

Regular Session, 2006

HOUSE BILL NO. 707

BY REPRESENTATIVES FARRAR AND RICHMOND

PROPERTY/EXPROPRIATION: (Constitutional Amendment) Provides procedures for the expropriation of property

1 A JOINT RESOLUTION

2 Proposing to amend Article I, Section 4(B) of the Constitution of Louisiana, to prohibit the
3 expropriation and transfer of property to a private person under certain
4 circumstances; to provide for submission of the proposed amendment to the electors;
5 and to provide for related matters.

6 Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members
7 elected to each house concurring, that there shall be submitted to the electors of the state of
8 Louisiana, for their approval or rejection in the manner provided by law, a proposal to
9 amend Article I, Section 4(B) of the Constitution of Louisiana, to read as follows:

10 §4. Right to Property

11 Section 4.

12 * * *

13 ~~(B) Property shall not be taken or damaged by the state or its political~~
14 ~~subdivisions except for public purposes and with just compensation paid to the~~
15 ~~owner or into court for his benefit. Property shall not be taken or damaged by any~~
16 ~~private entity authorized by law to expropriate, except for a public and necessary~~
17 ~~purpose and with just compensation paid to the owner; in such proceedings, whether~~
18 ~~the purpose is public and necessary shall be a judicial question. In every~~
19 ~~expropriation, a party has the right to trial by jury to determine compensation, and~~
20 ~~the owner shall be compensated to the full extent of his loss. No business enterprise~~

1 ~~or any of its assets shall be taken for the purpose of operating that enterprise or~~
2 ~~halting competition with a government enterprise. However, a municipality may~~
3 ~~expropriate a utility within its jurisdiction.~~ Expropriation shall only be available to
4 the state or its political subdivisions as a method of acquiring property from private
5 landowners in the following manner:

6 (1) The state or political subdivision shall establish in writing the need and
7 nature of the public purpose for the property and submit the document to the private
8 landowner as well as publish it through its official journal of public records.

9 (2) A public purpose shall be limited to a general public right to a definite
10 use of the property taken, the use of the property taken for utility or other common
11 carrier, or the removal of a threat to public health or safety with the existing use of
12 the property taken. "Public purposes" shall not otherwise include transfer of
13 ownership to a private entity or individual.

14 (3) Just and equitable compensation shall be paid to the private landowner
15 or placed into the court of competent jurisdiction for the landowner's benefit. In
16 every expropriation, a party has the right to trial by jury to determine compensation.

17 (4) Except for lease and operations agreements for port facilities, the state
18 or political subdivision shall not sell, lease-purchase, or lease property which has
19 been expropriated to any person without first offering the property to the original
20 landowner or the successor in title at fair market value, then the property can only
21 be transferred by competitive bid open to the general public.

22 (5) Within one year from the completion of the project for which the land
23 was expropriated, the state or its political subdivision shall identify all property
24 which is not necessary for the stated public purpose of the project and declare the
25 property as surplus property.

26 (6) All expropriated property identified as surplus property shall be offered
27 for sale to the original landowner or the successor in title at fair market value within
28 two years from completion of the project. If the original owner or the successor in
29 title refuses to purchase the surplus property, then the surplus property may be

1 offered for sale to the general public by competitive bid within three years from
2 completion of the project.

3 (7) Within one year from the completion of the project for which land was
4 expropriated, the original landowner or the successor in title may petition the state
5 or political subdivision to have all or any portion of their property declared surplus.
6 If the state or political subdivision refuses to identify all or any portion of the
7 expropriated property as surplus, the original landowner or the successor in title may
8 go to any court of competent jurisdiction to have the property declared surplus.

9 * * *

10 Section 2. Be it further resolved that this proposed amendment shall be submitted
11 to the electors of the state of Louisiana at the statewide election to be held on September 30,
12 2006.

13 Section 3. Be it further resolved that on the official ballot to be used at said election
14 there shall be printed a proposition, upon which the electors of the state shall be permitted
15 to vote FOR or AGAINST, to amend the Constitution of Louisiana, which proposition shall
16 read as follows:

17 To provide that expropriation shall only be available to the state or its
18 political subdivisions under certain limitations and requirements, including
19 but not limited to establishing the need and nature of the expropriation in
20 writing, limiting the definition of "public purpose", paying just and equitable
21 compensation to the landowner, prohibiting the transfer of the expropriated
22 property to any person without first offering the property to the original
23 landowner, requiring any unused property to be declared as surplus property
24 which shall first be offered to the original landowner and then to the public
25 by competitive bid. (Amends Article I, Section 4(B))

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Farrar

HB No. 707

Abstract: Establishes procedures for the expropriation of property by the state or its political subdivisions, limits the authority to expropriate, and provides for the declaration and return of surplus property.

Present constitution (Art. VI, §23) authorizes political subdivisions to acquire property for any public purpose by purchase, donation, expropriation, exchange, or otherwise, subject to restrictions provided by the constitution and by general law.

Present constitution (Art. VI, §21) provides, in part, that in order to induce and encourage the location or addition to industrial enterprises which would have an economic impact, the legislature may authorize political subdivisions to acquire property by purchase, donation, exchange, and expropriation and may sell, lease, lease-purchase, or demolish all or any part of the property acquired, subject to restrictions provided by the legislature.

Present constitution (Art. VI, §19) provides, in part, the authority to create special districts, boards, agencies, commissions, and authorities of every type and to define their rights, powers, and authorities as it deems proper, subject to restrictions provided by the constitution.

Present constitution (Art. I, §4(B)) prohibits the expropriation of property by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Prohibits the expropriation of property by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question.

Proposed constitutional amendment provides that expropriation shall only be available to the state or its political subdivisions pursuant to the following requirements and limitations:

- (1) Establish in writing the need and nature of the public purpose for the property which shall be published in the official journal and submitted to the private landowner.
- (2) Limit "public purpose" to a general public right to a definite use of the property taken, the use of the property taken for utility or other common carrier, or the removal of a threat to public health or safety with the existing use of the property taken and provides that "public purposes" shall not include transfer of ownership to a private entity or individual.
- (3) Just and equitable compensation shall be paid to the private landowner or placed into the court of competent jurisdiction for the landowner's benefit; a party has the right to trial by jury to determine compensation.
- (4) Except for lease and operations agreements for port facilities, the state or political subdivision shall not sell, lease-purchase, or lease property which has been expropriated to any person without first offering the property to the original landowner.
- (5) Within one year from the completion of the project, the state or its political subdivision shall identify all property which is not necessary and declare it as surplus.

- (6) The state or political subdivision shall offer all surplus property to the original landowner at fair market value within two years from completion of the project and if not purchased by the original owner, the surplus property may be offered for sale to the general public by competitive bid within three years from completion of the project.
- (7) Within one year from the completion of the project, the original landowner may petition the state or political subdivision to have all or any portion of their property declared surplus, and if the state or political subdivision refuses to identify all or any portion of the expropriated property as surplus, the original landowner may go to any court of competent jurisdiction to have the property declared surplus.

Provides for submission of the proposed amendment to the voters at the statewide election to be held September 30, 2006.

(Amends Const. Art. I, §4(B))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Changes prohibition of use of expropriated property by a private entity to a prohibition of transferring ownership to a private entity.
2. Deletes from consideration in determining public purpose whether the taking may prove beneficial or profitable to some portion of the public or for economic development.
3. Adds provision providing for the right to a jury trial to determine compensation.
4. Adds exemption from proposed law for lease and operations agreements for port facilities.