

Regular Session, 2011

SENATE BILL NO. 85

BY SENATOR GAUTREAUX

LOCAL AGENCIES. Authorizes the St. Mary Parish Council to expropriate by a declaration of taking. (8/15/11) (gov sig)

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AN ACT

To enact Part XI of Title 19 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 19:361 through 368, relative to expropriation by St. Mary Parish; to authorize the governing authority of the parish to expropriate by a declaration of taking; to define terms; to provide for procedures; to provide for purposes of expropriation; and to provide for related matters.

Notice of intention to introduce this Act has been published.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XI of Title 19 of the Louisiana Revised Statutes of 1950, comprised of R.S. 19:361 through 368, is hereby enacted to read as follows:

PART XI. EXPROPRIATION BY A DECLARATION OF TAKING

BY ST. MARY PARISH

§361. Parish of St. Mary; authority to expropriate; acquisition of property prior to judgment; definitions

A. When the governing authority of the parish of St. Mary cannot amicably acquire property needed for a street, parish road or highway, drainage, flood protection, utility, or sewerage project, it may acquire the same

1 by expropriation and may acquire the property prior to judgment in the trial
2 court fixing the amount of compensation due to the owner of the property. The
3 expropriation of any property pursuant to the provisions of this Part must first
4 be approved by two-thirds of the elected membership of the governing authority
5 of St. Mary Parish by the adoption of an ordinance declaring that the taking is
6 necessary or useful for the purposes of this Part.

7 B. At least fifteen days prior to filing a petition for expropriation, the
8 parish administration must notify the owner or owners by certified mail, return
9 receipt requested, of its intention to expropriate the property pursuant to this
10 Part. The letter of notification must also inform the owner that if, within fifteen
11 days after being served with the notice of suit, he does not object to the taking
12 on the ground that it is not for a public purpose, he will waive all defenses to the
13 taking except claims for compensation or damages. A copy of this Part must be
14 enclosed with the letter of notification.

15 C. Except as otherwise provided in this Part, such expropriation by the
16 parish government shall be conducted in the manner that the Department of
17 Transportation and Development may expropriate property for highway
18 purposes, as set forth in R.S. 48:441 through 460.

19 D. As used in this Part, the term "property" means any portion of
20 immovable property including servitudes, rights-of-way, and other rights in or
21 to immovable property, but shall not include any property, utility plant, or
22 facilities owned by any private waterworks or sewerage system.

23 **§362. Contents of petition; place of filing**

24 The right of expropriation granted by this Part shall be exercised in the
25 following manner:

26 (1) A petition shall be filed by the governing authority in the district
27 court of the parish in which the property to be expropriated is situated.

28 (2) The petition shall contain a statement of the purpose for which the
29 property is to be expropriated, describing the property necessary therefor with

1 a plan of the same, a description of the improvements thereon, if any, and the
2 name of the owner if known.

3 (3) The petition shall have annexed to it the following:

4 (a) A certified copy of the ordinance adopted by the parish council
5 authorizing the taking and declaring that it is necessary or useful for the
6 purposes of this Part.

7 (b) A certificate signed by the parish or consulting engineer declaring
8 both that:

9 (i) He has fixed the right-of-way in a manner sufficient in his judgment
10 to provide for the public interest, safety, and convenience.

11 (ii) That the location and design of the proposed improvements are in
12 accordance with the best modern practices adopted in the interest of the safety
13 and convenience of the public.

14 (c) An itemized statement of the amount of money estimated to be the
15 full extent of the owner's loss for the taking or the damage, or both, as the case
16 may be. It shall be signed by those who made the estimate, showing the capacity
17 in which they acted, and the date on which it was made.

18 (d) A copy of the return receipt from the letter of notification of
19 intention to expropriate the property, as required by R.S. 19:271.

20 §363. Prayer of the petition; ex parte order of taking

21 The petition shall conclude with a prayer that the property be declared
22 taken for public purposes and, upon presentation of the petition, the court shall
23 issue an order directing that the amount of the estimate be deposited in the
24 registry of the court and declaring that the property described in the petition
25 has been taken for public purposes at the time of the deposit.

26 §364. Vesting of title

27 Title to the property and the property rights specified in the petition
28 shall vest in the governing authority of St. Mary Parish upon final court order
29 declaring that the property described in the petition has been taken for the

1 project, and the right to just and adequate compensation therefor shall vest in
2 the persons entitled thereto. Upon vesting of title, the governing authority may
3 enter upon and take possession of the property.

4 §365. Notice to defendant

5 A. Upon receipt of the deposit, the clerk of court shall issue a notice to
6 each defendant in the suit, notifying him that the property described in the
7 petition has been expropriated for public purposes.

8 B. This notice, together with a certified copy of the order, the petition
9 and the clerk's receipt for the deposit, shall be delivered by the clerk to the
10 proper sheriff for service on each defendant in the manner provided for the
11 service of citations.

12 §366. Contesting validity of taking; waiver of defenses

13 A. Any defendant desiring to contest the validity of the taking on the
14 ground that the property was not expropriated for a public use may file a
15 motion to dismiss the suit within ten days from the date the notice was served
16 on him. He shall certify thereon that a copy thereof has been served personally
17 or by mail on either the plaintiff or his attorney of record in the suit. This
18 motion shall be tried contradictorily with preference to the judge alone and
19 shall be decided prior to fixing the case for trial on the compensation or
20 damages due to the defendant.

21 B. Failure to file the motion within the time provided or to serve a copy
22 thereof on the plaintiff constitutes a waiver of all defenses to the suit except
23 claims for compensation or damages.

24 §367. Defendant's answer; requirements; delay for filing

25 When property is expropriated pursuant to this Part, any defendant may
26 apply for a trial to determine the measure of compensation to which he is
27 entitled, if:

28 (1) He files an answer within one year from the date he is notified in
29 writing by the governing authority that it has finally accepted the construction

1 project for which the property was expropriated. However, he may file his
2 answer prior to the date he is notified by the governing authority.

3 (2) His answer sets forth the amount he claims, including the value of
4 each parcel expropriated and the amount he claims as damages to the
5 remainder of his property.

6 (3) His damage claim is reasonably itemized.

7 (4) His answer has a certificate thereon showing that a copy thereof has
8 been served personally or by mail on all parties to the suit who have not joined
9 in the answer.

10 §368. Grant as additional authority

11 The right to take possession and title as provided in this Part is in
12 addition to any right or authority conferred by the laws of this state under
13 which expropriation proceedings may be conducted and shall not be construed
14 as abrogating, eliminating, or modifying any such right or authority.

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by James Benton.

DIGEST

Present law provides for general expropriation authority. Under existing general expropriation authority, the property owner can demand a jury trial to determine the value of the property expropriated. Expropriating authority is only entitled to the property after the amount fixed by the final judgment is deposited in the registry of the court.

Proposed law retains present law and authorizes the governing authority of St. Mary Parish to expropriate by a declaration of taking property needed for a street, parish road or highway, drainage, flood protection, utility, or sewerage project. Requires approval of two-thirds of the elected membership of the parish council.

Proposed law provides that: (1) the parish administration must give 15 days notice to the property owner before filing a petition for expropriation; (2) the parish administration must file a petition which includes an itemized statement of the full extent of the owner's loss; (3) requires the court to issue an order directing the district to deposit the amount of the estimate

in the registry of the court; (4) title to the property vests in the governing authority upon final court order; and (5) property owner may apply for a trial to determine the measure of compensation to which he is entitled by filing an answer within one year from the date of notice of expropriation.

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

(Adds R.S. 19:361 through 368)