

2024 Regular Session

SENATE BILL NO. 459

BY SENATOR SEABAUGH

MINERALS. Provides relative to remediation of oilfield sites and exploration. (8/1/24)

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AN ACT

To amend and reenact R.S. 30:29(C)(1), (3)(a), (5), and (6), (D)(2), (3), (E)(1), (H)(1), (I)(2) and (4), (M)(1)(c) and 29.1 and to repeal R.S. 30:29(M)(1)(d), relative to the evaluation or remediation of oilfield sites and exploration and production sites; to provide for responsibility for environmental damage; to provide for regulatory standards; to provide for exceptions; to provide for remediation plans; to provide for appeals; to provide for payments; to provide for attorney fees; to provide for judicial remedies; to provide for definitions; to provide for damages; to provide for notification; to provide for environmental testing; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:29(C)(1), (3)(a), (5), and (6), (D)(2), (3), (E)(1), (H)(1), (I)(2) and (4), (M)(1)(c) and 29.1 are hereby amended and reenacted to read as follows:

§29. Remediation of oilfield sites and exploration and production sites

* * *

C.(1) If at any time during the proceeding a party admits ~~liability~~ **responsibility** for environmental damage or the finder of fact determines that environmental damage exists and determines the party or parties who caused the

1 damage or who are otherwise legally responsible therefor, the court shall order the
2 party or parties who admit responsibility or whom the court finds legally responsible
3 for the damage to develop a plan or submittal for the evaluation or remediation to
4 applicable regulatory standards of the contamination that resulted in the
5 environmental damage. The court shall order that the plan be developed and
6 submitted to the department and the court within a time that the court determines is
7 reasonable and shall allow the plaintiff or any other party at least thirty days from the
8 date each plan or submittal was made to the department and the court to review the
9 plan or submittal and provide to the department and the court a plan, comment, or
10 input in response thereto. The department shall consider any plan, comment, or
11 response provided timely by any party. The department shall submit to the court a
12 schedule of estimated costs for review of the plans or submittals of the parties by the
13 department and the court shall require the party admitting responsibility or the party
14 found legally responsible by the court to deposit in the registry of the court sufficient
15 funds to pay the cost of the department's review of the plans or submittals. Any plan
16 or submittal shall include an estimation of cost to implement the plan.

17 * * *

18 (3)(a) The department shall use and apply ~~the~~ applicable regulatory standards
19 **including but not limited to the Risk Evaluation and Corrective Action Plan,**
20 **known as RECAP, as well as any other exceptions to Statewide Order 29-B,** in
21 approving or structuring a plan that the department determines to be the most
22 feasible plan to evaluate or remediate the environmental damage. **In any action**
23 **governed by the provisions of this statute, the department shall not require**
24 **landowner consent to apply exceptions, including RECAP, to the application of**
25 **Statewide Order 29-B.**

26 * * *

27 (5) The court shall adopt the plan approved by the department **as the most**
28 **feasible plan,** unless a party proves by a preponderance of the **clear and convincing**
29 evidence that **the plan approved by the department is arbitrary or capricious**

1 Any such bond shall be valid through completion of the remediation. In lieu of
2 paying funds into the registry of the court, the responsible party may at its
3 option pay directly the cost of implementing the most feasible plan and post a
4 bond in an amount equal to the total cost of the most feasible plan as provided
5 by and in accordance with the procedures set forth for the posting of suspensive
6 appeal bonds. If a responsible party directly pays the cost of implementing the
7 most feasible plan, then the responsible party shall provide to the district court
8 a summary of costs paid each quarter until the most feasible plan is fully
9 implemented or the district court orders that no further summaries are
10 required.

11 (3) The court shall issue such orders as may be necessary to ensure that any
12 such funds are actually expended in a manner consistent with the adopted and final
13 most feasible plan for the evaluation or remediation of the environmental damage
14 for which the award or payment is made.

15 * * *

16 E.(1) In any civil action in which a party is responsible for damages or
17 payments for the evaluation or remediation of environmental damage, a party
18 providing evidence, in whole or in part, upon which the judgment is based shall be
19 entitled to recover from the party or parties admitting responsibility or the party or
20 parties found legally responsible by the court, in addition to any other amounts to
21 which the party may be entitled, all costs and reasonable attorney fees incurred
22 in the trial court and the department that were attributable to producing that
23 portion of the evidence that directly relates to the establishment of environmental
24 damage, including; but not limited to; expert witness fees, environmental evaluation,
25 investigation, and testing, and the cost of developing a plan of evaluation or
26 remediation, and reasonable attorney fees incurred in the trial court and the
27 department. Upon adoption of the most feasible plan by the trial court, a party
28 admitting responsibility, or a party found to be legally responsible for
29 environmental damage shall not be responsible for any further attorney fees or

1 costs, including but not limited to expert witness fees, environmental evaluation,
 2 monitoring, investigation, and testing. A defendant shall be entitled to recover
 3 from the plaintiff reasonable attorney fees and all costs including expert witness
 4 fees, environmental evaluation, monitoring, investigation, and testing, if that
 5 defendant is found at trial not to have caused or is otherwise not legally
 6 responsible for the alleged environmental damage.

7 * * *

8 H.(1) This Section shall not preclude an owner of land from pursuing a
 9 judicial remedy or receiving a judicial award for private claims suffered as a result
 10 of environmental damage, except as otherwise provided in this Section. Any award
 11 granted in connection with the judgment for additional remediation ~~in excess of the~~
 12 ~~requirements of the feasible plan adopted by the court~~ **required by an express**
 13 **contractual provision or for nonremediation damages** is not required to be paid
 14 into the registry of the court. **Any award granted in connection with the judgment**
 15 **for damages awarded to fund the most feasible plan shall be paid into the**
 16 **registry of the court.**

17 * * *

18 I. For the purposes of this Section, the following terms shall have the
 19 following meanings:

20 * * *

21 (2) "Environmental damage" shall mean any actual or potential impact,
 22 damage, or injury to environmental media ~~caused by contamination~~ resulting from
 23 activities associated with oilfield sites or exploration and production sites.
 24 Environmental media shall include but not be limited to soil, surface water, ground
 25 water, or sediment.

26 * * *

27 (4) "**Most** Feasible Plan" means the most reasonable plan which addresses
 28 environmental damage in conformity with the requirements of Article IX, Section
 29 1 of the Constitution of Louisiana to protect the environment, public health, safety

1 and welfare, and is in compliance with the specific relevant and applicable standards
 2 and regulations promulgated by a state agency in accordance with the Administrative
 3 Procedure Act in effect at the time of ~~clean up to remediate contamination to~~
 4 **evaluate or, if necessary, remediate, environmental damage** resulting from
 5 oilfield or exploration and production operations or waste.

6 * * *

7 M.(1) In an action governed by the provisions of this Section, damages may
 8 be awarded only for the following:

9 * * *

10 (c) ~~The cost of evaluating, correcting or repairing environmental damage~~
 11 ~~upon a showing that such damage was caused by unreasonable or excessive~~
 12 ~~operations based on rules, regulations, lease terms and implied lease obligations~~
 13 ~~arising by operation of law, or standards applicable at the time of the activity~~
 14 ~~complained of, provided that such damage is not duplicative of damages awarded~~
 15 ~~under Subparagraphs (a) or (b) of this Paragraph.~~ **Economic loss damages may be**
 16 **recovered if proven by clear and convincing evidence. All other nonremediation**
 17 **damages shall be limited to the market value of the property impacted by**
 18 **environmental damage. The fair market value of the property at issue is based**
 19 **on the value of the property as if it has no environmental damage.**

20 * * *

21 §29.1. Landowner notification of environmental testing

22 If the owner or operator of any oilfield site or exploration and production
 23 (E&P) site covered by the provisions of R.S. 30:29 performs any environmental
 24 testing on land owned by another person, results of such environmental testing shall
 25 be provided to the owner or owners of the land within ~~ten~~ **thirty** days from receipt
 26 of such results by the owner or operator, ~~regardless of whether or not~~ **if no** suit has
 27 been filed by the owner or owners of the land. The operator or owner or owners of
 28 land or anyone acting on their behalf who perform any environmental testing on land
 29 that is an oilfield or exploration and production (E&P) site shall provide the results

1 of such testing to the department within ~~ten~~ **thirty** days of receipt.

2 Section 2. R.S. 30:29(M)(1)(d) is hereby repealed.

3 Section 3. The provisions of this Act shall apply to any case in which the court on
4 or before December 31, 2024, has not approved a plan as the most feasible plan or a party
5 has not made a limited admission.

The original instrument was prepared by Jacob Wilson. The following digest, which does not constitute a part of the legislative instrument, was prepared by Hanna Gettys.

DIGEST

SB 459 Engrossed

2024 Regular Session

Seabaugh

Present law provides for the procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the jurisdiction of the Dept. of Energy and Natural Resources.

Present law provides that if at any time during the proceeding a party admits liability for environmental damage or it is determined that a party is responsible the court shall order the responsible party to develop a plan for evaluation or remediation in accordance with applicable regulatory standards.

Proposed law changes admission of liability to admission of responsibility but otherwise retains present law.

Present law provides that the department shall use and apply the applicable regulatory standards in approving or structuring a plan that the department determines to be the most feasible plan to evaluate or remediate the environmental damage.

Proposed law specifies that applicable regulatory standards include but are not limited to the Risk Evaluation and Corrective Action Plan (RECAP) as well as any other exceptions to Statewide Order 29-B.

Proposed law further provides that in any action governed by the provisions of present law the department shall not require landowner consent to apply exceptions, including RECAP, to the application of Statewide Order 29-B.

Present law requires the court to adopt the plan approved by the department, unless a party proves by a preponderance of the evidence that another plan is a more feasible plan to adequately protect the environment and the public health, safety, and welfare.

Proposed law requires the court to adopt the plan approved by the department as the most feasible plan unless proven that the plan is arbitrary or capricious by clear and convincing evidence and that another plan was timely provided to the department.

Proposed law requires the court to enter a judgment adopting the most feasible plan with written reasons assigned and for the trial to be stayed from the filing of a limited admission until the adoption of the most feasible plan.

Present law provides that any appeal conducted under present law is a de novo review and heard with preference on an expedited basis.

Proposed law requires that any appeal of a judgment adopting the most feasible plan shall be heard with preference on an expedited basis.

Present law provides that the court may allow any funds to be paid into the registry of the court to be paid in increments as necessary to fund the evaluation or remediation and implementation of any plan or submittal adopted by the court and that in any instance in which the court allows the funds to be paid in increments, whether or not an appeal is taken, the court shall require the posting of a bond in accordance with the procedures set forth for the posting of suspensive appeal bonds. Further provides any such bond be valid through completion of the remediation.

Proposed law retains present law and further provides the responsible party may, at its option, pay directly the cost of implementing the most feasible plan and post a bond in an amount equal to the total cost of the most feasible plan as provided by and in accordance with the procedures set forth for the posting of suspensive appeal bonds in lieu of paying funds into the registry of the court.

Proposed law provides that if a responsible party directly pays the cost of implementing the most feasible plan, then the responsible party shall provide to the district court a summary of costs paid each quarter until the most feasible plan is fully implemented or the district court orders that no further summaries are required.

Present law provides that a party providing evidence upon which the judgment is based in any civil action in which a party is responsible for damages or payments for the evaluation or remediation of environmental damage is entitled to recover all costs attributable to producing the portion of evidence directly related to the establishment of environmental damage from the liable party.

Proposed law retains present law and further provides the party providing evidence is also entitled to recover reasonable attorney fees incurred in trial court.

Proposed law further provides that upon adoption of the most feasible plan by the trial court, a party admitting responsibility, or a party found to be legally responsible for environmental damage shall not be responsible for any further attorney fees or costs, including but not limited to expert witness fees, environmental evaluation, monitoring, investigation, and testing.

Proposed law further provides that a defendant shall be entitled to recover from the plaintiff reasonable attorney fees and all costs including expert witness fees, environmental evaluation, monitoring, investigation, and testing, if that defendant is found at trial not to have caused or is otherwise not legally responsible for the alleged environmental damage.

Present law provides that any award granted in connection with the judgment for additional remediation in excess of the requirements of the feasible plan adopted by the court is not required to be paid into the registry of the court.

Proposed law provides that any award granted in connection with the judgment for additional remediation required by an express contractual provision or for nonremediation damages is not required to be paid into the registry of the court.

Proposed law further requires that any award granted in connection with the judgment for damages awarded to fund the most feasible plan be paid into the registry of the court.

Present law defines "Environmental damage" as any impact, damage, or injury to soil, water, or sediment caused by contamination from activities associated with oilfield sites or exploration and production sites.

Proposed law retains present law but removes the requirement that damage or injury be caused by contamination.

Present law defines "Feasible Plan" as the most reasonable plan which addresses environmental damage in conformity with the requirements of present law to protect the environment, public health, safety, and welfare, and is in compliance with the specific relevant and applicable standards and regulations promulgated by a state agency in accordance with the Administrative Procedure Act in effect at the time of clean up to remediate contamination resulting from oilfield or exploration and production operations or waste.

Proposed law defines "Most Feasible Plan" as the most reasonable plan which addresses environmental damage in conformity with the requirements of Article IX, Section 1 of the Constitution of Louisiana to protect the environment, public health, safety, and welfare, and is in compliance with the specific relevant and applicable standards and regulations promulgated by a state agency in accordance with the Administrative Procedure Act in effect at the time to evaluate or, if necessary, remediate, environmental damage resulting from oilfield or exploration and production operations or waste.

Present law provides that damages may be awarded for the cost of evaluating, correcting or repairing environmental damage upon a showing that such damage was caused by unreasonable or excessive operations based on rules, regulations, lease terms and implied lease obligations arising by operation of law, or standards applicable at the time of the activity complained of, provided that such damage is not duplicative of damages awarded for the cost of funding the feasible plan adopted by the court or the cost of additional remediation only if required by an express contractual provision.

Proposed law repeals present law.

Present law provides that damages may be awarded for the cost of nonremediation damages.

Proposed law provides that economic loss damages may be recovered if proven by clear and convincing evidence. All other nonremediation damages shall be limited to the market value of the property impacted by environmental damage. The fair market value of the property at issue is based on the value of the property as if it has no environmental damage.

Present law requires that if the owner or operator of any oilfield site or exploration and production (E&P) site covered by the provisions of present law performs any environmental testing on land owned by another person, results of the environmental testing be provided to the owner or owners of the land within ten days from receipt of the results by the owner or operator, regardless of whether or not suit has been filed by the owner or owners of the land.

Proposed law requires that if the owner or operator of any oilfield site or exploration and production (E&P) site covered by the provisions of present law performs any environmental testing on land owned by another person, results of such environmental testing be provided to the owner or owners of the land within 30 days from receipt of such results by the owner or operator if no suit has been filed by the owner or owners of the land.

Present law further requires that the operator or owner or owners of land or anyone acting on their behalf who perform any environmental testing on land that is an oilfield or exploration and production (E&P) site provide the results of such testing to the department within ten days of receipt.

Proposed law requires that the operator or owner or owners of land or anyone acting on their behalf who perform any environmental testing on land that is an oilfield or exploration and production (E&P) site provide the results of such testing to the department within 30 days of receipt.

Proposed law provides that the provisions of proposed law shall apply to any case in which the court on or before December 31, 2024, has not approved a plan as the most feasible plan

or a party has not made a limited admission.

(Amends R.S. 30:29(C)(1), (3)(a), (5), and (6), (D)(2), (3), (E)(1), (H)(1), (I)(2) and (4), (M)(1)(c) and 29.1; repeals R.S. 30:29(M)(1)(d))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Makes technical amendments.
2. Removes the requirement of any appeal of a judgment adopting the most feasible plan to be taken to the Court of Appeal for the First Circuit.
3. Provides that the responsible party paying the cost of implementing the most feasible plan shall provide the district court a summary of costs.
4. Removes the provision awarding the defendant attorney fees and costs from plaintiff if defendant was found not responsible for damages.
5. Allows economic loss damages if proven by clear and convincing evidence.
6. Limits nonremediation damages to market value of the property impacted by environmental damage.
7. Adds an effective date.