

Regular Session, 2014

SENATE BILL NO. 423

BY SENATOR ALLAIN

MINERALS. Provides relative to alternative dispute resolution in suits involving oilfield sites and exploration and production sites. (8/1/14)

1 AN ACT

2 To enact R.S. 30:29.2, relative to alternative dispute resolution of remediation of oilfield
3 sites and exploration and production sites; to require mediation of certain claims
4 involving oilfield sites and exploration and production sites; to allow for the
5 arbitration of certain claims involving oilfield sites and exploration and production
6 sites; to provide for the selection of the mediator and arbitrators; to provide for stay
7 of certain time delays; to provide relative to resolution of issues and claims; to
8 provide for application; to provide certain procedures, terms, conditions, and effects;
9 and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 30:29.2 is hereby enacted to read as follows:

12 **§29.2. Alternative dispute resolution; remediation of oilfield sites and**
13 **exploration and production sites**

14 **A. To facilitate an expedited remediation for environmental damage and**
15 **to assist the parties in the settlement of disputed claims, all litigation or pleading**
16 **making a judicial demand arising from or alleging environmental damage that**
17 **is subject to the provisions of R.S. 30:29 shall be referred to mediation pursuant**

1 to the provisions of this Section.

2 B. Upon the filing or amendment of any litigation or pleading making
3 a judicial demand arising from or alleging environmental damage that is
4 subject to the provisions of R.S. 30:29, the party filing same shall provide timely
5 notice to the state of Louisiana through the Department of Natural Resources,
6 commissioner of conservation and the attorney general as required by R.S.
7 30:29. In addition, the party filing same shall file a notice of mediation and the
8 time delays set forth in R.S. 30:29 shall be stayed for one year upon the filing of
9 the notice of mediation or shall be stayed until either party files a notice of
10 completion of mediation, whichever occurs first.

11 C. The mediation shall be administered by the American Arbitration
12 Association and shall be resolved in accordance with the Federal Arbitration
13 Act, Title 9 of the United States Code, and, except as is otherwise specified in
14 this Subsection, the Commercial Arbitration Rules of the American Arbitration
15 Association. The mediator shall be chosen by the parties from a list of three
16 nominees submitted by the executive director of the Louisiana Mineral Law
17 Institute. Mediation shall consist of a minimum of three meetings whereby the
18 mediator seeks to facilitate a consensus decision by all parties concerning the
19 issues. The mediation shall take place in the parish where the alleged
20 environmental damage occurred.

21 D. The sole issues to be decided in any such mediation are the following:

22 (1) The affected area of the oilfield site or exploration and production
23 (E&P) site as defined in R.S. 30:29.

24 (2) The three environmental consultants who will evaluate the affected
25 area.

26 (3) The plan that addresses environmental damage in conformity with
27 the requirements of Louisiana Constitution Article IX, Section 1 to protect the
28 environment, public health, safety and welfare, and is in compliance with the
29 specific relevant and applicable standards and regulations promulgated by a

1 state agency in accordance with the Administrative Procedure Act in effect at
2 the time of clean up to remediate contamination resulting from oilfield or
3 exploration and production operations or waste.

4 (4) The three arbitrators for the oilfield site and exploration and
5 production site review panel, including which arbitrator shall act as the chief
6 arbitrator. Arbitrators for the panel shall be selected from the membership of
7 the American Arbitration Association.

8 E.(1) If the parties cannot agree upon either of the issues, then a party
9 may file a notice of completion of mediation. Upon the filing of the notice of
10 completion of mediation, the time delays set forth in R.S. 30:29 shall apply.

11 (2) If the parties can agree upon the issues and a plan is developed, then
12 the parties shall file a notice of arbitration.

13 (3) Results of the mediation, any plan developed, any testing performed,
14 and any settlement offers tendered during the mediation shall be treated as
15 settlement negotiations for the purposes of admissibility in a court of law.

16 F. The arbitration shall be administered by the American Arbitration
17 Association and shall be resolved in accordance with the Federal Arbitration
18 Act, Title 9 of the United States Code, and, except as is otherwise specified in
19 this Subsection, the Commercial Arbitration Rules of the American Arbitration
20 Association.

21 G. The sole issue to be decided in any arbitration is the private claims
22 suffered as a result of environmental damage.

23 H.(1) After his selection, the chief arbitrator shall provide a written
24 request to all the parties for the submission of a detailed statement of fact or law
25 in support of their positions and such other documents as the parties deem
26 necessary, which are to be provided to each member of the panel and to the
27 other party within thirty days of the date of the request.

28 (2) The chief arbitrator shall then designate a time and place for a
29 hearing, unless a hearing is specifically waived in writing by both parties. The

1 **hearing shall take place in the parish where the alleged environmental damage**
2 **occurred.**

3 **(3) After due consideration of the statements and documents provided**
4 **to the panel, and any additional submissions required by the panel, and**
5 **argument and evidence submitted at the hearing, the panel shall issue a written**
6 **decision.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by J. W. Wiley.

DIGEST

Allain (SB 423)

Present law provides a procedure and time delays for the litigation of judicial demands arising from or alleging environmental damage.

Proposed law provides that all litigation making a judicial demand arising from or alleging environmental damage must be referred to mediation pursuant to the provisions of proposed law.

Proposed law provides that the party filing the litigation or pleading must provide timely notice to the state of Louisiana through the DNR, commissioner of conservation and the attorney general. Further requires the party to file a notice of mediation and the time delays set forth in present law must be stayed for one year upon the filing of the notice of mediation or stayed until either party files a notice of completion of mediation, whichever occurs first.

Proposed law requires the mediation and arbitration to be administered by the American Arbitration Association and resolved in accordance with the Federal Arbitration Act, Title 9 of the United States Code, and, except as is otherwise specified in proposed law, the Commercial Arbitration Rules of the American Arbitration Association.

Proposed law requires the mediator to be chosen by the parties from a list of three nominees submitted by the executive director of the Louisiana Mineral Law Institute. Further requires the mediation to consist of a minimum of three meetings in the parish where the alleged environmental damage occurred.

Proposed law provides for the sole issues to be decided in the mediation.

Proposed law provides that if the parties cannot agree upon either of the issues, then a party may file a notice of completion of mediation and upon such filing the time delays in present law shall apply.

Proposed law provides that if the parties can agree upon the issues and a plan is developed, then the parties will file a notice of arbitration.

Proposed law provides that the results of the mediation, any plan developed, any testing performed, and any settlement offers tendered during the mediation will be treated as settlement negotiations for the purposes of admissibility in a court of law.

Proposed law provides that the sole issue to be decided in any arbitration is the private claims suffered as a result of environmental damage.

Proposed law requires the chief arbitrator to provide a written request to all the parties for the submission of a detailed statement of fact or law in support of their positions and such other documents as the parties deem necessary, which are to be provided to each member of the panel and to the other party within 30 days of the date of the request.

Proposed law requires the chief arbitrator to designate a time and place for a hearing, unless a hearing is specifically waived in writing by both parties and requires the hearing to take place in the parish where the alleged environmental damage occurred.

Proposed law provides that after due consideration of the statements and documents provided to the panel, and any additional submissions required by the panel, and argument and evidence submitted at the hearing, the panel will issue a written decision.

Effective August 1, 2014.

(Adds R.S. 30:29.2)