

By: Bell

H.B. No. 1597

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

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, 2018, 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, 2017.