SLSX 14RS-1803 **ENGROSSED**

Regular Session, 2014

SENATE BILL NO. 667

BY SENATOR ADLEY

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MINERALS. Provides for procedures relative to remediation of oilfield sites and exploration and production sites. (8/1/14)

AN ACT

2	To amend and reenact R.S. 30:29(B)(6), (H), and (I) and Code of Civil Procedure Art.
3	1563(A)(2) and to enact R.S. 30:29(C)(2)(c) and (M), relative to the remediation of
4	oilfield sites and exploration and production sites; to provide for presumption and
5	jury charge following a limited admission of liability; to provide for reasonable
6	attorney fees and costs following a preliminary dismissal; to provide for certain
7	remediation damages; to provide terms, conditions, and requirements; and to provide
8	for related matters.
9	Be it enacted by the Legislature of Louisiana:
10	Section 1. R.S. 30:29(B)(6), (H), and (I) are hereby amended and reenacted and R.S.
11	30:29(C)(2)(c) and (M) are hereby enacted to read as follows:
12	§29. Remediation of oilfield sites and exploration and production sites
13	* * *
14	B. * * *
15	(6) Within sixty days of being served with a petition or amended petition
16	asserting an action, a defendant may request that the court conduct a preliminary
17	hearing to determine whether there is good cause for maintaining the defendant as

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a party in the litigation. At the hearing, the parties may introduce evidence in affidavit or written form. The plaintiff shall have the initial burden to introduce evidence to support the allegations of environmental damage, following which the moving party shall have the burden to demonstrate the absence of a genuine issue of material fact that the moving party caused or is otherwise legally responsible for the alleged environmental damage. The rules governing summary judgments in the Code of Civil Procedure shall not apply to the preliminary hearing. Within fifteen days of the preliminary hearing, the court shall issue an order on any timely request for preliminary dismissal. A judgment of dismissal under this Paragraph shall be without prejudice, with all parties reserving the right to rejoin the dismissed defendant during the litigation upon discovery of evidence not reasonably available at the time of the hearing on the motion for preliminary dismissal. If not rejoined, a party dismissed under this Paragraph shall be entitled to a judgment of dismissal with prejudice following a final nonappealable judgment on the claims asserted by the party against whom the preliminary dismissal was granted and shall be entitled to recover from the party who asserted the claim an award of reasonable attorney fees and costs, as may be determined by the court. Any pleading rejoining any defendant previously dismissed under this Paragraph shall relate back to the filing of the original petition or any amendment thereto as provided in the Code of Civil Procedure Article 1153. The finding of the district court shall be without prejudice of any party to litigate the legal responsibility of any potentially responsible party, the allocation of responsibility among the potentially responsible parties, and any other issues incident to the finder of fact's determination of the party or parties who caused the damage or who are otherwise legally responsible for the alleged environmental damage. The procedure for a preliminary dismissal provided by this Paragraph shall be in addition to the pretrial rights and the remedies available to the parties under the Code of Civil Procedure, including the right to civil discovery.

* * *

C. * * *

1 (2) * * *

(c) In all cases in which a party makes a limited admission of liability under the provisions of the Code of Civil Procedure Art. 1563, there shall be a rebuttable presumption that the plan approved or structured by the department, after consultation with the Department of Environmental Quality as appropriate, shall be the most feasible plan to evaluate or remediate to applicable regulatory standards the environmental damage for which responsibility is admitted. For cases tried by a jury, the court shall instruct the jury regarding this presumption if so requested by a party.

* * *

H.(1) This Section shall not preclude an owner of land from pursuing a judicial remedy or receiving a judicial award for private claims suffered as a result of environmental damage, except as otherwise provided in this Section. Nor shall it preclude a judgment ordering damages for or implementation of additional remediation in excess of the requirements of the plan adopted by the court pursuant to this Section as may be required in accordance with the terms of an express contractual provision. Any award granted in connection with the judgment for additional remediation in excess of the requirements of the feasible plan adopted by the court is not required to be paid into the registry of the court.

- (2) Damages that may be awarded in an action under this Section shall be governed by the provisions of Subsection M of this Section. This Section shall not be interpreted to create any cause of action or to impose additional implied obligations under the mineral code or arising out of a mineral lease.
- I. For the purposes of this Section, the following terms shall have the following meanings:
- (1) "Contamination" shall mean the introduction or presence of substances or contaminants into a usable groundwater aquifer, an underground source of drinking water (USDW) or soil in such quantities as to render them unsuitable for their reasonably intended purposes.

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1	(2) "Environmental damage" shall mean any actual or potential impact
2	damage, or injury to environmental media caused by contamination resulting from
3	activities associated with oilfield sites or exploration and production sites
4	Environmental media shall include but not be limited to soil, surface water, ground
5	water, or sediment.
6	(2)(3) "Evaluation or remediation" shall include but not be limited to
7	investigation, testing, monitoring, containment, prevention, or abatement.
8	(3)(4) "Feasible Plan" means the most reasonable plan which addresses
9	environmental damage in conformity with the requirements of Louisiana
10	Constitution Article IX, Section 1 to protect the environment, public health, safety
11	and welfare, and is in compliance with the specific relevant and applicable standards
12	and regulations promulgated by a state agency in accordance with the Administrative
13	Procedure Act in effect at the time of clean up to remediate contamination resulting
14	from oilfield or exploration and production operations or waste.
15	(4)(5) "Oilfield site" or "exploration and production (E&P) site" means any
16	location or any portion thereof on which oil or gas exploration, development, or
17	production activities have occurred, including wells, equipment, tanks, flow lines or
18	impoundments used for the purposes of the drilling, workover, production, primary
19	separation, disposal, transportation or storage of E&P wastes, crude oil and natural
20	gas processing, transportation or storage of a common production stream of crude
21	oil, natural gas, coal seam natural gas, or geothermal energy prior to a custody
22	transfer or a sales point. In general, this definition would apply to all exploration and
23	production operations located on the same lease, unit or field.
24	(5)(6) "Timely notice" means written notice sent by certified mail, return
25	receipt requested. Such notice shall include a copy of the petition and any other filing
26	in such litigation.
27	* * *
28	M. In an action governed by the provisions of this Section, damages may

be awarded only for the following:

1 (1) The cost of funding the feasible plan adopted by the court. 2 (2) The cost of additional remediation only if required by an express contractual provision providing for remediation to original condition or to some 3 other specific remediation standard. 4 5 (3) The cost of evaluating, correcting or repairing environmental damage upon a showing that such damage was caused by unreasonable or excessive 6 7 operations based on rules, regulations, lease terms or standards applicable at 8 the time of the activity complained of, provided that such damage is not 9 duplicative of damages awarded under Paragraphs (1) or (2) of this Subsection. 10 (4) The cost of nonremediation damages. The provisions of this Subsection shall not be construed to alter the 11 12 traditional burden of proof or to imply the existence or extent of damages in any 13 action, nor shall it affect an award of reasonable attorney fees or costs under 14 this Section. Section 2. Code of Civil Procedure Art. 1563(A)(2) is hereby amended and 15 reenacted to read as follows: 16 Art. 1563. Limited admission of liability in environmental damage lawsuits; effect 17 18 A 19 (2) Upon the expiration of the delay in which a party may file a limited admission under Paragraph (A)(5) of this Article, and if one or more of the 20 21 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 22 as the "department", to conduct a public hearing to approve or structure a plan which 23 24 the department determines to be the most feasible plan to evaluate or remediate the environmental damage under the applicable regulatory standards pursuant to the 25 provisions of R.S. 30:29. There shall be a rebuttable presumption that the plan 26 27 approved or structured by the department, after consultation with the 28 Department of Environmental Quality as appropriate, shall be the most feasible

plan to evaluate or remediate the environmental damage under the applicable

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regulatory standards pursuant to the provisions of R.S. 30:29. For cases tried

by a jury, the court shall instruct the jury regarding this presumption if

requested by a party.

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Section 3. The provisions of this Act shall not apply to any case filed before March 10, 2014, nor shall it apply to any case in which the court, on or before March 10, 2014 has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by J. W. Wiley.

DIGEST

Adley (SB 667)

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<u>Present law</u> provides that a defendant may request a hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation. Further provides that a party dismissed under <u>present law</u> will be entitled to a judgment of dismissal with prejudice following a final nonappealable judgment on the claims asserted by the party against whom the preliminary dismissal was granted.

<u>Proposed law</u> retains <u>present law</u> but further provides that the party against whom the preliminary dismissal was granted will be entitled to recover from the party who asserted the claim an award of reasonable attorney fees and costs, as may be determined by the court.

<u>Proposed law</u> provides that in all cases in which a party makes a limited admission there will be a rebuttable presumption that the plan approved or structured by the department, after consultation with the DEQ as appropriate, is the most feasible plan to evaluate or remediate to applicable regulatory standards the environmental damage for which responsibility is admitted. For cases tried by a jury, the court must instruct the jury regarding this presumption if so requested by a party.

<u>Present law</u> does not preclude a judgment ordering damages for or implementation of an additional remediation in excess of the requirements of the plan adopted by the court as may be required in accordance with the terms of an express contractual provision.

Proposed law removes present law.

<u>Present law</u> provides that any award granted in connection with the judgment for additional remediation is not required to be paid into the registry of the court.

<u>Proposed law</u> provides that only awards for additional remediation in excess of the requirements of the plan adopted by the court are not required to be paid into the registry of the court.

Proposed law provides for the definition of "contamination".

<u>Proposed law</u> provides for remediation damages only for the following:

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- (1) The cost of funding the feasible plan adopted by the court.
- (2) The cost of additional remediation if required by an express contractual provision providing for remediation to original condition or some other specific remediation standard.
- (3) The cost of evaluating, correcting or repairing any environmental damage caused by unreasonable or excessive operations based on rules, regulations, lease terms or standards applicable at the time of the activity under questions, provided that such damage is not duplicative of other damages.
- (4) The cost of nonremediation damages.

<u>Proposed law</u> provides that the provisions of <u>proposed law</u> will not be construed to alter the traditional burden of proof or to imply the existence of extent of damages in any action, nor will it affect an award of reasonable attorney fees or costs.

<u>Present law</u> provides that when a party files a limited admission for environmental damage, the court will refer the matter to 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 rededicate the environmental damage under the applicable regulatory standards.

<u>Proposed law</u> provides that the plan approved by the department is the most feasible plan to remediate environmental damage under the applicable regulatory standards. Further provides that for cases tried by a jury, the court shall instruct the jury regarding this presumption if requested by a party.

Provides that the provisions of <u>proposed law</u> will not apply to any case filed before March 10, 2014, nor shall it apply to any case in which the court, on or before March 10, 2014 has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

Effective August 1, 2014.

(Amends R.S. 30:29(B)(6), (H), and (I) and C.C.P. Art. 1563(A)(2); adds R.S. 30:29(C)(2)(c) and (M))

Summary of Amendments Adopted by Senate

<u>Committee Amendments Proposed by Senate Committee on Natural Resources to</u> the original bill

- 1. Moves provisions of law <u>from</u> R.S. 30:29.2 <u>to</u> R.S. 30:29(M).
- 2. Makes technical changes.
- 3. Provides that reasonable attorney fees and costs will be determined by the court.
- 4. Changes "responsible party" to "party" for limited admission of liability.
- 5. Allows DNR to consult with DEQ, as appropriate, on certain plans.
- 6. Adds the cost of evaluating the environmental damage to certain recoverable costs.

7. Adds provision relating to the effectiveness of the <u>proposed law</u> on existing cases.