

2021 Regular Session

SENATE BILL NO. 59

BY SENATOR HENSGENS (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MINERALS. Provides for the risk charge against nonparticipating mineral owners in drilling units. (8/1/21)

1 AN ACT

2 To amend and reenact R.S. 30:10(A)(2)(a), the introductory paragraph of (i) and (aa) and

3 (ee), (ii), and (iii), (b)(i), (ii)(aa), (bb), (dd), (ee), and (ff), and (iii), (e)(ii), (h), and

4 (i) and (3) and (B), and to enact R.S. 30:10(A)(2)(b)(ii)(gg), (hh), (ii), and (jj) and

5 (iv), relative to drilling units; to provide for definitions; to provide for procedures,

6 obligations, and remedies; to provide for written notice; to provide for information

7 required to be furnished; to provide for indemnification; to provide for changes of

8 ownership; to provide for title opinions; to provide for subsequent unit operations;

9 to provide terminology; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 30:10(A)(2)(a), the introductory paragraph of (i) and (aa) and (ee),

12 (ii), and (iii), (b)(i), (ii)(aa), (bb), (dd), (ee), and (ff), and (iii), (e)(ii), (h), and (i) and (3) and

13 (B) are hereby amended and reenacted and R.S. 30:10(A)(2)(b)(ii)(gg), (hh), (ii), and (jj) and

14 (iv) are hereby enacted to read as follows:

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

16 A.

17 * * *

1 (2)

2 * * *

3 (a)(i) Any owner drilling, intending to drill, or who has drilled a unit well, a
4 substitute unit well, an alternate unit well, or a cross-unit well on any drilling unit
5 heretofore or hereafter created by the commissioner, may, by registered mail, return
6 receipt requested, or other form of guaranteed delivery and notification method, not
7 including electronic communication or mail, notify all other owners in the unit of the
8 drilling or the intent to drill and give each owner an opportunity to elect to
9 participate in the risk and expense of such well. Such notice shall **be called a "risk**
10 **charge notice" and shall** contain:

11 (aa) An authorization for expenditure form (AFE), which shall include a
12 detailed estimate or the actual amount of the cost of drilling, testing, completing, and
13 equipping such well. The AFE shall be dated within one hundred twenty days of the
14 date of the mailing of the **risk charge** notice.

15 * * *

16 (ee) In the event that the well is being drilled or has been drilled at the time
17 of the **risk charge** notice, then a copy of all available logs, core analysis, production
18 data, and well test data from the well which has not been made public.

19 (ii) An election to participate must be exercised by mailing written notice
20 thereof by registered mail, return receipt requested, or other form of guaranteed
21 delivery and notification method, not including electronic communication or mail,
22 to the owner drilling or intending to drill the proposed well within thirty days after
23 receipt of the initial **risk charge** notice. Failure to give timely written notice of the
24 election to participate shall be deemed to be an election not to participate and the
25 owner shall be deemed a nonparticipating owner.

26 (iii) If the drilling of the proposed well is not commenced in accordance with
27 the initial **risk charge** notice within ninety days after receipt of the initial **risk**
28 **charge** notice, then the drilling owner shall send a supplemental **risk charge** notice
29 in order for the provisions of this Subsection to apply.

1 (b)(i) Should a notified owner elect not to participate in the risk and expense
2 of the unit well, substitute unit well, alternate unit well, or cross-unit well or should
3 such owner elect to participate in the risk and expense of the proposed well but then
4 fail to pay his share of the estimated drilling costs determined by the AFE timely or
5 fail to pay his share of actual reasonable drilling, testing, completing, equipping, and
6 operating expenses within sixty days of receipt of detailed invoices, then such owner
7 shall be deemed a nonparticipating owner, and the drilling owner shall, in addition
8 to any other available legal remedies to enforce collection of such expenses, be
9 entitled to own and recover out of net production proceeds from such well allocable
10 to the tract under lease to the nonparticipating owner such tract's allocated share of
11 the actual reasonable expenditures incurred in drilling, testing, completing,
12 equipping, and operating the well, including a charge for supervision, together with
13 a risk charge. For purposes of this Subparagraph, the payment of estimated drilling
14 costs shall be deemed timely if received by the drilling owner within sixty days of
15 the actual spudding of the well or the receipt by the notified owner of the risk
16 charge notice required by this Subsection, whichever is later. The risk charge for a
17 unit well, substitute unit well, or cross-unit well that will serve as the unit well or
18 substitute well for the unit shall be two hundred percent of such tract's allocated
19 share of the cost of drilling, testing, and completing the well, ~~exclusive of amounts~~
20 ~~the drilling owner remits to the nonparticipating owner for the benefit of the~~
21 ~~nonparticipating owner's royalty and overriding royalty owner.~~ The risk charge for
22 an alternate unit well or cross-unit well that will serve as an alternate unit well for
23 the unit shall be one hundred percent of such tract's allocated share of the cost of
24 drilling, testing, and completing such well, ~~exclusive of amounts the drilling owner~~
25 ~~remits to the nonparticipating owner for the benefit of the nonparticipating owner's~~
26 ~~royalty and overriding royalty owner.~~ For the purposes of this Section, "net
27 production proceeds" shall mean the proceeds from the sale or other disposition
28 of production, less severance or production taxes due thereon, and less any
29 amounts paid by the drilling owner to the nonparticipating owner for the

1 benefit of the lessor royalty owner and overriding royalty owner of the
 2 nonparticipating owner as provided in Subitems (ii)(aa) and (bb) of this
 3 Subparagraph.

4 (ii)(aa) During the recovery of the actual reasonable expenditures incurred
 5 in drilling, testing, completing, equipping, and operating the well, the charge for
 6 supervision, and the risk charge, the nonparticipating owner who has furnished the
 7 information set forth in Subitem (gg) of this Item, shall be entitled to receive from
 8 the drilling owner for the benefit of his lessor royalty owner that portion of the
 9 proceeds from the sale or other disposition of production, less severance or
 10 production taxes due thereon, due to the lessor royalty owner under the terms of
 11 the contract or agreement creating the royalty between the lessor royalty owner and
 12 the nonparticipating owner reflected of record at the time of the ~~well-proposal~~ risk
 13 charge notice.

14 (bb) In addition, during the recovery set forth in Subitem (aa) of this Item,
 15 the nonparticipating owner shall receive from the drilling owner for the benefit of the
 16 overriding royalty owner a portion of the proceeds from the sale or other
 17 disposition of production, less severance or production taxes due thereon, that
 18 is the lesser of: (I) the nonparticipating owner's total percentage of actual overriding
 19 royalty burdens associated with the existing lease or leases which cover each tract
 20 attributed to the nonparticipating owner reflected of record at the time of the ~~well~~
 21 ~~proposal~~ risk charge notice; or (II) the difference between the weighted average
 22 percentage of the total actual lessor royalty and overriding royalty burdens of the
 23 drilling owner's leasehold within the unit and the weighted average percentage of
 24 the total actual lessor royalty and overriding royalty burdens of the
 25 nonparticipating owner's ~~actual leasehold royalty burdens~~ within the unit reflected
 26 of record at the time of the ~~well-proposal~~ risk charge notice. Payment of the
 27 amount due shall be made in accordance with the terms of the contract or
 28 agreement creating the overriding royalty.

29 * * *

1 (dd) Nothing in this Section shall relieve any lessee of its obligations to pay,
2 from the commencement of production, any lessor royalty and overriding royalty due
3 under the terms of his lease; and other agreements during the ~~recovery of actual well~~
4 **recoupment of recoverable** costs and the risk charge, or shall relieve any lessee of
5 ~~his~~ **its** obligation to pay all **lessor** royalty and overriding royalty due under the terms
6 of his lease and other agreements after the ~~recovery of the actual well~~ **recoupment**
7 **of recoverable** costs and the risk charge. ~~Except as provided in this Paragraph, the~~
8 ~~drilling owner's obligation to pay the royalty and the overriding royalty to the~~
9 ~~nonparticipating owner in no way creates an obligation, duty, or relationship between~~
10 ~~the drilling owner and any person to whom the nonparticipating owner is liable to,~~
11 ~~contractually or otherwise.~~ **The lessor royalty owner and overriding royalty**
12 **owner shall follow the same procedure and have the same remedies against the**
13 **nonparticipating owner provided in Part 6 of Chapter 7 of Title 31 of the**
14 **Louisiana Revised Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the**
15 **Louisiana Revised Statutes of 1950.**

16 (ee) **Except as provided in this Paragraph, the drilling owner's obligation**
17 **to pay the lessor royalty and the overriding royalty to the nonparticipating**
18 **owner in no way creates an obligation, duty, or relationship between the drilling**
19 **owner and any person to whom the nonparticipating owner is liable,**
20 **contractually or otherwise.** In the event of nonpayment by the nonparticipating
21 owner of the **lessor** royalty and overriding royalty due, **and as a prerequisite to a**
22 **judicial demand for damages against the drilling owner,** the lessor royalty owner
23 and overriding royalty owner shall provide written notice of such failure to the
24 nonparticipating owner and drilling owner as a ~~prerequisite to a judicial demand for~~
25 ~~damages.~~ The lessor royalty owner and overriding royalty owner shall follow the
26 same procedure and have the same remedies **against the drilling owner, except**
27 **dissolution,** provided in Part 6 of Chapter 7 of Title 31 of the Louisiana Revised
28 Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the Louisiana Revised
29 Statutes of 1950, ~~respectively, against the nonparticipating owner and the drilling~~

1 owner. The written notice provided to the drilling owner by the lessor royalty
2 owner and overriding royalty owner shall include a true and complete copy of
3 the mineral lease or other agreement creating any lessor royalty or overriding
4 royalty. If the drilling owner provides sufficient proof of payment of the royalties
5 to the nonparticipating owner, then the lessor royalty owner and overriding royalty
6 owner shall have no cause of action against the drilling owner for nonpayment.

7 (ff) In the event of nonpayment by the drilling owner of the lessor royalty
8 and overriding royalty due to the nonparticipating owner for the benefit of the lessor
9 royalty owner and overriding royalty owner, and payment by the nonparticipating
10 owner of a good faith estimate of the lessor royalty and overriding royalty due, the
11 nonparticipating owner shall provide written notice of such failure to pay to the
12 drilling owner as a prerequisite to a judicial demand for damages. The drilling owner
13 shall have thirty days after receipt of the required notice within which to pay the
14 royalties due or to respond in writing by stating a reasonable cause for nonpayment.
15 If the drilling owner fails to make payment of the royalties or fails to state a
16 reasonable cause for nonpayment within this period, the court may award to the
17 nonparticipating owner as damages double the amount of royalties due, interest on
18 that sum from the date due, and a reasonable attorney fee regardless of the cause for
19 the original failure to pay royalties. If the drilling owner provides sufficient proof of
20 payment of the royalties to the nonparticipating owner, then the nonparticipating
21 owner shall have no cause of action against the drilling owner for nonpayment.

22 (gg) Each nonparticipating owner entitled to receive a portion of the
23 proceeds from the sale or other disposition of production as provided in
24 Subitems (aa) and (bb) of this Item shall furnish to the drilling owner both of
25 the following:

26 (I) A true and complete copy of the mineral lease or other agreement
27 creating any lessor royalty or overriding royalty for which the nonparticipating
28 owner is entitled to receive a portion of the proceeds from the sale or other
29 disposition of production.

1 **(II) A sworn statement of the ownership of the nonparticipating owner**
2 **as to each tract embraced within the unit in which the nonparticipating owner**
3 **has an interest and the amounts of the lessor royalty and overriding royalty**
4 **burdens for which the nonparticipating owner is entitled to receive a portion of**
5 **the proceeds from the sale or other disposition of production. In its discretion,**
6 **the nonparticipating owner may also provide to the drilling owner copies of any**
7 **title opinions in its possession on which the statement of ownership is based in**
8 **whole or in part.**

9 **(hh) Each nonparticipating owner who has received from the drilling**
10 **owner a portion of the proceeds from the sale or other disposition of production**
11 **for the benefit of a lessor royalty owner or overriding royalty owner, based only**
12 **on the information furnished pursuant to Subitem (gg) of this Item, shall**
13 **indemnify and hold harmless the drilling owner from and against any claims**
14 **asserted against the drilling owner related to any amounts paid to the**
15 **nonparticipating owner. The nonparticipating owner shall also restore to the**
16 **drilling owner any amounts paid by the drilling owner to the nonparticipating**
17 **owner in reliance on the information furnished pursuant to Subitem (gg) of this**
18 **Item, if and to the extent determined to be incorrect.**

19 **(ii) No change or division of the ownership of a nonparticipating owner**
20 **who is receiving from the drilling owner a portion of the proceeds from the sale**
21 **or other disposition of production shall be binding upon the drilling owner for**
22 **any purpose until such new nonparticipating owner acquiring any interest has**
23 **furnished the drilling owner at the drilling owner's address as reflected in the**
24 **records maintained by the office of conservation, with a certified copy of the**
25 **instrument or instruments constituting the chain of title from the original**
26 **nonparticipating owner.**

27 **(jj) In the event that the drilling owner secures a title opinion from a**
28 **licensed Louisiana attorney covering a tract of land in a unit burdened by a**
29 **mineral lease, or other agreement, that creates any lessor royalty or overriding**

1 royalty for which a nonparticipating owner is entitled to receive from the
2 drilling owner a portion of the proceeds from the sale or other disposition of
3 production, the actual reasonable costs incurred by the drilling owner in
4 obtaining the title examination and the title opinion shall be chargeable as a unit
5 operating cost recoverable by the drilling owner out of the tract's allocable
6 share of net production proceeds.

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

17 (iv)(aa) For purposes of this Section, the following definitions shall
18 apply:

19 (I) "Deepening" means an operation whereby an existing wellbore
20 serving as a unit well, alternate unit well, substitute unit well, or cross-unit well
21 is extended to a point within the same unit and unitized interval beyond its
22 previously drilled total measured depth.

23 (II) "Extension" means an operation related to a horizontal well
24 whereby a lateral is drilled in the same unitized interval to a greater total
25 measured depth or extent than the lateral was drilled pursuant to a previous
26 proposal.

27 (III) "Recompletion" means an operation to attempt a completion in a
28 portion of the unitized interval in the existing wellbore different from the initial
29 completion in the unitized interval.

1 **(IV) "Rework" means an operation conducted in the wellbore after it is**
2 **initially completed in the unitized interval in a good faith effort to secure,**
3 **restore, or improve production in a stratum within the unitized interval that**
4 **was previously open to production in that wellbore, including acidizing,**
5 **re-perforating, hydraulic fracturing and re-fracturing, sand or paraffin**
6 **removal, tubing repair or replacement, casing repair or replacement, squeeze**
7 **cementing, setting bridge plugs, and any essential preparatory steps. Rework**
8 **does not include routine maintenance, repair, or replacement of downhole**
9 **equipment such as rods, pumps, packers, or other mechanical devices.**

10 **(V) "Sidetrack" means the intentional deviation of an existing wellbore**
11 **serving as a unit well, alternate unit well, or substitute unit well from its actual**
12 **or permitted bottom hole location within that unit and unitized interval to a**
13 **different bottom hole location within the same unit and unitized interval.**

14 **(VI) "Subsequent unit operation" means a recompletion, rework,**
15 **deepening, sidetrack, or extension conducted within the unitized interval for a**
16 **unit or units created under R.S. 30:9(B).**

17 **(VII) "Unitized interval" means the subsurface interval defined in the**
18 **office of conservation order creating the unit or units that the existing wellbore**
19 **is serving as a unit well, alternate unit well, substitute unit well, or cross-unit**
20 **well.**

21 **(bb) Any owner of a well described in Subparagraph (a) of this**
22 **Paragraph who is conducting, intends to conduct, or has conducted a**
23 **subsequent unit operation on such well may notify all other owners in the unit**
24 **of the conducting or the intent to conduct such operation in the form and**
25 **manner of the risk charge notice described in Subparagraph (a) of this**
26 **Paragraph, and in that event, all of the provisions of this Paragraph shall be**
27 **applicable to that subsequent unit operation to the same extent, and in the same**
28 **manner, that they would apply to the drilling of a new well, subject to the**
29 **following provisions.**

1 (cc) The risk charge for any subsequent unit operation shall be one
2 hundred percent of the tract's allocated share of the actual reasonable
3 expenditures incurred in conducting the subsequent unit operation, including
4 a charge for supervision, regardless of whether the wellbore on which such
5 operations were conducted is a unit well, alternate unit well, substitute unit well,
6 or cross-unit well.

7 (dd) The notice to be provided by the drilling owner to the other owners
8 in the unit pursuant to Subitem (bb) of this Item shall contain:

9 (I) A detailed description identifying the well to which the subsequent
10 unit operation relates, the work associated therewith, and the new location and
11 objective depth of the well if changed as a result of such work.

12 (II) A copy of the order of the commissioner creating the drilling unit to
13 which the subsequent unit operation relates.

14 (III) An AFE that shall include a detailed estimate, or the actual amount,
15 of the cost of conducting the subsequent unit operation and that is dated within
16 one hundred twenty days of the date of mailing of the notice.

17 (IV) An estimate of the notified owner's approximate percentage of well
18 participation.

19 (V) A copy of all available logs, core analysis, production data, and well
20 test data with respect to the well that has not been made public.

21 (ee) If, on the date of the notice of the subsequent unit operation, there
22 are still amounts uncollected on a risk charge from a nonparticipating owner
23 for the drilling of, or a previous operation on, the wellbore for which the notice
24 is sent, the drilling owner may recoup a risk charge from that nonparticipating
25 owner on the costs of the noticed subsequent unit operation only if the drilling
26 owner sends that nonparticipating owner a notice of the subsequent unit
27 operation. The notice may offer that nonparticipating owner the opportunity to
28 participate in the subsequent unit operation upon payment to the drilling
29 owner, within sixty days of the date of receipt of the notice, of the

1 production, then the unit operator shall pay to such party or parties such tract's pro
 2 rata share of the proceeds of the sale or other disposition of production within one
 3 hundred eighty days of such sale or other disposition.

4 B. Should the owners of separate tracts embraced within a drilling unit fail
 5 to agree upon the pooling of the tracts and the drilling of a well on the unit, and
 6 should it be established by final and unappealable judgment of court that the
 7 commissioner is without authority to require pooling as provided for in Subsection
 8 **A of this Section**, then, subject to all other applicable provisions of this Chapter, the
 9 owner of each tract embraced within the drilling unit may drill thereon. The
 10 allowable production therefrom shall be such proportion of the allowable for the full
 11 unit as the area of the separately owned tract bears to the full drilling unit.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Tyler S. McCloud.

DIGEST

SB 59 Original 2021 Regular Session Hensgens

Present law provides for the assessment of the risk charge against nonparticipating owners in the cost of a unit well, substitute well, alternate unit well, or cross-unit well for a drilling unit.

Proposed law provides for terminology and technical corrections to present law and adds a definition of "net production proceeds".

Present law (R.S. 30:10(A)(2)(b)(ii)(aa) and (bb)) requires the drilling owner to pay certain amounts to the nonparticipating owner for the benefit of his lessor royalty owner and overriding royalty owner.

Proposed law provides for the manner in which such payments are made and the formulas used for calculating them. Proposed law also imposes a requirement that the nonparticipating owner provide certain information to the drilling owner.

Present law (R.S. 30:10(A)(2)(b)(ii)(dd) and (ee)) sets forth the obligations owed by the lessee and drilling owner with respect to the payment of any lessor royalty and overriding royalty due.

Proposed law provides for terminology used in present law and the applicable procedures and remedies available to the lessor royalty owner and overriding royalty owner against the nonparticipating owner and the drilling owner. Proposed law further provides that in the event of nonpayment by the nonparticipating owner, the notice provided to the drilling owner must include a true and complete copy of the mineral lease or other document creating the royalty.

Present law (R.S. 30:10(A)(2)(b)(ii)(ff)) provides with respect to nonpayment by the drilling owner of the lessor and overriding royalties and the payment of these amounts by the nonparticipating owner.

Proposed law provides for terminology used in present law and provides that payment by the nonparticipating owner may be a good faith estimate of the royalties due.

Proposed law (R.S. 30:10(A)(2)(b)(ii)(gg)) requires the nonparticipating owner to furnish certain information to the drilling owner. Proposed law further states that the nonparticipating owner may also provide copies of any title opinions in its possession.

Proposed law (R.S. 30:10(A)(2)(b)(ii)(hh)) requires the nonparticipating owner to indemnify and hold the drilling owner harmless against claims related to amounts paid based on information provided by the nonparticipating owner.

Proposed law (R.S. 30:10(A)(2)(b)(ii)(ii)) provides that no change in the ownership of a nonparticipating owner shall be binding upon a drilling owner until a certified copy of the instrument constituting the chain of title has been furnished to the drilling owner.

Proposed law (R.S. 30:10(A)(2)(b)(ii)(jj)) provides that the actual reasonable costs incurred by the drilling owner in obtaining a title examination and title opinion shall be chargeable as a unit operating cost and recoverable by the drilling owner.

Present law (R.S. 30:10(A)(2)(b)(iii)) provides with respect to the nonparticipating owner's obligation to bear his tract's share of the expenditures incurred in drilling, testing, completing, equipping, and operating the unit well.

Proposed law provides for terminology and revises present law to include subsequent unit operations.

Proposed law (R.S. 30:10(A)(2)(a)(b)(iv)) provides with respect to subsequent unit operations, setting forth definitions, required notices, the applicable risk charge, and other related provisions.

Effective August 1, 2021.

(Amends R.S. 30:10(A)(2)(a)(i)(intro para) and (aa) and (ee), (ii), and (iii), (b)(i), (ii)(aa), (bb), (dd), (ee), and (ff), and (iii), (e)(ii), (h), and (i) and (3) and (B); adds R.S. 30:10(A)(2)(b)(ii)(gg), (hh), (ii), and (jj) and (iv))