

SENATE BILL NO. 555

BY SENATOR ADLEY AND REPRESENTATIVES ABRAMSON, ADAMS, BERTHELOT, BILLIOT, STUART BISHOP, BROADWATER, HENRY BURNS, BURRELL, DOVE, GAROFALO, GISCLAIR, GUINN, HARRIS, HARRISON, HAVARD, HENRY, JEFFERSON, KLECKLEY, NANCY LANDRY, MILLER, JIM MORRIS, PIERRE, PYLANT, REYNOLDS, RICHARD, SCHEXNAYDER, SEABAUGH, THOMPSON AND WHITNEY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

AN ACT

To amend and reenact R.S. 30:29(C)(1), (2), and (3) and to enact R.S. 30:29(B)(5), (6), (7), and (L), relative to the remediation of oilfield sites and exploration and production sites; to provide for the admission or finding of liability by certain parties; to provide for the issuance of subpoenas for certain individuals and the procedure for a preliminary hearing; to suspend the prescriptive period for cases involving environmental damage; to provide for indemnification; to provide terms, conditions, requirements, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:29(C)(1), (2), and (3) are hereby amended and reenacted and R.S. 30:29(B)(5), (6), (7), and (L) are hereby enacted to read as follows:

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

* * *

B.(1) * * *

(5) Any party may subpoena, for purposes of deposition or trial, any employee, contractor, or representative of the department involved in the formulation of the feasible plan approved by the department under Subsection C of this Section, or an agency that reviews and provides comments under

1 Subsection C of this Section. Discovery regarding the department's review,
2 approval, or structuring of the feasible plan and of an agency that reviews and
3 provides comments shall not be allowed until after the department submits its
4 final feasible plan with reasons to the court pursuant to Subsection C of this
5 Section. If a party subpoenas the records or testimony of the department or an
6 agency for deposition or trial, the party issuing the subpoena shall pay the costs
7 of the department or agency in responding to such subpoena.

8 (6) Within sixty days of being served with a petition or amended petition
9 asserting an action, a defendant may request that the court conduct a
10 preliminary hearing to determine whether there is good cause for maintaining
11 the defendant as a party in the litigation. At the hearing, the parties may
12 introduce evidence in affidavit or written form. The plaintiff shall have the
13 initial burden to introduce evidence to support the allegations of environmental
14 damage, following which the moving party shall have the burden to
15 demonstrate the absence of a genuine issue of material fact that the moving
16 party caused or is otherwise legally responsible for the alleged environmental
17 damage. The rules governing summary judgments in the Code of Civil
18 Procedure shall not apply to the preliminary hearing. Within fifteen days of the
19 preliminary hearing, the court shall issue an order on any timely request for
20 preliminary dismissal. A judgment of dismissal under this Paragraph shall be
21 without prejudice, with all parties reserving the right to rejoin the dismissed
22 defendant during the litigation upon discovery of evidence not reasonably
23 available at the time of the hearing on the motion for preliminary dismissal. If
24 not rejoined, a party dismissed under this Paragraph shall be entitled to a
25 judgment of dismissal with prejudice following a final nonappealable judgment
26 on the claims asserted by the party against whom the preliminary dismissal was
27 granted. Any pleading rejoining any defendant previously dismissed under this
28 Paragraph shall relate back to the filing of the original petition or any
29 amendment thereto as provided in the Code of Civil Procedure Article 1153.
30 The finding of the district court shall be without prejudice of any party to

1 litigate the legal responsibility of any potentially responsible party, the
2 allocation of responsibility among the potentially responsible parties, and any
3 other issues incident to the finder of fact's determination of the party or parties
4 who caused the damage or who are otherwise legally responsible for the alleged
5 environmental damage. The procedure for a preliminary dismissal provided
6 by this Paragraph shall be in addition to the pretrial rights and the remedies
7 available to the parties under the Code of Civil Procedure, including the right
8 to civil discovery.

9 (7)(a) The prescriptive period that applies to any claim covered by the
10 provisions of this Section shall be suspended for a period of one year upon the
11 mailing or physical delivery to the department of a notice of intent to
12 investigate. A notice of intent to investigate shall include all of the following
13 information:

14 (i) A description of the property alleged to have been damaged.

15 (ii) A description of the alleged environmental damage.

16 (iii) The general location of the alleged environmental damage on the
17 property.

18 (iv) The name and address of all known owners of the property.

19 (v) The name and address of the current operator.

20 (b) The party issuing the notice of intent to investigate shall mail by
21 certified mail return receipt requested to all persons identified in the notice a
22 copy of the notice.

23 (c) If a party submits a notice of intent to investigate, any subsequent
24 judicial demand by the party under the provisions of this Section shall identify
25 on a map the location of any alleged environmental damage and include the
26 results of any environmental testing performed on the property. Failure to
27 include this information at the time of the filing of the judicial demand shall
28 result in exclusion of the information.

29 C.(1) If at any time during the proceeding a party admits liability for
30 environmental damage or the finder of fact determines that environmental damage

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

18 (2)(a) Within sixty days from the last day on which any party may provide
19 the department with a plan, comment, or response to a plan as provided in Paragraph
20 (C)(1) of this Section, the department shall conduct a public hearing on the plan or
21 plans submitted. **When a public hearing is held following a limited admission**
22 **pursuant to the Code of Civil Procedure Article 1563, then the department shall**
23 **not conduct an additional public hearing pursuant to this Section for the same**
24 **environmental damage.** Within sixty days of the conclusion of the hearing, the
25 department shall approve or structure a **final plan, or if applicable, a preliminary**
26 **plan pursuant to Subparagraph (C)(3)(b) of this Section,** based on the evidence
27 submitted which the department determines to be the most feasible plan to evaluate
28 or remediate the environmental damage and protect the health, safety, and welfare
29 of the people. The department shall issue written reasons for the plan it approves or
30 structures. On motion of the department, for good cause shown, the court may grant

1 the department additional time, not to exceed sixty days, within which to either
2 conduct the hearing or approve a plan with reasons.

3 (b) Except as otherwise provided for in this Section, from the date the
4 party or parties, who admit responsibility or whom the court finds legally
5 responsible for the damage, submit a plan to the department until after the
6 department has filed with the court the approved feasible plan for the
7 evaluation or remediation of the environmental damage, no party to the
8 litigation, either directly or indirectly, shall have ex parte communication with
9 any employee, contractor, or representative of the department regarding the
10 formation of the feasible plan or an agency providing comments to the
11 department regarding the formation of the feasible plan. The feasible plan
12 issued by the department shall contain a signed affidavit of compliance with this
13 restriction. Any comments provided by an agency to the department shall also
14 contain a signed affidavit of compliance with this restriction.

15 (3)(a) The department shall use and apply the applicable **regulatory**
16 standards in approving or structuring a plan that the department determines to be the
17 most feasible plan to evaluate or remediate the environmental damage.

18 (b)(i) If the department preliminarily approves or structures a
19 preliminary plan that requires the application of regulatory standards of an
20 agency other than the department or that provides an exception from the
21 department's standards, within fifteen days of such preliminary structuring or
22 approval, the department shall submit the plan to the Department of
23 Agriculture and Forestry, the Department of Environmental Quality, and the
24 Department of Natural Resources for review and comment. Within thirty days
25 after the department's submission of the plan to all of the agencies, each agency
26 may provide written comments regarding the plan. Each agency providing
27 written comments shall submit a schedule of the agency's costs for review of the
28 plan to the court for reimbursement by the responsible party. Failure of an
29 agency to respond to the department shall not affect the validity of the plan
30 approved by the department. The department and agency heads shall

1 coordinate in order to establish protocol to ensure inter-agency communication
 2 regarding plan development, timely delivery of all proposed plans to the
 3 appropriate agency heads, and timely receipt of all agency comments back to
 4 the department.

5 (ii) Within thirty days after the receipt of any agency's written
 6 comments, the department shall file in the court record the final plan, with
 7 written reasons that the department determines to be the most feasible plan to
 8 evaluate or remediate the environmental damage under applicable regulatory
 9 standards, together with any comments submitted by an agency under Item (i)
 10 of this Subparagraph. Based on the findings of the department, the department
 11 may issue any compliance order it deems necessary to either the operator of
 12 record or, where applicable, a party found responsible or admitting
 13 responsibility for implementing the most feasible plan to evaluate or remediate
 14 the environmental damage under applicable regulatory standards. If a
 15 compliance order is issued against the responsible party who is not the current
 16 operator of record, the responsible party shall give the current operator of
 17 record notice of the compliance order within thirty days of the responsible
 18 party's receipt of the compliance order.

19 * * *

20 L. If pursuant to the terms of a contract the responsible party is entitled
 21 to indemnification against punitive damages arising out of the environmental
 22 damage that is subject to the provisions of this Section, the responsible party
 23 shall waive the right to enforce the contractual right to indemnification against
 24 such punitive damages caused by the responsible party's acts or omissions if the
 25 responsible party admits responsibility for the remediation of the
 26 environmental damage under applicable regulatory standards pursuant to the
 27 provisions of the Code of Civil Procedure Article 1563. Such waiver of the right
 28 to indemnification against punitive damages shall not apply to any other claims
 29 or damages.

30 Section 2. The provisions of this Act shall not apply to any case in which the court

1 on or before May 15, 2012, has issued or signed an order setting the case for trial, regardless
2 of whether such trial setting is continued.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____