

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 that is entered for the purpose of the lessee engaging in the production of wind, solar, or hydroelectric energy using the leased premises, and any other lease pursuant to which the lessee's primary activity on the leased premises is the production of wind, solar, or hydroelectric energy. A renewable energy lease is not a mineral lease.**

1           **§1162. Preservation of rights**

2           **The owner of land burdened by a renewable energy lease and the lessee**  
3           **of a renewable energy lease shall exercise their respective rights with reasonable**  
4           **regard for those of the other, nor unreasonably interfere with the rights of**  
5           **others lawfully exercising their rights in the property.**

6           **§1163. Lessee's obligation to act as reasonably prudent operator**

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

13           **§1164. Lessee's right to assign or sublease**

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

20           **§1165. Responsibility of assignee or sublessee to original lessor**

21           **To the extent of the interest acquired, an assignee or sublessee acquires**  
22           **the rights and powers of the lessee and becomes responsible directly to the**  
23           **original lessor for performance of the lessee's obligations. An assignor or**  
24           **sublessor is not relieved of his obligations or liabilities under a renewable**  
25           **energy lease unless the lessor has discharged him expressly and in writing in a**  
26           **separate instrument executed at the time of the assignment or sublease or**  
27           **thereafter. The lessor shall not unreasonably withhold the discharge. A partial**  
28           **assignment or partial sublease does not divide a renewable energy lease. A**  
29           **renewable energy lease lessor shall accept performance by an assignee or**

1 sublessee whether or not the assignment or sublease is filed for registry.

2 §1166. Demands by lessor; effect on assignee or sublessee

3 An assignee or sublessee is bound by any notice or demand by the lessor  
4 on the lessee unless the lessor has been given written notice of the assignment  
5 or sublease and the assignment or sublease has been filed for registry in the  
6 conveyance records of the parish or parishes where the leased premises is  
7 located. If filing and notice have taken place, any subsequent notice or demand  
8 by the lessor shall be made on the assignee or sublessee.

9 PART 2. TERMINATION AND REMEDIES FOR VIOLATION

10 §1167. Termination of renewable energy lease

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

13 §1168. Right to relief for violation

14 If a renewable energy lease is violated, an aggrieved party shall be  
15 entitled to any appropriate relief provided by law.

16 §1169. Rules of default applicable except as specified

17 The provisions of the Louisiana Civil Code concerning putting in default  
18 are applicable to renewable energy leases subject to the modifications in this  
19 Part.

20 §1170. Written notice; requirement and effect on claims for damages or  
21 dissolution of lease

22 If a renewable energy lessor seeks relief from his lessee for any claim  
23 that the lessee has failed to develop and operate the property leased as a  
24 prudent operator, he shall give his lessee written notice of the asserted breach  
25 to perform and allow a reasonable time for performance by the lessee as a  
26 prerequisite to a judicial demand for damages or dissolution of the lease. If a  
27 lessee is found to have had actual or constructive knowledge of its failure to  
28 perform as a prudent operator and is held responsible for consequent damages,  
29 the damages may be computed from the time a reasonably prudent operator

1 would have remedied the failure to perform. In other cases where notice is  
2 required by this Part damages may be computed only from the time the written  
3 notice was received by the lessee. The parties may stipulate what constitutes a  
4 reasonable time for performance under this Article.

5 §1171. Nonpayment of royalties; notice prerequisite to judicial demand

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

10 §1172. Required response of lessee to notice; effect of response

11 The lessee shall have thirty days after receipt of the required notice  
12 within which to pay the rent or royalties due or to respond by stating in writing  
13 a reasonable cause for nonpayment. The payment or nonpayment of the rent  
14 or royalties or stating or failing to state a reasonable cause for nonpayment  
15 within this period has the following effect on the remedies of dissolution and  
16 damages:

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

21 B. If the lessee pays the rent or royalties due within thirty days of  
22 receiving the required notice, but the original failure to pay rent or royalties  
23 was either fraudulent or willful and without reasonable grounds, the court may  
24 in its discretion award as additional statutory damages in an amount not to  
25 exceed the amount of rent or royalties that were not timely or properly paid,  
26 interest on that sum from the date due, and reasonable attorney fees. In all  
27 other cases, such as mere oversight or neglect, damages shall be limited to  
28 interest on the rent or royalties computed from the date due, and a reasonable  
29 attorneys fee if such interest is not paid within thirty days of the written

1           demand.

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

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

11          §1173. Notice; manner of delivery

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

15          §1174. Summary eviction not applicable

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

17          §1175. Dissolution may be partial or entire

18                   A renewable energy lease may be dissolved partially or in its entirety. A  
19          decree of partial dissolution may be made as to those portions of the land  
20          subject to a renewable energy lease on which construction of the renewable  
21          energy facility has not commenced within seven years of the effective date of the  
22          lease, or in any other fashion which may provide appropriate justice in the  
23          judgment of the court.

24                   PART 3. THE LESSOR'S PRIVILEGE

25          §1176. Lessor's privilege

26                   The lessor of a renewable energy lease has, for the payment of his rent,  
27          and other obligations of the lease, a privilege on all equipment, machinery, and  
28          other property of the lessee on or attached to the property leased. The right  
29          also extends to property of others on or attached to the property leased by their

1 express or implied consent in connection with or contemplation of operations  
 2 on the lease.

3 §1177. Right to seize property on premises or within fifteen days of removal

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

8 §1178. Manner of enforcement

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

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

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

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

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DIGEST

SB 154 Engrossed

2023 Regular Session

Allain

Proposed law defines a "renewable energy lease" as a lease 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.

Proposed law requires the landowner and renewable energy lessee each to exercise their rights with reasonable regard for those of the other, nor 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 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 resolatory condition.

Proposed law provides that an aggrieved party is entitled to any appropriate lawful relief for violation of the lease.

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 seven 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.

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.