

SENATE BILL NO. 447

BY SENATOR APPEL AND REPRESENTATIVE JIMMY HARRIS

1 AN ACT

2 To amend and reenact R.S. 41:1212(G) and 1215(B)(1), (2), (3), (4), (5), and (6) and to  
3 enact R.S. 41:1215(D), (E), and (F), relative to public benefit corporations; to  
4 provide relative to certain procedures and requirements; to provide relative to leases  
5 or subleases of immovable property owned, leased or controlled by a public benefit  
6 corporation; to provide certain terms and conditions; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 41:1212(G) and 1215(B)(1), (2), (3), (4), (5), and (6) are hereby  
10 amended and reenacted and R.S. 41:1215(D), (E), and (F) are hereby enacted to read as  
11 follows:

12 §1212. Lands which may be leased; purposes; leases of sixteenth section lands for  
13 agricultural purposes; negotiation of surface leases of school lands;  
14 negotiation of leases by certain public benefit corporations;  
15 negotiation of leases for administering buildings designated as  
16 historic landmarks

17 \* \* \*

18 ~~G. Whenever a public benefit corporation formed by the city of New Orleans~~  
19 ~~or Orleans Parish, through its chief executive officer for the purposes of owning,~~  
20 ~~leasing, developing, and operating properties owned by the public benefit~~  
21 ~~corporation or the political subdivision, leases any property owned by the public~~  
22 ~~benefit corporation or the political subdivision, such public benefit corporation shall~~  
23 ~~not be required to advertise for and receive bids as hereinafter provided for in this~~  
24 ~~Part for other leases. Such leases entered into shall provide for a fair and equitable~~  
25 ~~return of revenue to the public benefit corporation or political subdivision. A public~~  
26 ~~benefit corporation that meets the requirements of R.S. 41:1215(B) shall not be~~  
27 ~~required to advertise for and receive bids as hereinafter provided for in this~~

1 Part for other leases. Such leases entered into shall comply with the provisions  
 2 of R.S. 41:1215(C), and shall be subject to the provisions of R.S. 41:1215(B)  
 3 through (F).

4 \* \* \*

5 §1215. Opening of bids; execution of leases; exceptions; public benefit corporations;  
 6 negotiated lease to nonprofit organizations

7 \* \* \*

8 B. For the purposes of this Part a "public benefit corporation" is defined to  
 9 be a nonprofit corporation formed pursuant to the general nonprofit corporation law  
 10 of the state of Louisiana, except those formed pursuant to specific constitutional or  
 11 statutory authority, by a political subdivision of the state of Louisiana through its  
 12 chief executive officer for the purposes of owning, leasing, developing, and  
 13 operating properties owned by such political subdivision or by such public benefit  
 14 corporation, including but not limited to planning, renovating, constructing, leasing,  
 15 subleasing, managing, and promoting such properties, which activity is declared to  
 16 constitute a public purpose, and which shall meet each of the following  
 17 requirements:

18 (1) The corporation must not be organized for profit except to the extent of  
 19 retiring indebtedness;

20 (2) The corporate income must not inure to any private person except for  
 21 ~~operating expenses~~, salaries **and other operating expenses**;

22 (3) The political subdivisions must have a beneficial interest in the  
 23 corporation ~~while the indebtedness issued by the corporation to finance the~~  
 24 ~~acquisition, construction or improvement of property remains outstanding and it~~  
 25 ~~must obtain full legal title to the property of the corporation with respect to which~~  
 26 ~~the indebtedness was incurred upon retirement of such indebtedness~~;

27 (4) Nonprofit corporations which meet the requirements of a public benefit  
 28 corporation as set forth herein and which own, lease, sublease, or control immovable  
 29 property shall not be required to advertise for and receive bids as provided for in this  
 30 Part, provided that any lease or sublease entered into by and between such nonprofit

1 corporation and a third party be approved by the governing body of such political  
 2 subdivision on behalf of which the corporation exercises its powers. Such leases or  
 3 subleases shall be negotiated and let ~~in~~ by the public benefit corporation in  
 4 accordance with fair and reasonable criteria established and applied by the public  
 5 benefit corporation relating to a balance of factors including but not limited to  
 6 highest rent, highest return of revenue and benefits to the political subdivision  
 7 ~~or highest percentage of gross profits, quality control of products, financial stability,~~  
 8 architectural design, development and management of operational plan,  
 9 uniqueness of operation, and ~~overall economic importance to the primary objective~~  
 10 ~~of stimulating other industrial or commercial activity within such development~~ the  
 11 political subdivision or the state;

12 (5) In the event that any person or other entity be unsuccessful in the bid for  
 13 the lease or sublease of immovable property owned, leased or controlled by a public  
 14 benefit corporation such person or other entity may, not later than thirty days  
 15 following the occurrence of such event, appeal to the district court in which the  
 16 political subdivision is located for such relief as may be provided by law. If no  
 17 appeal is taken within said thirty day period, any such claim shall be prescribed;

18 (6) The corporation must be approved by the political subdivision creating  
 19 it and any specific obligations issued or made by the corporation must also be  
 20 approved by said political subdivision;

21 \* \* \*

22 D.(1) In the event that any person or other entity challenges, seeks to  
 23 nullify, or seeks to enjoin a lease or sublease of immovable property owned,  
 24 leased or controlled by a public benefit corporation, including but not limited  
 25 to any person or entity that was unsuccessful in being selected for the lease or  
 26 sublease, such person or other entity may appeal to or file suit in the district  
 27 court in which the political subdivision is located for such relief as may be  
 28 provided by law, only by following the procedure set forth in this Section.

29 (2) In the case of an appeal or suit by a person or entity that was  
 30 unsuccessful in being selected for the lease or sublease, such appeal or suit must

1 be filed not later than thirty days following the occurrence of such event. In the  
2 case of a suit or appeal by any other person or entity, such appeal or suit must  
3 be filed not later than thirty days following the selection of the lessee or  
4 sublessee. If no appeal is taken or suit is filed within the thirty-day period, any  
5 such claim shall be prescribed.

6 (3)(a) Any person or entity that files a suit or appeal pursuant to  
7 Paragraphs (1) and (2) of this Subsection for a temporary restraining order or  
8 preliminary injunction of a lease or sublease of immovable property owned or  
9 controlled by a public benefit corporation shall be required to furnish security,  
10 if necessary, as required by Code of Civil Procedure Article 3601 et seq.

11 (b) Any person or entity that files a suit or appeal pursuant to  
12 Paragraphs (1) and (2) of this Subsection to challenge, nullify, or enjoin  
13 a lease or sublease of immovable property owned, leased, or controlled  
14 by a public benefit corporation shall receive a trial on the merits in the  
15 district court within sixty days of the filing of the suit and shall be given  
16 preference over all other matters on the court's calendar. The district  
17 court shall render a final judgment not more than twenty days after the  
18 conclusion of the trial.

19 (c) An appeal may be taken within ten days of the rendition of the  
20 final judgment of the district court and shall be returnable to the  
21 appropriate appellate court not more than thirty days from the rendition  
22 of the final judgment. The appeal shall be heard with the greatest  
23 possible expedition and no later than thirty days from the return day of  
24 the appeal. The appellate court shall render its ruling on the merits  
25 within sixty days of the return day of the appeal.

26 E. All leases or subleases executed by a public benefit corporation under  
27 the provisions of this Part shall be for a period not exceeding thirty years and  
28 shall provide for a rental payable in cash in a lump sum or installments, at the  
29 discretion of the lessor.

30 F. Notwithstanding the provisions of Subsection E of this Section and

1           R.S. 41:1217, any lease or sublease executed by a public benefit corporation  
 2           under the provisions of this Part, in the city of New Orleans, shall be for a  
 3           period not exceeding ninety-nine years and shall provide for a rental payable  
 4           in cash in a lump sum or installments, at the discretion of the lessor.

5           Section 3. The provisions of this Act shall be applicable to all leases entered into by  
 6 public benefit corporations after the effective date of this Act, and all claims, suits or appeals  
 7 pending on the effective date of this Act and all claims, suits or appeals filed on or after the  
 8 effective date of this Act.

9           Section 4. This Act shall become effective upon signature by the governor or, if not  
 10 signed by the governor, upon expiration of the time for bills to become law without signature  
 11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 12 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 13 effective on the day following such approval.

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 PRESIDENT OF THE SENATE

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 SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_