AN ACT
relating to the exclusive jurisdiction of this state to regulate
oil and gas operations in this state and the express preemption of
local regulation of those operations.

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

SECTION 1. The legislature finds that the laws and policy of
this state have fostered successful development of oil and gas
resources in concert with the growth of healthy and economically
vibrant communities for over 100 years. The legislature
acknowledges this cooperative progress and that mutual benefit is
derived from the statutes already in effect, which provide
effective and environmentally sound regulation of oil and gas
operations that is so comprehensive and pervasive that the
regulation occupies the field, while facilitating the overriding
policy objective of this state of fully and effectively exploiting
oil and gas resources while protecting the environment and the
public's health and safety. The legislature recognizes that in
order to continue this prosperity and the efficient management of a
key industry in this state, it is in the interest of this state to
explicitly confirm the authority to regulate oil and gas operations
in this state. The legislature intends that this Act expressly
preempt the regulation of oil and gas operations by municipalities
and other political subdivisions, which is impliedly preempted by
the statutes already in effect.
SECTION 2. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Section 81.0523 to read as follows:

Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS PREEMPTION. (a) In this section:

(1) "Commercially reasonable" means a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act.

(2) "Oil and gas operation" means an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities.

(b) An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided by Subsection (c), a municipality or other political subdivision may not enact or enforce an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

(c) The authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality may enact, amend, or enforce
an ordinance or other measure that:

(1) regulates only aboveground activity related to an
oil and gas operation that occurs at or above the surface of the
ground, including a regulation governing fire and emergency
response, traffic, lights, or noise, or imposing notice or
reasonable setback requirements;

(2) is commercially reasonable;

(3) does not effectively prohibit an oil and gas
operation conducted by a reasonably prudent operator; and

(4) is not otherwise preempted by state or federal
law.

(d) An ordinance or other measure is considered prima facie
to be commercially reasonable if the ordinance or other measure has
been in effect for at least five years and has allowed the oil and
gas operations at issue to continue during that period.

SECTION 3. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2015.
H.B. No. 40

President of the Senate

Speaker of the House

I certify that H.B. No. 40 was passed by the House on April 20, 2015, by the following vote: Yeas 125, Nays 20, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 40 was passed by the Senate on May 4, 2015, by the following vote: Yeas 24, Nays 7.

Secretary of the Senate

APPROVED: ______________________

Date

Governor