

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. (gov sig)

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

7 Notice of intention to introduce this Act has been published.

8 Be it enacted by the Legislature of Louisiana:

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

11 **PART XI. EXPROPRIATION BY A DECLARATION OF TAKING**

12 **BY ST. MARY PARISH**

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

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

1 property by expropriation and may acquire the property prior to judgment in  
2 the trial court fixing the amount of compensation due to the owner of the  
3 property. The expropriation of any property pursuant to the provisions of this  
4 Part must first be approved by two-thirds of the elected membership of the  
5 governing authority of St. Mary Parish by the adoption of an ordinance  
6 declaring that the taking is 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) 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. 19:361.

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. However, the  
26 petition shall be served on the defendant as provided by law and any defendant  
27 desiring to contest the validity of the taking on the ground that the property was  
28 not expropriated for a public use may file a motion to dismiss the suit within ten  
29 days from the date the petition was served on him. He shall certify thereon that

1 a copy thereof has been served personally or by mail on either the plaintiff or  
2 his attorney of record in the suit. This motion shall be tried contradictorily with  
3 preference to the judge alone and shall be decided prior to the court's declaring  
4 the property has been taken for public purposes.

5 §364. Vesting of title

6 Title to the property and the property rights specified in the petition  
7 shall vest in the governing authority of St. Mary Parish upon final court order  
8 declaring that the property described in the petition has been taken for the  
9 project, and the right to just and adequate compensation therefor shall vest in  
10 the persons entitled thereto. Upon vesting of title, the governing authority may  
11 enter upon and take possession of the property.

12 §365. Notice to defendant

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

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

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

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

29 B. Failure to file the motion within the time provided or to serve a copy

1 thereof on the plaintiff constitutes a waiver of all defenses to the suit except  
2 claims for compensation or damages.

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

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

7 (1) He files an answer within one year from the date he is notified in  
8 writing by the governing authority that it has finally accepted the construction  
9 project for which the property was expropriated. However, he may file his  
10 answer prior to the date he is notified by the governing authority.

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

14 (3) His damage claim is reasonably itemized.

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

18 **§368. Grant as additional authority**

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

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

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The original instrument was prepared by James Benton. The following digest, which does not constitute a part of the legislative instrument, was prepared by McHenry Lee.

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#### DIGEST

##### Gautreaux (SB 85)

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; (5) petition shall be served on the defendant as provided by law and any defendant desiring to contest the validity of the taking on the ground that the property was not expropriated for a public use may file a motion to dismiss the suit within ten days from the date the petition was served on him. He shall certify thereon that a copy thereof has been served personally or by mail on either the plaintiff or his attorney of record in the suit. This motion shall be tried contradictorily with preference to the judge alone and shall be decided prior to the court's declaring the property has been taken for public purposes (6) 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)

##### Summary of Amendments Adopted by Senate

###### Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Added provision for service of petition on defendant and motion to dismiss on ground that property not expropriated for a public use.

###### Senate Floor Amendments to reengrossed bill.

1. Legislative Bureau technical amendments.