

Regular Session, 2012

SENATE BILL NO. 505

BY SENATOR ADLEY

MINERALS. Provides relative to drilling units. (8/1/12)

1 AN ACT

2 To amend and reenact the introductory paragraph of R.S. 30:10(A), (A)(1) and (2), relative  
3 to minerals, oil, and gas; to provide for the agreements for drilling units; to provide  
4 for pooling interests; to provide for the election not to participate in a unit well; to  
5 provide for payment to certain royalty owners; to provide terms and conditions; and  
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. The introductory paragraph of R.S. 30:10(A), (A)(1) and (2) are hereby  
9 amended and reenacted to read as follows:

10 §10. Agreements for drilling units; pooling interests; terms and conditions; expenses

11 A. When two or more separately owned tracts of land are embraced within  
12 a drilling unit which has been established by the commissioner as provided in R.S.  
13 30:9(B), the owners may validly agree **by separate contract** to pool, **drill, and**  
14 **produce** their interests and to develop their lands as a drilling unit.

15 (1) Where the owners have not agreed **by separate contract** to pool, **drill,**  
16 **and produce** their interests, the commissioner shall require them to do so and to  
17 develop their lands as a drilling unit, if he finds it to be necessary to prevent waste

1 or to avoid drilling unnecessary wells.

2 (2) In the event ~~pooling is required~~, **a drilling unit is formed by a pooling**  
 3 **order by the commissioner and absent any agreement or contract between**  
 4 **owners as provided in this Section, then** the cost of development and operation of  
 5 the pooled unit chargeable to the owners therein shall be determined and recovered  
 6 as provided herein.

7 (a)(i) Any owner drilling or intending to drill a unit well, ~~including a~~  
 8 substitute unit well, **an alternate unit well, or a cross-unit well** on any drilling unit  
 9 heretofore or hereafter created by the commissioner, may, by ~~certified~~ **registered**  
 10 mail, return receipt requested, **or other form of guaranteed delivery and**  
 11 **notification method, not including electronic communication or mail**, notify all  
 12 other owners in the unit **prior to the actual spudding of any such well** of the  
 13 drilling or the intent to drill and give each owner an opportunity to elect to  
 14 participate in the risk and expense of such well. Such notice shall contain:

15 (aa) An **authorization for expenditure form ("AFE"), which shall include**  
 16 **a detailed** estimate of the cost of drilling, testing, completing, and equipping ~~the unit~~  
 17 **such proposed** well. **The AFE shall be dated within one hundred twenty days**  
 18 **of the date of the mailing of the notice;**

19 (bb) The proposed location of the ~~unit~~ well;

20 (cc) The proposed objective depth of the ~~unit~~ well; ~~and~~

21 (dd) **An estimate of ownership as a percentage of expected unit size or**  
 22 **approximate percentage of well participation;**

23 (ee) **In the event that the proposed well is being drilled or drilled at the**  
 24 **time of the notice, then a copy of all available** AH logs, core analysis, production  
 25 data, and well test data from the ~~unit~~ well which has not been made public.

26 (ii) ~~Such~~ **An** election to participate must be exercised by mailing written  
 27 notice thereof by ~~certified~~ **registered** mail, return receipt requested, **or other form**  
 28 **of guaranteed delivery and notification method, not including electronic**  
 29 **communication or mail**, to the owner drilling or intending to drill the ~~unit~~ **proposed**

1 well within thirty days after receipt of the initial notice. Failure to give timely written  
2 notice of the election to participate shall be deemed to be an election not to  
3 participate **and the owner shall be deemed a nonparticipating owner.**

4 (iii) ~~Another initial notice must be sent in order for the provisions of this~~  
5 ~~Subsection to apply if~~ **If** the drilling of the proposed ~~unit~~ well is not commenced in  
6 accordance with the initial notice within ninety days after receipt of the initial notice,  
7 **then the drilling owner shall send a supplemental notice in order for the**  
8 **provisions of this Subsection to apply.**

9 (b)(i) Should a notified owner elect not to participate in the risk and expense  
10 of the unit well, **substitute unit well, alternate unit well, or cross-unit well** or  
11 should such owner elect to participate in the risk and expense of the ~~unit~~ **proposed**  
12 well ~~and~~ **but** then fail to pay his share of ~~such expenses~~ **the drilling costs**  
13 **determined by the AFE** within sixty days of **the spudding of the well or fail to**  
14 **pay his share of subsequent drilling, completion, and operating expenses within**  
15 **sixty days of** receipt of **subsequent** detailed invoices, **then such owner shall be**  
16 **deemed a nonparticipating owner, and** the **drilling** owner ~~drilling same~~ shall, in  
17 addition to any other available legal remedies to enforce collection of such expenses,  
18 be entitled to own and recover out of production from such ~~unit~~ well allocable to the  
19 tract belonging to the nonparticipating owner such tract's allocated share of the actual  
20 reasonable expenditures incurred in drilling, testing, completing, equipping, and  
21 operating the ~~unit~~ well, including a charge for supervision, together with a risk  
22 charge, ~~which~~ **.The risk charge for a unit well or substitute unit well** shall be two  
23 hundred percent of such tract's allocated share of the cost of drilling, testing, and  
24 completing the ~~unit~~ well. **The risk charge for an alternate unit well or cross-unit**  
25 **well shall be one hundred percent of such tract's allocated share of the cost of**  
26 **drilling, testing, and completing such well.**

27 (ii)(aa) **During the recovery of the actual reasonable expenditures**  
28 **incurred in drilling, testing, completing, equipping, and operating the well, the**  
29 **charge for supervision, and the risk charge, the nonparticipating owner shall**

1 receive from the drilling owner for the benefit of his lessor royalty owner that  
2 portion of production due to the lessor royalty owner under the terms of the  
3 contract or agreement creating the royalty between the royalty owner and the  
4 nonparticipating owner. In the event the contract or agreement creating the  
5 royalty between the royalty owner and the nonparticipating owner is dissolved  
6 or terminated, then the provisions of this Subitem shall remain in effect and  
7 enforceable by both the drilling owner and the former royalty owner, whose  
8 contract or agreement was dissolved or terminated, except the drilling owner  
9 shall tender revenue proceeds equal to the royalty percentage and in accordance  
10 with the terms that existed in the dissolved or terminated contract or agreement  
11 directly to the former royalty owner, whose contract or agreement was  
12 dissolved or terminated, during the recoupment period of the well costs and risk  
13 charge provided in this Subitem.

14 (bb) In addition, during the recovery set forth in Subsection (ii)(aa) of  
15 this Subparagraph, the nonparticipating owner shall receive from the drilling  
16 owner for the benefit of the overriding royalty owner the lesser of: (i) the  
17 nonparticipating owner's total percentage of actual overriding royalty burdens  
18 associated with the existing lease or leases which cover each tract attributed to  
19 the nonparticipating owner at the time of the well proposal; or (ii) the difference  
20 between the weighted average percentage of the total actual royalty and  
21 overriding royalty burdens of the drilling owner's leasehold within the unit and  
22 the nonparticipating owner's actual leasehold royalty burdens at the time of the  
23 well proposal.

24 (cc) The share that is to be received by the nonparticipating owner on  
25 behalf of its lessor royalty owner and overriding royalty owner shall be made  
26 by the drilling owner in accordance with Part I of Chapter 2 of Subtitle I of  
27 Title 30 of the Louisiana Revised Statutes of 1950.

28 (dd) Nothing in this Section shall relieve any lessee of its obligations to  
29 pay, from the commencement of production, any lessor royalty and overriding

1 royalty owned under the terms of his lease, and other agreements during the  
2 recovery of actual well costs and the risk charge, or shall relieve any lessee of  
3 his obligation to pay all royalty and overriding royalty owned under the terms  
4 of his lease and other agreements after the recovery of the actual well costs and  
5 the risk charge. Except as provided in this Paragraph, the drilling owner's  
6 obligation to pay the royalty to the nonparticipating owner in no way creates an  
7 obligation, duty, or relationship between the drilling owner and any person to  
8 whom the nonparticipating owner is liable to contractually or otherwise.

9 (ee) In the event of nonpayment by the nonparticipating owner of the  
10 royalty and overriding royalty due, the lessor royalty owner and overriding  
11 royalty owner shall provide written notice of such failure to the  
12 nonparticipating owner and the drilling owner as a prerequisite to a judicial  
13 demand for damages. The nonparticipating owner and the drilling owner shall  
14 have thirty days after receipt of the required notice within which to pay the  
15 royalties due or to respond in writing by stating a reasonable cause for  
16 nonpayment. If the nonparticipating owner or the drilling owner fail to make  
17 payment of the royalties or fail to state a reasonable cause for nonpayment  
18 within this period, the court may award as damages double the amount of  
19 royalties due, interest on that sum from the date due, and a reasonable  
20 attorney's fee regardless of the cause for the original failure to pay royalties.

21 (iii) Any owner not notified shall bear only his tract's allocated share of the  
22 actual reasonable expenditures incurred in drilling, testing, completing, equipping,  
23 and operating the unit well, including a charge for supervision, which share shall be  
24 subject to the same obligation and remedies and rights to own and recover out of  
25 production in favor of the drilling party or parties as ~~hereinabove provided~~ **provided**  
26 in this Subsection. A participating owner shall deliver to the owner who has not  
27 been notified the proceeds attributable to his royalty and overriding royalty  
28 burdens as described in this Section.

29 (c) Should a drilling unit be created by order of the commissioner around a

1 well already drilled or drilling and including one or more tracts as to which the  
2 owner or owners thereof had not participated in the risk and expense of drilling such  
3 well, **then within thirty days of the date of the order creating such unit** the  
4 provisions ~~hereinabove~~ **of this Subsection** for notice, election, and participation shall  
5 be applicable as if a ~~unit~~ well were being proposed by the owner who drilled or was  
6 drilling such well; however, the cost of drilling, testing, completing, equipping, and  
7 operating the well allocable to each tract included in the unit shall be reduced in the  
8 same proportion as the recoverable reserves in the unitized pool have been recovered  
9 by prior production, if any, in which said tract or tracts did not participate prior to  
10 determining the share of cost allocable to such tract or tracts.

11 (d)(i) Should a drilling unit be revised by order of the commissioner so as to  
12 include an additional tract or tracts, **then within thirty days of the date of the order**  
13 **revising such unit** the provisions ~~hereinabove~~ **of this Subsection** for notice,  
14 election, and participation shall be applicable to such added tract or tracts and the  
15 owner thereof as if a ~~unit~~ well were being proposed by the owner who had drilled the  
16 ~~unit~~ well; however, the cost of drilling, testing, completing, equipping, and operating  
17 the unit well shall be reduced in the same proportion as the recoverable reserves in  
18 the unitized pool have been recovered by prior production, if any, in which said tract  
19 or tracts did not participate prior to determining the share of cost allocable to the  
20 subsequently included tract or tracts.

21 (ii) Should a drilling unit be revised by order of the commissioner as to  
22 exclude a tract or tracts, the cost of drilling, testing, completing, equipping, and  
23 operating the unit well shall be reduced in the same proportion as the recoverable  
24 reserves in the unitized pool have been recovered by prior production to determine  
25 the share of cost allocable to the subsequently excluded tract or tracts.

26 (e)(i) The provisions of ~~Paragraph 2(b) above~~ **Subparagraph (b) of this**  
27 **Paragraph** with respect to the risk charge shall not apply to any unleased interest not  
28 subject to an oil, gas, and mineral lease.

29 (ii) Notwithstanding the provisions of ~~Paragraph 2(b) above~~ **Subparagraph**

1           **(b) of this Paragraph**, the royalty owner and overriding royalty owner shall receive  
2           that portion of production due to them under the terms of the contract creating the  
3           royalty.

4           (f) In the event of a dispute relative to the calculation of unit well costs or  
5           depreciated unit well costs, the commissioner shall determine the proper costs after  
6           notice to all interested owners and a public hearing thereon.

7           (g) Nothing contained herein shall have the effect of enlarging, displacing,  
8           varying, altering, or in any way whatsoever modifying or changing the rights and  
9           obligations of the parties thereto under any contract between or among owners  
10           having a tract or tracts in the unit.

11           (h) The owners in the unit to whom the notice provided for hereinabove may  
12           be sent, are the owners of record as of the date on which the notice is sent.

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The original instrument was prepared by J. W. Wiley. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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DIGEST

Adley (SB 505)

Present law provides for the election to participate in the risk and expense of a unit well by certain owners who have the right to drill into and to produce from a pool.

Present law provides that when two or more separately owned tracts of land are embraced within a drilling unit which has been established by the commissioner, the owners may validly agree to pool their interests and to develop their lands as a drilling unit.

Proposed law retains present law and provides that the owners may agree by separate contract to pool, drill, and produce their interests.

Present law provides that in the event pooling is required, the cost of development and operation of the pooled unit chargeable to the owners therein shall be determined and recovered as provided in present law.

Proposed law changes present law language from "pooling is required" to "a drilling unit is formed by a pooling order by the commissioner and absent any agreement or contract between owners as provided in this Section, then".

Present law provides that any owner drilling or intending to drill a unit well, including a substitute unit well, on any drilling unit heretofore or hereafter created by the commissioner, may, by certified mail, return receipt requested, notify all other owners in the unit of the drilling or the intent to drill and give each owner an opportunity to elect to participate in the risk and expense of such well.

Proposed law includes additional types of wells and adds that notice and the response to the notice may be by another form of guaranteed delivery and notification method, not including electronic communication or mail. Further provides that the owners must be notified prior to the actual spudding of any such well.

Present law provides for the following information to be contained in the notice sent by the owner drilling or intending to drill a well:

1. An estimate of the cost of drilling, testing, completing, and equipping the unit well;
2. The proposed location of the unit well;
3. The proposed objective depth of the unit well; and
4. All logs, core analysis, production data, and well test data from the unit well which has not been made public.

Proposed law changes the information that must be included in the notice to the following:

1. An authorization for expenditure form ("AFE"), which shall include a detailed estimate of the cost of drilling, testing, completing, and equipping such proposed well. The AFE shall be dated within one hundred twenty days of the date of the mailing of the notice;
2. The proposed location of the well;
3. The proposed objective depth of the well;
4. An estimate of ownership as a percentage of expected unit size or approximate percentage of well participation;
5. In the event that the proposed well is being drilled or drilled at the time of the notice, then a copy of all available logs, core analysis, production data, and well test data from the well which has not been made public.

Present law provides that another initial notice must be sent in order for present law to apply if the drilling of the proposed unit well is not commenced in accordance with the initial notice within ninety days after receipt of the initial notice.

Proposed law makes technical changes to present law.

Present law provides that should a notified owner elect not to participate in the risk and expense of the unit well or should such owner elect to participate in the risk and expense of the unit well and then fail to pay his share of such expenses within 60 days of receipt of detailed invoices, the owner drilling same shall, in addition to any other available legal remedies to enforce collection of such expenses, be entitled to own and recover out of production from such unit well allocable to the tract belonging to the nonparticipating owner such tract's allocated share of the actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the unit well, including a charge for supervision, together with a risk charge, which risk charge shall be 200% of such tract's allocated share of the cost of drilling, testing, and completing the unit well.

Proposed law changes present law to add substitute unit well, alternate unit well, or cross-unit well to the list of wells and changes the timing of when drilling and operating expenses are required to be paid in order not to be deemed a nonparticipating owner.

Present law provides that the risk charge will be 200% of such tract's allocated share of the cost of drilling, testing, and completing the unit well.



Proposed law changes the risk charge so that the risk charge for a unit well or substitute unit well will be 200% and the risk charge for an alternate unit well or cross-unit well will be 100%.

Proposed law provides that during the recovery of the actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the well, the charge for supervision, and the risk charge, the nonparticipating owner shall receive from the drilling owner for the benefit of his lessor royalty owner that portion of production due to the lessor royalty owner under the terms of the contract or agreement creating the royalty between the royalty owner and the nonparticipating owner.

Proposed law provides that in the event the contract or agreement creating the royalty between the royalty owner and the nonparticipating owner is dissolved or terminated, then the provisions of proposed law will remain in effect and enforceable by both the drilling owner and the former royalty owner, whose contract or agreement was dissolved or terminated, except the drilling owner shall tender revenue proceeds equal to the royalty percentage and in accordance with the terms that existed in the dissolved or terminated contract or agreement directly to the former royalty owner, whose contract or agreement was dissolved or terminated, during the recoupment period of the well costs and risk charge.

Proposed law provides that the nonparticipating owner shall receive from the drilling owner for the benefit of the overriding royalty owner the lesser of: (1) the nonparticipating owner's total percentage of actual overriding royalty burdens associated with the existing lease or leases which cover each tract attributed to the nonparticipating owner at the time of the well proposal; or (2) the difference between the weighted average percentage of the total actual royalty and overriding royalty burdens of the drilling owner's leasehold within the unit and the nonparticipating owner's actual leasehold royalty burdens at the time of the well proposal.

Proposed law provides that the share that is to be received by the nonparticipating owner on behalf of its lessor royalty owner and overriding royalty owner shall be made by the drilling owner in accordance with Part I of Chapter 2 of Title 30 of the La. R.S. of 1950.

Proposed law provides that nothing in the proposed law will relieve any lessee of its obligations to pay, from the commencement of production, any lessor royalty and overriding royalty owned under the terms of his lease, and other agreements during the recovery of actual well costs and the risk charge, or shall relieve any lessee of his obligation to pay all royalty and overriding royalty owned under the terms of his lease and other agreements after the recovery of the actual well costs and the risk charge. Further provides that except as provided in proposed law, the drilling owner's obligation to pay the royalty to the nonparticipating owner in no way creates an obligation, duty, or relationship between the drilling owner and any person to whom the nonparticipating owner is liable to, contractually or otherwise.

Proposed law provides in the event of nonpayment by the nonparticipating owner of the royalty and overriding royalty due, the lessor royalty owner and overriding royalty owner will provide written notice of such failure to the nonparticipating owner and the drilling owner as a prerequisite to a judicial demand for damages. Also provides that the nonparticipating owner and the drilling owner will have 30 days after receipt of the required notice within which to pay the royalties due or to respond in writing by stating a reasonable cause for nonpayment. Further provides that if the nonparticipating owner or the drilling owner fail to make payment of the royalties or fail to state a reasonable cause for nonpayment within this period, the court may award as damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney's fee regardless of the cause for the original failure to pay royalties.

Proposed law requires a participating owner to deliver to the owner who has not been notified the proceeds attributable to his royalty and overriding royalty burdens.

Present law provides for notice to be sent should a drilling unit be created by order of the commissioner around a well already drilled or drilling and including one or more tracts as to which the owner or owners thereof had not participated in the risk and expense of drilling such well.

Proposed law retains present law and requires that the notice be sent within 30 days of the date of the order creating such unit.

Present law provides for notice to be sent should a drilling unit be revised by order of the commissioner so as to include an additional tract or tracts.

Proposed law retains present law and requires that the notice be sent within 30 days of the date of the order revising such unit.

Effective August 1, 2012.

(Amends R.S. 30:10(A)(intro para), and (A)(1) and (2))

#### Summary of Amendments Adopted by Senate

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

1. Allows owners to agree by separate contract to pool, drill, and produce their interests.
2. Changes the requirements of the notice and response to the notice.
3. Makes technical changes.
4. Changes the risk charge provisions.
5. Changes the definition of who is considered a "nonparticipating owner".
6. Requires that certain royalty owners be paid according to the terms of their contract or agreement.
7. Requires that certain overriding royalty owners be paid according to a formula.
8. Provides how payment is to be made by the drilling owner to the nonparticipating owner, on behalf of his royalty or overriding owners.
9. Provides for the penalties and procedure for enforcement of nonpayment by the drilling owner or the nonparticipating owner.
10. Provides for payment to an owner who has not been notified of his option to participate in a well.
11. Requires that a notice be sent within 30 days of creating a new unit or revising a unit.

##### Senate Floor Amendments to engrossed bill

1. Makes technical changes.