

By: Taylor

H.B. No. 100

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 Oil and Gas Majority Rights Protection 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 and

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, resignation, removal, or  
15 replacement of 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 Sec. 104.053. NOTICE. (a) Notice of the application and  
27 the time and place of the hearing on the application must be mailed,

1 postage prepaid, not later than the 31st day before the hearing date  
2 to each working interest owner, operator, unleased mineral interest  
3 owner, and royalty owner in the unit area and to each offset  
4 operator and unleased mineral interest owner whose name and address  
5 is shown on the list provided under Section 104.051.

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

13 (c) Typographical errors in a notice that are not material  
14 to the purpose of the notice do not affect the validity of the  
15 notice.

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

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

24 (2) the estimated incremental recovery of oil, gas, or  
25 oil and gas from the common source of supply is reasonably  
26 anticipated to exceed the estimated incremental expenses incident  
27 to conducting unit operations;

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

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

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

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

20           (7) the expense of establishing the unit and unit  
21 expenses that are to be charged as unit expenses are reasonable and  
22 necessary;

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

24                   (A) be for the common benefit of all persons with  
25 interests in the unit;

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

27 and

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

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

6           (10) the plan of unitization meets the requirements of  
7 Subchapter C and reasonably conforms to the requirements of this  
8 chapter; and

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

12           Sec. 104.055. UNITIZATION ORDER; EFFECT OF OPERATIONS. (a)  
13 If the commission finds that all the requirements of Section  
14 104.054 are met, the commission shall issue an order providing for:

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

17           (2) unitization of all working interests and royalty  
18 interests in the unit area.

19           (b) The order must:

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

24           (2) approve the area of the common source of supply or  
25 the part of the common source of supply to be included in the unit  
26 area and the vertical limits of the common source of supply as  
27 defined in the plan of unitization;

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

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

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

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

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

20           (1) the owners, on a unit participation basis, of a  
21 supermajority consisting of at least 70 percent of the aggregate  
22 unit working interests; and

23           (2) a supermajority consisting of at least 70 percent  
24 of the owners, on a unit participation basis, of the aggregate unit  
25 royalty interests that complete and return an approval or  
26 ratification together with the ballot distributed under Subsection  
27 (b).

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

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

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

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

15           (4) be accompanied by:

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

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

22                   (C) a postage-paid reply envelope.

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

26          (d) The applicant shall:

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

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

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

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

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

26           (1) to have a royalty interest of one-sixth of that  
27 interest, free and clear of all unit expenses; and

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

4           [Sections 104.058-104.100 reserved for expansion]

5                   SUBCHAPTER C. PLAN OF UNITIZATION

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

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

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

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

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

26           Sec. 104.103. PARTICIPATION; ALLOCATION OF UNIT  
27 PRODUCTION. (a) The proposed plan must provide for the



1 apportionment and allocation of the unit production among the  
2 tracts in the unit area in order to reasonably permit a person  
3 entitled to share in, or benefit by, the production from a tract in  
4 the unit to receive a fair share of the unit production or other  
5 benefits.

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

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

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

26 (1) the manner in which the unit will be operated,  
27 supervised, and managed by the unit operator in the conduct of unit

1 operations;

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

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

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

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

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

21 (1) the name of the unit;

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

25 (3) the commission docket number;

26 (4) the date of the commission order, including any  
27 supplemental orders, relating to approval of the plan of

1 unitization or the approval by the royalty owners;

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

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

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

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

17 (b) The plan also must:

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

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

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

27 (4) include provisions that disallow situations in

1 which a profit or other benefit would accrue solely to the operator  
2 as unit operator.

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

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

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

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

1       Sec. 104.109. SALE BY NONSIGNING WORKING INTEREST OWNER.

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

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

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

20       [Sections 104.112-104.150 reserved for expansion]

21       SUBCHAPTER D. AMENDMENT OF PLAN OR ORDER OF

22       UNITIZATION; EXPANSION OF UNIT AREA

23       Sec. 104.151. AMENDMENT OF PLAN OR ORDER OF UNITIZATION.

24       (a) A commission order approving unitization may be amended in the  
25       same manner and subject to the same conditions as are required for  
26       an original order providing for unitized operations.

27       (b) Approval of an amendment by royalty owners is not

1 required if the amendment affects only the rights and interests of  
2 working interest owners.

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

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

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

14 (d) An amendment to an order may not, without the aggregate  
15 approval of at least the minimum percentage of the working interest  
16 and royalty interest ownership required under Section 104.056 for  
17 approval of unitization, the aggregate approval of a supermajority  
18 consisting of at least 70 percent of the surface interest ownership  
19 in the unit area, and compliance with Section 104.005, change the  
20 unit operations from enhanced recovery operations to carbon dioxide  
21 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 a supermajority consisting of at least 70  
9 percent of the aggregate unit working interests and a supermajority  
10 consisting of at least 70 percent of the aggregate unit royalty  
11 interests in each unit to be combined have agreed to the  
12 combination.

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

22 [Sections 104.154-104.200 reserved for expansion]

23 SUBCHAPTER E. UNIT OPERATIONS

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



1 of the owners to whom or to whose credit the production or proceeds  
2 are payable under the plan of unitization.

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

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

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

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

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

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

26 Sec. 104.203. LIEN FOR COSTS. (a) Subject to any  
27 reasonable limitations in the plan of unitization, a unit operator

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

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

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

27 (b) Notwithstanding any other provision of this chapter,

1 without a separate voluntary agreement supported by consideration,  
2 a plan of unitization may not:

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

6 (2) reduce a royalty interest fraction; or

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

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

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

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

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

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

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

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

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

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

1 unitization.

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

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

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

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

1           (2) the applicant submits a plan of unitization that  
2 includes operations for carbon dioxide storage and meets the  
3 requirements for commission approval; and

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

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

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

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

26           (3) a statement that:

27                   (A) the applicant or proposed unit operator has

1 made a good faith effort to:

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

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

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

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

24 (5) for each person listed:

25 (A) an address; or

26 (B) a statement that the person's address is  
27 unknown; and



1           (6) a plan of unitization that includes operations for  
2 the injection of carbon dioxide for carbon dioxide storage,  
3 including the proposed division of interests for working interest,  
4 royalty interest, unleased mineral interest, and surface interest  
5 owners for purposes of sharing of expenses and payment of storage  
6 fees.

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

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

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

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

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

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

27                 (4) incorporate the provisions of this chapter

1 relating to enhanced oil, gas, or oil and gas recovery to the extent  
2 the commission considers those provisions to be applicable to the  
3 regulation of unit operations for the geologic storage of carbon  
4 dioxide in a common source of supply under the jurisdiction of this  
5 state.

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

10 SECTION 2. Except as provided by Section 3 of this Act, not  
11 later than January 1, 2014, the Railroad Commission of Texas shall  
12 adopt rules as necessary to implement Chapter 104, Natural  
13 Resources Code, as added by this Act.

14 SECTION 3. Not later than April 1, 2014, the Railroad  
15 Commission of Texas may adopt rules as necessary to permit the  
16 commission to assess a fee or fees in an amount sufficient to  
17 recover any costs incurred by the commission in implementing  
18 Chapter 104, Natural Resources Code, as added by this Act, that are  
19 in addition to the costs incurred by the commission in performing  
20 its other functions. This section does not authorize the  
21 commission to assess a fee for performing any function that is not  
22 specific to the implementation of that chapter.

23 SECTION 4. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2013.