

2016 Regular Session

SENATE BILL NO. 447

BY SENATOR APPEL

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

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 41:1212(G) and 1215(B) are hereby amended and reenacted and R.S.  
9 41:1215(D), (E), and (F) are hereby enacted to read as follows:

10 §1212. Lands which may be leased; purposes; leases of sixteenth section lands for  
11 agricultural purposes; negotiation of surface leases of school lands;  
12 negotiation of leases by certain public benefit corporations;  
13 negotiation of leases for administering buildings designated as  
14 historic landmarks

15 \* \* \*

16 G. ~~Whenever a public benefit corporation formed by the city of New Orleans~~  
17 ~~or Orleans Parish, through its chief executive officer for the purposes of owning,~~

1 ~~leasing, developing, and operating properties owned by the public benefit~~  
 2 ~~corporation or the political subdivision, leases any property owned by the public~~  
 3 ~~benefit corporation or the political subdivision, such public benefit corporation shall~~  
 4 ~~not be required to advertise for and receive bids as hereinafter provided for in this~~  
 5 ~~Part for other leases. Such leases entered into shall provide for a fair and equitable~~  
 6 ~~return of revenue to the public benefit corporation or political subdivision. A public~~  
 7 ~~benefit corporation that meets the requirements of R.S. 41:1215(B) shall not be~~  
 8 ~~required to advertise for and receive bids as hereinafter provided for in this~~  
 9 ~~Part for other leases. Such leases entered into shall comply with the provisions~~  
 10 ~~of R.S. 41:1215(C), and shall be subject to the provisions of R.S. 41:1215(B)~~  
 11 ~~through (F).~~

\* \* \*

13 §1215. Opening of bids; execution of leases; exceptions; public benefit corporations;  
 14 negotiated lease to nonprofit organizations

\* \* \*

16 B. For the purposes of this Part a "public benefit corporation" is defined to  
 17 be a nonprofit corporation formed pursuant to the general nonprofit corporation law  
 18 of the state of Louisiana, except those formed pursuant to specific constitutional or  
 19 statutory authority, by a political subdivision of the state of Louisiana through its  
 20 chief executive officer for the purposes of owning, leasing, developing, and  
 21 operating properties owned by such political subdivision or by such public benefit  
 22 corporation, including but not limited to planning, renovating, constructing, leasing,  
 23 subleasing, managing, and promoting such properties, which activity is declared to  
 24 constitute a public purpose, and which shall meet each of the following  
 25 requirements:

26 (1) The corporation must not be organized for profit except to the extent of  
 27 retiring indebtedness;

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

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

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

20 \* \* \*

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

28 **(2) In the case of an appeal or suit by a person or entity that was**  
29 **unsuccessful in being selected for the lease or sublease, such appeal or suit must**

1 be filed not later than thirty days following the occurrence of such event. In the  
2 case of a suit or appeal by any other person or entity, such appeal or suit must  
3 be filed not later than thirty days following the selection of the lessee or  
4 sublessee. If no appeal is taken or suit is filed within said thirty-day period, any  
5 such claim shall be prescribed.

6 (3) On the application of the public benefit corporation to the court, any  
7 person or other entity that files, or has filed, an appeal or suit pursuant to R.S.  
8 41:1215(B)(5)(a) and (b) shall be required to furnish security to assure the  
9 satisfaction of any damages, costs or expenses, or losses to the public benefit  
10 corporation, political subdivision, state, lessee or sublessee which may result,  
11 directly or indirectly, from the filing of the appeal or suit, in such amount as  
12 may be fixed by the court, but not less than the following:

13 (i) for those leases or subleases with a term that is up to twenty-five years  
14 in length, an amount equal to the total amount of rent payable to the public  
15 benefit corporation over the initial five-year period of the lease or sublease, or  
16 over the term of the lease or sublease, if the term is shorter than five years; and

17 (ii) for those leases or subleases with a term greater than twenty-five  
18 years, an amount equal to the total amount of rent payable to the public benefit  
19 corporation over the initial ten-year period of the lease or sublease. The court  
20 shall fix the amount of security within thirty days of the filing of the application  
21 by the public benefit corporation. If such security is provided through a  
22 commercial surety bond, the bond shall provide that the principal and the  
23 surety are bound in solido for the amount thereof. On the failure to furnish such  
24 security within thirty days from the court's determination of the amount of the  
25 security, or such lesser time as established by the court, the appeal or suit shall  
26 be dismissed with prejudice.

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

1            **discretion of the lessor.**

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

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

11           Section 4. This Act shall become effective upon signature by the governor or, if not  
 12           signed by the governor, upon expiration of the time for bills to become law without signature  
 13           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 14           vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 15           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 Ben Huxen.

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DIGEST

SB 447 Original

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 R.S. 41:1215(B) is not required to advertise for and receive bids for other leases. Leases must comply with the provisions of R.S. 41:1215(C), and shall be subject to the provisions of R.S. 41:1215(B) through (F).

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); adds R.S. 41:1215(D), (E), and (F))