

# ACT No. 743

Regular Session, 2012

HOUSE BILL NO. 504

BY REPRESENTATIVE DOVE

1 AN ACT

2 To amend and reenact R.S. 30:5.1 and 10(A)(introductory paragraph), (1), and (2), relative  
3 to pooling of oil and gas wells; to provide for authority of the commissioner of  
4 conservation to create such pools; to provide for applications, allocation of costs, and  
5 rules and regulations; to provide for the agreements for drilling units; to provide for  
6 pooling interests; to provide for the election not to participate in a unit well; to  
7 provide for payment to certain royalty owners; to provide terms and conditions; and  
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 30:5.1 and 10(A)(introductory paragraph), (1), and (2) are hereby  
11 amended and reenacted to read as follows:

12 §5.1. Deep pool order; ultra deep structure units; application; procedure; allocation  
13 of costs; rules and regulations

14 A. The following shall be applicable to deep pool units:

15 (1) In order to prevent waste and to avoid the drilling of unnecessary wells,  
16 and to encourage the development of deep oil and gas pools in Louisiana, the  
17 commissioner of conservation is authorized, as provided in this ~~Section~~ Subsection,  
18 to establish a single unit to be served by one or more wells for a deep pool and to  
19 adopt a development plan for such deep unit.

20 B: (2) Without in any way modifying the authority granted to the  
21 commissioner in R.S. 30:9(B) to establish a drilling unit or units for a pool and in  
22 addition to the authority conferred in R.S. 30:5, the commissioner upon the

1 application of any interested party may enter an order requiring the unit operation of  
 2 any deep pool when such unit operation will promote the development of such deep  
 3 pools, prevent waste, and avoid the drilling of unnecessary wells.

4 ~~€~~ (3) In connection with such order, the commissioner shall have the right  
 5 to establish a unit for a deep pool and to unitize, force pool, and consolidate all  
 6 separately owned tracts and other property ownerships within such unit. Any order  
 7 creating a unit for a deep pool shall be issued only after notice and public hearing  
 8 and shall be based on findings that:

9 ~~(1)~~ (a) The order is reasonably necessary to promote the development of a  
 10 deep pool and for the prevention of waste and the drilling of unnecessary wells.

11 ~~(2)~~ (b) The proposed unit operation is economically feasible.

12 ~~(3)~~ (c) The geologic top of the deep pool was encountered in the initial well  
 13 for the pool at a depth in excess of fifteen thousand feet true vertical depth.

14 ~~(4)~~ (d) Sufficient evidence exists to reasonably establish the limits of the  
 15 deep pool.

16 ~~(5)~~ (e) The plan of development for the unit is reasonable. The plan shall be  
 17 revised only if approved by the commissioner after notice and public hearing.

18 ~~Đ~~ (4) The order shall provide for the initial allocation of unit production on  
 19 a surface acreage basis to each separately owned tract within the unit.

20 ~~E~~ (5) No order shall be issued by the commissioner unless interested  
 21 parties have been provided a reasonable opportunity to review and evaluate all  
 22 data submitted by the applicant to the commissioner to establish the limits of the  
 23 deep pool, including seismic data.

24 ~~F~~ (6) The order creating the unit shall designate a unit operator and shall  
 25 also make provision for the proportionate allocation to the owners (lessees or  
 26 owners of unleased interests) of the costs and expenses of the unit operation,  
 27 which allocation shall be in the same proportion that the separately owned tracts  
 28 share in unit production. The cost of capital investment in wells and physical

1 equipment and intangible drilling costs, in the absence of voluntary agreement  
2 among the owners to the contrary, shall be shared in like proportion. However,  
3 no such owner who has not consented to the unitization shall be required to  
4 contribute to the costs or expenses of the unit operation or to the cost of capital  
5 investment in wells and physical equipment and intangible drilling costs except  
6 out of the proceeds of production accruing to the interest of such owner out of  
7 production from such unit operation. In the event of a dispute relative to the  
8 calculation of unit well costs or depreciated unit well costs, the commissioner  
9 shall determine the proper costs after notice to all interested owners and public  
10 hearing thereon.

11 ~~G. (7)~~ Upon application and after notice and public hearing and  
12 consideration of all ~~new~~ available geological and engineering evidence, the  
13 commissioner, to the extent required by such evidence, may create, revise, or  
14 dissolve any unit provided for under this ~~Section~~ Subsection or modify any  
15 provision of any order issued hereunder. Any such order shall provide for the  
16 allocation of unit production on a just and equitable basis to each separately  
17 owned tract within the unit.

18 ~~H. (8)~~ The commissioner shall prescribe, issue, amend, and rescind such  
19 orders, rules, and regulations as he may find necessary or appropriate to carry out  
20 the provisions of this ~~Section~~ Subsection.

21 ~~I. (9)~~ While this ~~Section~~ Subsection authorizes the initial creation of a  
22 single unit to be served by one or more wells, nothing herein shall be construed  
23 as limiting the authority of the commissioner to approve the drilling of alternate  
24 unit wells on drilling units established pursuant to R.S. 30:9(B).

25 B. The following shall be applicable to ultra deep structure units:

26 (1) In order to prevent waste and to avoid the drilling of unnecessary  
27 wells, and to encourage the development of ultra deep oil and gas structures in  
28 Louisiana, the commissioner of conservation is authorized, as provided in this  
29 Subsection, to establish a single unit to be served by one or more wells for an ultra

1 deep structure and to adopt a plan of development for such ultra deep structure  
2 unit. For purposes of this statute, a "structure" is defined as a unique geologic  
3 feature that potentially traps hydrocarbons in one or more pools or zones.

4 (2) Without in any way modifying the authority granted to the  
5 commissioner by R.S. 30:9(B) to establish a drilling unit or units for a pool and  
6 in addition to the authority conferred by R.S. 30:5 and 5.2, the commissioner,  
7 upon the application of any interested party, may enter an order requiring the unit  
8 operation of any ultra deep structure when such unit operation will promote the  
9 development of such ultra deep structure, prevent waste, and avoid the drilling of  
10 unnecessary wells.

11 (3) In connection with such order, the commissioner shall have the right  
12 to establish a unit no greater than nine thousand acres for an ultra deep structure  
13 and to unitize, force pool, and consolidate all separately owned tracts and other  
14 property ownerships within such unit. Any order creating a unit for an ultra deep  
15 structure shall be issued only after notice and public hearing and shall be based  
16 on findings that:

17 (a) The order is reasonably necessary to promote the development of an  
18 ultra deep structure and to prevent waste and the drilling of unnecessary wells.

19 (b) The proposed unit operation appears economically feasible.

20 (c) The stratigraphic top of the ultra deep structure unit is encountered or  
21 anticipated to be encountered in the initial well for the structure at a depth in  
22 excess of twenty-two thousand feet true vertical depth.

23 (d) Sufficient evidence exists to reasonably establish the limits of the ultra  
24 deep structure.

25 (e) The applicant has submitted a plan of development for the unit that is  
26 reasonable and contains the information listed under Paragraph (B)(4) of this  
27 Section. It is presumed that a reasonable plan of development will include at least  
28 one well for each three thousand acres contained in the unit.

1                   (4) The plan of development shall include, at a minimum, the following:

2                   (a) The applicant's estimate of the number of wells it intends to drill in the  
3                   unit.

4                   (b) The applicant's estimated time table for drilling and completing each  
5                   unit well.

6                   (c) The applicant's anticipated target depth for each such well.

7                   (5) Upon application of any landowner or other interested party, or at the  
8                   commissioner's discretion, the plan of development may be revised by the  
9                   commissioner after notice and public hearing for good cause.

10                  (6) The order creating a unit for an ultra deep structure shall provide for  
11                  the initial allocation of unit production on a surface acreage basis to each  
12                  separately owned tract within the unit and shall also specify the stratigraphic  
13                  intervals to which the unit shall be limited.

14                  (7) No order creating a unit for an ultra deep structure shall be issued by  
15                  the commissioner unless interested parties have been provided a reasonable  
16                  opportunity to review and evaluate all data, including seismic data, submitted by  
17                  the applicant to the commissioner to establish the limits of the deep structure.

18                  (8) An order creating the unit for an ultra deep structure shall designate  
19                  a unit operator.

20                  (9) The initial well and each subsequent well proposed or drilled pursuant  
21                  to the plan of development shall be deemed a unit well. The provisions of R.S.  
22                  30:10(A)(2) shall be applicable to ultra deep structure units, including the  
23                  applicable risk charge. In the event of a dispute relative to the calculation of unit  
24                  well costs or depreciated unit well costs, the commissioner shall determine the  
25                  proper costs after notice to all interested owners and public hearing thereon.

26                  (10) Upon application by any landowner or other interested party, or at  
27                  the commissioner's discretion, and after notice and public hearing and  
28                  consideration of available geological, engineering, and other relevant evidence,

1           the commissioner, to the extent required by such evidence, may by order create,  
 2           revise, confirm, or dissolve any unit provided for under this Subsection or modify  
 3           any provision of any order issued hereunder. Any such order shall provide for the  
 4           allocation of unit production on a just and equitable basis to each separately  
 5           owned tract within the unit. The applicant shall, in all cases, have the burden of  
 6           proof that the existing unit or order should be revised, confirmed, dissolved, or  
 7           amended in the manner proposed in the application. If the commissioner  
 8           determines that the unit operator has not substantially complied with the plan of  
 9           development, the unit operator shall be required to show cause why the unit  
 10           should not be reduced in size.

11           (11) The provisions of Subsection A of this Section shall not be  
 12           applicable to any unit well drilled in a unit established pursuant to this Subsection.

13           (12) The commissioner shall prescribe, issue, amend, and rescind such  
 14           orders, rules, and regulations as he may find necessary or appropriate to carry out  
 15           the provisions of this Subsection.

16           (13) While the provisions of this Subsection authorize the initial creation  
 17           of a single unit to be served by one or more wells, nothing herein shall be  
 18           construed as limiting the authority of the commissioner to approve the drilling of  
 19           alternate unit wells on drilling units established pursuant to R.S. 30:9(B).

20   \*       \*       \*

21           §10. Agreements for drilling units; pooling interests; terms and conditions;  
 22   expenses

23           A. When two or more separately owned tracts of land are embraced  
 24           within a drilling unit which has been established by the commissioner as provided  
 25           in R.S. 30:9(B), the owners may validly agree by separate contract to pool, drill,  
 26           and produce their interests and to develop their lands as a drilling unit.

27   (1) Where the owners have not agreed by separate contract to pool, drill,  
 28           and produce their interests, the commissioner shall require them to do so and to  
 29           develop their lands as a drilling unit, if he finds it to be necessary to prevent waste  
 30           or to avoid drilling unnecessary wells.

1 (a) All orders requiring pooling shall be made after notice and hearing.  
 2 They shall be upon terms and conditions that are just and reasonable and that will  
 3 afford the owner of each tract the opportunity to recover or receive his just and  
 4 equitable share of the oil and gas in the pool without unnecessary expense. They  
 5 shall prevent or minimize reasonable avoidable drainage from each developed  
 6 tract which is not equalized by counter drainage.

7 (b) The portion of the production allocated to the owner of each tract  
 8 included in a drilling unit formed by a pooling order shall, when produced be  
 9 considered as if it had been produced from his tract by a well drilled thereon.

10 (2) In the event ~~pooling is required~~, a drilling unit is formed by a pooling  
 11 order by the commissioner and absent any agreement or contract between owners  
 12 as provided in this Section, then the cost of development and operation of the  
 13 pooled unit chargeable to the owners therein shall be determined and recovered  
 14 as provided herein.

15 (a)(i) Any owner drilling or intending to drill a unit well, ~~including~~ a  
 16 substitute unit well, an alternate unit well, or a cross-unit well on any drilling unit  
 17 heretofore or hereafter created by the commissioner, may, by ~~certified~~ registered  
 18 mail, return receipt requested, or other form of guaranteed delivery and  
 19 notification method, not including electronic communication or mail, notify all  
 20 other owners in the unit prior to the actual spudding of any such well of the  
 21 drilling or the intent to drill and give each owner an opportunity to elect to  
 22 participate in the risk and expense of such well. Such notice shall contain:

23 (aa) An authorization for expenditure form (AFE), which shall include a  
 24 detailed estimate of the cost of drilling, testing, completing, and equipping ~~the~~  
 25 ~~unit~~ such proposed well. The AFE shall be dated within one hundred twenty days  
 26 of the date of the mailing of the notice;

27 (bb) The proposed location of the ~~unit~~ well;

28 (cc) The proposed objective depth of the ~~unit~~ well; ~~and~~

29 (dd) An estimate of ownership as a percentage of expected unit size or  
 30 approximate percentage of well participation;

1                   ~~(ee)~~ In the event that the proposed well is being drilled or drilled at the  
 2 time of the notice, then a copy of all available ~~AM~~ logs, core analysis, production  
 3 data, and well test data from the ~~unit~~ well which has not been made public.

4                   (ii) ~~Such~~ An election to participate must be exercised by mailing written  
 5 notice thereof by ~~certified~~ registered mail, return receipt requested, or other form  
 6 of guaranteed delivery and notification method, not including electronic  
 7 communication or mail, to the owner drilling or intending to drill the ~~unit~~  
 8 proposed well within thirty days after receipt of the initial notice. Failure to give  
 9 timely written notice of the election to participate shall be deemed to be an  
 10 election not to participate and the owner shall be deemed a nonparticipating  
 11 owner.

12                   ~~(iii) Another initial notice must be sent in order for the provisions of this~~  
 13 ~~Subsection to apply if~~ If the drilling of the proposed ~~unit~~ well is not commenced  
 14 in accordance with the initial notice within ninety days after receipt of the initial  
 15 notice, then the drilling owner shall send a supplemental notice in order for the  
 16 provisions of this Subsection to apply.

17                   (b)(i) Should a notified owner elect not to participate in the risk and  
 18 expense of the unit well, substitute unit well, alternate unit well, or cross-unit well  
 19 or should such owner elect to participate in the risk and expense of the ~~unit~~  
 20 proposed well ~~and but~~ then fail to pay his share of ~~such expenses~~ the drilling  
 21 costs determined by the AFE within sixty days of the spudding of the well or fail  
 22 to pay his share of subsequent drilling, completion, and operating expenses within  
 23 sixty days of receipt of subsequent detailed invoices, then such owner shall be  
 24 deemed a nonparticipating owner, and the drilling owner ~~drilling same~~ shall, in  
 25 addition to any other available legal remedies to enforce collection of such  
 26 expenses, be entitled to own and recover out of production from such ~~unit~~ well  
 27 allocable to the tract ~~belonging~~ under lease to the nonparticipating owner such  
 28 tract's allocated share of the actual reasonable expenditures incurred in drilling,  
 29 testing, completing, equipping, and operating the ~~unit~~ well, including a charge for  
 30 supervision, together with a risk charge, ~~which~~. The risk charge for a unit well,

1 substitute unit well, or cross-unit well that will serve as the unit well or substitute  
2 well for the unit shall be two hundred percent of such tract's allocated share of the  
3 cost of drilling, testing, and completing the ~~unit~~ well, exclusive of amounts the  
4 drilling owner remits to the nonparticipating owner for the benefit of the  
5 nonparticipating owner's royalty and overriding royalty owner. The risk charge  
6 for an alternate unit well or cross-unit well that will serve as an alternate unit well  
7 for the unit shall be one hundred percent of such tract's allocated share of the cost  
8 of drilling, testing, and completing such well, exclusive of amounts the drilling  
9 owner remits to the nonparticipating owner for the benefit of the nonparticipating  
10 owner's royalty and overriding royalty owner.

11 (ii)(aa) During the recovery of the actual reasonable expenditures incurred  
12 in drilling, testing, completing, equipping, and operating the well, the charge for  
13 supervision, and the risk charge, the nonparticipating owner shall be entitled to  
14 receive from the drilling owner for the benefit of his lessor royalty owner that  
15 portion of production due to the lessor royalty owner under the terms of the  
16 contract or agreement creating the royalty between the royalty owner and the  
17 nonparticipating owner reflected of record at the time of the well proposal.

18 (bb) In addition, during the recovery set forth in Subsection (ii)(aa) of this  
19 Subparagraph, the nonparticipating owner shall receive from the drilling owner  
20 for the benefit of the overriding royalty owner the lesser of: (I) the  
21 nonparticipating owner's total percentage of actual overriding royalty burdens  
22 associated with the existing lease or leases which cover each tract attributed to the  
23 nonparticipating owner reflected of record at the time of the well proposal; or (II)  
24 the difference between the weighted average percentage of the total actual royalty  
25 and overriding royalty burdens of the drilling owner's leasehold within the unit  
26 and the nonparticipating owner's actual leasehold royalty burdens reflected of  
27 record at the time of the well proposal.

28 (cc) The share that is to be received by the nonparticipating owner on  
29 behalf of its lessor royalty owner and overriding royalty owner shall be reported

1 by the drilling owner in accordance with Part 2-B of Chapter 13 of Title 31 of the  
2 Louisiana Revised Statutes of 1950.

3 (dd) Nothing in this Section shall relieve any lessee of its obligations to  
4 pay, from the commencement of production, any lessor royalty and overriding  
5 royalty due under the terms of his lease, and other agreements during the recovery  
6 of actual well costs and the risk charge, or shall relieve any lessee of his  
7 obligation to pay all royalty and overriding royalty due under the terms of his  
8 lease and other agreements after the recovery of the actual well costs and the risk  
9 charge. Except as provided in this Paragraph, the drilling owner's obligation to  
10 pay the royalty and the overriding royalty to the nonparticipating owner in no way  
11 creates an obligation, duty, or relationship between the drilling owner and any  
12 person to whom the nonparticipating owner is liable to, contractually or  
13 otherwise.

14 (ee) In the event of nonpayment by the nonparticipating owner of the  
15 royalty and overriding royalty due, the lessor royalty owner and overriding royalty  
16 owner shall provide written notice of such failure to the nonparticipating owner  
17 and drilling owner as a prerequisite to a judicial demand for damages. The lessor  
18 royalty owner and overriding royalty owner shall follow the same procedure and  
19 have the same remedies provided in Part 6 of Chapter 7 of Title 31 of the  
20 Louisiana Revised Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the  
21 Louisiana Revised Statutes of 1950, respectively, against the nonparticipating  
22 owner and the drilling owner. If the drilling owner provides sufficient proof of  
23 payment of the royalties to the nonparticipating owner, then the lessor royalty  
24 owner and overriding royalty owner shall have no cause of action against the  
25 drilling owner for nonpayment.

26 (ff) In the event of nonpayment by the drilling owner of the royalty and  
27 overriding royalty due to the nonparticipating owner for the benefit of the lessor  
28 royalty owner and overriding royalty owner, and payment by the nonparticipating  
29 owner of the royalty and overriding royalty due, the nonparticipating owner shall  
30 provide written notice of such failure to pay to the drilling owner as a prerequisite

1           to a judicial demand for damages. The drilling owner shall have thirty days after  
 2           receipt of the required notice within which to pay the royalties due or to respond  
 3           in writing by stating a reasonable cause for nonpayment. If the drilling owner  
 4           fails to make payment of the royalties or fails to state a reasonable cause for  
 5           nonpayment within this period, the court may award to the nonparticipating owner  
 6           as damages double the amount of royalties due, interest on that sum from the date  
 7           due, and a reasonable attorney fee regardless of the cause for the original failure  
 8           to pay royalties. If the drilling owner provides sufficient proof of payment of the  
 9           royalties to the nonparticipating owner, then the nonparticipating owner shall have  
 10          no cause of action against the drilling owner for nonpayment.

11           (iii) Any owner not notified shall bear only his tract's allocated share of  
 12          the actual reasonable expenditures incurred in drilling, testing, completing,  
 13          equipping, and operating the unit well, including a charge for supervision, which  
 14          share shall be subject to the same obligation and remedies and rights to own and  
 15          recover out of production in favor of the drilling party or parties as ~~hereinabove~~  
 16          provided in this Subsection. A participating owner shall deliver to the owner  
 17          whom has not been notified the proceeds attributable to his royalty and overriding  
 18          royalty burdens as described in this Section.

19           (c) Should a drilling unit be created by order of the commissioner around  
 20          a well already drilled or drilling and including one or more tracts as to which the  
 21          owner or owners thereof had not participated in the risk and expense of drilling  
 22          such well, then within sixty days of the date of the order creating such unit the  
 23          provisions ~~hereinabove~~ of this Subsection for notice, election, and participation  
 24          shall be applicable as if a ~~unit~~ well were being proposed by the owner who drilled  
 25          or was drilling such well; however, the cost of drilling, testing, completing,  
 26          equipping, and operating the well allocable to each tract included in the unit shall  
 27          be reduced in the same proportion as the recoverable reserves in the unitized pool  
 28          have been recovered by prior production, if any, in which said tract or tracts did  
 29          not participate prior to determining the share of cost allocable to such tract or  
 30          tracts.

1 (d)(i) Should a drilling unit be revised by order of the commissioner so  
2 as to include an additional tract or tracts, then within sixty days of the date of the  
3 order revising such unit the provisions ~~hereinabove~~ of this Subsection for notice,  
4 election, and participation shall be applicable to such added tract or tracts and the  
5 owner thereof as if a ~~unit~~ well were being proposed by the owner who had drilled  
6 the ~~unit~~ well; however, the cost of drilling, testing, completing, equipping, and  
7 operating the unit well shall be reduced in the same proportion as the recoverable  
8 reserves in the unitized pool have been recovered by prior production, if any, in  
9 which said tract or tracts did not participate prior to determining the share of cost  
10 allocable to the subsequently included tract or tracts.

11 (ii) Should a drilling unit be revised by order of the commissioner as to  
12 exclude a tract or tracts, the cost of drilling, testing, completing, equipping, and  
13 operating the unit well shall be reduced in the same proportion as the recoverable  
14 reserves in the unitized pool have been recovered by prior production to determine  
15 the share of cost allocable to the subsequently excluded tract or tracts.

16 (e)(i) The provisions of ~~Paragraph 2(b) above~~ Subparagraph (b) of this  
17 Paragraph with respect to the risk charge shall not apply to any unleased interest  
18 not subject to an oil, gas, and mineral lease.

19 (ii) Notwithstanding the provisions of ~~Paragraph 2(b) above~~ Subparagraph  
20 (b) of this Paragraph, the royalty owner and overriding royalty owner shall receive  
21 that portion of production due to them under the terms of the contract creating the  
22 royalty.

23 (f) In the event of a dispute relative to the calculation of unit well costs  
24 or depreciated unit well costs, the commissioner shall determine the proper costs  
25 after notice to all interested owners and a public hearing thereon.

26 (g) Nothing contained herein shall have the effect of enlarging,  
27 displacing, varying, altering, or in any way whatsoever modifying or changing the  
28 rights and obligations of the parties thereto under any contract between or among  
29 owners having a tract or tracts in the unit.

