

2017 Regular Session

SENATE BILL NO. 143

BY SENATOR CHABERT AND REPRESENTATIVE STOKES

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

PUBLIC LANDS. Provides relative to sales, leases, and subleases of immovable property under the jurisdiction of the Department of Culture, Recreation and Tourism. (gov sig)

AN ACT

To amend and reenact R.S. 36:204(B)(6) and R.S. 56:1687(6) and (9), and to enact R.S. 36:204(B)(9) and (10), relative to the powers and duties of the secretary of culture, recreation and tourism; to provide for the procedure for the sale, lease, and sublease of state parks land; to provide for concession leases; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 36:204(B)(6) is hereby amended and reenacted and R.S. 36:204(B)(9) and (10) are hereby enacted to read as follows:

§204. Powers and duties of secretary of culture, recreation and tourism

* * *

B. The secretary shall have authority to:

* * *

(6) ~~Except as otherwise specifically provided in R.S. 56:1687(6), sell~~ **Sell**, lease, or sublease state park lands ~~only after receiving approval for such sale, lease, or sublease by the legislature of the state of Louisiana and only after publishing an advertisement in the official journal of the parish or parishes in which such land is~~

1 ~~located setting forth a description of the lands to be sold, leased, or subleased; the~~
2 ~~time when bids therefor will be received; and a short summary of the terms,~~
3 ~~conditions, and purpose of said sale, lease, or sublease to be executed. The~~
4 ~~advertisement required by this Section shall be published once a week for three~~
5 ~~different weeks in a newspaper in the locality, the first advertisement to appear at~~
6 ~~least fifteen days before the opening of bids; however, when the advertisement is~~
7 ~~published in a daily newspaper in the locality, the advertisement shall be published~~
8 ~~three times within ten days, the first advertisement to appear at least ten days before~~
9 ~~the opening of bids~~ **in accordance with the applicable provisions of the sale and**
10 **lease laws of public lands of the state of Louisiana.**

11 * * *

12 **(9) Grant leases, subleases, and concession leases and enter any related**
13 **contract or agreement, hereafter in this Paragraph collectively referred to as a**
14 **"lease", on any portion of the immovable property under the department's**
15 **supervision, jurisdiction, or management except the Lower Pontalba Building**
16 **to any of the following:**

17 **(a) A public body. The application, advertisement, and bid requirements**
18 **set forth in Part I of Chapter 10 of Title 41 of the Louisiana Revised Statutes of**
19 **1950 shall not apply to such a lease.**

20 **(b) A private entity. The provisions of Part I of Chapter 10 of Title 41 of**
21 **the Louisiana Revised Statutes of 1950 shall not apply to a mineral or timber**
22 **lease with a private entity. If a private entity is obligated under the terms of a**
23 **lease to undertake activities or to construct improvements on the leased**
24 **immovable property that will support the public purposes of the department,**
25 **the provisions of Part I of Chapter 10 of Title 41 of the Louisiana Revised**
26 **Statutes of 1950 shall not apply to the lease, but such a lease is subject to the**
27 **following conditions:**

28 **(i) Such a lease shall be negotiated and let in accordance with fair and**
29 **reasonable criteria established and applied relating to a balance of factors**

1 including but not limited to rent, highest return of revenue and benefits,
2 financial stability of the lessee or sublessee, architectural design, development
3 and management of operational plan, uniqueness of operation, and stimulating
4 other economic activity and public benefits within the state.

5 (ii) A lease entered into by a private lessee for the performance of work
6 on the leased premises or the erection, construction, or maintenance of
7 improvements on the leased premises shall not constitute a contract for public
8 work as defined in R.S. 38:2211(A).

9 (iii) The architectural plans for such improvements shall be approved by
10 the secretary prior to construction on the leased or subleased property.

11 (iv) Such leases shall be subject to R.S. 39:11 and R.S. 39:366.11.

12 (c) The provisions of this Paragraph shall not impair or diminish the
13 priority established for individuals who are blind, under the administration of
14 the Louisiana Rehabilitation Services, in the operation of vending stands,
15 vending machines, cafeterias, or other food concessions.

16 (10) Terminate the lease, sublease, concession agreement, contract, or
17 other privilege of any person who files a federal or state trademark or service
18 mark application for a trademark or service mark that incorporates or implies
19 an association with a holding of the department or its historical, cultural, or
20 recreational resources or who makes a legal claim or assertion to have a
21 trademark or service mark. Any such person shall be disqualified from future
22 concession agreements, leases, contracts, and privileges granted by the
23 department. Any such person shall be responsible for the state's attorney fees,
24 costs, and expenses associated with that termination, opposition, cancellation,
25 and disqualification.

26 Section 2. R.S. 56:1687(6) and (9) are hereby amended and reenacted to read as
27 follows:

28 §1687. Secretary, Department of Culture, Recreation and Tourism; powers

29 The secretary of the Department of Culture, Recreation and Tourism may:

* * *

(6) Sell, lease, or sublease lands under the jurisdiction of the office of state parks when he believes it advantageous to the state to do so in the most orderly development and improvement of the office of state parks holdings but only after receiving approval for such sale, lease, or sublease by the legislature of the state of Louisiana and only after publishing an advertisement in the official journal of the parish or parishes in which such land is located, setting forth a description of the lands to be sold, leased, or subleased; the time when bids therefor will be received; and a short summary of the terms, conditions, and purposes of said sale, lease, or sublease to be executed. The advertisement required by this Paragraph shall be published once a week for three different weeks in a newspaper in the locality, the first advertisement to appear at least fifteen days before the opening of bids; however, when the advertisement is published in a daily newspaper in the locality, the advertisement shall be published three times within ten days before the opening of bids. However, leases of lands to a state agency or a political subdivision of the state shall not require the advertisement provided in this Paragraph. Furthermore, the provisions of this Paragraph shall not apply to mineral leases or to leases of lands for exploration or extraction of minerals in accordance with the sale and lease laws of public lands of the state of Louisiana and the provisions of R.S. 36:204.

* * *

(9) Charge a fee and collect rents and other payments for the leasing of concessions or granting of other privileges in or on an office of state parks holding. Additionally, the secretary may grant concession leases or lease rights for operating concessions on such holdings for an initial period not to exceed five years and an additional two-year period upon the option of the secretary. Such leases shall otherwise be granted in accordance with the applicable requirements of the public bid law of the state, state procurement laws, and procedures of the Division of Administration, and other applicable provisions of law that govern the granting of leases, concessions, or other privileges on such holdings, including R.S.

23:3023.

* * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument was prepared by Alan Miller. The following digest, which does not constitute a part of the legislative instrument, was prepared by J. W. Wiley.

DIGEST

SB 143 Reengrossed

2017 Regular Session

Chabert

Present law requires, under most circumstances, that the sale, lease, or sublease of state park lands be approved by the legislature and that notice of such sale be properly advertised.

Proposed law removes the legislative approval requirement, but requires that such sale, lease, or sublease of state park lands comply with applicable provisions of the sale and lease laws of public lands of the state.

Present law provides requirements for the leasing of public lands, including application, advertisement, and bidding.

Proposed law authorizes the secretary of the Dept. of Culture, Recreation and Tourism (CRT) to grant leases, subleases, and concession leases and enter any related contract or agreement on any portion of the immovable property under the CRT's supervision, jurisdiction, or management except the Lower Pontalba Building to any of the following:

- (1) A public body. The application, advertisement, and bid requirements of present law related to the leases of public lands will not apply to a lease with a public body under the proposed law.
- (2) A private entity. The provisions of present law related to the leases of public lands will not apply to a mineral or timber lease with a private entity under the proposed law. If a private entity is obligated under the terms of a lease to undertake activities or to construct improvements on the leased immovable property that will support the public purposes of the department, the provisions of present law related to the leases of public lands will not apply to the lease, but such a lease is subject to the following conditions:
 - (a) Such lease will be negotiated and let in accordance with fair and reasonable criteria established and applied relating to a balance of factors including but not limited to rent, highest return of revenue and benefits, financial stability of the lessee or sublessee, architectural design, development and management of operational plan, uniqueness of operation, and stimulating other economic activity and public benefits within the state.
 - (b) A lease entered into by a private lessee for the performance of work on the leased premises or the erection, construction, or maintenance of

improvements on the leased premises will not constitute a contract for public works.

- (c) The architectural plans for such improvements will be approved by the secretary prior to construction on the leased or subleased property.
 - (d) Such leases will be subject to the laws governing the administration of state lands and cooperative endeavor agreements.
- (3) The provisions of proposed law will not impair or diminish the priority established for individuals who are blind, under the administration of the Louisiana Rehabilitation Services, in the operation of vending stands, vending machines, cafeterias, or other food concessions.

Proposed law further authorizes the secretary to terminate the lease, sublease, concession agreement, contract, or other privilege of any person who files a federal or state trademark or service mark application for a trademark or service mark that incorporates or implies an association with a holding of the department or its historical, cultural, or recreational resources or who makes a legal claim or assertion to have a trademark or service mark.

Proposed law disqualifies any such person from future concession agreements, leases, contracts, and privileges granted by CRT. Proposed law provides that any such person will be responsible for the state's attorney fees, costs, and expenses associated with that termination, opposition, cancellation, and disqualification.

Present law authorizes the secretary to charge a fee for the leasing of concessions or other privileges in or on an office of state parks holding.

Present law provides for priority and certain fee exemptions to individuals who are blind and operate vending stands, vending machines, cafeterias, and other small business concessions in public buildings or premises.

Proposed law retains present law, but further authorizes the secretary to collect rents and other payments for the leasing of concessions or granting of other privileges in or on an office of state parks holding.

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

(Amends R.S. 36:204(B)(6) and R.S. 56:1687(6) and (9); adds R.S. 36:204(B)(9) and (10))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the original bill

1. Makes technical changes.
2. Adds provision that leases, subleases, concession leases, and any related contract or agreement will be referred to as a lease.
3. Exempts the Lower Pontalba Building from the secretary's authority to grant leases of immovable property under CRT's supervision.

Senate Floor Amendments to engrossed bill

1. Adds provision for priority and exemption to individuals who are blind and operate certain concessions in public buildings and premises.