

Regular Session, 2014

SENATE BILL NO. 667

BY SENATORS ADLEY AND JOHNS

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 R.S. 30:29(B)(6), (H), and (I) and Code of Civil Procedure Art.
3 1563(A)(2) and to enact R.S. 30:29(C)(2)(c) and (M), relative to the remediation of
4 oilfield sites and exploration and production sites; to provide for presumption and
5 jury charge following a limited admission of liability; to provide for reasonable
6 attorney fees and costs following a preliminary dismissal; to provide for certain
7 remediation damages; to provide terms, conditions, and requirements; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 30:29(B)(6), (H), and (I) are hereby amended and reenacted and R.S.
11 30:29(C)(2)(c) and (M) are hereby enacted to read as follows:

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

13 * * *

14 B. * * *

15 (6) Within sixty days of being served with a petition or amended petition
16 asserting an action, a defendant may request that the court conduct a preliminary
17 hearing to determine whether there is good cause for maintaining the defendant as

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

* * *

29 C. * * *

1 (2) * * *

2 (c) In all cases in which a party makes a limited admission of liability
3 under the provisions of the Code of Civil Procedure Art. 1563, there shall be a
4 rebuttable presumption that the plan approved or structured by the
5 department, after consultation with the Department of Environmental Quality
6 as appropriate, shall be the most feasible plan to evaluate or remediate to
7 applicable regulatory standards the environmental damage for which
8 responsibility is admitted. For cases tried by a jury, the court shall instruct the
9 jury regarding this presumption if so requested by a party.

10 * * *

11 H.(1) This Section shall not preclude an owner of land from pursuing a
12 judicial remedy or receiving a judicial award for private claims suffered as a result
13 of environmental damage, except as otherwise provided in this Section. ~~Nor shall it~~
14 ~~preclude a judgment ordering damages for or implementation of additional~~
15 ~~remediation in excess of the requirements of the plan adopted by the court pursuant~~
16 ~~to this Section as may be required in accordance with the terms of an express~~
17 ~~contractual provision. Any award granted in connection with the judgment for~~
18 ~~additional remediation~~ **in excess of the requirements of the feasible plan adopted**
19 **by the court** is not required to be paid into the registry of the court.

20 **(2) Damages that may be awarded in an action under this Section shall**
21 **be governed by the provisions of Subsection M of this Section.** This Section shall
22 not be interpreted to create any cause of action or to impose additional implied
23 obligations under the mineral code or arising out of a mineral lease.

24 I. For the purposes of this Section, the following terms shall have the
25 following meanings:

26 (1) **"Contamination" shall mean the introduction or presence of**
27 **substances or contaminants into a usable groundwater aquifer, an underground**
28 **source of drinking water (USDW) or soil in such quantities as to render them**
29 **unsuitable for their reasonably intended purposes.**

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

2 (2) The cost of additional remediation only if required by an express
3 contractual provision providing for remediation to original condition or to some
4 other specific remediation standard.

5 (3) The cost of evaluating, correcting or repairing environmental damage
6 upon a showing that such damage was caused by unreasonable or excessive
7 operations based on rules, regulations, lease terms or standards applicable at
8 the time of the activity complained of, provided that such damage is not
9 duplicative of damages awarded under Paragraphs (1) or (2) of this Subsection.

10 (4) The cost of nonremediation damages.

11 The provisions of this Subsection shall not be construed to alter the
12 traditional burden of proof or to imply the existence or extent of damages in any
13 action, nor shall it affect an award of reasonable attorney fees or costs under
14 this Section.

15 Section 2. Code of Civil Procedure Art. 1563(A)(2) is hereby amended and
16 reenacted to read as follows:

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

18 A. * * *

19 (2) Upon the expiration of the delay in which a party may file a limited
20 admission under Paragraph ~~(A)(5)~~ of this Article **Subparagraph (5) of this**
21 **Paragraph**, and if one or more of the defendants have made a timely limited
22 admission, the court shall refer the matter to the Department of Natural Resources,
23 office of conservation, hereinafter referred to as the "department", to conduct a
24 public hearing to approve or structure a plan which the department determines to be
25 the most feasible plan to evaluate or remediate the environmental damage under the
26 applicable regulatory standards pursuant to the provisions of R.S. 30:29. **There shall**
27 **be a rebuttable presumption that the plan approved or structured by the**
28 **department, after consultation with the Department of Environmental Quality**
29 **as appropriate, shall be the most feasible plan to evaluate or remediate the**

- (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 evaluating, correcting or repairing any environmental damage caused by unreasonable or excessive operations based on rules, regulations, lease terms or standards applicable at the time of the activity under questions, provided that such damage is not duplicative of other damages.
- (4) The cost of nonremediation 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 reasonable attorney fees or costs.

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 remediate environmental damage under the applicable regulatory standards. Further provides that for cases tried by a jury, the court shall instruct the jury regarding this presumption if requested by a party.

Provides that the provisions of proposed law will not apply to any case filed before March 10, 2014, nor shall it apply to any case in which the court, on or before March 10, 2014, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

Effective August 1, 2014.

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill

1. Moves provisions of law from R.S. 30:29.2 to R.S. 30:29(M).
2. Makes technical changes.
3. Provides that reasonable attorney fees and costs will be determined by the court.
4. Changes "responsible party" to "party" for limited admission of liability.
5. Allows DNR to consult with DEQ, as appropriate, on certain plans.

6. Adds the cost of evaluating the environmental damage to certain recoverable costs.
7. Adds provision relating to the effectiveness of the proposed law on existing cases.