

By: Ellis

S.B. No. 136

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.