

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 154

2023 Regular Session

Allain

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

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

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Provides that unless the agreement states otherwise, proposed law does not apply to an offshore wind energy agreement.
2. Makes technical amendments.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

SB 154 Reengrossed

2023 Regular Session

Allain

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.

Proposed law provides that unless such an agreement states otherwise, proposed law does not apply to offshore wind energy agreements.

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

(Adds R.S. 30:1161-1179)

Jacob K. Wilson
Attorney