A BILL TO BE ENTITLED
AN ACT
relating to the recovery of stranded oil, gas, or oil and gas from
depleting Cenozoic Era reservoirs.
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 Texas Tertiary Recovery Unitization Act.
Sec. 104.002. DEFINITIONS. In this chapter:
(1) "Commission" means the Railroad Commission of Texas.
(2) "Common source of supply" means:
(A) a common reservoir as defined by Section 86.002; or
(B) separate multiple stratigraphic or lenticular accumulations of oil, gas, or oil and gas that have been recognized and regulated as a common reservoir by the commission under Section 86.081(b).
(3) "Extraneous substances" are substances, including carbon dioxide and other nonhydrocarbon substances, purchased or otherwise obtained from outside a common source of supply for injection into the common source of supply during unit operations
using tertiary recovery methods.

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

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

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

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

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

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

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

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

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

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

(i) thermal recovery;

(ii) in situ combustion;

(iii) carbon dioxide or nitrogen miscible fluid displacement;

(iv) carbon dioxide augmented waterflooding;

(v) immiscible carbon dioxide displacement;

(vi) immiscible nonhydrocarbon gas displacement; or

(vii) operations using any other method
defined as a tertiary recovery method in former Section 4993 of the
former Internal Revenue Code of 1954; or

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

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

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

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

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

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

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

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

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

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

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

(b) The commission in accordance with this chapter shall determine whether a plan of unitization, including the participation formula, proposed under this chapter for all or part of a common source of supply is fair, reasonable, and equitable for all interests concerned and necessary to carry out the purposes of this chapter.
Sec. 104.004. APPLICABILITY TO VOLUNTARY COOPERATIVE AGREEMENTS IN SECONDARY RECOVERY OPERATIONS. This chapter does not affect or apply to a voluntary cooperative agreement in secondary recovery operations as provided by Subchapter B, Chapter 101, unless application is made under this chapter for unit operations using tertiary recovery methods.

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

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

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

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

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

(d) If land in which the state has an interest is to be unitized as provided for by Subsection (c), the plan of unitization and unit operating agreement is subject to and must incorporate by reference all statutes and rules that apply to the land in which the state has an interest.
Sec. 104.006. RESTRICTION ON COMMON SOURCES OF SUPPLY TO WHICH APPLICABLE. This chapter applies only to unit operations for the tertiary recovery of oil, gas, or oil and gas from a Cenozoic Era common source of supply.

Sec. 104.007. CONFLICT WITH ANTITRUST ACTS. (a) A plan of unitization and operation using tertiary recovery methods under an agreement that complies with this chapter, is approved by commission order, and is found by the commission to be necessary to prevent waste and conserve the natural resources of this state may not be construed to be in violation of Chapter 15, Business & Commerce Code.

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

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

Sec. 104.008. APPEALS. A person affected by an order of the commission issued under this chapter is entitled to judicial review of that order in accordance with Subchapter G, Chapter 85.
petition for review must be filed in Travis County.

SUBCHAPTER B. APPLICATION PROCEDURES; CONSIDERATION AND APPROVAL OF PLAN

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

(b) The application must contain:

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

(2) a statement of the type of operations using tertiary recovery methods contemplated for the unit area;

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

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

(B) voting and approval procedures;

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

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

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

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

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

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

(6) an allegation that:

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

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

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

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

(A) an address; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

(b) The order must:

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) be accompanied by:

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

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

(C) a postage-paid reply envelope.

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

(d) The applicant shall:

(1) confirm the receipt of each ballot; and

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

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

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

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

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

SUBCHAPTER C. PLAN OF UNITIZATION

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

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

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

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

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

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

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

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

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

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

(2) the grounds on which a unit operator may be
replaced for cause;
(3) a procedure by which a unit operator may be replaced without cause;

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

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

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

(1) the name of the unit;

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

(3) the commission docket number;

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

(5) the effective date of unit operations using
tertiary recovery methods; and

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

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

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

(b) The plan also must:

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

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

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

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

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

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

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

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

Sec. 104.109. SALE BY NONSIGNING WORKING INTEREST OWNER.
The plan of unitization must provide that a nonsigning working interest owner may elect to offer through the unit operator to sell and assign all of that owner's working interest in the unit area to the unit operator and to other working interest owners who desire to acquire a portion of the interest.

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

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

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

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

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

(b) Approval of an amendment by royalty owners is not required if the amendment affects only the rights and interests of working interest owners.
(c) An amendment to an order may not, without the aggregate approval of at least the minimum percentage of the working interest and royalty interest ownership required under Section 104.056 for approval of unitization and compliance with Section 104.005, change:

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

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

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

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

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

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

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

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

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

**SUBCHAPTER E. UNIT OPERATIONS**

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

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

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

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

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

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

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

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

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

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

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

(2) reduce a royalty interest fraction; or

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

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

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

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

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

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

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

Sec. 104.208. UNIT OWNERSHIP OF PRODUCTION, PROCEEDS, AND
ACQUIRED PROPERTY. (a) The part of the unit production allocated
to any tract and the proceeds from the sale of that production are

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

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

SECTION 2. Not later than January 1, 2018, the Railroad
Commission of Texas shall adopt rules as necessary to implement
Chapter 104, Natural Resources Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2017.