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The original instrument and the following digest, which constitutes no part of the legislative instrument, was prepared by Jacob K. Wilson.

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DIGEST

SB 459 Original

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 be taken to the Court of Appeal for the First Circuit and 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.

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 upon finding by the court that a defendant did not cause or is otherwise not legally responsible for the alleged environmental damage, that 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.

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 damages may be awarded for the cost of nonremediation damages limited to the nonimpacted market value of the property impacted by the 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.

Effective August 1, 2024.

(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))