Amend **CSHB 2161** (Senate committee printing) as follows:

(1) Add the following appropriately numbered sections and renumber the subsequent sections of the bill accordingly:

SECTION ___. Section 81.116(d), Natural Resources Code, is amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 [~~of this code~~]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, [~~and~~] 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

SECTION ___. Section 81.117(d), Natural Resources Code, is amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 [~~of this code~~]. The exemptions and reductions set out in Sections 201.053, 201.057, [~~and~~] 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

SECTION ___. Section 89.044, Natural Resources Code, is amended to read as follows:

Sec. 89.044. RIGHT TO ENTER ON LAND. (a) The commission or its employees or agents, the operator, or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged.

(b) A prospective operator who has been authorized under Section 89.047 to conduct a surface inspection of a well, on proper identification, may enter the land of another for the sole purpose of conducting the inspection.

SECTION ___. Subchapter C, Chapter 89, Natural Resources Code, is amended by adding Sections 89.047 and 89.048 to read as follows:

Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this section:

(1) "Depth of the well" means the vertical depth of a well as measured in linear feet from the surface to the lowest perforation of the casing of the well that is within the commission-designated correlative interval for the field for which

the well is issued a permit.

(2) "Operator in good standing" means an operator who:

(A) has a commission-approved organization report;

(B) is the designated operator of at least one well within the jurisdiction of the commission;

(C) has filed with the commission under Section 91.104 a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and

(D) is not the subject of a commission or court order regarding a violation of a commission rule with which the operator has not complied or a complaint that has been docketed by the commission alleging a violation of a commission rule.

(3) "Orphaned well" means a well:

(A) for which the commission has issued a permit;

(B) for which production of oil or gas or another activity under the jurisdiction of the commission has not been reported to the commission for the preceding 12 months; and

(C) whose operator's commission-approved organization report has lapsed.

(4) "Producing well" means a well classified by the commission as an oil or gas well in accordance with commission rules.

(5) "Service well" means a well for which the commission has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

(b) A person who is considering assumption of operatorship and regulatory responsibility for an orphaned well may nominate the well under consideration by filing a request on a form prescribed by the commission notifying the commission that the person seeks authority to conduct a surface inspection of the well to determine whether the person desires to be designated by the commission as the operator of the well.

(c) If the person is an operator in good standing and the well is not already subject to a nomination, the commission shall accept the nomination and issue a written confirmation to the person of the person's authority to conduct a surface inspection of the nominated well for a stated period not to exceed 30 days.

(d) A person to whom a confirmation is issued under Subsection (c) may conduct a surface inspection of the well. The person must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three days before the date of the inspection. The notice must:

(1) identify the orphaned well;

(2) state the name, address, and telephone number of the person;

(3) state the date the person intends to conduct the surface inspection;

(4) state the name of at least one representative of the person who will participate in the surface inspection; and

(5) state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well.

(e) In conducting a surface inspection of the orphaned well, the person may visually inspect the well and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the well, reenter the well, pull tubing from or perform any other type of downhole work on the well, conduct a salvage operation on the well, or remove any tangible item from the wellsite.

(f) The commission shall designate the person as the operator of the well if the person files with the commission:

(1) a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate;

(2) a completed certificate of compliance; and

(3) a nonrefundable fee in the amount of $250.

(g) A fee collected under Subsection (f) shall be deposited to the credit of the general revenue fund and may be appropriated only to the commission to be used to enforce the laws and rules concerning oil and gas conservation and waste and pollution prevention.

(h) A person who is designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

(1) a nontransferable exemption from severance taxes for all future production from the well as provided by Section 202.060, Tax Code;

(2) a nontransferable exemption from the fees provided by Sections 81.116 and 81.117 for all future production from the well; and

(3) a payment from the commission in an amount equal to the depth of the well multiplied by 50 cents for each foot of well depth if, not later than the third anniversary of the date the commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with commission rules.

(i) A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if:

(1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission; or

(2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission.

(j) The commission shall make payments to operators under Subsection (h)(3) annually in the same order the commission determines the operators to be entitled to the payments. The aggregate amount of payments in a state fiscal year under that subsection may not exceed $500,000. An operator may not receive:

(1) more than one payment under that subsection for the same well; or

(2) cumulative payments in an amount that exceeds the

amount of the bond, letter of credit, or cash deposit the operator has filed with the commission under Section 91.104.

Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER. (a) In this section, "orphaned well" has the meaning assigned by Section 89.047.

(b) The owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a commission-approved well plugger to plug the well.

(c) If the surface estate owner enters into a contract under Subsection (b), the well plugger shall:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of the commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the commission and the commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by Section 91.107; and

(4) plug the well in accordance with commission rules.

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil-field cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

(e) The commission shall adopt any rules reasonably necessary to implement this section.

SECTION ___. Section 91.112(a), Natural Resources Code, is amended to read as follows:

(a) Money in the fund may be used by the commission or its employees or agents for:

(1) conducting a site investigation or environmental assessment to determine:

(A) the nature and extent of contamination caused by oil and gas wastes or other substances or materials regulated by the commission under Section 91.101; and

(B) the measures that should be taken to control or clean up the wastes, substances, or materials described in Paragraph (A);

(2) controlling or cleaning up oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 that are causing or are likely to cause the pollution of surface or subsurface water, consistent with Section 91.113;

(3) plugging abandoned wells and administering or enforcing permits, orders, and rules relating to the commission's authority to prevent pollution under this chapter, Chapter 89, or any other law administered or enforced by the commission under Title 3;

(4) implementing Subchapter N and enforcing rules, orders, and permits adopted or issued under that subchapter;

(5) implementing the voluntary cleanup program under Subchapter O; [~~and~~]

(6) preparing the report required under Subsection (b);

(7) making payments to eligible operators under Section 89.047; and

(8) making payments to eligible surface estate owners under Section 89.048.

SECTION ___. Section 201.053, Tax Code, is amended to read as follows:

Sec. 201.053. GAS NOT TAXED. The tax imposed by this chapter does not apply to gas:

(1) injected into the earth in this state, unless sold for that purpose;

(2) produced from oil wells with oil and lawfully vented or flared;

(3) used for lifting oil, unless sold for that purpose; or

(4) produced in this state from a well that qualifies under Section 202.056 or 202.060.

SECTION ___. Section 201.058(a), Tax Code, is amended to read as follows:

(a) The exemptions described by Sections 202.056, 202.057, [~~and~~] 202.059, and 202.060 apply to the taxes imposed by this chapter as authorized by and subject to the certifications and approvals required by those sections.

SECTION ___. Subchapter B, Chapter 201, Tax Code, is amended by adding Section 201.059 to read as follows:

Sec. 201.059. CREDITS FOR QUALIFYING LOW-PRODUCING WELLS. (a) In this section:

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

(2) "Mcf" means 1,000 cubic feet of gas as measured in accordance with Section 91.052, Natural Resources Code.

(3) "Qualifying low-producing well" means a gas well whose production during a three-month period is no more than 90 mcf per day, excluding gas flared pursuant to the rules of the commission. For purposes of qualifying a gas well, production per well per day is determined by computing the average daily production from the well using the monthly well production report made to the commission.

(b) Each month, the comptroller shall certify the average taxable price of gas, adjusted to 2005 dollars, during the previous three months based on various price indices available to producers, including prices reported by Henry Hub, Houston Ship Channel, Mississippi Barge Transport, New York Mercantile Exchange, or other spot prices, as applicable. The comptroller shall publish certifications under this subsection in the Texas Register.

(c) An operator of a qualifying low-producing well is entitled to a 25 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is more than $3 per mcf but not more than $3.50 per mcf.

(d) An operator of a qualifying low-producing well is entitled to a 50 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is more than $2.50 per mcf but not more than $3 per mcf.

(e) An operator of a qualifying low-producing well is entitled to a 100 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is not more than $2.50 per mcf.

(f) If the tax is paid on gas at the full rate provided by Section 201.052, the person paying the tax is entitled to a credit against taxes imposed by this chapter or Chapter 202 on the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

(g) This section expires September 1, 2007.

SECTION ___. Section 202.052(c), Tax Code, is amended to read as follows:

(c) The exemptions described by Sections 202.056, [~~and~~] 202.059, and 202.060 apply to oil produced in this state from a well that qualifies under Section 202.056, [~~or~~] 202.059, or 202.060, subject to the certifications and approvals required by those sections.

SECTION ___. Subchapter B, Chapter 202, Tax Code, is amended by adding Sections 202.058, 202.060, and 202.061 to read as follows:

Sec. 202.058. CREDITS FOR QUALIFYING LOW-PRODUCING OIL LEASES. (a) In this section:

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

(2) "Qualifying low-producing oil lease" means a well classified as an oil well that is part of a lease whose production during a 90-day period is less than:

(A) 15 barrels of oil per day of production; or

(B) five percent recoverable oil per barrel of produced water.

(b) For purposes of qualifying a lease, production per well per day is determined by computing the average daily per well production from the lease using the monthly lease production report made to the commission. For purposes of qualifying a lease, production per well per day is measured by dividing the sum of lease production during the three-month period by the sum of the number of well-days, where a well-day is one well producing for one day. The operator of a lease that is eligible for a credit under this section only on the basis of Subsection (a)(2)(B) must pay to the comptroller a filing fee of $100 before the comptroller may authorize the credit.

(c) Each month, the comptroller shall certify the average taxable price of oil, adjusted to 2005 dollars, during the previous three months based on various price indices available to producers, including the reported Texas Panhandle Spot Price, West Texas Intermediate Crude Spot Price, New York Mercantile Exchange, or other spot prices, as applicable. The comptroller shall publish certifications under this subsection in the Texas Register.

(d) An operator of a qualifying low-producing lease is entitled to a 25 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is more than $25 per barrel but not more than $30 per barrel.

(e) An operator of a qualifying low-producing lease is entitled to a 50 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is more than $22 per barrel but not more than $25 per barrel.

(f) An operator of a qualifying low-producing lease is entitled to a 100 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is not more than $22 per barrel.

(g) If the tax is paid on oil at the full rate provided by Section 202.052, the person paying the tax is entitled to a credit against taxes imposed by this chapter or Chapter 201 on the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

(h) This section expires September 1, 2007.

Sec. 202.060. EXEMPTION FOR OIL AND GAS FROM REACTIVATED ORPHANED WELLS. (a) In this section:

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

(2) "Orphaned well" has the meaning assigned by Section 89.047, Natural Resources Code.

(b) The commission shall issue a certificate to a person who is designated by the commission under Section 89.047, Natural Resources Code, as the operator of an orphaned well. The certificate must identify the operator to whom and the well for which the certificate is issued.

(c) Hydrocarbons produced from the well identified in the certificate qualify for a severance tax exemption.

(d) The commission shall adopt all rules necessary to administer this section.

(e) To qualify for the tax exemption provided by this section, the person responsible for paying the tax must apply to the comptroller. The application must include a copy of the certificate issued by the commission. The comptroller shall approve the application if the person demonstrates that the hydrocarbon production is eligible for a tax exemption. The comptroller may require a person applying for the tax exemption to provide any relevant information necessary to administer this section. The comptroller may establish procedures to comply with this section.

(f) The exemption takes effect on the first day of the month following the month in which the comptroller approves the application.

(g) If the person to whom the certificate is issued ceases to be the operator of the well as shown by the records of the commission, the commission shall notify the comptroller. The exemption expires on the date the notice is received.

(h) A person who makes or subscribes an application, report, or other document and submits it to the commission to form the basis for an application for a tax exemption under this section, knowing that the application, report, or other document is untrue in a material fact, is subject to the penalties imposed by Chapters 85 and 91, Natural Resources Code.

(i) A person is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption authorized by this section for a well after the person to whom the certificate for the well was issued ceases to be the operator of the well as shown by the records of the commission. The amount of the penalty may not exceed the sum of:

(1) $10,000; and

(2) the difference between the amount of taxes paid or attempted to be paid and the amount of taxes due.

(j) The attorney general may recover a penalty under Subsection (i) in a suit brought on behalf of the state. Venue for the suit is in Travis County.

Sec. 202.061. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT. (a) In this section:

(1) "Enhanced efficiency equipment" means equipment used in the production of oil that reduces the energy used to produce a barrel of fluid by 10 percent or more when compared to commonly available alternative equipment. The term does not include a motor or downhole pump. Equipment does not qualify as enhanced efficiency equipment unless an institution of higher education approved by the comptroller that is located in this state and that has an accredited petroleum engineering program evaluated the equipment and determined that the equipment does produce the required energy reduction.

(2) "Marginal well" means an oil well that produces 10 barrels of oil or less per day on average during a month.

(b) The taxpayer responsible for the payment of severance taxes on the production from a marginal well in this state on which enhanced efficiency equipment is installed and used is entitled to a credit in an amount equal to 10 percent of the cost of the equipment, provided that:

(1) the cumulative total of all severance tax credits

authorized by this section may not exceed $1,000 for any marginal well;

(2) the enhanced efficiency equipment installed in a qualifying marginal well must have been purchased and installed not earlier than September 1, 2005, or later than September 1, 2009;

(3) the taxpayer must file an application with the comptroller for the credit and must demonstrate to the comptroller that the enhanced efficiency equipment has been purchased and installed in the marginal well within the period prescribed by Subdivision (2);

(4) the number of applications the comptroller may approve each state fiscal year may not exceed a number equal to one percent of the producing marginal wells in this state on September 1 of that state fiscal year, as determined by the comptroller; and

(5) the manufacturer of the enhanced efficiency equipment must obtain an evaluation of the product under Subsection (a).

(c) The taxpayer may carry any unused credit forward until the credit is used.

SECTION ___. (a) Sections 201.059 and 202.058, Tax Code, as added by this Act, apply to gas and oil produced on or after the effective date of this Act. Gas and oil produced before the effective date of this Act are governed by the law in effect on the date the gas and oil were produced, and that law is continued in effect for that purpose.

(b) As soon as practicable after the effective date of this Act, the comptroller shall perform the initial certification determination required by Sections 201.059 and 202.058, Tax Code, as added by this Act. The initial certification determination must cover the three-month period beginning on June 1, 2005.

(c) Sections 201.059 and 202.058, Tax Code, as added by this Act, do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of tax due and for civil and criminal enforcement of the liability for those taxes.

(2) Strike SECTION 6 of the bill (page 3, line 17) and

substitute the following appropriately numbered section:

SECTION ___. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) The following provisions take effect January 1, 2006:

(1) Sections 81.116(d), 81.117(d), 89.044, and 91.112(a), Natural Resources Code, as amended by this Act;

(2) Sections 89.047 and 89.048, Natural Resources Code, as added by this Act;

(3) Sections 201.053, 201.058(a), and 202.052(c), Tax Code, as amended by this Act; and

(4) Section 202.060, Tax Code, as added by this Act.