



LOUISIANA STATE LAW INSTITUTE

PAUL M. HEBERT LAW CENTER, ROOM W127

UNIVERSITY STATION

BATON ROUGE, LA 70803-1016

OFFICE OF
THE DIRECTOR
(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

May 14, 2021

Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**RE: SENATE RESOLUTION NO. 31 OF THE 2016 SECOND
EXTRAORDINARY SESSION**

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to the Louisiana Risk Fee Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge", with a horizontal line extending to the right.

Guy Holdridge
Director

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov
Secretary of State, Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
RISK FEE ACT COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO SR NO.
31 OF THE 2016 SECOND EXTRAORDINARY SESSION**

Relative to the Louisiana Risk Fee Act

Prepared for the
Louisiana Legislature on

May 14, 2021

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
RISK FEE ACT COMMITTEE**

Wm. Timothy Allen, III Shreveport

M. Taylor Darden New Orleans

Keith B. Hall Baton Rouge

Matthew R. May Shreveport

David L. Smelley Shreveport

Randall C. Songy Lafayette

* * * * *

Patrick S. Ottinger, Reporter
Mallory C. Waller, Staff Attorney

SENATE RESOLUTION NO. 31

BY SENATOR CORTEZ

A RESOLUTION

To urge and request the Louisiana State Law Institute to study the implications of Act 743 of the 2012 Regular Session of the Legislature, and to submit a written report of its findings with any recommendations.

WHEREAS, in 1984, R.S. 30:10 was amended by Act 345 to add statutory provisions which, in the oil and gas industry, have been referred to as the "Louisiana Risk Fee Act"; and

WHEREAS, the purpose of this legislation was to incentivize a party to share in the cost, risk, and expense of drilling a well in a compulsory unit created by the office of conservation, and concomitantly, to compensate a party for the risk that it assumes in drilling a well; and

WHEREAS, the drilling of oil and gas wells is an important sector of Louisiana's economy, and the policy of this state is advanced when wells are drilled under circumstances that the risk associated therewith is equitably shared by parties who would share in the reward of such undertakings; and

WHEREAS, certain provisions of Act 743 of the 2012 Regular Session may frustrate the original policy and purpose of the 1984 legislation, and may serve as a disincentive to a party who does not share in the risk associated with the drilling of a well, and reward such nonparticipating party for its failure to share in the risk associated with drilling a well; and

WHEREAS, certain provisions contained in Act 743 could lead to significant uncertainty in relation to the rights and obligations of the parties to a drilling unit; and

WHEREAS, the oil and gas industry would benefit from a thoughtful examination and study of the entirety of the Louisiana Risk Fee Act.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study the implications of Act 743 of the 2012 Regular Session of the Legislature on the Louisiana Risk Fee Act.

SR NO. 31

ENROLLED

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a written report of its findings, together with any recommendations in the form of proposed legislation, to the Legislature of Louisiana no later than February 1, 2017.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

May 14, 2021

To: Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SR NO. 31 OF THE 2016 SECOND EXTRAORDINARY SESSION**

Senate Resolution No. 31 of the 2016 Second Extraordinary Session urged and requested the Louisiana State Law Institute to study the implications of Act 743 of the 2012 Regular Session of the Legislature on the Louisiana Risk Fee Act. In fulfillment of this request, the Law Institute created the Risk Fee Act Committee, composed of oil and gas practitioners and professors and placed under the direction of Mr. Patrick S. Ottinger, a practicing lawyer and an Adjunct Professor of Mineral Law at the LSU Law Center, as Reporter.

The Committee began its work by considering the history of the Louisiana Risk Fee Act, which was enacted in 1984 and amended in 1991 and 2008 before the changes made in 2012. The Committee met on multiple occasions to examine and study the 2012 amendments and to discuss issues and concerns that could be addressed by revisions to R.S. 30:10. Members of the Committee also requested comments from trade associations and energy participants, including current drilling owners, concerning problems they might have encountered with respect to the Risk Fee Act in general, as well as its 2012 amendments.

During the course of its work, the Committee considered several issues, including the following:

1. Clarifying R.S. 30:10 with respect to the determination of the revenue stream to be applied against payout of any recoverable expenses and risk charge as it relates to the deduction or exclusion of royalties paid by the drilling owner to a nonparticipating owner on behalf of a nonparticipating owner's lessor.
2. Considering the entitlement of a participating owner to receive well information and the consequences that arise when a risk charge notice (sometimes called a "risk fee notice") is issued by the drilling owner at a time when a tract is unleased of record but thereafter a mineral lease is granted or recorded.
3. Clarifying the drilling owner's obligation to pay royalties with respect to unleased interests that later become leased to third persons subsequent to the spudding of the well.
4. Considering whether to allow a drilling owner to recover payments made to nonparticipating owners for the benefit of lessor royalty owners or overriding royalty

owners based on theories of *negotiorum gestio*, unjust enrichment, or payment of a thing not due, and whether to establish a cause of action under the Risk Fee Act to this effect.

5. Clarifying that dissolution is not available as a remedy for a lessor royalty owner and overriding royalty owner against a drilling owner who owns no interest in the mineral lease.
6. Clarifying issues relating to the date on which the 2012 amendments as well as any future amendments are to be effective, including whether and the extent to which such amendments might be retroactively applied.

The majority of the Committee's discussions, however, centered on the following topics:

I. Requiring Nonparticipating Owners to Provide Certain Information to Drilling Owners

One of the issues presented for the Committee's consideration was whether a nonparticipating owner should be required to demonstrate, to the satisfaction of a drilling owner charged with the responsibility to pay royalties, the validity or sufficiency of the nonparticipating owner's title to its leases as well as the lease terms pertaining to royalties. The Committee determined that, although a nonparticipating owner should not be obligated to conduct a title examination to ensure that the drilling owner is paying royalties to the proper parties on its behalf, the nonparticipating owner should provide the drilling owner with a true and complete copy of the mineral lease and any existing title opinions. The Committee also determined that the drilling owner should be indemnified with respect to royalty payments made based on information contained in such mineral lease or title opinions. On a related issue, the Committee discussed that any costs incurred by a drilling owner to conduct title work with respect to a tract under lease to a nonparticipating owner should be subject to recoupment along with any applicable risk charge.

II. Including "Subsequent Operations" Within the Scope of the Risk Fee Act

Another issue discussed by the Committee was whether and to what extent the Risk Fee Act should apply to "subsequent operations" beyond the initial drilling of a well. For example, the Committee considered whether a new risk charge notice should be required with respect to operations conducted subsequent to the initial drilling of the unit well, and whether the pending risk charge should be applied without the need for an additional risk charge notice and opportunity to participate. The Committee considered whether the Risk Fee Act should include an express requirement as to the re-proposal of the re-fracking or reworking of an existing well, as well as whether the consent to the subsequent operations by all, or at least a supermajority, of the participating owners should be required if the well is producing in "paying quantities."

The Committee also discussed that owners who did not participate in the original well should be given the opportunity to elect to participate in the subsequent operation, provided they do so within a certain time. The Committee determined that a nonparticipating owner who

chooses to participate in a subsequent operation should be required to pay both his share of the estimated costs of the subsequent operation and any outstanding balance on the initial operation, including the risk charge; otherwise, the nonparticipating owner will be subject to the risk charge with respect to the subsequent operation as well. The Committee also agreed that the risk charge on subsequent operations should be one hundred – rather than two hundred – percent of the cost of drilling, testing, and completing the well.

III. Legislatively Overruling the Holding of the First Circuit in *Duplantis v. OSD*

Finally, the Committee considered an issue that arose in an unreported decision by the First Circuit – *Duplantis v. OSD*, 2000 CA 2119, 817 So. 2d 510 (La. App. 1 Cir. 2002), *writ denied*, 814 So. 2d 564 (La. 2002) – concerning the release of a mineral lease by a nonparticipating lessee *after* a well had been proposed pursuant to the Risk Fee Act, and whether the unleased landowner should be exempt from the risk charge. In the *Duplantis* case, the First Circuit affirmed the trial court’s holding that a drilling owner could impose the risk charge against an unleased landowner even after the mineral lease was released by the nonparticipating lessee. The Committee questioned whether this decision should be legislatively overruled or whether some sort of remedy should be provided in favor of a landowner whose nonparticipating lessee releases the mineral lease after a well has been proposed, thereby subjecting the innocent landowner to the risk charge.

The Committee discussed that one possible solution to the inequity that results when a mineral lease is released by a nonparticipating lessee after the spudding of a well would be to treat the previously nonparticipating interest as unleased and therefore not subject to the risk charge, provided that the drilling owner is given notice that the previously leased tract is now unleased. The Committee expressed concern, however, over the possibility of collusion between the landowner and the lessee and questioned whether the facts of the *Duplantis* case could even arise after the 2012 amendments to the Risk Fee Act. The Committee concluded that the drilling owner’s new obligations with respect to the payment of royalties would likely disincentivize lessees from releasing their mineral leases after a well has been proposed, commenced, or completed.

Conclusion

After considering these and other issues, the Law Institute ultimately determined that the 2012 amendments to the Risk Fee Act should generally be retained, but that several clarifications to existing law should be made. The Law Institute’s recommended amendments to R.S. 30:10 appear below and were submitted to the legislature as Senate Bill No. 59 of the 2021 Regular Session.

20__ Regular Session

SENATE BILL NO. _____

BY SENATOR

(On Recommendation of the Louisiana State Law Institute)

MINERALS: Provides relative to the Risk Fee Act

1 AN ACT

2 To amend and reenact R.S. 30:10(A)(2)(a)(i)(introductory paragraph) and (aa) and (ee), (ii), and
3 (iii), (b)(i), (ii)(aa), (bb), (dd), (ee), and (ff), and (iii), (e)(ii), (h), and (i) and (3) and (B),
4 and to enact R.S. 30:10(A)(2)(a)(b)(ii)(gg), (hh), (ii), and (jj) and (iv), relative to the Risk
5 Fee Act; to provide for definitions; to provide for procedures, obligations, and remedies;
6 to provide for written notice; to provide for information required to be furnished; to
7 provide for indemnification; to provide for changes of ownership; to provide for title
8 opinions; to provide for subsequent unit operations; to clarify terminology; and to provide
9 for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 30:10 is hereby amended and reenacted to read as follows:

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

13 A. * * *

14 * * *

1 be deemed to be an election not to participate and the owner shall be deemed a
2 nonparticipating owner.

3 (iii) If the drilling of the proposed well is not commenced in accordance with the
4 initial risk charge notice within ninety days after receipt of the initial risk charge notice,
5 then the drilling owner shall send a supplemental risk charge notice in order for the
6 provisions of this Subsection to apply.

7 (b)(i) Should a notified owner elect not to participate in the risk and expense of
8 the unit well, substitute unit well, alternate unit well, or cross-unit well or should such
9 owner elect to participate in the risk and expense of the proposed well but then fail to pay
10 his share of the estimated drilling costs determined by the AFE timely or fail to pay his
11 share of actual reasonable drilling, testing, completing, equipping, and operating
12 expenses within sixty days of receipt of detailed invoices, then such owner shall be
13 deemed a nonparticipating owner, and the drilling owner shall, in addition to any other
14 available legal remedies to enforce collection of such expenses, be entitled to own and
15 recover out of net production proceeds from such well allocable to the tract under lease to
16 the nonparticipating owner such tract's allocated share of the actual reasonable
17 expenditures incurred in drilling, testing, completing, equipping, and operating the well,
18 including a charge for supervision, together with a risk charge. For purposes of this
19 Subparagraph, the payment of estimated drilling costs shall be deemed timely if received
20 by the drilling owner within sixty days of the actual spudding of the well or the receipt by
21 the notified owner of the risk charge notice required by this Subsection, whichever is
22 later. The risk charge for a unit well, substitute unit well, or cross-unit well that will serve

1 as the unit well or substitute well for the unit shall be two hundred percent of such tract's
2 allocated share of the cost of drilling, testing, and completing the well,~~exclusive of~~
3 ~~amounts the drilling owner remits to the nonparticipating owner for the benefit of the~~
4 ~~nonparticipating owner's royalty and overriding royalty owner.~~ The risk charge for an
5 alternate unit well or cross-unit well that will serve as an alternate unit well for the unit
6 shall be one hundred percent of such tract's allocated share of the cost of drilling, testing,
7 and completing such well,~~exclusive of amounts the drilling owner remits to the~~
8 ~~nonparticipating owner for the benefit of the nonparticipating owner's royalty and~~
9 ~~overriding royalty owner.~~ For purposes of this Section, "net production proceeds" shall
10 mean the proceeds from the sale or other disposition of production, less severance or
11 production taxes due thereon, and less any amounts paid by the drilling owner to the
12 nonparticipating owner for the benefit of the lessor royalty owner and overriding royalty
13 owner of the nonparticipating owner as provided in Subitems (ii)(aa) and (bb) of this
14 Subparagraph.

15 (ii)(aa) During the recovery of the actual reasonable expenditures incurred in
16 drilling, testing, completing, equipping, and operating the well, the charge for
17 supervision, and the risk charge, the nonparticipating owner who has furnished the
18 information set forth in Subitem (gg) of this Item, shall be entitled to receive from the
19 drilling owner for the benefit of his lessor royalty owner that portion of the proceeds from
20 the sale or other disposition of production, less severance or production taxes due
21 thereon, due to the lessor royalty owner under the terms of the contract or agreement

1 creating the royalty between the lessor royalty owner and the nonparticipating owner
2 reflected of record at the time of the ~~well-proposal~~ risk charge notice.

3 (bb) In addition, during the recovery set forth in Subitem (aa) of this Item, the
4 nonparticipating owner shall receive from the drilling owner for the benefit of the
5 overriding royalty owner a portion of the proceeds from the sale or other disposition of
6 production, less severance or production taxes due thereon, that is the lesser of: (I) the
7 nonparticipating owner's total percentage of actual overriding royalty burdens associated
8 with the existing lease or leases which cover each tract attributed to the nonparticipating
9 owner reflected of record at the time of the ~~well-proposal~~ risk charge notice; or (II) the
10 difference between the weighted average percentage of the total actual lessor royalty and
11 overriding royalty burdens of the drilling owner's leasehold within the unit and the
12 weighted average percentage of the total actual lessor royalty and overriding royalty
13 burdens of the nonparticipating owner's actual leasehold ~~royalty burdens~~ within the unit
14 reflected of record at the time of the ~~well-proposal~~ risk charge notice. Payment of the
15 amount due shall be made in accordance with the terms of the contract or agreement
16 creating the overriding royalty.

17 * * *

18 (dd) Nothing in this Section shall relieve any lessee of its obligations to pay, from
19 the commencement of production, any lessor royalty and overriding royalty due under the
20 terms of his lease, and other agreements during the ~~recovery of actual well~~ recoupment of
21 recoverable costs and the risk charge, or shall relieve any lessee of ~~his~~ its obligation to
22 pay all lessor royalty and overriding royalty due under the terms of his lease and other

1 agreements after the ~~recovery of the actual well~~ recoupment of recoverable costs and the
2 risk charge. ~~Except as provided in this Paragraph, the drilling owner's obligation to pay~~
3 ~~the royalty and the overriding royalty to the nonparticipating owner in no way creates an~~
4 ~~obligation, duty, or relationship between the drilling owner and any person to whom the~~
5 ~~nonparticipating owner is liable to, contractually or otherwise.~~ The lessor royalty owner
6 and overriding royalty owner shall follow the same procedure and have the same
7 remedies against the nonparticipating owner provided in Part 6 of Chapter 7 of Title 31 of
8 the Louisiana Revised Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the
9 Louisiana Revised Statutes of 1950.

10 (ee) Except as provided in this Paragraph, the drilling owner's obligation to pay
11 the lessor royalty and the overriding royalty to the nonparticipating owner in no way
12 creates an obligation, duty, or relationship between the drilling owner and any person to
13 whom the nonparticipating owner is liable, contractually or otherwise. In the event of
14 nonpayment by the nonparticipating owner of the lessor royalty and overriding royalty
15 due, and as a prerequisite to a judicial demand for damages against the drilling owner, the
16 lessor royalty owner and overriding royalty owner shall provide written notice of such
17 failure to the nonparticipating owner and drilling owner ~~as a prerequisite to a judicial~~
18 ~~demand for damages.~~ The lessor royalty owner and overriding royalty owner shall follow
19 the same procedure and have the same remedies against the drilling owner, except
20 dissolution, provided in Part 6 of Chapter 7 of Title 31 of the Louisiana Revised Statutes
21 of 1950 or Part 2-A of Chapter 13 of Title 31 of the Louisiana Revised Statutes of 1950;
22 ~~respectively, against the nonparticipating owner and the drilling owner.~~ The written

1 notice provided to the drilling owner by the lessor royalty owner and overriding royalty
2 owner shall include a true and complete copy of the mineral lease or other agreement
3 creating any lessor royalty or overriding royalty. If the drilling owner provides sufficient
4 proof of payment of the royalties to the nonparticipating owner, then the lessor royalty
5 owner and overriding royalty owner shall have no cause of action against the drilling
6 owner for nonpayment.

7 (ff) In the event of nonpayment by the drilling owner of the lessor royalty and
8 overriding royalty due to the nonparticipating owner for the benefit of the lessor royalty
9 owner and overriding royalty owner, and payment by the nonparticipating owner of a
10 good faith estimate of the lessor royalty and overriding royalty due, the nonparticipating
11 owner shall provide written notice of such failure to pay to the drilling owner as a
12 prerequisite to a judicial demand for damages. The drilling owner shall have thirty days
13 after receipt of the required notice within which to pay the royalties due or to respond in
14 writing by stating a reasonable cause for nonpayment. If the drilling owner fails to make
15 payment of the royalties or fails to state a reasonable cause for nonpayment within this
16 period, the court may award to the nonparticipating owner as damages double the amount
17 of royalties due, interest on that sum from the date due, and a reasonable attorney fee
18 regardless of the cause for the original failure to pay royalties. If the drilling owner
19 provides sufficient proof of payment of the royalties to the nonparticipating owner, then
20 the nonparticipating owner shall have no cause of action against the drilling owner for
21 nonpayment.

1 (gg) Each nonparticipating owner entitled to receive a portion of the proceeds
2 from the sale or other disposition of production as provided in Subitems (aa) and (bb) of
3 this Item, shall furnish to the drilling owner both of the following:

4 (I) A true and complete copy of the mineral lease or other agreement creating any
5 lessor royalty or overriding royalty for which the nonparticipating owner is entitled to
6 receive a portion of the proceeds from the sale or other disposition of production.

7 (II) A sworn statement of the ownership of the nonparticipating owner as to each
8 tract embraced within the unit in which the nonparticipating owner has an interest and the
9 amounts of the lessor royalty and overriding royalty burdens for which the
10 nonparticipating owner is entitled to receive a portion of the proceeds from the sale or
11 other disposition of production. In its discretion, the nonparticipating owner may also
12 provide to the drilling owner copies of any title opinions in its possession on which the
13 statement of ownership is based in whole or in part.

14 (hh) Each nonparticipating owner who has received from the drilling owner a
15 portion of the proceeds from the sale or other disposition of production for the benefit of
16 a lessor royalty owner or overriding royalty owner, based only on the information
17 furnished pursuant to Subitem (gg) of this Item, shall indemnify and hold harmless the
18 drilling owner from and against any claims asserted against the drilling owner related to
19 any amounts paid to the nonparticipating owner. The nonparticipating owner shall also
20 restore to the drilling owner any amounts paid by the drilling owner to the
21 nonparticipating owner in reliance on the information furnished pursuant to Subitem (gg)
22 of this Item, if and to the extent determined to be incorrect.

1 (ii) No change or division of the ownership of a nonparticipating owner who is
2 receiving from the drilling owner a portion of the proceeds from the sale or other
3 disposition of production shall be binding upon the drilling owner for any purpose until
4 such new nonparticipating owner acquiring any interest has furnished the drilling owner
5 at the drilling owner's address as reflected in the records maintained by the office of
6 conservation, with a certified copy of the instrument or instruments constituting the chain
7 of title from the original nonparticipating owner.

8 (jj) In the event that the drilling owner secures a title opinion from a licensed
9 Louisiana attorney covering a tract of land in a unit burdened by a mineral lease, or other
10 agreement, that creates any lessor royalty or overriding royalty for which a
11 nonparticipating owner is entitled to receive from the drilling owner a portion of the
12 proceeds from the sale or other disposition of production, the actual reasonable costs
13 incurred by the drilling owner in obtaining the title examination and the title opinion shall
14 be chargeable as a unit operating cost recoverable by the drilling owner out of the tract's
15 allocable share of net production proceeds.

16 (iii) Any owner not notified shall bear only his tract's allocated share of the actual
17 reasonable expenditures incurred in drilling, testing, completing, equipping, and
18 operating the unit well or in connection with any subsequent unit operation, including a
19 charge for supervision, which share shall be subject to the same obligation and remedies
20 and rights to own and recover out of production in favor of the drilling ~~party or parties~~
21 owner as provided in this Subsection. ~~A participating~~ The drilling owner shall deliver to
22 the owner ~~whom has not been notified~~, for the benefit of his lessor royalty owner or

1 overriding royalty owner, the proceeds attributable to ~~his~~ the lessor royalty and
2 overriding royalty burdens as described in this Section.

3 (iv)(aa) For purposes of this Section, the following definitions shall apply:

4 (I) "Deepening" means an operation whereby an existing wellbore serving as a
5 unit well, alternate unit well, substitute unit well, or cross-unit well is extended to a point
6 within the same unit and unitized interval beyond its previously drilled total measured
7 depth.

8 (II) "Extension" means an operation related to a horizontal well whereby a lateral
9 is drilled in the same unitized interval to a greater total measured depth or extent than the
10 lateral was drilled pursuant to a previous proposal.

11 (III) "Recompletion" means an operation to attempt a completion in a portion of
12 the unitized interval in the existing wellbore different from the initial completion in the
13 unitized interval.

14 (IV) "Rework" means an operation conducted in the wellbore after it is initially
15 completed in the unitized interval in a good faith effort to secure, restore, or improve
16 production in a stratum within the unitized interval that was previously open to
17 production in that wellbore, including acidizing, re-perforating, hydraulic fracturing and
18 re-fracturing, sand or paraffin removal, tubing repair or replacement, casing repair or
19 replacement, squeeze cementing, setting bridge plugs, and any essential preparatory
20 steps. Rework does not include routine maintenance, repair, or replacement of downhole
21 equipment such as rods, pumps, packers, or other mechanical devices.

1 (V) “Sidetrack” means the intentional deviation of an existing wellbore serving as
2 a unit well, alternate unit well, or substitute unit well from its actual or permitted bottom
3 hole location within that unit and unitized interval to a different bottom hole location
4 within the same unit and unitized interval.

5 (VI) “Subsequent unit operation” means a recompletion, rework, deepening,
6 sidetrack, or extension conducted within the unitized interval for a unit or units created
7 under R.S. 30:9(B).

8 (VII) “Unitized interval” means the subsurface interval defined in the office of
9 conservation order creating the unit or units that the existing wellbore is serving as a unit
10 well, alternate unit well, substitute unit well, or cross-unit well.

11 (bb) Any owner of a well described in Subparagraph (a) of this Paragraph who is
12 conducting, intends to conduct, or has conducted a subsequent unit operation on such
13 well may notify all other owners in the unit of the conducting or the intent to conduct
14 such operation in the form and manner of the risk charge notice described in
15 Subparagraph (a) of this Paragraph, and in that event, all of the provisions of this
16 Paragraph shall be applicable to that subsequent unit operation to the same extent, and in
17 the same manner, that they would apply to the drilling of a new well, subject to the
18 following provisions.

19 (cc) The risk charge for any subsequent unit operation shall be one hundred
20 percent of the tract’s allocated share of the actual reasonable expenditures incurred in
21 conducting the subsequent unit operation, including a charge for supervision, regardless

1 of whether the wellbore on which such operations were conducted is a unit well, alternate
2 unit well, substitute unit well, or cross-unit well.

3 (dd) The notice to be provided by the drilling owner to the other owners in the
4 unit pursuant to Subitem (bb) of this Item shall contain:

5 (I) A detailed description identifying the well to which the subsequent unit
6 operation relates, the work associated therewith, and the new location and objective depth
7 of the well if changed as a result of such work.

8 (II) A copy of the order of the commissioner creating the drilling unit to which the
9 subsequent unit operation relates.

10 (III) An AFE that shall include a detailed estimate, or the actual amount, of the
11 cost of conducting the subsequent unit operation and that is dated within one hundred
12 twenty days of the date of mailing of the notice.

13 (IV) An estimate of the notified owner's approximate percentage of well
14 participation.

15 (V) A copy of all available logs, core analysis, production data, and well test data
16 with respect to the well that has not been made public.

17 (ee) If, on the date of the notice of the subsequent unit operation, there are still
18 amounts uncollected on a risk charge from a nonparticipating owner for the drilling of, or
19 a previous operation on, the wellbore for which the notice is sent, the drilling owner may
20 recoup a risk charge from that nonparticipating owner on the costs of the noticed
21 subsequent unit operation only if the drilling owner sends that nonparticipating owner a
22 notice of the subsequent unit operation. The notice may offer that nonparticipating owner

1 the opportunity to participate in the subsequent unit operation upon payment to the
2 drilling owner, within sixty days of the date of receipt of the notice, of the
3 nonparticipating owner's entire outstanding balance due for all previous operations on the
4 wellbore, including any amounts uncollected on a risk charge. If the drilling owner sends
5 such a nonparticipating owner this notice, the drilling owner may, in addition to
6 recouping the costs of a subsequent unit operation, recoup a risk charge on the costs of
7 the subsequent unit operation from the net production proceeds from such well
8 attributable to the tract under lease to that nonparticipating owner if it fails to elect timely
9 to participate in the subsequent unit operation, or if it fails to pay timely the entire
10 outstanding balance due for all previous operations on the wellbore, or if it fails to pay
11 timely its share of the estimated costs of the subsequent unit operation determined by the
12 AFE.

13 (e)(i) * * *

14 (ii) Notwithstanding the provisions of Subparagraph (b) of this Paragraph, the
15 lessor royalty owner and overriding royalty owner shall receive that portion of production
16 proceeds due to them under the terms of the contract creating the royalty.

17 * * *

18 (h) The owners in the unit to whom the risk charge notice provided for
19 hereinabove may be sent, are the owners of record as of the date on which the risk charge
20 notice is sent.

1 (i) Failure of the drilling owner to provide ~~written~~ to an owner a risk charge notice
2 as required by Subparagraph (a) of this Paragraph ~~to an owner~~ shall not affect the validity
3 of the ~~written~~ risk charge notice properly provided to any other owner in the unit.

4 (3) If there is included in any unit created by the commissioner of conservation
5 one or more unleased interests for which the party or parties entitled to market production
6 therefrom have not made arrangements to separately sell or otherwise dispose of the
7 share of such production attributable to such tract, and the unit operator ~~proceeds with the~~
8 ~~sale of~~ sells or otherwise disposes of such unit production, then the unit operator shall pay
9 to such party or parties such tract's pro rata share of the proceeds of the sale or other
10 disposition of production within one hundred eighty days of such sale or other
11 disposition.

12 B. Should the owners of separate tracts embraced within a drilling unit fail to
13 agree upon the pooling of the tracts and the drilling of a well on the unit, and should it be
14 established by final and unappealable judgment of court that the commissioner is without
15 authority to require pooling as provided for in Subsection A of this Section, then, subject
16 to all other applicable provisions of this Chapter, the owner of each tract embraced within
17 the drilling unit may drill thereon. The allowable production therefrom shall be such
18 proportion of the allowable for the full unit as the area of the separately owned tract bears
19 to the full drilling unit.

DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB _____

20__ Regular Session

Author

Abstract: Provides relative to the Risk Fee Act.

Present law (R.S. 30:10(A)(2)(a)(i)(intro para.) and (aa) and (ee), (ii), and (iii), (e)(ii), (h), and (i) and (3) and (B)) provides with respect to the Risk Fee Act.

Proposed law makes changes in terminology and other technical corrections to present law.

Present law (R.S. 30:10(A)(2)(b)(i)) provides for the assessment of the risk charge against nonparticipating owners.

Proposed law clarifies terminology used in present law and adds a definition of “net production proceeds.”

Present law (R.S. 30:10(A)(2)(b)(ii)(aa) and (bb)) requires the drilling owner to pay certain amounts to the nonparticipating owner for the benefit of his lessor royalty owner and overriding royalty owner.

Proposed law clarifies present law as to the manner in which these payments are made and the formulas used for calculating them. Proposed law also imposes a requirement that the nonparticipating owner provide certain information to the drilling owner.

Present law (R.S. 30:10(A)(2)(b)(ii)(dd) and (ee)) sets forth the obligations owed by the lessee and drilling owner with respect to the payment of any lessor royalty and overriding royalty due.

Proposed law updates terminology used in present law and clarifies the applicable procedures and remedies available to the lessor royalty owner and overriding royalty owner against the nonparticipating owner and the drilling owner. Proposed law further provides that in the event of nonpayment by the nonparticipating owner, the notice provided to the drilling owner must include a true and complete copy of the mineral lease or other document creating the royalty.

Present law (R.S. 30:10(A)(2)(b)(ii)(ff)) provides with respect to nonpayment by the drilling owner of the lessor and overriding royalties and the payment of these amounts by the nonparticipating owner.

Proposed law clarifies terminology used in present law and provides that payment by the nonparticipating owner may be of a good faith estimate of the royalties due.

Proposed law (R.S. 30:10(A)(2)(a)(b)(ii)(gg)) requires the nonparticipating owner to furnish certain information to the drilling owner. Proposed law further states that the nonparticipating owner may also provide copies of any title opinions in its possession.

Proposed law (R.S. 30:10(A)(2)(a)(b)(ii)(hh)) requires the nonparticipating owner to indemnify and hold the drilling owner harmless against claims related to amounts paid based on information provided by the nonparticipating owner.

Proposed law (R.S. 30:10(A)(2)(a)(b)(ii)(ii)) provides that no change in the ownership of a nonparticipating owner shall be binding upon a drilling owner until a certified copy of the instrument constituting the chain of title has been furnished to the drilling owner.

Proposed law (R.S. 30:10(A)(2)(a)(b)(ii)(jj)) provides that the actual reasonable costs incurred by the drilling owner in obtaining a title examination and title opinion shall be chargeable as a unit operating cost and recoverable by the drilling owner.

Present law (R.S. 30:10(A)(2)(a)(b)(iii)) provides with respect to the nonparticipating owner's obligation to bear his tract's share of the expenditures incurred in drilling, testing, completing, equipping, and operating the unit well.

Proposed law clarifies terminology and expands present law to include subsequent unit operations.

Proposed law (R.S. 30:10(A)(2)(a)(b)(iv)) provides with respect to subsequent unit operations, setting forth definitions, required notices, the applicable risk charge, and other related provisions.

(Amends R.S. 30:10(A)(2)(a)(i)(intro. para.) and (aa) and (ee), (ii), and (iii), (b)(i), (ii)(aa), (bb), (dd), (ee), and (ff), and (iii), (e)(ii), (h), and (i) and (3) and (B); Adds R.S. 30:10(A)(2)(a)(b)(ii)(gg), (hh), (ii), and (jj) and (iv))