

2023 Regular Session

SENATE BILL NO. 154

BY SENATOR ALLAIN

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

ENERGY DEVELOPMENT. Provides for renewable energy leases. (gov sig)

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AN ACT

To enact Chapter 12-B of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:1161 through 1178, relative to renewable energy leases; to provide for rights and obligations; to provide for terms and conditions; to provide for remedies; to provide for termination; to provide for privileges; to provide for redesignation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 12-B of Title 30 of the Louisiana Revised Statutes of 1950, comprised of R.S. 30:1161 through 1178, is hereby enacted to read as follows:

CHAPTER 12-B. RENEWABLE ENERGY LEASES

PART 1. THE LESSEE

§1161. Renewable energy lease

A "renewable energy lease" is a lease of immovable property that is entered for the primary purpose of the lessee engaging in the production of wind, solar, or hydroelectric energy using the leased immovable, and any other lease pursuant to which the lessee's primary activity on the leased immovable is the production of wind, solar, or hydroelectric energy. A renewable energy

1 lease is not a mineral lease. The lessee's rights in a renewable energy lease and
2 his rights in the buildings, improvements, and other constructions on the leased
3 immovable are susceptible of mortgage.

4 §1162. Preservation of rights

5 The owner of land burdened by a renewable energy lease and the lessee
6 of a renewable energy lease shall exercise their respective rights with reasonable
7 regard for those of the other. Subject to the laws of registry, the lessee of a
8 renewable energy lease shall not unreasonably interfere with the rights of others
9 lawfully exercising their rights in the land.

10 §1163. Lessee's obligation to act as reasonably prudent operator

11 A lessee of a renewable energy lease is not under a fiduciary obligation
12 to his lessor, but he is bound to perform the contract in good faith and to
13 develop and operate the property leased as a reasonably prudent operator for
14 the mutual benefit of himself and his lessor. Parties may stipulate what shall
15 constitute reasonably prudent conduct of the lessee to develop and operate the
16 leased property.

17 §1164. Lessee's right to assign or sublease

18 The lessee's interest in a renewable energy lease may be assigned or
19 subleased in whole or in part, unless the lease expressly prohibits assignments
20 or subleases. If a renewable energy lease contains a provision that expressly
21 prohibits either assignments or subleases, then unless the lease language clearly
22 shows a contrary intent, the provision will be interpreted as prohibiting both
23 assignments and subleases.

24 §1165. Responsibility of assignee or sublessee to original lessor

25 A. To the extent of the interest acquired, an assignee or sublessee
26 acquires the rights and powers of the lessee and becomes responsible directly
27 to the original lessor for performance of the lessee's obligations. Except as
28 otherwise expressly agreed to in writing by the lessor, an assignor or sublessor
29 is not relieved of his obligations or liabilities under a renewable energy lease

1 unless the lessor has discharged him expressly and in writing in a separate
2 instrument executed at the time of the assignment or sublease or thereafter. The
3 lessor shall not unreasonably withhold the discharge. A partial assignment or
4 partial sublease does not divide a renewable energy lease. A renewable energy
5 lease lessor shall accept performance by an assignee or sublessee whether or not
6 the assignment or sublease is filed for registry.

7 B. If the assignor assigns his rights in the renewable energy lease, the
8 assignor shall provide to the lessor a notice of assignment containing the name,
9 address, phone number, and email address of the assignee. The assignee or his
10 operator shall comply with all applicable requirements of R.S. 30:1154.

11 §1166. Demands by lessor; effect on assignee or sublessee

12 An assignee or sublessee is bound by any notice or demand by the lessor
13 on the lessee unless the lessor has been given written notice of the assignment
14 or sublease. If such notice has been given, any subsequent notice or demand by
15 the lessor shall be made on the assignee or sublessee.

16 PART 2. TERMINATION AND REMEDIES FOR VIOLATION

17 §1167. Termination of renewable energy lease

18 A renewable energy lease terminates at the expiration of the agreed term
19 or upon the occurrence of an express resolatory condition.

20 §1168. Right to relief for violation

21 If a renewable energy lease is violated, an aggrieved party shall be
22 entitled to any appropriate relief provided by law. Parties may stipulate what
23 constitutes appropriate relief.

24 §1169. Rules of default applicable except as specified

25 The provisions of the Louisiana Civil Code concerning putting in default
26 are applicable to renewable energy leases subject to the modifications in this
27 Part.

28 §1170. Written notice; requirement and effect on claims for damages or
29 dissolution of lease

1 If a renewable energy lessor seeks relief from his lessee for any claim
2 that the lessee has failed to develop and operate the property leased as a
3 prudent operator, he shall give his lessee written notice of the asserted breach
4 to perform and allow a reasonable time for performance by the lessee as a
5 prerequisite to a judicial demand for damages or dissolution of the lease. If a
6 lessee is found to have had actual or constructive knowledge of its failure to
7 perform as a prudent operator and is held responsible for consequent damages,
8 the damages may be computed from the time a reasonably prudent operator
9 would have remedied the failure to perform. In other cases where notice is
10 required by this Part, damages may be computed only from the time the written
11 notice was received by the lessee. The parties may stipulate what constitutes a
12 reasonable time for performance under this Section.

13 §1171. Nonpayment of royalties; notice prerequisite to judicial demand

14 If a renewable energy lessor seeks relief for the failure of his lessee to
15 make timely or proper payment of rent or royalties, he shall give his lessee
16 written notice of such failure as a prerequisite to a judicial demand for damages
17 or dissolution of the lease.

18 §1172. Required response of lessee to notice; effect of response

19 The lessee shall have thirty days after receipt of the required notice to
20 pay the rent or royalties due or to respond by stating in writing a reasonable
21 cause for nonpayment. The payment or nonpayment of the rent or royalties or
22 stating or failing to state a reasonable cause for nonpayment within this period
23 has the following effect on the remedies of dissolution and damages:

24 A. If the lessee pays the rent or royalties due within thirty days of
25 receiving the required notice, the remedy of dissolution shall be unavailable
26 unless it be found that the original failure to pay was fraudulent. The lessee also
27 remains liable for interest from the time the payments were due under the lease.

28 B. If the lessee pays the rent or royalties due within thirty days of
29 receiving the required notice, but the original failure to pay rent or royalties

1 was either fraudulent or willful and without reasonable grounds, the court may
2 in its discretion award as additional statutory damages in an amount not to
3 exceed the amount of rent or royalties that were not timely or properly paid,
4 interest on that sum from the date due, and reasonable attorney fees. In all
5 other cases, such as mere oversight or neglect, damages shall be limited to
6 interest on the rent or royalties computed from the date due, and reasonable
7 attorney fees if such interest is not paid within thirty days of the written
8 demand.

9 C. If the lessee fails to pay rent or royalties due and fails to inform the
10 lessor of a reasonable cause for failure to pay in response to the required notice,
11 the court may dissolve the lease. In addition, the court may award as damages
12 the amount of rent or royalties due, interest on that sum from the date due, and
13 reasonable attorney fees regardless of the cause for the original failure to pay.

14 D. The parties may stipulate a time period longer than thirty days within
15 which the lessee shall pay rent or royalties due following written notice for
16 payment thereof by the lessor, but in no circumstance shall such time period be
17 greater than sixty days from delivery of the written notice to the lessee.

18 §1173. Notice; manner of delivery

19 For any written notice required under this Chapter, the parties to a
20 renewable energy lease may stipulate the conditions, manner, and method by
21 which delivery of such written notice to the lessee shall be made.

22 §1174. Summary eviction not applicable

23 A renewable energy lessee cannot be evicted by summary process.

24 §1175. Dissolution may be partial or entire

25 A renewable energy lease may be dissolved partially or in its entirety. A
26 decree of partial dissolution may be made as to those portions of the land
27 subject to a renewable energy lease on which construction of the renewable
28 energy facility has not commenced within ten years of the effective date of the
29 lease, or in any other fashion which may provide appropriate justice in the

1 judgment of the court.

2 PART 3. THE LESSOR'S PRIVILEGE

3 §1176. Lessor's privilege

4 The lessor of a renewable energy lease has, for the payment of his rent,
 5 and other obligations of the lease, a privilege on all equipment, machinery, and
 6 other property of the lessee on or attached to the property leased. The right also
 7 extends to equipment, machinery, and other property of a sublessee on or
 8 attached to the property leased, but only to the extent that the sublessee is
 9 indebted to his sublessor at the time the lessor exercises his right.

10 §1177. Right to seize property on premises or within fifteen days of removal

11 The renewable energy lessor may seize the property subject to his
 12 privilege before the lessee removes it from the leased premises, or within fifteen
 13 days after it has been removed by the lessee without the consent of the lessor,
 14 if it continues to be the property of the lessee, and can be identified.

15 §1178. Manner of enforcement

16 The renewable energy lessor may enforce his privilege in the same
 17 manner as the privilege accorded other lessors.

18 Section 2. The Louisiana State Law Institute is hereby directed to redesignate
 19 Chapter 12 of Title 30 as Chapter 12-A.

20 Section 3. This Act shall become effective upon signature by the governor or, if not
 21 signed by the governor, upon expiration of the time for bills to become law without signature
 22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 24 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Jacob K. Wilson.

Proposed law defines a "renewable energy lease" as a lease of immovable property entered
 for the purpose of engaging in the production of wind, solar, or hydroelectric energy using
 the leased premises. Proposed law provides that a renewable energy lease is not a mineral

lease and that the lessee's rights in the lease, buildings, immovables, and other constructions on the leased immovable are subject to mortgage.

Proposed law requires that the landowner and renewable energy lessee each exercise their rights with reasonable regard for those of the other, and, subject to the laws of registry, neither may unreasonably interfere with the rights of others in the property.

Proposed law provides that the renewable energy lessee is not under a fiduciary obligation to the lessor but is bound to perform in good faith and to develop and operate the property as a reasonably prudent operator for the mutual benefit of both. Proposed law allows the parties to stipulate what constitutes prudent conduct in development and operation of the leased property.

Proposed law provides that a lessee's interest in a renewable energy lease may be assigned or subleased in whole or in part, unless the lease expressly prohibits such. If the lease prohibits either assignments or subleases, in the absence of clear language stating otherwise, it will be interpreted to prohibit both assignments and subleases.

Proposed law provides that an assignee or sublessee acquires proportionately the rights and powers of the lessee and becomes responsible directly to the lessor for performance of the lessee's obligations. Proposed law does not relieve the assignor or sublessor of his obligations or liabilities unless discharged expressly and in writing in a separate instrument, and such relief may not be unreasonably withheld. Proposed law provides that a partial assignment or sublease does not divide the lease.

Proposed law provides that the assignor of a lease must provide the lessor notice of the assignment that includes the assignee's name, address, phone number, and email address, and the assignee shall comply with R.S. 30:1154.

Proposed law requires the lessor to accept performance by an assignee or sublessee regardless of whether the assignment or sublease is filed for registry. Proposed law provides that an assignee or sublessee is bound by notice or demand by the lessor unless the lessor has been given notice of the assignment or sublease and the assignment or sublease has been filed for registry in parish records. If filing and notice have taken place, subsequent notice or demand shall be made on the assignee or sublessee.

Proposed law provides that a renewable energy lease terminates at expiration of its term or occurrence of an express resolutive condition.

Proposed law provides that an aggrieved party is entitled to any appropriate lawful relief for violation of the lease and that the parties may stipulate what constitutes appropriate relief.

Proposed law provides that renewable energy leases are subject to the Civil Code provisions concerning default.

Proposed law provides that prior to seeking damages or dissolution for the lessee's failure to develop and/or operate prudently, the lessor shall provide written notice of the breach and allow a reasonable time for performance by the lessee. In such case, proposed law provides that any damages for which a lessee is held responsible may be computed from the time a reasonably prudent operator would have remedied the failure to perform. In other cases where notice is required, damages may be computed only from the time the written notice was received by the lessee. Proposed law provides that the parties may stipulate what constitutes a reasonable time for performance.

Proposed law provides that prior to seeking damages or dissolution for the failure of the lessee to pay rent or royalties, the lessor shall give written notice of the failure.

Proposed law provides that the lessee has 30 days after receipt of notice to either pay rent

or royalties or respond with cause for nonpayment. If the lessee pays within 30 days of notice, dissolution is precluded unless the original failure to pay was fraudulent, but the lessee is liable for interest from the payment due date. Proposed law provides that if the lessee pays with 30 days of notice but the original failure to pay was fraudulent or willful, the court may award interest and an attorney fees as additional damages. In cases of oversight or neglect, the court may add the attorney fees if the interest is not paid within 30 days of written demand.

Proposed law provides that if the lessee fails to pay rent or royalties due and fails to inform the lessor of a reasonable cause in response to the notice, the court may dissolve the lease and may award the amount of rent or royalties due, interest from the date due, and reasonable attorney fees, regardless of the cause for nonpayment.

Proposed law provides that the parties may stipulate a time period longer than 30 days, but no greater than 60 days, for payment of rent or royalties following written notice for payment.

Proposed law provides that the parties to the lease may stipulate the delivery conditions, manner, and method of any written notice to the lessee.

Proposed law provides that the renewable energy lessee cannot be evicted by summary process.

Proposed law provides that the lease may be judicially dissolved partially or in its entirety. Proposed law provides that the partial dissolution may be made applicable to any portion of the land upon which construction of a renewable energy facility has not begun within ten years of the lease effective date, or in any way that provides appropriate justice.

Proposed law provides that the lessor of a renewable energy lease has a privilege on all equipment, machinery, and other property of the lessee, either on or attached to the leased property, for the payment of his rent, and other obligations of the lease. The right extends to property of others on or attached to the property by their express or implied consent in connection with lease operations but is limited to the extent to which the sublessee is indebted to the sublessor.

Proposed law provides that the lessor may seize property subject to his privilege before removal from the leased premises, or within 15 days after it has been removed without the lessor's consent, if it remains as the lessee's identifiable property.

Proposed law provides that the renewable energy lessor may enforce his privilege in the same manner accorded other lessors.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 30:1161-1178)

Summary of Amendments Adopted by Senate

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

1. Removes geothermal energy from the definition of renewable energy lease.
2. Provides that a lessor may not unreasonably withhold the release from liability of an assignor or sublessor.
3. Provides that partial dissolution of a lease may be made as to portions of the leased premises on which construction of a renewable energy facility has not

started within seven years of the lease effective date.

Senate Floor Amendments to engrossed bill

1. Provides that a renewable energy lease is a lease of immovable property.
2. Provides that the lessee's rights in the lease, buildings, improvements, and other constructions on the leased immovable are subject to mortgage.
3. Provides that, subject to the laws of registry, the landowner and the renewable energy lessee shall not unreasonably interfere with the rights of others in the property.
4. Provides that the assignor of a lease must provide to the lessor notice of the assignment that includes the assignee's name, address, phone number, and email address, and the assignee shall comply with R.S. 30:1154.
5. Provides that parties may stipulate what constitutes appropriate relief if a lease is violated.
6. For purposes of lease dissolution, changes the time period within which construction of a renewable energy facility must commence from seven to ten years.
7. Provides that the lessor's privilege on the property of others that is on or attached to the leased immovable is limited to the extent to which the sublessee is indebted to the sublessor.