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

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## DIGEST

Adley (SB 581)

Present law provides that when a party files a limited admission for environmental damage, the court will refer the matter to DNR, office of conservation, to conduct a public hearing to approve or structure a plan, which the department determines to be the most feasible plan to evaluate or rededicate the environmental damage under the applicable regulatory standards.

Proposed law provides that the plan approved by the department is the most feasible plan to rededicate environmental damage under the applicable regulatory standards. Further provides that for cases tried to a jury, the court shall instruct the jury regarding this presumption if requested by a party.

Present law provides that a defendant may request a hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation. Further provides that a party dismissed under present law will be entitled to a judgment of dismissal with prejudice following a final nonappealable judgment on the claims asserted by the party against whom the preliminary dismissal was granted.

Proposed law retains present law but further provides that the party against whom the preliminary dismissal was granted will be entitled to recover from the party who asserted the claim an award of reasonable attorney fees, as may be determined by the court, and all costs to secure dismissal.

Proposed law provides that in all cases in which a responsible party makes a limited admission there shall be a rebuttable presumption that the plan approved or structured by the department is the most feasible plan to evaluate or rededicate to applicable regulatory standards the environmental damage for which responsibility is admitted. For cases tried to a jury, the court must instruct the jury regarding this presumption if so requested by a party.

Present law does not preclude a judgment ordering damages for or implementation of an additional remediation in excess of the requirements of the plan adopted by the court as may be required in accordance with the terms of an express contractual provision.

Proposed law removes present law.

Present law provides that any award granted in connection with the judgment for additional remediation is not required to be paid into the registry of the court.

Proposed law provides that only awards for additional remediation in excess of the requirements of the plan adopted by the court are not required to be paid into the registry of the court.

Proposed law provides for the definition of "contamination".

Proposed law provides for remediation damages only for the following:

- (1) The cost of funding the feasible plan adopted by the court.
- (2) The cost of additional remediation if required by an express contractual provision providing for remediation to original condition or some other specific remediation standard.
- (3) The cost of correcting or repairing any environmental damage caused by unreasonable or excessive operations based on rules, regulations, lease terms and standards applicable at the time of the activity under questions, provided that such damage is not duplicative of other damages.
- (4) The cost of non-remediation damages.

Proposed law provides that the provisions of proposed law will not be construed to alter the traditional burden of proof or to imply the existence of extent of damages in any action, nor will it affect an award of attorney fees or costs.

Effective August 1, 2014.

(Amends C.C.P. Art. 1563(A)(2), R.S. 30:29(B)(6), (H), and (I); adds R.S. 30:29(C)(2)(c) and 29.2)