
DIGEST

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DIGEST

Adley (SB 667)

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 and costs, as may be determined by the court.

Proposed law provides that in all cases in which a party makes a limited admission, there will be a rebuttable presumption that the plan approved or structured by the department, after consultation with the DEQ as appropriate, is the most feasible plan to evaluate or remediate to applicable regulatory standards the environmental damage for which responsibility is admitted. For cases tried by 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 evaluating, correcting, or repairing any environmental damage caused by unreasonable or excessive operations based on rules, regulations, lease terms, or standards applicable at the time of the activity under questions, provided that such damage is not duplicative of other damages.
- (4) The cost of nonremediation damages.

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 reasonable attorney fees or costs.

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 remediate the environmental damage under the applicable regulatory standards.

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

Provides that the provisions of proposed law shall not apply to any case in which the court, on or before March 10, 2014, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

Effective August 1, 2014.

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

Summary of Amendments Adopted by Senate

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

1. Moves provisions of law from R.S. 30:29.2 to R.S. 30:29(M).
2. Makes technical changes.
3. Provides that reasonable attorney fees and costs will be determined by the court.
4. Changes "responsible party" to "party" for limited admission of liability.
5. Allows DNR to consult with DEQ, as appropriate, on certain plans.
6. Adds the cost of evaluating the environmental damage to certain recoverable costs.
7. Adds provision relating to the effectiveness of the proposed law on existing cases.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill.

1. Deleted provision prohibiting application of proposed law to cases filed before March 10, 2014.