

Regular Session, 2014

HOUSE BILL NO. 854

BY REPRESENTATIVE GAROFALO

CIVIL/PROCEDURE: Provides relative to the remediation of oilfield sites and exploration and production sites

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 1563(A)(2) and to enact R.S.
3 30:29(C)(2)(c), relative to the remediation of oilfield sites and exploration and
4 production sites; to provide for a presumption and jury charges in certain
5 circumstances; to prohibit the court from proceeding to trial until an approved
6 feasible plan is filed with the court; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Civil Procedure Article 1563(A)(2) is hereby amended and
9 reenacted and R.S. 30:29(C)(2)(c) is hereby enacted to read as follows:

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

11 * * *

12 C.

13 * * *

14 (2)

15 * * *

16 (c)(i) Within the time limits set forth in Code of Civil Procedure Article
17 1563(A)(4), any party may request that the court refer the matter to the department
18 to conduct a public hearing to approve or structure a plan which the department
19 determines to be the most feasible plan to evaluate or remediate the environmental
20 damage under the applicable regulatory standards pursuant to the provisions of this

1 Section. The court shall thereafter order that the plan be developed and submitted
2 to the department pursuant to the time limits set forth in this Subsection, which shall
3 govern the parties' submission of any plan, comment, or input in response to the plan,
4 the public hearing, agency review, and approval of the plan by the department.

5 (ii) The plan approved by the department, and all written comments provided
6 by the agencies pursuant to Subparagraph (3)(b) of this Subsection shall be
7 admissible subject to the Code of Evidence Articles 702 through 705 and Code of
8 Civil Procedure Article 1425 as evidence in any action. There shall be a rebuttable
9 presumption that the plan approved or structured by the department shall be the most
10 feasible plan to evaluate or remediate to applicable regulatory standards the
11 environmental damage. For cases tried by a jury, the court shall instruct the jury
12 regarding the presumption if so requested by a party. The court shall not proceed to
13 a trial on the merits until the department has filed with the court the approved
14 feasible plan for the evaluation or remediation of the environmental damage.

15 (iii) The party requesting the referral to the department to conduct a public
16 hearing to approve or structure a plan shall be required to deposit with the
17 department sufficient funds to cover the cost of the department's review of the plans
18 or submittals under this Section, including the cost of holding a public hearing to
19 approve or structure the feasible plan. The initial payment of these costs shall be in
20 an amount of one hundred thousand dollars. The initial payment shall be deposited
21 prior to or along with the submission of the plan by the party requesting the referral.
22 The party requesting the referral shall be entitled to reimbursement of any portion
23 of the deposit that is unused by the department.

24 (iv) When a public hearing is held following a request pursuant to Item (i)
25 of this Subparagraph, the department shall not conduct an additional public hearing
26 for the same environmental damage.

27 (v) The referral to the department to approve or structure a plan pursuant to
28 Item (i) of this Subparagraph shall not apply to claims of environmental damage
29 brought by the state or a local governmental entity unless a party makes a limited

1 admission of liability for environmental damage under Code of Civil Procedure
2 Article 1563, or there has been a determination by the trier of fact that environmental
3 damage exists and a determination that the party or parties who caused the damage
4 or who are otherwise legally responsible for the damage.

5 * * *

6 Section 2. Code of Civil Procedure Article 1563(A)(2) is hereby amended and
7 reenacted to read as follows:

8 Art. 1563. Limited admission of liability in environmental damage lawsuits; effect
9 A.

10 * * *

11 (2)(a) Upon the expiration of the delay in which a party may file a limited
12 admission under ~~Paragraph (A)(5) of this Article~~ Subparagraph (5) of this Paragraph,
13 and if one or more of the defendants have made a timely limited admission, the court
14 shall refer the matter to the Department of Natural Resources, office of conservation,
15 hereinafter referred to as the "department", to conduct a public hearing to approve
16 or structure a plan which the department determines to be the most feasible plan to
17 evaluate or remediate the environmental damage under the applicable regulatory
18 standards pursuant to the provisions of R.S. 30:29.

19 (b) The court shall not proceed to a trial on the merits until the department
20 has filed with the court the approved feasible plan for the evaluation or remediation
21 of the environmental damage.

22 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Garofalo

HB No. 854

Abstract: Provides for the referral to DNR for the development and approval of a feasible plan, prohibits the court from proceeding to trial against a party admitting liability for environmental damage until the department has filed the approved feasible plan for evaluation or remediation with the court, and provides a rebuttable presumption that the plan developed and approved by DNR is the most feasible plan.

Present law provides procedures for civil actions for the remediation of oilfield sites and exploration and production sites.

Proposed law retains present law and provides for referral of the matter to DNR to conduct a public hearing to approve a plan which the department determines to be the most feasible plan.

Proposed law provides that, once a plan has been submitted to the department, the court shall not proceed to trial against a party who has admitted liability for environmental damage until the department has filed the approved feasible plan for evaluation or remediation of the environmental damage with the court.

Proposed law provides that the plan approved by the department, and all written comments provided by the agencies shall be admissible subject to the C.E. Arts. 702 through 705 and C.C.P. Art. 1425 as evidence in any action.

Proposed law provides that there shall be a rebuttable presumption that the plan approved or structured by the department shall be the most feasible plan to evaluate or remediate to applicable regulatory standards the environmental damage, and that for cases tried by a jury, the court shall instruct the jury regarding the presumption if so requested by a party.

Proposed law requires the party requesting the referral to the department to deposit with the department sufficient funds to cover the cost of the department's review of the plans or submittals, and provides that the initial payment of these costs shall be in an amount of \$100,000. The party requesting the referral shall be entitled to reimbursement of any portion of the deposit that is unused by the department.

Proposed law provides that when a public hearing is held following a request to refer the matter to the department, the department shall not conduct an additional public hearing for the same environmental damage.

Proposed law provides that the referral to the department to approve or structure a plan pursuant to proposed law shall not apply to claims of environmental damage brought by the state or a local governmental entity unless a party makes a limited admission of liability for environmental damage under C.C.P. Art. 1563, or there has been a determination by the trier of fact that environmental damage exists and a determination that the party or parties who caused the damage or who are otherwise legally responsible for the damage.

Present law (C.C.P. Art. 1563(A)) provides that upon the expiration of the delay in which a party may file a limited admission under present law, and if one or more of the defendants have made a timely limited admission, the court shall refer the matter to the 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 remediate the environmental damage under the applicable regulatory standards pursuant to the provisions of R.S. 30:29.

Proposed law retains present law and provides that the court shall not proceed to a trial on the merits until the department has filed with the court the approved feasible plan for the evaluation or remediation of the environmental damage.

(Amends C.C.P. Art. 1563(A)(2); Adds R.S. 30:29(C)(2)(c))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Redesignated the provisions proposing to require that the court stay the

proceedings until the department has filed the feasible plan from R.S. 30:29(C)(1) ~~to~~ R.S. 30:29(C)(2)(c)(ii).

2. Added provisions relative to referring the matter to the department to conduct a public hearing and to develop the most feasible plan.
3. Added provisions providing for the admissibility of the plan and written comments provided by the agencies.
4. Added provisions creating a rebuttable presumption and requiring the court to instruct the jury with respect to the rebuttable presumption.
5. Added provisions requiring the party requesting the referral to the department to deposit with the department sufficient funds to cover the cost of the department's review of the plans.
6. Added a provision limiting the number of public hearings in certain circumstances.
7. Added provisions exempting actions for environmental damage brought by the state or a local governmental entity from application of proposed law.
8. Added C.C.P. Art. 1563(A)(2) to also require that the court stay the proceedings until the department has filed the feasible plan.