

Regular Session, 2012

HOUSE BILL NO. 618

BY REPRESENTATIVES ABRAMSON, ADAMS, BERTHELOT, BROADWATER, HENRY BURNS, CARMODY, CHAMPAGNE, COX, DOVE, GAROFALO, GEYMANN, GISCLAIR, GUINN, HARRIS, HARRISON, HAVARD, HENSGENS, HOWARD, HUVAL, KATRINA JACKSON, JEFFERSON, KLECKLEY, NANCY LANDRY, TERRY LANDRY, LIGI, LORUSSO, MILLER, MORENO, JIM MORRIS, PYLANT, REYNOLDS, RICHARD, ROBIDEAUX, SCHEXNAYDER, SIMON, THOMPSON, AND WHITNEY

1 AN ACT

2 To enact Code of Civil Procedure Articles 1552 and 1563, relative to liability for  
3 environmental damage; to provide for environmental management orders; to provide  
4 for limitations on the effect of an admission of liability; to provide for admissibility  
5 of evidence; to provide for referral to the Department of Natural Resources; to  
6 provide for admissibility of admission of responsibility; to provide for funding of the  
7 department's review; to provide for reimbursement to plaintiff; to provide for  
8 primary jurisdiction; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Articles 1552 and 1563 are hereby enacted to read  
11 as follows:

12 Art. 1552. Environmental management orders

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

1 from admitting those results into evidence in the civil action. The environmental  
2 management order shall include reasonable terms for all of the following:

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

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

9 A.(1) If any party admits liability for environmental damage pursuant to R.S.  
10 30:29, that party may elect to limit this admission of liability for environmental  
11 damage to responsibility for implementing the most feasible plan to evaluate, and if  
12 necessary, remediate all or a portion of the contamination that is the subject of the  
13 litigation to applicable regulatory standards (hereinafter referred to as a "limited  
14 admission"). A limited admission shall not be construed as an admission of liability  
15 for damages under R.S. 30:29(H), nor shall a limited admission result in a waiver of  
16 any rights or defenses of the admitting party.

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

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

29 (4) At any time after the filing of a civil action subject to the provisions of  
30 R.S. 30:29 and, absent good cause shown, no later than ninety days after the

1 completion of the environmental testing set forth in the environmental management  
2 order issued by the court pursuant to the Code of Civil Procedure Art. 1552, any  
3 party may make a limited admission by filing the same into the record of the court  
4 proceeding.

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

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

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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_