## 2023 Regular Session

## HOUSE BILL NO. 590

## BY REPRESENTATIVE BAGLEY

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

MINERALS: Provides for the payment of royalties for a nonparticipating owner's lessor royalty owner and overriding royalty owner

1	AN ACT		
2	To amend and reenact R.S. 30:10(A)(2)(a)(ii) and (b)(i), (ii)(aa) through (cc) and (ee)		
3	through (jj), and (iii), relative to royalty payments in drilling units; to provide		
4	relative to participating and nonparticipating owners in unit wells; to provide for		
5	information required to be furnished; to provide for indemnification; to provide for		
6	changes of ownership; to provide for the payment of royalties; and to provide for		
7	related matters.		
8	Be it enacted by the Legislature of Louisiana:		
9	Section 1. R.S. 30:10(A)(2)(a)(ii) and (b)(i), (ii)(aa) through (cc) and (ee) through		
10	(jj), and (iii) are hereby amended and reenacted to read as follows:		
11	§10. Agreements for drilling units; pooling interests; terms and conditions; expenses		
12	А.		
13	* * *		
14	(2)		
15	* * *		
16	(a)		
17	* * *		
18	(ii) An election to participate must shall be exercised by mailing written		
19	notice thereof by registered mail, return receipt requested, or other form of		
20	guaranteed delivery and notification method, not including electronic communication		

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1 or mail, to the owner drilling or intending to drill the proposed well within thirty 2 days after receipt of the initial risk charge notice. If required by the drilling owner 3 in accordance with Subitem (i)(ff) of this Subparagraph, such an election to 4 participate shall include payment of the notified owner's share of costs as set forth 5 in the AFE. Failure to give timely written notice of the election to participate or, if 6 required by the drilling owner in accordance with Subitem (i)(ff) of this 7 Subparagraph, failure to make timely delivery of such payment of the notified 8 owner's share of the costs as set forth in the AFE, shall be deemed to be an election 9 not to participate and the owner shall be deemed a nonparticipating owner. An 10 owner that elects to participate in the risk and expense of the proposed well but then 11 fails to pay his share of actual reasonable drilling, testing, completing, equipping, 12 and operating expenses within sixty days of receipt of detailed invoices shall also be deemed a nonparticipating owner. In cases where some or all of the AFE costs are 13 14 estimated, financial adjustments shall be made between the drilling owner and the 15 participating owners within sixty days of receipt of detailed invoices in order to 16 account for the difference between any cost estimates and actual costs.

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18 (b)(i) Should a notified owner elect not to participate, or be deemed a 19 nonparticipating owner, in the risk and expense of the unit well, substitute unit well, 20 alternate unit well, or cross-unit well or should such owner elect to participate in the 21 risk and expense of the proposed well but, except where the drilling owner has 22 required payment with the election in accordance with Subitem (a)(i)(ff) of this 23 Paragraph, then fail to pay his share of the estimated drilling costs determined by the 24 AFE timely or fail to pay his share of actual reasonable drilling, testing, completing, 25 equipping, and operating expenses within sixty days of receipt of detailed invoices, 26 then such owner shall be deemed a nonparticipating owner, and, the drilling owner 27 shall, in addition to any other available legal remedies to enforce collection of such 28 expenses, be entitled to own and recover out of production from such well allocable 29 to the tract under lease to the nonparticipating owner such tract's allocated share of

1 the actual reasonable expenditures incurred in drilling, testing, completing, 2 equipping, and operating the well, including a charge for supervision, together with 3 a risk charge. Should the drilling owner require payment with the election, failure 4 to include payment in full with the election in accordance with Subitem (a)(i)(ff) of 5 this Paragraph, regardless of the election, shall be deemed an election not to 6 Should a notified owner elect to participate by satisfying the participate. 7 requirements of this Paragraph and subsequently fail to pay any actual costs that 8 were not previously paid by that owner as set forth in the AFE, the drilling owner, 9 in addition to any other available legal remedies, shall be entitled to recover such 10 unpaid costs out of production of such well. For purposes of this Subparagraph, and 11 except where the drilling owner has required payment with the election in 12 accordance with Subitem (a)(i)(ff) of this Paragraph, the payment of estimated 13 drilling costs shall be deemed timely if received by the drilling owner within sixty 14 days of the actual spudding of the well or the receipt by the notified owner of the 15 notice required by this Subsection, whichever is later. The risk charge for a unit 16 well, substitute unit well, or cross-unit well that will serve as the unit well or 17 substitute well for the unit shall be two hundred percent of such tract's allocated 18 share of the cost of drilling, testing, and completing the well, exclusive of amounts 19 the drilling owner remits to the nonparticipating owner for the benefit of the 20 nonparticipating owner's lessor royalty owner and overriding royalty owner. The 21 risk charge for an alternate unit well or cross-unit well that will serve as an alternate 22 unit well for the unit shall be one hundred percent of such tract's allocated share of 23 the cost of drilling, testing, and completing such well, exclusive of amounts the 24 drilling owner remits to the nonparticipating owner for the benefit of the 25 nonparticipating owner's lessor royalty owner and overriding royalty owner.

(ii)(aa) During the recovery of the actual reasonable expenditures incurred
in drilling, testing, completing, equipping, and operating the well, the charge for
supervision, and the risk charge, <u>if</u> the nonparticipating owner <del>who</del> has furnished the
information set forth in Subitem (gg) of this Item, the drilling owner shall remit to

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1 the nonparticipating owner's shall be entitled to receive from the drilling owner for 2 the benefit of his lessor royalty owner that portion of the proceeds from the sale or 3 other disposition of production due to the lessor royalty owner under the terms of the 4 contract or agreement creating the royalty between the lessor royalty owner and the 5 nonparticipating owner reflected of record at the time of the risk charge notice.

6 (bb) In addition, during the recovery set forth in Subitem (aa) of this Item, 7 the nonparticipating owner shall receive from the drilling owner for the benefit of the 8 drilling owner shall remit to the overriding royalty owner a portion of the proceeds 9 from the sale or other disposition of production that is the lesser of: (I) the 10 nonparticipating owner's total percentage of actual overriding royalty burdens 11 associated with the existing lease or leases which cover each tract attributed to the 12 nonparticipating owner reflected of record at the time of the risk charge notice; or 13 (II) the difference between the weighted average percentage of the total actual lessor 14 royalty and overriding royalty burdens of the drilling owner's leasehold within the 15 unit and the weighted average percentage of the total actual lessor royalty of the 16 nonparticipating owner's leasehold within the unit reflected of record at the time of 17 the risk charge notice. Payment of the amount due shall be made in accordance with 18 the terms of the contract or agreement creating the overriding royalty.

19 (cc) The share that is to be received by the nonparticipating owner on behalf
20 of its lessor royalty owner and overriding royalty owner shall be reported by the
21 drilling owner in accordance with Part 2-B of Chapter 13 of Title 31 of the Louisiana
22 Revised Statutes of 1950.

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(ee) Except as provided in this Paragraph, the drilling owner's obligation to
pay the lessor royalty and the overriding royalty to the nonparticipating owner in no
way creates an obligation, duty, or relationship between the drilling owner and any
person to whom the nonparticipating owner is liable, contractually or otherwise. In
the event of nonpayment by the nonparticipating owner of the lessor royalty and or
overriding royalty due, and as a prerequisite to a judicial demand for damages

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1 against the drilling owner, the lessor royalty owner and or overriding royalty owner 2 shall provide written notice of such failure to the nonparticipating owner and drilling 3 owner. The lessor royalty owner and overriding royalty owner shall follow the same 4 procedure and have the same remedies against the drilling owner, except dissolution, 5 provided in Part 6 of Chapter 7 of Title 31 of the Louisiana Revised Statutes of 1950 6 or Part 2-A of Chapter 13 of Title 31 of the Louisiana Revised Statutes of 1950. The 7 written notice provided to the drilling owner by the lessor royalty owner or 8 overriding royalty owner shall include a true and complete, or redacted, copy of the 9 mineral lease or other agreement creating any lessor royalty or overriding royalty. 10 If the drilling owner provides sufficient proof of payment of the royalties to the 11 nonparticipating owner, then the lessor royalty owner and overriding royalty owner 12 shall have no cause of action against the drilling owner for nonpayment.

13 (ff) In the event of nonpayment by the drilling owner of the lessor royalty 14 and or overriding royalty due to the nonparticipating owner for the benefit of the 15 lessor royalty owner and overriding royalty owner, and payment by the 16 nonparticipating owner of a good faith estimate of the lessor royalty and overriding 17 royalty due, the nonparticipating owner shall provide written notice of such failure 18 to pay to the drilling owner as a prerequisite to a judicial demand for damages, the 19 nonparticipating owner shall provide the drilling owner written notice of the 20 nonparticipating owner's payment of a good faith estimate of the royalties. The 21 drilling owner shall have thirty days after receipt of the required notice within which 22 to reimburse the nonparticipating owner and pay the any remaining royalties due or 23 to respond in writing by stating a reasonable cause for nonpayment. If the drilling 24 owner fails to make payment of the royalties or fails to state a reasonable cause for 25 nonpayment within this period, the court may award to the nonparticipating owner 26 as damages double the amount of royalties due, interest on that sum from the date 27 due, and a reasonable attorney fee regardless of the cause for the original failure to 28 pay royalties. If the drilling owner provides sufficient proof of payment of the 1

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royalties to the nonparticipating owner, then the nonparticipating owner shall have no cause of action against the drilling owner for nonpayment.

3 (gg) Each nonparticipating owner entitled to receive a portion of the 4 proceeds from the sale or other disposition of production as provided in Subitems 5 (aa) and (bb) of this Item shall furnish to the drilling owner both of the following: 6 Any nonparticipating owner may elect to have royalty payments made by the drilling 7 owner from the proceeds of the sale or other disposition of production in accordance 8 with this Item by furnishing the drilling owner both of the following:

9 (I) A true and complete, or redacted, copy of the mineral lease or other 10 agreement creating any lessor royalty or overriding royalty for which the 11 nonparticipating owner is entitled to receive a portion of the proceeds from the sale 12 or other disposition of production; provided that a redacted copy may be submitted 13 in lieu of a complete copy, if it contains in full the provisions dealing with the 14 determination and calculation of the portion of proceeds from the sale or other 15 disposition of production due to the lessor or overriding royalty owner.

16 (II) A sworn statement of the ownership of the nonparticipating owner as to 17 each tract embraced within the unit in which the nonparticipating owner has an 18 interest and the amounts of the lessor royalty and overriding royalty burdens for 19 which the nonparticipating owner is entitled to receive a portion of the proceeds from 20 the sale or other disposition of production. A sworn statement of the 21 nonparticipating owner's interest in any tracts within the unit and the amounts of the 22 lessor royalty and overriding royalty burdens for which the nonparticipating owner 23 is liable. In its discretion, the nonparticipating owner may also provide to the 24 drilling owner copies of any title opinions in its possession or portions thereof on 25 which the statement of ownership is based in whole or in part; however, doing so 26 shall not relieve the nonparticipating owner of its obligation to provide the sworn 27 statement described in this Subsubitem.

28 (hh) Each nonparticipating owner who has received from the drilling owner 29 a portion of the proceeds from the sale or other disposition of production for the

1 benefit of a lessor royalty owner or overriding royalty owner, based only on the information furnished pursuant to Subitem (gg) of this Item, shall indemnify and 2 3 hold harmless the drilling owner from and against any claims asserted against the 4 drilling owner related to any amounts paid to the nonparticipating owner. A drilling owner making royalty payments consistent with the information furnished by the 5 6 nonparticipating owner pursuant to Subitem (gg) of this Item shall be indemnified 7 and held harmless by the nonparticipating owner from and against any claims 8 asserted against the drilling owner related to the amount of any payment made to the 9 lessor royalty or overriding royalty owner. The nonparticipating owner shall also 10 restore to the drilling owner any amounts paid by the drilling owner to the 11 nonparticipating owner lessor royalty or overriding royalty owner in reliance on the 12 information furnished pursuant to Subitem (gg) of this Item, if and to the extent 13 determined to be incorrect.

14 (ii) No change or division of the ownership of a nonparticipating owner who 15 is receiving a portion of the proceeds from the sale or other disposition of production 16 from the drilling owner shall be binding upon the drilling owner for the purpose of 17 paying to the nonparticipating owner for the benefit of its lessor royalty owner or 18 overriding royalty owner, under Subitems (aa) and (bb) of this Item, until such new 19 nonparticipating owner acquiring any interest has furnished the drilling owner, at the 20 drilling owner's address as reflected in the records maintained by the office of 21 conservation, with a certified copy of the instrument or instruments constituting the 22 chain of title from the original nonparticipating owner. No change or division of 23 ownership of a lessor royalty or overriding royalty shall be binding upon the drilling 24 owner for the purpose of remitting royalty payments under this Item until the drilling 25 owner has been furnished, at the address of record with the office of conservation, 26 with written notice of the change in ownership and a certified copy of any instrument 27 required to show chain of title from the original royalty owner receiving payments 28 under this Item.

1	(jj) In the event that the drilling owner secures a title opinion from a licensed
2	Louisiana attorney covering a tract of land in a unit burdened by a mineral lease, or
3	other agreement, that creates any lessor royalty or overriding royalty for which a
4	nonparticipating owner is entitled to have the drilling owner pay out of his receive
5	from the drilling owner a portion of the proceeds from the sale or other disposition
6	of production, the actual reasonable costs incurred by the drilling owner in obtaining
7	the title examination and the title opinion may, at the drilling owner's sole discretion,
8	be chargeable as a cost recoverable by the drilling owner out of the tract's allocable
9	share of production. In such case, the drilling owner shall provide the
10	nonparticipating owner applicable excerpts of such title opinion.

11 (iii) Any owner not notified shall bear only his tract's allocated share of the 12 actual reasonable expenditures incurred in drilling, testing, completing, equipping, 13 and operating the unit well or in connection with any subsequent unit operation, 14 including a charge for supervision, which share shall be subject to the same 15 obligation and remedies and rights to own and recover out of production in favor of 16 the drilling owner as provided in this Subsection. The drilling owner shall deliver 17 to the owner not notified, for the benefit of his lessor royalty owner or overriding 18 royalty owner of the owner not notified, the proceeds attributable to the lessor 19 royalty and overriding royalty burdens as described in this Section.

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# DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HR	590	Original
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2023 Regular Session

Bagley

Abstract: Specifies that where owners in a drilling unit choose not to participate in the costs of a unit well, royalty payments must be paid directly from the drilling owner to the royalty owner.

<u>Present law</u> provides that in a drilling unit, during the period of recoupment of costs and the risk charge, the drilling owner shall pay to the nonparticipating owners for the benefit of their lessor royalty and overriding royalty owners, the amount of royalties due under a lease or other agreement between the nonparticipating owner and its lessor royalty and/or overriding royalty owners. Specifies that the nonparticipating owner is supposed to then pay

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the royalties due in accordance with the lease or other agreement creating the royalty interest.

<u>Proposed law</u> requires that, during the recoupment of costs and risk charge, the drilling owner must make these royalty payments directly to the lessor royalty owner and overriding royalty owner instead of through the nonparticipating owner.

<u>Present law</u> imposes a requirement that the nonparticipating owner provide certain information to the drilling owner regarding royalties. <u>Proposed law</u> retains present law.

<u>Present law</u> provides that the nonparticipating owner is not relieved of any obligation to pay any lessor royalty and overriding royalty during or after the recoupment of recoverable costs and the risk charge. <u>Proposed law</u> retains <u>present law</u>.

(Amends R.S. 30:10(A)(2)(a)(ii) and (b)(i), (ii)(aa) through (cc) and (ee) through (jj), and (iii))