

Regular Session, 2012

SENATE BILL NO. 703

BY SENATOR AMEDEE

LOCAL AGENCIES. Authorizes the parish of Ascension to expropriate certain property by a declaration of taking. (8/1/12)

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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; to authorize the governing authority of Ascension Parish to expropriate by a declaration of taking; to provide certain terms, conditions, procedures, definitions, requirements, and effects; to prohibit expropriation for certain purposes; 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 THE
PARISH OF ASCENSION**

**§361. Ascension Parish government; authority to expropriate; acquisition of
property prior to judgment; definitions**

**A. When the Ascension Parish governing authority cannot amicably
acquire property needed for a major infrastructure, road, sewage or drainage
project, it may acquire the same by expropriation and may acquire the property**

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

22 E. The provisions of this Part shall not apply to nor authorize the
23 expropriation of property for the purposes of bicycle facilities or paths.

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

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

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

29 (2) The petition shall contain a statement of the purpose for which the

1 property is to be expropriated, describing the property necessary therefor with
2 a plan of the same, a description of the improvements thereon, if any, and the
3 name of the owner if known.

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

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

8 (b) A certificate signed by the parish or consulting engineer declaring
9 that (i) he has fixed the right-of-way in a manner sufficient in his judgment to
10 provide for the public interest, safety, and convenience and (ii) that the location
11 and design of the proposed improvements are in accordance with the best
12 modern practices adopted in the interest of the safety and convenience of the
13 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 intention
19 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 upon final court order declaring that the
29 property described in the petition has been taken for the project, and the right

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

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

Proposed law authorizes the Ascension Parish governing authority to expropriate by a declaration of taking and provides procedures.

Proposed law provides that when the Ascension Parish governing authority cannot amicably acquire property needed for a major infrastructure, road, sewage or drainage project, it may acquire the same by expropriation and may acquire the property prior to judgment in the trial court fixing the amount of compensation due to the owner of the property. The expropriation of such property must first be approved by two-thirds of the elected membership of the parish council of the Ascension Parish government by the adoption of an ordinance declaring that the taking is necessary or useful.

Proposed law further provides that it shall not apply to nor authorize the expropriation of property for the purposes of bicycle facilities or paths.

Proposed law provides procedures for notice to owners, contents and filing of petition, vesting of title, contesting the validity of the taking, and conducting generally of expropriation in the same manner that DOTD expropriates property for highway purposes. Provides that "property" means any portion of immovable property including servitudes, rights-of-way, and other rights in or to immovable property.

Effective August 1, 2012.

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