

By: Bell

H.B. No. 1392

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the recovery of stranded oil, gas, or oil and gas from  
3 depleting Cenozoic Era reservoirs.

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

5 SECTION 1. Subtitle C, Title 3, Natural Resources Code, is  
6 amended by adding Chapter 104 to read as follows:

7 CHAPTER 104. UNITIZATION

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 104.001. SHORT TITLE. This chapter may be cited as the  
10 Texas Tertiary Recovery Unitization Act.

11 Sec. 104.002. DEFINITIONS. In this chapter:

12 (1) "Commission" means the Railroad Commission of  
13 Texas.

14 (2) "Common source of supply" means:

15 (A) a common reservoir as defined by Section  
16 86.002; or

17 (B) separate multiple stratigraphic or  
18 lenticular accumulations of oil, gas, or oil and gas that have been  
19 recognized and regulated as a common reservoir by the commission  
20 under Section 86.081(b).

21 (3) "Extraneous substances" are substances, including  
22 carbon dioxide and other nonhydrocarbon substances, purchased or  
23 otherwise obtained from outside a common source of supply for  
24 injection into the common source of supply during unit operations

1 using tertiary recovery methods.

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

4 (5) "Plan of unitization" means a plan or agreement  
5 that is consistent with the requirements of this chapter between  
6 working interest owners and royalty owners in a common source of  
7 supply or part of a common source of supply in which unit operations  
8 using tertiary recovery methods may be conducted to enhance the  
9 production of oil, gas, or oil and gas from the common source of  
10 supply or part of the common source of supply to greater volumes  
11 than would be produced by recovery operations that do not use  
12 tertiary recovery methods.

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

18 (7) "Royalty owner" means the owner of a royalty  
19 interest.

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

23 (9) "Tract participation" means the percentage shown  
24 in the plan of unitization participation formula for allocating  
25 unit production to a tract, which is measured by the value  
26 calculated for each tract for oil, gas, or oil and gas purposes  
27 based on its contributing value to the unit in relation to like

1 values of other tracts in the unit, the sum of which is 100 percent.

2 (10) "Unit area" includes the surface area inside the  
3 boundaries of the unit and the common source of supply or the part  
4 of the common source of supply underlying the surface area that may  
5 be reasonably required for the conduct of unit operations using  
6 tertiary recovery methods, including the monitoring of the unit  
7 operations.

8 (11) "Unit cost" or "unit expense" includes any cost  
9 or expense incurred in the conduct of unit operations using  
10 tertiary recovery methods.

11 (12) "Unit operations using tertiary recovery  
12 methods" means:

13 (A) operations using tertiary recovery methods  
14 intended to increase the ultimate recovery of oil, gas, or oil and  
15 gas from a common source of supply related to the production of oil,  
16 gas, or oil and gas from the unit area, including:

17 (i) thermal recovery;

18 (ii) in situ combustion;

19 (iii) carbon dioxide or nitrogen miscible  
20 fluid displacement;

21 (iv) carbon dioxide augmented  
22 waterflooding;

23 (v) immiscible carbon dioxide  
24 displacement;

25 (vi) immiscible nonhydrocarbon gas  
26 displacement; or

27 (vii) operations using any other method

1 defined as a tertiary recovery method in former Section 4993 of the  
2 former Internal Revenue Code of 1954; or

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

5 (13) "Unit operator" means the person designated under  
6 the plan of unitization to conduct unit operations using tertiary  
7 recovery methods, acting as operator and not merely as a working  
8 interest owner.

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

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

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

26 (A) recoverable extraneous substances injected  
27 into the common source of supply or used in well treatment or

1 pressure maintenance;

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

6 (C) any production used or consumed in unit  
7 operations.

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

16 (18) "Working interest owner" means the owner of a  
17 working interest.

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

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

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

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

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

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

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

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

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

1 state has an interest.

2 Sec. 104.006. RESTRICTION ON COMMON SOURCES OF SUPPLY TO  
3 WHICH APPLICABLE. This chapter applies only to unit operations for  
4 the tertiary recovery of oil, gas, or oil and gas from a Cenozoic  
5 Era common source of supply.

6 Sec. 104.007. CONFLICT WITH ANTITRUST ACTS. (a) A plan of  
7 unitization and operation using tertiary recovery methods under an  
8 agreement that complies with this chapter, is approved by  
9 commission order, and is found by the commission to be necessary to  
10 prevent waste and conserve the natural resources of this state may  
11 not be construed to be in violation of Chapter 15, Business &  
12 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. 104.008. 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 using tertiary recovery methods of a common source  
8 of supply or a part of that common 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 using  
14 tertiary recovery methods contemplated 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 using tertiary recovery methods are to be  
21 apportioned among and assessed against the tracts and interests  
22 chargeable with those costs and expenses, including a detailed  
23 accounting procedure governing all charges and credits incident to  
24 unit operations and providing for audits of those charges and  
25 credits;

26 (B) voting and approval procedures;

27 (C) the designation, removal, or replacement of



1 the unit operator;

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

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

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

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

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

15 (6) an allegation that:

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

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

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

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

1           (2) for each person listed:

2                   (A) an address; or

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

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

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

12           (c) The applicant shall pay to the commission an amount  
13 equal to the costs the commission incurs to hold the hearing, as  
14 determined by the commission.

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

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

1 the 31st day before the hearing date.

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

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

7 (1) the unitized operation using tertiary recovery  
8 methods of the common source of supply or the part of the common  
9 source of supply involved in the plan of unitization is reasonably  
10 necessary to conduct unit operations and the plan of unitization is  
11 reasonably necessary to prevent waste, protect correlative rights,  
12 and promote the conservation of oil, gas, or oil and gas;

13 (2) the estimated incremental recovery of oil, gas, or  
14 oil and gas from the common source of supply or the part of the  
15 common source of supply proposed for unitization is reasonably  
16 anticipated to exceed the estimated incremental expenses incident  
17 to conducting unit operations using tertiary recovery methods;

18 (3) the productive limits of the common source of  
19 supply or the part of the common source of supply proposed for  
20 unitization have been reasonably defined by exploration,  
21 development, or other definable means so as to establish that the  
22 area proposed for unitization is reasonably necessary and  
23 sufficient for unit operations, including the monitoring at the  
24 boundaries of the unit of the use of an injectant;

25 (4) if only a portion of the common source of supply is  
26 proposed for unitization, unit operations using tertiary recovery  
27 methods will not have a material adverse effect on the remainder of

1 the common source of supply;

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

9 (6) the applicant has obtained approval for the plan  
10 of unitization using tertiary recovery methods from at least the  
11 minimum number of working interest and royalty interest owners  
12 required by Section 104.056;

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

16 (8) the expenses relating to unit operations using  
17 tertiary recovery methods will:

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

20 (B) be allocated on a fair and equitable basis;  
21 and

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

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

27 (10) the plan of unitization meets the requirements of

1 Subchapter C and reasonably conforms to the requirements of this  
2 chapter; and

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

6 Sec. 104.055. UNITIZATION ORDER; EFFECT OF OPERATIONS. (a)  
7 If the commission finds that all the requirements of Section  
8 104.054 are met, the commission shall issue an order providing for:

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

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

13 (b) The order must:

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

18 (2) approve the area of the common source of supply or  
19 the part of the common source of supply to be included in the unit  
20 area, including any necessary buffer area, and the vertical limits  
21 of the common source of supply as defined in the plan of  
22 unitization;

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

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

27 (c) Unit operations using tertiary recovery methods on and

1 production from any lease in the unit area for which a unitization  
2 order has been entered are considered for all purposes the conduct  
3 of unit operations on and production from each separately owned  
4 lease and tract in the unit.

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

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

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

18 (2) at least 70 percent of the owners, on a unit  
19 participation basis, of the aggregate unit royalty interests that  
20 complete and return an approval or ratification together with the  
21 ballot distributed under Subsection (b).

22 (b) A ballot distributed to the owners of royalty interests  
23 must:

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

27 (2) be sent by certified mail, return receipt

1 requested, to each owner of a royalty interest in the proposed unit  
2 area, including the interest attributable to each owner of an  
3 unleased mineral interest;

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

9 (4) be accompanied by:

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

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

16 (C) a postage-paid reply envelope.

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

20 (d) The applicant shall:

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

22 (2) indicate to the royalty owner returning the ballot  
23 whether the ballot has been counted as a vote for or a vote against  
24 the proposed plan.

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

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

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

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

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

25           SUBCHAPTER C. PLAN OF UNITIZATION

26       Sec. 104.101. AUTHORIZED PLANS. (a) A plan of unitization  
27 may be proposed under this chapter only to establish units and



1 cooperative facilities necessary for unit operations using  
2 tertiary recovery methods that are reasonably anticipated to  
3 substantially increase the ultimate recovery of oil, gas, or oil  
4 and gas to greater volumes than would be recovered by primary or  
5 secondary recovery alone.

6 (b) The proposed plan of unitization and the commission  
7 order approving the plan may provide for unit operation using  
8 tertiary recovery methods of less than the whole of a common source  
9 of supply if:

10 (1) the unit area is of a size and shape that is  
11 reasonably required for successful and efficient conduct of the  
12 type of unit operations using tertiary recovery methods proposed  
13 and containment of the reservoir fluids; and

14 (2) the type of unit operations using tertiary  
15 recovery methods proposed will not have a material adverse effect  
16 on the part of the common source of supply that is not included in  
17 the plan of unitization.

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

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

1 the unit to receive a fair share of the unit production or other  
2 benefits.

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

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

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

23 (1) the manner in which the unit will be operated,  
24 supervised, and managed by the unit operator in the conduct of unit  
25 operations using tertiary recovery methods;

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

1           (3) a procedure by which a unit operator may be  
2 replaced without cause;

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

5           (5) the other matters required by Section  
6 104.051(b)(3).

7           Sec. 104.106. EFFECTIVE DATE AND TERMINATION DATE OF PLAN  
8 OF UNITIZATION. (a) The proposed plan of unitization must provide  
9 for the date on which the plan takes effect, the manner in which and  
10 the circumstances under which unit operations using tertiary  
11 recovery methods terminate, the settlement of accounts on  
12 termination, and notice by the unit operator to the public within 30  
13 days after the effective date of the unit. After the commission by  
14 order adopts the plan of unitization and declares the unit  
15 effective, the unit operator must give public notice by filing for  
16 record, in the real property records of the county or counties in  
17 which the unit area or any part of the unit area is located, a  
18 certificate containing:

19           (1) the name of the unit;

20           (2) the legal description of each tract included in  
21 the unit area and a description of the common source of supply or  
22 the part of the common source of supply included in the unit area;

23           (3) the commission docket number;

24           (4) the date of the commission order, including any  
25 supplemental orders, relating to approval of the plan of  
26 unitization or the approval by the royalty owners;

27           (5) the effective date of unit operations using

1 tertiary recovery methods; and

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

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

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

16 (b) The plan also must:

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

19 (2) require the operator to maintain records  
20 sufficient to show the reasonableness of any payments to affiliates  
21 of the operator and of other unit costs;

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

26 (4) include provisions that disallow situations in  
27 which a profit or other benefit would accrue solely to the operator

1 as unit operator.

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

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

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

20 (c) As to an interest located in the unit that is not leased  
21 by the effective date of unitization, one-sixth of the production  
22 attributable to the unleased interest is considered as royalty  
23 interest and is free and clear of all unit expenses and additional  
24 compensation amounts. Five-sixths of the unleased interest is  
25 considered as working interest and is subject to being financed or  
26 carried under this section.

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

1 The plan of unitization must provide that a nonsigning working  
2 interest owner may elect to offer through the unit operator to sell  
3 and assign all of that owner's working interest in the unit area to  
4 the unit operator and to other working interest owners who desire to  
5 acquire a portion of the interest.

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

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

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

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

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

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

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

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

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

12        (d) This section does not apply to an order:

13            (1) expanding an existing unit area under Section  
14 104.152; or

15            (2) creating a new unit area under Section 104.153.

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

26        (b) Allocation of unit production from the expanded unit  
27 must be calculated first by allocating to the expansion area a

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

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

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



1 that is combined under this section.

2 SUBCHAPTER E. UNIT OPERATIONS

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

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

24 (c) The unit operator shall make available, to any working  
25 interest owner, or to any royalty owner who has the preexisting  
26 right to take the owner's production in kind, to whom production or  
27 proceeds are payable and who makes adequate provision for receipt

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

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

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

25 (c) Unless otherwise specifically agreed to by the parties  
26 as part of a plan of unitization approved by the commission, any  
27 environmental condition or liability existing before the effective

1 date of the commission order approving the unit remains the sole  
2 responsibility of the party or parties responsible for that  
3 environmental condition or liability before the effective date of  
4 the commission order approving the unit.

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

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

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

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

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

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

12 (2) reduce a royalty interest fraction; or

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

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

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

27 Sec. 104.205. DISTRIBUTION OF UNIT PRODUCTION. Except as

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

7 Sec. 104.206. MODIFICATION OF PROPERTY RIGHTS OR TITLES.

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

13 Sec. 104.207. ROYALTY OBLIGATIONS; BURDENS; UNLEASED

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

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

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

26 ACQUIRED PROPERTY. (a) The part of the unit production allocated  
27 to any tract and the proceeds from the sale of that production are

1 the property and income of the owners to whom or to whose credit the  
2 production and proceeds are allocated or payable under the order  
3 and the plan for unit operations.

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

8 SECTION 2. Not later than January 1, 2016, the Railroad  
9 Commission of Texas shall adopt rules as necessary to implement  
10 Chapter 104, Natural Resources Code, as added by this Act.

11 SECTION 3. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2015.