

Regular Session, 2014

SENATE BILL NO. 581

BY SENATOR ADLEY

MINERALS. Provides for procedures relative to remediation of oilfield sites and exploration and production sites. (8/1/14)

1 AN ACT

2 To amend and reenact Code of Civil Procedure Art. 1563(A)(2), R.S. 30:29(B)(6), (H), and

3 (I), and to enact R.S. 30:29(C)(2)(c) and 29.2, relative to the remediation of oilfield

4 sites and exploration and production sites; to provide for presumption and jury

5 charge following a limited admission of liability; to provide for reasonable attorney

6 fees and costs following a preliminary dismissal; to provide for certain remediation

7 damages; to provide terms, conditions, and requirements; and to provide for related

8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Art. 1563(A)(2) is hereby amended and

11 reenacted to read as follows:

12 Art. 1563. Limited admission of liability in environmental damage lawsuits; effect

13 A. \* \* \*

14 (2) Upon the expiration of the delay in which a party may file a limited

15 admission under Paragraph (A)(5) of this Article, and if one or more of the

16 defendants have made a timely limited admission, the court shall refer the matter to

17 the Department of Natural Resources, office of conservation, hereinafter referred to

1 as the "department", to conduct a public hearing to approve or structure a plan which  
 2 the department determines to be the most feasible plan to evaluate or remediate the  
 3 environmental damage under the applicable regulatory standards pursuant to the  
 4 provisions of R.S. 30:29. **There shall be a rebuttable presumption that the plan**  
 5 **approved or structured by the department shall be the most feasible plan to**  
 6 **evaluate or remediate the environmental damage under the applicable**  
 7 **regulatory standards pursuant to the provisions of R.S. 30:29. For cases tried**  
 8 **to a jury, the court shall instruct the jury regarding this presumption if**  
 9 **requested by a party.**

10 \* \* \*

11 Section 2. R.S. 30:29(B)(6), (H), and (I) are hereby amended and reenacted and R.S.  
 12 30:29(C)(2)(c) and 29.2 are hereby enacted to read as follows:

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

14 \* \* \*

15 B.

\* \* \*

16 (6) Within sixty days of being served with a petition or amended petition  
 17 asserting an action, a defendant may request that the court conduct a preliminary  
 18 hearing to determine whether there is good cause for maintaining the defendant as  
 19 a party in the litigation. At the hearing, the parties may introduce evidence in  
 20 affidavit or written form. The plaintiff shall have the initial burden to introduce  
 21 evidence to support the allegations of environmental damage, following which the  
 22 moving party shall have the burden to demonstrate the absence of a genuine issue of  
 23 material fact that the moving party caused or is otherwise legally responsible for the  
 24 alleged environmental damage. The rules governing summary judgments in the Code  
 25 of Civil Procedure shall not apply to the preliminary hearing. Within fifteen days of  
 26 the preliminary hearing, the court shall issue an order on any timely request for  
 27 preliminary dismissal. A judgment of dismissal under this Paragraph shall be without  
 28 prejudice, with all parties reserving the right to rejoin the dismissed defendant during  
 29 the litigation upon discovery of evidence not reasonably available at the time of the

1 hearing on the motion for preliminary dismissal. If not rejoined, a party dismissed  
 2 under this Paragraph shall be entitled to a judgment of dismissal with prejudice  
 3 following a final nonappealable judgment on the claims asserted by the party against  
 4 whom the preliminary dismissal was granted **and shall be entitled to recover from**  
 5 **the party who asserted the claim an award of reasonable attorney fees, as may**  
 6 **be determined by the court, and all costs to secure the dismissal.** Any pleading  
 7 rejoining any defendant previously dismissed under this Paragraph shall relate back  
 8 to the filing of the original petition or any amendment thereto as provided in the  
 9 Code of Civil Procedure Article 1153. The finding of the district court shall be  
 10 without prejudice of any party to litigate the legal responsibility of any potentially  
 11 responsible party, the allocation of responsibility among the potentially responsible  
 12 parties, and any other issues incident to the finder of fact's determination of the party  
 13 or parties who caused the damage or who are otherwise legally responsible for the  
 14 alleged environmental damage. The procedure for a preliminary dismissal provided  
 15 by this Paragraph shall be in addition to the pretrial rights and the remedies available  
 16 to the parties under the Code of Civil Procedure, including the right to civil  
 17 discovery.

\* \* \*

19 C. \* \* \*

20 (2) \* \* \*

21 **(c) In all cases in which a responsible party makes a limited admission**  
 22 **under Louisiana Code of Civil Procedure Article 1563 there shall be a**  
 23 **rebuttable presumption that the plan approved by the department is the most**  
 24 **feasible plan to remediate to applicable regulatory standards the environmental**  
 25 **damage for which responsibility is admitted. For cases tried to a jury, the court**  
 26 **shall instruct the jury regarding this presumption if so requested by a party.**

\* \* \*

28 H. This Section shall not preclude an owner of land from pursuing a judicial  
 29 remedy or receiving a judicial award for private claims suffered as a result of

1 environmental damage, except as otherwise provided in this Section. ~~Nor shall it~~  
2 ~~preclude a judgment ordering damages for or implementation of additional~~  
3 ~~remediation in excess of the requirements of the plan adopted by the court pursuant~~  
4 ~~to this Section as may be required in accordance with the terms of an express~~  
5 ~~contractual provision.~~ Any award granted in connection with the judgment for  
6 additional remediation **in excess of the requirements of the plan adopted by the**  
7 **court** is not required to be paid into the registry of the court. **Damages that may be**  
8 **awarded in an action under this Section shall be governed by R.S. 30:29.2.** This  
9 Section shall not be interpreted to create any cause of action or to impose additional  
10 implied obligations under the mineral code or arising out of a mineral lease.

11 I. For the purposes of this Section, the following terms shall have the  
12 following meanings:

13 (1) **"Contamination" shall mean the introduction or presence of**  
14 **substances or contaminants into a usable groundwater aquifer, a USDW or soil**  
15 **in such quantities as to render them unsuitable for their reasonably intended**  
16 **purposes.**

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

22 (3) "Evaluation or remediation" shall include but not be limited to  
23 investigation, testing, monitoring, containment, prevention, or abatement.

24 (4) "Feasible Plan" means the most reasonable plan which addresses  
25 environmental damage in conformity with the requirements of Louisiana  
26 Constitution Article IX, Section 1 to protect the environment, public health, safety  
27 and welfare, and is in compliance with the specific relevant and applicable standards  
28 and regulations promulgated by a state agency in accordance with the Administrative  
29 Procedure Act in effect at the time of clean up to remediate contamination resulting

1 from oilfield or exploration and production operations or waste.

2 ~~(4)~~**(5)** "Oilfield site" or "exploration and production (E&P) site" means any  
3 location or any portion thereof on which oil or gas exploration, development, or  
4 production activities have occurred, including wells, equipment, tanks, flow lines or  
5 impoundments used for the purposes of the drilling, workover, production, primary  
6 separation, disposal, transportation or storage of E&P wastes, crude oil and natural  
7 gas processing, transportation or storage of a common production stream of crude  
8 oil, natural gas, coal seam natural gas, or geothermal energy prior to a custody  
9 transfer or a sales point. In general, this definition would apply to all exploration and  
10 production operations located on the same lease, unit or field.

11 ~~(5)~~**(6)** "Timely notice" means written notice sent by certified mail, return  
12 receipt requested. Such notice shall include a copy of the petition and any other filing  
13 in such litigation.

14 \* \* \*

15 **§29.2. Remediation Damages**

16 **In an action under La. R.S. 30:29, damages may be awarded only for the**  
17 **following:**

18 **(1) The cost of funding the feasible plan adopted by the court under R.**  
19 **S. 30:29;**

20 **(2) The cost of additional remediation only if required by an express**  
21 **contractual provision providing for remediation to original condition or to some**  
22 **other specific remediation standard;**

23 **(3) The cost of correcting or repairing environmental damage upon a**  
24 **showing that such damage was caused by unreasonable or excessive operations**  
25 **based on rules, regulations, lease terms and standards applicable at the time of**  
26 **the activity complained of, provided that such damage is not duplicative of**  
27 **damages awarded under items (1) and (2) above; and**

28 **(4) The cost of non-remediation damages.**

29 **This provision shall not be construed to alter the traditional burden of**

- 1            **proof or to imply the existence or extent of damages in any action, nor shall it**  
2            **affect an award of attorney fees or costs under R. S. 30:29.**

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The form of the original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by McHenry Lee.

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#### DIGEST

Adley (SB 581)

Present law provides that when a party files a limited admission for environmental damage, the court will refer the matter to DNR, office of conservation, to conduct a public hearing to approve or structure a plan, which the department determines to be the most feasible plan to evaluate or rededicate the environmental damage under the applicable regulatory standards.

Proposed law provides that the plan approved by the department is the most feasible plan to rededicate environmental damage under the applicable regulatory standards. Further provides that for cases tried to a jury, the court shall instruct the jury regarding this presumption if requested by a party.

Present law provides that a defendant may request a hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation. Further provides that a party dismissed under present law will be entitled to a judgment of dismissal with prejudice following a final nonappealable judgment on the claims asserted by the party against whom the preliminary dismissal was granted.

Proposed law retains present law but further provides that the party against whom the preliminary dismissal was granted will be entitled to recover from the party who asserted the claim an award of reasonable attorney fees, as may be determined by the court, and all costs to secure dismissal.

Proposed law provides that in all cases in which a responsible party makes a limited admission there shall be a rebuttable presumption that the plan approved or structured by the department is the most feasible plan to evaluate or rededicate to applicable regulatory standards the environmental damage for which responsibility is admitted. For cases tried to a jury, the court must instruct the jury regarding this presumption if so requested by a party.

Present law does not preclude a judgment ordering damages for or implementation of an additional remediation in excess of the requirements of the plan adopted by the court as may be required in accordance with the terms of an express contractual provision.

Proposed law removes present law.

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

Proposed law provides that only awards for additional remediation in excess of the requirements of the plan adopted by the court are not required to be paid into the registry of the court.

Proposed law provides for the definition of "contamination".

Proposed law provides for remediation damages only for the following:

- (1) The cost of funding the feasible plan adopted by the court.

- (2) The cost of additional remediation if required by an express contractual provision providing for remediation to original condition or some other specific remediation standard.
- (3) The cost of correcting or repairing any environmental damage caused by unreasonable or excessive operations based on rules, regulations, lease terms and standards applicable at the time of the activity under questions, provided that such damage is not duplicative of other damages.
- (4) The cost of non-remediation damages.

Proposed law provides that the provisions of proposed law will not be construed to alter the traditional burden of proof or to imply the existence of extent of damages in any action, nor will it affect an award of attorney fees or costs.

Effective August 1, 2014.

(Amends C.C.P. Art. 1563(A)(2), R.S. 30:29(B)(6), (H), and (I); adds R.S. 30:29(C)(2)(c) and 29.2)