

2020 Regular Session

SENATE BILL NO. 57

BY SENATOR MCMATH

MINERALS. Removes award of attorney fees in proceedings relative to the remediation of oilfield sites and exploration and production sites. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 30:29(B)(6), (E)(1) and (2), (J)(2) and (M)(2) and 29.2(G),
3 relative to remediation of oilfield sites and exploration and production sites; to
4 remove provisions relative to awards of attorney fees and provide that costs shall not
5 include attorney fees, and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 30:29(B)(6), (E)(1) and (2), (J)(2) and (M)(2) and 29.2(G) are hereby
8 amended and reenacted to read as follows:

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

10 * * *

11 B.(1)

12 * * *

13 (6) Within sixty days of being served with a petition or amended petition
14 asserting an action, a defendant may request that the court conduct a preliminary
15 hearing to determine whether there is good cause for maintaining the defendant as
16 a party in the litigation. At the hearing, the parties may introduce evidence in
17 affidavit or written form. The plaintiff shall have the initial burden to introduce

1 evidence to support the allegations of environmental damage, following which the
2 moving party shall have the burden to demonstrate the absence of a genuine issue of
3 material fact that the moving party caused or is otherwise legally responsible for the
4 alleged environmental damage. The rules governing summary judgments in the Code
5 of Civil Procedure shall not apply to the preliminary hearing. Within fifteen days of
6 the preliminary hearing, the court shall issue an order on any timely request for
7 preliminary dismissal. A judgment of dismissal under this Paragraph shall be without
8 prejudice, with all parties reserving the right to rejoin the dismissed defendant during
9 the litigation upon discovery of evidence not reasonably available at the time of the
10 hearing on the motion for preliminary dismissal. If not rejoined, a party dismissed
11 under this Paragraph shall be entitled to a judgment of dismissal with prejudice
12 following a final nonappealable judgment on the claims asserted by the party against
13 whom the preliminary dismissal was granted and shall be entitled to recover from the
14 party who asserted the claim an award of ~~reasonable attorney fees and~~ costs, as may
15 be determined by the court. **Attorney fees shall not be included as costs.** Any
16 pleading rejoining any defendant previously dismissed under this Paragraph shall
17 relate back to the filing of the original petition or any amendment thereto as provided
18 in the Code of Civil Procedure Article 1153. The finding of the district court shall
19 be without prejudice of any party to litigate the legal responsibility of any potentially
20 responsible party, the allocation of responsibility among the potentially responsible
21 parties, and any other issues incident to the finder of fact's determination of the party
22 or parties who caused the damage or who are otherwise legally responsible for the
23 alleged environmental damage. The procedure for a preliminary dismissal provided
24 by this Paragraph shall be in addition to the pretrial rights and the remedies available
25 to the parties under the Code of Civil Procedure, including the right to civil
26 discovery.

27 * * *

28 E.(1) In any civil action in which a party is responsible for damages or
29 payments for the evaluation or remediation of environmental damage, a party

1 providing evidence, in whole or in part, upon which the judgment is based shall be
 2 entitled to recover from the party or parties admitting responsibility or the party or
 3 parties found legally responsible by the court, in addition to any other amounts to
 4 which the party may be entitled, all costs attributable to producing that portion of the
 5 evidence that directly relates to the establishment of environmental damage,
 6 including, but not limited to, expert witness fees, environmental evaluation,
 7 investigation, and testing, **and** the cost of developing a plan of remediation, ~~and~~
 8 ~~reasonable attorney fees incurred in the trial court and the department.~~ **Attributable**
 9 **costs shall not include attorney fees.**

10 (2) In any civil action in which the department or the attorney general, or
 11 their employees, are parties or witnesses, provide evidence, or otherwise contribute
 12 to the determination of responsibility for evaluation or remediation, or the approval
 13 of a plan of remediation, the department or attorney general shall be entitled to
 14 recover from the party or parties admitting responsibility or the party or parties found
 15 legally responsible by the court all costs thereof, including but not limited to
 16 investigation, evaluation, and review costs; **and** expert witness fees; ~~and reasonable~~
 17 ~~attorney fees.~~ **Attorney fees shall not be included as costs.**

* * *

J.(1)

* * *

21 (2) In the event a settlement is agreed to between the parties in a case in
 22 which the department or the attorney general has intervened, such agency shall be
 23 entitled to recover from the settling defendants all costs, including investigation,
 24 evaluation, and review costs; **and** expert witness fees; ~~and reasonable attorney fees.~~
 25 **Attorney fees shall not be included as costs.**

* * *

M.(1)

* * *

29 (2) The provisions of this Subsection shall not be construed to alter the

1 traditional burden of proof or to imply the existence or extent of damages in any
2 action, nor shall it affect an award of ~~reasonable attorney fees or costs~~ under this
3 Section.

4 * * *

5 §29.2. Alternative dispute resolution for disputes relating to remediation of oilfield
6 sites and exploration and production sites

7 * * *

8 G. At any mediation held pursuant to this Section, a representative of each
9 party who has settlement authority or who is in direct contact with a person having
10 settlement authority on behalf of the party shall be present. If a party fails to comply
11 with this requirement, the court may, in its discretion and after contradictory hearing,
12 order that party to pay costs ~~and attorney fees~~ associated with the mediation.

13 **Attorney fees shall not be included as costs.**

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

SB 57 Original

2020 Regular Session

McMath

Present law provides relative to remediation of oilfield sites and exploration and production sites.

Present law provides under certain circumstances for judgments of dismissal, including recovery from the party who asserted the dismissed claims an award of reasonable attorney fees and costs, as may be determined by the court. Proposed law deletes language authorizing award of attorney fees and provides that attorney fees shall not be included as costs awarded.

Present law provides that in any civil action in which a party is responsible for damages or payments for the evaluation or remediation of environmental damage, a party providing evidence, in whole or in part, upon which the judgment is based shall be entitled to recover from the party or parties admitting responsibility or the party or parties found legally responsible by the court, in addition to any other amounts to which the party may be entitled, all costs attributable to producing that portion of the evidence that directly relates to the establishment of environmental damage, including but not limited to expert witness fees, environmental evaluation, investigation, testing, the cost of developing a plan of remediation and reasonable attorney fees incurred in the trial court and the department. Proposed law deletes language authorizing award of attorney fees and provides that attributable costs shall not include attorney fees.

Present law provides that in any civil action in which the Dept. of Natural Resources or the attorney general, or their employees, are parties or witnesses, provide evidence, or otherwise contribute to the determination of responsibility for evaluation or remediation, or the approval of a plan of remediation, the department or attorney general shall be entitled to

recover from the party or parties admitting responsibility or the party or parties found legally responsible by the court all costs thereof, including but not limited to investigation, evaluation, and review costs, expert witness fees, and reasonable attorney fees. Proposed law deletes language authorizing award of attorney fees and provides that costs shall not include attorney fees.

Present law provides that in the event a settlement is agreed to between the parties in a case in which the Dept. of Natural Resources or the attorney general has intervened, such agency shall be entitled to recover from the settling defendants all costs, including investigation, evaluation, and review costs, expert witness fees, and reasonable attorney fees. Proposed law deletes language authorizing award of attorney fees and provides that costs shall not include attorney fees.

Present law also provides relative to alternative dispute resolution for disputes relating to remediation of oilfield sites and exploration and production sites. Provides that at any mediation held pursuant to present law, a representative of each party who has settlement authority or who is in direct contact with a person having settlement authority on behalf of the party shall be present. If a party fails to comply with this requirement, the court may, in its discretion and after contradictory hearing, order that party to pay costs and attorney fees associated with the mediation. Proposed law deletes language authorizing award of attorney fees and provides that costs shall not include attorney fees.

Effective August 1, 2020.

(Amends R.S. 30:29(B)(6), (E)(1) and (2), (J)(2) and (M)(2) and 29.2(G))