

Regular Session, 2006

HOUSE BILL NO. 707

BY REPRESENTATIVES FARRAR, RICHMOND, AND STRAIN

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)(1) 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.~~ any private entity authorized by law to  
16 expropriate, except for a public and necessary purpose and with just compensation  
17 paid to the owner; in such proceedings, whether the purpose is public and necessary  
18 shall be a judicial question. In every expropriation, a party has the right to trial by  
19 jury to determine compensation, and the owner shall be compensated to the full  
20 extent of his loss. ~~No business enterprise or any of its assets shall be taken for the~~

1 ~~purpose of operating that enterprise or halting competition with a government~~  
2 ~~enterprise. However, a municipality may expropriate a utility within its jurisdiction.~~

3 (2) Expropriation shall be available to the state or its political subdivisions  
4 as a method of acquiring property from private landowners only in the following  
5 manner:

6 (a) 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 (b) 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 (c) 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 (d) 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, after which the property can  
21 only be transferred by competitive bid open to the general public.

22 (e) Within one year after 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 (f) 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 after completion of the project. If the original owner or the successor in

1 title refuses to purchase the surplus property, then the surplus property may be  
2 offered for sale to the general public by competitive bid within three years from  
3 completion of the project.

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

10 \* \* \*

11 Section 2. Be it further resolved that this proposed amendment shall be submitted  
12 to the electors of the state of Louisiana at the statewide election to be held on September 30,  
13 2006.

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

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

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DIGEST

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

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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 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.

#### House Floor Amendments to the engrossed bill.

1. Provides that property shall not be taken or damaged except for a public and necessary purpose and for the payment of just compensation.
2. Provides that whether or not the purpose is public and necessary is a judicial question.
3. Provides that a party has a right to a trial by jury to determine compensation.
4. Requires the owner to be paid compensation to the full extent of his loss.