Regular Session, 2014

HOUSE BILL NO. 854

BY REPRESENTATIVES GAROFALO, ABRAMSON, BARRAS, BERTHELOT, STUART BISHOP, WESLEY BISHOP, HENRY BURNS, BURRELL, CARMODY, CHAMPAGNE, DOVE, GISCLAIR, HARRIS, HENSGENS, IVEY, KLECKLEY, LORUSSO, PYLANT, RICHARD, RITCHIE, ROBIDEAUX, SCHEXNAYDER, SEABAUGH, STOKES, THOMPSON, WHITNEY, AND PATRICK WILLIAMS

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

AN ACT

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

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:29(C)(2)(c) is hereby enacted to read as follows:

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

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C.

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(2)

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(c)(i) Within the time limits set forth in Code of Civil Procedure Article 1563(A)(4), any party may request that the court refer the matter to the department 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 this Section. The court shall thereafter order that the plan be developed and submitted to the department pursuant to the time limits set forth in this Subsection, which shall govern the parties' submission of any plan, comment, or input in response to the plan, the public hearing, agency review, and approval of the plan by the department.

(ii) The plan approved by the department, and all written comments provided by the agencies pursuant to Subparagraph (3)(b) of this Subsection shall be admissible subject to the Code of Evidence Articles 702 through 705 and Code of Civil Procedure Article 1425 as evidence in any action. 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. For cases tried by a jury, the court shall instruct the jury regarding the presumption if so requested by a party.

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

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

(v) The referral to the department to approve or structure a plan pursuant to Item (i) of this Subparagraph 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 Code of Civil Procedure

Article 1563, or there has been a determination by the trier of fact that environmental damage exists and a determination of the liability of the party or parties who caused the damage or who are otherwise legally responsible for the damage.

(vi) Upon referral to the department to approve or structure a plan pursuant to Item (i) of this Subparagraph, the court shall not enjoin the department in its review, approval, or structuring of the plan prior to trial. A referral to the department shall not interfere with the department's authority to bring any civil or administrative enforcement action.

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

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

A.

* * *

(2)(a) Upon the expiration of the delay in which a party may file a limited admission under ~~Paragraph (A)(5) of this Article~~ Subparagraph (5) of this Paragraph, and if one or more of the defendants have made a timely limited admission, the court shall refer the matter to the Department of Natural Resources, office of conservation, hereinafter referred to as the "department", 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.

(b) Upon referral to the department to approve or structure a plan pursuant to R.S. 30:29(C)(2)(i), the court shall not enjoin the department in its review, approval, or structuring of the plan prior to trial. A referral to the department shall not interfere with the department's authority to bring any civil or administrative enforcement action.

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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 enjoining the department in its review, approval, or structuring of a plan prior to trial, 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 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.

Proposed law provides that when the matter has been referred to the department to approve or structure a plan pursuant to proposed law, the court shall not enjoin the department in its review, approval, or structuring of the plan prior to trial.

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 when the matter has been referred to the department to approve or structure a plan pursuant to proposed law, the court shall not enjoin the department in its review, approval, or structuring of the plan prior to trial.

(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.

Summary of Amendments Adopted by House

1. Made technical changes.

2. Deleted the provisions proposing to require that the court stay the proceedings until the department has filed the feasible plan.

3. Added provisions that provide that when the matter has been referred to the department to approve or structure a plan pursuant to proposed law, the court shall not enjoin the department in its review, approval, or structuring of the plan prior to trial.