

2016 Regular Session

SENATE BILL NO. 447

BY SENATOR APPEL AND REPRESENTATIVE JIMMY HARRIS

LEASES. Provides relative to leases or subleases of immovable property owned, leased or controlled by a public benefit corporation. (gov sig)

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AN ACT

To amend and reenact R.S. 41:1212(G) and 1215(B)(1), (2), (3), (4), (5), and (6) and to enact R.S. 41:1215(D), (E), and (F), relative to public benefit corporations; to provide relative to certain procedures and requirements; to provide relative to leases or subleases of immovable property owned, leased or controlled by a public benefit corporation; to provide certain terms and conditions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 41:1212(G) and 1215(B)(1), (2), (3), (4), (5), and (6) are hereby amended and reenacted and R.S. 41:1215(D), (E), and (F) are hereby enacted to read as follows:

§1212. Lands which may be leased; purposes; leases of sixteenth section lands for agricultural purposes; negotiation of surface leases of school lands; negotiation of leases by certain public benefit corporations; negotiation of leases for administering buildings designated as historic landmarks

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1 (2) The corporate income must not inure to any private person except for  
2 ~~operating expenses, salaries~~ **and other operating expenses;**

3 (3) The political subdivisions must have a beneficial interest in the  
4 corporation ~~while the indebtedness issued by the corporation to finance the~~  
5 ~~acquisition, construction or improvement of property remains outstanding and it~~  
6 ~~must obtain full legal title to the property of the corporation with respect to which~~  
7 ~~the indebtedness was incurred upon retirement of such indebtedness;~~

8 (4) Nonprofit corporations which meet the requirements of a public benefit  
9 corporation as set forth herein and which own, lease, sublease, or control immovable  
10 property shall not be required to advertise for and receive bids as provided for in this  
11 Part, provided that any lease or sublease entered into by and between such nonprofit  
12 corporation and a third party be approved by the governing body of such political  
13 subdivision on behalf of which the corporation exercises its powers. Such leases or  
14 subleases be negotiated and let in **the discretion and business judgment of the**  
15 **public benefit corporation in** accordance with ~~objective~~ criteria **established or**  
16 **applied by the public benefit corporation** relating to a balance of factors including  
17 but not limited to ~~highest rent or highest percentage of gross profits, quality control~~  
18 ~~of products~~, financial stability, architectural design, **development and management**  
19 **of operational plan**, uniqueness of operation, and ~~overall economic importance to~~  
20 ~~the primary objective of stimulating other industrial or commercial activity within~~  
21 ~~such development~~ **the political subdivision or the state;**

22 (5) In the event that any person or other entity be unsuccessful in the bid for  
23 the lease or sublease of immovable property owned, leased or controlled by a public  
24 benefit corporation such person or other entity may, not later than thirty days  
25 following the occurrence of such event, appeal to the district court in which the  
26 political subdivision is located for such relief as may be provided by law. If no  
27 appeal is taken within said thirty day period, any such claim shall be prescribed;

28 (6) The corporation must be approved by the political subdivision creating  
29 it and any specific obligations issued or made by the corporation must also be

1 approved by said political subdivision;

2 \* \* \*

3 D.(1) In the event that any person or other entity challenges, seeks to  
4 nullify, or seeks to enjoin a lease or sublease of immovable property owned,  
5 leased or controlled by a public benefit corporation, including but not limited  
6 to any person or entity that was unsuccessful in being selected for the lease or  
7 sublease, such person or other entity may appeal to or file suit in the district  
8 court in which the political subdivision is located for such relief as may be  
9 provided by law, only by following the procedure set forth in this Section.

10 (2) In the case of an appeal or suit by a person or entity that was  
11 unsuccessful in being selected for the lease or sublease, such appeal or suit must  
12 be filed not later than thirty days following the occurrence of such event. In the  
13 case of a suit or appeal by any other person or entity, such appeal or suit must  
14 be filed not later than thirty days following the selection of the lessee or  
15 sublessee. If no appeal is taken or suit is filed within the thirty-day period, any  
16 such claim shall be prescribed.

17 (3) On the application of the public benefit corporation to the court, any  
18 person or other entity that files, or has filed, an appeal or suit pursuant to R.S.  
19 41:1215(B)(5) and (D)(1) and (2) shall be required to furnish security to assure  
20 the satisfaction of any damages, costs or expenses, or losses to the public benefit  
21 corporation, political subdivision, state, lessee or sublessee which may result,  
22 directly or indirectly, from the filing of the appeal or suit, in such amount as  
23 may be fixed by the court, but not less than the following:

24 (a) For those leases or subleases with a term that is up to twenty-five  
25 years in length, an amount equal to the total amount of rent payable to the  
26 public benefit corporation over the initial five-year period of the lease or  
27 sublease, or over the term of the lease or sublease, if the term is shorter than  
28 five years.

29 (b) For those leases or subleases with a term greater than twenty-five

1       years, an amount equal to the total amount of rent payable to the public benefit  
2       corporation over the initial ten-year period of the lease or sublease. The court  
3       shall fix the amount of security within thirty days of the filing of the application  
4       by the public benefit corporation. If such security is provided through a  
5       commercial surety bond, the bond shall provide that the principal and the  
6       surety are bound in solido for the amount thereof. On the failure to furnish such  
7       security within thirty days from the court's determination of the amount of the  
8       security, or such lesser time as established by the court, the appeal or suit shall  
9       be dismissed with prejudice.

10       E. All leases or subleases executed by a public benefit corporation under  
11       the provisions of this Part shall be for a period not exceeding thirty years and  
12       shall provide for a rental payable in cash in a lump sum or installments, at the  
13       discretion of the lessor.

14       F. Notwithstanding the provisions of Subsection E of this Section and  
15       R.S. 41:1217, any lease or sublease executed by a public benefit corporation  
16       under the provisions of this Part, in the city of New Orleans, shall be for a  
17       period not exceeding ninety-nine years and shall provide for a rental payable  
18       in cash in a lump sum or installments, at the discretion of the lessor.

19       Section 3. The provisions of this Act shall be applicable to all leases entered into by  
20       public benefit corporations after the effective date of this Act, and all claims, suits or appeals  
21       pending on the effective date of this Act and all claims, suits or appeals filed on or after the  
22       effective date of this Act.

23       Section 4. This Act shall become effective upon signature by the governor or, if not  
24       signed by the governor, upon expiration of the time for bills to become law without signature  
25       by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
26       vetoed by the governor and subsequently approved by the legislature, this Act shall become  
27       effective on the day following such approval.

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The original instrument was prepared by Benjamin A. Huxen, II. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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## DIGEST

SB 447 Reengrossed

2016 Regular Session

Appel

Present law regarding public benefit corporations provides that whenever a public benefit corporation formed by the city of New Orleans or Orleans Parish, through its chief executive officer for the purposes of owning, leasing, developing, and operating properties owned by the public benefit corporation or the political subdivision, leases any property owned by the public benefit corporation or the political subdivision, such public benefit corporation shall not be required to advertise for and receive bids as hereinafter provided for in this Part for other leases. Such leases entered into shall provide for a fair and equitable return of revenue to the public benefit corporation or political subdivision.

Proposed law eliminates present law and provides that a public benefit corporation that meets the requirements of present law and proposed law is not required to advertise for and receive bids for other leases. Leases must comply with the provisions of present law, and shall be subject to the provisions of present law and proposed law.

Present law provides that political subdivisions must have a beneficial interest in a public benefit corporation while indebtedness issued by the corporation to finance the acquisition, construction or improvement of property remains outstanding and must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon retirement of such indebtedness. Proposed law eliminates present law regarding indebtedness.

Proposed law further modifies the criteria for letting leases.

Proposed law further provides the procedure for any person or other entity who challenges, seeks to nullify, or seeks to enjoin a lease or sublease of immovable property owned, leased or controlled by a public benefit corporation including the giving of certain security.

Proposed law further provides for terms of lease, including that in the city of New Orleans a lease or sublease shall be for a period not exceeding 99 years and shall provide for a rental payable in cash in a lump sum or installments.

Proposed law provides that it shall be applicable to leases entered into by public benefit corporations after the effective date of this Act, and to claims, suits or appeals pending on the effective date or filed on or after the effective date.

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

(Amends R.S. 41:1212(G) and 1215(B)(1), (2), (3), (4), (5), and (6); adds R.S. 41:1215(D), (E), and (F))

Summary of Amendments Adopted by SenateSenate Floor Amendments to engrossed bill

1. Makes technical corrections.