

Regular Session, 2011

HOUSE BILL NO. 212

BY REPRESENTATIVE MORRIS

NATURAL RESOURCES DEPT: Authorizes the issuance of bonds for remediation and restoration of certain oilfield sites

1 AN ACT

2 To amend and reenact R.S. 30:82, 84(A)(1), 86(B), (C), and (E)(1), and 95(A) and to enact  
3 R.S. 30:83(F)(2) and 83.1, relative to the Oilfield Site Restoration Commission; to  
4 provide for definitions; to authorize the issuance of bonds for certain purposes; to  
5 provide for the pledge and dedication of the monies deposited in the Oilfield Site  
6 Restoration Fund derived from certain sources; to provide for the duties and powers  
7 of the secretary of the Department of Natural Resources; to provide for the liability  
8 of the state; to provide relative to the requirements and limitations for issuance of  
9 revenue bonds; to authorize the execution of certain documents; and to provide for  
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 30:82, 84(A)(1), 86(B), (C), and (E)(1), and 95(A) are hereby  
13 amended and reenacted and R.S. 30:83(F)(2) and 83.1 are hereby enacted to read as follows:

14 §82. Definitions

15 As used in this Part, the following terms shall have the meanings ascribed to  
16 them in this Section, unless the context or use clearly indicates otherwise:

17 (1) "Assistant secretary" means the assistant secretary of the office of  
18 conservation within the Department of Natural Resources or his authorized  
19 representatives.

20 (2) "Bonds" means revenue bonds, notes, certificates, or other evidences of  
21 indebtedness issued by an issuer pursuant to R.S. 30:83.1.

1           ~~(2)~~ (3) "Commission" means the Oilfield Site Restoration Commission.

2           ~~(3)~~ (4) "Department" means the Department of Natural Resources.

3           ~~(4)~~ (5) "Fund" means the Oilfield Site Restoration Fund.

4           ~~(6)~~ (6) "Issuer" means a public trust and public corporation organized and  
5           existing by, under, and pursuant to the provisions of R.S. 9:2341 through 2347,  
6           whose beneficiary is the state of Louisiana, authorized to issue revenue bonds on  
7           behalf of the state of Louisiana.

8           ~~(5)~~ (7) "Nonproducing oilfield site" means an oilfield site which is not a  
9           producing oilfield site and which has not been declared an orphaned oilfield site by  
10          the assistant secretary.

11          ~~(6)~~ (8) "Oilfield site" or "exploration and production (E&P) site" means any  
12          oilfield site or exploration and production site as defined in R.S. 30:29(I)(4).

13          ~~(7)~~ (9) "Orphaned oilfield site" means an oilfield site which has no continued  
14          useful purpose for the exploration, production, or development of oil or gas and  
15          which has been declared to be an orphaned oilfield site by the assistant secretary  
16          under R.S. 30:91.

17          ~~(8)~~ (10) "Producing oilfield site" means an oilfield site which is associated  
18          with the production of oil or gas for at least six months of the preceding calendar  
19          year.

20          ~~(9)~~ (11) "Responsible party" means the operator of record according to the  
21          office of conservation records, who last operated the property on which the oilfield  
22          site is located at the time the site is about to be abandoned, ceases operation, or  
23          becomes an unusable oilfield site, and that operator's partners and working interest  
24          owners of that oilfield site. A working interest owner is the owner of a mineral right  
25          who is under an obligation to share in the costs of drilling or producing a well on the  
26          oilfield site.

27          (12) "Revenues" means the revenues described in R.S. 30:83.1(A)(2).

28          ~~(10)~~ (13) "Secretary" means the secretary of the Department of Natural  
29          Resources.

1           ~~(11)~~ (14) "Site restoration" means any and all oilfield site restoration  
2 activities required of a responsible party of an oil or gas property by regulations  
3 adopted by the office of conservation pursuant to this Subtitle, including without  
4 limitation plugging of oil and gas wells, pit closure, site remediation, and removal  
5 of oilfield equipment.

6           ~~(12)~~ (15) "Unusable oilfield site" means an oilfield site which has no  
7 continued useful purpose for the exploration, production, or development of oil or  
8 gas and for which a responsible party can be located.

9           §83. Oilfield Site Restoration Commission; Department of Natural Resources

10   \*           \*           \*

11                         F. The powers of the commission shall be limited to the following:

12   \*           \*           \*

13                         (2) The commission, at the direction of the secretary, is authorized to pledge  
14 the sources available to fund authorized purposes and to secure the issuance of bonds  
15 to fund such purposes provided in R.S. 30.83.1.

16   \*           \*           \*

17                         §83.1. Authorization of bonds

18                         A.(1) An issuer is authorized to issue bonds pursuant to the provisions of  
19 R.S. 9:2341 through 2347 for the benefit of the commission, at the direction of the  
20 secretary, to raise funds for authorized purposes in accordance with the provisions  
21 of this Section and the constitutional and statutory provisions governing the issuance  
22 of bonds by such entities.

23                         (2) The bonds may be secured by an irrevocable pledge and dedication of  
24 revenues of the commission, at the direction of the secretary, which shall consist of  
25 all monies deposited in the fund pursuant to R.S. 30:86(D), collected, derived from,  
26 or received from the oilfield site restoration fees and penalties imposed pursuant to  
27 R.S. 30:87 or any other lawfully available revenues, if any, to the extent  
28 appropriated, but shall not include site specific trust account monies as identified in  
29 R.S. 30:86(D)(6) and 88. The bonds of the issuer shall be revenue bonds payable

1 solely from the above-described sources, to the extent appropriated and released  
2 from the state, and such pledge shall not constitute a pledge of the full faith and  
3 credit of the state.

4 (3) The bonds shall be entitled to priorities on the revenues pledged and  
5 dedicated pursuant to Paragraph (2) of this Subsection, subject to the prior pledge  
6 applicable to outstanding bonds, if any, as provided for in a loan agreement, trust  
7 indenture, or other instrument entered into with the issuer or otherwise in connection  
8 with the bonds.

9 B.(1) When any bonds have been issued and secured in accordance with the  
10 provisions of this Section, neither the commission, the department, the state, nor any  
11 other entity may act to impair any obligation or contract for the benefit of the holders  
12 of the bonds or discontinue or decrease any fee, penalties, or other revenue in  
13 anticipation of the collection of which the bonds have been issued until all of the  
14 bonds have been retired as to principal and interest or irrevocable provision  
15 otherwise made for their complete redemption and payment in principal, interest, and  
16 redemption premium, if any, and the complete payment of all amounts due under the  
17 trust agreement pursuant to which the bonds are issued.

18 (2) Any pledge of revenues for the security of the bonds shall be valid and  
19 binding from the time the pledge is made and shall be subject to the lien of such  
20 pledge without any physical delivery thereof or further act, and the lien of any such  
21 pledge shall be valid and binding as against all parties having claims of any kind in  
22 tort, contract, or otherwise against the state, the department, or the commission  
23 whether or not such parties have notice thereof. Any trust agreement by which a  
24 pledge is created need not be filed or recorded.

25 (3) The secretary or the undersecretary is hereby authorized on behalf of the  
26 commission to execute loan agreements, reimbursement agreements, investment  
27 agreements, bond purchase agreements, and all documents as may be necessary or  
28 desirable to carry out the provisions of this Section and is further authorized to take  
29 any and all further actions and execute and deliver all other documents as may be

1 necessary in connection with the issuance of any bonds, notes, certificates,  
2 reimbursement obligations, or other evidences of indebtedness referred to in this  
3 Section. The provisions of R.S. 9:2347(J) shall not apply to bonds or any contractual  
4 obligation, including the pledge of state funds, to be undertaken or incurred in  
5 connection therewith.

6 (4) At the direction of the secretary, the commission is authorized to create  
7 funds or accounts for the deposit of the revenues or the proceeds of the bonds,  
8 including funds described above or other revenues and monies pledged in connection  
9 therewith or respect thereto.

10 (5) The department and, at the direction of the secretary, the commission are  
11 authorized to enter into any and all agreements or contracts, execute any and all  
12 instruments, and do and perform any and all acts necessary, convenient, or desirable  
13 for the issuance of the bonds or to carry out any power expressly given in this  
14 Section.

15 C. Notwithstanding any provision of law to the contrary, any revenues  
16 received by the commission pledged to the repayment of any bonds issued in  
17 accordance with this Section may be collected and disbursed as set forth in the  
18 documents providing for the issuance of the bonds or other documents related  
19 thereto.

20 §84. Powers of the secretary

21 A. The powers of the secretary shall include without limitation the power to  
22 do the following:

23 (1) Make expenditures or commitments to make expenditures from the fund  
24 or disburse funds for the restoration of oilfield sites as he deems necessary and  
25 appropriate, including but not limited to disbursement of monies in the fund pursuant  
26 to R.S. 30:86(E)(2) to pay principal, interest, and related costs in connection with the  
27 issuance of bonds.

28 \* \* \*

1 §86. Oilfield Site Restoration Fund

2 \* \* \*

3 B. The funds received shall be placed in the special trust fund in the custody  
4 of the state treasurer to be used only in accordance with this Part and shall not be  
5 placed in the general fund. The funds provided to the commission pursuant to this  
6 Section shall at all times be and remain the property of the commission. The funds  
7 shall only be used for the purposes set forth in this Part and for no other  
8 governmental purposes, ~~nor shall any portion hereof ever be available to borrow~~  
9 ~~from by any branch of government.~~ Except for the pledge of the revenues provided  
10 in R.S. 30:83.1, it is the intent of the legislature that this fund and its increments shall  
11 remain intact and inviolate. Any interest or earnings of the fund shall be credited  
12 only to the fund.

13 C. The treasurer of the state of Louisiana shall certify, to the secretary of the  
14 Department of Revenue, the date on which the balance in the fund equals or exceeds  
15 ten million dollars. The oilfield site restoration fees on oil and gas provided for in  
16 R.S. 30:87 shall not be collected or required to be paid on or after the first day of the  
17 second month following the certification, except that the secretary of the Department  
18 of Revenue shall resume collecting the fees on receipt of a certification from the  
19 treasurer that, based on the expenditures or commitments to expend monies, the fund  
20 has fallen below six million dollars. The secretary of the Department of Revenue  
21 shall continue collecting the fees until collections are again suspended in the manner  
22 provided by this Section. The sums in the site-specific trust accounts within the fund  
23 and sums generated from the issuance of bonds pursuant to R.S. 30:83.1 shall not be  
24 counted to determine the balance of the fund for the purposes of this Subsection.

25 \* \* \*

26 E. The monies in the fund may be disbursed and expended pursuant to the  
27 authority and direction of the secretary or assistant secretary for the following  
28 purposes and uses:

1 (1) Any oilfield site assessment or restoration conducted by the Department  
 2 of Natural Resources pursuant to this Part, and the payment of the principal, interest,  
 3 and legal fees, credit enhancement fees, trustee fees, and other related costs of  
 4 issuance or ongoing expenses in connection with issuance of bonds or other debt  
 5 obligations on behalf of the commission, at the direction of the secretary, pursuant  
 6 to R.S. 30:83.1 for the purpose of financing the costs of such oilfield site assessments  
 7 and restorations.

8 \* \* \*

9 §95. No inference of liability on the part of the state

10 A. Nothing in this Part shall establish or create any liability or responsibility  
 11 on the part of the commission or the state of Louisiana to pay any costs associated  
 12 with site restoration from any ~~source~~ sources other than the fund created by R.S.  
 13 30:86 or the funds established in connection with the issuance of bonds on behalf of  
 14 the commission, at the direction of the secretary, pursuant to R.S. 30:83.1 nor shall  
 15 the commission or the state of Louisiana have any liability or responsibility to make  
 16 any payments for costs associated with site restoration if the trust created herein is  
 17 insufficient to do so.

18 \* \* \*

19 Section 2. This Act shall become effective on July 1, 2011; if vetoed by the governor  
 20 and subsequently approved by the legislature, this Act shall become effective on July 1,  
 21 2011, or on the day following such approval by the legislature, whichever is later.

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DIGEST

The digest printed below was prepared by House Legislative Services. 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)]

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Morris

HB No. 212

**Abstract:** Authorizes an issuer, on behalf of the Oilfield Site Restoration Commission, to issue bonds to raise funds to use for the authorized purposes of the commission.

Present law provides for the creation of the Oilfield Site Restoration Commission within the office of the secretary of the Dept. of Natural Resources. Further provides for the powers of the commission.

Proposed law retains present law.

Proposed law authorizes an issuer, on behalf of the commission and at the direction of the secretary, to issue bonds to raise funds to use for the authorized purposes of the commission.

Proposed law provides that the bonds may be secured by an irrevocable and dedication of revenues consisting of the oilfield site restoration fees and penalties and any other revenue to the extent appropriated, but shall not include site specific trust account monies. Such pledge shall not constitute a pledge of the full faith and credit of the state.

Proposed law provides the bonds to be entitled to priorities on the revenues of the commission as provided in a loan agreement, trust indenture, or other instrument.

Proposed law provides that when any bonds have been issued and secured in accordance with proposed law, neither the commission, the department, the state, nor any other entity may act to impair any obligation or contract for the benefit of the holders of the bonds or discontinue or decrease any fee, rate, or other revenue in anticipation of the collection of which the bonds have been issued until all of the bonds have been retired as to principal and interest or irrevocable provision otherwise made for their complete redemption and payment in principal, interest, and redemption premium, if any, and the complete payment of all amounts due under the trust agreement pursuant to which the bonds are issued.

Proposed law provides for the validity of the pledge of revenues without physical delivery, notice, or recordation.

Proposed law authorizes the secretary or undersecretary of the department to execute certain agreements and documents necessary or desirable to carry out proposed law.

Proposed law authorizes the creation of funds or accounts for the revenues and proceeds of the bonds and the pledged revenues and authorizes the collection and disbursement of revenues in accordance with documents providing for the issuance of the bonds.

Proposed law authorizes the secretary to distribute revenue pursuant to proposed law to pay principal, interest, and related costs in connection with the issuance of bonds.

Present law provides the funds in the Oilfield Site Restoration Fund shall not be available to borrow. Proposed law provides the funds may be pledged in accordance with proposed law.

Present law imposes oilfield site restoration fees as follows: 1-1/2¢ per barrel on oil and condensate and up to 3/10ths of 1¢ per thousand cubic feet on gas. Present law additionally provides for a reduced fee for reduced-rate production, such as stripper wells and incapable wells, which is a proportional reduction based on the reduction from the full rate severance tax.

Present law provides that oilfield site restoration fees shall not be collected once the treasurer certifies the Oilfield Site Restoration Fund reaches or exceeds \$10 million and shall not again be collected until the fund has fallen below \$6 million. The funds in site-specific trust accounts are not counted in determining the balance of the fund for this purpose.

Proposed law retains present law except provides that the funds generated from proposed law shall also not be counted in determining the balance of the fund with such limitation.



Present law limits the liability or responsibility of the commission or the state to pay for site restoration beyond the Oilfield Site Restoration Fund. Proposed law retains present law and includes funds established from the issuance of bonds.

Effective July 1, 2011.

(Amends R.S. 30:82, 84(A)(1), 86(B), (C), and (E)(1), and 95(A); Adds R.S. 30:83(F)(2) and 83.1)