

**SENATE COMMITTEE AMENDMENTS**

Amendments proposed by Senate Committee on Natural Resources to Original Senate Bill No. 555 by Senator Adley

1 AMENDMENT NO. 1

2 On page 1, line 2, delete "R.S. 30:29(A), (C)(1) and (3), and (H)," and insert "R.S.  
3 30:29(C)(1), (2), and (3) and to enact R.S. 30:29(B)(5), (6), (7), and (L),"

4 AMENDMENT NO. 2

5 On page 1, line 4, after "parties;" insert "to provide for the issuance of subpoenas for certain  
6 individuals and the procedure for a preliminary hearing; to suspend the prescriptive period  
7 for cases involving environmental damage; to provide for indemnification;"

8 AMENDMENT NO. 3

9 On page 1, delete line 7, and insert "Section 1. R.S. 30:29(C)(1), (2), and (3) are hereby  
10 amended and reenacted and R.S. 30:29(B)(5), (6), (7), and (L) are hereby enacted"

11 AMENDMENT NO. 4

12 On page 1, delete lines 10 through 17 and on page 2, delete lines 1 through 11

13 AMENDMENT NO. 5

14 On page 2, between lines 12 and 13, insert the following:

15 "B.(1) \* \* \*

16 **(5) Any party may subpoena, for purposes of deposition or trial, any**  
 17 **employee, contractor, or representative of the department involved in the**  
 18 **formulation of the feasible plan approved by the department under Subsection**  
 19 **C of this Section, or an agency that reviews and provides comments under**  
 20 **Subsection C of this Section. Discovery regarding the department's review,**  
 21 **approval, or structuring of the feasible plan and of an agency that reviews and**  
 22 **provides comments shall not be allowed until after the department submits its**  
 23 **final feasible plan with reasons to the court pursuant to Subsection C of this**  
 24 **Section. If a party subpoenas the records or testimony of the department or an**  
 25 **agency for deposition or trial, the party issuing the subpoena shall pay the costs**  
 26 **of the department or agency in responding to such subpoena.**

27 **(6) Within sixty days of being served with a petition or amended petition**  
 28 **asserting an action, a defendant may request that the court conduct a**  
 29 **preliminary hearing to determine whether there is good cause for maintaining**  
 30 **the defendant as a party in the litigation. At the hearing, the parties may**  
 31 **introduce evidence in affidavit or written form. The plaintiff shall have the**  
 32 **initial burden to introduce evidence to support the allegations of environmental**  
 33 **damage, following which the moving party shall have the burden to**  
 34 **demonstrate the absence of a genuine issue of material fact that the moving**  
 35 **party caused or is otherwise legally responsible for the alleged environmental**  
 36 **damage. The rules governing summary judgments in the Code of Civil**  
 37 **Procedure shall not apply to the preliminary hearing. Within fifteen days of the**  
 38 **preliminary hearing, the court shall issue an order on any timely request for**  
 39 **preliminary dismissal. A judgment of dismissal under this Paragraph shall be**  
 40 **without prejudice, with all parties reserving the right to rejoin the dismissed**  
 41 **defendant during the litigation upon discovery of evidence not reasonably**  
 42 **available at the time of the hearing on the motion for preliminary dismissal. If**  
 43 **not rejoined, a party dismissed under this Paragraph shall be entitled to a**  
 44 **judgment of dismissal with prejudice following a final non-appealable judgment**

1 on the claims asserted by the party against whom the preliminary dismissal was  
 2 granted. Any pleading rejoining any defendant previously dismissed under this  
 3 Paragraph shall relate back to the filing of the original petition or any  
 4 amendment thereto as provided in the Code of Civil Procedure Article 1153.  
 5 The finding of the district court shall be without prejudice of any party to  
 6 litigate the legal responsibility of any potentially responsible party, the  
 7 allocation of responsibility among the potentially responsible parties, and any  
 8 other issues incident to the finder of fact's determination of the party or parties  
 9 who caused the damage or who are otherwise legally responsible for the alleged  
 10 environmental damage. The procedure for a preliminary dismissal provided  
 11 by this Paragraph shall be in addition to the pretrial rights and the remedies  
 12 available to the parties under the Code of Civil Procedure, including the right  
 13 to civil discovery.

14 (7)(a) The prescriptive period that applies to any claim covered by the  
 15 provisions of this Section shall be suspended for a period of one year upon the  
 16 mailing or physical delivery to the department of a notice of intent to  
 17 investigate. A notice of intent to investigate shall include all of the following  
 18 information:

- 19 (i) A description of the property alleged to have been damaged.
- 20 (ii) A description of the alleged environmental damage.
- 21 (iii) The general location of the alleged environmental damage on the  
 22 property.
- 23 (iv) The name and address of all known owners of the property.
- 24 (v) The name and address of the current operator.

25 (b) The party issuing the notice of intent to investigate shall mail by  
 26 certified mail return receipt requested to all persons identified in the notice a  
 27 copy of the notice.

28 (c) If a party submits a notice of intent to investigate, any subsequent  
 29 judicial demand by the party under the provisions of this Section shall identify  
 30 on a map the location of any alleged environmental damage and include the  
 31 results of any environmental testing performed on the property. Failure to  
 32 include this information at the time of the filing of the judicial demand shall  
 33 result in exclusion of the information."

34 AMENDMENT NO. 6

35 On page 2, line 13, delete "(a)"

36 AMENDMENT NO. 7

37 On page 2, delete lines 18 through 29 and on page 3, delete lines 1 through 9 and insert  
 38 "develop a plan or submittal"

39 AMENDMENT NO. 8

40 On page 3, line 10, after "applicable" insert "regulatory"

41 AMENDMENT NO. 9

42 On page 3, line 13, delete "or any"

43 AMENDMENT NO. 10

44 On page 3, line 14, delete "interested person"

45 AMENDMENT NO. 11

46 On page 3, line 18, delete "or any interested person"

1 AMENDMENT NO. 12

2 On page 3, delete line 24, and insert the following:

3           "(2)(a) Within sixty days from the last day on which any party may provide  
4 the department with a plan, comment, or response to a plan as provided in Paragraph  
5 (C)(1) of this Section, the department shall conduct a public hearing on the plan or  
6 plans submitted. **When a public hearing is held following a limited admission  
7 pursuant to the Code of Civil Procedure Article 1563, then the department shall  
8 not conduct an additional public hearing pursuant to this Section for the same  
9 environmental damage.** Within sixty days of the conclusion of the hearing, the  
10 department shall approve or structure a **final plan, or if applicable, a preliminary  
11 plan pursuant to Subparagraph (C)(3)(b) of this Section,** based on the evidence  
12 submitted which the department determines to be the most feasible plan to evaluate  
13 or remediate the environmental damage and protect the health, safety, and welfare  
14 of the people. The department shall issue written reasons for the plan it approves or  
15 structures. On motion of the department, for good cause shown, the court may grant  
16 the department additional time, not to exceed sixty days, within which to either  
17 conduct the hearing or approve a plan with reasons.

18           **(b) Except as otherwise provided for in this Section, from the date the  
19 party or parties, who admit responsibility or whom the court finds legally  
20 responsible for the damage, submit a plan to the department until after the  
21 department has filed with the court the approved feasible plan for the  
22 evaluation or remediation of the environmental damage, no party to the  
23 litigation, either directly or indirectly, shall have ex parte communication with  
24 any employee, contractor, or representative of the department regarding the  
25 formation of the feasible plan or an agency providing comments to the  
26 department regarding the formation of the feasible plan. The feasible plan  
27 issued by the department shall contain a signed affidavit of compliance with this  
28 restriction. Any comments provided by an agency to the department shall also  
29 contain a signed affidavit of compliance with this restriction.**"

30 AMENDMENT NO. 13

31 On page 3, line 25, after "(3)" insert "(a)"

32 AMENDMENT NO. 14

33 On page 3, between lines 27 and 28, insert the following:

34           **"(b)(i) If the department preliminarily approves or structures a  
35 preliminary plan that requires the application of regulatory standards of an  
36 agency other than the department or that provides an exception from the  
37 department's standards, within fifteen days of such preliminary structuring or  
38 approval, the department shall submit the plan to the Department of  
39 Agriculture and Forestry, the Department of Environmental Quality, and the  
40 Department of Natural Resources for review and comment. Within thirty days  
41 after the department's submission of the plan to all of the agencies, each agency  
42 may provide written comments regarding the plan. Each agency providing  
43 written comments shall submit a schedule of the agency's costs for review of the  
44 plan to the court for reimbursement by the responsible party. Failure of an  
45 agency to respond to the department shall not affect the validity of the plan  
46 approved by the department. The department and agency heads shall  
47 coordinate in order to establish protocol to ensure inter-agency communication  
48 regarding plan development, timely delivery of all proposed plans to the  
49 appropriate agency heads, and timely receipt of all agency comments back to  
50 the department.**

51           **(ii) Within thirty days after the receipt of any agency's written  
52 comments, the department shall file in the court record the final plan, with  
53 written reasons that the department determines to be the most feasible plan to  
54 evaluate or remediate the environmental damage under applicable regulatory**

1 standards, together with any comments submitted by an agency under Item  
 2 (C)(3)(b)(i). Based on the findings of the department, the department may issue  
 3 any compliance order it deems necessary to either the operator of record or,  
 4 where applicable, a party found responsible or admitting responsibility for  
 5 implementing the most feasible plan to evaluate or remediate the environmental  
 6 damage under applicable regulatory standards. If a compliance order is issued  
 7 against the responsible party who is not the current operator of record, the  
 8 responsible party shall give the current operator of record notice of the  
 9 compliance order within thirty days of the responsible party's receipt of the  
 10 compliance order."

11 AMENDMENT NO. 15

12 On page 3, delete line 29 and on page 4, delete lines 1 through 11 and insert the following:

13 "L. If pursuant to the terms of a contract the responsible party is  
 14 entitled to indemnification against punitive damages arising out of the  
 15 environmental damage that is subject to the provisions of this Section, the  
 16 responsible party shall waive the right to enforce the contractual right to  
 17 indemnification against such punitive damages caused by the responsible  
 18 party's acts or omissions if the responsible party admits responsibility for the  
 19 remediation of the environmental damage under applicable regulatory  
 20 standards pursuant to the provisions of the Code of Civil Procedure Article  
 21 1563. Such waiver of the right to indemnification against punitive damages  
 22 shall not apply to any other claims or damages.

23 Section 2. The provisions of this Act shall not apply to any case in which the  
 24 court on or before May 15, 2012, has issued or signed an order setting the case for  
 25 trial, regardless of whether such trial setting is continued."