

RÉSUMÉ DIGEST

ACT 455 (SB 154)

2023 Regular Session

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New 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. New 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.

New 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.

New 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. New law allows the parties to stipulate what constitutes prudent conduct in development and operation of the leased property.

New 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.

New 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. New law provides that an assignor or sublessor is not relieved of his obligations or liabilities unless discharged expressly and in writing in a separate instrument, and such relief may not be unreasonably withheld. New law provides that a partial assignment or sublease does not divide the lease.

New 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 applicable rules, regulations, and permitting requirements of the Dept. of Energy and Natural Resources.

New law requires the lessor to accept performance by an assignee or sublessee regardless of whether the assignment or sublease is filed for registry. New 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.

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

New 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.

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

New law provides that prior to seeking damages or dissolution for the lessee's failure to develop and operate prudently, the lessor shall provide written notice of the breach and allow a reasonable time for performance by the lessee. In such case, new 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. New law provides that the parties may stipulate what constitutes a reasonable time for performance.

New 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.

New 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. New 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.

New 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.

New 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.

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

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

New law provides that the lease may be judicially dissolved partially or in its entirety. New law provides that a partial dissolution may be made applicable to any portion of the land upon which construction of a renewable energy facility has not begun within 10 years of the lease effective date, or in any way that provides appropriate justice.

New 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.

New 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.

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

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

Effective June 28, 2023.

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