

# SENATE BILL No. 1453

September 9, 2008, Introduced by Senator KUIPERS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 61701, 61703, 61704, 61705, 61706, 61707,  
61718, and 61727 (MCL 324.61701, 324.61703, 324.61704, 324.61705,  
324.61706, 324.61707, 324.61718, and 324.61727), as added by 1995  
PA 57.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 61701. As used in this part, unless the context otherwise  
2 requires:

3       (a) "Field" means an underground reservoir or reservoirs  
4 containing oil or gas, or both. Field also includes the same  
5 general surface area that is underlaid or appears to be underlaid  
6 by at least 1 pool. Field and pool have the same meaning if only 1  
7 underground reservoir is involved. However, field, unlike pool, may

1 relate to 2 or more pools.

2 (b) "Lessee" means lessees under oil and gas leases and also  
3 the owners of unleased lands or mineral rights having the right to  
4 develop them for oil and gas.

5 (c) "Oil and gas" means oil and gas as such in combination one  
6 with the other and also means oil, gas, casinghead gas, casinghead  
7 gasoline, gas distillate, or other hydrocarbons, or any combination  
8 or combinations of these substances, which may be found in or  
9 produced from a common source of supply of oil, gas, oil and gas,  
10 or gas distillate.

11 (d) "Pool" or "common source of supply" means a natural  
12 underground reservoir containing or appearing to contain a common  
13 accumulation of oil and gas. Each productive zone of a general  
14 structure that is completely separate from any other zone in the  
15 structure, or that may for the purposes of this part be declared by  
16 the supervisor to be completely separate, is ~~included in the term~~ **A**  
17 pool or common source of supply. Any reference to a separately  
18 owned tract, although in general terms broad enough to include the  
19 surface and all underlying common sources of supply of oil and gas,  
20 shall have reference thereto only in relation to the common source  
21 of supply or portion thereof included within the unit area of a  
22 particular unit.

23 (e) "Supervisor" or "supervisor of wells" means the department  
24 as provided in part 615.

25 (f) "Unit area" means the formation or formations that are  
26 unitized and surface acreage that is a part of the unitized lands,  
27 as described in the plan for unit operations that is the subject of

1 the supervisor's order as provided in section ~~61706~~61704.

2 (g) "Unit expense" means any and all cost, expense, or  
3 indebtedness incurred by the unit in the establishment of its  
4 organization or incurred in the conduct and management of its  
5 affairs or the operations conducted by it.

6 (h) "Unit production" means all indigenous oil and gas  
7 produced and saved from a unit area after the effective date of the  
8 order of the supervisor creating the unit, regardless of the well  
9 or tract within the unit area from which that oil and gas is  
10 produced.

11 (i) "Waste", in addition to its ordinary meaning, means  
12 physical waste as that term is generally understood in the oil and  
13 gas industry. Waste includes all of the following:

14 (i) The inefficient, excessive, or improper use or dissipation  
15 of reservoir energy and the locating, spacing, drilling, equipping,  
16 operating, producing, or plugging of any oil and gas well or wells  
17 in a manner that results or tends to result in reducing the  
18 quantity of oil and gas ultimately recoverable from any pool in ~~the~~  
19 **THIS** state under good oil and gas field practice.

20 (ii) The inefficient production of oil and gas in a manner that  
21 causes or tends to cause unnecessary or excessive surface loss or  
22 destruction of oil and gas.

23 (iii) The locating, spacing, drilling, equipping, operating,  
24 producing, or plugging of a well or wells in a manner that causes  
25 or tends to cause unnecessary or excessive loss or destruction of  
26 oil and gas.

27 Sec. 61703. Any interested lessee may file a verified petition

1 with the supervisor requesting an order for the unit operation of a  
2 pool, pools, or parts of 1 or more pools. The petition shall  
3 contain all of the following:

4 (a) A description of the pool, pools, or parts of 1 or more  
5 pools to be ~~so-operated, termed the~~ **AS A** unit area.

6 (b) The names of all persons owning or having an interest in  
7 oil and gas in the proposed unit area and the names of all surface  
8 owners in the proposed unit area, as disclosed by the records in  
9 the office of the register of deeds for the county in which the  
10 **PROPOSED** unit area is situated, and their addresses, if known. If  
11 the address of any person is unknown, the petition shall so  
12 indicate.

13 (c) A statement of the type of the operations contemplated in  
14 order to effectuate the purposes of this part. **IF THE PETITION**  
15 **REQUESTS APPROVAL OF UNIT OPERATIONS BY CARBON DIOXIDE INJECTION,**  
16 **THE PETITION SHALL DO BOTH OF THE FOLLOWING:**

17 (i) **DESCRIBE PETITIONER'S PROPOSED OPERATIONS, INCLUDING THE**  
18 **SOURCE OF CARBON DIOXIDE AND THE CURRENT USE OR DISPOSITION OF THE**  
19 **CARBON DIOXIDE.**

20 (ii) **STATE WHETHER 75% OR MORE OF THE OIL RECOVERABLE USING**  
21 **PRIMARY PRODUCTION OPERATIONS HAS BEEN PRODUCED.**

22 (d) A recommended plan of unitization applicable to the  
23 proposed unit area which the petitioner considers fair, reasonable,  
24 and equitable.

25 (e) A verified statement indicating in detail what action the  
26 petitioner has taken to contact and obtain the approval of all  
27 persons of record owning or having an interest in oil and gas in

1 the proposed unit area who have not approved the proposed plan of  
2 unitization. If the question of whether the plan for unit  
3 operations has been approved as set forth in section 61706 is to be  
4 considered at a supplemental hearing pursuant to section 61707,  
5 this verified statement need not be part of the petition and may be  
6 filed separately ~~prior to~~ **BEFORE** the supplemental hearing.

7 Sec. 61704. (1) Upon the filing of a petition as provided in  
8 section 61703, the petitioner shall give notice to interested  
9 persons as set forth in section 61727. A person protesting the  
10 petition shall ~~have 15 days after the completion of the publication~~  
11 ~~of notice as provided in section 61726 to provide the supervisor~~  
12 **AND THE PETITIONER** with written notice of **THE** protest and the  
13 reason or reasons for the protest **NOT LESS THAN 15 DAYS BEFORE THE**  
14 **DATE SCHEDULED FOR HEARING.**

15 (2) The notice to interested persons required by subsection  
16 (1) shall set forth the procedure required to file a protest, ~~and~~  
17 the name, address, and phone number of a representative of the  
18 petitioner who is available to discuss the petition, and ~~shall~~ **THE**  
19 **TIME, DATE, AND LOCATION OF A HEARING ON THE PETITION. THE NOTICE**  
20 **SHALL ALSO** state that the supervisor may **CANCEL THE HEARING AND**  
21 issue an order approving the petition without a hearing if no  
22 protests are received in the time period provided in subsection  
23 (1). The notice to all mineral owners who have not approved the  
24 plan of unitization shall include a copy of the petition provided  
25 for in section 61703, except that the petitioner may omit from the  
26 notice those parts of the petition referred to in section 61703(b)  
27 and (e).

1           (3) If no protests are filed, the supervisor may issue an  
2 order as provided in subsection (4) without holding a hearing.

3           (4) The supervisor shall issue an order providing for the unit  
4 operation of a unit area if he or she finds all of the following:

5           (a) That the unitization requested is reasonably necessary to  
6 substantially increase the ultimate recovery of oil and gas from  
7 the unit area.

8           (b) That the type of operations contemplated by the plan ~~are~~  
9 **IS** feasible, will prevent waste, and will protect correlative  
10 rights.

11           (c) That the estimated additional cost of conducting such  
12 operations will not exceed the value of the additional oil and gas  
13 so recovered.

14           **(D) IF UNIT OPERATIONS BY CARBON DIOXIDE INJECTION HAVE BEEN**  
15 **PROPOSED, ALL OF THE FOLLOWING, WHICH SHALL BE SET FORTH IN THE**  
16 **ORDER:**

17           **(i) THAT A SOURCE OF CARBON DIOXIDE IS REASONABLY AVAILABLE.**

18           **(ii) THAT THE SOURCE OF CARBON DIOXIDE IS ANOTHER POOL OR THAT**  
19 **THE CARBON DIOXIDE WOULD OTHERWISE BE VENTED TO THE ATMOSPHERE IF**  
20 **NOT USED IN UNIT OPERATIONS BY CARBON DIOXIDE INJECTION IN THE UNIT**  
21 **AREA AS PROPOSED IN THE PETITION.**

22           **(iii) THAT, AFTER TERMINATION OF UNIT OPERATIONS, THE CARBON**  
23 **DIOXIDE USED IN UNIT OPERATIONS WILL NOT BE VENTED TO THE**  
24 **ATMOSPHERE.**

25           **(5) IF UNIT OPERATIONS BY CARBON DIOXIDE INJECTION HAVE BEEN**  
26 **PROPOSED, UNLESS THE ORDER INCLUDES A FINDING THAT THE PLAN FOR**  
27 **UNIT OPERATIONS HAS BEEN APPROVED UNDER SECTION 61706(1)(A), (B),**

1 OR (C), THE ORDER UNDER SUBSECTION (4) SHALL STATE WHETHER 75% OR  
2 MORE OF THE OIL RECOVERABLE USING PRIMARY PRODUCTION OPERATIONS HAS  
3 BEEN PRODUCED THROUGH SUCH OPERATIONS. FOR PURPOSES OF MAKING THE  
4 FINDING, PRIMARY PRODUCTION OPERATIONS SHALL BE CONSIDERED TO BE  
5 OPERATIONS OF THE SAME TYPE AS HAD BEEN AND WERE BEING CONDUCTED IN  
6 THE POOL WITHIN THE PROPOSED UNIT AREA AS OF THE DATE OF THE  
7 PETITION UNDER SECTION 61703. IF LESS THAN 75% OF THE OIL  
8 RECOVERABLE USING PRIMARY PRODUCTION OPERATIONS HAS BEEN PRODUCED  
9 THROUGH SUCH OPERATIONS, THE FINDINGS IN SUBSECTION (4) (A) TO (C)  
10 IN THE ORDER PROVIDING FOR UNIT OPERATIONS SHALL BE CONSIDERED  
11 CONCLUSIVELY DETERMINED FOR A PERIOD OF 2 YEARS AFTER THE DATE OF  
12 THE ORDER. THIS SUBSECTION DOES NOT APPLY IF, AS OF THE DATE OF THE  
13 PETITION, OPERATIONS WERE ALREADY BEING CONDUCTED PURSUANT TO  
14 SUPERVISOR APPROVAL UNDER THIS PART OR SECTION 61506(I).

15 Sec. 61705. The order of the supervisor **UNDER SECTION 61704**  
16 shall be upon terms and conditions that are fair, reasonable, and  
17 equitable and shall prescribe a plan for unit operations that  
18 includes all of the following:

19 (a) A description of the unit area.

20 (b) A statement in reasonable detail of the operations  
21 contemplated.

22 (c) An allocation to the separately owned tracts in the unit  
23 area of all the oil and gas that is produced from the unit area,  
24 and is saved, ~~excepting~~**EXCEPT** that production that is used in the  
25 conduct of operations on the unit area or unavoidably lost. A  
26 separately owned tract's fair, reasonable, and equitable share of  
27 production shall be measured by the value of the tract for oil and

1 gas purposes and its contributing value to the unit in relation to  
2 like values of all tracts in the unit.

3 (d) The manner in which the unit and the further development  
4 and operation of the unit area shall or may be financed and the  
5 basis, terms, and conditions on which the cost and expense shall be  
6 apportioned among and assessed against the tracts and interests  
7 made chargeable therewith, including a detailed accounting  
8 procedure governing all charges and credits incident to the  
9 operations.

10 (e) Provisions for carrying or otherwise financing a ~~person~~  
11 **LESSEE** who elects to be carried or otherwise financed, allowing a  
12 reasonable interest and service charge payable out of the ~~person's~~  
13 **LESSEE'S** share of production. **IF THE ORDER AUTHORIZES UNIT**  
14 **OPERATIONS BY CARBON DIOXIDE INJECTION, THEN ALL OF THE FOLLOWING**  
15 **APPLY:**

16 (i) **THE REASONABLE INTEREST CHARGE SHALL BE NOT LESS THAN THE**  
17 **PRIME INTEREST RATE FOR COMMERCIAL BANKS AS REPORTED BY THE FEDERAL**  
18 **RESERVE SYSTEM PLUS 5.00%, COMPOUNDED DAILY.**

19 (ii) **THE SERVICE CHARGE SHALL BE NOT LESS THAN 350% OF THE**  
20 **LESSEE'S PROPORTIONATE SHARE OF THE ACTUAL COST OF UNIT OPERATIONS.**

21 (f) The procedure and basis upon which wells, equipment, and  
22 other ~~properties~~ **PROPERTY** of the several lessees within the unit  
23 area are to be taken over and used for unit operations, including  
24 the method of arriving at the compensation ~~therefor~~ **FOR THE**  
25 **PROPERTY.**

26 (g) Provisions for supervision and conduct of the unit  
27 operations, in respect to which each person shall have a vote with



1 a value corresponding to the percentage of the costs of unit  
2 operations chargeable against the interest of the person **AS OF THE**  
3 **DATE OF THE VOTE.**

4 (h) The time when the plan of unitization becomes effective  
5 and when unit operations commence.

6 (i) The time when, conditions under which, and method by which  
7 the unit shall be dissolved and its affairs wound up.

8 (j) Additional provisions that are found to be appropriate for  
9 carrying on the unit operations and for the protection and  
10 adjustment of correlative rights.

11 Sec. 61706. **(1)** An order of the supervisor providing for unit  
12 operations shall not ~~be declared or become effective~~ **TAKE EFFECT**  
13 until the supervisor makes a finding, either in the order ~~providing~~  
14 ~~for~~ **ADDRESSING** unit operations or in a supplemental order as  
15 provided in section 61707, that the plan for unit operations has  
16 been approved in writing in 1 of the following ways:

17 (a) By those persons who under the supervisor's order will be  
18 required to pay at least 75% of the costs of unit ~~operation~~  
19 **OPERATIONS**, and also by those persons who under the supervisor's  
20 order will be entitled to at least 75% of the production from the  
21 unit area or the proceeds of that production that will be credited  
22 to interests that are free of cost, including, but not limited to,  
23 royalties, overriding royalties, and production payments.

24 (b) By those persons who under the supervisor's order will be  
25 entitled to at least 75% of all production from the unit area or  
26 the proceeds of that production, provided that among those persons  
27 there must be persons who under the supervisor's order will be

1 entitled to at least 50% of the production from the unit area or  
2 the proceeds of that production that will be credited to interests  
3 that are free of cost, including, but not limited to, royalties,  
4 overriding royalties, and production payments.

5 (c) By those persons who under the supervisor's order will be  
6 entitled to at least 90% of all production from the unit area or  
7 the proceeds of that production.

8 (D) BY THE PETITIONER AND ALSO BY THOSE PERSONS WHO UNDER THE  
9 SUPERVISOR'S ORDER WILL BE ENTITLED TO AT LEAST 51% OF THE  
10 PRODUCTION FROM THE UNIT AREA OR THE PROCEEDS OF THAT PRODUCTION  
11 THAT WILL BE CREDITED TO INTERESTS THAT ARE FREE OF COST,  
12 INCLUDING, BUT NOT LIMITED TO, ROYALTIES, OVERRIDING ROYALTIES, AND  
13 PRODUCTION PAYMENTS. THIS SUBDIVISION APPLIES ONLY IF ALL OF THE  
14 FOLLOWING REQUIREMENTS ARE MET:

15 (i) THE APPROVED METHOD OF UNIT OPERATIONS IS BY CARBON DIOXIDE  
16 INJECTION.

17 (ii) THE SUPERVISOR DETERMINES THAT 75% OR MORE OF THE OIL  
18 RECOVERABLE USING PRIMARY PRODUCTION OPERATIONS HAS BEEN PRODUCED  
19 THROUGH SUCH OPERATIONS.

20 (iii) THE PETITIONER AGREES TO ACT AS OPERATOR, TO CONDUCT UNIT  
21 OPERATIONS BY INJECTED CARBON DIOXIDE, AND THAT, AFTER THE  
22 TERMINATION OF UNIT OPERATIONS, THE CARBON DIOXIDE USED FOR UNIT  
23 OPERATIONS WILL NOT BE VENTED TO THE ATMOSPHERE.

24 (iv) THE SUPERVISOR DETERMINES THAT THE PETITIONER IS QUALIFIED  
25 BY TRAINING OR EXPERIENCE TO ACT AS UNIT OPERATOR. IF THE  
26 SUPERVISOR MAKES SUCH FINDINGS REGARDING THE PETITIONER, THEN THE  
27 PETITIONER SHALL BE APPOINTED UNIT OPERATOR.

1           (2) FOR THE PURPOSES OF THIS SECTION, AN UNLEASED OWNER'S  
2 INTEREST SHALL BE TREATED AS IF SUBJECT TO A 1/8 ROYALTY INTEREST.

3           Sec. 61707. If, ~~a finding is not made as set forth in section~~  
4 ~~61706 at the time the order for unit operations is made,~~ **WHEN THE**  
5 **ORDER FOR UNIT OPERATIONS IS ISSUED, THE SUPERVISOR DOES NOT FIND**  
6 **THAT THE PLAN FOR UNIT OPERATIONS HAS BEEN APPROVED UNDER SECTION**  
7 **61706,** the supervisor on the supervisor's motion or the motion of  
8 any interested person after notice shall hold supplemental hearings  
9 to ~~determine if the plan for unit operations has been approved. If~~  
10 ~~the written approval is found, then~~ **REVIEW THE APPLICABLE ISSUE OR**  
11 **ISSUES. WHETHER 75% OF THE OIL RECOVERABLE USING PRIMARY PRODUCTION**  
12 **OPERATIONS HAS BEEN PRODUCED IS AN APPLICABLE ISSUE IF APPROVAL OF**  
13 **THE PLAN FOR UNIT OPERATIONS IS SOUGHT UNDER SECTION 61706(1)(D)**  
14 **AND THERE WAS A FINDING UNDER SECTION 61704(5) THAT LESS THAN 75%**  
15 **OF THE OIL RECOVERABLE USING PRIMARY PRODUCTION OPERATIONS HAD BEEN**  
16 **PRODUCED. IF THE SUPERVISOR DETERMINES THAT THE PLAN HAS BEEN**  
17 **APPROVED UNDER SECTION 61706,** the supervisor shall make a  
18 supplemental order **STATING THAT FACT AND** declaring the plan  
19 effective and setting forth the date for the commencement of unit  
20 operations. If, ~~the written approval is not found within a period~~  
21 ~~of 6 months from~~ **2 YEARS AFTER** the date on which the order  
22 providing for unit operations is made, **THE SUPERVISOR DOES NOT**  
23 **DETERMINE THAT THE PLAN HAS BEEN APPROVED,** the order shall be  
24 ineffective and shall be revoked by the supervisor, unless for good  
25 cause shown the supervisor extends the time for an additional  
26 period not to exceed 1 year.

27           Sec. 61718. (1) Subject to reasonable limitations as set out

1 in the plan of unitization, the unit shall have a first and prior  
 2 lien for costs incurred pursuant to the plan of unitization upon  
 3 the leasehold estate and other oil and gas rights, exclusive of a  
 4 1/8 share of gross production that is attributable to a lessor's  
 5 royalty interest, in and to each separately owned tract, and the  
 6 interest of the owners thereof in and to the unit production and  
 7 equipment in possession of the unit, in the form and manner as  
 8 provided in ~~Act No. 146 of the Public Acts of 1937, being sections~~  
 9 **1937 PA 146, MCL 570.251 to 570.266. of the Michigan Compiled Laws.**  
 10 The interest of the person who by lease, contract, or otherwise is  
 11 responsible for the cost of developing and operating a given  
 12 portion of the unit area in the absence of unitization is primarily  
 13 responsible for costs as allocated by the plan of unitization, and  
 14 resort may be had to the entire 7/8 of gross production, including,  
 15 but not limited to, overriding royalties, oil and gas payments, and  
 16 royalty interests in excess of 1/8 of gross production but which  
 17 would not otherwise be responsible for allocated costs, only if the  
 18 person primarily responsible fails to pay the allocated costs  
 19 pursuant to the unit plan. Persons whose allowable share of  
 20 production is made secondarily responsible under this section to  
 21 the extent that their interest is foreclosed are subrogated to all  
 22 of the rights of the unit to the interest or interests primarily  
 23 responsible.

24 **(2) FOR THE PURPOSES OF THIS SECTION, AN UNLEASED OWNER'S**  
 25 **INTEREST SHALL BE TREATED AS IF SUBJECT TO A 1/8 ROYALTY INTEREST.**

26 Sec. 61727. (1) ~~Service of the notice~~ **NOTICE** described in  
 27 section 61704(2) ~~, which is provided as a matter of public policy~~

1 and not as a requirement of jurisdiction. ~~before~~ **BEFORE** the date  
 2 of the first publication of notice ~~provided for in~~ **UNDER** section  
 3 61726, **THE NOTICE DESCRIBED IN SECTION 61704(2) SHALL BE GIVEN** by  
 4 personal service or ~~by certified~~ **FIRST-CLASS** mail ~~, with return~~  
 5 ~~receipts requested, shall be provided to the last known address~~ **TO**  
 6 **EACH** of the following interested persons **AT HIS OR HER LAST KNOWN**  
 7 **ADDRESS:**

8 (a) The last owner of record of the oil and gas mineral  
 9 interests underlying the lands or areas directly affected by the  
 10 proposed action ~~, and of~~ the surface owners.

11 (b) The last owner of record of the oil and gas mineral  
 12 interests underlying the lands or areas immediately adjacent to,  
 13 and contiguous to, the lands or areas directly affected by the  
 14 proposed action ~~, and of~~ the surface owners.

15 (c) The last owner of record of oil and gas leases from 1 or  
 16 more owners described in subdivision (a) or (b).

17 (2) ~~Receipts returned following delivery by certified mail~~ **IF**  
 18 **NOTICE IS GIVEN BY MAIL, AN AFFIDAVIT OF PROOF OF MAILING BY FIRST-**  
 19 **CLASS MAIL** shall be filed with the supervisor on or before the date  
 20 of the hearing ~~, or before the supervisor's order is issued if~~  
 21 there is no hearing.

22 (3) Undelivered notices that are returned to the petitioner  
 23 shall be filed with the supervisor on or before the date of the  
 24 hearing ~~, or before the supervisor's order is issued if there is no~~  
 25 hearing.

26 (4) If notice is given by personal service, an affidavit of  
 27 service shall be filed with the supervisor on or before the date of

- 1 the hearing ~~or~~ before the supervisor's order is issued if there
- 2 is no hearing.