

SENATE BILL NO. 154

BY SENATOR ALLAIN

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

1 AN ACT

2 To enact Chapter 12-B of Title 30 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 30:1161 through 1179, relative to renewable energy leases; to
4 provide for rights and obligations; to provide for terms and conditions; to provide for
5 remedies; to provide for termination; to provide for privileges; to provide for
6 redesignation; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 12-B of Title 30 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 30:1161 through 1179, is hereby enacted to read as follows:

10 CHAPTER 12-B. RENEWABLE ENERGY LEASES

11 PART 1. THE LESSEE

12 §1161. Renewable energy lease

13 A "renewable energy lease" is a lease of immovable property that is
14 entered for the primary purpose of the lessee's engaging in the production of
15 wind, solar, or hydroelectric energy using the leased immovable, and any other
16 lease pursuant to which the lessee's primary activity on the leased immovable
17 is the production of wind, solar, or hydroelectric energy. A renewable energy
18 lease is not a mineral lease. The lessee's rights in a renewable energy lease and
19 his rights in the buildings, improvements, and other constructions on the leased
20 immovable are susceptible of mortgage.

21 §1162. Preservation of rights

22 The owner of land burdened by a renewable energy lease and the lessee
23 of a renewable energy lease shall exercise their respective rights with reasonable
24 regard for those of the other. Subject to the laws of registry, the lessee of a
25 renewable energy lease shall not unreasonably interfere with the rights of others
26 lawfully exercising their rights in the land.

1 §1163. Lessee's obligation to act as reasonably prudent operator

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

8 §1164. Lessee's right to assign or sublease

9 The lessee's interest in a renewable energy lease may be assigned or
10 subleased in whole or in part, unless the lease expressly prohibits assignments
11 or subleases. If a renewable energy lease contains a provision that expressly
12 prohibits either assignments or subleases, then unless the lease language clearly
13 shows a contrary intent, the provision will be interpreted as prohibiting both
14 assignments and subleases.

15 §1165. Responsibility of assignee or sublessee to original lessor

16 A. To the extent of the interest acquired, an assignee or sublessee
17 acquires the rights and powers of the lessee and becomes responsible directly
18 to the lessor for performance of the lessee's obligations. Except as otherwise
19 expressly agreed to in writing by the lessor, an assignor or sublessor is not
20 relieved of his obligations or liabilities under a renewable energy lease unless
21 the lessor has discharged him expressly and in writing in a separate instrument
22 executed at the time of the assignment or sublease or thereafter. The lessor shall
23 not unreasonably withhold the discharge. A partial assignment or partial
24 sublease does not divide a renewable energy lease. A renewable energy lease
25 lessor shall accept performance by an assignee or sublessee whether or not the
26 assignment or sublease is filed for registry.

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

1 **§1166. Demands by lessor; effect on assignee or sublessee**

2 **An assignee or sublessee is bound by any notice or demand by the lessor**
3 **on the lessee unless the lessor has been given written notice of the assignment**
4 **or sublease. If such notice has been given, any subsequent notice or demand by**
5 **the lessor shall be made on the assignee or sublessee.**

6 **PART 2. TERMINATION AND REMEDIES FOR VIOLATION**

7 **§1167. Termination of renewable energy lease**

8 **A renewable energy lease terminates at the expiration of the agreed term**
9 **or upon the occurrence of an express resolatory condition.**

10 **§1168. Right to relief for violation**

11 **If a renewable energy lease is violated, an aggrieved party shall be**
12 **entitled to any appropriate relief provided by law. Parties may stipulate what**
13 **constitutes appropriate relief.**

14 **§1169. Rules of default applicable except as specified**

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

18 **§1170. Written notice; requirement and effect on claims for damages or**
19 **dissolution of lease**

20 **If a renewable energy lessor seeks relief from his lessee for any claim**
21 **that the lessee has failed to develop and operate the property leased as a**
22 **prudent operator, he shall give his lessee written notice of the asserted breach**
23 **of performance and allow a reasonable time for performance by the lessee as a**
24 **prerequisite to a judicial demand for damages or dissolution of the lease. If a**
25 **lessee is found to have had actual or constructive knowledge of its failure to**
26 **perform as a prudent operator and is held responsible for consequent damages,**
27 **the damages may be computed from the time a reasonably prudent operator**
28 **would have remedied the failure to perform. In other cases where notice is**
29 **required by this Part, damages may be computed only from the time the written**
30 **notice was received by the lessee. The parties may stipulate what constitutes a**

1 reasonable time for performance under this Section.

2 §1171. Nonpayment of royalties; notice prerequisite to judicial demand

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

7 §1172. Required response of lessee to notice; effect of response

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

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

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

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

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

5 **§1173. Notice; manner of delivery**

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

9 **§1174. Summary eviction not applicable**

10 **A renewable energy lessee cannot be evicted by summary process.**

11 **§1175. Dissolution may be partial or entire**

12 **A renewable energy lease may be dissolved partially or in its entirety. A**
13 **decree of partial dissolution may be made as to those portions of the land**
14 **subject to a renewable energy lease on which construction of the renewable**
15 **energy facility has not commenced within ten years of the effective date of the**
16 **lease, or in any other fashion which may provide appropriate justice in the**
17 **judgment of the court.**

18 **PART 3. THE LESSOR'S PRIVILEGE**

19 **§1176. Lessor's privilege**

20 **The lessor of a renewable energy lease has, for the payment of his rent,**
21 **and other obligations of the lease, a privilege on all equipment, machinery, and**
22 **other property of the lessee on or attached to the property leased. The right also**
23 **extends to equipment, machinery, and other property of a sublessee on or**
24 **attached to the property leased, but only to the extent that the sublessee is**
25 **indebted to his sublessor at the time the lessor exercises his right.**

26 **§1177. Right to seize property on premises or within fifteen days of removal**

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

1 **§1178. Manner of enforcement**

2 **The renewable energy lessor may enforce his privilege in the same**
3 **manner as the privilege accorded other lessors.**

4 **§1179. Exclusion; offshore wind**

5 **Unless incorporated by reference into an agreement, this Chapter shall**
6 **not apply to offshore wind energy agreements entered into by the state.**

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

9 Section 3. 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.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____