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## DIGEST

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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.