

Regular Session, 2013

SENATE BILL NO. 139

BY SENATOR WARD AND REPRESENTATIVE ST. GERMAIN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONSERVATION. Provides relative to fines levied by the commissioner of conservation for certain violations. (2/3 - CA7s2.1(A)) (gov sig)

AN ACT

To amend and reenact R.S. 30:148.9(B) and to enact R.S. 30:18(A)(6), relative to underground caverns for hydrocarbon storage or solution mining; to provide for penalties for violations of laws, regulations, or orders relative to drilling or use of such underground caverns; to provide factors for determining penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:148.9(B) is hereby amended and reenacted and R.S. 30:18(A)(6) is hereby enacted to read as follows:

§18. Penalties for violation of Chapter; venue

A.(1) * * *

(6)(a)(i) Notwithstanding any provision of this Section to the contrary, any person found to be in violation of any provision of this Chapter related to the drilling or use of underground caverns for hydrocarbon storage or solution mining, or any requirement, rule, regulation, or order related thereto, may be liable for a civil penalty, to be assessed by the commissioner or the court, of not more than the cost to the state of any response action made necessary by such

1 violation that is not voluntarily paid by the violator, and a penalty of not more
2 than thirty-two thousand five hundred dollars for each day of violation.
3 However, such person may be liable for an additional penalty of not more than
4 one million dollars when any such violation is done intentionally, willfully, or
5 knowingly and either results in a discharge or disposal that causes irreparable
6 or severe damage to the environment or involves the discharge of a substance
7 which endangers human life or health.

8 (ii) If the penalty assessed by the commissioner is upheld in full or in
9 part, the commissioner shall be entitled to legal interest as provided in R.S.
10 9:3500 from the date of imposition of the penalty until paid.

11 (iii) Any person found to be in violation of any provision of this Chapter
12 related to the drilling or use of underground caverns for hydrocarbon storage
13 or solution mining, or any requirement, rule, regulation, or order related
14 thereto, may be subject to the revocation or suspension of any permit, license,
15 or variance that has been issued to the person related to the drilling or use of
16 such underground caverns for hydrocarbon storage or solution mining.

17 (b) Any person to whom a compliance order or a cease and desist order
18 is issued pursuant to this Chapter who fails to take corrective action within the
19 time specified in said order shall be liable for a civil penalty to be assessed by
20 the commissioner or the court of not more than fifty thousand dollars for each
21 day of continued violation or noncompliance.

22 (c)(i) In determining whether or not a civil penalty is to be assessed and
23 in determining the amount of the penalty or the amount agreed upon in
24 compromise, the following factors shall be considered:

25 (aa) The history of previous violations or repeated noncompliance.

26 (bb) The nature and gravity of the violation.

27 (cc) The gross revenues generated by the respondent.

28 (dd) The degree of culpability, recalcitrance, defiance, or indifference
29 to regulations or orders.

1 (ee) The monetary benefits realized through noncompliance.

2 (ff) The degree of risk to human health or property caused by the
3 violation.

4 (gg) Whether the noncompliance or violation and the surrounding
5 circumstances were immediately reported to the commissioner and whether the
6 violation or noncompliance was concealed or if there was an attempt to conceal
7 by the person charged.

8 (hh) Whether the person charged has failed to mitigate or to make a
9 reasonable attempt to mitigate the damages caused by his noncompliance or
10 violation.

11 (ii) The costs of bringing and prosecuting an enforcement action, such
12 as staff time, equipment use, hearing records, and expert assistance.

13 (ii) The commissioner may supplement such criteria by rule. In the
14 event that the order with which the person failed to comply was an emergency
15 cease and desist order, no penalty shall be assessed if it appears upon later
16 hearing that said order was issued without reasonable cause.

17 (iii) The commissioner by rule may establish classifications or levels of
18 violations and the appropriate enforcement response.

19 (d) After submission for a penalty determination at a hearing, the
20 commissioner shall provide an opportunity for relevant and material public
21 comment relative to any penalty that may be imposed.

22 (e) If the penalty assessed by the commissioner is upheld in full or in
23 part, the commissioner shall be entitled to legal interest as provided in R.S.
24 9:3500 from the date of imposition of the penalty until paid. If any penalty
25 assessed by the commissioner under the provisions of this Paragraph is vacated
26 or reduced as the result of an appeal of the assessment, the court shall award to
27 the respondent legal interest as provided in R.S. 9:3500 on the amount required
28 to be refunded by the commissioner.

29 * * *

1 §148.9. Oil; natural gas; liquid hydrocarbons; carbon dioxide; lease for
2 underground storage

3 * * *

4 B. Any lease granted hereunder shall be subject to the provisions of R.S.
5 30:18, 22, and 23, Statewide Order No. 29-M (LAC 43:XVII.Chapter 3), and
6 Statewide Order No. 29-N-1 (LAC 43:XVII.Chapter 1), as applicable.

7 Section 2. This Act shall become effective upon signature by the governor or, if not
8 signed by the governor, upon expiration of the time for bills to become law without signature
9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
11 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by McHenry Lee.

DIGEST

Ward (SB 139)

Present law provides for penalties for any person who violates a rule, regulation, or order of the commissioner of conservation.

Proposed law retains present law and provides that any person found to be in violation of any requirement, rule, regulation, or order related to the drilling or use of underground caverns issued by the commissioner may be liable for a civil penalty, to be assessed by the commissioner or the court, of not more than the cost to the state of any response action made necessary by the violation and a penalty of not more than \$32,500 per day of the violation. Further provides that if the violation is done intentionally, willfully, or knowingly, and results in either a discharge or disposal which causes severe damage to the environment, or a discharge or disposal which endangers human life or death, the person may be liable for an additional penalty of not more than \$1 million.

Proposed law provides that any person found to be in violation of any rule, regulation, or order related to the drilling or use of underground caverns may be subject to revocation or suspension of any permit, license, or variance which has been issued.

Proposed law provides that any person who has been issued a compliance order or a cease and desist order and who fails to take corrective action within the time specified will be liable for a civil penalty to be assessed by the commissioner or the court of no more than \$50,000 per day of the violation.

Proposed law provides criteria for assessing the amount of the penalty.

Proposed law requires the commissioner to provide an opportunity for relevant and material public comment relative to any penalty which may be imposed at a penalty determination hearing.

Proposed law provides that if the penalty assessed by the commissioner is upheld in full or

part, the commissioner will be entitled to legal interest. Further provides that if the penalty is vacated or reduced as a result of an appeal of the assessment, the court will award to the respondent legal interest.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 30:148.9(B); adds R.S. 30:18(A)(6))

Summary of Amendments Adopted by Senate

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

1. Changes criteria for the \$1 million penalty.
2. Requires that permit revocation be related to a certain cavern.

Senate Floor Amendments to engrossed bill

1. Technical.