

Regular Session, 2012

SENATE BILL NO. 555

BY SENATOR ADLEY

MINERALS. Provides for the remediation of oilfield sites and exploration and production sites. (8/1/12)

AN ACT

To amend and reenact R.S. 30:29(C)(1), (2), and (3) and to enact R.S. 30:29(B)(5), (6), (7), and (L), relative to the remediation of oilfield sites and exploration and production sites; to provide for the admission or finding of liability by certain parties; to provide for the issuance of subpoenas for certain individuals and the procedure for a preliminary hearing; to suspend the prescriptive period for cases involving environmental damage; to provide for indemnification; to provide terms, conditions, requirements, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:29(C)(1), (2), and (3) are hereby amended and reenacted and R.S. 30:29(B)(5), (6), (7), and (L) are hereby enacted to read as follows:

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

* * *

B.(1) * * *

(5) Any party may subpoena, for purposes of deposition or trial, any employee, contractor, or representative of the department involved in the formulation of the feasible plan approved by the department under Subsection

1 C of this Section, or an agency that reviews and provides comments under
2 Subsection C of this Section. Discovery regarding the department's review,
3 approval, or structuring of the feasible plan and of an agency that reviews and
4 provides comments shall not be allowed until after the department submits its
5 final feasible plan with reasons to the court pursuant to Subsection C of this
6 Section. If a party subpoenas the records or testimony of the department or an
7 agency for deposition or trial, the party issuing the subpoena shall pay the costs
8 of the department or agency in responding to such subpoena.

9 (6) Within sixty days of being served with a petition or amended petition
10 asserting an action, a defendant may request that the court conduct a
11 preliminary hearing to determine whether there is good cause for maintaining
12 the defendant as a party in the litigation. At the hearing, the parties may
13 introduce evidence in affidavit or written form. The plaintiff shall have the
14 initial burden to introduce evidence to support the allegations of environmental
15 damage, following which the moving party shall have the burden to
16 demonstrate the absence of a genuine issue of material fact that the moving
17 party caused or is otherwise legally responsible for the alleged environmental
18 damage. The rules governing summary judgments in the Code of Civil
19 Procedure shall not apply to the preliminary hearing. Within fifteen days of the
20 preliminary hearing, the court shall issue an order on any timely request for
21 preliminary dismissal. A judgment of dismissal under this Paragraph shall be
22 without prejudice, with all parties reserving the right to rejoin the dismissed
23 defendant during the litigation upon discovery of evidence not reasonably
24 available at the time of the hearing on the motion for preliminary dismissal. If
25 not rejoined, a party dismissed under this Paragraph shall be entitled to a
26 judgment of dismissal with prejudice following a final non-appealable judgment
27 on the claims asserted by the party against whom the preliminary dismissal was
28 granted. Any pleading rejoining any defendant previously dismissed under this
29 Paragraph shall relate back to the filing of the original petition or any

1 amendment thereto as provided in the Code of Civil Procedure Article 1153.
2 The finding of the district court shall be without prejudice of any party to
3 litigate the legal responsibility of any potentially responsible party, the
4 allocation of responsibility among the potentially responsible parties, and any
5 other issues incident to the finder of fact's determination of the party or parties
6 who caused the damage or who are otherwise legally responsible for the alleged
7 environmental damage. The procedure for a preliminary dismissal provided
8 by this Paragraph shall be in addition to the pretrial rights and the remedies
9 available to the parties under the Code of Civil Procedure, including the right
10 to civil discovery.

11 (7)(a) The prescriptive period that applies to any claim covered by the
12 provisions of this Section shall be suspended for a period of one year upon the
13 mailing or physical delivery to the department of a notice of intent to
14 investigate. A notice of intent to investigate shall include all of the following
15 information:

16 (i) A description of the property alleged to have been damaged.
17 (ii) A description of the alleged environmental damage.
18 (iii) The general location of the alleged environmental damage on the
19 property.

20 (iv) The name and address of all known owners of the property.

21 (v) The name and address of the current operator.

22 (b) The party issuing the notice of intent to investigate shall mail by
23 certified mail return receipt requested to all persons identified in the notice a
24 copy of the notice.

25 (c) If a party submits a notice of intent to investigate, any subsequent
26 judicial demand by the party under the provisions of this Section shall identify
27 on a map the location of any alleged environmental damage and include the
28 results of any environmental testing performed on the property. Failure to
29 include this information at the time of the filing of the judicial demand shall

1 **result in exclusion of the information.**

2 C.(1) If at any time during the proceeding a party admits liability for
3 environmental damage or the finder of fact determines that environmental damage
4 exists and determines the party or parties who caused the damage or who are
5 otherwise legally responsible therefor, the court shall order the party or parties who
6 admit responsibility or whom the court finds legally responsible for the damage to
7 develop a plan or submittal for the evaluation or remediation to applicable
8 **regulatory** standards of the contamination that resulted in the environmental
9 damage. The court shall order that the plan be developed and submitted to the
10 department and the court within a time that the court determines is reasonable and
11 shall allow the plaintiff or any other party at least thirty days from the date each plan
12 or submittal was made to the department and the court to review the plan or
13 submittal and provide to the department and the court a plan, comment, or input in
14 response thereto. The department shall consider any plan, comment, or response
15 provided timely by any party. The department shall submit to the court a schedule
16 of estimated costs for review of the plans or submittals of the parties by the
17 department and the court shall require the party admitting responsibility or the party
18 found legally responsible by the court to deposit in the registry of the court sufficient
19 funds to pay the cost of the department's review of the plans or submittals. Any plan
20 or submittal shall include an estimation of cost to implement the plan.

21 (2)(a) Within sixty days from the last day on which any party may provide
22 the department with a plan, comment, or response to a plan as provided in Paragraph
23 (C)(1) of this Section, the department shall conduct a public hearing on the plan or
24 plans submitted. **When a public hearing is held following a limited admission**
25 **pursuant to the Code of Civil Procedure Article 1563, then the department shall**
26 **not conduct an additional public hearing pursuant to this Section for the same**
27 **environmental damage.** Within sixty days of the conclusion of the hearing, the
28 department shall approve or structure a **final plan, or if applicable, a preliminary**
29 **plan pursuant to Subparagraph (C)(3)(b) of this Section,** based on the evidence

1 submitted which the department determines to be the most feasible plan to evaluate
2 or remediate the environmental damage and protect the health, safety, and welfare
3 of the people. The department shall issue written reasons for the plan it approves or
4 structures. On motion of the department, for good cause shown, the court may grant
5 the department additional time, not to exceed sixty days, within which to either
6 conduct the hearing or approve a plan with reasons.

7 **(b) Except as otherwise provided for in this Section, from the date the**
8 **party or parties, who admit responsibility or whom the court finds legally**
9 **responsible for the damage, submit a plan to the department until after the**
10 **department has filed with the court the approved feasible plan for the**
11 **evaluation or remediation of the environmental damage, no party to the**
12 **litigation, either directly or indirectly, shall have ex parte communication with**
13 **any employee, contractor, or representative of the department regarding the**
14 **formation of the feasible plan or an agency providing comments to the**
15 **department regarding the formation of the feasible plan. The feasible plan**
16 **issued by the department shall contain a signed affidavit of compliance with this**
17 **restriction. Any comments provided by an agency to the department shall also**
18 **contain a signed affidavit of compliance with this restriction.**

19 (3)(a) The department shall use and apply the applicable **regulatory**
20 standards in approving or structuring a plan that the department determines to be the
21 most feasible plan to evaluate or remediate the environmental damage.

22 **(b)(i) If the department preliminarily approves or structures a**
23 **preliminary plan that requires the application of regulatory standards of an**
24 **agency other than the department or that provides an exception from the**
25 **department's standards, within fifteen days of such preliminary structuring or**
26 **approval, the department shall submit the plan to the Department of**
27 **Agriculture and Forestry, the Department of Environmental Quality, and the**
28 **Department of Natural Resources for review and comment. Within thirty days**
29 **after the department's submission of the plan to all of the agencies, each agency**

1 may provide written comments regarding the plan. Each agency providing
2 written comments shall submit a schedule of the agency's costs for review of the
3 plan to the court for reimbursement by the responsible party. Failure of an
4 agency to respond to the department shall not affect the validity of the plan
5 approved by the department. The department and agency heads shall
6 coordinate in order to establish protocol to ensure inter-agency communication
7 regarding plan development, timely delivery of all proposed plans to the
8 appropriate agency heads, and timely receipt of all agency comments back to
9 the department.

10 (ii) Within thirty days after the receipt of any agency's written
11 comments, the department shall file in the court record the final plan, with
12 written reasons that the department determines to be the most feasible plan to
13 evaluate or remediate the environmental damage under applicable regulatory
14 standards, together with any comments submitted by an agency under Item
15 (C)(3)(b)(i). Based on the findings of the department, the department may issue
16 any compliance order it deems necessary to either the operator of record or,
17 where applicable, a party found responsible or admitting responsibility for
18 implementing the most feasible plan to evaluate or remediate the environmental
19 damage under applicable regulatory standards. If a compliance order is issued
20 against the responsible party who is not the current operator of record, the
21 responsible party shall give the current operator of record notice of the
22 compliance order within thirty days of the responsible party's receipt of the
23 compliance order.

24 * * *

25 L. If pursuant to the terms of a contract the responsible party is entitled
26 to indemnification against punitive damages arising out of the environmental
27 damage that is subject to the provisions of this Section, the responsible party
28 shall waive the right to enforce the contractual right to indemnification against
29 such punitive damages caused by the responsible party's acts or omissions if the

1 responsible party admits responsibility for the remediation of the
2 environmental damage under applicable regulatory standards pursuant to the
3 provisions of the Code of Civil Procedure Article 1563. Such waiver of the right
4 to indemnification against punitive damages shall not apply to any other claims
5 or damages.

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by J. W. Wiley.

DIGEST

Adley (SB 555)

Present law provides that if at any time during the proceeding a party admits liability for environmental damage or the finder of fact determines that environmental damage exists and determines the party or parties who caused the damage or who are otherwise legally responsible, the court shall order the party or parties who admit responsibility or whom the court finds legally responsible for the damage to develop a plan or submittal for the evaluation or remediation to applicable standards of the contamination that resulted in the environmental damage.

Proposed law allows any party to subpoena, for purposes of deposition or trial, any employee, contractor, or representative of the department or agency involved in the formulation of the feasible plan. Further allows the department or agency to recover costs associated with the subpoena.

Proposed law does not allow for discovery of the department's review, approval, or structuring of the feasible plan or of an agency's review and comments until after submission to the court of the final feasible plan.

Proposed law provides a procedure for a defendant to request that the court conduct a preliminary hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation.

Proposed law suspends the prescriptive period for one year for any claim covered by the present law. Further provides for the procedure and requirements for the suspension.

Present law provides a procedure for a public hearing on the plan or plans submitted to evaluate or remediate the environmental damage.

Proposed law provides that if a public hearing is held following a limited admission then the department will not conduct an additional public hearing for the same environmental damage.

Proposed law provides that from the date a party admits responsibility or whom the court finds legally responsible for the damage submits a plan to the department until after the department has filed with the court the approved feasible plan for the evaluation or remediation of the environmental damage, no party to the litigation, either directly or

indirectly, may have ex parte communication with any employee, contractor, or representative of the department or a commenting agency regarding the formation of the feasible plan.

Proposed law provides a procedure for review of a plan that requires the application of regulatory standards of an agency other than the department or that provides an exception from the department's standards. Further provides that the Dept. of Ag. and Forestry, DEQ, and DNR will review and comment on the plan.

Proposed law allows the department to issue compliance orders to either the operator of record or to a party found responsible or admitting responsibility for implementing the most feasible plan. Further provides for notice of the compliance order to the current operator.

Proposed law provides for waiver of the right to enforce the contractual right to indemnification against such punitive damages caused by the responsible party's acts or omissions if the responsible party admits responsibility for the remediation of the environmental damage under applicable regulatory standards. Further provides that the waiver of the right to indemnification against punitive damages will not apply to any other claims or damages.

Provides that the provisions of proposed law will not apply to any case in which the court on or before May 15, 2012, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

Effective August 1, 2012.

(Amends R.S. 30:29(C)(1), (2), and (3); adds R.S. 30:29(B)(5), (6), (7), and (L))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill

1. Provides subpoena and preliminary hearing procedure.
2. Provides for suspension of prescriptive period.
3. Removes limited admission of liability language.
4. Provides for public hearings.
5. Prohibits ex parte communication.
6. Provides procedure for approval of a feasible plan and allows for issuance of compliance orders.
7. Provides for indemnification.