless the exemption is approved by the governing body of the taxing unit in

the manner provided by law for official action.

(w) To receive an exemption under this section from taxation by a taxing unit for which the approval of the governing body of the taxing unit is required by Subsection (v), an organization must submit to the governing body of the taxing unit a written request for approval of the exemption from taxation of the property described in the request.

(x) Not later than the 60th day after the date the governing body of the taxing unit receives a written request under Subsection (w) for an exemption under this section, the governing body shall:

(1) approve the exemption in the amount provided by Subsection (s);

(2) approve the exemption in a reasonable amount other than the amount provided by Subsection (s); or

(3) deny the exemption if the governing body determines that:

(A) the taxing unit cannot afford the loss of ad valorem tax revenue that would result from approving the exemption; or

(B) additional housing for individuals or families meeting the income eligibility requirements of this section is not needed in the territory of the taxing unit.

(y) Not later than the fifth day after the date the governing body of the taxing unit takes action under Subsection (x), the taxing unit shall issue a letter to the organization stating the governing body's action and, if the governing body denied the exemption, stating whether the denial was based on a determination under Subsection (x)(3)(A) or (B) and the basis for the determination. The taxing unit shall send a copy of the letter by regular mail to the chief appraiser of each appraisal district that appraises the property for the taxing unit. The governing body may charge the organization a fee not to exceed the administrative costs of processing the request of the organization, approving or denying the exemption, and issuing the letter required by this subsection. If the chief appraiser determines that the property qualifies for an exemption under this section and the governing body of the taxing unit approves the exemption, the chief appraiser shall grant the exemption in the amount approved by the governing body.

CREDIT(S)

Added by Acts 2003, 78th Leg., ch. 1156, § 3, eff. Jan. 1, 2004. Amended by Acts 2007, 80th Leg., ch. 1264, § 1, eff. Jan. 1, 2008.

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V.T.C.A., Tax Code § 23.215

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Effective: January 1, 2004

Vernon's Texas Statutes and Codes Annotated Currentness

Tax Code (Refs & Annos)

Title 1. Property Tax Code

Subtitle D. Appraisal and Assessment (Refs & Annos)

▣ Chapter 23. Appraisal Methods and Procedures (Refs & Annos)

▣ Subchapter B. Special Appraisal Provisions

→ § 23.215. Appraisal of Certain Nonexempt Property Used for Low-Income or Moderate-Income Housing

(a) This section applies only to real property owned by an organization:

(1) that on the effective date of this section was rented to a low-income or moderate-income individual or family satisfying the organization's income eligibility requirements and that continues to be used for that purpose;

(2) that was financed under the low income housing tax credit program under Subchapter DD, Chapter 2306, Government Code;

(3) that does not receive an exemption under Section 11.182 or 11.1825; and

(4) the owner of which has not entered into an agreement with any taxing unit to make payments to the taxing unit instead of taxes on the property.

(b) The chief appraiser shall appraise the property in the manner provided by Section 11.1825(q).

CREDIT(S)

Acts 2003, 78th Leg., ch. 1156, § 5, eff. Jan. 1, 2004.

CROSS REFERENCES

Appraisals generally, see V.T.C.A., Tax Code § 23.01.

Exemption of community housing development organizations, see V.T.C.A., Tax Code § 11.182.

Exemption of organizations constructing or rehabilitating low-income housing, see V.T.C.A., Tax Code § 11.1825.

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V.T.C.A., Tax Code § 23.215

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2010 Electronic Update

Encyclopedias

TX Jur. 3d Taxation § 436, Real Property--Property Use to Provide Affordable Housing.

V. T. C. A., Tax Code § 23.215, TX TAX § 23.215

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Texas Assoc. of
Community
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Associations -

No written
testimony

Foundation Communities-

No written
testimony

Texas
Comptroller of
Public
Accounts



Presentation to the

Senate Finance Committee

Identify and evaluate potential improvements to the property tax system. Consider and make recommendations relating to the following: Methods and procedures for determining a real property interest in oil or gas in place, as contained in Texas Tax Code Sec. 23.175, including how market-based data and market-based methodology could possibly be used to ensure fair, reliable, and equitable price forecasts of oil and gas interests. Analyze the need for the creation of an Oil and Gas Valuation Advisory Committee to assist in forecasting current calendar year statewide average prices for oil and gas.

April 14, 2010

Presented by:

John Heleman

Revenue Estimating Division

Texas Comptroller of Public Accounts

Tax Code 23.175 -- Estimation of Oil and Natural Gas Prices for Purposes of Mineral Property Appraisal

NATURAL GAS

Actual Prices (Taxable)	Calendar Year	Current System (Taxable)	Vs. Actual Taxable Price	Old System (Taxable)	Vs. Actual Taxable Price	Taxable Prices: Old System vs. New System
\$ 3.71	2000					
\$ 3.80	2001	\$ 3.86	\$ 0.06	\$ 3.71	\$ (0.09)	\$ (0.15)
\$ 2.97	2002	\$ 2.65	\$ (0.32)	\$ 3.80	\$ 0.83	\$ 1.15
\$ 4.87	2003	\$ 2.85	\$ (2.02)	\$ 2.97	\$ (1.90)	\$ 0.12
\$ 5.52	2004	\$ 3.62	\$ (1.90)	\$ 4.87	\$ (0.65)	\$ 1.25
\$ 7.24	2005	\$ 5.33	\$ (1.91)	\$ 5.52	\$ (1.72)	\$ 0.19
\$ 6.27	2006	\$ 7.92	\$ 1.65	\$ 7.24	\$ 0.97	\$ (0.68)
\$ 5.89	2007	\$ 6.51	\$ 0.62	\$ 6.27	\$ 0.38	\$ (0.24)
\$ 8.03	2008	\$ 6.09	\$ (1.94)	\$ 5.89	\$ (2.14)	\$ (0.20)
\$ 3.37	2009	\$ 4.85	\$ 1.48	\$ 8.03	\$ 4.66	\$ 3.18
	2010	\$ 4.23		\$ 3.37		\$ (0.86)

OIL

Actual Prices (Taxable)	Calendar Year	Current System (Taxable)	Vs. Actual Taxable Price	Old System (Taxable)	Vs. Actual Taxable Price	Taxable Prices: Old System vs. New System
\$ 28.72	2000					
\$ 23.74	2001	\$ 26.63	\$ 2.89	\$ 28.72	\$ 4.98	\$ 2.09
\$ 24.36	2002	\$ 23.52	\$ (0.84)	\$ 23.74	\$ (0.62)	\$ 0.22
\$ 29.35	2003	\$ 20.94	\$ (8.41)	\$ 24.36	\$ (4.99)	\$ 3.42
\$ 38.95	2004	\$ 24.10	\$ (14.85)	\$ 29.35	\$ (9.60)	\$ 5.25
\$ 52.78	2005	\$ 38.90	\$ (13.88)	\$ 38.95	\$ (13.83)	\$ 0.05
\$ 61.52	2006	\$ 51.88	\$ (9.64)	\$ 52.78	\$ (8.74)	\$ 0.90
\$ 68.40	2007	\$ 57.43	\$ (10.97)	\$ 61.52	\$ (6.88)	\$ 4.09
\$ 96.27	2008	\$ 67.83	\$ (28.44)	\$ 68.40	\$ (27.87)	\$ 0.57
\$ 57.49	2009	\$ 35.99	\$ (21.50)	\$ 96.27	\$ 38.78	\$ 60.28
	2010	\$ 64.55		\$ 57.49		\$ (7.06)

NOTES:

1. With respect to prices, the term "taxable" refers that portion which is subject to either the crude oil or natural gas production tax.
2. a calendar year covers the same time period as a tax year (for property tax purposes).
3. The Current System (that is, how Tax Code 23.175 currently operates) was instituted beginning with calendar/tax year 2008. This analysis also shows what prices would have been if this method had been used in the years 2000 through 2007.
4. Similarly, the Old System refers to how Tax Code 23.175 operated prior to the legislative change (that is, calendar/tax year 2007 and before). This analysis also shows what prices would have been if this method had been used in the years 2008 and after.
5. Prices used for the appraisal of mineral properties, such as those above, are only one factor customarily used in the appraisal of mineral properties. Other factors (not projected by the Comptroller's Office) can include production and cost of operating a property

Questions?



John Heleman
Revenue Estimating Division
Texas Comptroller of Public Accounts

john.heleman@cpa.state.tx.us

(512) 475-0042

County Judges
and
Commissioners
Association /
Texas
Association of
Counties

Senate Committee on Finance

Interim Hearing

April 14, 2010

Interim Charge No. 4. Identify and evaluate potential improvements to the property tax system. Consider and make recommendations relating to the following:

Methods and procedures for determining a real property interest in oil or gas in place, as contained in Texas Tax Code Sec 23.175, including how market-based data and market-based methodology could possibly be used to ensure fair, reliable, and equitable price forecasts of oil and gas interests. Analyze the need for the creation of an Oil and Gas Valuation Advisory Committee to assist in forecasting current calendar year statewide average prices for oil and gas.

Information given by:

Texas Association of Counties

and

James P. Allison

General Counsel

County Judges and Commissioners Association of Texas

Oil and Gas Undervaluation Issue

- **What is the Problem:** A 2007 Amendment to Section 23.175, Tax Code, added a forward looking component (the CPA's estimate of the price of oil and gas for the upcoming year) to the valuation formula for oil and gas properties. In addition, the Comptroller determined HB 2982 (80R) required the use of the state severance tax revenue estimate methodology. The estimates for 2008 and 2009 severely underestimated the actual price of crude oil for the coming year. This resulted in a shift of the tax burden to other property owners and a loss of revenue to the state and local governments.

- **What to Change:** Inaccurate Methodology. Change the consistently low forecasts for oil and gas to reflect market value. The current methodology shifts the property tax burden to residential and commercial property owners and reduces tax revenues to counties, schools, and other local governments. The methodology required in Section 23.175 of the Tax Code section should be changed to reflect market value.

- **How to Fix the Problem:**
 - a) Return to the previous law from 1993 (73R) with no Forecasted Market Condition Factor

 - OR

 - b) At the very least, remove the "revenue estimating" methodology and insert "market based" language to develop an accurate forecast.

Background

Since 1993, the Tax Code (Sec 23.175), has required the valuation of oil and gas properties to include the average price of oil and gas for the past year, prepared by the Comptroller of Public Accounts (CPA), causing appraisal values to lag behind recent market results with severe changes in annual appraisals.

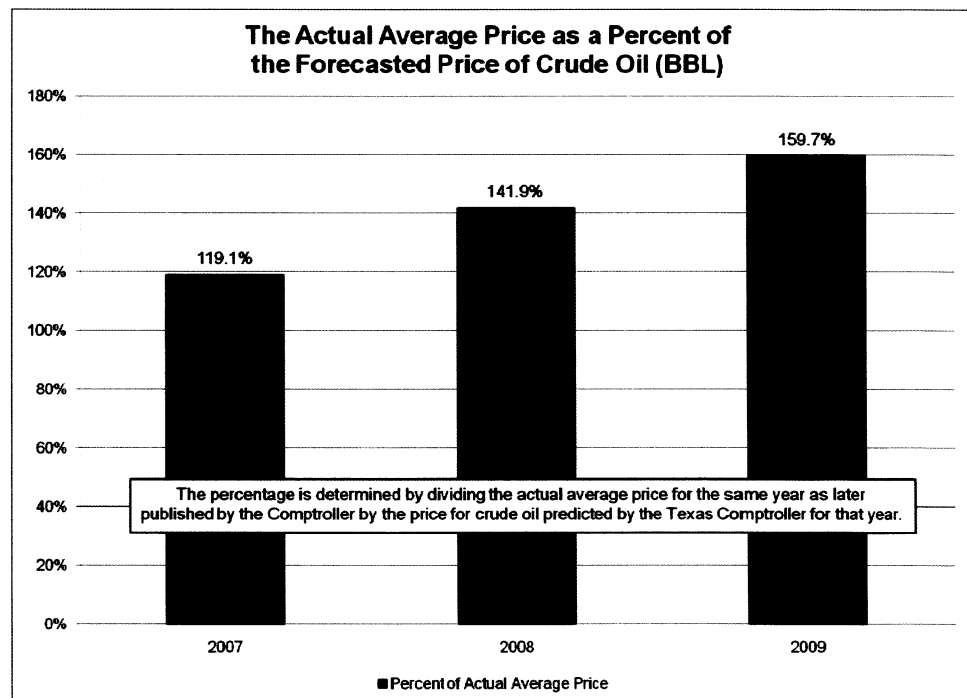
In 2007, HB 2982, (80R), altered section 23.175 of the Tax Code to add a forward- looking component, hopefully to increase the uniformity of appraisals statewide. The change requires appraisers to use forecasted and average historical prices published by the State Comptroller of Public Accounts (Comptroller) for determining how future product values will change when appraising oil and gas properties – whether prices are going up or down. The mandate applies when using an appraisal method based on future oil and gas income derived from the production of those minerals.

The bill's stated purpose was to level the wide variations caused by the single use of the past year's prices. However, HB 2982 required the use of "revenue estimating" methodology. The Comptroller determined that this language required the use of the state severance tax forecast prices.

Problem --Inaccurate Methodology

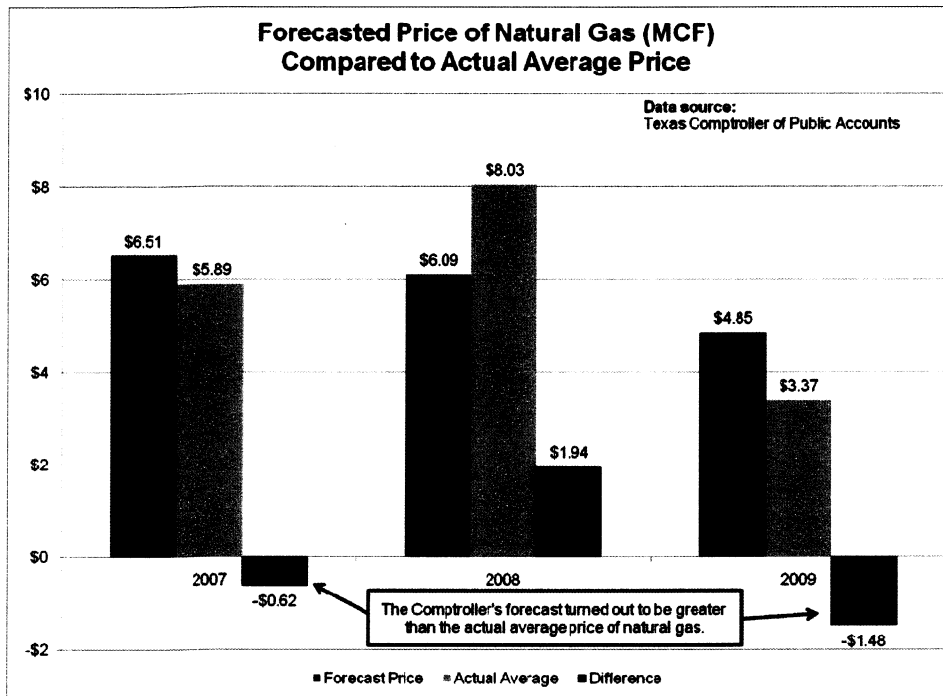
As can be seen in the accompanying charts, the Comptroller's price forecasts have differed significantly from actual prices. This has raised concerns among county officials and others as to the accuracy of oil and gas appraisals.

The first chart compares the average annual actual price with the forecasted price of crude oil published by the Comptroller. This is a direct comparison since both values represent the taxable value of crude oil as opposed to the market value.¹ There is a significant disparity between the forecasts and actual prices and, on a percentage basis, that disparity has been growing.



¹ Taxable value is equal to market value less certain costs. Generally, for crude oil those costs are equal to approximately 10 percent of market value.

Natural gas price forecasts from the Comptroller have been significantly closer to actual prices. The next chart compares the forecasted prices with the average annual prices later published by the Comptroller for the same year. Based on this comparison, it would appear that the Comptroller overestimated the future price of natural gas in both 2007 and 2009.



In each of the three years for which data is available the forecasted natural gas price differed by a significant percentage from the actual average price published by the Comptroller.

There are policy reasons for the Comptroller to be conservative with the severance tax forecasts – to prevent an over-estimate of state severance tax revenue.

However, the significant deviation of recent forecasts from actual prices and continued conservative forecasts have unfairly shifted the property tax burden and diminished revenues from this source. This methodology is inappropriate and improper to determine actual value for appraisal purposes.

Conclusion

Forecasted prices that were consistently and significantly below the actual average price have resulted in artificially low appraisals on oil reserves. The low appraisals, in turn, resulted in reduced property taxes for those property owners, shifting the property tax burden to other property owners or reducing revenues. By shifting taxes to other property owners, the low forecasts reduce the public's confidence that the property tax is applied fairly to all property owners. To the extent that these under-appraisals are not compensated by higher tax rates on other property, tax revenues to the schools, counties and other local governments are decreased.

Any methodology or procedure that decreases the fairness of the local property tax is a significant concern to state and county officials. County governments must rely on the property tax to fund the services their constituents demand and the law requires. State and school officials rely on the property tax for major funding of our public education system. A revision of the oil and gas appraisal methodology mandated in Section 23.175, Tax Code is necessary to ensure an accurate and fair property tax system.

ACCURACY OF OIL AND GAS PRICE FORECASTS

By Tim Brown

Texas Association of Counties

March 2010

Introduction

House Bill 2982, 80th Session, (HB 2982) altered section 23.175 of the Tax Code to require appraisers to use forecasted and average historical prices published by the State Comptroller of Public Accounts (Comptroller) for determining how future product values will change when appraising oil and gas properties whether the prices are going up or down. The mandate applies when using an appraisal method based on future oil and gas income derived from the production of those minerals.

The bill analysis prepared for the House Committee on Ways & Means by Rep. Hardcastle states, "Ensuring accurate and uniform appraisals requires that an objective standard be used for the price forecast. The Comptroller's forecast is that standard under the Tax Code and the intent of HB 2982 is that it be uniformly applied." (Hardcastle 2007)

Prior to HB 2982, appraisers were required to use the actual average price from the prior year as the forecasted price for the current year. HB 2982 changed that requirement so that, starting in 2008, appraisers must multiply the actual average price from the prior year by a "market condition factor" calculated and published by the Comptroller in order to arrive at a forecasted price for the current year. The effect of this additional step is to create a uniform percentage change in per unit price forecasts for crude oil and natural gas reserves.

By mandating this uniformity, the bill mandates that forecasts change in lockstep across the state. For example, if the Comptroller forecasts taxable crude oil prices to go down 10 percent, then the appraisers must assume that the average price received for the products produced from every oil well will also go down 10 percent. This forces all oil and gas appraisers to replicate any inaccuracies that may occur in the Comptroller's forecasts in their own appraisals.

In recent years, the Comptroller's price forecasts have differed significantly from actual prices as seen in Chart 1 which compares the actual average price with the forecasted per unit price of crude oil for the same year.

Chart 1

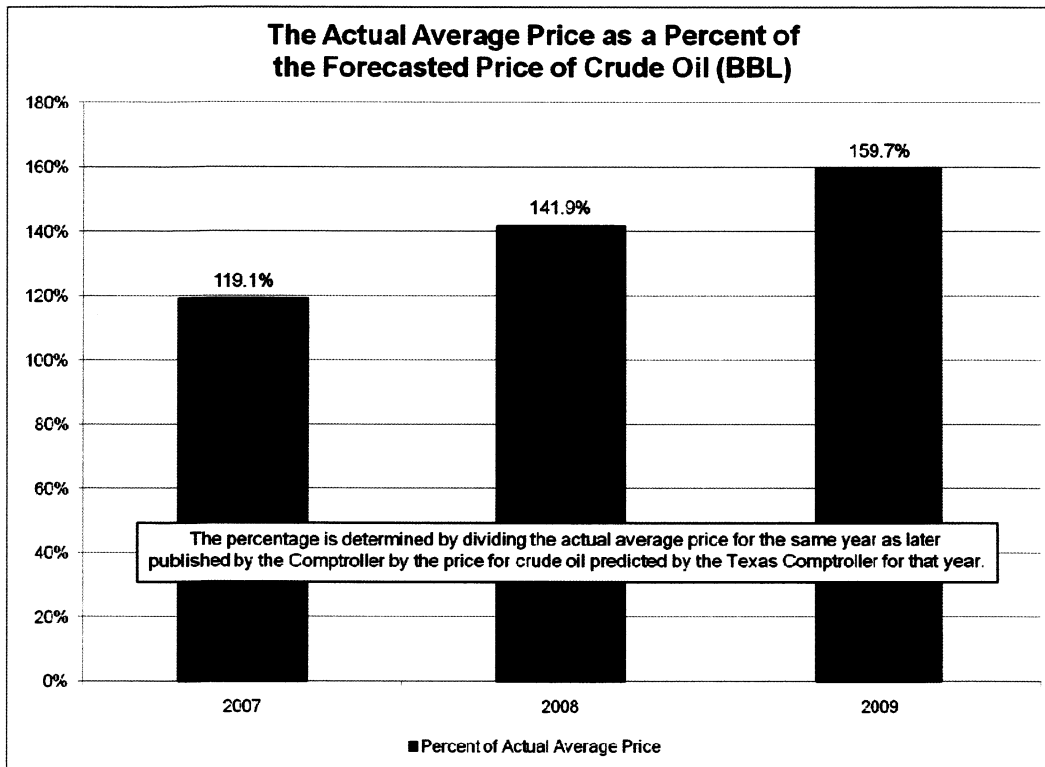


Chart 2 shows the forecasted price divided by the prior year price from 2008 to 2010, a result that is equal to the market condition factor. The data shows that the result of the addition of the market condition factor required by HB 2982 was to lower per unit prices slightly in 2008, decrease them by over 72 percent in 2009, and to increase the prices by 12 percent for 2010.

Previously appraisers were required to use the prior year average as the expected price for the current year, now HB 2982 requires the appraiser to multiply the prior year average by the market condition factor in order to forecast the price for the current year. All other factors being equal, the consequence of reducing the per unit taxable value used in calculating appraised value by 72.6 percent in 2009 was to decrease appraised values by the same percentage compared to what the appraisals would have been under the valuation method required prior to HB 2982. Thus, the market condition factor, as shown for crude oil in the next chart, can be used as a proxy to understand the impact of HB 2982.

Where the market condition factor equals one, there is no impact. When the factor is greater than one, the oil and gas property owners pay additional property taxes. When the factor is less than one, the same owners pay less property taxes while their neighbors make up the difference.

Chart 2

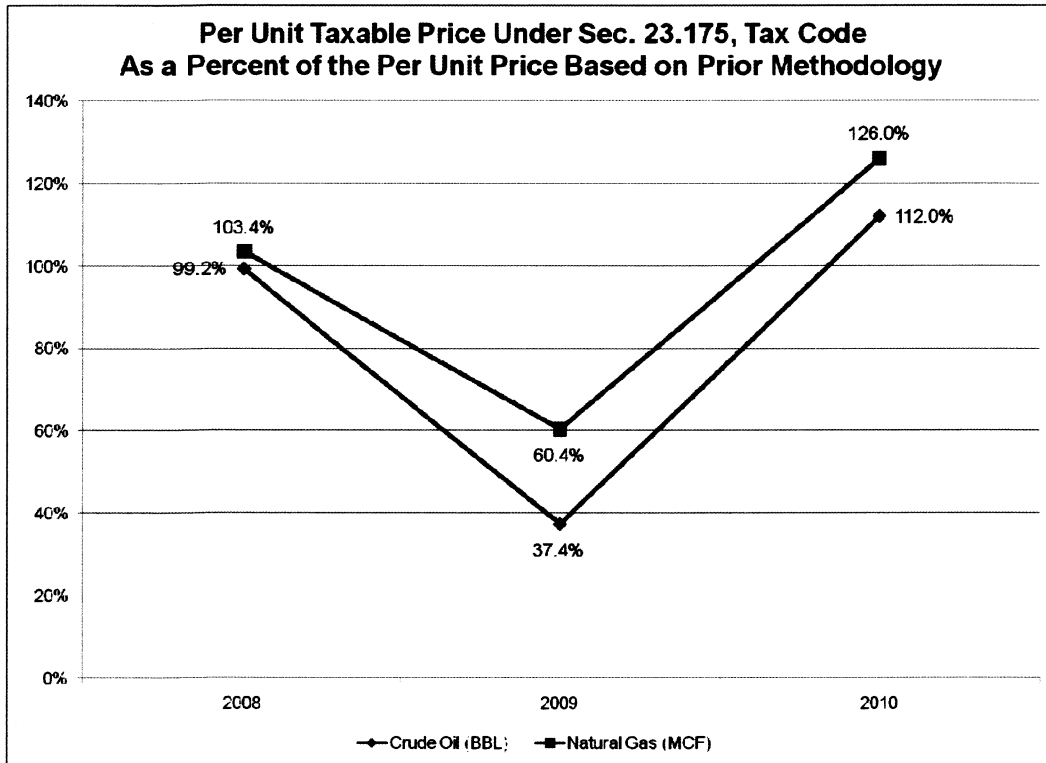


Chart 3

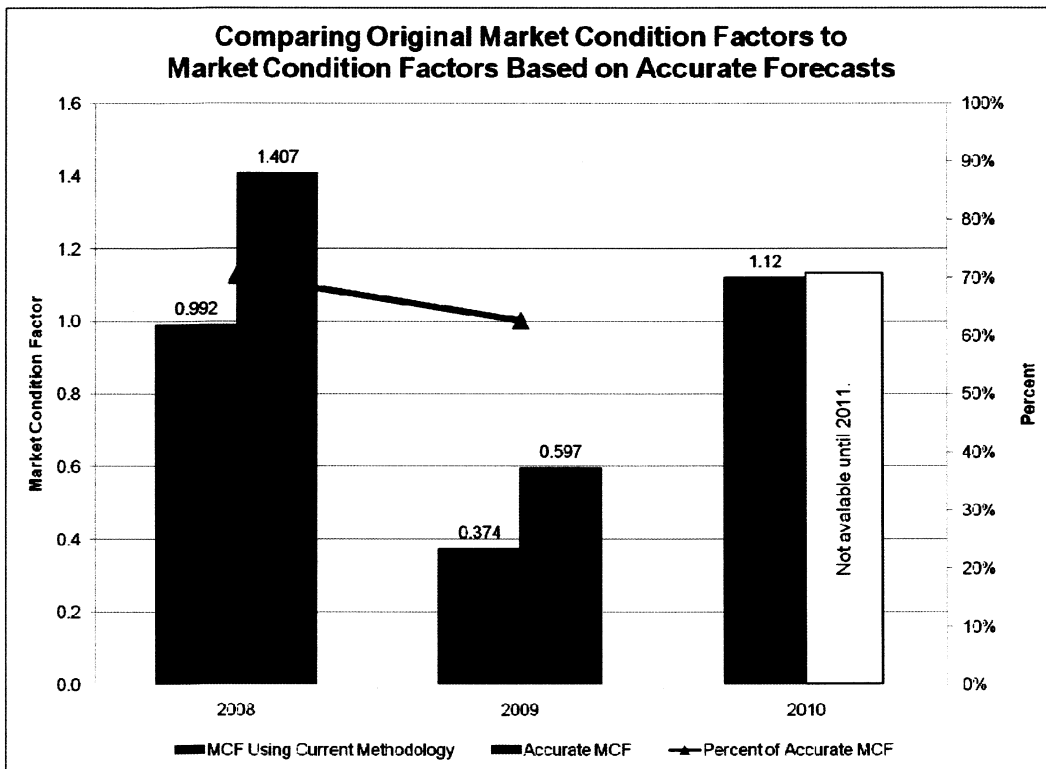


Chart 3 compares the market condition factor as published by the Comptroller (shown in blue) to a hypothetical market condition factor (green). The hypothetical market condition factor is equal to the actual average price of crude oil divided by the previous year's actual average price. The difference is that the hypothetical market condition factor replaces the Comptroller's forecast with the actual average price. The chart therefore shows what the market condition factor would have been had the forecast been completely accurate.

The red line in Chart 3 shows the actual market condition factor as a percentage of the hypothetical market condition factor. Since the actual average price for 2010 is not available at this time, the percentage is shown for 2008 and 2009 only.

The following analysis will look at the price forecasts to determine if the goal of an objective standard for the price forecast that ensures accurate and uniform appraisals has been met.

Analysis – Overview

Unfortunately, the Comptroller does not publish the methodology used in determining the forecasts available to the public – following a recent request for the methodology, the Comptroller replied that no published methodology exists. However, in an informal conversation with agency staff, it was revealed that the forecast is generally derived by averaging a small group of forecasts from outside organizations such as the United States Energy Information Agency, Moody's and Cambridge Energy Research Associates (CERA) – basically any credible organization that has an established track record as long as their forecasts are not proprietary. The actual sources are subject to change but these three have been used in recent years along with other organizations. Specific forecasts from an organization may not be included in the average if it deemed to be significantly higher or lower than forecasts from the other sources.

Selectively adding or dropping source forecasts could easily impact the Comptroller's published forecasts. However, the following analysis will operate under the assumption that the Comptroller's forecasts are objective. The analysis will therefore focus on two remaining areas to determine if the Comptroller's price forecasts have ensured "accurate and uniform appraisals" through an objective standard.

First, how closely have the price forecasts comported with actual resulting prices. It should be noted that the price forecasts are actually for "taxable" prices as opposed to the actual unit price paid for oil and gas products. As a result, the comparison will begin with the spot price published by the United States government and the prior year average price later published by the Comptroller for the same year. A third comparison will be made with spot prices for crude oil only.

Appraisal districts are generally held accountable to be within a five percent margin of error on their appraisals.

“The Comptroller tests the taxable values the appraisal district assigns to each property category by constructing a statistical margin of error around the Comptroller’s estimate of value for selected property categories in each school district. PTAD [Property Tax Assistance Division] considers values valid, or acceptable, when they are within the margin of error. The margin of error is plus or minus 5 percent of the state value at a minimum, but may be higher. PTAD considers values outside this margin of error invalid.” (Texas Comptroller of Public Accounts 2009)

In the following analysis, the Comptroller’s forecasts will be held to a looser standard of twice that margin of error (2 times 5 percent equals 10 percent) for determining whether the forecasts are accurate.

Second, what trends can be noted about the forecasts? Are the forecasts trending closer to either the spot price or the prior year average price or are they diverging? Lack of convergence will be taken as an indication that forecast accuracy is not improving.

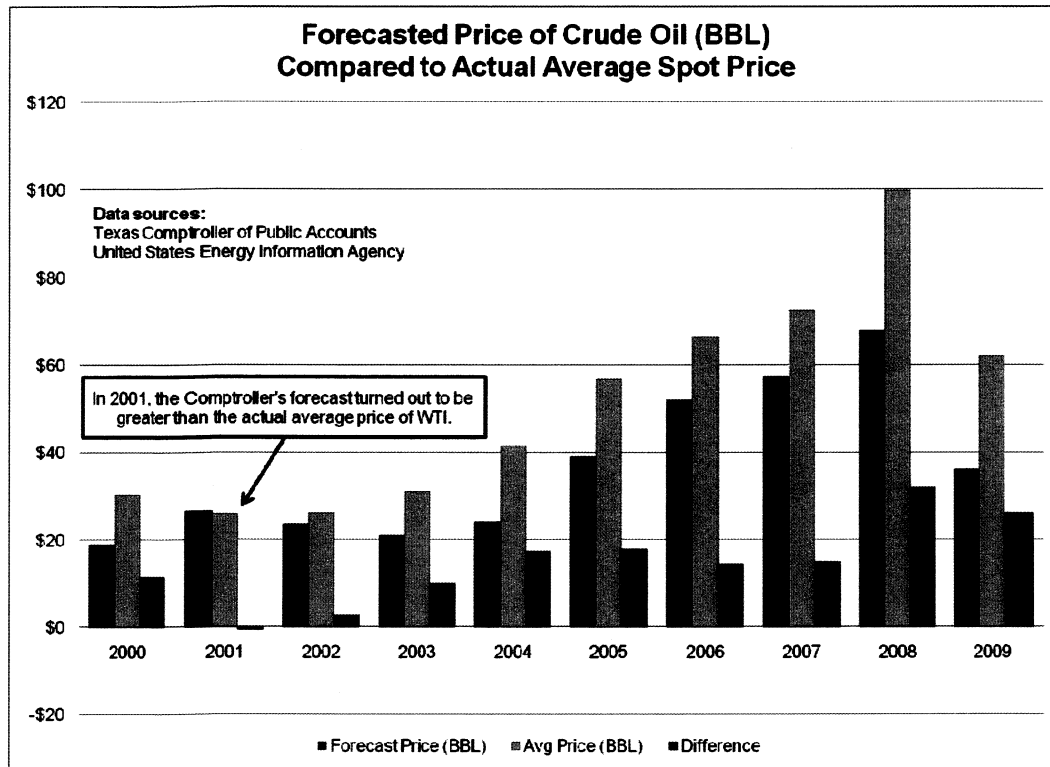
Analysis – Oil

Chart 4 compares the Comptroller’s forecasted per barrel (bbl) price for crude oil with the average annual spot price later published by the United States Energy Information Agency (EIA) for the same year. The average annual spot price is the average daily price for West Texas Intermediate (WTI) in Cushing, OK crude oil future contracts.

The first column on the left of each group shows the unit price forecasted by the Comptroller and the second column shows the average annual price for the same year. There are several key points that can be noted from this chart. First, the Comptroller’s forecast is for the taxable value of oil, not the actual sales price. Therefore, the forecast price is expected to be slightly lower than the average price or approximately equal to the actual price minus certain operating and other costs – which turns out to be the case for every year except 2001. In 2001, the Comptroller’s forecast actually turned out to be too high. As a result, the average price was lower than the forecast.

Second, while there have been some ups and downs, over the entire period the difference between the forecast and the actual price has tended to grow as seen in the third column. The discrepancy is particularly notable in 2001-2003 when the forecasted prices were declining at the same time actual prices were increasing. Although it decreased in some years, overall the general trend has been for the gap between the forecast and the actual price to increase.

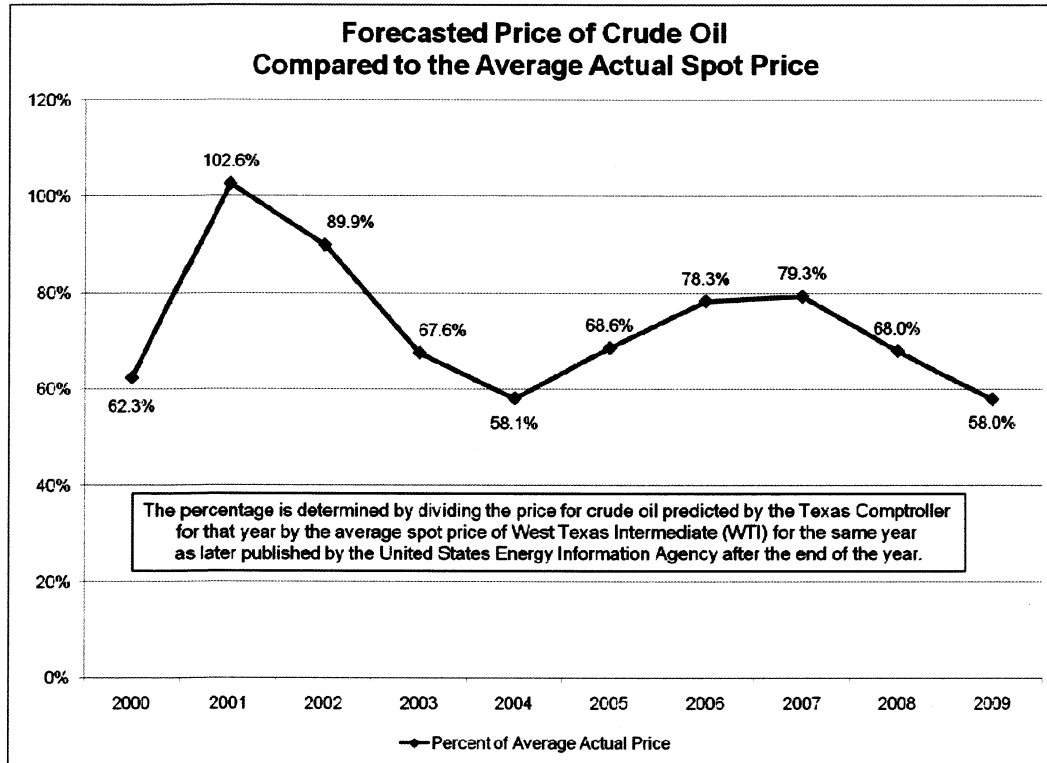
Chart 4



Third, the gap between the forecasts and the actual prices of crude oil grew to an alarming size in 2008-2009. Chart 5 graphs the forecasted price as a percentage of the actual price.

As the chart reveals, the forecasted prices differed from the actual prices by more than 10 percent in nine of the ten years of this study. However, as previously mentioned the forecasted prices are for taxable value, not actual market value – although informal discussion with the Comptroller’s staff indicates that the taxable value is generally about 10 percent less than the market value. As a rough guide then, an accurate forecast would be about 90 percent of the actual price. Generally, the published forecasts have not been close to this more generous benchmark.

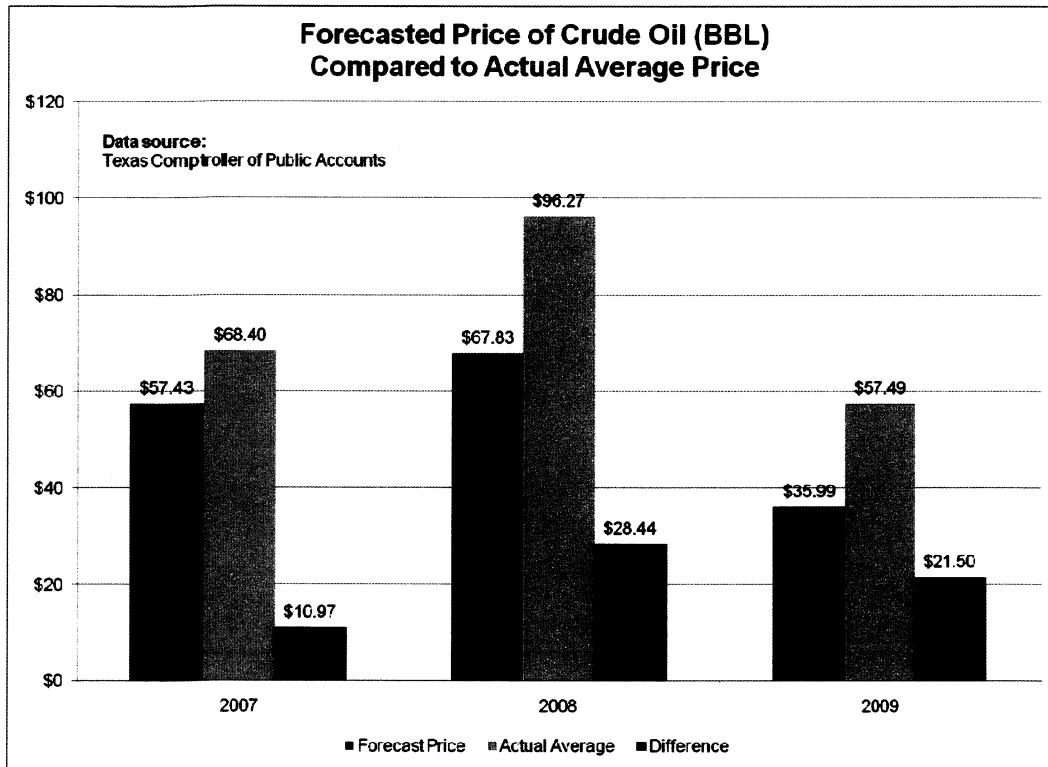
Chart 5



The next chart compares the forecasted price of crude oil to the average annual price as later published by Comptroller. This is a direct comparison since both values represent the taxable value of crude oil. Unfortunately, the data for this comparison is only available starting with 2007, the year HB 2982 was enacted. While there are some discrepancies with the previous charts (e.g., Chart 4 shows a decline in the gap between the forecast and actual price from 2008 to 2009) it does tend to validate the previous conclusions. There is a significant disparity between the forecasts and actual prices and the disparity has grown in recent years on a percentage basis.

As with the previous chart, it is clear that forecasted prices have consistently differed from average taxable prices by more than 10 percent. Given that the difference has exceeded 10 percent in each of the three years for which data is available, the forecasts have obviously not met the criteria established earlier in this study.

Chart 6



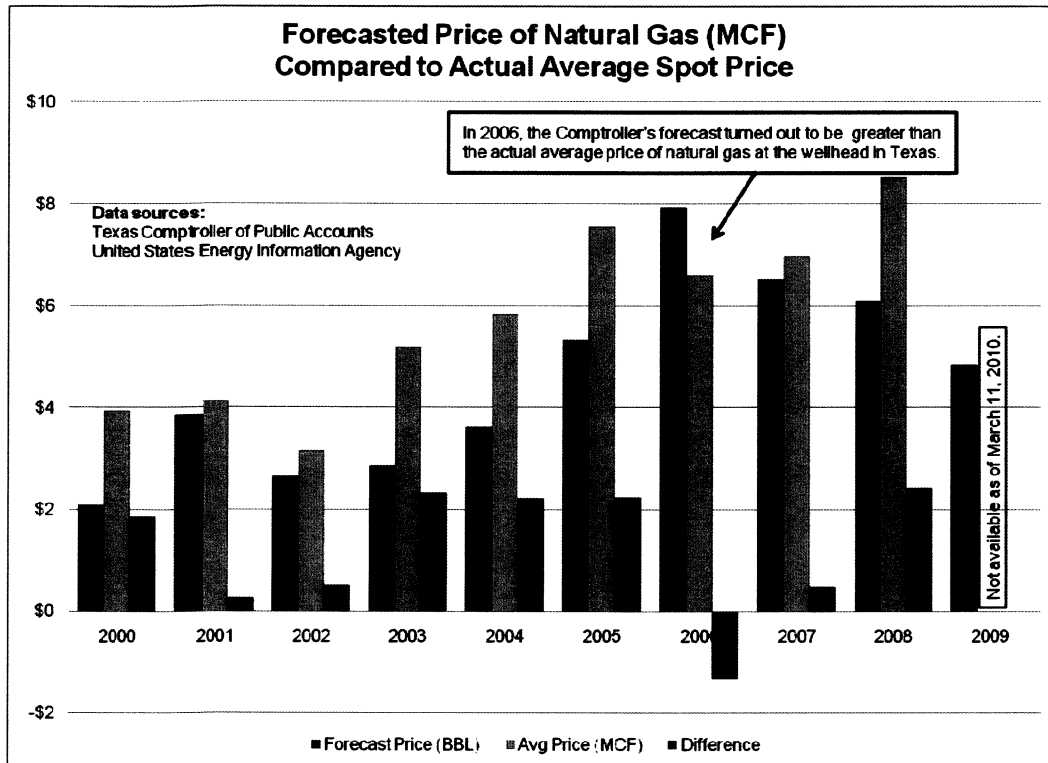
There are reasons for the Comptroller to be conservative in forecasting future prices of crude oil resulting in forecasts consistently less than 90 percent of the average actual price. It is clear, however, that recent forecasts have differed significantly from actual prices. Furthermore, it would appear from the trends noted in previous charts that no effective effort has been made by the Comptroller to improve the accuracy of crude oil price forecasts. Nor has the data shown in Chart 6 contradicted those trends. Thus, the crude oil forecasts also fail the second test, by failing to converge with the actual average price of crude oil as determined by either the EIA or the Comptroller.

This is not surprising given that the Comptroller relies entirely on outside experts to provide those forecasts and likely has little influence on them. In addition, given the incentive to produce conservative estimates for state revenue estimating purposes, it is unlikely the Comptroller finds any reason to complain about these trends.

Analysis – Gas

Natural gas price forecasts from the Comptroller have been significantly closer to actual prices as shown in Chart 7. This chart compares the forecasted price for natural gas with the actual annual average price of natural gas at the wellhead in Texas for the same year as provided by the EIA.

Chart 7



Unlike the similar chart for crude oil, trends are much more difficult to detect in this chart of natural gas prices. Clearly forecasts tend to be below the average wellhead price. Similarly, that discrepancy has grown from 2006, when the forecast was higher than the wellhead price, to 2008. By 2008, the difference between the forecast and the actual wellhead price had increased to levels previously seen in 2003-05.

On the other hand, it is unclear in this chart whether an actual long-term trend exists. In five of the years (2000, 2003-05, and 2008), the difference in prices is around \$2 which is fairly high on a percentage bases. Yet in four years (2001-02 and 2006-07), the difference is no more than \$0.51 (2002) and sometimes significantly smaller. In fact, the forecast was above the actual price by \$1.32 in 2006.

It would seem that there is a bias towards low forecasts based on both Chart 7 and Chart 8 although that bias is not as great as it was for crude oil. Chart 8 shows the percentage relationship between the forecasts and the actual price for natural gas. The chart reveals that the forecasted price was less than 75% of the actual price in five of the ten years while only exceeding the actual price in one year.

Similar to the chart for crude oil, Chart 8 reveals that forecasted prices usually differed significantly from the actual prices. For natural gas, forecasted prices differed from actual prices by more than 10 percent in seven of nine years.

However, the natural gas prices forecasted by the Comptroller are for taxable values. Like the previously discussed annual average crude oil prices reported by EIA, the average annual natural gas prices reported by EIA are not adjusted for costs. Therefore, Charts 7 and 8 may overstate the discrepancy between forecasted and actual prices for natural gas.

Chart 8

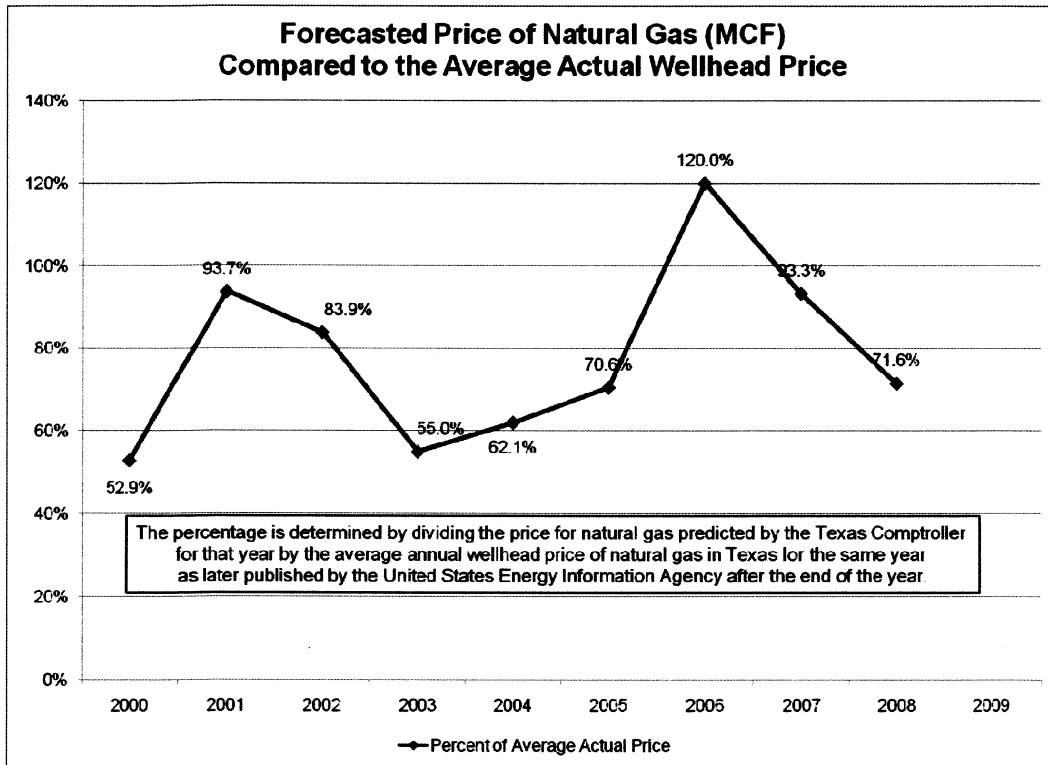
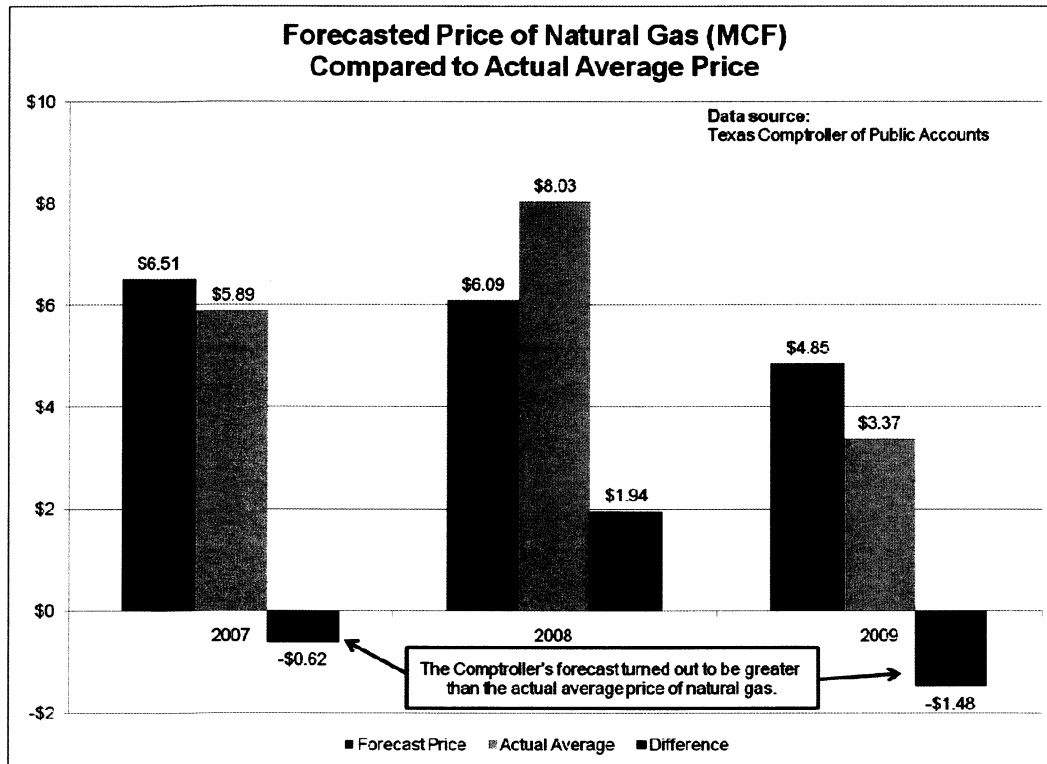


Chart 6 removes any uncertainty by comparing the forecasted prices with the average annual taxable prices later published by the Comptroller for the same year. Based on this comparison, it would appear that the Comptroller overestimated the future price of natural gas in both 2007 and 2009.

The accuracy test makes no distinction between under- and overestimates. It counts any difference of more than 10 percent as a miss. By that criterion, the forecasted natural gas prices also failed. In each of the three years for which data is available, the forecasted natural gas price differed from the actual average price as published by the Comptroller by more than 10 percent. Thus the Comptroller's natural gas forecasts fail this test as did the crude oil forecasts.

That leaves the trend test. Are the forecasts converging on the actual average prices as determined by either the EIA or the Comptroller? The answer is a qualified maybe. A very slight trend towards convergence can be noted in Chart 7 if one looks at the entire period 2000-09. However, if one looks at Chart 9 which compares taxable prices to taxable prices, it would appear that the forecast is diverging from the actual average price for the most recent three year period.

Chart 9



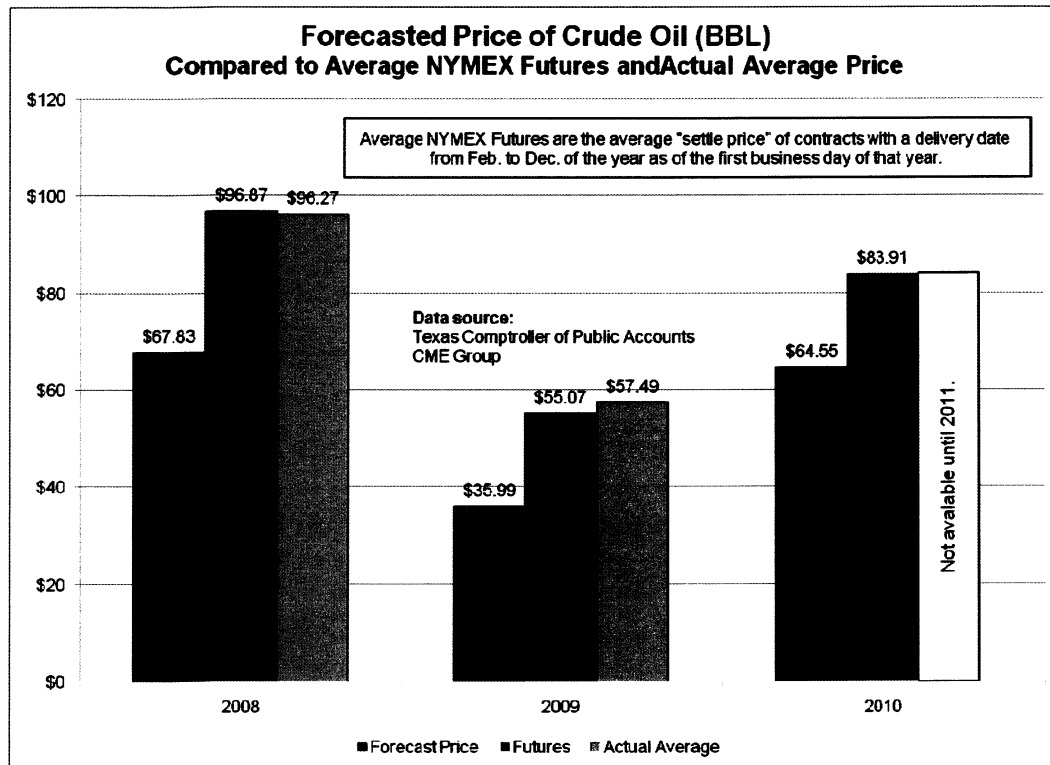
Analysis – Other Data Sources for Developing Forecasts

In preparing the forecasts, the Comptroller relies on outside experts such as the United States Energy Information Agency, Moody's and Cambridge Energy Research Associates. However, because the main purpose of the forecasts is for state revenue estimating, the Comptroller does not use data from future contracts for crude oil and natural gas.

Wikipedia provides the following definition: "A futures contract is a standardized contract to buy or sell a specified commodity of standardized quality at a certain date in the future and at a market-determined price (the futures price)." Thus, futures contracts provide information on prices that have been agreed upon by both willing sellers and willing buyers. Those prices create a market forecast of what prices will be in the future and can therefore be used to determine the market value of crude oil and natural gas reserves.

Chart 10 shows the relationship between the Comptroller’s forecasted price for crude oil for the period 2008-2010, the average future contract price for crude oil on the New York Mercantile Exchange (NYMEX), and the actual average taxable price as later published by the Comptroller. The average NYMEX price is determined by taking the settle price on the first business day of the year for WTI futures contracts that have a delivery date in that same year (excluding January).

Chart 10



As the chart shows for 2008 and 2009, the average NYMEX futures prices were significantly closer to what the Comptroller later determined to be the average price for each year than were her forecasts. This eventuated despite the fact that the NYMEX prices were available weeks if not months prior the Comptroller publishing her forecasts (the 2010 forecast, for example, was not released until March 2010).

As with the EIA data, the NYMEX prices represent actual value, not taxable value. However, subtracting 10 percent from the average NYMEX futures prices (using the previously mentioned rule of thumb to estimate the difference between market value and taxable value) would still result in an estimate significantly closer to the actual average price than the Comptroller’s estimates.

Conclusion

Two criteria were developed for use in analyzing the use of the Comptroller's forecasted prices for appraising oil and gas properties: how accurate are the forecasts and what trends can be noted from those forecasts. The forecasts have failed to meet the established accuracy criteria for both crude oil and natural gas. Forecasts more often than not turn out to have been highly inaccurate.

In the case of crude oil, there is a noticeable trend for the forecasts to be significantly below the market value. While this tendency is commendable for forecasting state severance tax revenue, it is inappropriate for use in determine market values for property tax purposes. In addition, there are highly accurate data sources such as NYMEX futures that are not used in developing the forecasts.

While natural gas prices did not show a tendency to be overly conservative, neither did they show a trend towards increasing accuracy.

Therefore, it is concluded that the Comptroller's forecasted prices for crude oil and natural gas have failed to meet HB 2982's stated goal of ensuring accurate and uniform appraisals.



PROPERTY TAX SHIFTS CREATED BY HOUSE BILL 2982, 80TH LEGISLATURE

By Tim Brown

Texas Association of Counties

March 2010

Executive Summary

House Bill 2982, 80th Session, added a requirement for all appraisers to use forecasted and average historical prices published by the State Comptroller of Public Accounts (Comptroller) for determining how future product values will change when appraising crude oil and natural gas reserves. The mandate applies when using an appraisal method based on future oil and gas income derived from the production of those minerals.

HB 2982 may have been successful in creating more uniform valuations. However, it also had the side effect of shifting property taxes from oil and gas properties to other properties.

It is estimated that oil and gas property owners paid an additional \$96,295,438 in property taxes for 2008 while getting a \$758,180,083 tax break for 2009. Those estimates are based on a total property tax rate of \$1 per \$100 of taxable value. By 2008, most school district property tax rates alone were greater than \$1; therefore the actual tax shift must have been significantly greater than the previous estimate. If an average property tax rate of \$1.50 was used in the estimate, then the tax shift in 2008 would have caused an estimated additional tax burden of \$144,443,157 while, in 2009, the tax break would have increased to more than \$1.137 billion for oil and gas property owners or \$992.8 million for the two year period.

In addition, since 2006, state revenue must be used to make up the difference whenever local property taxes dip below a certain level as part of the "hold harmless" provision of school finance reform. In general, when taxable property values are lowered, state financial support must increase. Thus, when HB 2982 lowered the total taxable value of oil and gas properties in 2009, one of the results was to increase total state financial support of school districts.

The unintended consequences of HB 2982 have been significant. By shifting the tax burden at a time of high oil prices, HB 2982 has reduced the public's confidence that the property tax is applied fairly to all property owners.

Any change that decreases the fairness of the local property tax is a significant concern to county officials. County governments rely on the property tax to fund the services their constituents demand and the law requires. Only by ensuring a fair property tax system can counties raise the revenue needed to provide the services required by the citizens of Texas.

Background

In 2007, the Texas Legislature passed, and Governor Perry signed, House Bill 2982, which had the unforeseen consequence of shifting property taxes away from certain oil and gas properties onto all other properties, including residential and commercial homes. The tax shift resulted from changing the methodology used to appraise oil and gas reserves. The methodology required under HB 2982 attempted to change appraisals by requiring the use of uniform price forecasts made by the Texas Comptroller of Public Accounts. Previously, appraisers had some leeway in that the only explicit limit was imposed on price increases, according to the HB 2982 Bill Analysis, “leading some appraisers to ignore the comptroller’s forecast for years in which price decreases [were] anticipated.”

This is not to say that appraisers must use the exact prices published by the Comptroller in determining the value of oil and gas properties. However, they are now required to use the *percentage change* from one year to the next that is established by those published prices. For the base or current year, the percentage change is determined by dividing the current year’s forecasted price by the prior year’s average price to arrive at a “market condition factor” for each type of product. Appraisers multiply the average price of crude oil or natural gas, which can vary from location to location around the state, by the appropriate market condition factor to arrive at a forecasted price for the current year’s production per unit of product.

For future years, the appraisers increase or decrease the price using the same percentage change in price published by the Comptroller in the state’s estimate of future price changes. Thus, if the Comptroller forecasts a 10 percent increase in the first year followed by a 15 percent decrease in the per unit price of natural gas, then every appraiser must forecast a 10 percent increase followed by a 15 percent decrease in the per unit price of natural gas for every such property. Similarly, future prices of crude used in valuing oil properties must also change in lockstep with the Comptroller’s forecasts for that product.

Up to a point, the objective of uniformity in valuing oil and gas properties was met. However, there have been some unintended consequences, as is shown by the resulting tax shift.

Research

Accurate data on the tax shift is difficult to obtain. Appraisals are conducted using whatever method/price forecast is currently required – appraisers as a rule don’t have a reason or the time to calculate values using both the current methodology and prior methodology. Since a tax shift was suspected, but not confirmed, the Texas Association of Counties resolved to develop an estimate of the tax shift.

Unfortunately, oil and gas appraised values are not available from a single source such as the annual "Reports of Property Value" collected by the Comptroller. While that report does include the value of mineral properties, the report does not separate oil and gas values, but combines them into a single reported number along with the value of other items such as extraction equipment. As a result, in early 2010, the Texas Association of Counties contacted all 254 county judges to request the total appraised value of oil and gas reserves in each county. The judges were asked to include the values for taxable reserves only and to exclude the value of both the surface land and the value of extraction equipment.

TAC collected the total appraised values for oil and gas reserves by county for the prior two years to determine if a tax shift occurred. Appraisals for 2010 were not yet available at the time as the Texas Comptroller of Public Accounts (Comptroller) did not publish the price forecasts for January 1 and the market condition factors required for use to determine appraised values according to HB 2982 until March 5, 2010. This prevented the counties from reporting their 2010 mineral values since the appraisals could not be finished until after the Comptroller published her forecasts. Consequently, the tax shift estimates in this report are confined to 2008 and 2009.

In order to get the 2008-2009 data, the county judges had to contact the appraisal districts which, in turn, generally turned to the professional appraisal companies with which they had a contract to appraise oil and gas properties. Several of those companies then contacted the Texas Association of Counties and sent the data directly. Some sent tables showing the data on a county by county basis while one company preferred to give TAC a grand total for a collection of counties. TAC asked the later company to share a list of the counties in that collection and further asked that they only include counties that the company contracted with for both 2008 and 2009.¹ TAC also received some values directly from the county judges and the appraisal districts.

As might be expected, TAC received values from multiple sources for some counties. If that included the company that only sent a grand total, the values received from the other sources were not included. Otherwise, the average of the values received from all sources was used for each county, thereby eliminating any duplication of values.

TAC also did not use some of the county supplied values when it was clear that those values contained the values of other types of minerals. This occurred when a county reported its total mineral values, for example, rather than break out the oil and gas values.

¹ Technically, the companies sent the values by appraisal district. However, district boundaries are coterminous with county boundaries so for simplicity's sake this report will refer to counties not appraisal districts.

As a side note, TAC asked counties that had no oil or gas properties to respond to the survey to obtain as accurate a statewide estimate as possible. Six counties sent a response indicating they had no taxable oil or gas reserves.

Including the negative responses, TAC was able to collect data from 198 out of 254 counties by Feb. 10. The following data picture emerged for those counties.

Mineral	Actual Appraised Value 2008	Actual Appraised Value 2009
Gas reserves	\$73,000,999,027.16	\$69,485,397,604.78
Oil reserves	\$48,974,018,592.76	\$39,653,025,889.26

TAC then worked backward to determine the respective volume of minerals involved in those values. In order to proceed, several assumptions were made.

- Rate of decline in production (annual): 20.0%
- Rate of increase in operating costs: 4.0%
- Initial operating cost per mcf (gas): \$0.50
- Initial operating cost per mcf (oil): \$10.00

Other data needed for the calculations came from the Comptroller's Web site.

Item	Gas		Oil	
	2008	2009	2008	2009
Average prior year price:	\$5.89	\$8.03	\$68.40	\$96.27
Market Condition Factor:	1.034	0.604	0.992	0.374
Discount rate:	17.25%	16.16%	17.25%	16.16%
Severance tax rate:	7.50%	7.50%	4.60%	4.60%

Using the values provided by the various sources, the stated assumptions, and the information provided by the Comptroller, the Texas Association of Counties developed a mathematical model to determine the volume of minerals used to calculate the actual appraised values for both oil and gas in 2008-2009.

In order to develop the model, TAC used the basic discounted cash flow method described in the Comptroller's *Manual for Discounting Oil and Gas Income*. Rather than work forward from oil or gas production as is described in that manual, the model worked backward from total discounted cash flow to obtain estimated production for each type of mineral one year at a time. Technically, statewide total appraised value collected from the various sources was entered rather than total discounted cash flow.

In working backward, TAC used the average prior year price, market condition factor, discount rate, and forecasted annual percentage change in future prices as published by the Comptroller for that tax year.

Once the model provided the production data, TAC then worked forward using the same basic discounted cash flow method, but with slightly different input for prices. First, this part of the model dropped the market condition factor. In addition, rather than use the forecasted future percentage price increases published by the Comptroller for 2008 and 2009 respectively, the model used the forecasted future percentage price increases published by the Comptroller for 2007 (the last year before HB 2982 took effect).

TAC then took the difference in total discounted cash flows as the estimate of the change in appraised value caused by HB 2982 for each year and product. The change is shown in the following table. Note that negative numbers indicate a decrease in the appraised value of oil and gas properties using the methodology required by HB 2982, while positive numbers indicate an increase in value.

Product	2008	2009
Oil	\$3,282,943,141	(\$49,109,378,818)
Gas	\$6,346,600,635	(\$26,708,629,459)
Annual Total Tax Shift	\$9,629,543,776	(\$75,818,008,277)

The numbers shown in the table above represent changes in appraised values due to HB 2982. In order to determine the tax shift, assume that total local property taxes average \$1 per \$100 of taxable value. Based on the previously discussed instructions that were given to those sources providing appraisal values, it is clear that the amounts shown in the preceding table represent taxable appraised values. As a result, given the stated assumptions, oil and gas property owners paid an additional \$96,295,438 in property taxes for 2008 while getting a \$758,180,083 tax break for 2009.

In other words, other property owners received an estimated \$96.3 million tax break for 2008 but were required to pay an additional \$758.2 million for 2009. However, those estimates are based on a \$1 tax rate. Given that the median 2008 school district property tax rate was \$1.1835 per \$100 of value,² it is clear that the actual tax shift must have been significantly greater than the previous estimates. For example, if an average property tax rate of \$1.50 were used in the

² The median value is the one in the middle when the values are sorted. In other words, of the 1562 school districts, 781 had 2008 property tax rates less than the median while the remaining 781 had property tax rates greater than the median.

calculation rather than \$1.00, to account for both the school districts and other taxing entities,³ then the estimated tax shift would increase 50 percent to more than \$992.8 million for the two year period.⁴

An alternate methodology exists which can be used to produce an estimate of the tax shift. This method simply divides the total reported appraised values by the appropriate market condition factor and then calculates the tax shift based on the difference between the original appraisals and the result. Using this method, it is estimated that oil and gas property owners were able to shift \$1,648,834,365 in property taxes onto other property owners from 2008-2009.⁵

While this methodology is highly simplified, the resulting estimate is significantly more than the previous estimate of \$992.8 million. However, it provides additional assurance as to the scale of the tax shift which occurred and highlights the impact of the market condition factor added by HB 2982.

It should be noted that HB 2982 has impacted more than just the private sector. By reducing total appraised values, the bill has also impacted state finances. In 2006, HB 1, 79th Legislature, Third Called Session, which cut local school district property tax rates to \$1 per \$100 of assessed valuation, froze the per student amount a school district could spend, based on 2006 expenditures. If the property tax doesn't produce a school district's target amount per student, the state must make up the difference under the "hold harmless" provision designed to prevent any financial harm to the district from the new taxing limit.

Consequently, state revenue must be used to make up the difference whenever local property taxes dip below a certain level. Since the ability of school districts to raise their property tax rate is severely circumscribed, the amount of property taxes they can raise is largely dependent on overall taxable value. In general, therefore, when taxable property values are lowered, state financial support must increase. Thus, when HB 2982 lowered the total taxable value of oil and gas properties in 2009, one of the results was an increase in total state financial support of school districts.

It is not possible at this time to place an exact dollar amount of that impact on the state financial support of school districts. Still, it is clear that the impact of HB 2982 has not only created a tax shift from oil and gas property owners to other taxpayers, it has also created a drain on the state which now indirectly provides financial support to those same oil and gas property owners by replacing local property tax dollars with state dollars to support the school districts.

³ Cities, counties and many different types of special districts (e.g., hospital districts, emergency services districts, etc.) are also authorized to levy property taxes in Texas.

⁴ The actual increase would be from \$758,180,083 to \$1,137,270,124.

⁵ See the appendix for more detail about this alternate methodology.



Conclusion

The unintended consequences of HB 2982 have been significant. In many areas of the state, it shifted a large tax burden away from the owners of oil and gas reserves to other property owners and to the state of Texas. By shifting that burden at a time of high oil prices, HB 2982 has reduced the public's confidence that the property tax is applied fairly to all property owners.

While the tax shift causes no direct burden on county government, county officials have an obvious interest in a fair property tax system. Any change that creates an additional burden on most property owners and decreases the perceived fairness of the local property tax, even if it benefits a few property owners, is a significant concern to county officials. Only by ensuring a fair property tax system can local governments raise the revenue needed to provide the services required by the citizens of Texas.



Appendix I: Methodology for Calculating the Tax Shift

The methodology used to estimate oil or gas reserves uses the following assumptions and facts.

Assumptions:

- Rate of decline in production (annual): 20.0%
- Rate of increase in operating costs: 4.0%
- Initial operating cost per mcf (gas): \$0.50
- Initial operating cost per mcf (oil): \$10.00

Facts:

Factor	Oil		Gas	
	2008	2009	2008	2009
Average prior year price	\$68.40	\$96.27	\$5.89	\$8.03
Market condition factor	0.992	0.374	1.034	0.604
Discount rate	17.25%	16.16%	17.25%	16.16%

Rather than try to determine annual production, assume that production holds steady and let the price per barrel of oil decrease by 20 percent per year (the rate of decline). Then, the price per barrel for the first year of the forecast is the average prior year price of oil times the market condition factor as seen in column B. To obtain the price per barrel for forecast year 2, simply multiply \$36 by the price increase forecasted by the Comptroller in 2009 to obtain the results in column B. Then adjust the price for lost production by multiplying the result in column B by 0.8 raised to the power of one less than the forecast year.

Forecast Year	Price (\$/bbl)	Price Adj. for Lost Production	Op Exp	Sev Tax	Future Cash Flow	P.V. Factor at 16.16%	Present Value of Cash Flow
A	B	C	D	E	F	G	H
1	\$36.00	\$36.00	\$10.00	\$1.66	\$24.35	0.927837	\$22.59
2	\$41.64	\$33.31	\$10.40	\$1.53	\$21.38	0.798758	\$17.08
3	\$51.78	\$33.14	\$10.82	\$1.52	\$20.80	0.687636	\$14.30
4	\$67.54	\$34.58	\$11.25	\$1.59	\$21.74	0.591973	\$12.87
5	\$76.54	\$31.35	\$11.70	\$1.44	\$18.21	0.509619	\$9.28
6	\$85.54	\$28.03	\$12.17	\$1.29	\$14.57	0.438721	\$6.39
7	\$94.55	\$24.79	\$12.65	\$1.14	\$10.99	0.377687	\$4.15
8	\$104.01	\$21.81	\$13.16	\$1.00	\$7.65	0.325144	\$2.49
9	\$108.17	\$18.15	\$13.69	\$0.83	\$3.63	0.27991	\$1.02
10	\$111.42	\$14.95	\$14.23	\$0.69	\$0.03	0.24097	\$0.01
25	\$132.57	\$0.00	\$0.00	\$0.00	\$0.00	0.025475	\$0.00

Operating expenses are increased each year by 4 percent starting from a \$10 per barrel initial cost, as shown in column D. When the operating expenses exceed the adjusted price in column C, production presumably ceases. Thus, forecast year 25 shows neither an adjusted price nor an operating expense.

The severance taxes on the other hand are a constant 4.6 percent applied to the adjusted price in column D after subtracting operating expenses.⁶

Future cash flow in column F is the adjusted price minus both operating expenses and severance taxes. The discount rate published by the Comptroller for oil properties in the 2009 *Base Discount Rate for All Oil and Gas Properties in the Property Value Study* is 16.16 percent.⁷ The present value factor in column G reflects the current value of a dollar obtained in the forecast year. See the *Comptroller's Manual for Discounting Oil and Gas Income* for more information on this topic.

Present value of cash flow, column H, is future cash flow in column F multiplied by the present value factor in column G. Once the present value of cash flow is calculated for each of the forecast years, production (number of barrels of oil) can be estimated with the following simplified formula.

$$\text{Year 1 Production} = \frac{\text{Total Appraised Value of Oil Reserves}}{\text{Sum of the Present Value of Cash Flow for all Years (col. H)}}$$

Once the production for the first year of the forecast is known, it can be plugged into a model based on the example given in the *Manual for Discounting Oil and Gas Income* in order to determine the appraised value. This time, however, the market condition factor is not used to adjust the average prior year price of oil. In addition, rather than use the annual price changes forecast by the Comptroller in 2009, the annual price changes forecasted in 2007 are used.

Subtract the resulting appraised value from the original 2009 appraised value in order to determine the estimated change in appraised values due to HB 2982. A negative number indicates HB 2982 reduced the oil and gas appraisals while a positive number indicates HB 2982

⁶ This is the severance tax rate for oil in Texas; the state severance tax rate for gas is 7.5%.

⁷ This is actually the minimum discount rate from the range published by the Comptroller. No adjustments are made for specific property issues nor will the property tax rate be added since it varies across the state. Interestingly, using a higher discount rate would actually increase the estimated tax shift onto other property owners.



increased the appraisals. The statewide tax shift can be estimated as previously described in this report.

See Appendix II for a simplified method for determining the tax shift.



Appendix II: An Alternate (Simplified) Tax Shift Methodology

A simpler method of determining the tax shift exists. First, take the actual appraised values for 2008-2009 as reported by 198 counties and the market condition factors published by the Comptroller.

Now divide the appraised values by the corresponding market condition factor and take the difference to see how total appraised values changed. Then, using either the \$1 or the \$1.50 per \$100 of value property tax rate, calculate the resulting tax shift.

Item	Gas		Oil	
	2008	2009	2008	2009
Appraised value:	\$73,000,999,027	\$69,485,397,605	\$48,974,018,593	\$39,653,025,889
Market Condition Factor:	1.034	0.604	0.992	0.374
Adj. appraised value:	\$70,600,579,330	\$115,042,049,015	\$49,368,970,356	\$106,024,133,393
Difference in value	\$2,400,419,697	(\$45,556,651,410)	(\$394,951,763)	(\$66,371,107,504)
Shift @ \$1.00 rate	\$24,004,197	(\$455,566,514)	(\$394,9518)	(\$663,711,075)
Shift @ \$1.50 rate	\$36,006,295	(\$683,349,771)	(\$5,924,276)	(\$995,566,613)

Using this simplified methodology, oil and gas property owners paid an extra \$30,082,019 in 2008 but paid \$1,678,916,384 less in property taxes in 2009 than they would have without HB 2982. In the two year period, this simplified method estimates that a property tax shift occurred in which other property owners paid an estimated \$1,648,834,365 in property taxes that would have been levied on oil and gas property owners if not for the unanticipated consequences of HB 2982 (based on the \$1.50 tax rate).

While the actual dollar estimate from using this approach is significantly greater than with the previous estimate, it does validate the scale of the tax shift. It also indicates that the assumptions used in the prior methodology may have been too conservative.

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**Oil Wells by County
As of February 2010**

Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC.	TOTAL
Anderson	504	99	366	56		1,025
Andrews	7,338	576	2,772	2,486		13,172
Angelina	3		1			4
Aransas	23	9	16	4		52
Archer	3,023	760	1,071	431		5,285
Armstrong						
Atascosa	1,118	183	200	44		1,545
Austin	93	39	62	6		200
Bailey						
Bandera	2		2			4
Bastrop	291	50	50	4		395
Baylor	127	114	121	24		386
Bee	207	52	102	17		378
Bell						
Bexar	2,559	346	189	4		3,098
Blanco		1				1
Borden	620	120	298	230		1,268
Bosque		1				1
Bowie	11	8	4	2		25
Brazoria	300	291	260	75		926
Brazos	477	27	121	4		629
Brewster						
Briscoe						
Brooks	54	28	71	8		161
Brown	711	144	312	70		1,237
Burleson	1,006	47	156	8		1,217
Burnet						
Caldwell	3,231	499	258	76		4,064
Calhoun	61	25	48	9		143
Callahan	781	97	268	144		1,290
Cameron	1					1
Camp	99	7	38	31		175
Carson	1,450	41	325	60		1,876
Cass	141	40	53	9		243
Castro						
Chambers	166	292	285	44		787
Cherokee	73	11	29	14		127
Childress	8	1		2		11
Clay	1,099	164	514	181		1,958
Cochran	1,946	107	684	812		3,549
Coke	287	26	91	58		462
Coleman	635	149	285	81		1,150

**Oil Wells by County
As of February 2010**

Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC.	TOTAL
Collin						
Collingsworth	25	2	14	4		45
Colorado	48	13	33	10		104
Comal						
Comanche	66	22	31	3		122
Concho	245	14	118	35		412
Cooke	2,101	174	482	375		3,132
Coryell		3	2			5
Cottle	31	4	17	7		59
Crane	4,235	346	1,754	1,113		7,448
Crockett	2,113	320	486	211		3,130
Crosby	415	46	58	82		601
Culberson	86	4	126	9		225
Dallam						
Dallas						
Dawson	1,282	86	316	622		2,306
Deaf Smith						
Delta						
Denton	61	22	6	5		94
De Witt	43	26	18	7		94
Dickens	243	23	35	33		334
Dimmit	574	113	162	131		980
Donley						
Duval	714	276	468	152		1,610
Eastland	655	247	409	130		1,441
Ector	5,855	683	2,720	1,695		10,953
Edwards	64	2	40	5		111
Ellis	19	35	5	10		69
El Paso						
Erath	11	7	7	2		27
Falls	20	14	18			52
Fannin			1			1
Fayette	557	21	147	11		736
Fisher	422	41	191	74		728
Floyd	2	4	3			9
Foard	60	11	60	21		152
Fort Bend	312	83	274	35		704
Franklin	132	22	149	16		319
Freestone	55	8	46	8		117
Frio	535	168	420	25		1,148
Gaines	3,473	268	724	1,628		6,093
Galveston	113	55	132	19		319

Oil Wells by County
As of February 2010
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COUNTY NAME	REGULAR PRODUCING	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC	TOTAL
Garza	2,143	107	287	655		3,192
Gillespie						
Glasscock	1,244	72	313	131		1,760
Goliad	118	26	45	3		192
Gonzales	168	53	42	4		267
Gray	2,787	77	881	186		3,931
Grayson	656	66	187	80		989
Gregg	3,285	161	579	46		4,071
Grimes	28	2	20	3		53
Guadalupe	1,778	542	292	44		2,656
Hale	206	43	123	165		537
Hall						
Hamilton	2		1	1		4
Hansford	104	21	24	8		157
Hardeman	237	24	62	19		342
Hardin	877	56	415	64		1,412
Harris	321	165	341	47		874
Harrison	313	279	117	27		736
Hartley	26	1	2	5		34
Haskell	235	44	139	39		457
Hays		2				2
Hemphill	131	19	45	9		204
Henderson	139	21	41	13		214
Hidalgo	25	8	16	3		52
Hill	1	5	1	2		9
Hockley	4,308	163	755	2,483		7,709
Hood	2	2	1	3		8
Hopkins	64	21	43	16		144
Houston	198	34	126	17		375
Howard	3,453	239	1,230	795		5,717
Hudspeth						
Hunt		4				4
Hutchinson	3,019	325	1,356	191		4,891
Irion	1,602	130	222	98		2,052
Jack	1,448	339	327	175		2,289
Jackson	227	180	387	43		837
Jasper	46	18	22	9		95
Jeff Davis						
Jefferson	177	115	156	37		485
Jim Hogg	50	19	17	8		94
Jim Wells	87	49	108	9		253
Johnson		2		11		13

**Oil Wells by County
As of February 2010**

Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC	TOTAL
Jones	734	206	236	113		1,289
Karnes	104	37	72	8		221
Kaufman	20	8	16	3		47
Kendall						
Kenedy	7	29	48	4		88
Kent	566	44	221	267		1,098
Kerr		4				4
Kimble	1		1			2
King	445	73	210	108		836
Kinney		1				1
Kleberg	11	38	87	3		139
Knox	226	99	165	37		527
Lamar						
Lamb	65	12	21	8		106
Lampasas						
La Salle	151	46	76	4		277
Lavaca	36	8	25	4		73
Lee	801	16	132	3		952
Leon	236	24	96	10		366
Liberty	647	244	592	64		1,547
Limestone	92	11	15	18		136
Lipscomb	399	32	96	21		548
Live Oak	186	58	55	18		317
Llano						
Loving	701	59	230	76		1,066
Lubbock	433	18	62	160		673
Lynn	83	15	33	32		163
Mcculloch	67	6	17	10		100
Mclennan	45	19				64
Mcmullen	638	69	123	26		856
Madison	148	12	50	8		218
Marion	213	113	104	17		447
Martin	2,391	86	170	68		2,715
Mason						
Matagorda	127	169	135	14		445
Maverick	769	121	216	231		1,337
Medina	1,413	139	77	4		1,633
Menard	127	13	28	18		186
Midland	4,895	215	535	162		5,807
Milam	978	211	133	8		1,330
Mills						
Mitchell	2,518	101	548	862		4,029

**Oil Wells by County
As of February 2010**

Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC	TOTAL
Montague	2,383	149	349	312		3,193
Montgomery	149	21	106	36		312
Moore	725	33	194	22		974
Morris	1					1
Motley	18	4	10	3		35
Nacogdoches	88	59	35	2		184
Navarro	710	564	424	82		1,780
Newton	141	9	53	15		218
Nolan	467	84	323	88		962
Nueces	195	107	172	24		498
Ochiltree	574	81	172	46		873
Oldham	23	2	19	7		51
Orange	131	26	131	11		299
Palo Pinto	387	58	210	49		704
Panola	232	149	93	19		493
Parker	10	4	6	10		30
Parmer						
Pecos	3,005	404	1,511	570		5,490
Polk	118	27	68	25		238
Potter	539	10	82	10		641
Presidio						
Rains						
Randall						
Reagan	4,096	125	395	106		4,722
Real	2	1				3
Red River	46	18	22	6		92
Reeves	788	74	214	149		1,225
Refugio	675	231	470	116		1,492
Roberts	257	32	50	6		345
Robertson	165	7	10	1		183
Rockwall		1				1
Runnels	541	99	193	47		880
Rusk	1,845	301	713	84		2,943
Sabine	7	3	7			17
San Augustine	13	2	2	1		18
San Jacinto	12	6	2	2		22
San Patricio	161	48	148	33		390
San Saba						
Schleicher	332	22	75	23		452
Scurry	2,588	223	1,162	979		4,952
Shackelford	1,813	393	747	281		3,234
Shelby	49	6	8	6		69

**Oil Wells by County
As of February 2010**

Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC.	TOTAL
Sherman	35	6	20	6		67
Smith	317	89	154	42		602
Somervell				3		3
Starr	105	90	118	14		327
Stephens	1,299	68	475	512		2,354
Sterling	1,349	146	163	103		1,761
Stonewall	565	89	382	127		1,163
Sutton	23	1	10	1		35
Swisher						
Tarrant		9	9	2		20
Taylor	431	78	172	73		754
Terrell	20	3	1			24
Terry	826	90	255	483		1,654
Throckmorton	945	138	271	172		1,526
Titus	203	72	175	31		481
Tom Green	637	96	189	43		965
Travis	14	5	14	1		34
Trinity	26	1		1		28
Tyler	69	21	29	9		128
Upshur	108	3	35	30		176
Upton	3,184	163	1,175	275		4,797
Uvalde		2				2
Val Verde	2	24	2	1		29
Van Zandt	428	201	148	30		807
Victoria	187	72	162	40		461
Walker	5	2	4			11
Waller	223	32	52	25		332
Ward	3,066	369	1,102	903		5,440
Washington	120	9	13	2		144
Webb	121	82	71	35		309
Wharton	249	48	124	50		471
Wheeler	401	29	148	32		610
Wichita	5,766	784	2,727	909		10,186
Wilbarger	869	92	528	146		1,635
Willacy	96	16	157	10		279
Williamson	34	29	42	1		106
Wilson	565	222	97	46		930
Winkler	1,727	336	931	338		3,332
Wise	589	102	158	36		885
Wood	585	151	485	97		1,318
Yoakum	3,536	219	752	2,197		6,704
Young	2,341	532	890	374		4,137

**Oil Wells by County
As of February 2010**

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COUNTY NAME	REGULAR PRODUCING	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC	TOTAL
Zapata	16	59	129	4		208
Zavala	189	48	108	14		359
Total	157,347	21,318	52,525	29,699	0	260,889

**** Oil Well Types**

- Regular Producing - well that is capable of producing oil.
- Shut-In - inactive well.
- Shut-In 14(B)(2) - inactive well with valid 14(B)(2) extension
- Injection - well used to inject fluid (water, air, CO2) into a productive formation.
- Misc. - observation, monitoring, etc.

Note: This report does not include wells that have been plugged & abandoned.

Data source: Texas Railroad Commission, *Well Distribution by County - Well Counts*, Updated 02/04/10.
<http://www.rrc.state.tx.us/data/wells/wellcount/index.php> (accessed February 5, 2010).



**Gas Wells by County
As of February 2010
Prepared by The County Information Project, Texas Association of Counties**

COUNTY NAME	REGULAR PRODUCING	NOT USABLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN (B)(2)	INJECTION	MISC	TOTAL
Anderson	128	1		8	2	27	1	167
Andrews	182			7	1	46	2	238
Angelina	108			7		8	2	125
Aransas	72	1		8	4	47	2	134
Archer	5							5
Armstrong								
Atascosa	88	3		13	3	51	2	160
Austin	97			1		31	1	130
Bailey								
Bandera	1							1
Bastrop	76			1	1	5	1	107
Baylor					1	1		2
Bee	439	5		48	19	157	14	684
Bell						1		1
Bexar				5	5	12	6	28
Blanco								
Borden								
Bosque	5	2		4		15		26
Bowie	4					2		6
Brazoria	180	6		36	2	287	5	517
Brazos	112			1		14	2	129
Brewster								
Briscoe				1				1
Brooks	450	4		50	8	275	9	796
Brown	539			16	7	94	6	708
Burleson	123			1		19	2	145
Burnet								
Caldwell	6					1		7
Calhoun	138	12		43	1	102	5	304
Callahan	102			2	2	36	1	144
Cameron	2					9		11
Camp	3			1		1		5
Carson	549	24				47	2	627

Gas Wells by County
As of February 2010
 Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	NOT ELIGIBLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC	TOTAL
Cass	66		3		38	1	8	116
Castro								
Chambers	70	7	37	1	226	7		348
Cherokee	494	4	12	3	49	4		566
Childress								
Clay	45			1	15	1	19	81
Cochran	32		1		18	1		52
Coke	39		2		24	1		66
Coleman	328	1	25	3	131	3	24	515
Collin								
Collingsworth	318	1	1		46	2	3	371
Colorado	291	3	12	2	158	12		478
Comal								
Comanche	183		2	3	42		13	243
Concho	66	1			25		1	93
Cooke	42	1			4			47
Coryell								
Cottle	83	1		3	5			12
Crane	542		2		13			99
Crockett	5,826	15	12	12	64	1	2	621
Crosby			27		287	5		6,160
Culberson	34		1		12	2		49
Dallam								
Dallas	19		1		4		1	25
Dawson								
Deaf Smith								
Delta								
Denton	2,678	3	72	6	128	2	8	2,897
De Witt	311	2	30	5	85	4		437
Dickens								
Dimmit	170	2	23	6	92	2	2	297
Donley	4				4			8
Duval	632	3	68	11	397	23	5	1,139





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COUNTY NAME	REGULAR PRODUCING	NOT ELIGIBLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN (A)(B)(C)	INJECTION	MISC	TOTAL
Eastland	867	1	12		228	8	61	1,177
Ector	101		7		70		123	301
Edwards	539	6	7	7	158	3		720
Ellis	39	1	7		4			51
El Paso								
Erath	379	2	16	1	124	2	14	538
Falls		1	1		1			3
Fannin								
Fayette	247	4	1		37	1	1	291
Fisher	22	1			5			28
Floyd		2			2			4
Foard	136				4			140
Fort Bend	157	1	10	1	111	7	15	302
Franklin	37		2		3		1	43
Freestone	2,888	8	29		142	19	1	3,087
Frio	84		1		12			97
Gaines	122		2		54		64	242
Galveston	55		13		78	3		149
Garza								
Gillespie								
Glasscock	118		3		19			140
Goliad	544	1	95	33	244	13	1	931
Gonzales	11		1		5	1		18
Gray	1,042	14	2		126	2	7	1,193
Grayson	56		7		15			78
Gregg	1,032	11	18	3	83	3		1,150
Grimes	212		2	2	18	3		237
Guadalupe	1							1
Hale								
Hall								
Hamilton	12				4			16
Hansford	925	7	20	1	115	8	3	1,079
Hardeman	1				1			2

Gas Wells by County
As of February 2010
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COUNTY NAME	REGULAR PRODUCING	NOT ELIGIBLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC	TOTAL
Hardin	83		4	2	49	3		141
Harris	160	2	8	3	166	11	62	412
Harrison	2,545	26	72	2	304	26	99	3,074
Hartley	78	7		1	5			91
Haskell	1				5			6
Hays								
Hemphill	2,581	12	30		258	29		2,910
Henderson	432	2	11		56	6	31	538
Hidalgo	1,527	23	93	19	718	40		2,420
Hill	216	1	22		11	1		251
Hockley	15				6			21
Hood	769		34	1	125	11	5	945
Hopkins	8		1		5		24	38
Houston	95		9		35	1		140
Howard	36				12			48
Hudspeth					1			1
Hunt								
Hutchinson	689	47	13		160	11	1	921
Irion	288		3		35			326
Jack	1,287	6	30	7	228	4	47	1,609
Jackson	187	5	66	19	310	11		598
Jasper	106	1	6	4	22	3		142
Jeff Davis					3			3
Jefferson	150	1	26	2	101	15		295
Jim Hogg	257		8	4	67	1		337
Jim Wells	283	1	37	5	333	7	3	669
Johnson	2,681	7	149		87	11	2	2,937
Jones	6		1		3			10
Karnes	122	1	20	2	61	4		210
Kaufman								
Kendall								
Kenedy	214		31	1	143	7	3	399
Kent								





**Gas Wells by County
As of February 2010
Prepared by The County Information Project, Texas Association of Counties**

COUNTY NAME	REGULAR PRODUCING	NOT ELIGIBLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN (B)(2)	INJECTION	MISC	TOTAL
Kerr				1				1
Kimble	15				18			33
King	42				12			54
Kinney								
Kleberg	228	4	71	2	236	4	17	562
Knox								
Lamar								
Lamb								
Lampasas		2	6		22			30
La Salle	534	2	16	4	49	2	1	608
Lavaca	586	7	68	7	224	17	1	910
Lee	78	4	2		23	1		108
Leon	506	4	13		41	2	1	567
Liberty	168	1	16	6	101	4		296
Limestone	1,140	7	21	1	90	8	1	1,268
Lipscomb	1,321	16	12		149	4	2	1,504
Live Oak	365	5	69	10	177	17		643
Llano								
Loving	220	2	1	1	28	4	1	257
Lubbock								
Lynn								
Mcculloch	6		4	2	17		5	34
Mclennan		1						1
Mcmullen	651	2	31	11	171	12		878
Madison	118	2	7		23	2		152
Marion	113	2	3	1	34	2	1	156
Martin	3				2			5
Mason								
Matagorda	300	9	54	10	226	14	1	614
Maverick	125	1	10	13	61	1	2	213
Medina	22		7	2	3		4	38
Menard	9				6		3	18
Midland	161		13		49		132	355

**Gas Wells by County
As of February 2010
Prepared by The County Information Project, Texas Association of Counties**

COUNTY NAME	REGULAR PRODUCING	NOT ELIGIBLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN (4B)(2)	INJECTION	MISC	TOTAL
Milam	9		8	3	5		2	27
Mills	3							3
Mitchell	1				3			4
Montague	41		3	1	7			52
Montgomery	152	2	11	1	151	8		325
Moore	1,290	86	5	1	90	10	2	1,484
Morris								
Motley		1	3					4
Nacogdoches	1,409	10	40	2	77	10		1,548
Navarro	30		1	5	11	1		48
Newton	35	1	3		24	10		73
Nolan	42		2	1	9			54
Nueces	747	7	82	11	545	12		1,404
Ochiltree	889	7	21		163	6	1	1,087
Oldham	7				1			8
Orange	43				26	5		74
Palo Pinto	1,475	2	33	8	340	37	13	1,908
Panola	5,193	72	282	63	719	76	3	6,408
Parker	1,766	2	99	6	358	12	24	2,267
Parmer								
Pecos	1,363	3	54	4	261	15	17	1,717
Polk	147		7		60	8		222
Potter	497	77			57			631
Presidio								
Rains	10		1		10			21
Randall								
Reagan	63		2		14			79
Real	6		1		2			9
Red River					1			1
Reeves	303	1	18	1	59	9	8	399
Refugio	353	5	76	38	399	36	1	908
Roberts	934	15	8		138	4		1,099
Robertson	868	1	19		28	5		921



**Gas Wells by County
As of February 2010**
Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	NOT ELIGIBLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN (B)(2)	INJECTION	MISC	TOTAL
Rockwall								
Runnels	38		4		15			57
Rusk	2,641	10	54	10	124	14		2,853
Sabine			1		2			3
San Augustine	66	3	2	1	3			75
San Jacinto	101		3		32	6		142
San Patricio	213	3	36	9	171	12		444
San Saba								
Schleicher	787	1	4	2	48	1		843
Scurry								
Shackelford	231		9	1	82	5	3	331
Shelby	582	9	17	2	69	20		699
Sherman	930	37	3		65	9	1	1,045
Smith	655		4		24	1		684
Somervell	65	1	14		37	2	1	120
Starr	1,310	41	61	44	563	20		2,039
Stephens	1,002		16	7	137	31	8	1,201
Sterling	657		4		130			791
Stonewall						1	1	2
Sutton	5,961	131	38	138	527	19	1	6,815
Swisher								
Tarrant	2,398	11	308	1	226	4	1	2,949
Taylor	5		3		8	1	1	18
Terrell	679	1	5	3	51	1		740
Terry					10			10
Throckmorton	35		1	3	48	4	1	92
Titus					1			1
Tom Green	83		2		20		15	120
Travis								
Trinity	9	1	2	2	3			17
Tyler	125	2	1	2	35	1		166
Upshur	789	2	10	2	29	5		837
Upton	364		9	1	66	5	58	503

**Gas Wells by County
As of February 2010
Prepared by The County Information Project, Texas Association of Counties**

COUNTY NAME	REGULAR PRODUCING	NOT ELIGIBLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN 14(B)(2)	INJECTION	MISC	TOTAL
Uvalde	2			2	8			12
Val Verde	260		6	1	16	1		284
Van Zandt	41		3		19	2		65
Victoria	239	6	67	28	336	22	4	702
Walker	20	1	3		12			36
Waller	66	1	28	6	137	5	9	252
Ward	284		13		53	8	2	360
Washington	173	1	1		17			192
Webb	4,910	9	79	9	848	28	6	5,889
Wharton	500	7	24	10	244	26	5	816
Wheeler	1,723	2	20		154	23	10	1,932
Wichita				3				3
Wilbarger	1				1			2
Willacy	108	2	14	1	72	4	1	202
Williamson					2			2
Wilson	2	1	5		5			13
Winkler	338	1	30		187	5	1	562
Wise	4,049	6	134	2	271	3	3	4,468
Wood	68	1	2	1	50	1	2	125
Yoakum	1	1	1		15		39	57
Young	250	1	7	11	65	10	3	347
Zapata	3,243	25	69	5	597	18	1	3,958
Zavala	58	1	50	3	121	6		239
Total	100,574	990	3,887	743	19,203	1,082	1,164	127,643

**** Gas Well Types**

- Regular Producing - well that is capable of producing gas well gas.
- Not Eligible For Allow - well is lacking required form, has serious rules violation, or permit restriction.
- Temporarily Abandoned - well not being produced and does not have wellhead pressure.
- Shut-In - well not being produced but has wellhead pressure.
- Shut-in 14(B)(2) - inactive well with valid 14(B)(2) extension.
- Injection - well used to inject fluid (water, air, co2) into a productive formation does not include gas well gas





**Gas Wells by County
As of February 2010**
Prepared by The County Information Project, Texas Association of Counties

COUNTY NAME	REGULAR PRODUCING	NO. AVAILABLE FOR ALLOW	TEMPORARILY ABANDONED	SHUT-IN	SHUT-IN (A/B/C)	INJECTION	MISC	TOTAL
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injection.

Misc - well is being used as observation, domestic gas supply, etc.

Note: This report does not include wells that have been plugged & abandoned.

Data source: Texas Railroad Commission, *Well Distribution by County - Well Counts*, Updated 02/04/10, <http://www.rrc.state.tx.us/data/wells/wellcount/index.php> (accessed February 5, 2010).



April 14, 2010

To: Honorable Members of the Senate Committee on Finance:
From: Texas Association of Counties
County Judges and Commissioners Association of Texas

Attached please see a letter regarding the undervaluation of oil and gas properties. The letter is signed by county judges from throughout the state. Another group of judges wrote individual letters, and another letter is signed by an entire commissioners court – totaling almost 100 counties.

We hope you will consider the concerns of county officials in your deliberations during the interim on this very important subject.

March 19, 2010

To: Members, House Committee on Ways and Means and Senate Finance Committee
From: County Judges
Re: Valuation of Oil and Gas Properties

Dear Members:

We, the undersigned county judges, do respectfully request that the interim studies on oil/gas property valuations consider the following information:

- At least half of our Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.
- The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.
- The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,

Alan Bayer
Jim Barron
RAY POWELL
Trey Carrington
Dale Davis
Dale Spurgeon
Mike Saran
Polly McHugh
Jim B. White
Ernie C. Lloyd
Kwain Dodson
Dudley Galt
H. Amy (Dunt)
Charles Bradley
Susan M. Redford
Jany Bearden
John Hill
Lynn Tom
James W. Head
Dezola Keeter
Lee Thomas
Becky Seay-Walker
James H. Clair
Alvin Crow
Marilyn Egan
Charles J. Blocker
SAM STATE
Van L. York

Terry County
Yoakum County
HALL County
Throckmorton Co.
Ashtell County
Jones County
TOM GREEN COUNTY
Stonewall County
Kent County
Knox County
Hale County
Hood County
Jockly County
Schlesher County
Ector County
Mason County
Dixon County
Reagan County
Lubbock County
Nowata County
Garza County
Hudspeth County
COCHRAN COUNTY
COWLEY COUNTY
Brunnels County
Martin County
DAWSON CO.
Borden County

Jerry Dan Tully

Wheeler County

Don P. Wood

Oldham Co.

1 dug Reed

Armitage Co.

Lewis Powers

Carson County

Richard Becht

Bray County

John James

Collingsworth County

Dick Hill

DeWitt County

Roger Cowd

Callahan County

Sherril Hanson

Bailey County

Richard H. Dolgene

Anchens County

Juan Guerra
ROSALVA Guerra

Zapata County

Marnet M. Minar

Callison County

Larry Cooper

Presidio County

Linda Rogers

Baylor County

Jay Banks

Hutchinson County

Earl Beth Carter

Sherman County

Donnie J. Seale

Parmer County

Kenneth Siggott

Clay County

Gary W. Beesmer

Archer County

Mitchell S. Davenport

Tack County

Bill McEhane

Wise County

John Farmer

Crane County

Rod Waller

Scurry County

Ray Mayo

Mitchell County

Charlie Beel

Foard County

Jim Lambrough

NOLAN COUNTY

W. H. Franklin

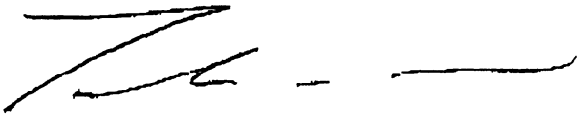
LYNN COUNTY

Ed D. Smith

Motley County

Martin Quimby
Mark J. Bau
Lisa Arnold
Donald E. Ingram
Deane Samil
Dawey Hill
William F. Sudd
Donna Jones
Earl McKinley
Benny D. Wilson
Tikki Bradley
Walter A. Thompson Jr
Vernon H. Cook
Penny Deligdisley
Bryce Lynn

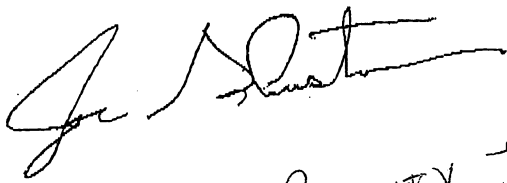
Wilson County
Howard Co.
Dickens Co.
HARDENMAN CO.
King Co.
Crosby Co
Castro County
WOOD COUNTY
Ochiltree County
Hansford County
UPTON COUNTY
LAMB COUNTY
Roberts County
Floyd County
Wilbarger County

A handwritten signature in black ink, appearing to read 'Mark W. Allen', with a long horizontal line extending to the right.

Mark W. Allen, County Judge
Jasper County, Texas

Judge Byron Ryder
Leon County.

RECEIVED
MAR 19 2010
BY:



(PECOS COUNTY JUDGE)

Willard Smith
(CHIPS COMB COUNTY JUDGE)

Ralph Sides
Sterling County Judge



Arthur M. Henson
County Judge Madison County

RED RIVER COUNTY
400 N. Walnut
Clarksville, Texas 75426
FAX: 903 427-5510
Phone: 903 427-2680
e-mail: redriver0001@yahoo.com

FAX

TO:	Jim Allison	FROM:	Morris Harville
FAX NO.	512 480-0902	PH. NO.	903 427-2680
PAGES	1 Page Attached	CC:	---
SUBJECT:	Oil/Gas Valuation		

Date: March 19, 2010

Jim -

Per your request, below is my signature to be added to the letter regarding the Oil/Gas Valuation discussion.

Thanks -

**Morris Harville,
County Judge**


Morris Harville, County Judge

Lonnie Hunt, County Judge
401 E. Goliad, Suite 201
Crockett, TX 75835



936-544-3255 ext 221
Fax 936-544-8053
LHunt@co.houston.tx.us

County of Houston
Office of the County Judge

March 18, 2010

Please add my name to the letter being drafted from County Judges to the House and Senate committees concerning on oil and gas appraisals.

Thank you,

A handwritten signature in cursive script that reads "Lonnie Hunt".

Lonnie Hunt
Houston County Judge

2

an

an

(TRINITY COUNTY JUDGE)
MARK EVANS

John P. Thompson

(POLK COUNTY JUDGE)

Wayne L. Boultinghouse
Lampasas County Judge



Nacogdoches County

JOE ENGLISH

County Judge

Commissioners

Jerry Don Williamson, Pct. I
Reggie L. Cotton, Jr., Pct. II

Danna S. Garrett
Admin. Court Assistant

Commissioners

Jim Elder, Pct. III
Tom Strickland, Pct. IV

March 25, 2010

State of Texas
House Committee on Ways & Means
Honorable Rene Oliveira – Chair
Honorable John Otto – Vice Chair
Honorable Dwayne Bohac
Honorable Will Hartnett
Honorable Harvey Hilderbran
Honorable Charlie F. Howard
Honorable Phil King
Honorable Ken Paxton
Honorable Aaron Pena
Honorable Larry Taylor
Honorable Mike Villarreal
Austin, Texas 78701

Re: Interim Study- Special appraisal provisions, oil or gas interest.

Honorable Chair, Vice Chair and Members,

As Nacogdoches County Judge and representing the Nacogdoches County Commissioners Court, I submit this letter in support of the testimony to be presented to this committee today by staff of the Texas Association of Counties and Mr. James P. Allison, General Counsel of the County Judges and Commissioners Association of Texas. We would also to present a resolution passed on March 23, 2010 by the Nacogdoches County Commissioners Court regarding this same issue.

Being in full agreement with the oral testimony as presented and not to repeat those points made which reflect the general problems and issues facing all public Texas governmental entities which are largely restricted to the ad valorem property tax system to fund the majority of their maintenance and operating budgets and the sole source for funding long term bonded debt, I would briefly like to personalize this issue to Nacogdoches County government.

In this post-Peveto Bill era, the manner and mode of property taxation is light-years away from the old, inconsistent apples and oranges valuation methods across this state and often just across the county line. While many new aspects of the ad valorem valuation and taxation system have brought necessary and desirable changes that bring much greater equity to the process and to the taxpayers statewide, the system has some imperfections and limitations. Those changes have been instituted by expanded legislation, sometimes conflicting requirements, hovering oversight and total state control.

Uniformity and equity are understandably achieved by rules and discipline however the balance between fairness to taxpayers and the fiscal responsibilities of local government is subject to variants measured in hummingbird feathers. This is why the current system of valuation and taxation processes has placed county government in a very precarious position.

On the one hand values are totally computed under state dictated formulas, with only the slightest deviations allowed, thus setting a taxable base with little or no governmental entity input or appeal and diminished by a mix of mandatory and politically sensitive optional value exemptions. While values are the base, it is the rate of taxation that actually determines the levy of spendable tax revenues, and, here again, the state has rigid rules on the extent of the rates, in total, in increments and the proposed levy collections, without allowances for uncollectables.

With mandatory limits on values and rates, the product of the two factors result in a limited ad valorem tax revenue pool. From this pool, which comprises upwards of 60% of county operating revenue, with the remaining being fines, fees, charges and assessments, which are also almost totally set by state statute, can marginally be effected by local government, the county must provide a vast array of mandates services- jails, judicial/legal system, indigent legal and health care, elections, public safety, et al which encompasses almost all county expenditures.

Here county government is with limited revenue sources and almost unlimited fiscal requirements. The equation to provide mandated public services, a continual increasing amount; by taking the value of local physical properties (land, homes, businesses and mineral interests) owned by taxpayers, fluctuating, unstable and generally inconsistent over time and by geographic and economic locales; and highly restrictive multiplier rates which are not adjustable to account for variations in revenues sources nor expenditure demands across time or circumstances.

NET Taxable Values X LIMITED Tax Rates = FINITE Resources to fund INFINITE Services.

Therefore any changes in any of the elements of the equations can radically alter a county's ability to obtain resources or provide services and rarely do both occur in tandem. Such volatility is not conducive to future planning and budgeting much beyond the annual cycle.

The particular issue of discussion today is one of those elements which have the almost assuredly detrimental potential to negatively impact the equation. Local government, in order to fulfill its obligations to the citizens, while operating under the rules of the state, must have a stable and consistent methodology and reasonably predictable assurances of a dependable revenue source in

order make both short (operational) and long-term (capital) expenditure decisions. Beware of the hummingbird feathers.

In Nacogdoches County, in very broad terms, the difference between the alternative methods of valuation of mineral values, which currently produce almost 25% of tax revenues or approximately \$3 million dollars, even to a minimal extent of 25% of that portion of the levy, could mean a reduction of \$750,000, which represents approximately 6.25% of the current total tax rate of \$0.4343 per \$100 value or 2.7 cents, with no recourse to immediately replace the loss other than increasing the only variable at our disposal- the tax rate. Even then there are likely eminent obstacles in that any rate hikes exceeding 8% subject the action to a non-appealable and immediate rollback of the tax rates, thus leaving a seismic fissure in the immediate budget.

To absorb an approximate loss of \$750,000 the county would have to look at the following non-mandated services to balance the budget-

The annual budget of:

Veteran's Services	\$48,000
Teen Court	\$23,000
External Audit Services* (mandated for federal funds)	\$30,000
Human Resources	\$57,000
County Extension Services	\$110,000
Rural fire protection supplements	\$87,000
Courthouse security (over and above earned security fees)	\$86,000
Law enforcement vehicles	\$224,000
MHMR, Economic development, Child protective services, Public Library, Historical Committee, Meals on Wheels, Mental Health Center...	<u>\$108,000</u>
Estimated Total	<u>\$773,000</u>

Hopefully this brings into perspective, in real human terms, what variations measured in decimal points, can mean to the citizens of a community, while the local government's hands are tied and can do little to mitigate these decimations, often being the difference between life and death, like a bystander helpless to stop a damning storm. Government is a delicate environment and like the environment, minute disruptions can lead to cataclysmic results, i.e. "The Butterfly Effect".

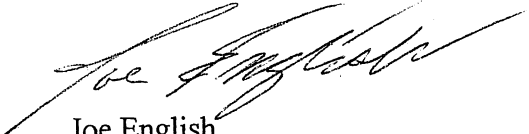
We ask that you provide local government with the ways and means to steward our governance environment responsibly and everlastingly. We ask you to allow us to be a partner in governance and not merely a subservient enforcer. Finally we ask that we be allowed, as the government most

intimately close to the people and the most informed of local abilities and needs to perform that most fundamental function of government- serve the people.

It is with great humility and equally great pride that we stand with you, shoulder to shoulder, with harmonious heartbeats, and a single vision of a better life and society for those we commonly serve, each in our unique but compatible roles.

We are here to join with you in this most noble and selfless of public vocations and offer our abilities to you in this high calling. You are most welcomed and encouraged to seek us out for our perspective knowledge and experience, just as we look to you for guidance and enabling abilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe English". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Joe English
Nacogdoches County Judge

UNDER-VALUATION OF OIL AND GAS PROPERTIES

WHEREAS, the Texas State Comptroller's severance tax based interpretation of the Texas Tax Code Sec. 23.175 (Commonly known as the market condition factor) has been applied to the estimated 2009 tax valuations of Nacogdoches County; and,

WHEREAS, Nacogdoches County receives the vast majority of our tax revenues from the county's oil and gas values; and,


WHEREAS, the State Comptroller's under-valuation of the market condition factor favors oil and gas owners to the detriment of all other taxpayers; and,

WHEREAS, Nacogdoches County will be adversely and catastrophically affected by the market condition factor as interpreted by Texas Comptroller's office; and,

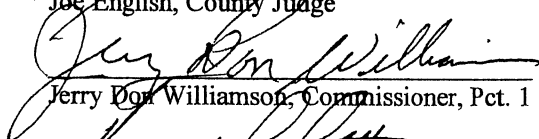
WHEREAS, Nacogdoches County will be unable to fund essential county government services under the Comptroller's interpretation of the Texas Tax Code Sec. 23.175 (market condition factor) and its effect on the oil and gas values in Nacogdoches County and make all efforts to change or repeal Texas Tax Code Sec. 23.175 to bring all Texas taxpayers into an equitable position.

NACOGDOCHES COUNTY COMMISSIONER'S COURT

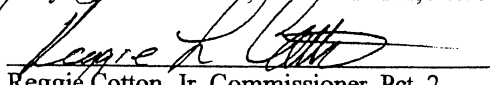
Dated this 23rd day of March 2010



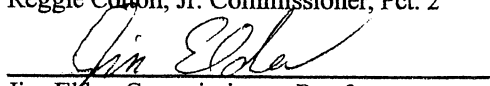
Joe English, County Judge



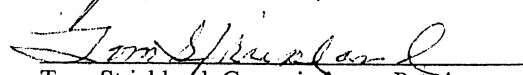
Jerry Don Williamson, Commissioner, Pct. 1



Reggie Cotton, Jr. Commissioner, Pct. 2



Jim Elder, Commissioner, Pct. 3



Tom Strickland, Commissioner, Pct. 4

We, the undersigned county judges, do respectfully request that the interim studies on oil/gas property valuations consider the following information:

- At least half of our Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.
- The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.
- The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,

Harold F. Gleason
Goliad County Judge

Send TAC-Judicial mailing list submissions to
tac-jud@list.county.org
 To subscribe via the World Wide Web, visit
<http://list.county.org/lists>
 To update your personal information or unsubscribe
 via the World Wide Web, visit
<http://list.county.org/ops-cp>

Elna Christopher <ElnaC@county.org>
 Reply-To: tac-jud@list.county.org
 To: TAC-Judicial <tac-jud@list.county.org>

Thu, Mar 18, 2010 at 3:10 PM

[Quoted text hidden]

James Allison <j.allison@allison-bass.com>
 Reply-To: tac-jud@list.county.org

Thu, Mar 18, 2010 at 3:50 PM

Mary Manning

From: James Allison [j.allison@allison-bass.com]
Sent: Sunday, March 21, 2010 5:14 PM
To: 'Elna Christopher'; Mary Manning
Subject: FW: Valuation of Oil and Gas Properties

From: Judge Cletis Millsap [mailto:judge@hopkinscountytexas.org]
Sent: Saturday, March 20, 2010 5:02 PM
To: 'James Allison'
Subject: Valuation of Oil and Gas Properties

March 19, 2010

To: Members, House Committee on Ways and Means and Senate Finance Committee
From: County Judges
Re: Valuation of Oil and Gas Properties

Dear Members:

We, the undersigned county judges, do respectfully request that the interim studies on oil/gas property valuations consider the following information:

- At least half of our Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.
- The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.
- The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,



*Hopkins County, Judge
P.O. Box 288
Sulphur Springs, TX 75483*



LEON COUNTY, TEXAS

COUNTY JUDGE

BYRON RYDER

P.O. Box 429 Centerville, TX 75833 • 903-536-2331 • 903-536-7044 fax

March 22nd, 2010

The Honorable Rene O. Oliveira, Chairman
House Ways & Means Committee
Texas House of Representatives
PO Box 2910
Austin, TX 78768-2910

Dear Chairman Oliveira,

Leon County is presently in the process of starting our plans for the 2010-2011 budget year; but there is a great deal of uncertainty and apprehension about what the crude oil and natural gas values will be. Knowing what these values are is a necessary prerequisite to preparing a county budget which is viable and reasonable, and which also gives the county a degree of flexibility in achieving its short and long term goals.

Leon County is a small, rural county with limited resources for revenue; and needless to say, oil and gas production generated locally within our county is a primary and important source of such revenue. Last year, Leon County lost \$1.4 million in anticipated revenue from oil and gas alone. A majority of that loss can be directly attributed to the State's new method of calculating the prices for these commodities. If our county, and others like us, are to survive financially, and continue to provide necessary services to our residents and reach our goals through a balanced budget; the State must seriously consider repealing this new method of calculation, and reinstate the previous method of calculating prices for oil and gas, i.e., by averaging them from the previous year.

Primarily due to lost oil and gas revenues, our county has had to drastically cut the budgets of virtually every county department, and merit and cost of living raises are a thing of the past. Such budget cuts have created a hardship on our county's infrastructure, its employees, and residents who depend upon county services. I anticipate this negative trend to continue until such time as the State returns to the "averaging" method of calculating the prices of oil and gas; a method which over the years, has proven to be an easier and fairer method of distributing these monies to the State and its counties.

Also, this new method of calculating the prices of oil and gas commodities may well negatively impact the State budget. As you are aware, the State must make up any tax difference over \$1.00/\$1,000 taxes for school districts and if the State loses revenue utilizing this new method of oil and gas pricing the State will be

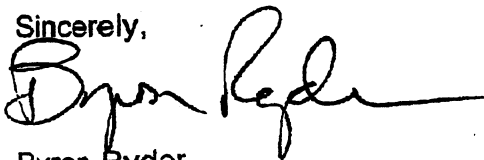
paying more to the school districts which, in turn, could adversely affect the surplus amount the State now has; and place the State in a deficit situation in an amount larger than the already expected \$15 billion.

If our State and its counties are to stay strong and healthy in the future, you must seriously consider returning to the "averaging" method for calculating the prices of oil and gas. I have spoken with many county officials and community leaders regarding this matter and it seems to be the sentiment of a vast majority of the counties in this State. Under the "averaging" method it would also be easier for the counties and the State Comptroller's Office to monitor that system; and it would be a fairer and more equitable method of valuing the crude oil and natural gas for county budget purposes.

In conclusion, I earnestly seek your committee and its members' cooperation and assistance in effecting this change in the manner of calculating the prices of oil and gas. Toward that end, I would also like to encourage you to actively seek out more input and involvement from County Officials and Appraisal Districts Chief Appraisers in the decision making process in this regard. These people have a lot of information pertinent to these issues, and they should be "tapped" by your committee before any decision is made. A decision which has the potential to have a long-lasting and permanent effect on all of us living in this great State of Texas.

If you require any additional information, or have questions, please do not hesitate to contact me at my office. Thank you very much.

Sincerely,



Byron Ryder
County Judge
Leon County



Lipscomb County

Willis Smith, County Judge
Lipscomb, Texas 79056
P.O. Box 69
(806) 862-4131
FAX (806) 862-2603

COMMISSIONERS

Juan M. Cantu
Precinct One

Stanley Born
Precinct Two

Scotty Schilling
Precinct Three

John Fritzen
Precinct Four

March 22, 2010

To: Members, House Committee on Ways and Means and Senate Finance Committee

From: County Judges

Re: Valuation of Oil and Gas Properties

Dear Members:

I do respectfully request that the interim studies on oil/gas property valuations consider the following information:

At least half of our Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.

The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA uses a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.

The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,

Willis Smith
County Judge

Danny Yocom
Commissioner
Precinct 1

Craig Belt
Commissioner
Precinct 2

COUNTY OF GAINES

Tom N. Keyes

County Judge

P. O. Box 847

Seminole, Texas 79360

(432) 758-5411 -- FAX (432) 758-4031

Blair Tharp
Commissioner
Precinct 3

Charlie Lopez
Commissioner
Precinct 4



March 22, 2010

To: Members, House Committee on Ways and Means and Senate Finance Committee
From: Gaines County Commissioners Court
Re: Valuation of Oil and Gas Properties

Dear Members:

We, the undersigned Commissioners Court of Gaines County, do respectfully request that the interim studies on oil/gas property valuations consider the following information:

- Gaines County experienced a reduction of 22.3% of oil/gas property valuations from fiscal year 2009 to 2010. Explicitly, oil/gas values went from \$5.411 billion to \$4.204 billion. The loss of value sent our Effective Tax Rate up significantly. In the face of the looming recession Gaines County was forced to take a \$2 million cut in revenue for the sake of our citizens. Through strict management we were able to avoid major cuts in services, but if this trend continues we will be forced to consider severe management actions in FY 2011.
- At least half of Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect. This undervaluation does not just affect the ability of county government to continue to provide services at levels expected by its citizens. It effects cities and school districts.
- The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This was aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.
- We, the Commissioners Court of Gaines County, hereby join the members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) to request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,

Tom N Keyes

Tom N. Keyes
County Judge

Danny Yocom

Danny Yocom
Commissioner, Pct # 1

Craig Belt

Craig Belt
Commissioner, Pct # 2

Blair Tharp

Blair Tharp
Commissioner, Pct # 3

Charlie Lopez

Charlie Lopez
Commissioner, Pct # 4

Vicki Phillips

ATTEST: Vicki Phillips
County Clerk



**OFFICE of the COUNTY JUDGE
BONNIE LECK ~ WINKLER COUNTY**



*P.O. Drawer Y
Kermit, TX 79745
(432) 586-6658
Fax (432) 586-3223*

*Vida Stinson
Administrative Assistant*

March 19, 2010

The Honorable René O. Oliveira
Chairman, House Ways & Means Committee
Texas House of Representatives
PO Box 2910
Austin, TX 78768-2910

Dear Congressman Oliveira:

It is respectfully requested that the interim studies on oil/gas property valuations consider the following:

- Winkler County, as well as at least half of our Texas counties, is significantly affected by the undervaluation caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect and deserve (county hospital, senior citizen center, airport, recreation, etc.).
- The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This was aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.
- The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Leck".

Bonnie Leck
Winkler County Judge

BL/vs

County of DeWitt



307 N. Gonzales St.
CUERO, TEXAS 77954

March 19, 2010

Members, House Committee on Ways and Means
Honorable Rene O. Oliveira, Chair
Honorable John C. Otto, Vice Chair
Honorable Dwayne Bohac
Honorable Charlie Howard
Honorable Aaron Pena
Honorable Will Hartnett
Honorable Phil S. King
Honorable Larry Taylor
Honorable Harvey Hilderbran
Honorable Ken Paxton
Honorable Michael "Mike" Villarreal

Members, Senate Finance Committee
Honorable Steve Ogden, Chair
Honorable Juan "Chuy" Hinojosa, Vice Chair
Honorable Kip Averitt
Honorable Kevin P. Eltife
Honorable Jane Nelson
Honorable Royce West
Honorable Judith Zaffirini
Honorable Robert F. Deuell
Honorable Chris Harris
Honorable Kel Seliger
Honorable John Whitmire
Honorable Robert Duncan
Honorable Eddie Lucio
Honorable Florence Shapiro
Honorable Tommy Williams

Re: Valuation of Oil and Gas Properties

Dear Committee Members:

I respectfully request the interim studies on oil/gas property valuations consider the following information:

At least half of our Texas counties are significantly affected by the undervaluation caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.

The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.

As a member of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) DeWitt County Commissioners Court requests that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,

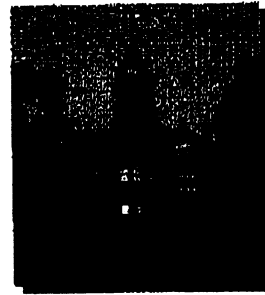
Ben E. Prause
County Judge

BEP:cm

Xc: James P. Allison, Attorney at Law, Allison Bass & Associates, L.L.P. - Fax 512 480 0902

Fayette County

COUNTY JUDGE'S OFFICE



March 19, 2010

To: Members, House Committee on Ways and Means and Senate Finance Committee
From: County Judges
Re: Valuation of Oil and Gas Properties

Dear Members:

We, the undersigned county judges, do respectfully request that the interim studies on oil/gas property valuations consider the following information:

- At least half of our Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.
- The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.
- The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,


Edward F. Janecka

Fayette County Judge



**Mark W. Allen
County Judge
Jasper County, Texas**

March 18, 2010

To: Members, House Committee on Ways and Means and Senate Finance Committee
c/o The Honorable René O. Oliveira
Chairman, House Ways & Means Committee
Texas House of Representatives
PO Box 2910
Austin, TX 78768-2910

Re: Valuation of Oil and Gas Properties

Dear Honorable Chairman Oliveira & Members:

I respectfully request that the interim studies on oil/gas property valuations consider the following information:

- At least half of our Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.
- The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.
- The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

If you have any questions, or require additional information, please feel free to contact me at (409) 384-2612. Thank you very much for your service to our great state and for your consideration of our concerns.

Mark W. Allen, County Judge
Jasper County, Texas

Jasper County Courthouse • 121 N. Austin, Room 106 • Jasper, Texas 75951
Phone: (409) 384-2612 • Fax (409) 384-9745

Vikki Bradley

Upton County Judge

*P. O. Box 482
Rankin, Texas 79778*

*Phone: 432-693-2321
Fax: 432-693-2243*

March 22, 2010

To: Members, House Committee on Ways and Means and Senate Finance Committee

Re: Valuation of Oil and Gas Properties

Dear Members:

We, the undersigned county judges, do respectfully request that the interim studies on oil/gas property valuations consider the following information:

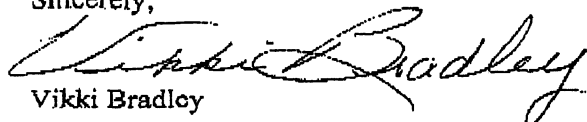
. At least half of our Texas counties are significantly affected by the undervaluation, caused by the 2007 amendments to Section 23.175, Tax Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.

. The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.

. The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,


Vikki Bradley

Code. When oil and gas properties are undervalued, it causes an unfair tax shift to local homeowners and business owners who reside in the affected communities or requires seriously cutting services that our residents expect.

The Comptroller of Public Accounts (CPA) forecast for 2008 and 2009 substantially underestimated the values for crude oil. This aggravated by the requirement that the CPA use a "revenue estimating" methodology, instead of market-based data. Unless the statutes are revised, the estimates will continue to undervalue these resources.

The members of the County Judges and Commissioners Association of Texas (CJCAT) and the Texas Association of Counties (TAC) request that these estimates be determined by market conditions, not severance tax estimates.

Thank you very much for your service to our great state and for your consideration of our concerns.

Sincerely,

Sumner Danforth
Newton County Judge

Lonnie Hunt, County Judge
401 E. Goliad, Suite 201
Crockett, TX 75835



936-544-3255 ext 221
Fax 936-544-8053
LHunt@co.houston.tx.us

County of Houston Office of the County Judge

March 24, 2010

The Honorable Rene Oliveira and Members
Committee on Ways and Means
Texas House of Representatives
Austin, TX 78768-2910

Delivered by fax to: 512-463-8186

Dear Chairman Oliveira and Committee Members,

It is the belief of the Houston County Commissioners Court, and many other Commissioners Courts across Texas, that the adoption and implementation of Section 23.175 of the Texas Property Tax Code in 2007 has resulted in an unfair and possibly unconstitutional situation in which oil and gas properties have been valued at less than fair market value.

This has caused an unfair shift in the property tax burden to homeowners, farmers and ranchers, and small business owners. It has also resulted in a loss of revenue to local governments including Houston County. Ironically, the largest loss of revenue occurred in the first year this new process was in place, but because oil and gas values were up so much that year, most of us had no idea of the negative impact it was having.

It is impossible to know just how much lost revenue this has caused Houston County, but the attached page shows my best efforts to estimate it. I think these are conservative estimates. And I know that the State of Texas has lost much more than county governments because of the reduction in school property taxes that had to be made up by the State.

No one wants to pay property taxes. But as long as we have property taxes, we must ensure that the system is fair to all. No one industry or group should get a break at the expense of other taxpayers. A fair and equitable appraisal of property is all we are seeking.

It is an impossible task for the Comptroller or anyone else to try to predict oil and gas prices. The old method of using an average of the previous year's prices was fair. Thus, I urge the Ways and Means Committee to support legislation which would repeal Section 23.175 and return to the previous law with regard to oil and gas appraisals.

Sincerely,

A handwritten signature in cursive script that reads "Lonnie Hunt".

Lonnie Hunt
County Judge

Lost Revenue to Houston County From Undervalued Oil & Gas Properties

(Estimates Based on Values Approximately 25 Percent Below Actual Market Prices.)

2008 Total County Tax Rate	38.6 cents
2008 Assessed Oil & Gas Value Under New Formula	\$313,170,370
County Tax Revenue from Oil & Gas	\$ 1,210,922
2008 Estimated Oil & Gas Value Under Old Formula	\$417,560,493
Estimated County Tax Revenue from Oil & Gas	\$ 1,611,783
Lost Revenue for 2008	\$ 400,861

2009 Total County Tax Rate	38.6 cents
2009 Assessed Oil & Gas Value Under New Formula	\$241,592,340
County Tax Revenue from Oil & Gas	\$ 932,546
2009 Estimated Oil & Gas Value Under Old Formula	\$322,123,120
Estimated County Tax Revenue from Oil & Gas	\$ 1,243,395
Lost Revenue for 2009	\$ 310,849

Combined 2008-2009 Losses Under Section 23.175 \$ 711,710

HB 925
73rd Leg. Sess., (1993)

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Bill: HB 925

Legislative Session: 73(R)

Council Document: 73R 4531 JD-D

Last Action: 06/19/1993 E Effective on 9/1/93

Caption Version: Introduced

Caption Text: Relating to the appraisal of oil and gas property for ad valorem tax purposes.

Author: Craddick

Sponsor: Bivins

Subjects: Oil & Gas (I0545)
Taxation--Motor Fuels (I0809)
Taxation--Property-Appraisals & Appraisal Districts (I0792)

House Committee: Ways & Means

Status: Out of committee

Vote: Ayes=0 Nays=0 Present Not Voting=0 Absent=0

Senate Committee: Finance

Bill Subcommittee: Ad Valorem Tax Policy

Status: Out of committee

Armbrister (Chair) | Moncrief | Truan

Vote: Ayes=12 Nays=0 Present Not Voting=1 Absent=0

Actions: (ascending date order)

Description	Comment	Date	Time	Journal Page
H Filed		02/17/1993		
H Read first time		02/18/1993		434
H Referred to Ways & Means		02/18/1993		434
H Scheduled for public hearing on		03/03/1993		
H Considered in public hearing		03/03/1993		
H Left pending in committee		03/03/1993		
H Considered in public hearing		03/24/1993		
H Testimony taken in committee		03/24/1993		
H Reported favorably as substituted		03/24/1993		1027
H Committee report printed and distributed		04/01/1993	08:09 PM	
H Comm. report sent to Local & Consent Calendar		04/02/1993		
H Considered in Local & Consent Calendars		04/07/1993		
H Placed on Consent Calendar		04/15/1993		
H Read 2nd time		04/15/1993		1165
H Passed to engrossment		04/15/1993		1165
H Nonrecord vote recorded in Journal		04/15/1993		1165
H Read 3rd time		04/15/1993		1172
H Passed		04/15/1993		1172
H Nonrecord vote recorded in Journal		04/15/1993		1172
H Reported engrossed		04/15/1993		1287
S Received from the House		04/19/1993		815

001

S Read first time	04/20/1993	845
S Referred to Finance	04/20/1993	845
S Scheduled for public hearing on	05/05/1993	
S Considered in public hearing	05/05/1993	
S Referred to special subcommittee	05/05/1993	
S Scheduled for public hearing in s/c on . . .	05/11/1993	
S Considered by s/c in public hearing	05/11/1993	
S Testimony taken in subcommittee	05/11/1993	
S Left pending in subcommittee	05/11/1993	
S Posting rule suspended	05/14/1993	1958
S Considered by s/c in public hearing	05/14/1993	
S Testimony taken in subcommittee	05/14/1993	
S Reported from s/c favorably w/o amendments	05/14/1993	
S Scheduled for public hearing on	05/17/1993	
S Meeting cancelled	05/17/1993	
S Scheduled for public hearing on	05/18/1993	
S Considered in public hearing	05/18/1993	
S Testimony taken in committee	05/18/1993	
S Left pending in committee	05/18/1993	
S Considered in public hearing	05/19/1993	
S Testimony taken in committee	05/19/1993	
S Reported favorably w/o amendments	05/19/1993	2197
S Placed on intent calendar	05/21/1993	
S Rules suspended	05/30/1993	3873
S Read 2nd time & passed to 3rd reading	05/30/1993	3873
S Rules suspended	05/30/1993	3874
S Record vote	05/30/1993	3874
S Read 3rd time	05/30/1993	3874
S Passed	05/30/1993	3874
H Senate passage reported	05/30/1993	5368
H Reported enrolled	05/31/1993	5468
H Signed in the House	05/31/1993	5467
S Signed in the Senate	05/31/1993	3928
E Sent to the Governor	06/01/1993	5468
E Signed by the Governor	06/19/1993	
E Effective on 9/1/93	06/19/1993	

93 FEB 18 AM 2:45
HOUSE OF REPRESENTATIVES

I certify that the attached is a true and
correct copy of hb 925, which
was filed of record on 2-17-93
and referred to the committee on:
Ways & Means
Betty W. Mansour
Chief Clerk of the House

FILED FEB 17 1993

By CRADDICK

H.B. No. 925

A BILL TO BE ENTITLED

AN ACT

1

2 relating to the appraised value of oil and gas property for ad
3 valorem tax purposes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter B, Chapter 23, Tax Code, is amended by
6 adding Section 23.175 to read as follows:

7 Sec. 23.175. OIL OR GAS INTEREST. If a real property
8 interest in oil or gas in place is appraised by a method that takes
9 into account the future income from the sale of oil or gas to be
10 produced from the interest, the method must use the average price
11 of the oil or gas from the interest for the preceding year as the
12 future price at which the oil or gas to be produced from the
13 interest is projected to be sold. The average price for the
14 preceding year is calculated by dividing the sum of the prices for
15 which oil or gas from the interest was selling on each day of the
16 preceding calendar year, excluding February 29, by 365. If there
17 was no production of oil or gas from the interest on any day during
18 the preceding calendar year, the average price for which similar
19 oil or gas from comparable interests was selling on that day is to
20 be used.

21 SECTION 2. This Act takes effect January 1, 1994, and
22 applies only to taxes imposed on or after that date.

23 SECTION 3. The importance of this legislation and the
24 crowded condition of the calendars in both houses create an

1 emergency and an imperative public necessity that the
2 constitutional rule requiring bills to be read on three several
3 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
73rd Regular Session

March 3, 1993

TO: Honorable Tom Craddick, Chair
Committee on Ways and Means
House of Representatives
Austin, Texas

IN RE: House Bill No. 925
By: Craddick

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 925 (relating to the appraised value of oil and gas property for ad valorem tax purposes) this office has determined the following:

The bill would amend Subchapter B, Chapter 23, Tax Code by adding Sec. 23.175, to provide that if a real property interest in oil or gas were appraised on the basis of future income from the sale of the oil or gas production, then the appraiser must use the average price of the product from the previous year as the basis for appraisal.

The use of the average price of oil and gas for the preceding year, applied to a future income stream from a producing property, would result in a reduction of statewide taxable value of oil and gas properties and thus a reduction in property tax revenues.

Assuming an \$0.82 local fund assignment rate, under the Foundation School Program, the reduction in property tax values would increase state costs by \$45.1 million per year for Tier 1 alone. This increase in state aid would partially offset the estimated loss of \$68.7 million to local school districts.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost to the General Revenue Fund	Probable Loss to School Districts	Probable Loss to Counties
1994	\$45,100,000	\$23,564,000	\$16,103,000
1995	45,100,000	23,564,000	16,103,000
1996	45,100,000	23,564,000	16,103,000
1997	45,100,000	23,564,000	16,103,000
1998	45,100,000	23,564,000	16,103,000

Similar annual fiscal implications would continue as long as the provisions of the bill are in effect.

Source: Comptroller of Public Accounts;
LBB Staff: JO, JWH, DF, WJR, OC

005



House Committee on Ways & Means (C490)
Legislature: 73(R) - 1993
Appointment Date: 1/29/1993

Clerk: CHRISSEE HUFFMAN
Phone: (512) 463-0822
Room: EXT E2.116

Position	Member
Chair:	Rep. Tom Craddick
Vice Chair:	Rep. Clyde Alexander
Members:	Rep. Hugo Berlanga
	Rep. Pat Haggerty
	Rep. Talmadge Heflin
	Rep. Jim Horn
	Rep. Paul Moreno
	Rep. Rene Oliveira
	Rep. D.R. "Tom" Uher
	Rep. Richard F. "Ric" Williamson
	Rep. Steven Wolens

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**HOUSE
COMMITTEE REPORT** 93 APR -1 PM 8:09
1st Printing HOUSE OF REPRESENTATIVES

By Craddick

H.B. No. 925

Substitute the following for H.B. No. 925:

By Craddick

C.S.H.B. No. 925

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appraisal of oil and gas property for ad valorem
3 tax purposes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter B, Chapter 23, Tax Code, is amended by
6 adding Section 23.175 to read as follows:

7 Sec. 23.175. OIL OR GAS INTEREST. (a) If a real property
8 interest in oil or gas in place is appraised by a method that takes
9 into account the future income from the sale of oil or gas to be
10 produced from the interest, the method must use the average price
11 of the oil or gas from the interest for the preceding year as the
12 price at which the oil or gas produced from the interest is
13 projected to be sold in the current year of the appraisal. The
14 average price for the preceding year is calculated by dividing the
15 sum of the prices for which oil and gas from the interest was
16 selling on each day of the preceding calendar year, excluding
17 February 29, by 365. If there was no production of oil or gas from
18 the interest on any day during the preceding calendar year, the
19 average price for which similar oil and gas from comparable
20 interests was selling on that day is to be used. If market
21 conditions warrant, the average price from the preceding year may
22 be increased or decreased in the second and/or succeeding years of
23 an appraisal that takes into account the future income from the
24 sale of oil or gas to be produced from the interest. If the

1 average price from the preceding year is increased in the second or
2 any succeeding year of an appraisal that takes into account the
3 future income from the sale of oil or gas from the interest, the
4 annual percentage rate of increase may be no greater than the
5 annual percentage rate increase projected for that year by the
6 comptroller for revenue estimating purposes; however, in no event
7 may the price used in the second or any succeeding year of an
8 appraisal exceed 150 percent of the price used in the current year
9 of the appraisal. The price used in the current year may be
10 decreased by any amount in the second and succeeding year of an
11 appraisal.

12 (b) The comptroller by rule shall develop and distribute to
13 each appraisal office appraisal manuals that specify methods and
14 procedures to discount future income from the sale of oil or gas
15 from the interest to present value.

16 (c) Each appraisal office shall use the methods and
17 procedures specified by the appraisal manuals developed under
18 Subsection (b) of this section.

19 SECTION 2. This Act takes effect September 1, 1993.

20 SECTION 3. The importance of this legislation and the
21 crowded condition of the calendars in both houses create an
22 emergency and an imperative public necessity that the
23 constitutional rule requiring bills to be read on three several
24 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Pete Laney
Speaker of the House of Representatives

3-24-93
(date)

Sir:

We, your COMMITTEE ON WAYS AND MEANS

to whom was referred HB925 have had the same under consideration and beg to report
(measure)

back with the recommendation that it

() do pass, without amendment.

() do pass, with amendment(s).

(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes () no An author's fiscal statement was requested, () yes (X) no

A criminal justice policy impact statement was requested. () yes (X) no

An equalized educational funding impact statement was requested. () yes (X) no

An actuarial impact statement was requested. () yes (X) no

A water development policy impact statement was requested. () yes (X) no

(X) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Craddick, Ch.	X			
Alexander, V.C.				X
Berlanga	X			
Haggerty	X			
Heflin	X			
Horn	X			
Moreno				X
Oliveira	X			
Uher				X
Williamson	X			
Wolens	X			

Total 8 aye
 0 nay
 0 present, not voting
 3 absent

Pete Laney

 CHAIRMAN



012

012

BILL ANALYSIS

BACKGROUND INFORMATION

Chapter 23, Tax Code, establishes methods and procedures for property appraisal in the state. On January 1 each year, all taxable property is to be appraised using generally accepted appraisal techniques. Subchapter B, Chapter 23, Tax Code, establishes appraisal methods for special appraisals such as taxable leaseholds, intangibles of an insurance company, and mineral interests not being produced.

PURPOSE

The bill would require appraisals of real property interests in oil or gas in place to use the historical price of gas or oil during the previous year as the basis of determining taxable value. The determination of the future price of oil or gas would strictly depend on the price of oil or gas in the preceding year unless market conditions warranted the use of the Comptroller's forecast of oil and gas prices to adjust the previous year's price.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 23, Tax Code by adding Section 23.175.

(a) Requires the use of historical oil and gas prices in determining taxable values of oil and gas interests. If market conditions warrant, the Comptroller's forecast of oil and gas prices be used to adjust the previous year's value.

(b) Provides that the Comptroller shall develop and distribute to appraisal districts a manual that specifies methods for appraising oil and gas properties using future prices of oil or gas in determining present value.

(c) Requires each appraisal office to use the methods and procedures specified in the appraisal manual distributed under subsection (b).

SECTION 2. Establishes effective date of January 1, 1994.

SECTION 3. Emergency clause.

COMPARISON OF SUBSTITUTE TO ORIGINAL

C.S.S.B. 925 contains a provision for including the Comptroller's forecast of oil and gas prices in the appraisal of oil or gas property should market conditions warrant. No such provision was in H.B. 925.

C.S.S.B. 925 contains a provision capping the increase in oil or gas price used in the appraisal at 150 of the price of the previous year. No such provision was in H.B. 925.

C.S.S.B. 925 contains a provision directing the Comptroller to develop and distribute a manual for the appraisal districts to use to appraise oil and gas property using the future value of oil or gas to determine present value. H.B. 925 contained no such provision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not delegate new rulemaking authority to any state officer, agency, department, or institution.

SUMMARY OF COMMITTEE ACTION

Public notice was posted in accordance to the rules and a public hearing was held on March 3, 1993. No testimony was received on, for, or against the bill. Without objection, H.B. 925 was left pending before the committee.

On March 24, 1993, the Chair laid out H.B. 925 on pending business and a committee substitute to the bill. Representative Craddick explained the bills to the committee. No testimony was received on, for, or against the bills. The committee adopted C.S.H.B. 925. By a record vote of 8 ayes, 0 nays, 0 present not voting, and 3 absent, the committee voted to report H.B. 925 to the House as substituted with the recommendation that it be sent to the Local and Consent Calendar and that it do pass.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
73rd Regular Session

March 31, 1993

TO: Honorable Tom Craddick, Chair
Committee on Ways and Means
House of Representatives
Austin, Texas

IN RE: Committee Substitute for
House Bill No. 925

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 925 (relating to the appraisal of oil and gas property for ad valorem tax purposes) this office has determined the following:

The bill would amend Subchapter B, Chapter 23, Tax Code by adding Sec. 23.175, to require that oil and gas appraisals use the average price of oil and gas for the preceding year to estimate future income. If market conditions warrant, the average price from the preceding year could be increased in the second and or succeeding years, but not to exceed the annual percentage rate of increase projected for that year by the Comptroller for revenue estimating purposes. An increase based on market conditions could not exceed 150% of the price used in the current year of the appraisal.

The bill would also require the Comptroller by rule to develop and distribute to each appraisal office appraisal manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

The Comptroller's office would incur an administrative expense based on the anticipated cost of developing and distributing to each appraisal office appraisal manuals that specify methods and procedures for appraisal of these properties, however, these costs could be absorbed under current appropriation levels.

No significant fiscal implication to the State or units of local government is anticipated.

Source: Comptroller of Public Accounts
LBB Staff: JO, JWH, DF, OC



810

ADOPTED

APR 16 1993

Betsy Manning
Chief Clerk
House of Representatives

By Craddick

H.B. No. 925

Substitute the following for H.B. No. 925:

By *Craddick*

C.S.H.B. No. 925

A BILL TO BE ENTITLED

AN ACT

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2 relating to the appraisal of oil and gas property for ad
3 valorem tax purposes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter B, Chapter 23, Tax Code is amended
6 by adding Section 23.175 to read as follows:

7 Section 23.175. OIL OR GAS INTEREST. (a) If a real
8 property interest in oil or gas in place is appraised by
9 a method that takes into account the future income from the
10 sale of oil or gas to be produced from the interest, the
11 method must use the average price of the oil or gas from
12 the interest for the preceding year as the price at which
13 the oil or gas produced from the interest is projected to
14 be sold in the current year of the appraisal. The average
15 price for the preceding year is calculated by dividing the
16 sum of the prices for which oil and gas from the interest
17 was selling on each day of the preceding calendar year,
18 excluding February 29, by 365. If there was no production
19 of oil or gas from the interest on any day during the
20 preceding calendar year, the average price for which similar
21 oil and gas from comparable interests was selling on that
22 day is to be used. If market conditions warrant, the
23 average price from the preceding year may be increased or
24 decreased in the second and/or succeeding years of an
25 appraisal that takes into account the future income from the

1 sale of oil or gas to be produced from the interest. If
2 the average price from the preceding year is increased in
3 the second or any succeeding year of an appraisal that takes
4 into account the future income from the sale of oil or gas
5 from the interest, the annual percentage rate of increase
6 may be no greater than the annual percentage rate increase
7 projected for that year by the comptroller for revenue
8 estimating purposes; however, in no event may the price used
9 in the second or any succeeding year of an appraisal exceed
10 150 percent of the price used in the current year of the
11 appraisal. The price used in the current year may be
12 decreased by any amount in the second and succeeding year
13 of an appraisal.

14 (b) The comptroller by rule shall develop and
15 distribute to each appraisal office appraisal manuals that
16 specify methods and procedures to discount future income from
17 the sale of oil or gas from the interest to present value.

18 (c) Each appraisal office shall use the methods and
19 procedures specified by the appraisal manuals developed under
20 Subsection (b) of this section.

21 SECTION 2. This Act takes effect September 1, 1993.

22 SECTION 3. The importance of this legislation and the
23 crowded condition of the calendars in both houses create an
24 emergency and an imperative public necessity that the
25 constitutional rule requiring bills to be read on three
26 several days in each house be suspended, and this rule is
27 hereby suspended.

BYL

HOUSE ENGROSSMENT

By Craddick

H.B. No. 925

A BILL TO BE ENTITLED

AN ACT

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relating to the appraisal of oil and gas property for ad valorem tax purposes.

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SECTION 1. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.175 to read as follows:

Sec. 23.175. OIL OR GAS INTEREST. (a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding year as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding year is calculated by dividing the sum of the prices for which oil and gas from the interest was selling on each day of the preceding calendar year, excluding February 29, by 365. If there was no production of oil or gas from the interest on any day during the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling on that day is to be used. If market conditions warrant, the average price from the preceding year may be increased or decreased in the second and/or succeeding years of an appraisal that takes into account the future income from the sale of oil or gas to be produced from the interest. If the

1 average price from the preceding year is increased in the second or
2 any succeeding year of an appraisal that takes into account the
3 future income from the sale of oil or gas from the interest, the
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6 comptroller for revenue estimating purposes; however, in no event
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13 each appraisal office appraisal manuals that specify methods and
14 procedures to discount future income from the sale of oil or gas
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16 (c) Each appraisal office shall use the methods and
17 procedures specified by the appraisal manuals developed under
18 subsection (b) of this section.

19 SECTION 2. This Act takes effect September 1, 1993.

20 SECTION 3. The importance of this legislation and the
21 crowded condition of the calendars in both houses create an
22 emergency and an imperative public necessity that the
23 constitutional rule requiring bills to be read on three several
24 days in each house be suspended, and this rule is hereby suspended.

BILL ANALYSIS

Senate Research Center

H.B. 925
By: Craddick
Finance
5-11-93
Engrossed

BACKGROUND

All taxable property is to be appraised using generally accepted appraisal techniques on January 1 of each year. Chapter 23B, Tax Code, establishes appraisal methods for special appraisals such as taxable leaseholds, intangibles of an insurance company, and mineral interests not being used.

PURPOSE

As proposed, H.B. 925 sets forth methods for the appraisal of oil and gas property for ad valorem tax purposes.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the comptroller of public accounts in SECTION 1 (Section 23.175(b), Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 23B, Tax Code, by adding Section 23.175, as follows:

Sec. 23.175. OIL OR GAS INTEREST. (a) Sets forth the method for appraisal of a real property interest in oil or gas.

(b) Requires the comptroller, by rule, to develop and distribute to each appraisal office manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

(c) Requires each appraisal office to use the methods and procedures specified by the manuals developed under Subsection (b).

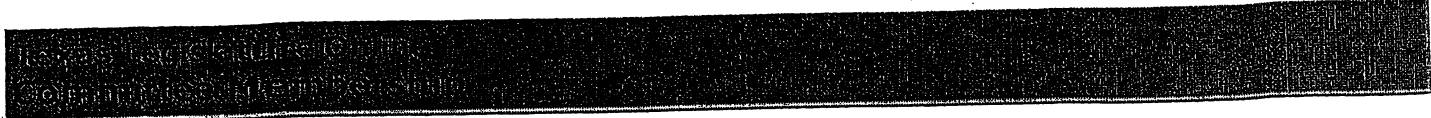
SECTION 2. Effective date: September 1, 1993.

SECTION 3. Emergency clause.



130

022



Senate Committee on Finance (C540)
Legislature: 73(R) - 1993
Appointment Date: 1/13/1993

Clerk: JERRY SANDER
Phone: (512) 463-0370
Room: EXT E1.038

Position	Member
Chair:	Sen. John T. Montford
Vice Chair:	Sen. Jim Turner
Members:	Sen. Gonzalo Barrientos
	Sen. Teel Bivins
	Sen. Rodney Ellis
	Sen. Bill Haley
	Sen. Mike Moncrief
	Sen. Carl Parker
	Sen. Bill Ratliff
	Sen. David Sibley
	Sen. Bill Sims
	Sen. Carlos Truan
	Sen. Judith Zaffirini

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
73rd Regular Session

April 22, 1993

TO: Honorable John Montford, Chair
Committee on Finance
Senate Chamber
Austin, Texas

IN RE: House Bill No. 925, as engrossed
By: Craddick

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 925, as engrossed (relating to the appraisal of oil and gas property for ad valorem tax purposes) this office has determined the following:

The bill would amend Subchapter B, Chapter 23, Tax Code by adding Sec. 23.175, to require that oil and gas appraisals use the average price of oil and gas for the preceding year to estimate future income. If market conditions warrant, the average price from the preceding year could be increased in the second and or succeeding years, but not to exceed the annual percentage rate of increase projected for that year by the Comptroller for revenue estimating purposes. An increase based on market conditions could not exceed 150% of the price used in the current year of the appraisal.

The bill would also require the Comptroller by rule to develop and distribute to each appraisal office appraisal manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

The Comptroller's office would incur an administrative expense based on the anticipated cost of developing and distributing to each appraisal office appraisal manuals that specify methods and procedures for appraisal of these properties, however, these costs could be absorbed under current appropriation levels.

No significant fiscal implication to the State or units of local government is anticipated.

Source: Comptroller of Public Accounts
LBB Staff: JO, JWH, DF, OC



050

026

1 By: Craddick (Senate Sponsor - Bivins) H.B. No. 925
 2 (In the Senate - Received from the House April 19, 1993;
 3 April 19, 1993, read first time and referred to Committee on
 4 Finance; May 19, 1993, reported favorably by the following vote:
 5 Yeas 12, Nays 0; May 19, 1993, sent to printer.)

6 COMMITTEE VOTE

	Yea	Nay	PNV	Absent
7 Montford	x			
8 Turner	x			
9 Armbrister	x			
10 Barrientos	x			
11 Bivins	x			
12 Ellis	x			
13 Haley	x			
14 Moncrief			x	
15 Parker	x			
16 Ratliff	x			
17 Sims	x			
18 Truan	x			
19 Zaffirini	x			

21 A BILL TO BE ENTITLED
 22 AN ACT

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 31 produced from the interest, the method must use the average price
 32 of the oil or gas from the interest for the preceding year as the
 33 price at which the oil or gas produced from the interest is
 34 projected to be sold in the current year of the appraisal. The
 35 average price for the preceding year is calculated by dividing the
 36 sum of the prices for which oil and gas from the interest was
 37 selling on each day of the preceding calendar year, excluding
 38 February 29, by 365. If there was no production of oil or gas from
 39 the interest on any day during the preceding calendar year, the
 40 average price for which similar oil and gas from comparable
 41 interests was selling on that day is to be used. If market
 42 conditions warrant, the average price from the preceding year may
 43 be increased or decreased in the second and/or succeeding years of
 44 an appraisal that takes into account the future income from the
 45 sale of oil or gas to be produced from the interest. If the
 46 average price from the preceding year is increased in the second or
 47 any succeeding year of an appraisal that takes into account the
 48 future income from the sale of oil or gas from the interest, the
 49 annual percentage rate of increase may be no greater than the
 50 annual percentage rate increase projected for that year by the
 51 comptroller for revenue estimating purposes; however, in no event
 52 may the price used in the second or any succeeding year of an
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 54 of the appraisal. The price used in the current year may be
 55 decreased by any amount in the second and succeeding year of an
 56 appraisal.

57 (b) The comptroller by rule shall develop and distribute to
 58 each appraisal office appraisal manuals that specify methods and
 59 procedures to discount future income from the sale of oil or gas
 60 from the interest to present value.

61 (c) Each appraisal office shall use the methods and
 62 procedures specified by the appraisal manuals developed under
 63 Subsection (b) of this section.

64 SECTION 2. This Act takes effect September 1, 1993.

65 SECTION 3. The importance of this legislation and the
 66 crowded condition of the calendars in both houses create an

1 emergency and an imperative public necessity that the H.B. No. 925
2 constitutional rule requiring bills to be read on three several
3 days in each house be suspended, and this rule is hereby suspended.

4 * * * * *

5 Austin, Texas
6 May 19, 1993

7 Hon. Bob Bullock
8 President of the Senate

9 Sir:

10 We, your Committee on Finance to which was referred H.B. No. 925,
11 have had the same under consideration, and I am instructed to
12 report it back to the Senate with the recommendation that it do
13 pass and be printed.

14 Montford, Chairman

15 * * * * *

16 WITNESSES

17 No witnesses appeared on H. B. No. 925.

**FAVORABLE
SENATE COMMITTEE REPORT ON**

SB SCR SJR SR **HB** HCR HJR 925
 By Cradick / Bivins
(Author/Senate Sponsor)
5-20-93
(date)

We, your Committee on FINANCE, to which was referred the attached measure, have on 5-19-93, had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

- do pass and be printed
- do pass and be ordered not printed
- and is recommended for placement on the Local and Uncontested Bills Calendar.
- A fiscal note was requested. yes no
- A revised fiscal note was requested. yes no
- An actuarial analysis was requested. yes no
- Considered by subcommittee. yes no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Montford, Chair	✓			
Turner, Vice-Chair	✓			
Armbrister	✓			
Barrientos	✓			
Bivins	✓			
Ellis	✓			
Haley	✓			
Moncrief				✓
Parker	✓			
Ratliff	✓			
Sims	✓			
Truan	✓			
Zaffirini	✓			
TOTAL VOTES	12	0	0	1

COMMITTEE ACTION

- S260 Considered in public hearing
- S270 Testimony taken

Jim Mays
 COMMITTEE CLERK

Montford
 CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill
 Retain one copy of this form for Committee files

ENROLLED

H.B. No. 925

1 AN ACT
2 relating to the appraisal of oil and gas property for ad valorem
3 tax purposes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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13 each appraisal office appraisal manuals that specify methods and
14 procedures to discount future income from the sale of oil or gas
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17 procedures specified by the appraisal manuals developed under
18 Subsection (b) of this section.

19 SECTION 2. This Act takes effect September 1, 1993.

20 SECTION 3. The importance of this legislation and the
21 crowded condition of the calendars in both houses create an
22 emergency and an imperative public necessity that the
23 constitutional rule requiring bills to be read on three several
24 days in each house be suspended, and this rule is hereby suspended.

H.B. No. 925

President of the Senate

Speaker of the House

I certify that H.B. No. 925 was passed by the House on April 15, 1993, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 925 was passed by the Senate on May 30, 1993, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor

BILL ANALYSIS

Senate Research Center

H.B. 925
By: Craddick
Finance
7-14-93
Enrolled

BACKGROUND

All taxable property is to be appraised using generally accepted appraisal techniques on January 1 of each year. Chapter 23B, Tax Code, establishes appraisal methods for special appraisals such as taxable leaseholds, intangibles of an insurance company, and mineral interests not being used.

PURPOSE

As enrolled, H.B. 925 sets forth methods for the appraisal of oil and gas property for ad valorem tax purposes.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the comptroller of public accounts in SECTION 1 (Section 23.175(b), Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 23B, Tax Code, by adding Section 23.175, as follows:

Sec. 23.175. OIL OR GAS INTEREST. (a) Sets forth the method for appraisal of a real property interest in oil or gas.

(b) Requires the comptroller, by rule, to develop and distribute to each appraisal office manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

(c) Requires each appraisal office to use the methods and procedures specified by the manuals developed under Subsection (b).

SECTION 2. Effective date: September 1, 1993.

SECTION 3. Emergency clause.



Bill Comparison Utility
03-18-2010 - 08:39:22

Comparison between TX73RHB00925 the FIL version and

TX73RHB00925 the ENR version

Bill Number: TX73RHB 925 Filed: 2/17/93

Bill Number: TX73RHB 925 Date: 6/ 3/93

Author: Cradick
A BILL TO BE ENTITLED
AN ACT

relating to the appraisal value of oil and gas property for ad valorem tax purposes.

relating to the appraisal of oil and gas property for ad valorem tax purposes.

Sec. 23.175. OIL OR GAS INTEREST. If a real property

Sec. 23.175. OIL OR GAS INTEREST. (a) If a real property

future price at which the oil or gas to be produced from the interest is projected to be sold. The average price for the preceding year is calculated by dividing the sum of the prices for which oil or gas from the interest was selling on each day of the preceding calendar year, excluding February 29, by 365. If there was no production of oil or gas from the interest on any day during the preceding calendar year, the average price for which similar oil or gas from comparable interests was selling on that day is to be used.

price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding year is calculated by dividing the sum of the prices for which oil and gas from the interest was selling on each day of the preceding calendar year, excluding February 29, by 365. If there was no production of oil or gas from the interest on any day during the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling on that day is to be used. If market conditions warrant, the average price from the preceding year may be increased or decreased in the second and/or succeeding years of an appraisal that takes into account the future income from the sale of oil or gas to be produced from the interest. If the average price from the preceding year is increased in the second or any succeeding year of an appraisal that takes into account the future income from the sale of oil or gas from the interest, the annual percentage rate of increase may be no greater than the annual percentage rate increase projected for that year by the comptroller for revenue estimating purposes, however, in no event may the price used in the second or any succeeding year of an appraisal exceed 150 percent of the price used in the current year of the appraisal. The price used in the current year may be decreased by any amount in the second and succeeding year of an appraisal.

037

SECTION 2. This Act takes effect January 1, 1994, and applies only to taxes imposed on or after that date.

35

55

President of the Senate Speaker of the House
I certify that H.B. No. 925 was passed by the House on April 15, 1993, by a non-record vote.

Chief Clerk of the House
I certify that H.B. No. 925 was passed by the Senate on May 30, 1993, by a viva-voce vote.

Secretary of the Senate

Bill Comparison Utility

APPROVED: _____
 Date _____
 Governor _____

 Number of difference sections found: 4
 Number of difference records found: 53
 -- End of Comparison --

038



HB 2982
80th Leg. Sess., (2007)

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Bill: HB 2982

Legislative Session: 80(R)

Council Document: 80R 9712 SMH-F

Last Action: 06/15/2007 E See remarks for effective date

Caption Version: Enrolled

Caption Text: Relating to the ad valorem tax appraisal of oil or gas interests.

Author: Hardcastle | Otto

Sponsor: Seliger

Subjects: Oil & Gas (I0545)
Taxation--Property-Appraisals & Appraisal Districts (I0792)

Remarks: This Act takes effect January 1, 2008, except Section 3 takes effect September 1, 2007.

House Committee: Ways & Means

Status: Out of committee

Vote: Ayes=8 Nays=0 Present Not Voting=0 Absent=1

Senate Committee: Finance

Status: Out of committee

Vote: Ayes=10 Nays=0 Present Not Voting=1 Absent=4

Actions: (ascending date order)

Viewing Votes: [Most Recent House Vote](#) | [Most Recent Senate Vote](#)

Description	Comment	Date	Time	Journal Page
H Filed		03/07/2007		
H Read first time		03/15/2007		959
H Referred to Ways & Means		03/15/2007		959
H Scheduled for public hearing on		04/11/2007		
H Considered in public hearing		04/11/2007		
H Testimony taken in committee		04/11/2007		
H Left pending in committee		04/11/2007		
H Considered in public hearing		04/18/2007		
H Reported favorably w/o amendment(s)		04/18/2007		
H Comte report filed with Committee Coordinator		04/24/2007		2486
H Committee report printed and distributed		04/24/2007	08:59 PM	
H Committee report sent to Calendars		04/25/2007		
H Considered in Calendars		05/01/2007		
H Placed on General State Calendar		05/03/2007		
H Read 2nd time		05/09/2007		3605
H Passed to engrossment		05/09/2007		3605
H Read 3rd time		05/10/2007		3719
H Passed		05/10/2007		3719
H Record vote	RV#1173	05/10/2007		3719

H Reported engrossed		05/10/2007 07:37 PM	4075
S Received from the House		05/11/2007	1932
S Read first time		05/15/2007	2129
S Referred to Finance		05/15/2007	2129
S Scheduled for public hearing on		05/19/2007	
S Considered in public hearing		05/19/2007	
S Testimony taken in committee		05/19/2007	
S Reported favorably w/o amendments		05/19/2007	2393
S Committee report printed and distributed		05/20/2007 03:08 PM	
S Placed on intent calendar		05/22/2007	
S Not again placed on intent calendar		05/23/2007	
S Rules suspended-Intent Calendar		05/23/2007	3097
S Rules suspended-Regular order of business		05/23/2007	3097
S Vote recorded in Journal		05/23/2007	3097
S Read 2nd time		05/23/2007	3097
S Amendment(s) offered	FA1 Seliger	05/23/2007	3097
S Amended		05/23/2007	3097
S Vote recorded in Journal		05/23/2007	3097
S Amendment(s) offered	FA2 Seliger	05/23/2007	3097
S Amended		05/23/2007	3097
S Vote recorded in Journal		05/23/2007	3097
S Amendment(s) offered	FA3 Estes	05/23/2007	3098
S Amended		05/23/2007	3098
S Vote recorded in Journal		05/23/2007	3098
S Passed to 3rd reading as amended		05/23/2007	3098
S Vote recorded in Journal		05/23/2007	3098
S Three day rule suspended		05/23/2007	3098
S Record vote		05/23/2007	3098
S Read 3rd time		05/23/2007	3099
S Passed		05/23/2007	3099
S Record vote		05/23/2007	3099
H Senate passage as amended reported		05/24/2007	5840
H Senate Amendments printed and distributed		05/24/2007 06:20 PM	
H Senate Amendments Analysis distributed		05/24/2007 06:29 PM	
H House concurs in Senate amendment(s)		05/25/2007	6188
H Record vote	RV#1825	05/25/2007	6188
H Text of Senate Amendment(s)		05/25/2007	6188
S House concurs in Senate amendment(s)-reported		05/25/2007	4579
H Reported enrolled		05/27/2007 01:40 PM	7402
H Signed in the House		05/27/2007	7054
S Signed in the Senate		05/28/2007	5275
E Sent to the Governor		05/28/2007	7403
E Signed by the Governor		06/15/2007	7406
E See remarks for effective date		06/15/2007	

Bill Number: TX80RHB 2982

Filed: 03-07-2007

Author: Hardcastle

A BILL TO BE ENTITLED

AN ACT

relating to the ad valorem tax appraisal of oil or gas interests.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 23.175(a), Tax Code, is amended to read as follows:

(a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a market condition factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during ~~on~~ each month ~~day~~ of the preceding calendar year ~~[, excluding February 29,]~~ by 12 ~~[365]~~. If there was no production of oil or gas from the interest ~~[on any day]~~ during any month of the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling during that month ~~[on that day]~~ is to be used. The comptroller shall calculate the market condition factor by dividing the comptroller's current calendar year statewide average price for oil or gas, as applicable, forecasted for revenue estimating purposes by the preceding calendar year actual statewide average price for

1 oil or gas, as applicable. For purposes of calculating the market
2 condition factor, "price" means the market value of oil or gas as
3 determined under Subchapter C, Chapter 201, or Section 202.053, as
4 applicable. The comptroller shall calculate the preceding calendar
5 year actual statewide average prices for oil and gas and the market
6 condition factors for oil and gas and publish that information to be
7 used for ad valorem tax appraisal purposes concurrently with the
8 current calendar year statewide average prices for oil and gas
9 forecasted for revenue estimating purposes. The price for the
10 interest used in the second or a subsequent calendar year of the
11 appraisal shall reflect the same percentage rate increase or
12 decrease in the price for oil or gas, as applicable, as projected
13 for that calendar year by the comptroller for revenue estimating
14 purposes. [~~if market conditions warrant, the average price from the~~
15 ~~preceding year may be increased or decreased in the second and/or~~
16 ~~succeeding years of an appraisal that takes into account the future~~
17 ~~income from the sale of oil or gas to be produced from the interest.~~
18 ~~If the average price from the preceding year is increased in the~~
19 ~~second or any succeeding year of an appraisal that takes into~~
20 ~~account the future income from the sale of oil or gas from the~~
21 ~~interest, the annual percentage rate of increase may be no greater~~
22 ~~than the annual percentage rate increase projected for that year by~~
23 ~~the comptroller for revenue estimating purposes, however, in no~~
24 ~~event may the price used in the second or any succeeding year of an~~
25 ~~appraisal exceed 150 percent of the price used in the current year~~
26 ~~of the appraisal. The price used in the current year may be~~
27 ~~decreased by any amount in the second and succeeding year of an~~

1 ~~appraisal.]~~

2 SECTION 2. This Act applies only to the appraisal of
3 property for ad valorem tax purposes for a tax year beginning on or
4 after the effective date of this Act.

5 SECTION 3. This Act takes effect January 1, 2008.



80th Legislature

HOUSE WAYS AND MEANS
E2.116, 463-0822

Members

Keffer, Jim (R) - CHAIR
Ritter (D) - VICE CHAIR
Otto (R) - CBO
Bonnen (R)
Davis, Yvonne (D)
Flores (D)
Paxton (R)
Pena (D)
Pitts (R)

Resources

Bills In Committee
Bills Reported from Committee
Bills Referred to Committee
Legislative Statistics
Committee Vote Sheet
Committee Vote Sheet with Photos

Committee Hearing Agendas
Committee News and Commentary
Schedule, Witness List and Minutes*
Audio of Meetings*
Jurisdiction
Interim Charges
Committee Staff

Faint, illegible text at the top of the page, possibly a header or title.



LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 10, 2007

TO: Honorable Jim Keffer, Chair, House Committee on Ways & Means

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2982 by Hardcastle (Relating to the ad valorem tax appraisal of oil or gas interests.), As
Introduced

No significant fiscal implication to the State is anticipated.

The bill would amend Section 23.175 of the Tax Code to change the oil and gas price averaging method in an income appraisal method from the daily average for the preceding calendar year to the monthly average for the preceding year.

The bill would require that the average price of the oil or gas be multiplied by a market condition factor, and the resulting price used as the price in the current year of the appraisal. The bill would require that the Comptroller calculate the market condition factor by dividing the Comptroller's current calendar year statewide average price for oil or gas forecasted for revenue estimating purposes by the preceding calendar year actual statewide average price for oil or gas.

The Comptroller would have to publish the actual statewide average prices for oil and gas and the market condition factors concurrently with the current calendar year statewide average prices for oil and gas forecasted for revenue estimating purposes. Finally, the bill would require appraisal districts to appraise oil and gas interests using the same percentage rate of increase or decrease in oil or gas prices as projected by the Comptroller for revenue estimating purposes.

Because the state is constitutionally prohibited from imposing a state property tax, there would be no direct fiscal impact on the state; however, Section 403.302 of the Government Code requires the Comptroller to conduct a property value study to determine the total taxable value for each school district. Total taxable value is an element in the state's school funding formula. Passage of this bill could cause a change in school district taxable values reported to the Commissioner of Education by the Comptroller.

The bill would modify the oil and gas pricing method that appraisal districts are currently required to follow in their appraisals, but it would not overrule the general requirement that oil and gas interests be appraised at market value. There would be no significant cost to the state and local units of government.

The bill would take effect January 1, 2008.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts
LBB Staff: JOB, CT, SD, SJS

WITNESS LIST

HB 2982

HOUSE COMMITTEE REPORT

Ways & Means Committee

April 11, 2007 - 1:00 PM or upon final adjourn./recess

For: LeBas, James (Texas Oil and Gas Association)
Valenza, John (Anadarko Petroleum Corp.)

Registering, but not testifying:

For: Perry, Steve (Chevron USA)
Stevens, Bill (Tx Alliance of Energy Producers)
Warndof, Donna (TIPRO - Tx. Independent Producers & Royalty Owners)



012

HB 2982
80th Legislative Session (2007)

House Committee on Ways & Means
Committee meeting of 4/11/07
Otto explains HB 2982 by Hardcastle.

Rep. Otto: Members this bill has to do with ad valorem valuation of mineral interests. Our present system of mineral appraisal was formalized when property tax laws were codified and the state property tax board was created in 1979. Taxable value is calculated as a present worth of future income capabilities. There are four components of the present worth calculations: commodity price; the amount of commodity produced; the operating and capital expenses; and, present worth factor. Prior to passage of 23.175 of the code, appraisal firms could set prices in any manner they saw fit. 23.175 was passed to make price estimates more accountable and realistic. Requested changes to 23.175 are an attempt to make the pricing process more uniform and enhance the accuracy of the taxable value. The current statute uses a year old price as a starting point. The requested change would adjust that price to the current market conditions. Current law is silent in regards to de-escalating prices. This requested change would mandate that prices be de-escalated as appropriate. Appraisal uniformity across the state would be enhanced and gaming of appraisal pricing would be minimized as the comptroller's pricing scenario would be mandated.

Members what we are attempting to do here, the comptroller publishes a forward looking price of mineral product. We are simply saying we want take that pricing structure and use it in coming up with the present value calculation. So that gives affect both to when the comptroller is projecting increasing prices, values will rise. At the same time when she projects decreasing prices, the value should go down. In the past what we have happen is we always seem to get adjustment when the values or prices are going up but they never go down. So by tying it to the comptroller schedule, we are going to have consistency throughout the state on how the mineral interests are valued on the present value calculation.

I will be happy to answer any questions.

Rep. Keffer: Members do we have any questions?

Rep. Flores: So then, I guess if it would be on a sliding scale and I know several sessions ago we had to go back and correct it because the price had gone down so much. We had to make some type of adjustments. So now she will have the authority

to do it as the price went up and as the price came down she will have the authority to do that the comptroller's office...

Rep. Otto: She is already publishes this information. So all we are doing is taking advantage of something the comptroller is already putting out there and we are going to say that is the data we will use then to use in the discounted present value of the mineral interests to be used in the appraisal process. We are relying on her numbers and it basically if she is projecting increasing in pricing in the future then values are gonna go up...

Rep. Flores: So because it didn't have any type of a cost, this will allow us ... this would ensure there is fairness to both sides.

Rep. Otto: That's correct.

Rep. Davis: There's not a ... (not audible).

Rep. Otto: This will be the standard.

Witnesses:

James Le Bas, Texas Oil and Gas Association, is for the bill. Mr. Otto did a very thorough job of explaining the bill. So, I will be brief. Was around when the bill was passed in 1993. I believe this bill clarifies what the original intent was which is we follow an independent and objective forecast which she is already done by the comptroller's office. In most places the bill is already being followed but there are a few places where there has been some cherry picking going on. In order to ensure that everybody is treated the same, this bill would iron all that out everywhere and should improve uniformity the way taxes are imposed. We are in support of this bill.

No questions for the witness.

John Valenta, Anadarko Petroleum Corp., manager of ad valorem tax for the Anadarko Petroleum Corp., we are here today to speak in favor of the bill. One of the things we have when we are going to do ad valorem tax appraisals every year is that we come in and we like to find a consistent and uniform practice of application of this law 23.175 was a good start when it was enacted in 1993. However, there has been some gaming of the system. We are here to just to make sure it's consistent, therefore, we are in favor of the passage of this bill.

No questions for the witness.

Registering for, but not testifying:

Steve Perry, (Chevron USA)

Bill Stevens, (Tx Alliance of Energy Producers)

Donna Warndof, (TIPRO – Tx Independent Producers & Royalty Owners)

Rep. Otto closed on the bill. I would ask that members are agreeable that we move this as fast as possible since we are getting down to 47 days.

Left pending.

Reported favorably out of committee with no amendments on 4/18/07.



010

016

BILL ANALYSIS

H.B. 2982

By:

Hardcastle

Ways & Means

Committee Report

(Unamended)

BACKGROUND AND PURPOSE

The Texas constitution and state law require uniformity and equality in property taxation. In response to large variations in oil and gas price forecasts that were being used in appraising mineral properties, in 1993 the Legislature enacted Section 23.175 of the Tax Code. Section 23.175 ties the price forecast component of the appraisal process to the forecast that is developed by the Texas Comptroller for the state's revenue estimate. However, the statute's only explicit limit is that imposed on price increases, leading some appraisers to ignore the Comptroller's forecast for years in which price decreases are anticipated.

Ensuring accurate and uniform appraisals requires that an objective standard be used for the price forecast. The Comptroller's forecast is that standard under the Tax Code and the intent of HB 2982 is that it be uniformly applied.

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

The bill amends Section 23.175 of the Tax Code to require that the starting-year price to be used in appraising an oil or gas property be the average price received on that property's production in the prior year, multiplied by a market condition factor. The Comptroller will calculate the market condition factor by the ratio of the current-year statewide average price forecast of the Comptroller divided by the preceding calendar year actual statewide average price. The Comptroller will calculate and publish the market condition factor.

Percent changes in price to be used for all forecast years subsequent to the starting year would be required to be the same as those forecasted by the Comptroller. The current 150% cap on an increasing price forecast would be repealed. The Comptroller shall publish the price forecast to be used.

This Act takes effect January 1, 2008.

EFFECTIVE DATE

January 1, 2008.

017



APPENDIX
STANDING COMMITTEE REPORTS

~~Favorable reports have been filed by committees as follows:~~

~~April 24~~

Agriculture and Livestock - HB 1915
Business and Industry - HB 2392, HB 3147, HB 3518, HB 3674, SB 458
County Affairs - HB 2276, SB 1106
Criminal Jurisprudence - HB 3370, HB 3372
Culture, Recreation, and Tourism - HB 152, HB 693, HB 3113, HB 3863,
HB 3910, HJR 71, SB 182, SB 573
Defense Affairs and State-Federal Relations - HB 2694, SB 61
Economic Development - HB 2947, HB 3037
Wednesday, April 25, 2007 HOUSE JOURNAL -- 62nd Day 2485
Elections - HB 1462
Human Services - HB 2042, HB 2691, SB 344, SB 744
Insurance - HB 2765, HB 3271
Judiciary - HB 2479
Juvenile Justice and Family Issues - HB 555, HB 876, HB 983, HB 1481,
HB 1993, HB 2410, HB 2501, HB 2502, HB 2940, HB 3022, HB 3993
Land and Resource Management - HB 631
Law Enforcement - HB 2833, HB 3613, SB 534
Licensing and Administrative Procedures - SB 904
Local Government Ways and Means - HB 1404, HB 3038, SB 162, SB 940
Natural Resources - HB 599, HB 1498, HB 2444, HB 2883, HB 4067
Public Education - HB 1632
Public Health - SB 625
State Affairs - HB 13, HB 21, HB 455, HB 2038, HB 2248, HB 2656,
HB 2666, HB 3453, HCR 198, SB 123
Transportation - HB 191
~~Ways and Means - HB 646, HB 1084, HB 1950, HB 1976, HB 2558,
HB 2982, HB 3461, HB 3546, HB 3928~~



SUBJECT: Determining the ad valorem tax appraisal value of oil and gas interests

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Keffer, Ritter, Bonnen, Y. Davis, Flores, Paxton, Pena, Pitts
0 nays
1 absent — Otto

WITNESSES: For — James LeBas, Texas Oil and Gas Association; John Valenza, Anadarko Petroleum Corp.; (*Registered, but did not testify*): Steve Perry, Chevron USA; Bill Stevens, Texas Alliance of Energy Producers; Donna Warndorf, Texas Independent Producers and Royalty Owners)
Against — None

BACKGROUND: Tax Code sec. 23.175 governs the appraisal methods for oil and gas interests. If the appraisal methods take into account the future income from the sale of oil or gas to be produced from the interest, this method must use the average price of the oil or gas from the preceding year as the price at which the oil or gas is projected to be sold in the current year of the appraisal.

DIGEST: Under HB 2982, an appraisal method that took into account the future income from the sale of oil or gas would have to use the average price of the oil or gas for the preceding calendar year, multiplied by a market condition factor.

The average price for the preceding year would be calculated by dividing the sum of the monthly average prices for which the oil and gas from the interest was selling during each month, divided by 12.

The market condition factor would be calculated by dividing the comptroller's current statewide average price for oil or gas by the preceding year's statewide average price for oil or gas. The comptroller would publish this information concurrently with the average prices for oil and gas.

The price for the interest used in the second and subsequent years of appraisal would reflect the same percent increase or decrease in the price of oil or gas as projected by the comptroller for revenue estimating purposes.

The bill would take effect January 1, 2008, and would apply for tax years beginning on or after that date.

Bill Number: TX80RHB 2982

Date: 05-10-2007

ENGROSSED

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the ad valorem tax appraisal of oil or gas interests.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 23.175(a), Tax Code, is amended to read
5 as follows:


6 (a) If a real property interest in oil or gas in place is
7 appraised by a method that takes into account the future income from
8 the sale of oil or gas to be produced from the interest, the method
9 must use the average price of the oil or gas from the interest for
10 the preceding calendar year multiplied by a market condition factor
11 as the price at which the oil or gas produced from the interest is
12 projected to be sold in the current year of the appraisal. The
13 average price for the preceding calendar year is calculated by
14 dividing the sum of the monthly average prices for which oil and gas
15 from the interest was selling during ~~on~~ each month ~~day~~ of the
16 preceding calendar year ~~[, excluding February 29,]~~ by 12 ~~[365]~~. If
17 there was no production of oil or gas from the interest ~~[on any day]~~
18 during any month of the preceding calendar year, the average price
19 for which similar oil and gas from comparable interests was selling
20 during that month ~~[on that day]~~ is to be used. The comptroller
21 shall calculate the market condition factor by dividing the
22 comptroller's current calendar year statewide average price for oil
23 or gas, as applicable, forecasted for revenue estimating purposes
24 by the preceding calendar year actual statewide average price for

1 oil or gas, as applicable. For purposes of calculating the market
2 condition factor, "price" means the market value of oil or gas as
3 determined under Subchapter C, Chapter 201, or Section 202.053, as
4 applicable. The comptroller shall calculate the preceding calendar
5 year actual statewide average prices for oil and gas and the market
6 condition factors for oil and gas and publish that information to be
7 used for ad valorem tax appraisal purposes concurrently with the
8 current calendar year statewide average prices for oil and gas
9 forecasted for revenue estimating purposes. The price for the
10 interest used in the second or a subsequent calendar year of the
11 appraisal shall reflect the same percentage rate increase or
12 decrease in the price for oil or gas, as applicable, as projected
13 for that calendar year by the comptroller for revenue estimating
14 purposes. [If market conditions warrant, the average price from the
15 preceding year may be increased or decreased in the second and/or
16 succeeding years of an appraisal that takes into account the future
17 income from the sale of oil or gas to be produced from the interest.
18 If the average price from the preceding year is increased in the
19 second or any succeeding year of an appraisal that takes into
20 account the future income from the sale of oil or gas from the
21 interest, the annual percentage rate of increase may be no greater
22 than the annual percentage rate increase projected for that year by
23 the comptroller for revenue estimating purposes, however, in no
24 event may the price used in the second or any succeeding year of an
25 appraisal exceed 150 percent of the price used in the current year
26 of the appraisal. The price used in the current year may be
27 decreased by any amount in the second and succeeding year of an

1 ~~appraisal]~~

2 SECTION 2. This Act applies only to the appraisal of
3 property for ad valorem tax purposes for a tax year beginning on or
4 after the effective date of this Act.

5 SECTION 3. This Act takes effect January 1, 2008.


Bill Comparison Utility
03-18-2010 - 09:14:20

Comparison between TX80RHB02982 the FIL version and

TX80RHB02982 the ENG version

Bill Number: TX80RHB 2982 Filed: 03-07-2007

Bill Number: TX80RHB 2982 Date: 05-10-2007

Author: Hardcastle

EMGROSSED

Number of difference sections found: 1

Number of difference records found: 2

-- End of Comparison --

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 16, 2007

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2982 by Hardcastle (Relating to the ad valorem tax appraisal of oil or gas interests.), As Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend Section 23.175 of the Tax Code to change the oil and gas price averaging method in an income appraisal from the daily average for the preceding calendar year to the monthly average for the preceding year.

The bill would require that the average price of the oil or gas be multiplied by a market condition factor, and the resulting price used as the price in the current year of the appraisal. The bill would require that the Comptroller calculate the market condition factor by dividing the Comptroller's current calendar year statewide average price for oil or gas forecasted for revenue estimating purposes by the preceding calendar year actual statewide average price for oil or gas.

The Comptroller would have to publish the actual statewide average prices for oil and gas and the market condition factors concurrently with the current calendar year statewide average prices for oil and gas forecasted for revenue estimating purposes. Finally, the bill would require appraisal districts to appraise oil and gas interests using the same percentage rate of increase or decrease in oil or gas prices as projected by the Comptroller for revenue estimating purposes.

Because the state is constitutionally prohibited from imposing a state property tax, there would be no direct fiscal impact on the state; however, Section 403.302 of the Government Code requires the Comptroller to conduct a property value study to determine the total taxable value for each school district. Total taxable value is an element in the state's school funding formula. Passage of this bill could cause a change in school district taxable values reported to the Commissioner of Education by the Comptroller.

The bill would modify the oil and gas pricing method that appraisal districts are currently required to follow in their appraisals, but it would not overrule the general requirement that oil and gas interests be appraised at market value. There would be no significant cost to the state and local units of government.

The bill would take effect January 1, 2008.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, CT, SD, SJS



480 0.00

BILL ANALYSIS

Senate Research Center
80R9712 SMH-F

H.B. 2982
By: Hardcastle, Otto (Seliger)
Finance
5/18/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires uniformity and equality in property taxation. In response to large variations in oil and gas price forecasts that were being used in appraising mineral properties, the 73rd Legislature, Regular Session, 1993, enacted Section 23.175 (Oil or Gas Interest), Tax Code. Section 23.175 ties the price forecast component of the appraisal process to the forecast that is developed by the comptroller of public accounts (comptroller) for the state's revenue estimate. However, the statute's only explicit limit is that limit imposed on price increases, leading some appraisers to ignore the comptroller's forecast for years in which price decreases are anticipated. Ensuring accurate and uniform appraisals requires that an objective standard be used for the price forecast.

H.B. 2982 requires that the starting year price to be used in appraising an oil or gas property be the average price received on that property's production in the prior year, multiplied by a market condition factor. This bill requires the comptroller to calculate the market condition factor by a certain method and to publish the results.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23.175(a), Tax Code, as follows:

(a) Requires the method used to appraise real property interest in oil or gas that takes into account the future income from the sale of oil or gas to be produced from the interest (oil or gas) to use the average price of the oil or gas for the preceding calendar year multiplied by a market condition factor as the price at which the oil or gas is projected to be sold in the current year of appraisal. Provides that the average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas was selling during each month of the preceding calendar year by 12, rather than on each day of that year, excluding February 29, by 365. Sets forth the method by which the comptroller of public accounts (comptroller) is required to calculate the market condition factor. Defines "price" for purposes of calculating the market condition factor. Requires the comptroller to calculate the preceding calendar year actual statewide average prices for oil and gas and the market condition factors for oil and gas and to publish that information to be used for ad valorem tax appraisal purposes concurrently with the current calendar year statewide average prices for oil and gas forecasted for revenue estimating purposes. Requires the price for the interest used in the second or subsequent calendar year of the appraisal to reflect the same percentage rate increase or decrease in the price for oil or gas, as applicable, as projected for that calendar year by the comptroller for revenue estimating purposes. Deletes existing text relating to the use and computation of average prices from the preceding year.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: January 1, 2008.

032



Senate Committee on Finance (C540)
Legislature: 80(R) - 2007
Appointment Date: 1/9/2007

Clerk: Amy Jeter
Phone: (512) 463-0370
Room: EXT E1.038

Position	Member
Chair:	Sen. Steve Ogden
Vice Chair:	Sen. Judith Zaffirini
Members:	Sen. Kip Averitt
	Sen. Bob Deuell
	Sen. Robert Duncan
	Sen. Kevin Eltife
	Sen. Troy Fraser
	Sen. Chris Harris
	Sen. Juan Hinojosa
	Sen. Eddie Lucio, Jr.
	Sen. Jane Nelson
	Sen. Florence Shapiro
	Sen. Royce West
	Sen. John Whitmire
	Sen. Tommy Williams

[View Membership History](#)

[Bills In/Out of Committee | Meetings](#)

WITNESS LIST

HB 2982

Senate Committee Report

Finance

May 19, 2007 - 8:30 AM

FOR:

LaBas, James Fiscal Consulting (Texas Oil and Gas Association), Austin, TX

Stevens, Bill Exec V-P (Texas Alliance of Energy Producers), Austin, TX

Valenta, John Tax Manager - Property Tax (Anadarko Petroleum), Houston, TX

Registering, but not testifying:

For:

Acevedo, Adrian Manager, Government Relations (Anadarko Petroleum), Austin, TX

Davis, Tricia Rep. American Royalty Council (ARC) (American Royalty Council), Austin, TX

Sellers, Tom (Conoco Phillips), Austin, TX

Warndof, Donna Director of Public Affairs (TIPRO Texas Independent Procedures & Royalty Owners), Austin, TX



275

036

HB 2982
80th Legislative Session (2007)

Senate Committee on Finance
Committee Meeting of 5/19/07
Sen. Eltife recognized for Sen. Seliger

Sen. Eltife: The Texas Constitution in state law requires uniformity in property taxation. The present system on mineral appraisals was formalized and property tax laws were set and the state property tax board was created in 1979. This bill set the standard process for appraisal for oil and gas property based on the previous year average production price and the comptroller's market condition factor. The resulting price will be used as the price in the current year of the appraisal. The bill requires appraisal districts to appraise oil and gas industries using the same percentage rate regardless of the increase or decrease in price from the previous year to determine the year's average. The bill will change the oil and gas price averaging method from the daily average for the preceding calendar year to the monthly average from the preceding year. It will repeal the 150% cap on an increase in price forecast. This is for consistency and true reliance on the comptroller's yearly forecast. This legislation would create appraisal uniformity across the state and gaming of appraisal pricing would be minimized as the comptroller's pricing scenario would be mandated.

Thank you Mr. Chairman. (No questions from members.)

Public testimony:

John Valenta, Tax Manager, Property Tax, (Anadarko Petroleum), Houston, Tx. I'm here to testify in support of HB 2982. The bill supplements the original 23.175 that was passed by the senate and the house in 1993. That bill when passed in 1993 added uniformity to the appraisal system; however, there's been some gaming of the system in regards to the starting price of oil and gas and escalation scenarios used. This bill simply would clarify that and bring everybody on a consistent uniform practice. Presently the way the system is there is wide disparity in the appraisals and between appraisals with...

Sen. Ogden: No lie. (Laughter) Go ahead. I know that to be true.

John Valenta: Simply what we are trying to do with this is to bring everybody on an even playing field with this bill. Anadarko Petroleum and I are in support of this bill.

Sen. Ogden: Ok. Thank you Mr. Valenta. I have a pretty good interest in this bill. I'll probably have to do a white light on it but I understand the man's testimony.

James LaBas, Fiscal Consulting (Texas Oil and Gas Association), Austin, Tx. For the bill, HB 2982. As you can see from the fiscal note, it's primarily a clarification. There are a couple of changes need to be made to ensure the uniformity and the objectivity in the appraisals. Technically, there's sort of a soft spot in the law. It allows the down years of the forecast to be ignored while only the up years can be looked at. If someone chose to cherry pick the forecast, and so this would make property appraisal process use the entire data series from the comptroller including down years as well as up years. The other change is makes, this is kinda of a less sweetened change, is it addresses the very first year of a property appraisal using the price forecast, comptroller again, as opposed to just using the previous year. So if the prices are rising, the appraisal will go up that year. If prices are falling, appraisals go down that year. All in all it ties everybody together to use a single standard and should achieve a greater level of uniformity across the state. In addition, it repeals a 1993 cap 150% of the old price. That goes away. Just in keeping with the general spirit that if the state has an objective forecast we should use that. Everybody should be using the same ruler. That's all that I've got.

Bill Stevens, Exec VP, (Texas Alliance of Energy Producers), Austin, Tx., The determination of the discounted net present value of oil and gas properties has always been a problem for us in appraisals. We think this particular piece of legislation goes a long way to helping that. The fewer variable assumptions there are, the more definitive it is. The better we all are for predictability. The Texas Alliance of Energy Producers is happy to support this.

Sen. Ogden: I was reading the fiscal note here Bill, "What is a market condition factor?"

Bill Stevens: I'm going to bounce that one to the former comptroller's employee.

Sen. Ogden: The fiscal note says that the bill would require that the average price of oil and gas be multiplied by a market condition factor. What is that?

Former Comptroller Employee: (Name not given.) In the very first year, under current law it just says use last year's price. The problem is that price is always obsolete by the time this year comes. So what it would say is the comptroller will calculate and publish last year's price and this year's price and compute that ratio. So if the price is rising, the

market condition factor is 1.1, let's say if it's going up 10%. If it's falling, it's 0.9, if it's falling 10%. That's the market condition factor. It's a one year adjustment.

Sen. Ogden: And in a year that uh, let me see, like now our renditions are coming out. Tell me like now...

Former Comptroller Employee: Well, if it were in affect now, the natural gas market condition factor would be greater than 1 because the comptroller has called for an increase in price.

Sen. Ogden: Between last year and this year.

Former Comptroller Employee: Between last year and this year. For oil they were showing the reverse happening. Now as we know prices have risen this year.

Sen. Ogden: Right now uh. So, in this particular case would that mean that the estimated price of oil will be higher for appraisal purposes this year than it would have been under the current law?

Former Comptroller Employee: Well, oil would have been lower because the comptroller's forecast showed a decline this year. For gas it would be higher because they showed it rising this year.

Sen. Ogden: All right. Thank you.

Donna Warndof, Director of Public Affairs (TIPRO, Texas Independent Procedures & Royalty Owners, Austin, TX, is for the bill.

Trisha Davis, represents American Royalty Council (ARC), Austin, TX, is for the bill.

Adrian Acevedo, Manager, Government Relations (Anadarko Petroleum) Austin, TX, is for the bill.

Tom Sellers, Conoco Phillips, Austin, TX, is for the bill.

Left pending in committee.

1230 060

1-1 By: Hardcastle, Otto (Senate Sponsor - Seliger) H.B. No. 2982
1-2 (In the Senate - Received from the House May 11, 2007;
1-3 May 15, 2007, read first time and referred to Committee on Finance;
1-4 May 19, 2007, reported favorably by the following vote: Yeas 10,
1-5 Nays 0, 1 present not voting; May 19, 2007, sent to printer.)

1-6
1-7

A BILL TO BE ENTITLED
AN ACT

1-8 relating to the ad valorem tax appraisal of oil or gas interests.
1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-10 SECTION 1. Section 23.175(a), Tax Code, is amended to read
1-11 as follows:

1-12 (a) If a real property interest in oil or gas in place is
1-13 appraised by a method that takes into account the future income from
1-14 the sale of oil or gas to be produced from the interest, the method
1-15 must use the average price of the oil or gas from the interest for
1-16 the preceding calendar year multiplied by a market condition factor
1-17 as the price at which the oil or gas produced from the interest is
1-18 projected to be sold in the current year of the appraisal. The
1-19 average price for the preceding calendar year is calculated by
1-20 dividing the sum of the monthly average prices for which oil and gas
1-21 from the interest was selling during ~~each~~ each month ~~day~~ of the
1-22 preceding calendar year ~~[excluding February 29]~~ by 12 ~~[365]~~. If
1-23 there was no production of oil or gas from the interest ~~[on any day]~~
1-24 during any month of the preceding calendar year, the average price
1-25 for which similar oil and gas from comparable interests was selling
1-26 during that month ~~[on that day]~~ is to be used. The comptroller
1-27 shall calculate the market condition factor by dividing the
1-28 comptroller's current calendar year statewide average price for oil
1-29 or gas, as applicable, forecasted for revenue estimating purposes
1-30 by the preceding calendar year actual statewide average price for
1-31 oil or gas, as applicable. For purposes of calculating the market
1-32 condition factor, "price" means the market value of oil or gas as
1-33 determined under Subchapter C, Chapter 201, or Section 202.053, as
1-34 applicable. The comptroller shall calculate the preceding calendar
1-35 year actual statewide average prices for oil and gas and the market
1-36 condition factors for oil and gas and publish that information to be
1-37 used for ad valorem tax appraisal purposes concurrently with the
1-38 current calendar year statewide average prices for oil and gas
1-39 forecasted for revenue estimating purposes. The price for the
1-40 interest used in the second or a subsequent calendar year of the
1-41 appraisal shall reflect the same percentage rate increase or
1-42 decrease in the price for oil or gas, as applicable, as projected
1-43 for that calendar year by the comptroller for revenue estimating
1-44 purposes. ~~[If market conditions warrant, the average price from the~~
1-45 ~~preceding year may be increased or decreased in the second and/or~~
1-46 ~~succeeding years of an appraisal that takes into account the future~~
1-47 ~~income from the sale of oil or gas to be produced from the interest.~~
1-48 ~~If the average price from the preceding year is increased in the~~
1-49 ~~second or any succeeding year of an appraisal that takes into~~
1-50 ~~account the future income from the sale of oil or gas from the~~
1-51 ~~interest, the annual percentage rate of increase may be no greater~~
1-52 ~~than the annual percentage rate increase projected for that year by~~
1-53 ~~the comptroller for revenue estimating purposes; however, in no~~
1-54 ~~event may the price used in the second or any succeeding year of an~~
1-55 ~~appraisal exceed 150 percent of the price used in the current year of~~
1-56 ~~of the appraisal. The price used in the current year may be~~
1-57 ~~decreased by any amount in the second and succeeding year of an~~
1-58 ~~appraisal.]~~

1-59 SECTION 2. This Act applies only to the appraisal of
1-60 property for ad valorem tax purposes for a tax year beginning on or
1-61 after the effective date of this Act.

1-62 SECTION 3. This Act takes effect January 1, 2008.

1-63

* * * * *

040

042

Bill Number: TX80RHB 2982

Date: 05-23-2007

SENATE FLOOR AMENDMENT(S)

FLOOR AMENDMENT NO. 1

Amend HB 2982 (House Committee Printing) by adding the following appropriately numbered Sections and renumbering the remaining Sections of the bill:

SECTION __. Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if:

(1) the license holder or person paid tax on diesel fuel;

(2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing; and

(3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

SECTION __. This Act takes effect September 1, 2007.

FLOOR AMENDMENT NO. 2

Amend H.B. No. 2982 by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION __. Sections 201.059(g) and 202.058(h), Tax Code, are repealed.

FLOOR AMENDMENT NO. 3

Amend H.B. No. 2982 by adding the following SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS accordingly:

SECTION __. (a) Section 21.02(e), Tax Code, is amended to read as follows:

(e) In this subsection, "portable drilling rig" includes equipment associated with the drilling rig. A portable drilling rig designed for land-based oil or gas drilling or exploration operations is taxable by each [the] taxing unit in which the rig is located on January 1 if the rig was located in the appraisal district that appraises property for the unit for the preceding 365 consecutive days. If the drilling rig was not located in the appraisal district where it is located on January 1 for the preceding 365 days, it is taxable by each [the] taxing unit in which the owner's principal place of business in this state is located on January 1, unless the owner renders the rig under Chapter 22 to the appraisal district in which the rig is located on January 1, in which event the rig is taxable by each taxing unit in which the rig is located on January 1. If an owner elects to render any portable drilling rig to the appraisal district in which the rig is located on January 1 when the rig otherwise would be taxable at the owner's principal place of business in this state, all the owner's portable drilling rigs are taxable by the taxing units in which each rig is located on January 1. Notwithstanding any other provision of this subsection, if the owner of a portable drilling rig does not have a place of business in this state, the rig is taxable by each taxing unit in which the rig is located on January 1.

(b) Subsection (a) of this section applies only to a tax year that begins on or after the effective date of this section.

(c) This section takes effect January 1, 2008.

(Senator Brimer in Chair)

HOUSE BILL 2982 ON SECOND READING

Senator Seliger moved to suspend Senate Rule 5.14(a) and the regular order of business to take up for consideration **HB 2982** at this time on its second reading:

HB 2982, Relating to the ad valorem tax appraisal of oil or gas interests.

The motion prevailed.

Senator Ogden asked to be recorded as "Present-not voting" on suspension of the regular order of business.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2982** (House committee printing) by adding the following appropriately numbered Sections and renumbering the remaining Sections of the bill:

SECTION ____ . Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if:

(1) the license holder or person paid tax on diesel fuel;

(2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing; and

(3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

SECTION ____ . This Act takes effect September 1, 2007.

The amendment to **HB 2982** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Present-not voting: Ogden.

Senator Seliger offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2982** by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION ____ . Sections 201.059(g) and 202.058(h), Tax Code, are repealed.

The amendment to **HB 2982** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Present-not voting: Ogden.

Senator Estes offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 2982** by adding the following SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS accordingly:

SECTION _____. (a) Section 21.02(e), Tax Code, is amended to read as follows:

(e) In this subsection, "portable drilling rig" includes equipment associated with the drilling rig. A portable drilling rig designed for land-based oil or gas drilling or exploration operations is taxable by each [the] taxing unit in which the rig is located on January 1 if the rig was located in the appraisal district that appraises property for the unit for the preceding 365 consecutive days. If the drilling rig was not located in the appraisal district where it is located on January 1 for the preceding 365 days, it is taxable by each [the] taxing unit in which the owner's principal place of business in this state is located on January 1, unless the owner renders the rig under Chapter 22 to the appraisal district in which the rig is located on January 1, in which event the rig is taxable by each taxing unit in which the rig is located on January 1. If an owner elects to render any portable drilling rig to the appraisal district in which the rig is located on January 1 when the rig otherwise would be taxable at the owner's principal place of business in this state, all the owner's portable drilling rigs are taxable by the taxing units in which each rig is located on January 1. Notwithstanding any other provision of this subsection, if the owner of a portable drilling rig does not have a place of business in this state, the rig is taxable by each taxing unit in which the rig is located on January 1.

(b) Subsection (a) of this section applies only to a tax year that begins on or after the effective date of this section.

(c) This section takes effect January 1, 2008.

The amendment to **HB 2982** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Present-not voting: Ogden.

On motion of Senator Seliger and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2982 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Present-not voting: Ogden.

HOUSE BILL 2982 ON THIRD READING

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2982** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Ogden.



Voting Record

Bill Number: HB 2982 (TX-80R)
Caption: By Hardcastle. Relating to the ad valorem tax appraisal of oil or gas interests.
Vote: S- 2 Third Reading and Final Passage
Date: 05/23/07
View: Switch to Ayes and Nays

Yes: 31 **No: 0** **Present: 0** **Absent: 0**

- | | |
|---|--|
| <input checked="" type="checkbox"/> Averitt (R) | <input checked="" type="checkbox"/> Nelson (R) |
| <input checked="" type="checkbox"/> Brimer (R) | <input checked="" type="checkbox"/> Nichols (R) |
| <input checked="" type="checkbox"/> Carona (R) | <input checked="" type="checkbox"/> Ogden (R) |
| <input checked="" type="checkbox"/> Deuell (R) | <input checked="" type="checkbox"/> Patrick (R) |
| <input checked="" type="checkbox"/> Duncan (R) | <input checked="" type="checkbox"/> Seliger (R) |
| <input checked="" type="checkbox"/> Ellis, Rodney (D) | <input checked="" type="checkbox"/> Shapiro (R) |
| <input checked="" type="checkbox"/> Eltife (R) | <input checked="" type="checkbox"/> Shapleigh (D) |
| <input checked="" type="checkbox"/> Estes (R) | <input checked="" type="checkbox"/> Uresti (D) |
| <input checked="" type="checkbox"/> Fraser (R) | <input checked="" type="checkbox"/> Van de Putte (D) |
| <input checked="" type="checkbox"/> Gallegos (D) | <input checked="" type="checkbox"/> Watson (D) |
| <input checked="" type="checkbox"/> Harris (R) | <input checked="" type="checkbox"/> Wentworth (R) |
| <input checked="" type="checkbox"/> Hegar (R) | <input checked="" type="checkbox"/> West, Royce (D) |
| <input checked="" type="checkbox"/> Hinojosa (D) | <input checked="" type="checkbox"/> Whitmire (D) |
| <input checked="" type="checkbox"/> Jackson, Mike (R) | <input checked="" type="checkbox"/> Williams (R) |
| <input checked="" type="checkbox"/> Janek (R) | <input checked="" type="checkbox"/> Zaffirini (D) |
| <input checked="" type="checkbox"/> Lucio (D) | |

	Democrat		Republican	
	Votes	%	Votes	%
Yes:	11	100	20	100
No:	0	0	0	0

Faint, illegible text at the top of the page, possibly a header or title.

044
120

048

House Bill 2982
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION . (a) Section 21.02(e), Tax Code, is amended to read as follows:

(e) In this subsection, "portable drilling rig" includes equipment associated with the drilling rig. A portable drilling rig designed for land-based oil or gas drilling or exploration operations is taxable by each [the] taxing unit in which the rig is located on January 1 if the rig was located in the appraisal district that appraises property for the unit for the preceding 365 consecutive days. If the drilling rig was not located in the appraisal district where it is located on January 1 for the preceding 365 days, it is taxable by each [the] taxing unit in which the owner's principal place of business in this state is located on January 1, unless the owner renders the rig under Chapter 22 to the appraisal district in which the rig is located on January 1, in which event the rig is taxable by each taxing unit in which the rig is located on January 1. If an owner elects to render any portable drilling rig to the appraisal district in which the rig is located on January 1 when the rig otherwise would be taxable at the owner's principal place of business in this state, all the owner's portable drilling rigs are taxable by the taxing units in which each rig is located on January 1. Notwithstanding any other provision of this subsection, if the owner of a portable drilling rig does not have a place of business in this state, the rig is taxable by each taxing unit in which the rig is located on January 1.

(b) Subsection (a) of this section applies only to a tax year that begins on or after the effective date of this section.

049

House Bill 2982
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(c) This section takes effect January 1, 2008.

Same as House version.

SECTION 1. Section 23.175(a), Tax Code, is amended to read as follows:

(a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a market condition factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during [each] month [day] of the preceding calendar year [excluding February 29] by 12 [365]. If there was no production of oil or gas from the interest [on any day] during any month of the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling during that month [on that day] is to be used. The comptroller shall calculate the market condition factor by dividing the comptroller's current calendar year statewide average price for oil or gas, as applicable, forecasted for revenue estimating purposes by the preceding calendar year actual statewide average price for oil or gas, as applicable. For purposes of calculating the market condition factor, "price" means the market value of oil or gas as determined under

050

House Bill 2982
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

~~Subchapter C, Chapter 201, or Section 202.053, as applicable. The comptroller shall calculate the preceding calendar year actual statewide average prices for oil and gas and the market condition factors for oil and gas and publish that information to be used for ad valorem tax appraisal purposes concurrently with the current calendar year statewide average prices for oil and gas forecasted for revenue estimating purposes. The price for the interest used in the second or a subsequent calendar year of the appraisal shall reflect the same percentage rate increase or decrease in the price for oil or gas, as applicable, as projected for that calendar year by the comptroller for revenue estimating purposes. [If market conditions warrant, the average price from the preceding year may be increased or decreased in the second and/or succeeding years of an appraisal that takes into account the future income from the sale of oil or gas to be produced from the interest. If the average price from the preceding year is increased in the second or any succeeding year of an appraisal that takes into account the future income from the sale of oil or gas from the interest, the annual percentage rate of increase may be no greater than the annual percentage rate increase projected for that year by the comptroller for revenue estimating purposes; however, in no event may the price used in the second or any succeeding year of an appraisal exceed 150 percent of the price used in the current year of the appraisal. The price used in the current year may be decreased by any amount in the second and succeeding year of an appraisal.]~~

80R23033 RNS-1NF

House Bill 2982
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION __. Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:
(c-1) A license holder may take a credit on a return for the period in which the purchase occurred and a person who does not hold a license may file a refund claim with the comptroller, if:

(1) the license holder or person paid tax on diesel fuel;

(2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing;

and

(3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

052

No equivalent provision.

SECTION __. This Act takes effect September 1, 2007

No equivalent provision.

SECTION __. Sections 201.059(e) and 202.058(h), Tax Code, are repealed.

SECTION 2. This Act applies only to the appraisal of property for ad valorem tax purposes for a tax year beginning on or after the effective date of this Act.

Same as House version.

80R23033 RNS-INF

4

Associated Draft:

House Bill 2982
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 3. This Act takes effect January 1, 2008.

Same as House version.

053

80R23033 RNS-INF

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Associated Draft:



800-054
001

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION
Revision 1

May 24, 2007

TO: Honorable Tom Craddick, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2982 by Hardcastle (Relating to the ad valorem tax appraisal of oil or gas interests.), As Passed 2nd House

Estimated Two-year Net Impact to General Revenue Related Funds for HB2982, As Passed 2nd House: a negative impact of (\$1,176,000) through the biennium ending August 31, 2009.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$559,000)
2009	(\$617,000)
2010	(\$622,000)
2011	(\$627,000)
2012	(\$632,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from AVAILABLE SCHOOL FUND 2	Probable Revenue Gain/(Loss) from STATE HIGHWAY FUND 6
2008	(\$559,000)	(\$1,676,000)
2009	(\$617,000)	(\$1,851,000)
2010	(\$622,000)	(\$1,866,000)
2011	(\$627,000)	(\$1,880,000)
2012	(\$632,000)	(\$1,896,000)

Fiscal Analysis

The bill would amend Section 23.175 of the Tax Code to change the oil and gas price averaging method in an income appraisal method from the daily average for the preceding calendar year to the monthly average for the preceding year.

The bill would require that the average price of the oil or gas be multiplied by a market condition factor, and the resulting price used as the price in the current year of the appraisal. The bill would require that the Comptroller calculate the market condition factor by dividing the Comptroller's current calendar year statewide average price for oil or gas forecasted for revenue estimating purposes by the preceding calendar year actual statewide average price for oil or gas.

The Comptroller would have to publish the actual statewide average prices for oil and gas and the market condition factors concurrently with the current calendar year statewide average prices for oil and gas forecasted for revenue estimating purposes. Finally, the bill would require appraisal districts

afu

to appraise oil and gas interests using the same percentage rate of increase or decrease in oil or gas prices as projected by the Comptroller for revenue estimating purposes.

Because the state is constitutionally prohibited from imposing a state property tax, there would be no direct fiscal impact on the state; however, Section 403.302 of the Government Code requires the Comptroller to conduct a property value study to determine the total taxable value for each school district. Total taxable value is an element in the state's school funding formula. Passage of this bill could cause a change in school district taxable values reported to the Commissioner of Education by the Comptroller.

The bill would modify the oil and gas pricing method that appraisal districts are currently required to follow in their appraisals, but it would not overrule the general requirement that oil and gas interests be appraised at market value. There would be no significant cost to the state and local units of government.

Senate floor amendment 1 adds the text of House Bill 1618 which adds a revenue cost to the original versions of HB 2982.

Senate floor amendments 2 and 3 have no state fiscal impact.

Amendment 1 bill would change Chapter 162 of the Tax Code to allow a credit or refund of the diesel fuel tax paid on diesel fuel used in certain oil field well service equipment.

Under current law, the diesel fuel tax on undyed diesel fuel used in oil field well service equipment that qualifies to receive a federal diesel fuel tax refund (i.e., mobile machinery vehicles) in the Internal Revenue Code of 1986 is not eligible for a state diesel fuel tax credit or a refund.

This amendment would allow a credit or refund of the diesel fuel tax paid on diesel fuel if the diesel fuel was used in Texas by oil field well service equipment, and the person who purchased the diesel fuel had received or was eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 (for the diesel fuel to be used by the oil field well service equipment).

This amendment would take effect September 1, 2007.

Except for House floor amendment 1, the bill would take effect January 1, 2008.

Methodology

Under current law, the undyed diesel fuel that would be affected by this bill is taxed at the rate of \$0.20 per gallon.

This estimate is based on survey data from firms operating mobile machinery vehicles used for oil field well servicing, and on the policies in the Internal Revenue Code of 1986 on the same subject. Based on these data, the average amount of diesel fuel that would be used by this equipment was calculated, and the \$0.20 per gallon tax rate was applied to estimate the potential annual revenue loss, which was then trended forward over the five-year projection period.

The first year's revenue loss was adjusted to allow for the statutory lag in motor fuel tax remittances

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, CT

in the premises of another holder of a license or permit under Title 3, Alcoholic Beverage Code, if the premises of that other license or permit holder are part of the premises of a racetrack licensed under this Act.

(k) The commission shall review the ownership and management of a license issued under this article every five years beginning on the fifth anniversary of the issuance of the license. In performing the review, the commission may require the license holder to provide any information that would be required to be provided in connection with an original license application under Article 5 of this Act or this article. The commission shall charge fees for the review in amounts sufficient to implement this subsection.

**HB 2982 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS**

Representative Hardcastle called up with senate amendments for consideration at this time,

HB 2982, A bill to be entitled An Act relating to the ad valorem tax appraisal of oil or gas interests.

Representative Hardcastle moved to concur in the senate amendments to **HB 2982**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 1825):
141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Bailey; Berman; Bohac; Bolton; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Farrar; Flores; Flynn; Frost; Gallego; Garcia; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Heflin; Hernandez; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Jackson; Jones; Keffer; King, P.; King, S.; King, T.; Krusee; Kuempel; Latham; Laubenberg; Leibowitz; Lucio; Macias; Madden; Mallory Caraway; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pierson; Pitts; Puente; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solomons(C); Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Vo; West; Woolley; Zedler; Zerwas.

Present, not voting — Mr. Speaker.

Absent, Excused — Branch; Isett.

Absent, Excused, Committee Meeting — Gattis; Kolkhorst.

Absent — Moreno; Oliveira; Turner; Villarreal.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2982** (House Committee Printing) by adding the following appropriately numbered Sections and renumbering the remaining Sections of the bill:

SECTION _____. Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if:

- (1) the license holder or person paid tax on diesel fuel;
- (2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing; and
- (3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

SECTION _____. This Act takes effect September 1, 2007.

Senate Amendment No. 2 (Senate Floor Amendment No. 2)

Amend **HB 2982** by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION _____. Sections 201.059(g) and 202.058(h), Tax Code, are repealed.

Senate Amendment No. 3 (Senate Floor Amendment No. 3)

Amend **HB 2982** by adding the following SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS accordingly:

SECTION _____. (a) Section 21.02(e), Tax Code, is amended to read as follows:

(e) In this subsection, "portable drilling rig" includes equipment associated with the drilling rig. A portable drilling rig designed for land-based oil or gas drilling or exploration operations is taxable by each ~~the~~ taxing unit in which the rig is located on January 1 if the rig was located in the appraisal district that appraises property for the unit for the preceding 365 consecutive days. If the drilling rig was not located in the appraisal district where it is located on January 1 for the preceding 365 days, it is taxable by each ~~the~~ taxing unit in which the owner's principal place of business in this state is located on January 1, unless the owner renders the rig under Chapter 22 to the appraisal district in which the rig is located on January 1, in which event the rig is taxable by each taxing unit in which the rig is located on January 1. If an owner elects to render any portable drilling rig to the appraisal district in which the rig is located on January 1 when the rig otherwise would be taxable at the owner's principal place of business in this state, all the owner's portable drilling rigs are taxable by the taxing units in

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:12 p.m. agreed to adjourn, pending receipt of Messages from the House, until 11:00 a.m. tomorrow.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 25, 2007

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

- HB 160 (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 426 (140 Yeas, 1 Nays, 2 Present, not voting)
- HB 581 (134 Yeas, 0 Nays, 2 Present, not voting)
- HB 779 (140 Yeas, 0 Nays, 3 Present, not voting)
- HB 1495 (141 Yeas, 0 Nays, 1 Present, not voting)
- HB 1742 (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 1988 (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 2198 (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 2402 (134 Yeas, 0 Nays, 1 Present, not voting)
- HB 2460 (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 2541 (141 Yeas, 0 Nays, 2 Present, not voting)
- HB 2701 (111 Yeas, 25 Nays, 2 Present, not voting)
- HB 2702 (139 Yeas, 0 Nays, 1 Present, not voting)
- HB 2978 (139 Yeas, 0 Nays, 2 Present, not voting)
- HB 2982 (141 Yeas, 0 Nays, 1 Present, not voting)
- HB 2994 (139 Yeas, 0 Nays, 2 Present, not voting)
- HB 3271 (141 Yeas, 0 Nays, 1 Present, not voting)
- HB 3309 (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 3378 (136 Yeas, 0 Nays, 2 Present, not voting)
- HB 3430 (142 Yeas, 0 Nays, 2 Present, not voting)

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Bill Number: TX80RHB 2982

Date: 05-27-2007

ENROLLED

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AN ACT

relating to the ad valorem tax appraisal of oil or gas interests.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) Section 21.02(e), Tax Code, is amended to read as follows:

(e) In this subsection, "portable drilling rig" includes equipment associated with the drilling rig. A portable drilling rig designed for land-based oil or gas drilling or exploration operations is taxable by each [~~the~~] taxing unit in which the rig is located on January 1 if the rig was located in the appraisal district that appraises property for the unit for the preceding 365 consecutive days. If the drilling rig was not located in the appraisal district where it is located on January 1 for the preceding 365 days, it is taxable by each [~~the~~] taxing unit in which the owner's principal place of business in this state is located on January 1, unless the owner renders the rig under Chapter 22 to the appraisal district in which the rig is located on January 1, in which event the rig is taxable by each taxing unit in which the rig is located on January 1. If an owner elects to render any portable drilling rig to the appraisal district in which the rig is located on January 1 when the rig otherwise would be taxable at the owner's principal place of business in this state, all the owner's portable drilling rigs are taxable by the taxing units in which each rig is located on January 1. Notwithstanding any other provision of this

1 subsection, if the owner of a portable drilling rig does not have a
2 place of business in this state, the rig is taxable by each taxing
3 unit in which the rig is located on January 1.

4 (b) Subsection (a) of this section applies only to a tax
5 year that begins on or after the effective date of this section.

6 (c) This section takes effect January 1, 2008.

7 SECTION 2. Section 23.175(a), Tax Code, is amended to read
8 as follows:

9 (a) If a real property interest in oil or gas in place is
10 appraised by a method that takes into account the future income from
11 the sale of oil or gas to be produced from the interest, the method
12 must use the average price of the oil or gas from the interest for
13 the preceding calendar year multiplied by a market condition factor
14 as the price at which the oil or gas produced from the interest is
15 projected to be sold in the current year of the appraisal. The
16 average price for the preceding calendar year is calculated by
17 dividing the sum of the monthly average prices for which oil and gas
18 from the interest was selling during [on] each month [day] of the
19 preceding calendar year[~~, excluding February 29,~~] by 12 [365]. If
20 there was no production of oil or gas from the interest [~~on any day~~]
21 during any month of the preceding calendar year, the average price
22 for which similar oil and gas from comparable interests was selling
23 during that month [~~on that day~~] is to be used. The comptroller
24 shall calculate the market condition factor by dividing the
25 comptroller's current calendar year statewide average price for oil
26 or gas, as applicable, forecasted for revenue estimating purposes
27 by the preceding calendar year actual statewide average price for

1 oil or gas, as applicable. For purposes of calculating the market
2 condition factor, "price" means the market value of oil or gas as
3 determined under Subchapter C, Chapter 201, or Section 202.053, as
4 applicable. The comptroller shall calculate the preceding calendar
5 year actual statewide average prices for oil and gas and the market
6 condition factors for oil and gas and publish that information to be
7 used for ad valorem tax appraisal purposes concurrently with the
8 current calendar year statewide average prices for oil and gas
9 forecasted for revenue estimating purposes. The price for the
10 interest used in the second or a subsequent calendar year of the
11 appraisal shall reflect the same percentage rate increase or
12 decrease in the price for oil or gas, as applicable, as projected
13 for that calendar year by the comptroller for revenue estimating
14 purposes. [~~If market conditions warrant, the average price from the~~
15 ~~preceding year may be increased or decreased in the second and/or~~
16 ~~succeeding years of an appraisal that takes into account the future~~
17 ~~income from the sale of oil or gas to be produced from the interest.~~
18 ~~If the average price from the preceding year is increased in the~~
19 ~~second or any succeeding year of an appraisal that takes into~~
20 ~~account the future income from the sale of oil or gas from the~~
21 ~~interest, the annual percentage rate of increase may be no greater~~
22 ~~than the annual percentage rate increase projected for that year by~~
23 ~~the comptroller for revenue estimating purposes, however, in no~~
24 ~~event may the price used in the second or any succeeding year of an~~
25 ~~appraisal exceed 150 percent of the price used in the current year~~
26 ~~of the appraisal. The price used in the current year may be~~
27 ~~decreased by any amount in the second and succeeding year of an~~

1 ~~appraisal.]~~

2 SECTION 3. (a) Section 162.227, Tax Code, is amended by
3 adding Subsection (c-1) to read as follows:

4 (c-1) A license holder may take a credit on a return for the
5 period in which the purchase occurred, and a person who does not
6 hold a license may file a refund claim with the comptroller, if:

7 (1) the license holder or person paid tax on diesel
8 fuel;

9 (2) the diesel fuel is used in this state by movable
10 specialized equipment used in oil field well servicing; and

11 (3) the person who purchased the diesel fuel has
12 received or is eligible to receive a federal diesel fuel tax refund
13 under the Internal Revenue Code of 1986 for the diesel fuel used by
14 movable specialized equipment used in oil field well servicing.

15 (b) This section takes effect September 1, 2007.

16 SECTION 4. Sections 201.059(g) and 202.058(h), Tax Code,
17 are repealed.

18 SECTION 5. This Act applies only to the appraisal of
19 property for ad valorem tax purposes for a tax year beginning on or
20 after the effective date of this Act.

21 SECTION 6. Except as otherwise provided by this Act, this
22 Act takes effect January 1, 2008.

President of the Senate

Speaker of the House

I certify that H.B. No. 2982 was passed by the House on May 10, 2007, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2982 on May 25, 2007, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

064

I certify that H.B. No. 2982 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 30, Nays 0, 1 present, not voting.

Secretary of the Senate

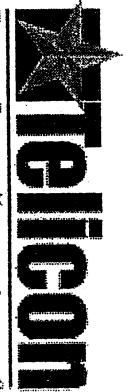
APPROVED: _____

Date

Governor



080 066



Bill Comparison Utility
03-18-2010 - 13:36:39

Comparison between TX80RHB02982 the ENG version and

Bill Number: TX80RHB 2982 Date: 05-10-2007

ENGROSSED

A BILL TO BE ENTITLED

SECTION 1. Section 23.175(a), Tax Code, is amended to read

TX80RHB02982 the ENR version

Bill Number: TX80RHB 2982 Date: 05-27-2007

ENROLLED

SECTION 1. (a) Section 21.02(e), Tax Code, is amended to read as follows:

(e) In this subsection, "portable drilling rig" includes equipment associated with the drilling rig. A portable drilling rig designed for land-based oil or gas drilling or exploration operations is taxable by each (the) taxing unit in which the rig is located on January 1 if the rig was located in the appraisal district that appraises property for the unit for the preceding 365 consecutive days. If the drilling rig was not located in the appraisal district where it is located on January 1 for the preceding 365 days, it is taxable by each (the) taxing unit in which the owner's principal place of business in this state is located on January 1, unless the owner renders the rig under Chapter 22 to the appraisal district in which the rig is located on January 1, in which event the rig is taxable by each taxing unit in which the rig is located on January 1. If an owner elects to render any portable drilling rig to the appraisal district in which the rig is located on January 1 when the rig otherwise would be taxable at the owner's principal place of business in this state, all the owner's portable drilling rigs are taxable by the taxing unit in which each rig is located on January 1. Notwithstanding any other provision of this subsection, if the owner of a portable drilling rig does not have a place of business in this state, the rig is taxable by each taxing unit in which the rig is located on January 1.

(b) Subsection (a) of this section applies only to a tax year that begins on or after the effective date of this section.

(c) This section takes effect January 1, 2008.

SECTION 2. Section 23.175(a), Tax Code, is amended to read

SECTION 2. This Act applies only to the appraisal of property for ad valorem tax purposes for a tax year beginning on or after the effective date of this Act.

SECTION 3. This Act takes effect January 1, 2008.

SECTION 3. (a) Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if:

(1) the license holder or person paid tax on diesel fuel

(2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing; and

(3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

(b) This section takes effect September 1, 2007.

SECTION 4. Sections 201.059(g) and 202.058(h), Tax Code, are repealed.

SECTION 5. This Act applies only to the appraisal of property for ad valorem tax purposes for a tax year beginning on or after the effective date of this Act.

067

SECTION 6. Except as otherwise provided by this Act, this Act takes effect January 1, 2008.

President of the Senate Speaker of the House

I certify that H.B. No. 2982 was passed by the House on May 10, 2007, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2982 on May 25, 2007, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2982 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 30, Nays 0, 1 present, not voting.

Secretary of the Senate

APPROVED: _____

Date _____

Governor _____

Number of difference sections found: 3

Number of difference records found: 70

End of Comparison --



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Bill: SB 2557**Legislative Session:** 81(R)**Council Document:** 81R 26953 SMH-D**Last Action:** 04/24/2009 S Referred to Finance**Caption Version:** Introduced**Caption Text:** Relating to the appraisal for ad valorem tax purposes of a real property interest in oil or gas in place.**Author:** Uresti**Subjects:** Oil & Gas (I0545)
Taxation--Property-Appraisals & Appraisal Districts (I0792)
Taxation--Property-Assessment & Collection (I0798)**Senate Committee:** Finance**Status:** In committee**Actions:** (ascending date order)

Description	Comment	Date	Time	Journal Page
S Received by the Secretary of the Senate		04/23/2009		
S <u>Permission to introduce</u>		04/24/2009		1480
<u>Read first time</u>		04/24/2009		1480
S <u>Referred to Finance</u>		04/24/2009		1480

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002

By: Uresti

S.B. No. 2557

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the appraisal for ad valorem tax purposes of a real
3 property interest in oil or gas in place.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 23.175, Tax Code, is repealed.

6 SECTION 2. This Act applies only to ad valorem taxes imposed
7 for a tax year beginning on or after the effective date of this Act.

8 SECTION 3. This Act takes effect January 1, 2010.



004



Bill: HB 3454

Legislative Session: 81(R)

Council Document: 81R 13224 JD-D

Last Action: 05/30/2009 H Senate appoints conferees-reported

Caption Version: Senate Committee Report

Caption Text: Relating to the determination of the value of property for ad valorem tax purposes, including appeals of appraisal review board orders determining protests of property value determinations, and the use of certain values by school districts in adopting tax rates.

Author: Otto

Coauthor: Creighton | Legler | Miller, Doug | Parker | Quintanilla

Sponsor: Williams

Cosponsor: Patrick, Dan

Subjects: Property Interests--Real Property (I0595)
Taxation--Property-Appraisals & Appraisal Districts (I0792)
HOME SALE PRICES (S0672)

House Committee: Ways & Means

Status: Out of committee

Vote: Ayes=10 Nays=0 Present Not Voting=0 Absent=1

Senate Committee: Finance

Status: Out of committee

Vote: Ayes=14 Nays=0 Present Not Voting=0 Absent=1

House Conferees: Appointed (05/29/2009) Otto (Chair) | Farabee | Hardcastle | Heflin | Keffer

Senate Conferees: Appointed (05/30/2009) Williams (Chair) | Deuell | Ellis | Eltife | Uresti

Actions: (ascending date order)

Viewing Votes: [Most Recent House Vote](#) | [Most Recent Senate Vote](#)

Description	Comment	Date	Time	Journal Page
H Filed		03/11/2009		
H Read first time		03/19/2009		779
H Referred to Ways & Means		03/19/2009		779
H Scheduled for public hearing on . . .		04/01/2009		
H Considered in public hearing		04/01/2009		
H Amendment(s) considered in committee		04/01/2009		
H Testimony taken/registration(s) recorded in committee		04/01/2009		
H Left pending in committee		04/01/2009		
H Considered in formal meeting		04/02/2009		
H Amendment(s) considered in committee		04/02/2009		
H Reported favorably as amended		04/02/2009		
H Comte report filed with Committee Coordinator		04/14/2009		1236

005

H Committee report printed and distributed		04/15/2009 12:03 AM	
H Committee report sent to Calendars		04/15/2009	
H Considered in Calendars		04/27/2009	
H Placed on General State Calendar		04/29/2009	
H Read 2nd time		04/29/2009	2110
H Amended	1-Otto	04/29/2009	2110
H Amendment withdrawn	2-Hilderbran	04/29/2009	2111
H Amended	3-Aycock	04/29/2009	2111
H Passed to engrossment as amended		04/29/2009	2112
H Read 3rd time		04/30/2009	2175
H Amended	1-Villarreal	04/30/2009	2175
H Amended	2-Phillips	04/30/2009	2177
H Passed as amended		04/30/2009	2177
H Record vote	RV#417	04/30/2009	2177
H Reported engrossed		05/01/2009 07:50 AM	2337
S Received from the House		05/01/2009	1881
S Read first time		05/06/2009	2093
S Referred to Finance		05/06/2009	2093
S Scheduled for public hearing on . . .		05/23/2009	
S Considered in public hearing		05/23/2009	
S Testimony taken in committee		05/23/2009	
S Left pending in committee		05/23/2009	
S Considered in public hearing		05/25/2009	
S Reported favorably as substituted		05/26/2009	3495
S Committee report printed and distributed		05/26/2009 02:05 PM	
S Placed on intent calendar		05/27/2009	
S Co-sponsor authorized		05/27/2009	3524
S Rules suspended-Regular order of business		05/28/2009	4059
S Vote recorded in Journal		05/28/2009	4059
S Read 2nd time		05/28/2009	4059
S Amendment(s) offered	FA1 Patrick	05/28/2009	4059
S Amended		05/28/2009	4062
S Record vote		05/28/2009	4062
S Amendment(s) offered	FA2 Uresti	05/28/2009	4062
S Amended		05/28/2009	4065
S Vote recorded in Journal		05/28/2009	4065
S Passed to 3rd reading as amended		05/28/2009	4065
S Vote recorded in Journal		05/28/2009	4065
S Three day rule suspended		05/28/2009	4065
S Record vote		05/28/2009	4065
S Read 3rd time		05/28/2009	4065
S Passed		05/28/2009	4065
S Record vote		05/28/2009	4065
H Senate passage as amended reported		05/28/2009	5207
H Senate Amendments Analysis distributed		05/28/2009 11:20 PM	
H Senate Amendments printed and distributed		05/28/2009 11:31 PM	
H House refuses to concur in Senate amendments		05/29/2009	5938
H House requests conference committee		05/29/2009	5938

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H House appoints conferees	05/29/2009	5938
S House refuses to concur-reported	05/30/2009	4524
S House requests conference committee-reported	05/30/2009	4524
H House appoints conferees-reported	05/30/2009	4524
S Senate grants request for conference comm.	05/30/2009	4595
S Senate appoints conferees	05/30/2009	4595
H Senate grants request for conf comm-reported	05/30/2009	6032
H Senate appoints conferees-reported	05/30/2009	6032

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800 008

Bill Number: TX81RHB 3454

Date: 05-01-2009

ENGROSSED

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the determination of the value of property for ad
3 valorem tax purposes.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 23.01(b), Tax Code, is amended to read as
6 follows:

7 (b) The market value of property shall be determined by the
8 application of generally accepted appraisal methods and
9 techniques. If the appraisal district determines the appraised
10 value of a property using mass appraisal standards, the mass
11 appraisal standards must comply with the Uniform Standards of
12 Professional Appraisal Practice. The same or similar appraisal
13 methods and techniques shall be used in appraising the same or
14 similar kinds of property. However, each property shall be
15 appraised based upon the individual characteristics that affect the
16 property's market value, and all available evidence that is
17 specific to the value of the property shall be taken into account in
18 determining the property's market value.

19 SECTION 2. Section 23.013, Tax Code, is amended to read as
20 follows:

21 Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL.

22 (a) If the chief appraiser uses the market data comparison method of
23 appraisal to determine the market value of real property, the chief
24 appraiser shall use comparable sales data and shall adjust the

1 comparable sales to the subject property.

2 (b) A sale of real property is not considered to be a
3 comparable sale unless the sale occurred within 24 months of the
4 date as of which the market value of the subject property is to be
5 determined and is appropriately adjusted for changes in the market
6 value over the time period between the dates of the sale and the
7 appraisal. Whether a property is comparable to the subject
8 property shall be determined based on similarities with regard to
9 location, square footage of the lot and improvements, property age,
10 property condition, property access, amenities, views, income,
11 operating expenses, occupancy, and the existence of easements, deed
12 restrictions, or other legal burdens affecting marketability.

13 SECTION 3. Section 23.24, Tax Code, is amended to read as
14 follows:

15 Sec. 23.24. FURNITURE, FIXTURES, AND EQUIPMENT. (a) If
16 real property is appraised by a method that takes into account the
17 value of furniture, fixtures, and equipment in or on the real
18 property, the furniture, fixtures, and equipment shall not be
19 subject to additional appraisal or taxation as personal property.

20 (b) In determining the market value of the real property,
21 the chief appraiser may not separately appraise or take into
22 account any personal property valued as a portion of the income of
23 the real property, and the market value of the real property must
24 include the combined value of the real property and the personal
25 property.

26 SECTION 4. (a) Subchapter D, Chapter 23, Tax Code, is
27 amended by adding Section 23.522 to read as follows:

1 Sec. 23.522. TEMPORARY CESSATION OF AGRICULTURAL USE DURING
2 DROUGHT. The eligibility of land for appraisal under this
3 subchapter does not end because the land ceases to be devoted
4 principally to agricultural use to the degree of intensity
5 generally accepted in the area if:

6 (1) a drought declared by the governor creates an
7 agricultural necessity to extend the normal time the land remains
8 out of agricultural production; and

9 (2) the owner of the land intends that the use of the
10 land in that manner and to that degree of intensity be resumed when
11 the declared drought ceases.

12 (b) Section 23.522, Tax Code, as added by this Act, applies
13 only to the appraisal of land for ad valorem tax purposes for a tax
14 year that begins on or after the effective date of this Act.

15 SECTION 5. (a) Section 41A.01, Tax Code, is amended to read
16 as follows:

17 Sec. 41A.01. RIGHT OF APPEAL BY PROPERTY OWNER. As an
18 alternative to filing an appeal under Section 42.01, a property
19 owner is entitled to appeal through binding arbitration under this
20 chapter an appraisal review board order determining a protest
21 brought under Section 41.41(a) (1) or (2) concerning the appraised
22 or market value of [real] property if [—]

23 ~~[-(1)]~~ the appraised or market value, as applicable, of
24 the property as determined by the order is \$1 million or less ~~[—and]~~

25 ~~[-(2)]~~ ~~the appeal does not involve any matter in dispute~~
26 ~~other than the determination of the appraised or market value of the~~
27 ~~property].~~

1 (b) Section 41A.03(a), Tax Code, is amended to read as
2 follows:

3 (a) To appeal an appraisal review board order under this
4 chapter, a property owner must file with the appraisal district not
5 later than the 45th day after the date the property owner receives
6 notice of the order:

7 (1) a completed request for binding arbitration under
8 this chapter in the form prescribed by Section 41A.04; and

9 (2) an arbitration deposit [~~in the amount of \$500,~~]
10 made payable to the comptroller in the amount of:

11 (A) \$500; or

12 (B) \$250, if the property owner requests
13 expedited arbitration under Section 41A.031.

14 (c) Effective September 1, 2012, Section 41A.03(a), Tax
15 Code, is amended to read as follows:

16 (a) To appeal an appraisal review board order under this
17 chapter, a property owner must file with the appraisal district not
18 later than the 45th day after the date the property owner receives
19 notice of the order:

20 (1) a completed request for binding arbitration under
21 this chapter in the form prescribed by Section 41A.04; and

22 (2) an arbitration deposit in the amount of \$500, made
23 payable to the comptroller.

24 (d) Chapter 41A, Tax Code, is amended by adding Section
25 41A.031 to read as follows:

26 Sec. 41A.031. EXPEDITED ARBITRATION. (a) A property owner
27 is entitled to an expedited arbitration if the property owner

1 includes a request for expedited arbitration in the request filed
2 under Section 41A.03 and pays the required deposit.

3 (b) An expedited arbitration must provide for not more than
4 one hour of argument and testimony on behalf of the property owner
5 and not more than one hour of argument and testimony on behalf of
6 the appraisal district.

7 (c) The comptroller shall adopt rules and processes to
8 assist in the conduct of an expedited arbitration, including rules
9 relating to the evidence required to be produced by each party.

10 (d) This section expires September 1, 2012.

11 (e) Section 41A.08, Tax Code, is amended by adding
12 Subsection (c) to read as follows:

13 (c) In an arbitration proceeding under this chapter brought
14 on the ground of unequal appraisal of property, the protest shall be
15 determined in accordance with Section 42.26(a), except that a party
16 may not present evidence relating to the median level of appraisal
17 or the median appraised value of more than five other properties in
18 the appraisal district.

19 (f) The change in law made by this section applies only to an
20 appeal under Chapter 41A, Tax Code, that is filed on or after the
21 effective date of this Act. An appeal under Chapter 41A, Tax Code,
22 that is filed before the effective date of this Act is governed by
23 the law in effect on the date the appeal was filed, and the former
24 law is continued in effect for that purpose.

25 (g) Except as otherwise provided by this section, this
26 section takes effect September 1, 2009.

27 SECTION 6. Sections 6.15(a) and (b), Tax Code, are amended

1 to read as follows:

2 (a) A member of the board of directors of an appraisal
3 district commits an offense if the member directly or indirectly
4 communicates with the chief appraiser regarding ~~[on any matter~~
5 ~~relating to]~~ the appraisal of property by the appraisal district,
6 except in:

7 (1) an open meeting of the appraisal district board of
8 directors or another public forum; or

9 (2) a closed meeting of the board of directors held to
10 consult with the board's attorney about pending litigation, at
11 which the chief appraiser's presence is necessary for full
12 communication between the board and the board's attorney.

13 (b) A chief appraiser commits an offense if the chief
14 appraiser directly or indirectly communicates with a member of the
15 board of directors of the appraisal district regarding ~~[on any~~
16 ~~matter relating to]~~ the appraisal of property by the appraisal
17 district, except in:

18 (1) an open meeting of the board of directors or
19 another public forum; or

20 (2) a closed meeting of the board of directors held to
21 consult with the board's attorney about pending litigation, at
22 which the chief appraiser's presence is necessary for full
23 communication between the board and the board's attorney.

24 SECTION 7. Section 23.014, Tax Code, is repealed.

25 SECTION 8. This Act applies only to the appraisal of
26 property for a tax year beginning on or after the effective date of
27 this Act.

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SECTION 9. This Act takes effect January 1, 2010.



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Bill Number: TX81RHB 3454

Date: 05-29-2009

SENATE FLOOR AMENDMENT(S)

FLOOR AMENDMENT NO. 1

Amend H.B. No. 3454 (senate committee printing) as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION __. (a) Sections 23.46(c) and (d), Tax Code, are amended to read as follows:

(c) If land that has been designated for agricultural use in any year is sold or diverted to a nonagricultural use, the total amount of additional taxes for the three years preceding the year in which the land is sold or diverted [~~plus interest at the rate provided for delinquent taxes~~] becomes due. A determination that the land has been diverted to a nonagricultural use is made by the chief appraiser. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether the land has been diverted to a nonagricultural use. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes [~~plus interest~~] as soon as practicable after the change of use occurs. If the additional taxes are due because of a sale of the land, the assessor for each taxing unit shall prepare and deliver the bill as soon as practicable after the sale occurs. The taxes [~~and interest~~] are due and become delinquent and incur penalties and interest as provided by law for other delinquent ad valorem taxes imposed by the taxing unit if not paid

before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(d) A tax lien attaches to the land on the date the sale or change of use occurs to secure payment of the additional tax ~~and interest~~ imposed by Subsection (c) ~~[of this section]~~ and any penalties and interest incurred if the tax becomes delinquent. The lien exists in favor of all taxing units for which the additional tax is imposed.

(b) Sections 23.55(a), (b), (e), (f), (m), and (n), Tax Code, are amended to read as follows:

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years ~~[plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due]~~. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether a change in the use of the land has occurred.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax ~~and interest~~ imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(e) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the

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determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes [~~plus interest~~] as soon as practicable. The taxes [~~and interest~~] are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(f) The sanctions provided by Subsection (a) [~~of this section~~] do not apply if the change of use occurs as a result of:

- (1) a sale for right-of-way;
- (2) a condemnation;
- (3) a transfer of the property to the state or a

political subdivision of the state to be used for a public purpose;

or

(4) a transfer of the property from the state, a political subdivision of the state, or a nonprofit corporation created by a municipality with a population of more than one million under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to an individual or a business entity for purposes of economic development if the comptroller determines that the economic development is likely to generate for deposit in the general revenue fund during the next two fiscal bienniums an amount of taxes and other revenues that equals or exceeds 20 times the amount of additional taxes [~~and interest~~] that would have been imposed under Subsection (a) had the sanctions provided by that subsection applied to the transfer.

(m) For purposes of determining whether a transfer of land qualifies for the exemption from additional taxes provided by Subsection (f) (4), on an application of the entity transferring or

proposing to transfer the land or of the individual or entity to which the land is transferred or proposed to be transferred, the comptroller shall determine the amount of taxes and other revenues likely to be generated as a result of the economic development for deposit in the general revenue fund during the next two fiscal bienniums. If the comptroller determines that the amount of those revenues is likely to equal or exceed 20 times the amount of additional taxes [~~and interest~~] that would be imposed under Subsection (a) if the sanctions provided by that subsection applied to the transfer, the comptroller shall issue a letter to the applicant stating the comptroller's determination and shall send a copy of the letter by regular mail to the chief appraiser.

(n) Within one year of the conclusion of the two fiscal bienniums for which the comptroller issued a letter as provided under Subsection (m), the board of directors of the appraisal district, by official board action, may direct the chief appraiser to request the comptroller to determine if the amount of revenues was equal to or exceeded 20 times the amount of taxes [~~and interest~~] that would have been imposed under Subsection (a). The comptroller shall issue a finding as to whether the amount of revenue met the projected increases. The chief appraiser shall review the results of the comptroller's finding and shall make a determination as to whether sanctions under Subsection (a) should be imposed. If the chief appraiser determines that the sanctions provided by Subsection (a) shall be imposed, the sanctions shall be based on the date of the transfer of the property under Subsection (f)(4).

(c) Sections 23.58(c) and (d), Tax Code, are amended to read as follows:

(c) A provision in an instrument pertaining to a loan secured by a lien in favor of the lender on land appraised according to this subchapter that requires the borrower to make a payment to protect the lender from loss because of ~~the~~ ⁰²⁰ imposition of

additional taxes [~~and interest~~] under Section 23.55 is void unless the provision:

(1) requires the borrower to pay into an escrow account established by the lender an amount equal to the additional taxes [~~and interest~~] that would be due under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended;

(2) requires the escrow account to bear interest to be credited to the account monthly;

(3) permits the lender to apply money in the escrow account to the payment of a bill for additional taxes [~~and interest~~] under Section 23.55 before the loan is paid and requires the lender to refund the balance remaining in the escrow account after the bill is paid to the borrower; and

(4) requires the lender to refund the money in the escrow account to the borrower on the payment of the loan.

(d) On the request of the borrower or the borrower's representative, the assessor for each taxing unit shall compute the additional taxes [~~and interest~~] that would be due that taxing unit under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended. The assessor may charge a reasonable fee not to exceed the actual cost of making the computation.

(d) Sections 23.46(c) and (d), Tax Code, as amended by this section, apply only to a sale or diversion to a nonagricultural use of land appraised under Subchapter C, Chapter 23, Tax Code, that occurs on or after the effective date of this section.

(e) Sections 23.55(a), (b), (e), (f), (m), and (n), Tax Code, as amended by this section, apply only to a change of use of land appraised under Subchapter D, Chapter 23, Tax Code, that occurs on or after the effective date of this section.

(f) Sections 23.58(c) and (d), Tax Code, as amended by this section, apply only to a loan secured by a lien on open-space land that is contracted for on or after the effective date of this section.

(g) This section takes effect September 1, 2009.

(2) In SECTION 18 of the bill (page 5, line 32) strike "This" and substitute "Except as otherwise provided by this Act, this".

(3) In SECTION 19 of the bill, the effective date provision (page 5, line 35), strike "This" and substitute "Except as otherwise provided by this Act, this".

FLOOR AMENDMENT NO. 2

Amend C.S.H.B. No. 3454 (senate committee report) as follows:

(1) Add the following SECTIONS to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION __. Sections 23.175(a) and (b), Tax Code, are amended to read as follows:

(a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a market condition factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during each month of the preceding calendar year by 12. If there was no production of oil or gas from the interest during any month of the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling during that month is to be used. The comptroller shall calculate the market condition factor by dividing the ~~[comptroller's]~~ current calendar year statewide average price

for oil or gas, as applicable, as forecasted by the Oil and Gas Valuation Advisory Committee using market-based data and a market-based methodology and approved by the comptroller, [for revenue estimating purposes] by the preceding calendar year actual statewide average price for oil or gas, as applicable. [~~For purposes of calculating the market condition factor, "price" means the market value of oil or gas as determined under Subchapter C, Chapter 201, or Section 202.053, as applicable.~~] The comptroller shall calculate the preceding calendar year actual statewide average prices for oil and gas and the market condition factors for oil and gas and publish that information to be used for ad valorem tax appraisal purposes concurrently with the current calendar year statewide average prices for oil and gas forecasted using market-based data and a market-based methodology [for revenue estimating purposes]. The price for the interest used in the second or a subsequent calendar year of the appraisal shall reflect the [~~same~~] percentage rate increase or decrease in the price for oil or gas, as applicable, as projected for that calendar year by the comptroller using market-based data and a market-based methodology. However, in no event may the price used in the second or any succeeding year of an appraisal exceed 200 percent of the price used in the current year of the appraisal [for revenue estimating purposes].

(b) The comptroller by rule shall:

(1) establish procedures for performing the calculations required by Subsection (a); and

(2) develop and distribute to each appraisal office appraisal manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

SECTION __. Subchapter B, Chapter 23, Tax Code, is

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amended by adding Section 23.176 to read as follows:

Sec. 23.176. OIL AND GAS VALUATION ADVISORY COMMITTEE. (a)

The Oil and Gas Valuation Advisory Committee is created. The advisory committee is composed of:

(1) the comptroller, who serves as a nonvoting member and as presiding officer of the committee;

(2) three members who are members of a county commissioners court, appointed by the chief executive officer of the County Judges and Commissioners Association of Texas;

(3) two members who are chief appraisers of an appraisal district, appointed by the chief executive officer of the Texas Association of Appraisal Districts;

(4) two members appointed by the chief executive officer of the Texas Oil & Gas Association;

(5) two members appointed by the chief executive officer of the Texas Independent Producers and Royalty Owners Association; and

(6) one member appointed annually on a rotating basis by the chief executive officer of the Texas Alliance of Energy Producers, the chief executive officer of the Permian Basin Petroleum Association, or the chief executive officer of the Panhandle Producers & Royalty Owners Association.

(b) An appointed member of the advisory committee serves at the will of the appointing entity.

(c) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(d) The advisory committee shall, by a vote of at least two-thirds of the voting members, determine the current calendar year statewide average price for oil or gas, as applicable, forecasted using market-based data and a market-based methodology.

(e) The determination of the advisory committee may not result in a current calendar year statewide average price for oil or

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gas, as applicable forecasted using market-based data and a market-based methodology that deviates by more than 50 percent from the preceding calendar year actual statewide average price for oil or gas as applicable, as calculated by the comptroller under Section 23.175(a).

(f) The advisory committee shall notify the comptroller of the committee's determination. The comptroller shall accept or reject the advisory committee's determination. If the comptroller rejects the advisory committee's determination, the comptroller shall:

(1) immediately notify the advisory committee of the comptroller's rejection of and reasons for rejecting the determination; and

(2) direct the advisory committee to make a new determination.

(g) A new determination by the advisory committee is subject to Subsections (d), (e), and (f) in the same manner as an initial determination.

(h) If the comptroller accepts the initial or a subsequent determination of the advisory committee, the comptroller shall use the current calendar year statewide average price for oil or gas, as applicable) as determined by the advisory committee in performing the calculations required by Section 23.175(a).

(i) The comptroller by rule shall establish procedures for the functions of the advisory committee, including procedures requiring the advisory committee to notify the comptroller of its initial determination for each tax year not later than January 31 of that year.

SECTION __. The chief executive officers of the County Judges and Commissioners Association of Texas, Texas Association of Appraisal Districts, Texas Oil & Gas Association, Texas Independent

Producers and Royalty Owners Association, and Texas Alliance of Energy Producers shall appoint the initial appointed members of the Oil and Gas Valuation Advisory Committee created by Section 23.176, Tax Code, as added by this Act, as soon as practicable on or after September 1, 2009.

SECTION __. The comptroller shall adopt rules under Section 23.175(b), Tax Code, as amended by this Act, and Section 23.176(i), Tax Code, as added by this Act, not later than December 1, 2009.

(2) Strike SECTION 19 of the bill (page 5, line 35) and substitute the following:

SECTION 19. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2010.

(b) Sections 23.175(a) and (b), Tax Code, as amended by this Act, and Section 23.176, Tax Code, as added by this Act, take effect September 1, 2009.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 26, 2009

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3454 by Otto (Relating to the determination of the value of property for ad valorem tax purposes, including appeals of appraisal review board orders determining protests of property value determinations, and the use of certain values by school districts in adopting tax rates.), Committee Report 2nd House, Substituted

The bill's provision prohibiting a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property could create a cost to the state through the operation of the school finance formulas, but only to the extent that chief appraisers are currently double counting the value of personal property by including it in an income appraisal of the real property and also including it by another method.

The provisions of the bill related to the temporary cessation of typical agricultural activities during a drought would create a cost to the state through the operation of the school funding formulas.

The bill would prohibit the representation of the appraisal review board by a person who serves as legal counsel for the appraisal district.

The bill would prohibit an increase in the appraised value of property after the value had been determined by an appeal to the appraisal review board, binding arbitration, or court decision unless the increase is reasonably supported by substantial, reliable evidence after considering all the evidence in the record.

The bill would limit sales that could be used as comparable sales in developing appraisals to sales that occurred within two years of the appraisal date unless insufficient comparable sales occurred within two years of the appraisal date to form a representative sample. The bill would require that a comparable sale price be adjusted for market changes during the period between the date of the sale and the appraisal date. The bill would include additional factors to be considered before using a sale as a comparable.

The bill would also prohibit a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property when appraising the property based on rental income. The market value of the real property would be required to include the combined value of the real and personal property.

The bill would provide that the eligibility of land qualified for agricultural appraisal does not end in situations in which a drought declared by the Governor causes the temporary cessation of typical agricultural activities if the landowner intends to resume the agricultural use when the drought ceases.

The bill would require that tax assessors for school districts estimate the values for each school district and submit them to the districts. Each school district would be required to calculate the effective and rollback tax rates using the estimate and adopt a tax rate before the later of September 30 or the 60th day after the date the estimate of the taxable value of property in the district is received.

The bill would disallow appraisal review board communications outside the hearing regarding a factual or hypothetical situation that is similar to a situation that is the subject of the protest.

The bill would amend Chapter 41A of the Tax Code, regarding property tax appraisal appeals and binding arbitration. Under current law, an appeal through binding arbitration is restricted to appeals that do not involve any matter in dispute other than the determination of the appraised or market value of the property. This bill would remove that restriction and include appeals based on equity.

The bill would provide for an expedited arbitration with not more than one hour of argument and testimony by each side involved in the protest. The deposit for an expedited arbitration would be \$250, compared to the \$500 deposit for the existing arbitration process.

The bill would add a continuing education requirement for arbitrators and would require them to renew their arbitration service agreement with the Comptroller on or as near as possible to the date on which the person's license or certification issued under Chapters 901, 1101, or 1103 of the Occupations Code, is renewed. The bill would add the requirement that an arbitrator in an appeal regarding property other than real property to be licensed as a certified public accountant. If an arbitrator fails to renew an agreement, the Comptroller would be required to remove the person from the arbitration registry.

The bill's proposed requirement for appraisers to consider proper evidence before increasing the appraised value of properties that were successfully protested in the previous year would not prevent appraisal districts from appraising the properties at market value because property tax appraisers are currently required to follow the Uniform Standards of Professional Appraisal Practice (USPAP) which requires such evidence.

The bill's requirements that appraisers select only the comparable sales that occurred within two years of the appraisal date unless a reasonable number of such sales are unavailable, that appraisers adjust sales for market changes between the sale date and the appraisal date, and that appraisers consider reasonable factors when selecting comparable sales are also in substantial accord with USPAP and International Association of Assessing Officers standards. As a result, these provisions would not create a significant fiscal impact on the state or local taxing units.

The bill's provision prohibiting a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property could create a cost to the state and to local taxing units, but only to the extent that chief appraisers are currently double counting the value of personal property by including it in an income appraisal of the real property and also including it by another method. Insufficient information is available about the extent of this practice. As a result, the cost cannot be estimated.

The provisions of the bill related to the temporary cessation of typical agricultural activities during a drought would create a cost to taxing units and to the state through the operation of the school funding formulas. Because information regarding the number of acres of land subject to denial of agricultural use appraisal because of drought is unavailable, the cost cannot be estimated.

The bill's provisions regarding school district rate calculation would affect only protest procedures or property tax processes but would not affect appraisal methods, exemptions or tax rates. As a result they would have no significant effect on tax revenues or state funding.

The provisions of the bill related to arbitration would modify a part of the appeal process and expand the kind of issues that are eligible for arbitration. The substantive rights of property owners would not be affected. The actions of arbitrators in deciding future arbitrations cannot be predicted. As a result, the fiscal impact cannot be estimated.

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Local Government Impact

The bill's provision prohibiting a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property could create a cost to local taxing units, but only to the extent that chief appraisers are currently double counting the value of personal property by including it in an income appraisal of the real property and also including it by another method. Insufficient information is available about the extent of this practice. As a result, the cost cannot be estimated.

The provisions of the bill related to the temporary cessation of typical agricultural activities during a drought would create a cost to taxing units. Because information regarding the number of acres of land subject to denial of agricultural use appraisal because of drought is unavailable, the cost cannot be estimated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, MN, SD, SJS

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SECTION ____ . Section 352.003(h), Tax Code, as added by Chapter 749 (H.B. 3132), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(h) The tax rate in a county authorized to impose the tax under Section 352.002(f) may not exceed two percent of the price paid for a room in a hotel. [~~This subsection expires September 1, 2015.~~]

The amendment to **HB 3669** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading.

On motion of Senator Ogden and by unanimous consent, the caption was again amended to conform to the body of the bill as amended.

HB 3669 as again amended was again finally passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 3454 ON SECOND READING

Senator Williams moved to suspend the regular order of business to take up for consideration **CSHB 3454** at this time on its second reading:

CSHB 3454, Relating to the determination of the value of property for ad valorem tax purposes, including appeals of appraisal review board orders determining protests of property value determinations, and the use of certain values by school districts in adopting tax rates.

The motion prevailed.

Senator Seliger asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 3454** (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION ____ . (a) Sections 23.46(c) and (d), Tax Code, are amended to read as follows:

(c) If land that has been designated for agricultural use in any year is sold or diverted to a nonagricultural use, the total amount of additional taxes for the three years preceding the year in which the land is sold or diverted [~~plus interest at the rate provided for delinquent taxes~~] becomes due. A determination that the land has been diverted to a nonagricultural use is made by the chief appraiser. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether the land has been diverted to a nonagricultural use. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination.

If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes ~~[plus interest]~~ as soon as practicable after the change of use occurs. If the additional taxes are due because of a sale of the land, the assessor for each taxing unit shall prepare and deliver the bill as soon as practicable after the sale occurs. The taxes ~~[and interest]~~ are due and become delinquent and incur penalties and interest as provided by law for other delinquent ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(d) A tax lien attaches to the land on the date the sale or change of use occurs to secure payment of the additional tax ~~[and interest]~~ imposed by Subsection (c) ~~[of this section]~~ and any penalties and interest incurred if the tax becomes delinquent. The lien exists in favor of all taxing units for which the additional tax is imposed.

(b) Sections 23.55(a), (b), (e), (f), (m), and (n), Tax Code, are amended to read as follows:

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years ~~[, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due]~~. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether a change in the use of the land has occurred.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax ~~[and interest]~~ imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(e) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes ~~[plus interest]~~ as soon as practicable. The taxes ~~[and interest]~~ are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(f) The sanctions provided by Subsection (a) ~~[of this section]~~ do not apply if the change of use occurs as a result of:

- (1) a sale for right-of-way;
- (2) a condemnation;
- (3) a transfer of the property to the state or a political subdivision of the state to be used for a public purpose; or

(4) a transfer of the property from the state, a political subdivision of the state, or a nonprofit corporation created by a municipality with a population of more than one million under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to an individual or a business entity for purposes of economic development if the comptroller determines that the economic development is likely to generate for deposit in the general revenue fund during the next two fiscal bienniums an amount of taxes and other revenues that equals or exceeds 20 times the amount of additional taxes ~~[and interest]~~ that would have been imposed under Subsection (a) had the sanctions provided by that subsection applied to the transfer.

(m) For purposes of determining whether a transfer of land qualifies for the exemption from additional taxes provided by Subsection (f)(4), on an application of the entity transferring or proposing to transfer the land or of the individual or entity to which the land is transferred or proposed to be transferred, the comptroller shall determine the amount of taxes and other revenues likely to be generated as a result of the economic development for deposit in the general revenue fund during the next two fiscal bienniums. If the comptroller determines that the amount of those revenues is likely to equal or exceed 20 times the amount of additional taxes ~~[and interest]~~ that would be imposed under Subsection (a) if the sanctions provided by that subsection applied to the transfer, the comptroller shall issue a letter to the applicant stating the comptroller's determination and shall send a copy of the letter by regular mail to the chief appraiser.

(n) Within one year of the conclusion of the two fiscal bienniums for which the comptroller issued a letter as provided under Subsection (m), the board of directors of the appraisal district, by official board action, may direct the chief appraiser to request the comptroller to determine if the amount of revenues was equal to or exceeded 20 times the amount of taxes ~~[and interest]~~ that would have been imposed under Subsection (a). The comptroller shall issue a finding as to whether the amount of revenue met the projected increases. The chief appraiser shall review the results of the comptroller's finding and shall make a determination as to whether sanctions under Subsection (a) should be imposed. If the chief appraiser determines that the sanctions provided by Subsection (a) shall be imposed, the sanctions shall be based on the date of the transfer of the property under Subsection (f)(4).

(c) Sections 23.58(c) and (d), Tax Code, are amended to read as follows:

(c) A provision in an instrument pertaining to a loan secured by a lien in favor of the lender on land appraised according to this subchapter that requires the borrower to make a payment to protect the lender from loss because of the imposition of additional taxes ~~[and interest]~~ under Section 23.55 is void unless the provision:

(1) requires the borrower to pay into an escrow account established by the lender an amount equal to the additional taxes ~~[and interest]~~ that would be due under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended;

(2) requires the escrow account to bear interest to be credited to the account monthly;

(3) permits the lender to apply money in the escrow account to the payment of a bill for additional taxes [~~and interest~~] under Section 23.55 before the loan is paid and requires the lender to refund the balance remaining in the escrow account after the bill is paid to the borrower; and

(4) requires the lender to refund the money in the escrow account to the borrower on the payment of the loan.

(d) On the request of the borrower or the borrower's representative, the assessor for each taxing unit shall compute the additional taxes [~~and interest~~] that would be due that taxing unit under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended. The assessor may charge a reasonable fee not to exceed the actual cost of making the computation.

(d) Sections 23.46(c) and (d), Tax Code, as amended by this section, apply only to a sale or diversion to a nonagricultural use of land appraised under Subchapter C, Chapter 23, Tax Code, that occurs on or after the effective date of this section.

(e) Sections 23.55(a), (b), (e), (f), (m), and (n), Tax Code, as amended by this section, apply only to a change of use of land appraised under Subchapter D, Chapter 23, Tax Code, that occurs on or after the effective date of this section.

(f) Sections 23.58(c) and (d), Tax Code, as amended by this section, apply only to a loan secured by a lien on open-space land that is contracted for on or after the effective date of this section.

(g) This section takes effect September 1, 2009.

(2) In SECTION 18 of the bill (page 5, line 32) strike "This" and substitute "Except as otherwise provided by this Act, this".

(3) In SECTION 19 of the bill, the effective date provision (page 5, line 35), strike "This" and substitute "Except as otherwise provided by this Act, this".

The amendment to **CSHB 3454** was read and was adopted by the following vote: Yeas 30, Nays 1.

Nays: Shapleigh.

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 3454** (Senate committee report) as follows:

(1) Add the following SECTIONS to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION ____ . Sections 23.175(a) and (b), Tax Code, are amended to read as follows:

(a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a market condition factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during each month of the preceding calendar year by 12. If there was no production of oil or gas from the interest during any month of the preceding

calendar year, the average price for which similar oil and gas from comparable interests was selling during that month is to be used. The comptroller shall calculate the market condition factor by dividing the ~~[comptroller's]~~ current calendar year statewide average price for oil or gas, as applicable, as forecasted by the Oil and Gas Valuation Advisory Committee using market-based data and a market-based methodology and approved by the comptroller, [for revenue estimating purposes] by the preceding calendar year actual statewide average price for oil or gas, as applicable. ~~[For purposes of calculating the market condition factor, "price" means the market value of oil or gas as determined under Subchapter C, Chapter 201, or Section 202.053, as applicable.]~~ The comptroller shall calculate the preceding calendar year actual statewide average prices for oil and gas and the market condition factors for oil and gas and publish that information to be used for ad valorem tax appraisal purposes concurrently with the current calendar year statewide average prices for oil and gas forecasted using market-based data and a market-based methodology [for revenue estimating purposes]. The price for the interest used in the second or a subsequent calendar year of the appraisal shall reflect the ~~[same]~~ percentage rate increase or decrease in the price for oil or gas, as applicable, as projected for that calendar year by the comptroller using market-based data and a market-based methodology. However, in no event may the price used in the second or any succeeding year of an appraisal exceed 200 percent of the price used in the current year of the appraisal [for revenue estimating purposes].

(b) The comptroller by rule shall:

(1) establish procedures for performing the calculations required by Subsection (a); and

(2) develop and distribute to each appraisal office appraisal manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

SECTION ____ Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.176 to read as follows:

Sec. 23.176. OIL AND GAS VALUATION ADVISORY COMMITTEE. (a) The Oil and Gas Valuation Advisory Committee is created. The advisory committee is composed of:

(1) the comptroller, who serves as a nonvoting member and as presiding officer of the committee;

(2) three members who are members of a county commissioners court, appointed by the chief executive officer of the County Judges and Commissioners Association of Texas;

(3) two members who are chief appraisers of an appraisal district, appointed by the chief executive officer of the Texas Association of Appraisal Districts;

(4) two members appointed by the chief executive officer of the Texas Oil & Gas Association;

(5) two members appointed by the chief executive officer of the Texas Independent Producers and Royalty Owners Association; and

(6) one member appointed annually on a rotating basis by the chief executive officer of the Texas Alliance of Energy Producers, the chief executive officer of the Permian Basin Petroleum Association, or the chief executive officer of the Panhandle Producers & Royalty Owners Association.

(b) An appointed member of the advisory committee serves at the will of the appointing entity.

(c) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(d) The advisory committee shall, by a vote of at least two-thirds of the voting members, determine the current calendar year statewide average price for oil or gas, as applicable, forecasted using market-based data and a market-based methodology.

(e) The determination of the advisory committee may not result in a current calendar year statewide average price for oil or gas, as applicable, forecasted using market-based data and a market-based methodology that deviates by more than 50 percent from the preceding calendar year actual statewide average price for oil or gas, as applicable, as calculated by the comptroller under Section 23.175(a).

(f) The advisory committee shall notify the comptroller of the committee's determination. The comptroller shall accept or reject the advisory committee's determination. If the comptroller rejects the advisory committee's determination, the comptroller shall:

(1) immediately notify the advisory committee of the comptroller's rejection of and reasons for rejecting the determination; and

(2) direct the advisory committee to make a new determination.

(g) A new determination by the advisory committee is subject to Subsections (d), (e), and (f) in the same manner as an initial determination.

(h) If the comptroller accepts the initial or a subsequent determination of the advisory committee, the comptroller shall use the current calendar year statewide average price for oil or gas, as applicable, as determined by the advisory committee in performing the calculations required by Section 23.175(a).

(i) The comptroller by rule shall establish procedures for the functions of the advisory committee, including procedures requiring the advisory committee to notify the comptroller of its initial determination for each tax year not later than January 31 of that year.

SECTION _____. The chief executive officers of the County Judges and Commissioners Association of Texas, Texas Association of Appraisal Districts, Texas Oil & Gas Association, Texas Independent Producers and Royalty Owners Association, and Texas Alliance of Energy Producers shall appoint the initial appointed members of the Oil and Gas Valuation Advisory Committee created by Section 23.176, Tax Code, as added by this Act, as soon as practicable on or after September 1, 2009.

SECTION _____. The comptroller shall adopt rules under Section 23.175(b), Tax Code, as amended by this Act, and Section 23.176(i), Tax Code, as added by this Act, not later than December 1, 2009.

(2) Strike SECTION 19 of the bill (page 5, line 35) and substitute the following:

SECTION 19. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2010.

(b) Sections 23.175(a) and (b), Tax Code, as amended by this Act, and Section 23.176, Tax Code, as added by this Act, take effect September 1, 2009.

The amendment to **CSHB 3454** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Nays: Seliger.

Present-not voting: Ogden.

On motion of Senator Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 3454 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Seliger.

COMMITTEE SUBSTITUTE HOUSE BILL 3454 ON THIRD READING

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3454** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Seliger.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

COMMITTEE SUBSTITUTE HOUSE BILL 2553 ON SECOND READING

The Presiding Officer, Senator Watson in Chair, laid before the Senate **CSHB 2553** by Senator Davis on its second reading. The bill had been read second time, amended, and further consideration temporarily postponed:

CSHB 2553, Relating to the registration and operation of certain motor vehicles.

Question — Shall **CSHB 2553** as amended be passed to third reading?

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 4

Amend Floor Amendment No. 1 to **CSHB 2553** (Senate committee printing) as follows and renumber SECTIONS of the bill as appropriate:

(1) In SECTION __ of Amendment 1, in Section 502.1725(i), Transportation Code (page 3 line 11) after "500,000" strike "." and substitute "; and".

(2) In SECTION __ of Amendment 1, in Section 502.1725(i), Transportation Code (page 3 lines 4 through 11) immediately after page 3 line 11 insert the following:

(3) a county:



The chair announced the appointment of the following conference committee, on the part of the house, on **SB 679**: Y. Davis, chair; Pierson, Menendez, Fletcher, and Miklos.

**HB 2093 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

Representative Driver called up with senate amendments for consideration at this time,

HB 2093, A bill to be entitled An Act relating to persons certified as peace officers.

Representative Driver moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 2093**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2093**: Driver, chair; Isett, Chisum, Peña, and Hunter.

**HB 3454 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

Representative Otto called up with senate amendments for consideration at this time,

HB 3454, A bill to be entitled An Act relating to the determination of the value of property for ad valorem tax purposes.

Representative Otto moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 3454**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3454**: Otto, chair; Keffer, Hardcastle, Heflin, and Farabee.

**HB 3872 - HOUSE REFUSES TO CONCUR
IN SENATE AMENDMENTS
CONFERENCE COMMITTEE APPOINTED**

Representative Gattis called up with senate amendments for consideration at this time,

HB 3872, A bill to be entitled An Act relating to the qualifications to be a veterans county service officer.



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CONFERENCE COMMITTEE ON HOUSE BILL 2240

Senator Nelson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2240** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2240** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Whitmire, Seliger, Patrick, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 3827

Senator Deuell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3827** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3827** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Deuell, Chair; Hegar, Averitt, Williams, and Estes.

CONFERENCE COMMITTEE ON HOUSE BILL 3454

Senator Williams called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3454** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3454** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Ellis, Uresti, Eltife, and Deuell.

CONFERENCE COMMITTEE ON HOUSE BILL 2752

Senator Averitt called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2752** and moved that the request be granted.

The motion prevailed without objection.





Bill Comparison Utility
03-18-2010 - 09:34:50

Comparison between TX81RHB03454 the ENG version and TX81RHB03454 the SPA version

Bill Number: TX81RHB 3454 Date: 05-01-2009

ENGROSSED
A BILL TO BE ENTITLED
AN ACT
relating to the determination of the value of property for ad
valorem tax purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 23.01(b), Tax Code, is amended to read as
follows:

(b) The market value of property shall be determined by the application of generally accepted appraisal methods and techniques. If the appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice. The same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property. However, each property shall be appraised based upon the individual characteristics that affect the property's market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value.

SECTION 2. Section 23.013, Tax Code, is amended to read as follows:

Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL.
(a) If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data and shall adjust the comparable sales to the subject property.

(b) A sale of real property is not considered to be a comparable sale unless the sale occurred within 24 months of the date as of which the market value of the subject property is to be determined and is appropriately adjusted for changes in the market value over the time period between the dates of the sale and the appraisal. Whether a property is comparable to the subject property shall be determined based on similarities with regard to location, square footage of the lot and improvements, property age, operating condition, property access, amenities, views, income, operating expenses, occupancy, and the existence of easements, deed restrictions, or other legal burdens affecting marketability.

SECTION 3. Section 23.24, Tax Code, is amended to read as follows:

Sec. 23.24. FURNITURE, FIXTURES, AND EQUIPMENT. (a) If real property is appraised by a method that takes into account the value of furniture, fixtures, and equipment in or on the real property, the furniture, fixtures, and equipment shall not be subject to additional appraisal or taxation as personal property.

(b) In determining the market value of the real property, the chief appraiser may not separately appraise or take into account any personal property valued as a portion of the income of the real property, and the market value of the real property must include the combined value of the real property and the personal property.

Bill Number: TX81RHB 3454 Date: 05-29-2009

SENATE FLOOR AMENDMENT(S)
FLOOR AMENDMENT NO. 1
Amend H.B. No. 3454 (senate committee printing) as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:
SECTION 1. (a) Sections 23.46(c) and (d), Tax Code, are amended to read as follows:

(c) If land that has been designated for agricultural use in any year is sold or diverted to a nonagricultural use, the total amount of additional taxes for the three years preceding the year in which the land is sold or diverted [plus interest at the rate] [provided for delinquent taxes] becomes due. A determination that the land has been diverted to a nonagricultural use is made by the chief appraiser. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether the land has been diverted to a nonagricultural use. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes [plus interest] as soon as practicable after the change of use occurs. If the additional taxes are due because of a sale of the land, the assessor for each taxing unit shall prepare and deliver the bill as soon as practicable after the sale occurs. The taxes [and interest] are due and become delinquent and incur penalties and interest as provided by law for other delinquent ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.

(d) A tax lien attaches to the land on the date the sale or change of use occurs to secure payment of the additional tax [and interest] imposed by Subsection (c) [of this section] and any penalties and interest incurred if the tax becomes delinquent. The lien exists in favor of all taxing units for which the additional tax is imposed.
(b) Sections 23.55(a), (b), (e), (f), (m), and (n), Tax Code, are amended to read as follows:

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land for equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years [plus interest at] [an annual rate of seven percent calculated from the dates on which] [the differences would have become due]. For purposes of this subsection, the chief appraiser may not consider any period during which land is owned by the state in determining whether a change in

Bill Comparison Utility

SECTION 4. (a) Subchapter D, Chapter 23, Tax Code, is amended by adding Section 23.522 to read as follows:
 Sec. 23.522. TEMPORARY CESSATION OF AGRICULTURAL USE DURING DROUGHT. The eligibility of land for appraisal under this subchapter does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if:
 (1) a drought declared by the governor creates an agricultural necessity to extend the normal time the land remains out of agricultural production, and
 (2) the owner of the land intends that the use of the land in that manner and to that degree of intensity be resumed when the declared drought ceases.
 (b) Section 23.522, Tax Code, as added by this Act, applies only to the appraisal of land for ad valorem tax purposes for a tax year that begins on or after the effective date of this Act.
 SECTION 5. (a) Section 41A.01, Tax Code, is amended to read as follows:
 Sec. 41A.01. RIGHT OF APPEAL BY PROPERTY OWNER. As an alternative to filing an appeal under Section 42.01, a property owner is entitled to appeal through binding arbitration under this chapter an appraisal review board order determining a protest brought under Section 41.41(a)(1) or (2) concerning the appraised or market value of [rent] property if [(-)]
 [(+)] the appraised or market value, as applicable, of the property as determined by the order is \$1 million or less [(-amd)]
 [(+) the appeal does not involve any matter in dispute]
 [other than the determination of the appraised or market value of the property].
 (b) Section 41A.03 (a), Tax Code, is amended to read as follows:
 (a) To appeal an appraisal review board order under this chapter, a property owner must file with the appraisal district not later than the 45th day after the date the property owner receives notice of the order:
 (1) a completed request for binding arbitration under this chapter in the form prescribed by Section 41A.04; and
 (2) an arbitration deposit [(-the amount of \$500-)] made payable to the comptroller in the amount of:
 (A) \$500, or
 (B) \$250, if the property owner requests expedited arbitration under Section 41A.031.
 (c) Effective September 1, 2012, Section 41A.03 (a), Tax Code, is amended to read as follows:
 (a) To appeal an appraisal review board order under this chapter, a property owner must file with the appraisal district not later than the 45th day after the date the property owner receives notice of the order:
 (1) a completed request for binding arbitration under this chapter in the form prescribed by Section 41A.04; and
 (2) an arbitration deposit in the amount of \$500, made payable to the comptroller.
 (d) Chapter 41A, Tax Code, is amended by adding Section 41A.031 to read as follows:
 Sec. 41A.031. EXPEDITED ARBITRATION. (a) A property owner is entitled to an expedited arbitration if the property owner includes a request for expedited arbitration in the request filed under Section 41A.03 and pays the required deposit.
 (b) An expedited arbitration must provide for not more than one hour of argument and testimony on behalf of the property owner and not more than one hour of argument and testimony on behalf of the appraisal district.
 (c) The comptroller shall adopt rules and processes to assist in the conduct of an expedited arbitration, including rules relating to the evidence required to be produced by each party.
 (d) This section expires September 1, 2012.

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the use of the land has occurred.
 (b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax [amd-interest] imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.
 (e) A determination that a change in use of the land has occurred is made by the chief appraiser. The chief appraiser shall deliver a notice of the determination to the owner of the land as soon as possible after making the determination and shall include in the notice an explanation of the owner's right to protest the determination. If the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, the assessor for each taxing unit shall prepare and deliver a bill for the additional taxes [plus-interest] as soon as practicable. The taxes [amd-interest] are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next February 1 that is at least 20 days after the date the bill is delivered to the owner of the land.
 (f) The sanctions provided by Subsection (a) [of this section] do not apply if the change of use occurs as a result of:
 (1) a sale for right-of-way;
 (2) a condemnation;
 (3) a transfer of the property to the state or a political subdivision of the state to be used for a public purpose; or
 (4) a transfer of the property from the state, a political subdivision of the state, or a nonprofit corporation created by a municipality with a population of more than one million under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to an individual or a business entity for purposes of economic development if the comptroller determines that the economic development is likely to generate for deposit in the general revenue fund during the next two fiscal bienniums an amount of taxes and other revenues that equals or exceeds 20 times the amount of additional taxes [amd-interest] that would have been imposed under Subsection (a) had the sanctions provided by that subsection applied to the transfer.
 (m) For purposes of determining whether a transfer of land qualifies for the exemption from additional taxes provided by Subsection (f) (4), on an application of the entity transferring or proposing to transfer the land or of the individual or entity to which the land is transferred or proposed to be transferred, the comptroller shall determine the amount of taxes and other revenues likely to be generated as a result of the economic development for deposit in the general revenue fund during the next two fiscal bienniums. If the comptroller determines that the amount of those revenues is likely to equal or exceed 20 times the amount of additional taxes [amd-interest] that would be imposed under Subsection (a) if the sanctions provided by that subsection applied to the transfer, the comptroller shall issue a letter to the applicant stating the comptroller's determination and shall send a copy of the letter by regular mail to the chief appraiser.
 (n) Within one year of the conclusion of the two fiscal bienniums for which the comptroller issued a letter as provided under Subsection (m), the board of directors of the appraisal district, by official board action, may direct the chief appraiser to request the comptroller to determine if the amount of revenues was equal to or exceeded 20 times the amount of taxes [amd-interest] that would have been imposed under Subsection (a). The comptroller shall issue a finding as to whether the amount of revenue met the projected increases. The chief appraiser shall review the results of the comptroller's finding and shall make a determination as to whether sanctions under Subsection (a) should be imposed. If the chief appraiser determines that the sanctions provided by

(e) Section 41A.08, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) In an arbitration proceeding under this chapter brought on the ground of unequal appraisal of property, the protest shall be determined in accordance with Section 42.26(a), except that a party may not present evidence relating to the median level of appraisal or the median appraised value of more than five other properties in the appraisal district.

(f) The change in law made by this section applies only to an appeal under Chapter 41A, Tax Code, that is filed on or after the effective date of this Act. An appeal under Chapter 41A, Tax Code, that is filed before the effective date of this Act is governed by the law in effect on the date the appeal was filed, and the former law is continued in effect for that purpose.

(g) Except as otherwise provided by this section, this section takes effect September 1, 2009.

SECTION 6. Sections 6.15(a) and (b), Tax Code, are amended to read as follows:

(a) A member of the board of directors of an appraisal district commits an offense if the member directly or indirectly communicates with the chief appraiser regarding [redacted] [redacted] the appraisal of property by the appraisal district, except in:

- (1) an open meeting of the appraisal district board of directors or another public forum; or
- (2) a closed meeting of the board of directors held to consult with the board's attorney about pending litigation, at which the chief appraiser's presence is necessary for full communication between the board and the board's attorney.

(b) A chief appraiser commits an offense if the chief appraiser directly or indirectly communicates with a member of the board of directors of the appraisal district regarding [redacted] [redacted] the appraisal of property by the appraisal district, except in:

- (1) an open meeting of the board of directors or another public forum; or
- (2) a closed meeting of the board of directors held to consult with the board's attorney about pending litigation, at which the chief appraiser's presence is necessary for full communication between the board and the board's attorney.

SECTION 7. Section 23.014, Tax Code, is repealed.
SECTION 8. This Act applies only to the appraisal of property for a tax year beginning on or after the effective date of this Act.
SECTION 9. This Act takes effect January 1, 2010.

Subsection (a) shall be imposed, the sanctions shall be based on the date of the transfer of the property under Subsection (f) (4).
(c) Sections 23.58(c) and (d), Tax Code, are amended to read as follows:

(c) A provision in an instrument pertaining to a loan secured by a lien in favor of the lender on land appraised according to this subchapter that requires the borrower to make a payment to protect the lender from loss because of the imposition of additional taxes [redacted] under Section 23.55 is void unless the provision:

- (1) requires the borrower to pay into an escrow account established by the lender an amount equal to the additional taxes [redacted] that would be due under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended;
- (2) requires the escrow account to bear interest to be credited to the account monthly;
- (3) permits the lender to apply money in the escrow account to the payment of a bill for additional taxes [redacted] under Section 23.55 before the loan is paid and requires the lender to refund the balance remaining in the escrow account after the bill is paid to the borrower; and
- (4) requires the lender to refund the money in the escrow account to the borrower on the payment of the loan.

(d) On the request of the borrower or the borrower's representative, the assessor for each taxing unit shall compute the additional taxes [redacted] that would be due that taxing unit under Section 23.55 if a change of use occurred on January 1 of the year in which the loan is granted or amended. The assessor may charge a reasonable fee not to exceed the actual cost of making the computation.

(d) Sections 23.46(c) and (d), Tax Code, as amended by this section, apply only to a sale or diversion to a nonagricultural use of land appraised under Subchapter C, Chapter 23, Tax Code, that occurs on or after the effective date of this section.

(e) Sections 23.55(a), (b), (e), (f), (m), and (n), Tax Code, as amended by this section, apply only to a change of use of land appraised under Subchapter D, Chapter 23, Tax Code, that occurs on or after the effective date of this section.

(f) Sections 23.58(c) and (d), Tax Code, as amended by this section, apply only to a loan secured by a lien on open-space land that is contracted for on or after the effective date of this section.

(g) This section takes effect September 1, 2009.
(2) In SECTION 18 of the bill (page 5, line 32) strike "this" and substitute "Except as otherwise provided by this Act, this".
(3) In SECTION 19 of the bill, the effective date provision (page 5, line 35), strike "this" and substitute "Except as otherwise provided by this Act, this".

FLOOR AMENDMENT NO. 2
Amend C.S.H.B. No. 3454 (senate committee report) as follows:
(1) Add the following SECTIONS to the bill and renumber the subsequent SECTIONS of the bill accordingly:
SECTION __. Sections 23.175(a) and (b), Tax Code, are amended to read as follows:

(a) If a real property interest in oil or gas in place is appraised by a method that takes into account the future income from the sale of oil or gas to be produced from the interest, the method must use the average price of the oil or gas from the interest for the preceding calendar year multiplied by a market condition factor as the price at which the oil or gas produced from the interest is projected to be sold in the current year of the appraisal. The average price for the preceding calendar year is calculated by dividing the sum of the monthly average prices for which oil and gas from the interest was selling during each month of the preceding calendar year by 12. If there was no production of oil or gas from

the interest during any month of the preceding calendar year, the average price for which similar oil and gas from comparable interests was selling during that month is to be used. The comptroller shall calculate the market condition factor by dividing the ~~(comptroller's)~~ current calendar year statewide average price for oil or gas, as applicable, as forecasted by the Oil and Gas Valuation Advisory Committee using market-based data and a market-based methodology and approved by the comptroller, ~~[for revenue-estimating purposes]~~ by the preceding calendar year actual statewide average price for oil or gas, as applicable. ~~[for purposes of calculating the market condition factor, price means]~~ ~~[the market value of oil or gas as determined under Subchapter E, Chapter 201, or Section 202-053, as applicable].~~ The comptroller shall calculate the preceding calendar year actual statewide average prices for oil and gas and the market condition factors for oil and gas and publish that information to be used for ad valorem tax appraisal purposes concurrently with the current calendar year statewide average prices for oil and gas forecasted using market-based data and a market-based methodology ~~[for revenue-estimating purposes]~~. The price for the interest used in the second or a subsequent calendar year of the appraisal shall reflect the ~~[same]~~ percentage rate increase or decrease in the price for oil or gas, as applicable, as projected for that calendar year by the comptroller using market-based data and a market-based methodology. However, in no event may the price used in the second or any succeeding year of an appraisal exceed 200 percent of the price used in the current year of the appraisal ~~[for revenue-estimating purposes]~~.

(b) The comptroller by rule shall:

- (1) establish procedures for performing the calculations required by Subsection (a), and
- (2) develop and distribute to each appraisal office appraisal manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

SECTION __, Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.176 to read as follows:

Sec. 23.176. OIL AND GAS VALUATION ADVISORY COMMITTEE. (a) The Oil and Gas Valuation Advisory Committee is created. The advisory committee is composed of:

- (1) the comptroller, who serves as a nonvoting member and as presiding officer of the committee;
- (2) three members who are members of a county commissioners court, appointed by the chief executive officer of the County Judges and Commissioners Association of Texas;
- (3) two members who are chief appraisers of an appraisal district, appointed by the chief executive officer of the Texas Association of Appraisal Districts;
- (4) two members appointed by the chief executive officer of the Texas Oil & Gas Association;
- (5) two members appointed by the chief executive officer of the Texas Independent Producers and Royalty Owners Association; and

(6) one member appointed annually on a rotating basis by the chief executive officer of the Texas Alliance of Energy Producers, the chief executive officer of the Permian Basin Petroleum Association, or the chief executive officer of the Panhandle Producers & Royalty Owners Association.

(b) An appointed member of the advisory committee serves at the will of the appointing entity.

(c) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(d) The advisory committee shall, by a vote of at least two-thirds of the voting members, determine the current calendar year statewide average price for oil or gas, as applicable, forecasted using market-based data and a market-based methodology.

(e) The determination of the advisory committee may not result in a current calendar year statewide average price for oil or gas, as applicable forecasted using market-based data and a market-based methodology that deviates by more than 50 percent from the preceding calendar year actual statewide average price for oil or gas as applicable, as calculated by the comptroller under Section 23.175(a).

(f) The advisory committee shall notify the comptroller of the committee's determination. The comptroller shall accept or reject the advisory committee's determination. If the comptroller rejects the advisory committee's determination, the comptroller shall:

(1) immediately notify the advisory committee of the comptroller's rejection of and reasons for rejecting the determination; and

(2) direct the advisory committee to make a new determination.

(g) A new determination by the advisory committee is subject to Subsections (d), (e), and (f) in the same manner as an initial determination.

(h) If the comptroller accepts the initial or a subsequent determination of the advisory committee, the comptroller shall use the current calendar year statewide average price for oil or gas, as applicable) as determined by the advisory committee in performing the calculations required by Section 23.175(a).

(i) The comptroller by rule shall establish procedures for the functions of the advisory committee, including procedures requiring the advisory committee to notify the comptroller of its initial determination for each tax year not later than January 31 of that year.

SECTION __. The chief executive officers of the County Judges and Commissioners Association of Texas, Texas Association of Appraisal Districts, Texas Oil & Gas Association, Texas Independent Producers and Royalty Owners Association, and Texas Alliance of Energy Producers shall appoint the initial appointed members of the Oil and Gas Valuation Advisory Committee created by Section 23.176, Tax Code, as added by this Act, as soon as practicable on or after September 1, 2009.

SECTION __. The comptroller shall adopt rules under Section 23.175(b), Tax Code, as amended by this Act, and Section 23.176(1), Tax Code, as added by this Act, not later than December 1, 2009.

(2) Strike SECTION 19 of the bill (page 5, line 35) and substitute the following:

SECTION 19. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2010.

(b) Sections 23.175(a) and (b), Tax Code, as amended by this Act, and Section 23.176, Tax Code, as added by this Act, take effect September 1, 2009.

Number of difference sections found: 1

Number of difference records found: 299

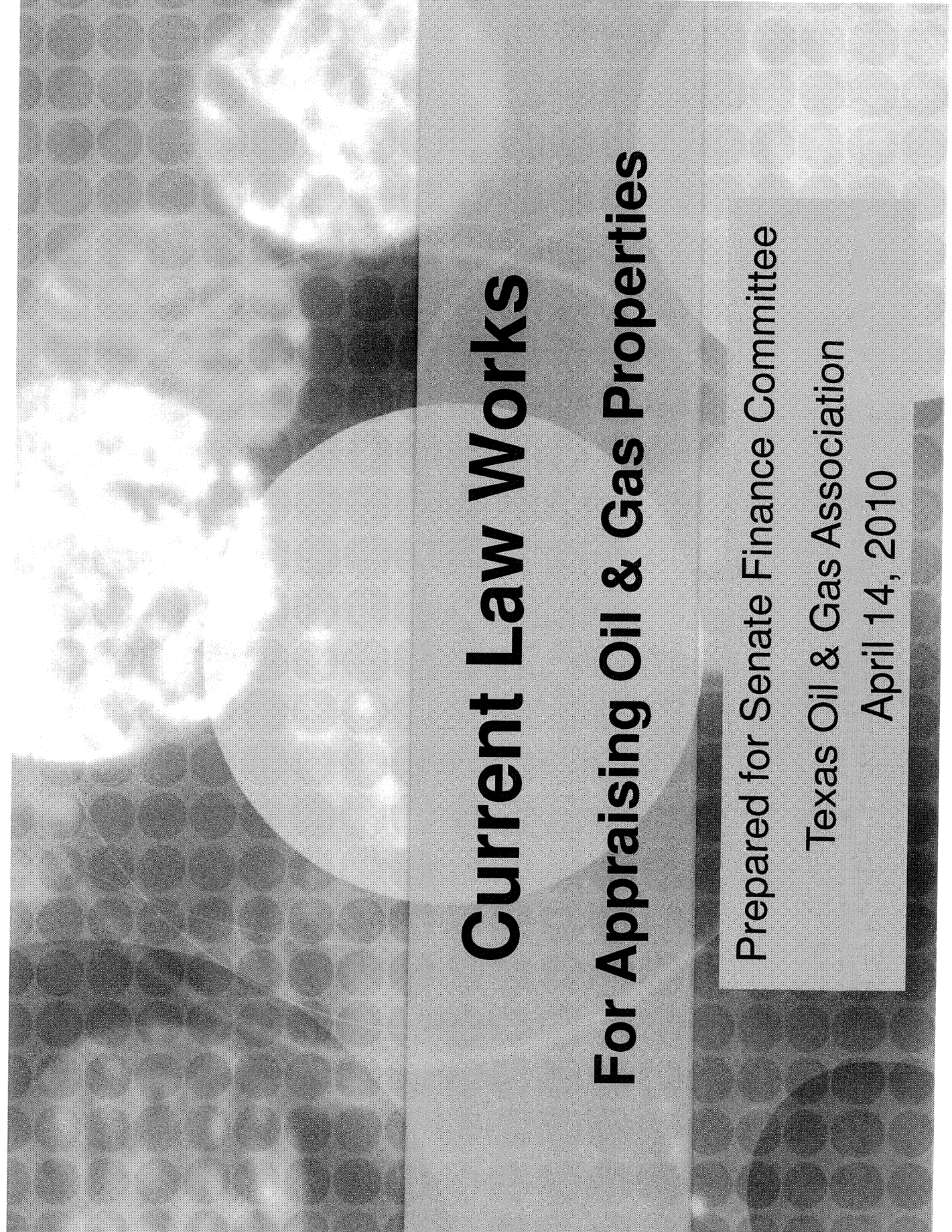
-- End of Comparison --



V&U

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Texas Oil and
Gas
Association



Current Law Works

For Appraising Oil & Gas Properties

Prepared for Senate Finance Committee

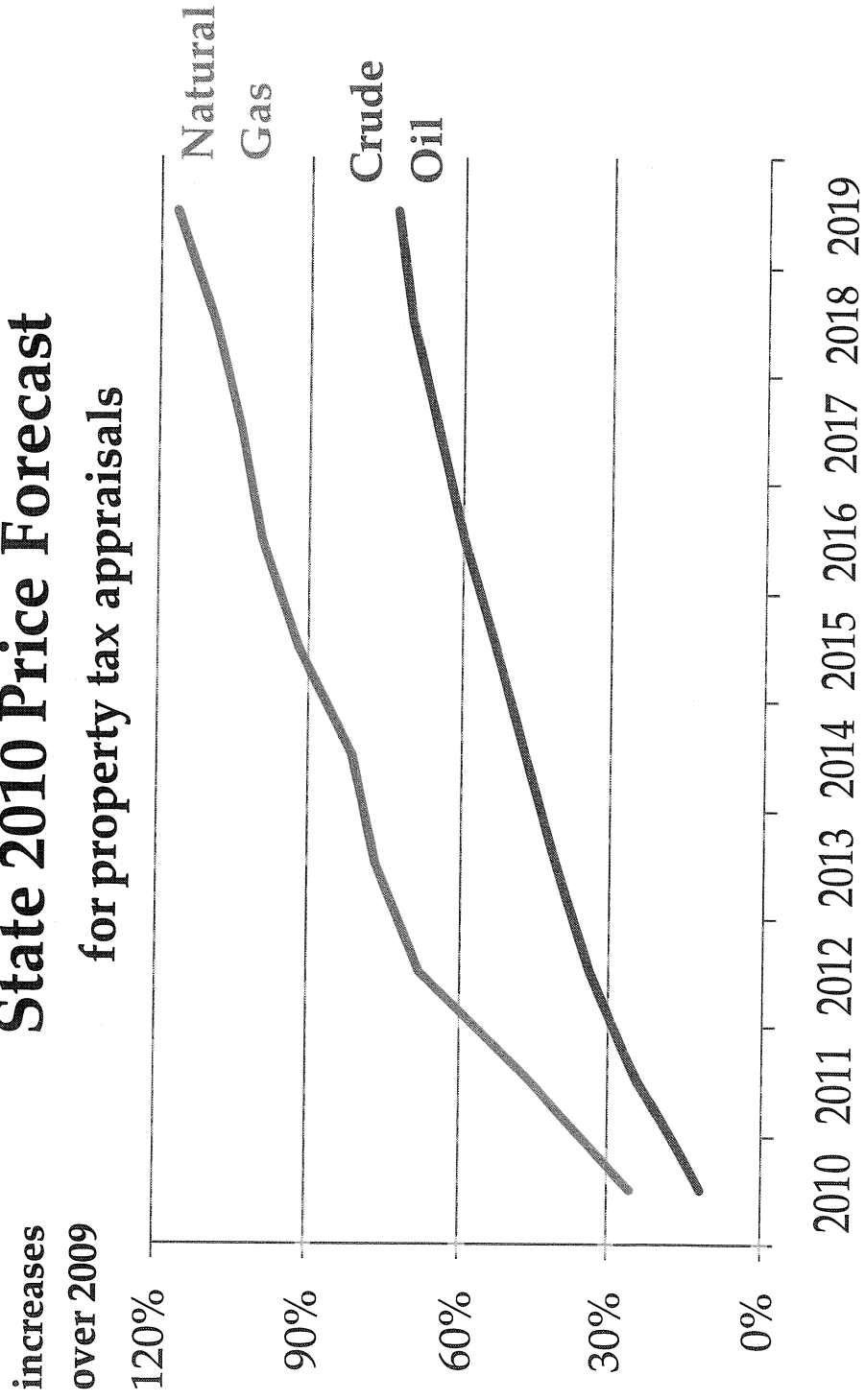
Texas Oil & Gas Association

April 14, 2010

Current Law Works

2010 oil and gas price forecast supports strong property values

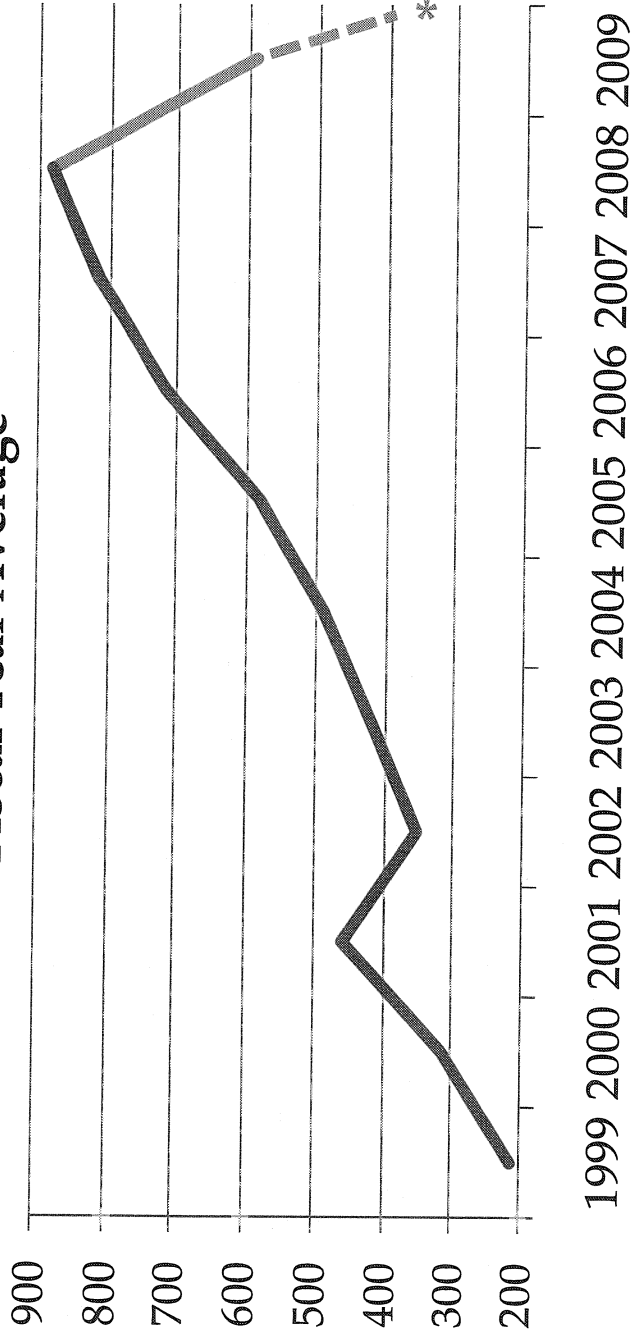
State 2010 Price Forecast for property tax appraisals



Current Law Works

2009 property values reflected industry conditions

**Texas Rig Count
Fiscal Year Average**



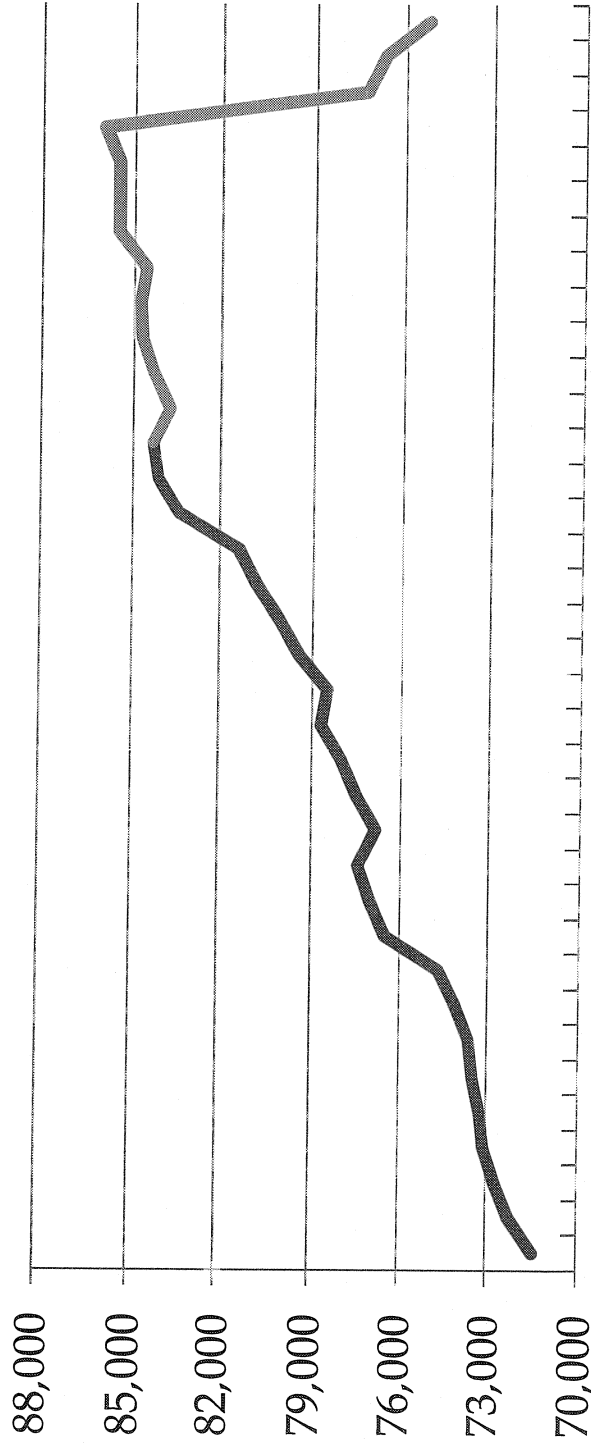
* Rig count was 366 at fiscal year-end.

SOURCES: Texas Comptroller, Baker Hughes

Current Law Works

2009 property values reflected industry conditions

Employment by Month, Oil & Gas Extraction



FISCAL YEARS 2007, 2008, 2009

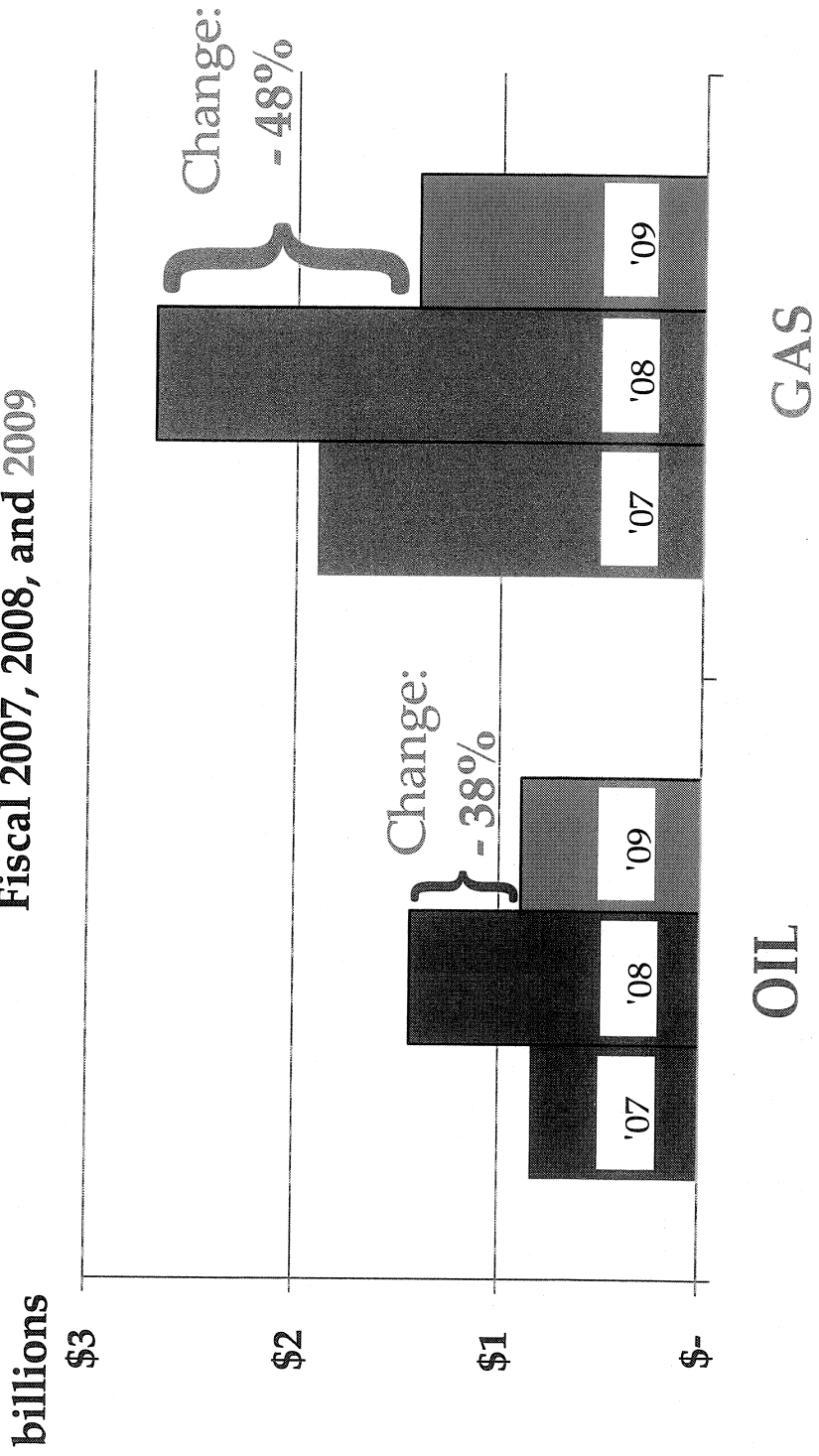
SOURCE: Texas Workforce Commission

Current Law Works

2009 property values reflected industry conditions

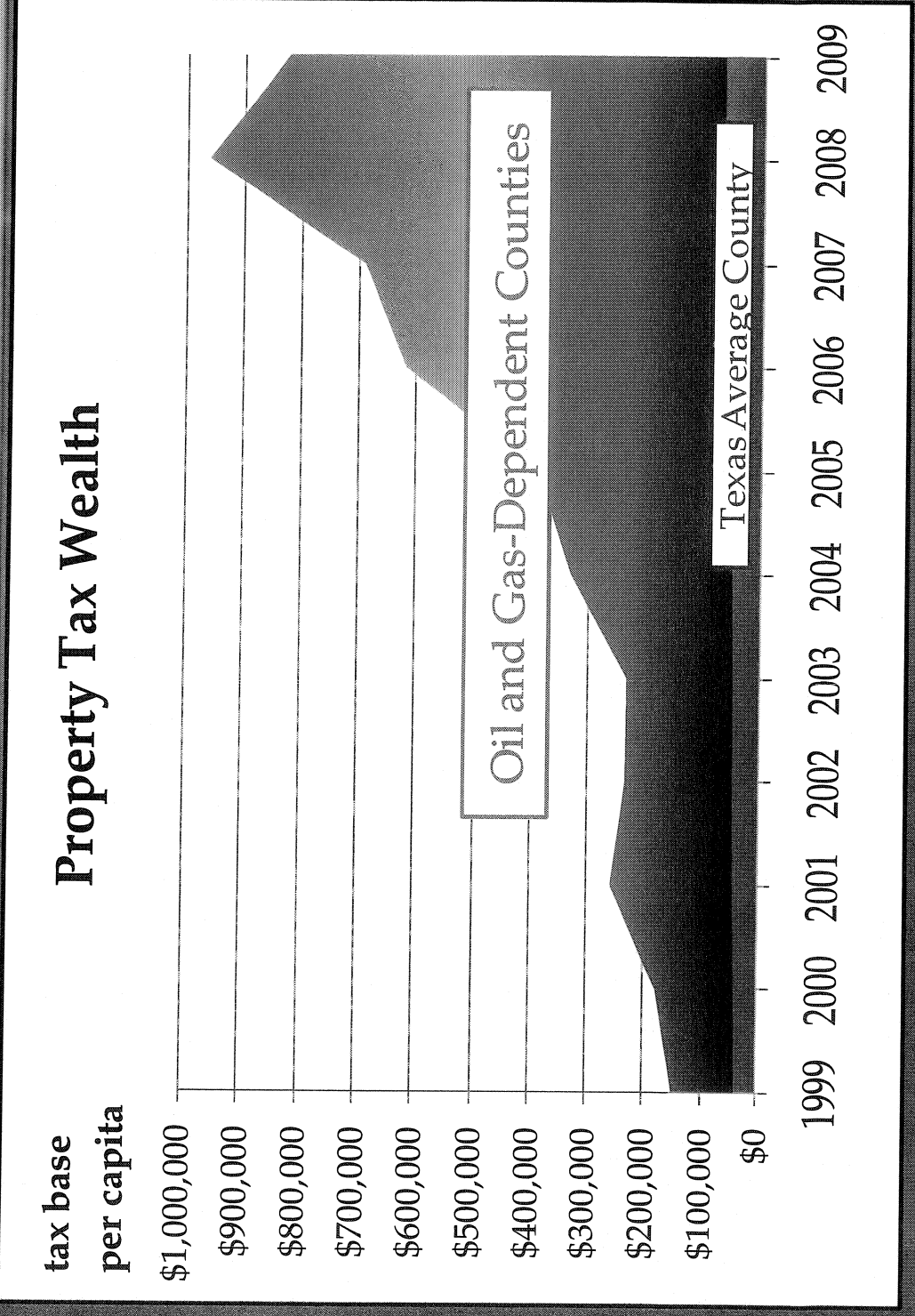
State Severance Tax Collections by Year

Fiscal 2007, 2008, and 2009



Current Law Works

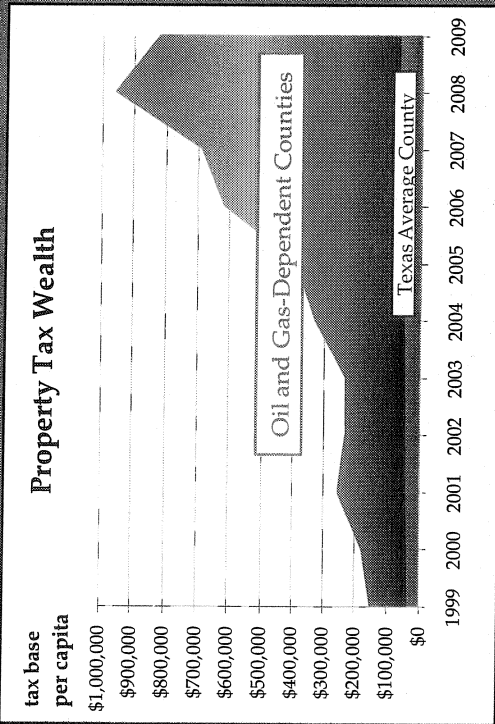
Oil & Gas-dependent areas have benefited more than the rest of Texas



Current Law Works

Oil & Gas-dependent counties, during the past decade:

- Grew in per capita taxable wealth from 4 times the state average to 12 times the state average.
- Increased per capita property taxes for general purposes nearly 3 times as fast as did the average Texas county over the past decade.*
- Impose more than 13 times the per capita tax levy for general purposes as does the average Texas county.*



*2008 is the latest levy data.

Current Law Works

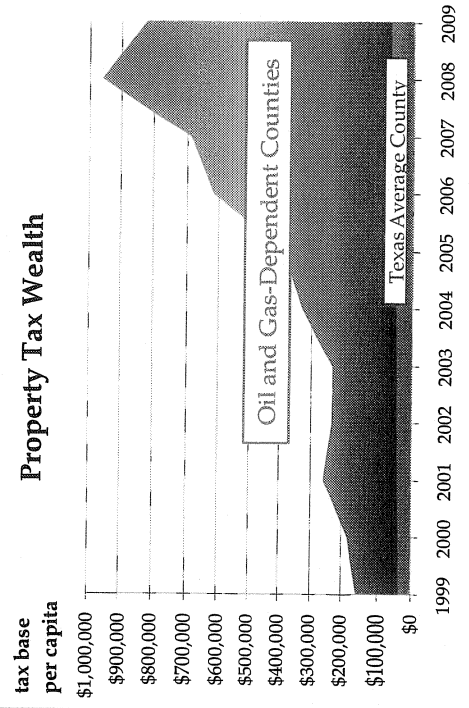
Oil & Gas-dependent counties compared to Texas average:

<u>Change since 1999</u>		Oil and Gas-Dependent Counties		State Average	
General Fund M&O ¹ Tax Rate:	-\$0.17	-	-\$0.02		
General Fund M&O ¹ Per Capita Tax Levy:	239%		84%		
Per Capita Tax Base: ²	257%		82%		

2008 Tax Levy	
General Fund M&O ¹ Per Capita Tax Levy:	\$2,953
	\$218

¹Maintenance & operations. 2008 is the latest available levy data.

² Tax base data is through 2009.



Current Law Works

Oil & Gas-dependent counties during the past decade:

OIL & GAS DEPENDENT COUNTIES

Counties With 2009 Property Tax Bases Comprised Over 50% From Oil & Gas Producing Properties

	----- Taxable Wealth Per Capita -----	----- General Fund M&O Tax Rate -----	2009 Value	Change Since 1999	2008* Rate	Change Since 1999
Andrews County	\$246,931	187%	\$0.30	187%	\$0.30	-\$0.22
Borden County	\$1,044,996	296%	\$0.22	296%	\$0.22	-\$0.26
Cochran County	\$205,004	202%	\$0.39	202%	\$0.39	-\$0.24
Cottle County	\$102,200	128%	\$0.56	128%	\$0.56	-\$0.05
Crane County	\$529,365	226%	\$0.27	226%	\$0.27	-\$0.30
Crockett County	\$590,580	256%	\$0.32	256%	\$0.32	-\$0.24
Dawson County	\$71,834	119%	\$0.47	119%	\$0.47	-\$0.06
Duval County	\$82,217	158%	\$0.52	158%	\$0.52	-\$0.24
Freestone County	\$283,942	417%	\$0.13	417%	\$0.13	-\$0.20
Gaines County	\$318,874	153%	\$0.22	153%	\$0.22	-\$0.06
Garza County	\$164,104	196%	\$0.30	196%	\$0.30	-\$0.13
Glasscock County	\$746,853	316%	\$0.26	316%	\$0.26	-\$0.36
Hemphill County	\$595,236	223%	\$0.34	223%	\$0.34	-\$0.01
Hockley County	\$154,374	191%	\$0.19	191%	\$0.19	-\$0.05
Irion County	\$351,454	275%	\$0.25	275%	\$0.25	-\$0.25
Kent County	\$844,352	195%	\$0.26	195%	\$0.26	-\$0.21

*2008 is the latest levy data.

Current Law Works

Oil & Gas-dependent counties during the past decade:

OIL & GAS DEPENDENT COUNTIES

Counties With 2009 Property Tax Bases Comprised Over 50% From Oil & Gas Producing Properties

	----- Taxable Wealth Per Capita -----	----- General Fund M&O Tax Rate -----	Change Since 1999	2008* Rate	Change Since 1999
	2009 Value				
King County	\$886,821		223%	\$0.70	\$0.20
Lipscomb County	\$372,864		322%	\$0.21	-\$0.22
Loving County	\$18,258,779		981%	\$0.30	-\$0.50
Martin County	\$365,304		514%	\$0.09	-\$0.43
McMullen County	\$521,030		79%	\$0.44	\$0.03
Mitchell County	\$87,493		159%	\$0.33	-\$0.20
Panola County	\$218,840		154%	\$0.27	\$0.00
Pecos County	\$232,803		98%	\$0.47	\$0.01
Reagan County	\$507,218		394%	\$0.29	-\$0.29
Refugio County	\$141,451		178%	\$0.45	-\$0.07
Roberts County	\$1,009,211		315%	\$0.21	-\$0.24
Robertson County	\$295,550		486%	\$0.32	-\$0.15
Schleicher County	\$122,669		123%	\$0.55	-\$0.09
Sherman County	\$261,722		144%	\$0.39	-\$0.08
Stephens County	\$81,303		134%	\$0.46	-\$0.11
Stonewall County	\$135,415		137%	\$0.49	-\$0.12

*2008 is the latest levy data.

Current Law Works

Oil & Gas-dependent counties during the past decade:

OIL & GAS DEPENDENT COUNTIES

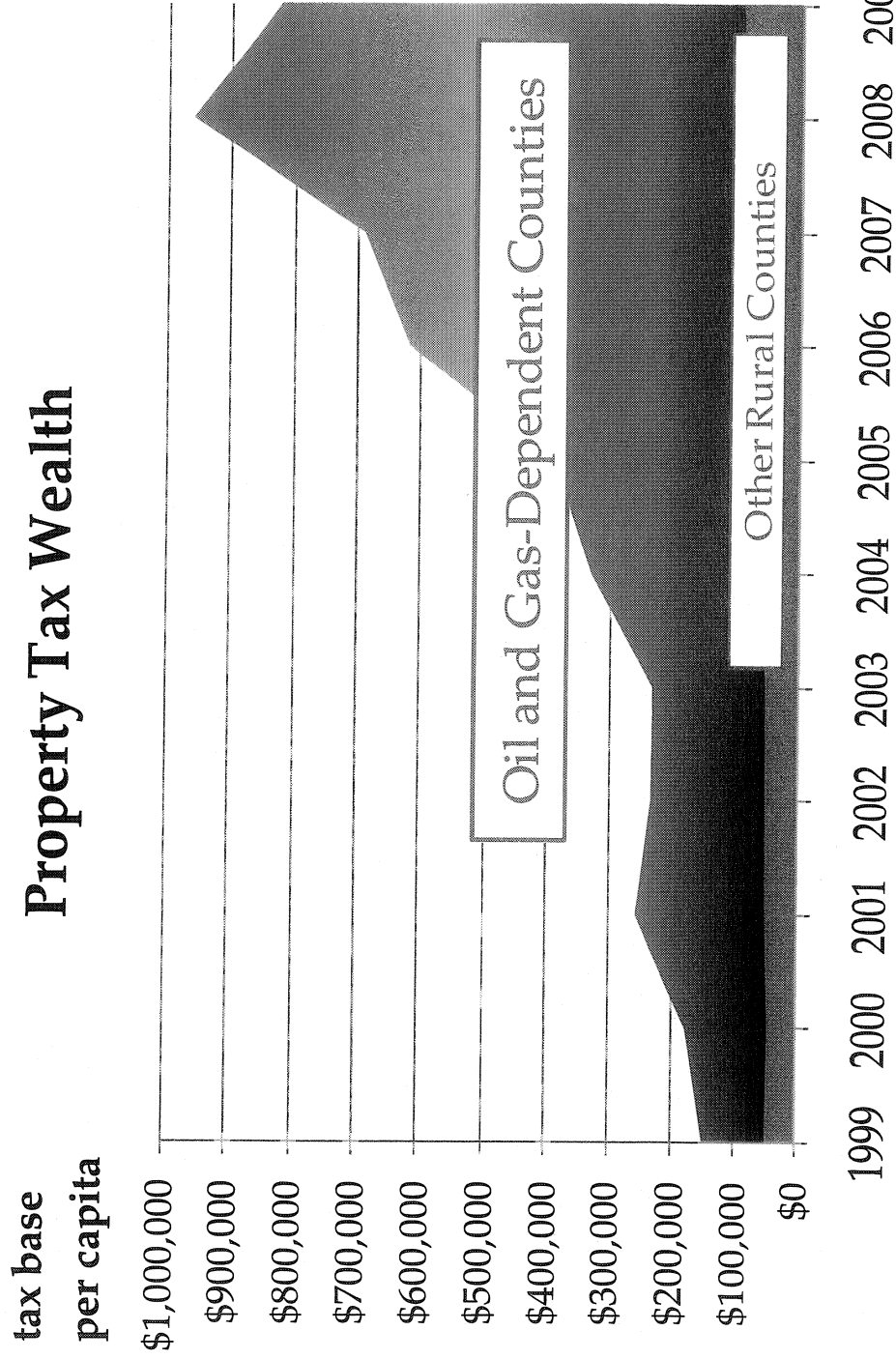
Counties With 2009 Property Tax Bases Comprised Over 50% From Oil & Gas Producing Properties

	----- Taxable Wealth Per Capita -----	----- General Fund M&O Tax Rate -----	
	2009 Value	Change Since 1999	2008* Rate
			Change Since 1999
Sutton County	\$321,378	247%	\$0.15
Terrell County	\$845,121	267%	\$0.29
Terry County	\$79,781	123%	\$0.52
Upton County	\$1,051,837	579%	\$0.22
Ward County	\$163,447	176%	\$0.64
Wheeler County	\$432,072	474%	\$0.20
Winkler County	\$235,769	272%	\$0.52
Yoakum County	\$476,804	205%	\$0.24
Zapata County	\$222,109	212%	\$0.62
Average of the above:	\$820,954	257%	\$0.35
Staterwide Average County:	\$70,793	82%	\$0.41
			-\$0.02

"Oil and gas-dependent counties" are those with more than half of their tax base comprised of oil and gas producing properties. Oil and gas-dependent counties had 1% of Texas' population in 2008.

Current Law Works

Oil & Gas-dependent areas have benefited more than the rest of Rural Texas



Current Law Works

Oil & Gas-dependent counties compared to Texas average and Rural:

Change since 1999

	Oil and Gas-Dependent Counties	Other Rural	State Average
General Fund M&O ¹ Tax Rate:	-\$0.17	\$0.00	-\$0.02
General Fund M&O ¹ Per Capita Tax Levy:	239%	181%	84%
Per Capita Tax Base: ²	257%	99%	82%

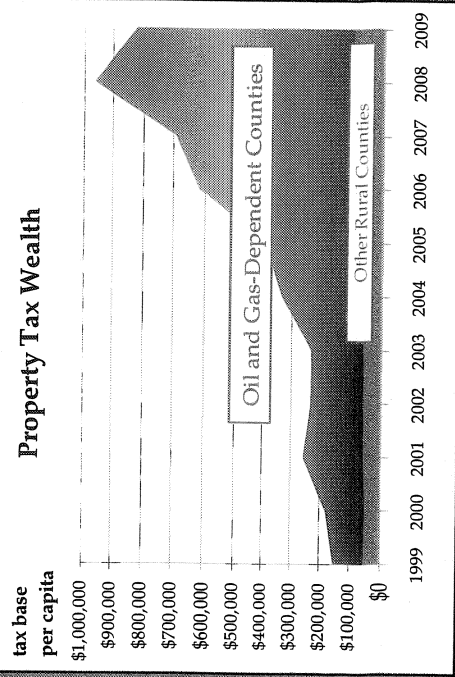
2008 Tax Levy

General Fund M&O ¹ Per Capita Tax Levy:	\$2,953	\$386	\$218
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"Other rural" are counties with fewer than 50,000 in population and which have less than half of their tax base comprised of oil and gas producing properties.

¹ Maintenance & operations. 2008 is the latest available levy data.

² Tax base data is through 2009.



Current Law Works

Oil & Gas-dependent counties during the past decade:

OIL & GAS DEPENDENT COUNTIES

Counties With 2009 Property Tax Bases Comprised Over 50% From Oil & Gas Producing Properties

	----- Taxable Wealth Per Capita ----- 2009 Value	Change Since 1999	----- General Fund M&O Tax Rate ----- 2008* Rate	Change Since 1999
Average, oil & gas counties:	\$820,954	257%	\$0.35	-\$0.17
Statewide Average County:	\$70,793	82%	\$0.41	-\$0.02
Other Rural Counties, avg	\$ 96,106	99%	\$0.46	\$0.00

"Oil and gas-dependent counties" are those with more than half of their tax base comprised of oil and gas producing properties. Oil and gas-dependent counties had 1% of Texas' population in 2008.

"Other rural counties" are those with fewer than 50,000 in population and which have less than half of their tax base comprised of oil and gas producing properties.



Current Law Works

For Appraising Oil & Gas Properties

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Texas Alliance of Energy Producers

●

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Testimony
before
Committee on Finance
Texas Senate
Steve Ogden, Chairman
April 14, 2010

by
Bill Stevens, Executive Vice-president
Texas Alliance of Energy Producers

Re: Challenges of Mineral Tax Appraisal

Oil and gas producers, royalty and mineral owners, and members of the oil and gas industry, in general, look with pride at their contributions to the State's economy and the quality of life of its citizens. They are proud that their daily work is a driving force and powerful engine in the economy of Texas.

I am here today on behalf of the nearly 3400 members of the Texas Alliance of Energy Producers. Chairman Ogden and Members, we appreciate this opportunity to discuss the perspectives of independent oil and gas producers relative to your interim charge.

You have been provided with written documents of this testimony which we hope is succinct and to the point.

- 1) We are satisfied with the current law enacted in 2007 and implemented in 2008 and 2009. We see no need for change at this time.
- 2) The market factor initiated for estimating future prices was installed to make appraisal results and the final tax levied more reflective of the actual market. Even in these most volatile of years 08 and 09, the Comptroller has made reasonable estimates.

And point of fact, as Mr. Lebas pointed out in his research just presented, county budgets in oil and gas dependent counties (50% and above) have increased their budgets based on the rising appraisal values of the last five years. Yes, 2009 brought an overall 11% decline in value of mineral appraisals across the State, but this was on the heels of a 27% increase in 2008 and with the Comptroller's new market factors for 2010, it is entirely possible that appraisals will be overvalued this year.

- 3) There has been hardship on some counties and we do not discount this, but two years (and very volatile years at that) do not rise to level of changing

the law for the entirety of the State. It is far better to look at the results of 2010 and 2011 before we make those decisions. It is entirely possible that we will see improvement for these counties within months.

In fact, the Comptroller's estimate for 2010 is \$64.55/b for crude oil, up from last year's \$57.49 actual, for a market factor of 1.12. The Comptroller's estimate for 2010 is \$4.23/mcf for natural gas, up from last year's \$3.37 actual, for a market factor of 1.26. Remember, that these are actual prices received by the operator and reported to the Comptroller, not NYMX or index prices.

Today, the crude oil price is above the Comptroller's estimate, but let us also be aware that natural gas prices are below and slipping. In fact, a recent 'Gas Daily' article of April 7 reports that the Energy Information Administration has revised their price estimates downward for the second and third quarters of 2010 by 19% and 23%, respectively.

- 4) The Alliance also believes that the law directing the Comptroller to determine the estimated price is appropriate. It might be possible to do it by committee but we are not sure what that accomplishes over and beyond the good work by the professionals at the Comptroller's office. It has been our experience that for the last 30 years, revenue estimating and hydrocarbon price forecasting in the Comptroller's office has been as accurate as any in the world. Inside the Comptroller's staff, pricing estimates reference supply and demand trends, multiple indices and markets (such as EIA, Moody's and the NYMX), as well as the conditions of the overall economy.
- 5) Finally, please find attached to my testimony a letter from a Midland operator who is an Alliance member. He keeps records reflecting the percentage of *net revenue* on each lease that is paid in ad valorem taxes. His summary sheet lists such information from 3 gas wells and 8 oil leases in various counties in the Panhandle and the Permian Basin. The compilation spans three years - 07, 08 and 09 - and lists the Net Income in \$ before ad valorem, the actual ad valorem taxes paid in dollars and the percentage of the tax to net income.

Please note that in all but one instance, the percent of net income attributed to ad valorem taxes was in double digits in 2009, ranging from 10.7% to a high of 111.0 %.

Yet, when viewed as a percent of net revenue, even the 5% to 7% taxes of 2007 and 2008 appear to be high, particularly on gas.

Our Alliance operator would ask, 'What is the appropriate percentage of taxation?'

We believe there are two factors that contribute to the high tax. The volatility of the downward trending market and inefficient expense recognition by the appraisal companies and taxing entities. (Please note the attached 2009 Oil Lease Operating Expense Scenario.) Simply put, the appraisal company did not use last year's actual expenses but instead they presumed that expenses would be lower by 30%. It is an assumption that is then carried out over the next several years on the expense side of the equation.

This is not the undervaluation which some may claim but exactly the opposite. It is an over-valuation created by the variable assumptions made by the appraisal companies in the favor of the taxing entity.

There are many assumptions that are made throughout the process and the Comptroller's pricing estimate is just one.

In conclusion, let me say again, that we do not discount the budgetary constraints of some of the counties. We are willing to work with them and with the legislature to solve problems. Yet, we all need as much stability as possible in our tax laws. We believe that change at this time is not warranted.

Price forecasting and revenue estimating are inexact sciences. Producers and mineral owners are faced with paying a tax on an asset revenue stream which may never be realized in the future - either in actual production or price. And we pay on the same barrel and the same mcf in place, year after year.



April 6, 2010

Texas Alliance of Energy Producers
Mr. William Stevens
1007 East 8th Street
Austin, Texas 78702

Re: Ad Valorem Tax

Dear Bill:

Attached you will find information on Ad Valorem taxes for certain leases. As I mentioned before, I believe the first question to the county and state officials pushing for more money through Ad Valorem taxes on oil and gas properties should be "what percentage of net income from oil and gas leases before Ad Valorem tax deduction do you consider an appropriate amount of Ad Valorem tax?"

The attachment summarizes the Ad Valorem taxes for certain oil and or gas leases. Also included is the back-up for 2009 with the amount paid for Ad Valorem tax circled in red and the net income to the lease after Ad Valorem tax circled in green. I also show the % and amount of Ad Valorem taxes on these same leases for 2007 and 2008. I have not sent the back-up for those years but the procedure to get the % of net income before Ad Valorem tax payment is the same. On the summary I have rounded the dollar to the nearest \$100. For 2009 you have back-up showing exact amounts.

I hope this will be helpful in the hearing of the Senate Finance Committee. If you have any questions give me a call.

Sincerely,

Don L. Sparks

DLS/ad

Attachments

SUMMARY OF AD VALOREM TAX PAYMENTS

A. Texas Railroad Commission Classification: Gas Wells

County	# Wells/ Approx Age	2009		2008		2007		
		Net Income \$ Before Ad Valorem	Ad Valorem \$	Net Income %	Ad Valorem \$	Net Income %	Ad Valorem \$	Net Income %
G1 Hemphill	1/30	(\$300)	\$3,100	111%	\$7,900	7.45%	\$7,200	6.74%
G2 Hansford	1/35	\$16,600	\$4,600	27.80%	\$4,200	6.74%	\$3,000	6.34%
G3 Schleicher	1/11	\$28,000	\$3,400	12.10%	\$5,500	6.51%	\$3,000	3.78%

B. Texas Railroad Commission Classification: Oil Wells

County	# Wells/ Approx Age	2009		2008		2007		
		Net Income \$ Before Ad Valorem	Ad Valorem \$	Net Income %	Ad Valorem \$	Net Income %	Ad Valorem \$	Net Income %
O1 Andrews	2/10	\$33,900	\$5,200	15.30%	\$5,700	4.00%	\$6,900	6.50%
O2 Midland (Wolfberry)	3/7	\$367,500	\$22,100	6.00%	\$27,300	3.90%	\$37,100	6.20%
O3 w/casing leak '08)	1/7	\$124,600	\$5,000	3.90%	\$7,000	123%	\$7,200	4.50%
O4 Midland (Wolfberry)	2/8	\$129,800	\$3,200	10.70%	\$5,900	3.20%	\$6,900	5.40%
O5 Midland (Wolfberry)	4/9	\$42,600	\$8,400	19.70%	\$11,800	4.50%	\$12,800	3.30%
O6 Reagan	1/25	\$39,800	\$4,900	12.30%	\$3,500	5.00%	\$1,500	3.50%
O7 Schleicher	1/13	\$42,400	\$6,500	15.30%	\$6,100	4.70%	\$4,700	4.93%
O8 Schleicher	1/33	\$27,500	\$4,100	14.90%	\$3,100	3.40%	\$2,200	5.05%

**2009 P&A Oil Lease Operating Expense Scenario:
Insufficient Expense Recognition Resulting in Overvaluation**

County Parker
 Operator XXXXX
 Lease YYYYY
 P&A Lease# _____

RRC# _____

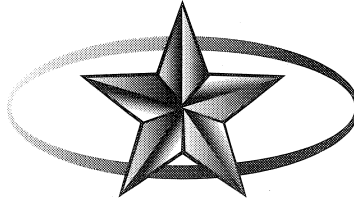
Lease Expense Scenario

P&A's LOE Start 40,000 Merit's LOE Start 40,000

	P&A's LOE Factors	P&A's LOE Allowance	Merit: Flat for 2 Yrs, 2% Esc. For 6 Yrs, Then Comptroller Scenario Applied	Merit LOE Projection	Annual Expense Shortfall
Year 1	0.7000	\$ 28,000	1.0000	\$ 40,000	\$ 12,000
Year 2	0.9000	\$ 25,200	1.0000	\$ 40,000	\$ 14,800
Year 3	1.0000	\$ 25,200	1.0200	\$ 40,800	\$ 15,600
Year 4	1.1130	\$ 28,048	1.0200	\$ 41,616	\$ 13,568
Year 5	1.1333	\$ 31,786	1.0200	\$ 42,448	\$ 10,662
Year 6	1.1176	\$ 35,524	1.0200	\$ 43,297	\$ 7,773
Year 7	1.1053	\$ 39,265	1.0200	\$ 44,163	\$ 4,898
Year 8	1.1000	\$ 43,192	1.0200	\$ 45,046	\$ 1,855
Year 9	1.0400	\$ 44,919	1.0400	\$ 46,848	\$ 1,929
Year 10	1.0300	\$ 46,267	1.0300	\$ 48,254	\$ 1,987
Year 11	1.0251	\$ 47,428	1.0250	\$ 49,460	\$ 2,032
Year 12	1.0200	\$ 48,377	1.0200	\$ 50,449	\$ 2,073
Year 13	1.0100	\$ 48,861	1.0100	\$ 50,954	\$ 2,093
Year 14	1.0100	\$ 49,349	1.0100	\$ 51,463	\$ 2,114
Year 15	1.0100	\$ 49,843	1.0100	\$ 51,978	\$ 2,135
Year 16	1.0100	\$ 50,341	1.0100	\$ 52,498	\$ 2,157
Year 17	1.0100	\$ 50,844	1.0100	\$ 53,023	\$ 2,178
Year 18	1.0100	\$ 51,353	1.0100	\$ 53,553	\$ 2,200
Year 19	1.0100	\$ 51,866	1.0100	\$ 54,089	\$ 2,222
Year 20	1.0100	\$ 52,385	1.0100	\$ 54,629	\$ 2,244
Year 21	1.0100	\$ 52,909	1.0100	\$ 55,176	\$ 2,267
Year 22	1.0100	\$ 53,438	1.0100	\$ 55,727	\$ 2,289
Year 23	1.0100	\$ 53,972	1.0100	\$ 56,285	\$ 2,312
Year 24	1.0100	\$ 54,512	1.0100	\$ 56,848	\$ 2,335
Year 25	1.0100	\$ 55,057	1.0100	\$ 57,416	\$ 2,359

Cumulative LOE Under-Allowance by P&A	
Year 1	\$ 12,000
Year 2	\$ 26,800
Year 3	\$ 42,400
Year 4	\$ 55,968
Year 5	\$ 66,630
Year 6	\$ 74,403
Year 7	\$ 79,301
Year 8	\$ 81,156
Year 9	\$ 83,085
Year 10	\$ 85,072
Year 11	\$ 87,104
Year 12	\$ 89,177
Year 13	\$ 91,270
Year 14	\$ 93,384
Year 15	\$ 95,520
Year 16	\$ 97,676
Year 17	\$ 99,855
Year 18	\$ 102,055
Year 19	\$ 104,277
Year 20	\$ 106,521
Year 21	\$ 108,788
Year 22	\$ 111,077
Year 23	\$ 113,390
Year 24	\$ 115,725
Year 25	\$ 118,084

Hugh Landrum
and Associates



HUGH L. LANDRUM & ASSOCIATES, INC.
Valuation Engineers Since 1963

April 7, 2010

Senate Finance Committee
1400 Congress Avenue, Room E1.038
Austin, TX 78701

Dear Committee Members:

Thank you for allowing me to address the issue of oil and gas appraisals with you. I appreciate your time and will endeavor to be as brief as possible. This paper is intended to set out for you the details supporting the arguments that I will present next Wednesday in the hearing.

My Background:

I am a Registered Professional Appraiser and Registered Texas Assessor Collector. I am also a Certified Texas Assessor and a licensed attorney in the State of Texas. I am a principle in the appraisal firm of Hugh L. Landrum & Associates, Inc., with Hugh Landrum, Sr. being my Dad. I grew up on the Gulf Coast in Texas City, earned my undergraduate degree from Rice University and my law degree from South Texas College of Law. After practicing as a civil defense litigator for six years, I returned to the family business, appraising oil and gas properties for our firm. Today, Hugh L. Landrum & Associates, Inc. is responsible for over \$24 billion dollars of appraised value in ten counties.

Interim Charge:

Identify and evaluate improvements to the property tax system. Consider and make recommendations relating to the following:

1. Methods and procedures for determining a real property interest in oil or gas in place, as contained in Texas Tax Code Sec. 23.175, including how market-based data and market-based methodology could possibly be used to ensure fair, reliable, and equitable price forecasts of oil and gas interests.
2. Analyze the need for the creation of an Oil and Gas Valuation Advisory Committee to assist in forecasting current calendar year statewide average prices for oil and gas.

Discussion:

The oil and gas markets can be inherently volatile and have been especially so in recent years. The data below shows the dramatic swings in prices from 2007 thru 2009:

2007 average prices: \$59.02/bbl \$6.34/mcf

2008 average prices: \$96.27/bbl \$7.67/mcf

A 63% increase in oil and 20% increase in gas prices in 2008.

2009 average prices: \$57.49/bbl \$3.37/mcf

A 40% decrease in oil and 56% decrease in gas prices in 2009!

For that reason, using true market value as the standard for property tax appraisals of oil & gas properties will necessarily result in appraised values that reflect the volatility of the market. This presents a difficult challenge to jurisdictions whose tax base is largely oil and/or gas, particularly counties, who by law cannot save during the rich years to offset the lean years. In the past, this difficulty was buffered somewhat by the provisions of section 23.175. After the 2007 revisions to section 23.175, however, the buffer was removed and the full effect of a volatile market was felt statewide.

The law prior to 2007 allowed us to use the prior year's average price as our starting price for ad valorem appraisal purposes. As a result, our "market values" lagged one year behind the real market and in doing so, provided a one year cushion for jurisdictions and taxpayers to adjust for market swings.

One benefit to this approach is that it provided a one year cushion against market swings. It also employed a starting price that was known and presumably accurate, requiring no projections or speculation. It was easy to determine, understand and apply. The problem, however was that it did not result in a true market price. In reality, no one uses **last** year's prices when buying income producing properties. Another problem with the old method was that taxpayers, especially royalty owners, really disliked the years when prices started falling and they were still being taxed at the higher rate. They enjoyed the years when prices were climbing and they were being taxed at a lower rate, but not the years when prices started to fall and they were taxed at the prior year's higher rate.

The 2007 change to 23.175 created an appraisal that was much closer to true market value. Unfortunately, three things happened at once to tarnish the good intentions behind the 2007 legislation. First, the economy crashed. Next, the revision removed the one year cushion that allowed jurisdictions to adjust for market swings. And lastly, the factors required by the new legislation were off the mark as shown below:

2008 factored prices: \$67.83/ bbl vs. \$96.27/bbl actual average

42% too low on oil for 2008.

2008 factored prices: \$6.09/ mcf vs. \$8.03/mcf actual average
32% too low on gas for 2008.

2009 factored prices: \$35.99/bbl vs. \$57.49/bbl actual average
60% too low on oil for 2009.
\$4.85/mcf vs. \$3.37/mcf actual average
30% too high on gas for 2009.

As a result, since the law changed, tax revenues from oil and gas have dropped abruptly and more than they needed to.

Recommendations:

How do we protect the jurisdictions from the market volatility of the oil and gas markets while maintaining fair and equitable appraisals statewide? First, allow counties and any other jurisdictions that do not currently have the ability to save money in a "Rainy Day" type fund, to do so. This may require a constitutional amendment.

Next, revise section 23.175 in one of three ways:

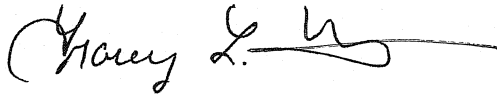
1. Revise section 23.175 to require the Comptroller to provide a preliminary forecast by January 31. Allow 20 days for any interested party to present written suggestions for improving the forecast. At the end of the 20 day period, have a hearing so that all interested parties can present limited oral testimony on the matter. Then the Comptroller has 10 days from the date of the hearing to release the final projection. This would give the stakeholders an opportunity to be heard and share information, but does not require that they all agree. It also would give the Comptroller access to information that may not currently be available. Finally, it would minimize the opportunity for political or other outside pressures to factor into the process, or be perceived as doing so.
2. In the alternative, revise section 23.175 to use a true market standard for projecting future prices, instead of the Comptroller's projections. Form a committee of stakeholders to determine the best index and/or projection methodology to use, but then statutorily require that prices be computed using that standard and/or methodology each year. The problem with this alternative is that there is no index like Marshall and Swift for oil and gas. Future prices, regardless of who is doing the projecting, are only projections and have the inherent risk of being wrong.
3. A final alternative would be to revise section 23.175 to change the way mineral prices are projected by using a 3 or 5 year average starting price. Using a 3 or 5 year price rolling average, would smooth out the highs and lows of the market and make the process less volatile for all concerned. But, please note, this would not be a true

market value appraisal and may require a constitutional amendment to establish a “special appraisal” for oil and gas interests.

I encourage the first revision scenario calling for the Comptroller to continue setting the factor, but with input from those who have the knowledge and an interest at stake. I believe that this will afford all parties an opportunity to participate and influence the outcome without requiring them to all come together in agreement. It has been my experience in the twenty-plus years that I have been in the property tax business that such agreements are hard to come by.

Again, I thank you for your time and the opportunity to appear before you. If you have any questions or if I can be of any service, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey L. Foster", with a long horizontal flourish extending to the right.

Tracey L. Foster, JD, RPA, RTA, CTA
tracey@hughlandrum.com

Texas
Comptroller of
Public
Accounts



Presentation to the

Senate Finance Committee

Identify and evaluate potential improvements to the property tax system. Consider and make recommendations relating to the following: The constitutional constraints and fiscal implications of exempting real property, leased to a school, as defined by Section 11.21 of the Tax Code, from ad valorem taxation.

April 14, 2010

Presented by:

Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

Exempting Property Leased to a School



Constitutional Authority: Article VIII, Section 2(a)

“ . . .the legislature may, by general laws, exempt from taxation . . . any property that is owned by a church or by a strictly religious society and is leased by that church or strictly religious society to a person for **use as a school**, as defined by Section 11.21, Tax Code, or a successor statute, for educational purposes; . . . **all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools . . .**”

Exempting Property Leased to a School



Statutory Authority: Section 11.21, Tax Code

- Buildings (and the land reasonably necessary for the use of the building) and tangible personal property owned and used by a private school are exempt from taxation
- The school may be operated by an individual, a corporation, or an association.
- A school may qualify for the exemption if it meets the following requirements:
 - is organized and operated primarily for the purpose of engaging in educational functions;
 - normally maintains a regular faculty, has a regular curriculum, and has an organized body of students in attendance at the place where the education functions occur;
 - is operated exclusively by the individual, corporation, or association that owns the property;
 - is operated in a way that does not result in the accrual of distributable profits or the realization of private gain from excessive compensation or other gain;
 - if a corporation, is organized under the Texas Non-Profit Corporation Act; and
 - must direct in the school's charter, bylaws or other regulation that upon dissolution that the organization's assets must be transferred to the State of Texas, the United States, or an organization qualified as a charity under Section 501(c)(3), Internal Revenue Code

Exempting Property Leased to a School



Statutory Authority: Section 11.21, Tax Code (Cont.)

- The school property must be owned exclusively by the persons who operate the school
- Includes other ownership requirements
- Property must be used exclusively for educational functions
- Property of a qualified organization may be exempted while it is under construction
- Endowment funds that are owned and used exclusively for the school's support may be exempt

Exempting Property Leased to a School



Case Law

- In **Circle C Child Development Child Development Center, Inc. v. Travis Cent. Appraisal Dist.** 981 S.W.2d 483 (Tex.App.-Austin 1998, no writ), the court ruled that if there is a non-educational use that is substantial, such as a day care center, the property would not qualify as a school for purposes of Section 11.21. The center was not used exclusively for educational functions
- A property cannot be exempt if its primary use is as the residence of the school president or any other member of the administration. **Bexar Appraisal District and Bexar County Appraisal Review Board v. Incarnate Word College**, 824 S.W.2d 295 (Tex. App.—San Antonio 1992, writ denied)

Questions?



Deborah Cartwright, Director
Property Tax Assistance Division
Texas Comptroller of Public Accounts

deborah.cartwright@cpa.state.tx.us

(512) 936-4251

●

Texas Charter Schools Association-

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No written
testimony

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