

2015 Regular Session

SENATE BILL NO. 79

BY SENATOR ALLAIN (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MINERALS. Provides for alternative dispute resolution for disputes relating to remediation of oilfield sites and exploration and production sites. (8/1/15)

1 AN ACT

2 To enact R.S. 30:29.2, relative to the remediation of oilfield sites and exploration and

3 production sites; to provide alternative dispute resolution in lawsuits involving the

4 remediation of oilfield sites and exploration and production sites; to authorize the

5 court to compel nonbinding mediation; to provide for the payment of mediation fees

6 and expenses; to provide terms, conditions, requirements, and effects; to provide for

7 effectiveness; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

10 **§29.2. Alternative dispute resolution for disputes relating to remediation of**

11 **oilfield sites and exploration and production sites**

12 **A. This Section establishes procedures that apply to any dispute subject**

13 **to the provisions of R.S. 30:29.**

14 **B. Within sixty days after the end of the stay of litigation required by**

15 **R.S. 30:29(B)(1), the parties shall meet and confer in an effort to assess the**

16 **dispute, narrow the issues, and reach agreements useful or convenient for the**

17 **litigation of the action.**

1 **C. On any party's motion filed subsequent to the close of all discovery or**
2 **five hundred fifty days after commencement of the action, whichever occurs**
3 **first, the court shall enter an order compelling the parties to enter nonbinding**
4 **mediation. The motion shall be served on all parties, but a contradictory**
5 **hearing shall not be required.**

6 **D. No later than one hundred eighty days before trial begins in any**
7 **action to which this Section applies, the parties shall certify to the court that a**
8 **mediation has been held or that the parties have agreed to mediate on a specific**
9 **date prior to trial. If the parties do not certify that a mediation has occurred,**
10 **and no party has filed a motion to compel mediation, then at any time within**
11 **one hundred eighty days prior to the beginning of trial of the action, the court,**
12 **in its discretion and on its own motion, may order the parties to participate in**
13 **nonbinding mediation of the action prior to the beginning of the trial.**

14 **E. If the court enters an order compelling mediation, the clerk of court**
15 **shall mail or otherwise deliver a copy of the order to all parties.**

16 **F. If the court has entered an order compelling mediation and the parties**
17 **cannot agree within fifteen days after notice of the order to such matters as the**
18 **date, time, and place of the mediation, the identity of the mediator, provisions**
19 **for compensation of the mediator, or any other details regarding the conduct**
20 **of the mediation, the parties shall so notify the court and, after contradictory**
21 **hearing, the court may issue orders reasonably necessary to determine such**
22 **matters and any other matters necessary or convenient to provide for the**
23 **conduct of the mediation.**

24 **G. Responsibility for the mediator's fees and any expenses associated**
25 **with the location of the mediation shall be based on the parties' agreement. In**
26 **the absence of an agreement, each party shall be responsible for payment of an**
27 **equal share of those fees and expenses, unless the court, for good cause shown**
28 **after contradictory hearing, orders another division of the fees and expenses.**

29 **H. At any mediation held pursuant to this Section, a representative of**

1 each party who has settlement authority or who is in direct contact with a
 2 person having settlement authority on behalf of the party shall be present. If a
 3 party fails to comply with this requirement, the court may, in its discretion and
 4 after contradictory hearing, order that party to pay costs and attorney fees
 5 associated with the mediation.

6 Section 2. This Act shall apply to actions filed on or after the effective date of this
 7 Act. This Act shall also apply to other actions: for which a trial date has not been set as of
 8 the effective date of this Act; for which trial is scheduled to begin more than one hundred
 9 eighty days after the effective date of this Act; or for which the start of trial is continued to
 10 a date more than one hundred eighty days after the effective date of this Act.

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

DIGEST

SB 79 Engrossed

2015 Regular Session

Allain

Present law provides that immediately upon the filing or amendment of any litigation or pleading making a judicial demand arising from or alleging environmental damage, the party filing same shall provide timely notice to the commissioner of conservation and the attorney general. The litigation will be stayed with respect to any such judicial demand until 30 days after such notice is issued and return receipt is filed with the court.

Proposed law provides that within 60 days after the end of stay required in present law, the parties must meet and confer to assess the dispute, narrow the issues, and reach agreements useful or convenient for the litigation of the action.

Proposed law provides that on any party's motion filed subsequent to the close of all discovery or 550 days after commencement of the action, whichever occurs first, the court will enter an order compelling the parties to enter a nonbinding mediation. Further provides that the motion will be served to all parties and a contradictory motion is not required.

Proposed law provides that no later than 180 days before a trial begins in any action to which proposed law applies, the parties will certify to the court that a mediation has been held or that the parties have agreed to mediate on a specific date prior to trial. Further provides that if the parties do not certify that a mediation has occurred, and no party has filed a motion to compel mediation, then at any time within 180 days prior to the beginning of trial of the action, the court can order the parties to participate in nonbinding mediation prior to the beginning of the trial.

Proposed law requires that if the court enters an order compelling mediation, the clerk of court will mail or deliver a copy of the order to all parties.

Proposed law provides that if the court has entered an order compelling mediation and the parties cannot agree within 15 days after notice of the order to such matters as date, time, and place of mediation, the identity of the mediator, provisions for compensation of the mediator, or any other details regarding the conduct of the mediation, the parties must so notify the court and, after contradictory hearing, the court may issue orders reasonably

necessary to determine such matters and any other matters necessary or convenient to provide for the conduct of the mediation.

Proposed law provides that responsibility for the mediator's fees and any expenses associated with mediation will be based on the agreement of the parties. Further provides that in the absence of agreement, each party will be responsible for payment of an equal share of those fees and expenses, unless the court, for good cause shown after contradictory hearing, orders another division of the fees and expenses.

Proposed law provides that a representative of each party who has settlement authority or who is in direct contact with a person having settlement authority on behalf of the party must be present at the mediation. If a party fails to comply with this requirement, the court may, in its discretion and after contradictory hearing, order that party to pay costs and attorneys fees association with the mediation.

Effective August 1, 2015.

(Adds R.S. 30:29.2)