

Regular Session, 2012

SENATE BILL NO. 760 (Substitute of Senate Bill No. 731 by Senator Allain)

BY SENATOR ALLAIN

MINERALS. Provides relative to qualified admission of responsibility for remediation of oilfield sites and exploration and production sites. (8/1/12)

1 AN ACT

2 To enact R.S. 30:29.2, relative to remediation; to provide relative to remediation of oilfield  
3 sites and exploration and production sites; to provide for qualified admission of  
4 responsibility for environmental damage; to provide terms, conditions, procedures,  
5 requirements, definitions, and standards; to provide relative to duties and  
6 responsibilities of certain agency heads; to provide relative to certain actions or  
7 claims involving environmental damage; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 30:29.2 is hereby enacted to read as follows:

10 **§29.2. Qualified admission of responsibility for environmental damage**  
11 **A. Within one hundred and twenty days of being served with a claim**  
12 **under R.S. 30:29, any party may make a qualified admission of responsibility**  
13 **to fund the most feasible plan to evaluate or remediate all or a portion of the**  
14 **environmental damage to applicable regulatory standards. This admission shall**  
15 **not be construed as an admission of liability for damages pursuant to R.S.**  
16 **30:29(H). After the initial admission under the provisions of this Section, an**  
17 **admission by any other party to the litigation under the provisions of this**

1        Section shall be made within thirty days of the filing in the record of the first  
2        admission.

3                B. Within sixty days of a qualified admission of responsibility as to all  
4        or any portion of the environmental damage, and whether by one or more of the  
5        defendants, a party admitting responsibility shall file a plan of evaluation or  
6        remediation with the Department of Natural Resources, office of conservation,  
7        together with all facts and data necessary to support the plan. Any party may  
8        submit a plan, submittal or comment for consideration by the department. The  
9        department shall have sixty days after the filing of the plan of evaluation or  
10       remediation within which to approve the plan or structure a plan which the  
11       department determines to be the most feasible plan to evaluate or remediate the  
12       environmental damage to applicable regulatory standards. No plan for  
13       evaluation or remediation of environmental damage approved by the  
14       department shall include an exception from any existing regulations as to  
15       remediation of environmental media suitable for use in human consumption,  
16       the forestry industry, the fishing industry, the agriculture industry, the  
17       aquaculture industry, or coastal restoration, unless the exception has been  
18       approved by the commissioner of agriculture, the secretary of the Department  
19       of Natural Resources, the secretary of the Department of Wildlife and Fisheries,  
20       the secretary of the Department of Environmental Quality, the secretary of the  
21       Department of Health and Hospitals, and, if the environmental damage is  
22       within the coastal zone or impacts the master plan for coastal protection, the  
23       chairman of the Coastal Protection and Restoration Authority.

24                C. A qualified admission of responsibility, as provided for in this  
25        Section, for implementing the most feasible plan and the plan approved by the  
26        department shall be admissible as evidence in any action. The party admitting  
27        responsibility shall be required to deposit with the department sufficient funds  
28        to cover the cost of the department's review of the plans or submittals including  
29        the cost of holding a public hearing to approve or structure the feasible plan.

1        The initial payment of these costs shall be in the amount of one hundred  
2        thousand dollars. This initial payment shall be deposited prior to or along with  
3        the submission of the plan by the party admitting responsibility. Within thirty  
4        days of the department's filing of the plan, the party admitting responsibility for  
5        implementing the most feasible plan shall reimburse the plaintiff for those costs  
6        which the court determines to be recoverable under R.S. 30:29(E)(1). Nothing  
7        in this Section shall delay the prosecution or defense of the action, including the  
8        conducting of discovery and pretrial motion practice.

9                D. Any party may subpoena, for purposes of deposition or trial, any  
10              employee, contractor or representative of the department involved in the  
11              formulation of the feasible plan approved by the department.

12              E. The provisions of this Section shall not establish primary jurisdiction  
13              with the Department of Natural Resources.

14              F. The definitions in R.S. 30:29 shall apply to the provisions of this  
15              Section.

16              G.(1) Any party admitting responsibility under the provisions of this  
17              Section shall waive any and all legal or contractual rights to indemnity or  
18              contribution from any party to the litigation, or any other person, for the cost  
19              of implementing the feasible plan. Any agreement granting indemnity or  
20              contribution to any such party admitting responsibility shall become null and  
21              void upon the filing of a qualified admission of responsibility. Any party who  
22              accepts all or part of any payment of any legal or contractual indemnity  
23              obligation in violation of the provisions of this Paragraph shall be liable to the  
24              indemnitor for the return of such payment. A qualified admission of  
25              responsibility and the resulting waiver of indemnity shall be limited to the  
26              extent of the qualified admission of responsibility. The waiver of indemnity shall  
27              not apply to indemnity against acts or omissions of the assignee or successor  
28              operator, occurring after any assignment, or for any damages beyond the  
29              jurisdiction of the department.

1                    **(2) Nothing in this Section shall prohibit or invalidate any insurance**  
2                    **agreement governed by the provisions of Title 22 of the Louisiana Revised**  
3                    **Statutes of 1950.**

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

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

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#### DIGEST

Allain (SB 760)

Present law provides a procedure for the remediation of oilfield sites and exploration and production sites and provides for definitions.

Proposed law provides that the definitions in present law shall apply to proposed law.

Proposed law provides that within 120 days of being served with a claim under present law any party may make a qualified admission of responsibility to fund the most feasible plan to evaluate or remediate all or a portion of the environmental damage to applicable regulatory standards.

Proposed law provides that an admission will not be construed as an admission of liability for damages pursuant to present law. Further provides that after the initial admission under proposed law, an admission by any other party to the litigation must be made within 30 days of the filing in the record of the first admission.

Proposed law provides that within 60 days of a qualified admission of responsibility as to all or any portion of the environmental damage, and whether by one or more of the defendants, a party admitting responsibility must file a plan of evaluation or remediation with the DNR, office of conservation, together with all facts and data necessary to support such plan.

Proposed law provides that any party may submit a plan, submittal or comment for consideration by the department. Further requires the department within 60 days after the filing of the plan of evaluation or remediation to approve the plan or structure a plan which the department determines to be the most feasible plan to evaluate or remediate the environmental damage to applicable regulatory standards.

Proposed law provides that no plan for evaluation or remediation of environmental damage approved by the department will include an exception from any existing regulations as to remediation of environmental media, unless such exception has been approved by certain department heads.

Proposed law provides that the qualified admission of responsibility for implementing the most feasible plan and the plan approved by the department will be admissible as evidence in any action.

Proposed law requires the party admitting responsibility to deposit with the department sufficient funds to cover the cost of the department's review of the plans or submittals including the cost of holding a public hearing to approve or structure the feasible plan.

Further requires the initial payment to be in the amount of \$100,000, and be deposited prior to or along with the submission of the plan by the party admitting responsibility.

Proposed law provides that within 30 days of the department's filing of the plan, the party admitting responsibility for implementing the most feasible plan must reimburse the plaintiff for those costs which the court determines to be recoverable.

Proposed law provides that nothing in the proposed law will delay the prosecution or defense of the action, including the conducting of discovery and pretrial motion practice.

Proposed law allows any party to 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.

Proposed law provides that proposed law will not establish primary jurisdiction with the DNR.

Proposed law requires any party admitting responsibility to waive any and all legal or contractual rights to indemnity or contribution from any party to the litigation, or any other person, for the cost of implementing the feasible plan. Further requires that any agreement granting indemnity or contribution to any such party admitting responsibility will become null and void upon the filing of a qualified admission of responsibility.

Proposed law provides that any party who accepts all or part of any payment of any legal or contractual indemnity obligation in violation of proposed law will be liable to the indemnitor for the return of such payment.

Proposed law provides that a qualified admission of responsibility and the resulting waiver of indemnity will be limited to the extent of the qualified admission of responsibility. Further provides that the waiver of indemnity will not apply to indemnity against acts or omissions of the assignee or successor operator, occurring after any assignment, or for any damages beyond the jurisdiction of the department.

Proposed law provides that nothing in proposed law will prohibit or invalidate any insurance agreement governed by the provisions of Title 22 of the Louisiana Revised Statutes of 1950.

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

Effective August 1, 2012.

(Adds R.S. 30:29.2)