

SENATE COMMITTEE AMENDMENTS

Amendments proposed by Senate Committee on Natural Resources to Reengrossed House Bill No. 618 by Representative Abramson

1 AMENDMENT NO. 1

2 On page 1, line 2, delete "Article" and insert "Articles 1552 and"

3 AMENDMENT NO. 2

4 On page 1, line 3, after "damage;" insert "to provide for environmental management orders;"

5 AMENDMENT NO. 3

6 On page 1, delete lines 9 through 21, and on page 2, delete lines 1 through 17 and insert:

7 "Section 1. Code of Civil Procedure Articles 1552 and 1563 are hereby
8 enacted to read as follows:

9 Art. 1552. Environmental management orders

10 Upon the request of any party in any civil action alleging environmental
11 damage pursuant to R.S. 30:29, or the Department of Natural Resources, office of
12 conservation, the court shall direct the attorneys for the parties to appear before the
13 court to develop an environmental management order. The environmental
14 management order shall authorize all parties to access the property allegedly
15 impacted to perform inspections and environmental testing. The order shall require
16 that all test results be submitted to all parties and the Department of Natural
17 Resources, office of conservation, within thirty days of receipt thereof. Failure by
18 a party to provide the results of testing to the other parties shall preclude that party
19 from admitting those results into evidence in the civil action. The environmental
20 management order shall include reasonable terms for all of the following:

- 21 (1) Access to the property.
- 22 (2) Investigation and environmental testing.
- 23 (3) Sampling and testing protocols.
- 24 (4) Specific time frames within which to conduct such testing and sampling.

25 * * *

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

28 A.(1) If any party admits liability for environmental damage pursuant to R.S.
29 30:29, that party may elect to limit this admission of liability for environmental
30 damage to responsibility for implementing the most feasible plan to evaluate, and if
31 necessary, remediate all or a portion of the contamination that is the subject of the
32 litigation to applicable regulatory standards (hereinafter referred to as a "limited
33 admission"). A limited admission shall not be construed as an admission of liability
34 for damages under R.S. 30:29(H), nor shall a limited admission result in a waiver of
35 any rights or defenses of the admitting party.

36 (2) Upon the expiration of the delay in which a party may file a limited
37 admission under Paragraph (A)(5) of this Article, and if one or more of the
38 defendants have made a timely limited admission, the court shall refer the matter to
39 the Department of Natural Resources, office of conservation (hereinafter to as the
40 "department"), to conduct a public hearing to approve or structure a plan which the
41 department determines to be the most feasible plan to evaluate or remediate the
42 environmental damage under the applicable regulatory standards pursuant to the
43 provisions of R.S. 30:29.

44 (3) The limited admission, the plan approved by the department, and all
45 written comments provided by the agencies pursuant to R.S. 30:29(C)(3)(b) shall be
46 admissible subject to the Code of Evidence Articles 702 through 705 and Code of
47 Civil Procedure Art. 1425 as evidence in any action.

1 (4) At any time after the filing of a civil action subject to the provisions of
2 R.S. 30:29 and, absent good cause shown, no later than ninety days after the
3 completion of the environmental testing set forth in the environmental management
4 order issued by the court pursuant to the Code of Civil Procedure Art. 1552, any
5 party may make a limited admission by filing the same into the record of the court
6 proceeding.

7 (5) Any other party who intends to make a limited admission for the same
8 or any other environmental damage shall file the same into the record of the court
9 proceeding within sixty days of the filing of the first limited admission by another
10 party. Any limited admission filed by another party after the first limited admission
11 is filed shall be filed no later than ninety days following the completion of the
12 environmental testing set forth in the environmental management order.

13 (6) The party making a limited admission shall be required to deposit with
14 the department sufficient funds to cover the cost of the department's review of the
15 plans or submittals under R.S. 30:29, including the cost of holding a public hearing
16 to approve or structure the feasible plan. The initial payment of these costs shall be
17 in an amount of one hundred thousand dollars. This initial payment shall be
18 deposited prior to or along with the submission of the plan by the admitting party.
19 The admitting party shall be entitled to reimbursement of any portion of the deposit
20 that is unused by the department. Within thirty days of the department's filing of the
21 plan, the party admitting responsibility for implementing the most feasible plan shall
22 reimburse the plaintiff for those costs which the court determines to be recoverable
23 under R.S. 30:29(E)(1).

24 (B) The provisions of this Article shall not establish primary jurisdiction
25 with the Department of Natural Resources.

26 Section 2. The provisions of this Act shall not apply to any case in which the
27 court on or before May 15, 2012, has issued or signed an order setting the case for
28 trial, regardless of whether such trial setting is continued."