

By: Taylor of Collin

S.B. No. 177

A BILL TO BE ENTITLED

AN ACT

relating to unit operations for oil, gas, or oil and gas production from depleting reservoirs or carbon dioxide storage; authorizing a fee.

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 for Secondary and Tertiary Recovery Operations.

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 the boundaries of which have been determined from geological or other scientific data or experiments or from drilling operations; 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).

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

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

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

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

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

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

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

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

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

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

16 (13) "Unit operations" means:

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

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

1 and

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

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

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

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

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

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

27 (B) any production that is reinjected into the

1 unit area, unless the reinjected production is later removed from
2 the unit area for nonunit purposes or sold, in which case it will be
3 considered to be unit production; or

4 (C) any production used or consumed in unit
5 operations.

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

14 (19) "Working interest owner" means the owner of a
15 working interest.

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

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

26 Sec. 104.004. APPLICABILITY TO EXPLORATORY OR PRIMARY
27 RECOVERY OPERATIONS. This chapter does not affect or apply to

1 exploratory or primary recovery operations.

2 Sec. 104.005. APPLICABILITY TO VOLUNTARY COOPERATIVE
3 AGREEMENTS IN SECONDARY RECOVERY OPERATIONS. This chapter does not
4 affect or apply to a voluntary cooperative agreement in secondary
5 recovery operations as provided by Subchapter B, Chapter 101,
6 unless application is made under this chapter for unit operations.

7 Sec. 104.006. APPLICABILITY TO POOLING OF INTERESTS IN
8 PRORATION UNIT. This chapter does not affect or apply to the
9 pooling of separately owned interests in oil and gas within an
10 existing or proposed proration unit in a common reservoir as
11 provided by Subchapter B, Chapter 102.

12 Sec. 104.007. APPLICABILITY TO PUBLIC LAND. (a) This
13 chapter does not apply to land owned by the state or land in which
14 the state has a direct or indirect interest.

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

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

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

26 (2) with the approval of or consent to a plan of
27 unitization by the state, the commissioner of the General Land

1 Office, or the board or agency having jurisdiction.

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

7 Sec. 104.008. CONFLICT WITH ANTITRUST ACTS. (a) A plan of
8 unitization and operation under an agreement that complies with
9 this chapter, is approved by commission order, and is found by the
10 commission to be necessary to prevent waste and conserve the
11 natural resources of this state may not be construed to be in
12 violation of Chapter 15, Business & Commerce Code.

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

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

25 Sec. 104.009. APPEALS. A person affected by an order of the
26 commission issued under this chapter is entitled to judicial review
27 of that order in accordance with Subchapter G, Chapter 85. The

1 petition for review must be filed in Travis County.

2 SUBCHAPTER B. APPLICATION PROCEDURES; CONSIDERATION

3 AND APPROVAL OF PLAN

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

9 (b) The application must contain:

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

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

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

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

25 (B) voting and approval procedures;

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

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

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

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

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

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

14 (6) an allegation that:

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

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

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

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

27 (2) for each person listed:

1 (A) an address; or

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

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

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

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

18 (b) Notice of the application and the time and place of
19 hearing must be published once a week for four consecutive weeks in
20 a newspaper of general circulation authorized by law to publish
21 legal notices in the county or counties in which the land involved
22 is located. The first publication must be made not later than the
23 31st day before the hearing date.

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

27 Sec. 104.054. COMMISSION FINDINGS. After notice and a

1 hearing, the commission shall determine whether:

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

8 (2) the estimated incremental recovery of oil, gas, or
9 oil and gas from the common source of supply is reasonably
10 anticipated to exceed the estimated incremental expenses incident
11 to conducting unit operations;

12 (3) the productive limits of the common source of
13 supply or the part of the common source of supply proposed for
14 unitization have been reasonably defined by exploration,
15 development, or other definable means so as to establish that the
16 area proposed for unitization is reasonably necessary and
17 sufficient for unit operations;

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

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

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

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

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

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

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

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

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

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

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

23 Sec. 104.055. UNITIZATION ORDER; EFFECT OF OPERATIONS. (a)
24 If the commission finds that all the requirements of Section
25 104.054 are met, the commission shall issue an order providing for:

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

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

3 (b) The order must:

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

8 (2) approve the area of the common source of supply or
9 the part of the common source of supply to be included in the unit
10 area and the vertical limits of the common source of supply as
11 defined in the plan of unitization;

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

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

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

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

26 Sec. 104.056. APPROVAL OF PROPOSED PLAN OF UNITIZATION BY
27 WORKING INTEREST AND ROYALTY OWNERS. (a) An order of the

1 commission creating a unit and prescribing the plan of unitization
2 takes effect only when the proposed plan of unitization has been
3 approved in writing by:

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

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

12 (b) A ballot distributed to the owners of royalty interests
13 must:

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

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

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

26 (4) be accompanied by:

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

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

6 (C) a postage-paid reply envelope.

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

10 (d) The applicant shall:

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

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

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

18 (f) Notwithstanding Sections 104.054 and 104.055, the
19 commission may issue an order approving the plan of unitization
20 before the requirements of Subsection (a)(2) of this section have
21 been met. If the commission issues an order approving the plan of
22 unitization under that circumstance, the requirements of
23 Subsection (a)(2) must be met not later than six months after the
24 date the commission issues the order. If after an additional notice
25 and hearing as provided by Sections 104.052 and 104.053 the
26 commission determines that the requirements of Subsection (a)(2) of
27 this section have been met before the expiration of the required

1 period, the order takes effect. If after the additional notice and
2 hearing the commission determines that the requirements of
3 Subsection (a)(2) have not been met before the expiration of the
4 required period, the order has no effect, and the commission shall
5 revoke the order.

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

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

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

15 SUBCHAPTER C. PLAN OF UNITIZATION

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

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

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

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

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

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

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

26 Sec. 104.104. VOTING BY WORKING INTEREST OWNERS. The
27 proposed plan of unitization must establish a voting procedure for

1 decisions by the working interest owners. The voting procedure
2 need not be the same for each type of decision that may be made by
3 the working interest owners. However, each voting procedure must
4 provide that each working interest owner has a voting interest
5 equal to that owner's unit participation.

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

9 (1) the manner in which the unit will be operated,
10 supervised, and managed by the unit operator in the conduct of unit
11 operations;

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

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

16 (4) allocation of and provision for payment of unit
17 costs; and

18 (5) the other matters required by Section
19 104.051(b)(3).

20 Sec. 104.106. EFFECTIVE DATE AND TERMINATION DATE OF PLAN
21 OF UNITIZATION. (a) The proposed plan of unitization must provide
22 for the date on which the plan takes effect, the manner in which and
23 the circumstances under which unit operations terminate, the
24 settlement of accounts on termination, and notice by the unit
25 operator to the public within 30 days after the effective date of
26 the unit. After the commission by order adopts the plan of
27 unitization and declares the unit effective, the unit operator must

1 give public notice by filing for record, in the real property
2 records of the county or counties in which the unit area or any part
3 of the unit area is located, a certificate containing:

4 (1) the name of the unit;

5 (2) the legal description of each tract included in
6 the unit area and a description of the common source of supply or
7 the part of the common source of supply included in the unit area;

8 (3) the commission docket number;

9 (4) the date of the commission order, including any
10 supplemental orders, relating to approval of the plan of
11 unitization or the approval by the royalty owners;

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

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

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

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

27 (b) The plan also must:

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

3 (2) require the operator to maintain records
4 sufficient to show the reasonableness of any payments to affiliates
5 of the operator and of other unit costs;

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

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

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

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

22 (b) The plan of unitization must provide that all of the
23 unit production allocated to a nonpaying working interest owner who
24 does not pay the share of the unit expenses charged and any
25 additional compensation amounts applied to that nonpaying owner
26 under Subsection (a) may be appropriated by the unit operator and
27 marketed and sold for the payment of unit expenses and additional

1 compensation amounts. Any sale proceeds remaining after payment of
2 unit expenses and additional compensation amounts must be remitted
3 to the nonpaying working interest owner.

4 (c) As to an interest located in the unit that is not leased
5 by the effective date of unitization, one-sixth of the production
6 attributable to the unleased interest is considered as royalty
7 interest and is free and clear of all unit expenses and additional
8 compensation amounts. Five-sixths of the unleased interest is
9 considered as working interest and is subject to being financed or
10 carried under this section.

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

12 The plan of unitization must provide that a nonsigning working
13 interest owner may elect to offer through the unit operator to sell
14 and assign all of that owner's working interest in the unit area to
15 the unit operator and to other working interest owners who desire to
16 acquire a portion of the interest.

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

26 Sec. 104.111. ADDITIONAL PLAN PROVISIONS. The plan of
27 unitization may include any additional provisions approved by the

1 commission that are consistent with the findings required by
2 Section 104.054.

3 SUBCHAPTER D. AMENDMENT OF PLAN OR ORDER OF

4 UNITIZATION; EXPANSION OF UNIT AREA

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

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

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

12 (c) An amendment to an order may not, without the aggregate
13 approval of at least the minimum percentage of the working interest
14 and royalty interest ownership required under Section 104.056 for
15 approval of unitization and compliance with Section 104.007,
16 change:

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

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

23 (d) An amendment to an order may not, without the aggregate
24 approval of at least the minimum percentage of the working interest
25 and royalty interest ownership required under Section 104.056 for
26 approval of unitization, the aggregate approval of a supermajority
27 consisting of at least 70 percent of the surface interest ownership

1 in the unit area, and compliance with Section 104.007, change the
2 unit operations from enhanced recovery operations to carbon dioxide
3 storage operations.

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

5 (1) expanding an existing unit area under Section
6 104.152;

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

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

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

17 Sec. 104.152. EXPANSION OF UNIT AREA. (a) In accordance
18 with this section and subject to Section 104.153, an existing unit
19 area may be expanded to include additional nonunitized tracts under
20 the terms contained in the plan of unitization for the existing unit
21 if the working interest owners and the royalty owners in each
22 additional tract and in the existing unit area approve the
23 expansion by the same percentages and in the same manner as required
24 by Section 104.056 and Section 104.007(c), if applicable, for the
25 creation of a unit. The requirements for creating a unit under this
26 chapter apply to the expansion of the unit area under this section.

27 (b) Allocation of unit production from the expanded unit

1 must be calculated first by allocating to the expansion area a
2 portion of the total production of oil, gas, or oil and gas from the
3 unit area as enlarged. That allocation must be based on the
4 relative contribution to the total production of oil, gas, or oil
5 and gas that the expansion area is expected to make during the
6 remaining course of unit operations. If the expansion area
7 consists of separately owned tracts, the production allocated to
8 the expansion area must be allocated to the separately owned tracts
9 in proportion to the relative contribution of each of those tracts
10 as provided by Section 104.103. The remaining portion of unit
11 production must be allocated among the tracts in the existing unit
12 area in the same proportions as those set out in the existing plan
13 of unitization.

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

22 (b) A commission order combining units created under this
23 chapter, in allocating unit production between the previously
24 established units to be combined, must first treat each unit to be
25 combined as a single tract for purposes of production allocation.
26 The part of unit production that is allocated to each unit to be
27 combined must then be allocated among the separately owned tracts

1 included in the previously established units in the same proportion
2 as provided in each previous commission order establishing a unit
3 that is combined under this section.

4 SUBCHAPTER E. UNIT OPERATIONS

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

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

26 (c) The unit operator shall make available, to any working
27 interest owner, or to any royalty owner who has the preexisting

1 right to take the owner's production in kind, to whom production or
2 proceeds are payable, who makes adequate provision for receipt of
3 the production, the owner's share of production in kind or for sale.
4 The unit operator, at the request of an owner who elects to have the
5 owner's production marketed by the unit operator, may market the
6 production of the owner. A unit operator that markets the
7 production of such an owner shall do so in such a manner that the
8 owner receives the same price and proportionate share of premiums
9 and other compensation as the unit operator receives for the unit
10 operator's share of unit production, except to the extent that a
11 previous contractual commitment or express specific term of a
12 contract entered into in good faith prohibits such sharing or
13 marketing of additional production. This subsection may not be
14 construed to require that any profit, compensation, or other
15 benefit received by the unit operator that is realized on a
16 transaction occurring beyond the point of first sale at the unit or
17 in the vicinity of the unit be shared with or distributed to any
18 owner electing to have the owner's production marketed by the unit
19 operator.

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

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

27 (c) Unless otherwise specifically agreed to by the parties

1 as part of a plan of unitization approved by the commission, any
2 environmental condition or liability existing before the effective
3 date of the commission order approving the unit remains the sole
4 responsibility of the party or parties responsible for that
5 environmental condition or liability before the effective date of
6 the commission order approving the unit.

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

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

19 Sec. 104.204. EFFECT OF UNIT OPERATIONS ON EXPRESSED OR
20 IMPLIED COVENANTS AND CONDITIONS. (a) To the extent a lease,
21 division order, or contract covering lands in the unit area relates
22 to the common source of supply or the part of the common source of
23 supply included in the unit area, all terms of the lease, division
24 order, or contract, express or implied, must be construed by giving
25 due regard to the plan of unitization approved by the commission.
26 Operations conducted in accordance with a plan of unitization
27 approved by the commission are presumed to comply with those terms

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

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

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

14 (2) reduce a royalty interest fraction; or

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

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

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

1 royalty owner.

2 Sec. 104.205. DISTRIBUTION OF UNIT PRODUCTION. Except as
3 authorized by this chapter or in a plan of unitization approved by
4 the commission, the unit production must be distributed among, or
5 the proceeds paid to, the owners entitled to share in the production
6 from each tract in the same manner that those owners would have
7 shared in the production or proceeds from the tract if the unit had
8 not been established.

9 Sec. 104.206. MODIFICATION OF PROPERTY RIGHTS OR TITLES.
10 Except to the extent that the parties affected by the plan of
11 unitization otherwise agree, a commission order entered under
12 Section 104.055 does not alienate, convey, cross-convey, transfer,
13 or change title or ownership, legal or equitable, of a person in a
14 parcel of land or the oil and gas rights in that parcel.

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

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

27 Sec. 104.208. UNIT OWNERSHIP OF PRODUCTION, PROCEEDS, AND

1 ACQUIRED PROPERTY. (a) The part of the unit production allocated
2 to any tract and the proceeds from the sale of that production are
3 the property and income of the owners to whom or to whose credit the
4 production and proceeds are allocated or payable under the order
5 and the plan for unit operations.

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

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

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

26 (b) Unit operations for the geologic storage of carbon
27 dioxide may be conducted in a common source of supply previously

1 included in a plan of unitization approved by the commission for the
2 enhanced recovery of oil, gas, or oil and gas under the other
3 provisions of this chapter if the commission amends the order
4 approving the plan of unitization in the manner provided by Section
5 104.151 to authorize operations for carbon dioxide storage. The
6 commission may amend the order as provided by this subsection only
7 if:

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

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

12 (3) the commission determines, following notice,
13 hearing, and presentation of evidence, that the ultimate recovery
14 of oil, gas, or oil and gas from the common source of supply has
15 reached the economic limit for continued enhanced recovery
16 operations.

17 (c) Unit operations for the geologic storage of carbon
18 dioxide may be conducted in a common source of supply that has not
19 previously been unitized under the other provisions of this chapter
20 if the commission adopts a storage unitization order authorizing
21 the operations. The commission may adopt the order only on
22 application and after notice and hearing as required by Sections
23 104.052 and 104.053, except that notice must also be mailed in the
24 manner provided by Section 104.053 to each surface owner in the unit
25 area. The application must contain:

26 (1) a description of the proposed unit area and the
27 vertical limits and the formerly productive horizons to be included

1 in that unit area with a map or plat attached that meets the
2 requirements of Section 104.054(3);

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

7 (3) a statement that:

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

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

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

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

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

5 (5) for each person listed:

6 (A) an address; or

7 (B) a statement that the person's address is
8 unknown; and

9 (6) a plan of unitization that includes operations for
10 the injection of carbon dioxide for carbon dioxide storage,
11 including the proposed division of interests for working interest,
12 royalty interest, unleased mineral interest, and surface interest
13 owners for purposes of sharing of expenses and payment of storage
14 fees.

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

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

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

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

26 (2) require a fair and equitable division of interest
27 between the owners of working interests, royalty interests,

1 unleased mineral interests, and surface interests in the proposed
2 unit area;

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

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

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

18 SECTION 2. Except as provided by Section 3 of this Act, not
19 later than January 1, 2018, the Railroad Commission of Texas shall
20 adopt rules as necessary to implement Chapter 104, Natural
21 Resources Code, as added by this Act.

22 SECTION 3. Not later than April 1, 2018, the Railroad
23 Commission of Texas may adopt rules as necessary to permit the
24 commission to assess a fee or fees in an amount sufficient to
25 recover any costs incurred by the commission in implementing
26 Chapter 104, Natural Resources Code, as added by this Act, that are
27 in addition to the costs incurred by the commission in performing

1 its other functions. This section does not authorize the
2 commission to assess a fee for performing any function that is not
3 specific to the implementation of that chapter.

4 SECTION 4. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2017.