

By: Taylor of Collin

H.B. No. 82

A BILL TO BE ENTITLED

AN ACT

relating to unit operations for oil, gas, or oil and gas production
or carbon dioxide storage.

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

SECTION 1. Subtitle C, Title 3, Natural Resources Code, is
amended by adding Chapter 104 to read as follows:

CHAPTER 104. UNITIZATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 104.001. SHORT TITLE. This chapter may be cited as the
Texas Enhanced Recovery Unitization Act.

Sec. 104.002. DEFINITIONS. In this chapter:

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

(2) "Common source of supply" means:

(A) a common reservoir as defined by Section
86.002; or

(B) separate multiple stratigraphic or
lenticular accumulations of oil, gas, or oil and gas that have been
recognized and regulated as a common reservoir by the commission
under Section 86.081(b).

(3) "Extraneous substances" are substances, including
hydrocarbons or carbon dioxide, purchased or otherwise obtained
from outside a common source of supply for injection into the common
source of supply during unit operations.

1 (4) "Oil and gas" means "oil" and "gas" as defined by
2 Section 85.001.

3 (5) "Plan of unitization" means a plan or agreement
4 that is consistent with the requirements of this chapter between
5 working interest owners and royalty owners in a common source of
6 supply or part of a common source of supply in which unit operations
7 may be conducted to enhance the production of oil, gas, or oil and
8 gas from the common source of supply or part of the common source of
9 supply to greater volumes than would otherwise be produced by
10 primary recovery operations only.

11 (6) "Primary recovery" means the displacement of oil,
12 gas, or oil and gas from a common source of supply or part of a
13 common source of supply in a unit area by means of the natural
14 pressure of the reservoir, including artificial lift, but in the
15 absence of unit operations.

16 (7) "Royalty interest" means the right to, or an
17 interest in, oil and gas or proceeds of oil and gas production free
18 of costs, other than a working interest. The term includes a
19 royalty interest attributable to the interest of an unleased
20 mineral interest owner under Section 104.057(1).

21 (8) "Royalty owner" means the owner of a royalty
22 interest.

23 (9) "Tract" means a parcel of land lying within the
24 unit area that is under uniform royalty and working interest
25 ownership.

26 (10) "Tract participation" means the percentage shown
27 in the plan of unitization participation formula for allocating

1 unit production to a tract, which is measured by the value
2 calculated for each tract for oil, gas, or oil and gas purposes
3 based on its contributing value to the unit in relation to like
4 values of other tracts in the unit, the sum of which is 100 percent.

5 (11) "Unit area" includes the surface area inside the
6 boundaries of the unit and the common source of supply or the part
7 of the common source of supply underlying the surface area that may
8 be reasonably required for the conduct of unit operations.

9 (12) "Unit cost" or "unit expense" includes any cost
10 or expense incurred in the conduct of unit operations.

11 (13) "Unit operations" means:

12 (A) operations intended to increase the ultimate
13 recovery of oil, gas, or oil and gas from a common source of supply
14 related to the production of oil, gas, or oil and gas from the unit
15 area, including:

- 16 (i) repressuring;
- 17 (ii) waterflooding;
- 18 (iii) pressure maintenance;
- 19 (iv) tertiary recovery operations; or
- 20 (v) any other similar operations that are

21 incidental or necessary to increase the ultimate recovery of oil,
22 gas, oil and gas, or other hydrocarbons from the proposed unit area;
23 or

24 (B) the establishment and operation of the
25 necessary facilities for the operations listed in Paragraph (A).

26 (14) "Unit operator" means the person designated under
27 the plan of unitization to conduct unit operations, acting as

1 operator and not merely as a working interest owner.

2 (15) "Unit participation of a royalty owner" means the
3 percentage equal to the sum of the products obtained by multiplying
4 the royalty interest of each royalty owner in each tract in which
5 the owner owns a royalty interest by the tract participation of that
6 tract in the unit.

7 (16) "Unit participation of a working interest owner"
8 means the percentage equal to the sum of the products obtained by
9 multiplying the working interest of each working interest owner in
10 each tract in which the owner owns a working interest by the tract
11 participation of that tract in the unit.

12 (17) "Unit production" includes all oil, gas, or oil
13 and gas produced and saved from a unit area after the effective date
14 of the unit regardless of the well or tract in the unit area from
15 which the oil, gas, or oil and gas are produced. The term does not
16 include the following substances if the working interest owners
17 under a lease, contract, agreement, or unit plan have excluded the
18 substances from unit production:

19 (A) recoverable extraneous substances injected
20 into the common source of supply or used in well treatment or
21 pressure maintenance;

22 (B) any production that is reinjected into the
23 unit area, unless the reinjected production is later removed from
24 the unit area for nonunit purposes or sold, in which case it will be
25 considered to be unit production; or

26 (C) any production used or consumed in unit
27 operations.

1 (18) "Working interest" means an interest in oil and
2 gas by virtue of a lease, operating agreement, fee title, or
3 otherwise, including a carried interest, the owner of which is
4 obligated to pay, in cash, out of production, or otherwise, the
5 owner's share of the unit expense under the proposed or approved
6 plan of unitization. The term includes a working interest
7 attributable to the interest of an unleased mineral interest owner
8 under Section 104.057(2).

9 (19) "Working interest owner" means the owner of a
10 working interest.

11 Sec. 104.003. POWER AND AUTHORITY OF COMMISSION. (a) The
12 commission shall adopt any necessary rule, issue and enforce any
13 necessary order, and perform all required acts necessary to carry
14 out the purposes of this chapter.

15 (b) The commission in accordance with this chapter shall
16 determine whether a plan of unitization, including the
17 participation formula, proposed under this chapter for all or part
18 of a common source of supply is fair, reasonable, and equitable for
19 all interests concerned and necessary to carry out the purposes of
20 this chapter.

21 Sec. 104.004. APPLICABILITY TO VOLUNTARY COOPERATIVE
22 AGREEMENTS IN SECONDARY RECOVERY OPERATIONS. This chapter does not
23 affect or apply to a voluntary cooperative agreement in secondary
24 recovery operations as provided by Subchapter B, Chapter 101,
25 unless application is made under this chapter for unit operations.

26 Sec. 104.005. APPLICABILITY TO PUBLIC LAND. (a) This
27 chapter does not apply to land owned by the state or land in which

1 the state has a direct or indirect interest.

2 (b) Except as provided by Subsection (c), this chapter does
3 not amend, repeal, change, alter, or affect in any manner the
4 authority or jurisdiction of the state, the commissioner of the
5 General Land Office, or any board or agency of the state with
6 respect to any land or interest in land in which the state, the
7 commissioner of the General Land Office, or any board or agency of
8 the state has jurisdiction or the unitization of such land.

9 (c) Land in which the state has an interest as described in
10 this chapter may be unitized under this chapter only:

11 (1) at the instance of the commissioner of the General
12 Land Office; or

13 (2) with the approval of or consent to a plan of
14 unitization by the state, the commissioner of the General Land
15 Office, or the board or agency having jurisdiction.

16 (d) If land in which the state has an interest is to be
17 unitized as provided for by Subsection (c), the plan of unitization
18 and unit operating agreement is subject to and must incorporate by
19 reference all statutes and rules that apply to the land in which the
20 state has an interest.

21 Sec. 104.006. CONFLICT WITH ANTITRUST ACTS. (a) A plan of
22 unitization and operation under an agreement that complies with
23 this chapter, is approved by commission order, and is found by the
24 commission to be necessary to prevent waste and conserve the
25 natural resources of this state may not be construed to be in
26 violation of Chapter 15, Business & Commerce Code.

27 (b) If a court finds a conflict between this chapter and

1 Chapter 15, Business & Commerce Code, this chapter is intended as a
2 reasonable exception to that law that is necessary for the public
3 interest of preventing waste and conserving the natural resources
4 of this state.

5 (c) If a court finds a conflict between this chapter and
6 Chapter 15, Business & Commerce Code, and finds that this chapter is
7 not a reasonable exception to Chapter 15, Business & Commerce Code,
8 the legislature intends that this chapter, or any conflicting part
9 of this chapter, be declared invalid rather than that Chapter 15,
10 Business & Commerce Code, or any portion of that chapter, be
11 declared invalid.

12 Sec. 104.007. APPEALS. A person affected by an order of the
13 commission issued under this chapter is entitled to judicial review
14 of that order in accordance with Subchapter G, Chapter 85. The
15 petition for review must be filed in Travis County.

16 [Sections 104.008-104.050 reserved for expansion]

17 SUBCHAPTER B. APPLICATION PROCEDURES; CONSIDERATION

18 AND APPROVAL OF PLAN

19 Sec. 104.051. APPLICATION FOR UNITIZATION. (a) A working
20 interest owner or proposed unit operator may file an application
21 with the commission requesting an order under this chapter for the
22 unit operation of a common source of supply or a part of that common
23 source of supply.

24 (b) The application must contain:

25 (1) a description of the proposed unit area and the
26 vertical limits and producing horizons to be included in that unit
27 area with a map or plat attached;

1 (2) a statement of the type of operations contemplated
2 for the unit area;

3 (3) a copy of a proposed plan of unitization and all
4 agreements related to that plan that the applicant considers fair,
5 reasonable, and equitable, including a unit operating agreement
6 that contains provisions dealing with:

7 (A) the manner in which the costs and expenses of
8 unit operations are to be apportioned among and assessed against
9 the tracts and interests chargeable with those costs and expenses,
10 including a detailed accounting procedure governing all charges and
11 credits incident to unit operations and providing for audits of
12 those charges and credits;

13 (B) voting and approval procedures;

14 (C) the designation, removal, or replacement of
15 the unit operator;

16 (D) the division of interest or formula for
17 allocation of unit production, payment of interests free of costs,
18 and allocation of unit expenses;

19 (E) the time when the plan of unitization takes
20 effect; and

21 (F) the time when, conditions under which, and
22 method by which the unit shall or may be dissolved and its affairs
23 wound up;

24 (4) an allegation of the facts required to be found by
25 the commission under Section 104.054;

26 (5) an allegation that the applicant has obtained at
27 least the minimum required approval of the plan of unitization as

1 required by Section 104.056; and

2 (6) an allegation that:

3 (A) each owner of an interest in the oil and gas
4 under each tract in the proposed unit area has been given an
5 opportunity to enter into the unit on the same basis; and

6 (B) the applicant or proposed unit operator has
7 made a good faith effort to voluntarily unitize all interests in the
8 proposed unit area.

9 (c) The applicant shall submit with the application a list
10 including:

11 (1) the name of each person owning or having a working
12 interest, royalty interest, or unleased mineral interest in the
13 proposed unit area and each offset operator and unleased mineral
14 interest owner adjacent to the proposed unit area; and

15 (2) for each person listed:

16 (A) an address; or

17 (B) a statement that the person's address is
18 unknown.

19 Sec. 104.052. HEARING REQUIRED. (a) On receipt of an
20 application, the commission promptly shall set the matter for
21 hearing and cause notice of the hearing to be given as provided by
22 Section 104.053.

23 (b) At the hearing, an affected person is entitled to be
24 heard, to introduce evidence, and to introduce and cross-examine
25 witnesses.

26 (c) The applicant shall pay to the commission an amount
27 equal to the costs the commission incurs to hold the hearing, as

1 determined by the commission.

2 Sec. 104.053. NOTICE. (a) Notice of the application and
3 the time and place of the hearing on the application must be mailed,
4 postage prepaid, not later than the 31st day before the hearing date
5 to each working interest owner, operator, unleased mineral interest
6 owner, and royalty owner in the unit area and to each offset
7 operator and unleased mineral interest owner whose name and address
8 is shown on the list provided under Section 104.051.

9 (b) Notice of the application and the time and place of
10 hearing must be published once a week for four consecutive weeks in
11 a newspaper of general circulation authorized by law to publish
12 legal notices in the county or counties in which the land involved
13 is located, or in another newspaper or publication designated by
14 the commission. The first publication must be made not later than
15 the 31st day before the hearing date.

16 (c) Typographical errors in a notice that are not material
17 to the purpose of the notice do not affect the validity of the
18 notice.

19 Sec. 104.054. COMMISSION FINDINGS. After notice and a
20 hearing, the commission shall determine whether:

21 (1) the unitized operation of the common source of
22 supply or the part of the common source of supply involved in the
23 plan of unitization is reasonably necessary to conduct unit
24 operations and the plan of unitization is reasonably necessary to
25 prevent waste, protect correlative rights, and promote the
26 conservation of oil, gas, or oil and gas;

27 (2) the estimated incremental recovery of oil, gas, or

1 oil and gas from the common source of supply is reasonably
2 anticipated to exceed the estimated incremental expenses incident
3 to conducting unit operations;

4 (3) the productive limits of the common source of
5 supply or the part of the common source of supply proposed for
6 unitization have been reasonably defined by exploration,
7 development, or other definable means so as to establish that the
8 area proposed for unitization is reasonably necessary and
9 sufficient for unit operations;

10 (4) if only a portion of the common source of supply is
11 proposed for unitization, unit operations will have a material
12 adverse effect on the remainder of the common source of supply;

13 (5) the unsigned owners of interests in the oil and gas
14 under each tract of land in the proposed unit area have been given a
15 reasonable opportunity to enter into the unit on the same basis as
16 the owners of interests in the oil and gas under the other tracts in
17 the unit area and the applicant or proposed unit operator has made a
18 good faith effort to voluntarily unitize all interests within the
19 proposed unit area;

20 (6) the applicant has obtained approval for the plan
21 of unitization from at least the minimum number of working interest
22 and royalty interest owners required by Section 104.056;

23 (7) the expense of establishing the unit and unit
24 expenses that are to be charged as unit expenses are reasonable and
25 necessary;

26 (8) the expenses relating to unit operations will:

27 (A) be for the common benefit of all persons with

1 interests in the unit;

2 (B) be allocated on a fair and equitable basis;

3 and

4 (C) not result in a profit or other benefit that
5 favours the unit operator over other unitized interest owners;

6 (9) a working interest owner has a reasonable right to
7 review all records pertaining to unit operations and a reasonable
8 amount of time to audit unit expenses;

9 (10) the plan of unitization meets the requirements of
10 Subchapter C and reasonably conforms to the requirements of this
11 chapter; and

12 (11) the plan of unitization, including the tract
13 participation formula and percentages, is in all respects fair,
14 reasonable, and equitable.

15 Sec. 104.055. UNITIZATION ORDER; EFFECT OF OPERATIONS. (a)
16 If the commission finds that all the requirements of Section
17 104.054 are met, the commission shall issue an order providing for:

18 (1) the unitized operation of the unit area in the
19 common source of supply as set forth in the plan of unitization; and

20 (2) unitization of all working interests and royalty
21 interests in the unit area.

22 (b) The order must:

23 (1) unitize all interests of all owners in the area
24 covered by the plan of unitization with the same effect as if those
25 owners had executed the plan of unitization and had been parties to
26 the unit agreement;

27 (2) approve the area of the common source of supply or

1 the part of the common source of supply to be included in the unit
2 area and the vertical limits of the common source of supply as
3 defined in the plan of unitization;

4 (3) approve the plan of unitization, including the
5 allocation of production and costs among tracts; and

6 (4) approve the designation of the initial unit
7 operator as named in the plan of unitization.

8 (c) Unit operations on and production from any lease in the
9 unit area for which a unitization order has been entered are
10 considered for all purposes the conduct of unit operations on and
11 production from each separately owned lease and tract in the unit.

12 (d) If only a part of a lease is included in the unit, unit
13 operations on or production from the unit maintains an oil and gas
14 lease as to the part excluded from the unit only if the excluded
15 part of the lease otherwise would have been maintained under the
16 terms of the lease by the unit production attributable to the
17 included tract or tracts.

18 Sec. 104.056. APPROVAL OF PROPOSED PLAN OF UNITIZATION BY
19 WORKING INTEREST AND ROYALTY OWNERS. (a) An order of the
20 commission creating a unit and prescribing the plan of unitization
21 takes effect only when the proposed plan of unitization has been
22 approved in writing by:

23 (1) the owners, on a unit participation basis, of at
24 least 70 percent of the aggregate unit working interests; and

25 (2) at least 70 percent of the owners, on a unit
26 participation basis, of the aggregate unit royalty interests that
27 complete and return an approval or ratification together with the

1 ballot distributed under Subsection (b).

2 (b) A ballot distributed to the owners of royalty interests
3 must:

4 (1) state that the applicant will confirm by mail that
5 the ballot has been received and whether it has been counted as a
6 vote for or against the proposed plan;

7 (2) be sent by certified mail, return receipt
8 requested, to each owner of a royalty interest in the proposed unit
9 area, including the interest attributable to each owner of an
10 unleased mineral interest;

11 (3) be sent a second time by certified mail, return
12 receipt requested, to any interest owner for whom a receipt from the
13 first mailing is not returned after a reasonable effort has been
14 made between the first and the second mailings to correct any
15 address that appears to be inaccurate; and

16 (4) be accompanied by:

17 (A) a copy of the proposed plan of unitization;

18 (B) an objective summary of the proposed plan
19 that is reasonably calculated to provide an ordinary royalty owner
20 with an adequate understanding of how the royalty owner's property
21 interest would be affected by a favorable vote and how that interest
22 would be affected by an unfavorable vote; and

23 (C) a postage-paid reply envelope.

24 (c) A royalty owner may not be required to return a ballot
25 earlier than the 14th day after the date the owner receives the
26 ballot and other information required by Subsection (b).

27 (d) The applicant shall:

1 (1) confirm the receipt of each ballot; and

2 (2) indicate to the royalty owner returning the ballot
3 whether the ballot has been counted as a vote for or a vote against
4 the proposed plan.

5 (e) The commission shall dismiss the application if the
6 commission finds that the applicant has not reasonably complied
7 with Subsection (b), (c), or (d).

8 (f) Notwithstanding Sections 104.054 and 104.055, the
9 commission may issue an order approving the plan of unitization
10 before the requirements of Subsection (a)(2) of this section have
11 been met. If the commission issues an order approving the plan of
12 unitization under that circumstance, the requirements of
13 Subsection (a)(2) must be met not later than six months after the
14 date the commission issues the order. If after an additional notice
15 and hearing as provided by Sections 104.052 and 104.053 the
16 commission determines that the requirements of Subsection (a)(2) of
17 this section have been met before the expiration of the required
18 period, the order takes effect. If after the additional notice and
19 hearing the commission determines that the requirements of
20 Subsection (a)(2) have not been met before the expiration of the
21 required period, the order has no effect, and the commission shall
22 revoke the order.

23 Sec. 104.057. STATUS OF UNLEASED MINERAL INTERESTS. Any
24 mineral interest in the unit area that is unleased on the effective
25 date of unitization is considered for purposes of unit
26 participation:

27 (1) to have a royalty interest of one-sixth of that

1 interest, free and clear of all unit expenses; and

2 (2) to be a working interest to the extent of
3 five-sixths of that interest, with all the rights and obligations
4 of a lessee as if the mineral rights were leased.

5 [Sections 104.058-104.100 reserved for expansion]

6 SUBCHAPTER C. PLAN OF UNITIZATION

7 Sec. 104.101. AUTHORIZED PLANS. (a) A plan of unitization
8 may be proposed under this chapter only to establish units and
9 cooperative facilities necessary for unit operations that are
10 reasonably anticipated to substantially increase the ultimate
11 recovery of oil, gas, or oil and gas to greater volumes than would
12 be recovered by primary recovery alone.

13 (b) The proposed plan of unitization and the commission
14 order approving the plan may provide for unit operation of less than
15 the whole of a common source of supply if:

16 (1) the unit area is of a size and shape that is
17 reasonably required for successful and efficient conduct of the
18 type of unit operations proposed; and

19 (2) the type of unit operations proposed will not have
20 a material adverse effect on the part of the common source of supply
21 that is not included in the plan of unitization.

22 Sec. 104.102. SINGLE OR MULTIPLE AGREEMENTS. The plan of
23 unitization may consist of one or more agreements that the
24 applicant considers to be fair, reasonable, and equitable if the
25 applicant submits each agreement to the commission as required by
26 Section 104.051(b)(3).

27 Sec. 104.103. PARTICIPATION; ALLOCATION OF UNIT

1 PRODUCTION. (a) The proposed plan must provide for the
2 apportionment and allocation of the unit production among the
3 tracts in the unit area in order to reasonably permit a person
4 entitled to share in, or benefit by, the production from a tract in
5 the unit to receive a fair share of the unit production or other
6 benefits.

7 (b) A tract's fair share of the unit production must be
8 measured by the value of each tract and its contributing value to
9 the unit in relation to like values of other tracts in the unit,
10 taking into account acreage, the quantity of oil, gas, or oil and
11 gas recoverable from the tract, the tract's location on the
12 geological structure, the tract's probable productivity of oil,
13 gas, or oil and gas in the absence of unit operations, or as many
14 other factors, including other pertinent engineering, geological,
15 or operating factors, as are reasonably susceptible of
16 determination.

17 Sec. 104.104. VOTING BY WORKING INTEREST OWNERS. The
18 proposed plan of unitization must establish a voting procedure for
19 decisions by the working interest owners. The voting procedure
20 need not be the same for each type of decision that may be made by
21 the working interest owners. However, each voting procedure must
22 provide that each working interest owner has a voting interest
23 equal to that owner's unit participation.

24 Sec. 104.105. OPERATING AGREEMENT. The proposed plan of
25 unitization must include a proposed operating agreement
26 establishing:

27 (1) the manner in which the unit will be operated,

1 supervised, and managed by the unit operator in the conduct of unit
2 operations;

3 (2) the grounds on which a unit operator may be
4 replaced for cause;

5 (3) a procedure by which a unit operator may be
6 replaced without cause;

7 (4) allocation of and provision for payment of unit
8 costs; and

9 (5) the other matters required by Section
10 104.051(b)(3).

11 Sec. 104.106. EFFECTIVE DATE AND TERMINATION DATE OF PLAN
12 OF UNITIZATION. (a) The proposed plan of unitization must provide
13 for the date on which the plan takes effect, the manner in which and
14 the circumstances under which unit operations terminate, the
15 settlement of accounts on termination, and notice by the unit
16 operator to the public within 30 days after the effective date of
17 the unit. After the commission by order adopts the plan of
18 unitization and declares the unit effective, the unit operator must
19 give public notice by filing for record, in the real property
20 records of the county or counties in which the unit area or any part
21 of the unit area is located, a certificate containing:

22 (1) the name of the unit;

23 (2) the legal description of each tract included in
24 the unit area and a description of the common source of supply or
25 the part of the common source of supply included in the unit area;

26 (3) the commission docket number;

27 (4) the date of the commission order, including any

1 supplemental orders, relating to approval of the plan of
2 unitization or the approval by the royalty owners;

3 (5) the effective date of unit operations; and

4 (6) a survey plat setting out the unit boundaries.

5 (b) The plan of unitization must require the unit operator,
6 not later than the 60th day after the date of termination of the
7 unit, to file for record in each county in which any part of the unit
8 area is located a certificate stating the date the unit operations
9 terminated.

10 Sec. 104.107. FINANCING UNIT OPERATIONS. (a) The plan of
11 unitization must provide the manner in which unit costs, including
12 overhead and interest, are determined, allocated, and charged to
13 the separately owned tracts or interests and must include a
14 detailed accounting procedure for all charges and credits incident
15 to unit operations. The unit costs chargeable to a tract or
16 interest must be paid by each working interest owner on a unit
17 participation basis.

18 (b) The plan also must:

19 (1) provide for the auditing of all records of the unit
20 operator pertaining to unit operation;

21 (2) require the operator to maintain records
22 sufficient to show the reasonableness of any payments to affiliates
23 of the operator and of other unit costs;

24 (3) provide for disclosure so that working interest
25 owners will be informed in a timely manner whether particular costs
26 and expenses relate to activities undertaken by an affiliate of the
27 operator; and

1 (4) include provisions that disallow situations in
2 which a profit or other benefit would accrue solely to the operator
3 as unit operator.

4 Sec. 104.108. ATTACHMENT OF OR LIEN ON PROCEEDS OF
5 PRODUCTION TO COVER DEBTS OF NONPAYING WORKING INTEREST OWNERS.

6 (a) The plan of unitization must provide for the attachment of or a
7 lien on proceeds of production due to any working interest owner who
8 is not paying the owner's share of the costs of unit operation as
9 compensation to the paying owner or owners. The compensation
10 amount may not exceed 300 percent of the nonpaying working interest
11 owner's share of unit costs, which is considered to include all
12 penalties and interest.

13 (b) The plan of unitization must provide that all of the
14 unit production allocated to a nonpaying working interest owner who
15 does not pay the share of the unit expenses charged and any
16 additional compensation amounts applied to that nonpaying owner
17 under Subsection (a) may be appropriated by the unit operator and
18 marketed and sold for the payment of unit expenses and additional
19 compensation amounts. Any sale proceeds remaining after payment of
20 unit expenses and additional compensation amounts must be remitted
21 to the nonpaying working interest owner.

22 (c) As to an interest located in the unit that is not leased
23 by the effective date of unitization, one-sixth of the production
24 attributable to the unleased interest is considered as royalty
25 interest and is free and clear of all unit expenses and additional
26 compensation amounts. Five-sixths of the unleased interest is
27 considered as working interest and is subject to being financed or

1 carried under this section.

2 Sec. 104.109. SALE BY NONSIGNING WORKING INTEREST OWNER.
3 The plan of unitization must provide that a nonsigning working
4 interest owner may elect to offer through the unit operator to sell
5 and assign all of that owner's working interest in the unit area to
6 the unit operator and to other working interest owners who desire to
7 acquire a portion of the interest.

8 Sec. 104.110. INVESTMENT ADJUSTMENTS AND PROPERTY TAKEN
9 OVER. The plan of unitization must provide for the procedure and
10 basis for adjustment among the working interest owners in the unit
11 area of their respective investment in wells, tanks, pumps,
12 machinery, materials, equipment, facilities, and other items of
13 value taken over and used in unit operations. Investment
14 adjustments and credits for property taken over may not be used as a
15 factor in setting participation percentages and allocations of unit
16 production under Section 104.103.

17 Sec. 104.111. ADDITIONAL PLAN PROVISIONS. The plan of
18 unitization may include any additional provisions approved by the
19 commission that are consistent with the findings required by
20 Section 104.054.

21 [Sections 104.112-104.150 reserved for expansion]

22 SUBCHAPTER D. AMENDMENT OF PLAN OR ORDER OF
23 UNITIZATION; EXPANSION OF UNIT AREA

24 Sec. 104.151. AMENDMENT OF PLAN OR ORDER OF UNITIZATION.
25 (a) A commission order approving unitization may be amended in the
26 same manner and subject to the same conditions as are required for
27 an original order providing for unitized operations.

1 (b) Approval of an amendment by royalty owners is not
2 required if the amendment affects only the rights and interests of
3 working interest owners.

4 (c) An amendment to an order may not, without the aggregate
5 approval of at least the minimum percentage of the working interest
6 and royalty interest ownership required under Section 104.056 for
7 approval of unitization and compliance with Section 104.005,
8 change:

9 (1) the percentage of unit oil, gas, or oil and gas
10 production allocated to each tract in the plan approved by the
11 original or amended order approving the existing unit; or

12 (2) the percentage of unit expenses allocated to each
13 tract in the plan of unitization approved by the original or amended
14 order for the existing unit.

15 (d) An amendment to an order may not, without the aggregate
16 approval of at least the minimum percentage of the working interest
17 and royalty interest ownership required under Section 104.056 for
18 approval of unitization, the aggregate approval of at least 70
19 percent of the surface interest ownership in the unit area, and
20 compliance with Section 104.005, change the unit operations from
21 enhanced recovery operations to carbon dioxide storage operations.

22 (e) This section does not apply to an order:

23 (1) expanding an existing unit area under Section
24 104.152;

25 (2) creating a new unit area under Section 104.153; or

26 (3) under Section 104.209 authorizing an operator of
27 an enhanced recovery project to document geologic storage of carbon

1 dioxide while the common source of supply is operated for the
2 economic recovery of oil, gas, or oil and gas.

3 (f) For purposes of Subsection (e)(3), the common source of
4 supply is considered to be operated for the economic recovery of
5 oil, gas, or oil and gas if there is a reasonable expectation of
6 more than insignificant future production volumes of oil, gas, or
7 oil and gas.

8 Sec. 104.152. EXPANSION OF UNIT AREA. (a) In accordance
9 with this section and subject to Section 104.153, an existing unit
10 area may be expanded to include additional nonunitized tracts under
11 the terms contained in the plan of unitization for the existing unit
12 if the working interest owners and the royalty owners in each
13 additional tract and in the existing unit area approve the
14 expansion by the same percentages and in the same manner as required
15 by Section 104.056 and Section 104.005(c), if applicable, for the
16 creation of a unit. The requirements for creating a unit under this
17 chapter apply to the expansion of the unit area under this section.

18 (b) Allocation of unit production from the expanded unit
19 must be calculated first by allocating to the expansion area a
20 portion of the total production of oil, gas, or oil and gas from the
21 unit area as enlarged. That allocation must be based on the
22 relative contribution to the total production of oil, gas, or oil
23 and gas that the expansion area is expected to make during the
24 remaining course of unit operations. If the expansion area
25 consists of separately owned tracts, the production allocated to
26 the expansion area must be allocated to the separately owned tracts
27 in proportion to the relative contribution of each of those tracts

1 as provided by Section 104.103. The remaining portion of unit
2 production must be allocated among the tracts in the existing unit
3 area in the same proportions as those set out in the existing plan
4 of unitization.

5 Sec. 104.153. ENLARGEMENT INCLUDING ALL OF PREVIOUSLY
6 ESTABLISHED UNIT. (a) The commission may not combine two or more
7 units created under this chapter unless the owners, on a unit
8 participation basis, of at least 70 percent of the aggregate unit
9 working interests and at least 70 percent of the aggregate unit
10 royalty interests in each unit to be combined have agreed to the
11 combination.

12 (b) A commission order combining units created under this
13 chapter, in allocating unit production between the previously
14 established units to be combined, must first treat each unit to be
15 combined as a single tract for purposes of production allocation.
16 The part of unit production that is allocated to each unit to be
17 combined must then be allocated among the separately owned tracts
18 included in the previously established units in the same proportion
19 as provided in each previous commission order establishing a unit
20 that is combined under this section.

21 [Sections 104.154-104.200 reserved for expansion]

22 SUBCHAPTER E. UNIT OPERATIONS

23 Sec. 104.201. STATUS OF PRODUCTION PROCEEDS; STANDARD OF
24 CARE; DISTRIBUTION. (a) Unit production, proceeds from the sale of
25 production, or other receipts may not be treated or taxed as income
26 or profit of the unit. All unit production and proceeds are income
27 of the owners to whom or to whose credit the production or proceeds

1 are payable under the plan of unitization.

2 (b) The unit operator does not become an agent or fiduciary
3 of a working interest owner to whom production or proceeds are
4 payable solely by reason of receiving or disbursing production or
5 proceeds. When disposing of production for working interest
6 owners, a unit operator who is not an agent or fiduciary shall act
7 with the same standard of care as is required in the plan of
8 unitization. In the absence of such a standard, the operator shall
9 act in the same manner in which a reasonably prudent operator would
10 act under the same or similar circumstances. A unit operator who is
11 not an agent or a fiduciary who has acted according to these
12 standards is not liable to any working interest owner who elects to
13 have the owner's share of unit production disposed of by the unit
14 operator for losses sustained or liability incurred as a result of
15 the unit operator's actions under this section in selling or
16 disposing of others' production.

17 (c) The unit operator shall make available, to any working
18 interest owner, or to any royalty owner who has the preexisting
19 right to take the owner's production in kind, to whom production or
20 proceeds are payable, who makes adequate provision for receipt of
21 the production, the owner's share of production in kind or for sale.
22 The unit operator, at the request of an owner who elects to have the
23 owner's production marketed by the unit operator, may market the
24 production of the owner. A unit operator that markets the
25 production of such an owner shall do so in such a manner that the
26 owner receives the same price and proportionate share of premiums
27 and other compensation as the unit operator receives for the unit

1 operator's share of unit production, except to the extent that a
2 previous contractual commitment or express specific term of a
3 contract entered into in good faith prohibits such sharing or
4 marketing of additional production. This subsection may not be
5 construed to require that any profit, compensation, or other
6 benefit received by the unit operator that is realized on a
7 transaction occurring beyond the point of first sale at the unit or
8 in the vicinity of the unit be shared with or distributed to any
9 owner electing to have the owner's production marketed by the unit
10 operator.

11 Sec. 104.202. LIABILITY OF WORKING INTEREST OWNER. (a) The
12 liability of a working interest owner for payment of unit expense is
13 several and not joint or collective.

14 (b) Except as provided by this subsection and Section
15 104.108, a working interest owner in a tract is not liable, directly
16 or indirectly, for more than the amount charged to that owner's
17 interest in the tract.

18 (c) Unless otherwise specifically agreed to by the parties
19 as part of a plan of unitization approved by the commission, any
20 environmental condition or liability existing before the effective
21 date of the commission order approving the unit remains the sole
22 responsibility of the party or parties responsible for that
23 environmental condition or liability before the effective date of
24 the commission order approving the unit.

25 Sec. 104.203. LIEN FOR COSTS. (a) Subject to any
26 reasonable limitations in the plan of unitization, a unit operator
27 has a lien on the leasehold estate and other oil, gas, or oil and gas

1 rights in each separately owned tract, the interest of the owners in
2 the unit production, and all equipment in the possession of the unit
3 to secure the payment of the amount of the unit expense and other
4 additional compensation charges as provided for in Section 104.108
5 charged to each separate working interest.

6 (b) The lien established under this section does not attach
7 to the royalty interest under lease or the one-sixth royalty
8 interest attributable to an unleased mineral interest or to any
9 interest in land directly or indirectly owned by the state.

10 Sec. 104.204. EFFECT OF UNIT OPERATIONS ON EXPRESSED OR
11 IMPLIED COVENANTS AND CONDITIONS. (a) To the extent a lease,
12 division order, or contract covering lands in the unit area relates
13 to the common source of supply or the part of the common source of
14 supply included in the unit area, all terms of the lease, division
15 order, or contract, express or implied, must be construed by giving
16 due regard to the plan of unitization approved by the commission.
17 Operations conducted in accordance with a plan of unitization
18 approved by the commission are presumed to comply with those terms
19 unless there is an irreconcilable conflict between the lease,
20 division order, or contract and the approved plan of unitization.
21 If there is an irreconcilable conflict between the lease, division
22 order, or contract and the approved plan of unitization, the plan
23 controls, but the lease, division order, or contract terms must be
24 regarded as modified only to the extent necessary to conform to the
25 plan.

26 (b) Notwithstanding any other provision of this chapter,
27 without a separate voluntary agreement supported by consideration,

1 a plan of unitization may not:

2 (1) cause a royalty interest to become liable for any
3 part of unit expense that the interest is not otherwise obligated to
4 pay;

5 (2) reduce a royalty interest fraction; or

6 (3) alter a provision of a lease or contract providing
7 for indemnification or similar compensation in the event the
8 actions of one person cause another person to become liable for
9 damages to the environment or for a violation of a statute, rule, or
10 common-law standard that serves to protect the environment.

11 (c) Lease or surface use provisions that conflict with the
12 use of the surface for unit operations in such a manner as to
13 prevent or render uneconomical the implementation of the plan of
14 unitization as approved by the commission must be amended by the
15 unit order to the extent, and only to the extent, necessary to
16 implement the plan in an economical and efficient manner.

17 (d) Section 104.201 may not be construed to diminish a
18 working interest owner's duty to market production on behalf of a
19 royalty owner.

20 Sec. 104.205. DISTRIBUTION OF UNIT PRODUCTION. Except as
21 authorized by this chapter or in a plan of unitization approved by
22 the commission, the unit production must be distributed among, or
23 the proceeds paid to, the owners entitled to share in the production
24 from each tract in the same manner that those owners would have
25 shared in the production or proceeds from the tract if the unit had
26 not been established.

27 Sec. 104.206. MODIFICATION OF PROPERTY RIGHTS OR TITLES.

1 Except to the extent that the parties affected by the plan of
2 unitization otherwise agree, a commission order entered under
3 Section 104.055 does not alienate, convey, cross-convey, transfer,
4 or change title or ownership, legal or equitable, of a person in a
5 parcel of land or the oil and gas rights in that parcel.

6 Sec. 104.207. ROYALTY OBLIGATIONS; BURDENS; UNLEASED
7 INTERESTS. (a) Each working interest owner who is the owner of an
8 interest in an oil and gas lease is responsible for the payment of
9 all royalty, overriding royalty, or other lease burdens affecting
10 the owner's leasehold estate unless the plan of unitization
11 provides otherwise.

12 (b) One-sixth of the production or proceeds attributable to
13 any unleased interest located in the unit area, free of all unit
14 expense and free of any lien, must be allocated to that interest.
15 Five-sixths of any unleased interest in the production or proceeds
16 must bear its pro rata share of all unit expense and is subject to
17 any lien provided by this chapter or the plan of unitization.

18 Sec. 104.208. UNIT OWNERSHIP OF PRODUCTION, PROCEEDS, AND
19 ACQUIRED PROPERTY. (a) The part of the unit production allocated
20 to any tract and the proceeds from the sale of that production are
21 the property and income of the owners to whom or to whose credit the
22 production and proceeds are allocated or payable under the order
23 and the plan for unit operations.

24 (b) Any property that is acquired in the conduct of unit
25 operations and charged as an item of unit expense is owned by the
26 working interest owners in the unit area as provided in the plan of
27 unitization.

1 Sec. 104.209. UNIT OPERATIONS FOR PERMANENT GEOLOGIC
2 STORAGE OF CARBON DIOXIDE IN COMMON SOURCE OF SUPPLY FOR WHICH THERE
3 IS POTENTIAL FOR FURTHER ECONOMIC RECOVERY OF OIL, GAS, OR OIL AND
4 GAS. The commission, on application, by order shall authorize an
5 operator of an enhanced recovery project to document geologic
6 storage of anthropogenic carbon dioxide, including anthropogenic
7 carbon dioxide stored in conjunction with the injection of
8 naturally sourced carbon dioxide, while continuing to perform
9 enhanced recovery operations for oil, gas, or oil and gas.

10 Sec. 104.210. UNIT OPERATIONS FOR PERMANENT GEOLOGIC
11 STORAGE OF CARBON DIOXIDE IN COMMON SOURCE OF SUPPLY FOR WHICH THERE
12 IS NO POTENTIAL FOR FURTHER ECONOMIC RECOVERY OF OIL, GAS, OR OIL
13 AND GAS. (a) The commission shall adopt rules as necessary to
14 regulate unit operations for the geologic storage of carbon dioxide
15 for the purpose of enhancing the public welfare and protecting the
16 natural resources of this state.

17 (b) Unit operations for the geologic storage of carbon
18 dioxide may be conducted in a common source of supply previously
19 included in a plan of unitization approved by the commission for the
20 enhanced recovery of oil, gas, or oil and gas under the other
21 provisions of this chapter if the commission amends the order
22 approving the plan of unitization in the manner provided by Section
23 104.151 to authorize operations for carbon dioxide storage. The
24 commission may amend the order as provided by this subsection only
25 if:

26 (1) the unit area is not being revised;

27 (2) the applicant submits a plan of unitization that

1 includes operations for carbon dioxide storage and meets the
2 requirements for commission approval; and

3 (3) the commission determines, following notice,
4 hearing, and presentation of evidence, that the ultimate recovery
5 of oil, gas, or oil and gas from the common source of supply has
6 reached the economic limit for continued enhanced recovery
7 operations.

8 (c) Unit operations for the geologic storage of carbon
9 dioxide may be conducted in a common source of supply that has not
10 previously been unitized under the other provisions of this chapter
11 if the commission adopts a storage unitization order authorizing
12 the operations. The commission may adopt the order only on
13 application and after notice and hearing as required by Sections
14 104.052 and 104.053, except that notice must also be mailed in the
15 manner provided by Section 104.053 to each surface owner in the unit
16 area. The application must contain:

17 (1) a description of the proposed unit area and the
18 vertical limits and the formerly productive horizons to be included
19 in that unit area with a map or plat attached that meets the
20 requirements of Section 104.054(3);

21 (2) a statement that the common source of supply has no
22 further economic utility for the production of oil, gas, or oil and
23 gas and that uncontroverted evidence to that effect will be
24 provided at the hearing;

25 (3) a statement that:

26 (A) the applicant or proposed unit operator has
27 made a good faith effort to:

1 (i) voluntarily unitize all interests in
2 the proposed unit area; or

3 (ii) acquire by option, lease, conveyance,
4 or other negotiated means the interests of at least 70 percent of
5 the group of persons consisting of the owners of working interests,
6 royalty interests, unleased mineral interests, and surface
7 interests in the proposed unit area; and

8 (B) the number of owners of interests in the
9 proposed unit area who have voluntarily agreed to unitize their
10 interests, when combined with the number of owners of working
11 interests, royalty interests, unleased mineral interests, and
12 surface interests in the proposed unit area whose interests the
13 applicant or proposed unit operator has acquired by option, lease,
14 conveyance, or other negotiated means, equals at least 70 percent
15 of the group of persons consisting of the owners of working
16 interests, royalty interests, unleased mineral interests, and
17 surface interests in the proposed unit area;

18 (4) the name of each person owning or having a working
19 interest, royalty interest, unleased mineral interest, or surface
20 interest in the proposed unit area and each offset operator or
21 unleased mineral interest owner adjacent to the proposed unit area;

22 (5) for each person listed:

23 (A) an address; or

24 (B) a statement that the person's address is
25 unknown; and

26 (6) a plan of unitization that includes operations for
27 the injection of carbon dioxide for carbon dioxide storage,

1 including the proposed division of interests for working interest,
2 royalty interest, unleased mineral interest, and surface interest
3 owners for purposes of sharing of expenses and payment of storage
4 fees.

5 (d) Royalty interests and surface interests must be free of
6 costs of the storage operations. Unleased mineral interests are
7 considered to have the royalty interests and working interests
8 specified by Section 104.057.

9 (e) The commission may not approve a proposed unitization
10 plan for carbon dioxide storage unless the requirements of
11 Subsection (c)(3)(B) have been satisfied.

12 (f) Rules adopted by the commission under this section must:

13 (1) provide for mailing notice of the application and
14 the time and place of the hearing on the application in the manner
15 provided by Section 104.053;

16 (2) require a fair and equitable division of interest
17 between the owners of working interests, royalty interests,
18 unleased mineral interests, and surface interests in the proposed
19 unit area;

20 (3) require that the unit operations cover the entire
21 common source of supply, taking into consideration the necessity,
22 if any, for buffer acreage for monitoring of the carbon dioxide
23 storage site and any attendant storage facilities unique to the
24 storage operations; and

25 (4) incorporate the provisions of this chapter
26 relating to enhanced oil, gas, or oil and gas recovery to the extent
27 the commission considers those provisions to be applicable to the

1 regulation of unit operations for the geologic storage of carbon
2 dioxide in a common source of supply under the jurisdiction of this
3 state.

4 (g) Unit operations for the geologic storage of carbon
5 dioxide in the common source of supply may not begin until the
6 commission determines that the unit operations will comply with
7 state and federal law.

8 SECTION 2. Not later than February 1, 2012, the Railroad
9 Commission of Texas shall adopt rules as necessary to implement
10 Chapter 104, Natural Resources Code, as added by this Act.

11 SECTION 3. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect on the 91st day after the last day of the
16 legislative session.