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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

Adley (SB 555)

Present law provides that if at any time during the proceeding a party admits liability for environmental damage or the finder of fact determines that environmental damage exists and determines the party or parties who caused the damage or who are otherwise legally responsible, the court shall order the party or parties who admit responsibility or whom the court finds legally responsible for the damage to develop a plan or submittal for the evaluation or remediation to applicable standards of the contamination that resulted in the environmental damage.

Proposed law allows any party to subpoena, for purposes of deposition or trial, any employee, contractor, or representative of the department or agency involved in the formulation of the feasible plan. Further allows the department or agency to recover costs associated with the subpoena.

Proposed law does not allow for discovery of the department's review, approval, or structuring of the feasible plan or of an agency's review and comments until after submission to the court of the final feasible plan.

Proposed law provides a procedure for a defendant to request that the court conduct a preliminary hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation.

Proposed law suspends the prescriptive period for one year for any claim covered by the present law. Further provides for the procedure and requirements for the suspension.

Present law provides a procedure for a public hearing on the plan or plans submitted to evaluate or remediate the environmental damage.

Proposed law provides that if a public hearing is held following a limited admission then the department will not conduct an additional public hearing for the same environmental damage.

Proposed law provides that from the date a party admits responsibility or whom the court finds legally responsible for the damage submits a plan to the department until after the department has filed with the court the approved feasible plan for the evaluation or remediation of the environmental damage, no party to the litigation, either directly or indirectly, may have ex parte communication with any employee, contractor, or representative of the department or a commenting agency regarding the formation of the feasible plan.

Proposed law provides a procedure for review of a plan that requires the application of regulatory standards of an agency other than the department or that provides an exception from the

department's standards. Further provides that the Dept. of Ag. and Forestry, DEQ, and DNR will review and comment on the plan.

Proposed law allows the department to issue compliance orders to either the operator of record or to a party found responsible or admitting responsibility for implementing the most feasible plan. Further provides for notice of the compliance order to the current operator.

Proposed law provides for waiver of the right to enforce the contractual right to indemnification against such punitive damages caused by the responsible party's acts or omissions if the responsible party admits responsibility for the remediation of the environmental damage under applicable regulatory standards. Further provides that the waiver of the right to indemnification against punitive damages will not apply to any other claims or damages.

Provides that the provisions of proposed law will not apply to any case in which the court on or before May 15, 2012, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

Effective August 1, 2012.

(Amends R.S. 30:29(C)(1), (2), and (3); adds R.S. 30:29(B)(5), (6), (7), and (L))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill

1. Provides subpoena and preliminary hearing procedure.
2. Provides for suspension of prescriptive period.
3. Removes limited admission of liability language.
4. Provides for public hearings.
5. Prohibits ex parte communication.
6. Provides procedure for approval of a feasible plan and allows for issuance of compliance orders.
7. Provides for indemnification.