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

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

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

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

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

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

(10) "Tract participation" means the percentage shown in the plan of unitization participation formula for allocating
unit production to a tract, which is measured by the value
calculated for each tract for oil, gas, or oil and gas purposes
based on its contributing value to the unit in relation to like
values of other tracts in the unit, the sum of which is 100 percent.

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

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

(13) "Unit operations" means:

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

(i) repressuring;
(ii) waterflooding;
(iii) pressure maintenance;
(iv) tertiary recovery operations; or
(v) any other similar operations that are
incidental or necessary to increase the ultimate recovery of oil,
gas, oil and gas, or other hydrocarbons from the proposed unit area;

and

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

(14) "Unit operator" means the person designated under
the plan of unitization to conduct unit operations, acting as
operator and not merely as a working interest owner.

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

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

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

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

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

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

"Working interest owner" means the owner of a working interest.

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

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

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

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

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

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

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

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

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

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

(b) If a court finds a conflict between this chapter and
Chapter 15, Business & Commerce Code, this chapter is intended as a reasonable exception to that law that is necessary for the public interest of preventing waste and conserving the natural resources of this state.

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

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

[Sections 104.008-104.050 reserved for expansion]

SUBCHAPTER B. APPLICATION PROCEDURES; CONSIDERATION AND APPROVAL OF PLAN

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

(b) The application must contain:

(1) a description of the proposed unit area and the vertical limits and producing horizons to be included in that unit area with a map or plat attached;
(2) a statement of the type of operations contemplated for the unit area;

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

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

(B) voting and approval procedures;

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

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

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

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

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

(5) an allegation that the applicant has obtained at least the minimum required approval of the plan of unitization as
required by Section 104.056; and

(6) an allegation that:

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

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

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

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

(2) for each person listed:

(A) an address; or

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

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

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

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

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

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

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

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

(2) the estimated incremental recovery of oil, gas, or
oil and gas from the common source of supply is reasonably
anticipated to exceed the estimated incremental expenses incident
to conducting unit operations;
(3) the productive limits of the common source of supply or the part of the common source of supply proposed for unitization have been reasonably defined by exploration, development, or other definable means so as to establish that the area proposed for unitization is reasonably necessary and sufficient for unit operations;

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

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

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

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

(8) the expenses relating to unit operations will:

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

(B) be allocated on a fair and equitable basis;
(C) not result in a profit or other benefit that favors the unit operator over other unitized interest owners;

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

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

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

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

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

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

(b) The order must:

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

(2) approve the area of the common source of supply or the part of the common source of supply to be included in the unit area and the vertical limits of the common source of supply as defined in the plan of unitization;
(3) approve the plan of unitization, including the allocation of production and costs among tracts; and

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

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

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

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

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

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

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

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

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

(4) be accompanied by:

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

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

(C) a postage-paid reply envelope.

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

(d) The applicant shall:

(1) confirm the receipt of each ballot; and
(2) indicate to the royalty owner returning the ballot whether the ballot has been counted as a vote for or a vote against the proposed plan.

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

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

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

(1) to have a royalty interest of one-sixth of that interest, free and clear of all unit expenses; and
(2) to be a working interest to the extent of five-sixths of that interest, with all the rights and obligations of a lessee as if the mineral rights were leased.

[Sections 104.058-104.100 reserved for expansion]

SUBCHAPTER C. PLAN OF UNITIZATION

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

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

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

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

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

Sec. 104.103. PARTICIPATION; ALLOCATION OF UNIT PRODUCTION. (a) The proposed plan must provide for the
apportionment and allocation of the unit production among the tracts in the unit area in order to reasonably permit a person entitled to share in, or benefit by, the production from a tract in the unit to receive a fair share of the unit production or other benefits.

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

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

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

(1) the manner in which the unit will be operated, supervised, and managed by the unit operator in the conduct of unit
operations;
(2) the grounds on which a unit operator may be replaced for cause;
(3) a procedure by which a unit operator may resign or be replaced without cause;
(4) allocation of and provision for payment of unit costs; and
(5) the other matters required by Section 104.051(b)(3).

Sec. 104.106. EFFECTIVE DATE AND TERMINATION DATE OF PLAN OF UNITIZATION. (a) The proposed plan of unitization must provide for the date on which the plan takes effect, the manner in which and the circumstances under which unit operations terminate, the settlement of accounts on termination, and notice by the unit operator to the public within 30 days after the effective date of the unit. After the commission by order adopts the plan of unitization and declares the unit effective, the unit operator must give public notice by filing for record, in the real property records of the county or counties in which the unit area or any part of the unit area is located, a certificate containing:
(1) the name of the unit;
(2) the legal description of each tract included in the unit area and a description of the common source of supply or the part of the common source of supply included in the unit area;
(3) the commission docket number;
(4) the date of the commission order, including any supplemental orders, relating to approval of the plan of
unitization or the approval by the royalty owners;
(5) the effective date of unit operations; and
(6) a survey plat setting out the unit boundaries.

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

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

(b) The plan also must:
(1) provide for the auditing of all records of the unit operator pertaining to unit operation;
(2) require the operator to maintain records sufficient to show the reasonableness of any payments to affiliates of the operator and of other unit costs;
(3) provide for disclosure so that working interest owners will be informed in a timely manner whether particular costs and expenses relate to activities undertaken by an affiliate of the operator; and
(4) include provisions that disallow situations in
which a profit or other benefit would accrue solely to the operator as unit operator.

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

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

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

(c) As to an interest located in the unit that is not leased by the effective date of unitization, one-sixth of the production attributable to the unleased interest is considered as royalty interest and is free and clear of all unit expenses and additional compensation amounts. Five-sixths of the unleased interest is considered as working interest and is subject to being financed or carried under this section.
Sec. 104.109. SALE BY NONSIGNING WORKING INTEREST OWNER.
The plan of unitization must provide that a nonsigning working
interest owner may elect to offer through the unit operator to sell
and assign all of that owner’s working interest in the unit area to
the unit operator and to other working interest owners who desire to
acquire a portion of the interest.

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

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

[Sections 104.112-104.150 reserved for expansion]

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

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

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

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

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

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

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

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

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

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

(3) under Section 104.209 authorizing an operator of an enhanced recovery project to document geologic storage of carbon
dioxide while the common source of supply is operated for the
economic recovery of oil, gas, or oil and gas.

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

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

(b) Allocation of unit production from the expanded unit
must be calculated first by allocating to the expansion area a
portion of the total production of oil, gas, or oil and gas from the
unit area as enlarged. That allocation must be based on the
relative contribution to the total production of oil, gas, or oil
and gas that the expansion area is expected to make during the
remaining course of unit operations. If the expansion area
consists of separately owned tracts, the production allocated to
the expansion area must be allocated to the separately owned tracts
in proportion to the relative contribution of each of those tracts.
as provided by Section 104.103. The remaining portion of unit 
production must be allocated among the tracts in the existing unit 
area in the same proportions as those set out in the existing plan 
of unitization.

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

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

[Sections 104.154-104.200 reserved for expansion] 

SUBCHAPTER E. UNIT OPERATIONS

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

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

(c) The unit operator shall make available, to any working interest owner, or to any royalty owner who has the preexisting right to take the owner's production in kind, to whom production or proceeds are payable, who makes adequate provision for receipt of the production, the owner's share of production in kind or for sale. The unit operator, at the request of an owner who elects to have the owner's production marketed by the unit operator, may market the production of the owner. A unit operator that markets the production of such an owner shall do so in such a manner that the owner receives the same price and proportionate share of premiums
and other compensation as the unit operator receives for the unit operator's share of unit production, except to the extent that a previous contractual commitment or express specific term of a contract entered into in good faith prohibits such sharing or marketing of additional production. This subsection may not be construed to require that any profit, compensation, or other benefit received by the unit operator that is realized on a transaction occurring beyond the point of first sale at the unit or in the vicinity of the unit be shared with or distributed to any owner electing to have the owner's production marketed by the unit operator.

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

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

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

Sec. 104.203. LIEN FOR COSTS. (a) Subject to any reasonable limitations in the plan of unitization, a unit operator
has a lien on the leasehold estate and other oil, gas, or oil and gas
rights in each separately owned tract, the interest of the owners in
the unit production, and all equipment in the possession of the unit
to secure the payment of the amount of the unit expense and other
additional compensation charges as provided for in Section 104.108
charged to each separate working interest.

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

Sec. 104.204. EFFECT OF UNIT OPERATIONS ON EXPRESSED OR
IMPLIED COVENANTS AND CONDITIONS. (a) To the extent a lease,
division order, or contract covering lands in the unit area relates
to the common source of supply or the part of the common source of
supply included in the unit area, all terms of the lease, division
order, or contract, express or implied, must be construed by giving
due regard to the plan of unitization approved by the commission.
Operations conducted in accordance with a plan of unitization
approved by the commission are presumed to comply with those terms
unless there is an irreconcilable conflict between the lease,
division order, or contract and the approved plan of unitization.

If there is an irreconcilable conflict between the lease, division
order, or contract and the approved plan of unitization, the plan
controls, but the lease, division order, or contract terms must be
regarded as modified only to the extent necessary to conform to the
plan.

(b) Notwithstanding any other provision of this chapter,
without a separate voluntary agreement supported by consideration, a plan of unitization may not:

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

(2) reduce a royalty interest fraction; or

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

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

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

Sec. 104.205. DISTRIBUTION OF UNIT PRODUCTION. Except as authorized by this chapter or in a plan of unitization approved by the commission, the unit production must be distributed among, or the proceeds paid to, the owners entitled to share in the production from each tract in the same manner that those owners would have shared in the production or proceeds from the tract if the unit had not been established.
Sec. 104.206. MODIFICATION OF PROPERTY RIGHTS OR TITLES.

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

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

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

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

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

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

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

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

(1) the unit area is not being revised;
the applicant submits a plan of unitization that includes operations for carbon dioxide storage and meets the requirements for commission approval; and

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

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

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

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

(3) a statement that:

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

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

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

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

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

(5) for each person listed:

(A) an address; or

(B) a statement that the person's address is unknown; and
(6) a plan of unitization that includes operations for
the injection of carbon dioxide for carbon dioxide storage,
including the proposed division of interests for working interest,
royalty interest, unleased mineral interest, and surface interest
owners for purposes of sharing of expenses and payment of storage
fees.

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

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

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

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

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

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

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

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

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

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

SECTION 4. 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, 2013.