

Regular Session, 2012
HOUSE BILL NO. 274
BY REPRESENTATIVE FOIL

ACT No. 702

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact R.S. 19:2, 2.1(A)(2), 2.2(A)(introductory paragraph) and (2) and (B), 5(B) and (C)(6), 6, 7, 8(A) and (B), 9, 12, 14(B), and 201, to enact R.S. 19:2.2(C), 8(E), and 16, and to repeal R.S. 9:3176 through 3191, relative to expropriation; to provide notice, service, and filing requirements when property is sought to be acquired through expropriation; to provide additional requirements when property is sought to be acquired by expropriating authorities other than the state or its political subdivisions or corporations; to provide procedures for delay periods, trial, and burden of proof; to provide for determination of compensation and attorney fees; to repeal outdated or duplicative expropriation statutes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 19:2, 2.1(A)(2), 2.2(A)(introductory paragraph) and (2) and (B), 5(B) and (C)(6), 6, 7, 8(A) and (B), 9, 12, 14(B), and 201 are hereby amended and reenacted and R.S. 19:2.2(C), 8(E), and 16 are hereby enacted to read as follows:

§2. Expropriation by state or certain corporations, ~~and~~ limited liability companies, or other legal entities

~~Where a price cannot be agreed upon with the owner,~~ Prior to filing an expropriation suit, an expropriating authority shall attempt in good faith to reach an agreement as to compensation with the owner of the property sought to be taken and comply with all of the requirements of R.S. 19:2.2. If unable to reach an agreement

1 with the owner as to compensation, any of the following may expropriate needed
 2 property:

3 (1) The state or its political corporations or subdivisions created for the
 4 purpose of exercising any state governmental powers;

5 (2) Any domestic or foreign corporation, limited liability company, or other
 6 legal entity created for, or engaged in, the construction of railroads, toll roads, or
 7 navigation canals;

8 (3) Any domestic or foreign corporation, limited liability company, or other
 9 legal entity created for, or engaged in, the construction ~~and~~ or operation of street
 10 railways, urban railways, or inter-urban railways;

11 (4) Any domestic or foreign corporation, limited liability company, or other
 12 legal entity created for, or engaged in, the construction or operation of waterworks,
 13 filtration and treating plants, or sewerage plants to supply the public with water and
 14 sewerage;

15 (5) Any domestic or foreign corporation, limited liability company, or other
 16 legal entity created for, or engaged in, the piping and marketing of natural gas for the
 17 purpose of supplying the public with natural gas as a common carrier or contract
 18 carrier or any ~~partnership~~, domestic or foreign corporation, limited liability company,
 19 or other legal entity which is or will be a natural gas company or an intrastate natural
 20 gas transporter as defined by federal or state law, composed entirely of such
 21 ~~corporations~~ entities or composed of the wholly owned subsidiaries of such
 22 ~~corporations~~ entities. As used in this Paragraph, "contract carrier" means any legal
 23 entity that transports natural gas for compensation or hire pursuant to special contract
 24 or agreement with unaffiliated third parties.

25 (6) Any domestic or foreign corporation, limited liability company, or other
 26 legal entity created for the purpose of, or engaged in, transmitting intelligence by
 27 telegraph or telephone;

28 (7) Any domestic or foreign corporation, limited liability company, or other
 29 legal entity created for the purpose of, or engaged in, generating, transmitting, and
 30 distributing or for transmitting or distributing electricity and steam for power,

1 lighting, heating, or other such uses. The generating plants, buildings, transmission
 2 lines, stations, and substations expropriated or for which property was expropriated
 3 shall be so located, constructed, operated, and maintained as not to be dangerous to
 4 persons or property nor interfere with the use of the wires of other wire using
 5 companies or, more than is necessary, with the convenience of the landowners;

6 (8) All persons included in the definition of common carrier pipelines as set
 7 forth in R.S. 45:251;

8 (9) Any domestic or foreign corporation, limited liability company, or other
 9 legal entity created for or engaged in piping and or marketing of coal or lignite in
 10 whatever form or mixture convenient for transportation within a pipeline as
 11 otherwise provided for in R.S. 30:721 through ~~30:723~~.

12 (10) Any domestic or foreign corporation, limited liability company, or other
 13 legal entity ~~or any partnership~~ composed of such corporations or wholly owned
 14 subsidiaries thereof engaged in the piping or marketing of carbon dioxide for use in
 15 connection with a secondary or tertiary recovery project for the enhanced recovery
 16 of liquid or gaseous hydrocarbons approved by the commissioner of conservation.
 17 Property located in Louisiana may be so expropriated for the transportation of carbon
 18 dioxide for underground injection in connection with such projects located in
 19 Louisiana or in other states or jurisdictions.

20 (11) Any domestic or foreign corporation, limited liability company, or other
 21 legal entity engaged in any of the activities otherwise provided for in this Section.

22 (12) Any domestic or foreign corporation, limited liability company, or other
 23 legal entity ~~or any partnership~~ composed of such corporations or wholly owned
 24 subsidiaries thereof engaged in the injection of carbon dioxide for the underground
 25 storage of carbon dioxide approved by the commissioner of conservation. Property
 26 located in Louisiana may be so expropriated for the underground storage of carbon
 27 dioxide in connection with such storage facility projects located in Louisiana,
 28 including but not limited to surface and subsurface rights, mineral rights, and other
 29 property interests necessary or useful for the purpose of constructing, operating, or
 30 modifying a carbon dioxide facility. This Paragraph ~~has~~ shall have no effect on nor

1 does it grant expropriation of the mineral rights or other property rights associated
2 with the approvals required for injection of carbon dioxide into enhanced recovery
3 projects approved by the commissioner under R.S. 30:4.

4 §2.1. Petition for expropriation; place of filing; contents; claims for damages;
5 prescription

6 A. The rights of expropriation granted in R.S. 19:2 shall be exercised in the
7 following manner:

8 * * *

9 (2) The petition shall contain a statement of the purposes for which the
10 property is to be expropriated, describing the property necessary therefor with a plan
11 of the same, a description of the improvements thereon, if any, and the name of the
12 owner if known ~~and present in the state.~~

13 * * *

14 §2.2. Expropriation by ~~state or its political corporations or subdivisions~~
15 expropriating authorities referred to in R.S. 19:2

16 A. Before exercising the rights of expropriation provided ~~for in~~ by R.S. 19:2,
17 ~~the state or its political corporations or subdivisions~~ any expropriating authority
18 referred to in R.S. 19:2 shall comply with the following:

19 * * *

20 (2) Offer to compensate the owner ~~an~~ a specific amount ~~equal to at least~~ not
21 less than the lowest appraisal or evaluation.

22 B. In addition to the requirements of Subsection A of this Section, each
23 expropriating authority other than the state or its political corporations or
24 subdivisions shall, at least thirty days prior to the filing of a petition for
25 expropriation, send a letter by certified mail, return receipt requested, to the owner
26 at his last known address setting forth in detail or attaching the following:

27 (1) The basis on which the expropriating authority exercises its power.

28 (2) The purpose, terms, and conditions of the proposed acquisition.

29 (3) The compensation to be paid for the rights sought to be acquired.

1 (4) A complete copy of all appraisals of, or including, the subject property
2 previously obtained by the expropriating authority.

3 (5) A plat of survey signed by a Louisiana licensed surveyor illustrating the
4 proposed location and boundary of the proposed acquisition, and any temporary
5 servitudes or work spaces. If the expropriating authority is unable to obtain access
6 to the property for formal surveying, a plat that fairly identifies the proposed
7 boundary and servitudes may be utilized.

8 (6) A description and proposed location of any proposed above-ground
9 facilities to be located on the property.

10 (7) A statement by the entity of considerations for the proposed route or area
11 to be acquired.

12 ~~B.C. Before~~ Prior to exercising the rights of expropriation provided ~~for in~~ by
13 R.S. 19:2, the state or any of its departments, ~~except the Department of~~
14 ~~Transportation and Development~~, offices, boards, commissions, agencies, or
15 instrumentalities, except the Department of Transportation and Development, and
16 ~~except~~ political subdivisions, but specifically including levee districts and their
17 boards, shall, upon request of the owner whose property is to be taken, provide the
18 owner with the results of tests by the Louisiana Geological Survey that show whether
19 or not sand or gravel is present in the property. The test shall be done at no cost to
20 the property owner.

21 * * *

22 §5. Time of trial; notice to defendant

23 * * *

24 B. The clerk of court shall issue to the defendant, at least sixty days before
25 the time fixed for the trial, a notice ~~signed by the clerk in his official capacity and~~
26 ~~under the seal of his office~~, accompanied by a certified copy of the petition,
27 ~~exclusive of exhibits, even if made a part thereof~~, copies of all exhibits, and a
28 certified copy of the order for trial.

29 C. The notice shall contain the following:

30 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (6) A statement that the ~~person cited~~ defendant must file an answer,
 2 exception, or other responsive pleading within the ~~fifteen-day~~ thirty-day period after
 3 service of citation and that failure to ~~file an answer~~ do so within the ~~fifteen-day~~
 4 thirty-day period constitutes a waiver by the defendant of all defenses to the suit
 5 except claims for ~~money as compensation for the property sought to be expropriated~~
 6 and claims for ~~money as damages to other property~~.

7 §6. Service of answer on plaintiff

8 The defendant shall file ~~an~~ any answer, exceptions, or other responsive
 9 pleadings within ~~fifteen~~ thirty days after the service upon the defendant of the notice
 10 of the time fixed for the trial. The answer, exceptions, or other responsive pleadings
 11 shall be served personally or by mail on either the plaintiff or ~~his~~ its attorney of
 12 record in the suit.

13 §7. ~~Laches~~ Failure to timely file by defendant; ~~forfeits~~ forfeiture of defenses

14 Failure of the defendant in any such suit to timely file ~~his~~ any answer,
 15 exceptions, or other responsive pleadings timely constitutes a waiver by the
 16 defendant of all defenses to the suit except claims for ~~money as compensation for the~~
 17 ~~property sought to be expropriated and claims for money as damages to other~~
 18 ~~property~~.

19 §8. Trial ~~in or out of term~~ with dispatch; judgment; appraisals; payment in court
 20 registry

21 A.(1) Expropriation suits shall be tried ~~in term time or in vacation~~ by
 22 preference and shall be conducted ~~with preference and~~ with the greatest possible
 23 dispatch. ~~Judgments may be signed in term time or in vacation.~~ All issues shall be
 24 decided by the trial judge, except compensation when either party has demanded a
 25 trial by jury to determine compensation. ~~However, when a jury trial has been~~
 26 ~~demanded, the judge shall hear the evidence on all issues, other than the measure of~~
 27 ~~compensation and shall render a decision within five days. If the trial judge decides~~
 28 ~~in favor of the expropriating authority, then within thirty days after such decision,~~
 29 ~~a jury shall be impaneled to determine the measure of compensation.~~

1 (2) Notwithstanding the provisions of R.S. 19:5, if the defendant files a
 2 timely answer, exception, or other responsive pleading challenging any issue other
 3 than compensation, the court shall set the matter for hearing within thirty days after
 4 filing of the pleading and shall render a decision within five days after the case is
 5 submitted, which time periods may be extended for good cause shown. If the court
 6 rules in favor of the expropriating authority, upon motion of either party, the trial on
 7 compensation shall be set within forty-five days thereafter, which time period may
 8 be extended for good cause shown.

9 (3) Immediately after compensation has been determined, the plaintiff shall,
 10 upon motion of the defendant, present evidence as to the highest amount it offered
 11 ~~the defendant for the property prior to trial on the merits. After~~ the defendant for the
 12 property and severance damages, if any, prior to the trial on the merits. After hearing
 13 evidence on the issue, the court shall determine the highest amount offered. If the
 14 highest amount offered is less than the compensation awarded for the property and
 15 severance damages, if any, the court may award reasonable attorney fees to the
 16 defendant. The expropriating authority shall not be entitled to possession or
 17 ownership of the property until a final judgment has been rendered and payment has
 18 been made to the owner or paid into the registry of the court, except as may
 19 otherwise be stipulated by the parties.

20 B. If either party has demanded a trial by jury to determine compensation,
 21 the trial shall be in accordance with the general laws regulating trial by jury, except
 22 as provided in this ~~part~~ Part and except that in order to render any verdict, five of the
 23 jurors must concur therein. The jury shall consist of six jurors. The judge may allow
 24 the jurors to take a concise summary into the jury room as provided in R.S.
 25 48:451.18. The number of peremptory challenges is as provided for in R.S.
 26 48:451.9.

27 * * *

28 E. Absent an express stipulation by the parties, the plaintiff shall present a
 29 prima facie case of the public and necessary purpose of the proposed acquisition.

1 §9. Measure of compensation; "extent of loss"

2 A. In ~~estimating~~ determining the value of the property to be expropriated,
3 and any damages caused to the defendant by the expropriation, the basis of
4 ~~assessment~~ compensation shall be the value which the property possessed before the
5 contemplated improvement was proposed, without deducting therefrom any ~~amount~~
6 ~~for the benefit~~ general or specific benefits derived by the owner from the
7 contemplated improvement or work.

8 B. The ~~owner~~ defendant shall be compensated to the full extent of his loss.
9 The court shall include in its consideration the difference between the rate of interest
10 of any existing mortgage on an owner-occupied residence and the prevailing rate of
11 interest required to ~~secure~~ obtain a mortgage on another owner-occupied residence
12 of equal value.

13 * * *

14 §12. Tender of true value refused; costs

15 ~~If a tender is made of the true value of the property to the owner thereof,~~
16 ~~before proceeding to a forced expropriation, the costs of the expropriation~~
17 ~~proceedings shall be paid by the owner.~~ If the highest amount offered prior to the
18 filing of the expropriation suit is equal to or more than the final award, the court
19 may, in its discretion, order the defendant to pay all or a portion of the costs of the
20 expropriation proceedings.

21 * * *

22 §14. Possession of property; removal of facilities; objection; waiver

23 * * *

24 B. In the case where any ~~corporation~~ expropriating authority referred to in
25 R.S. 19:2, other than the state or its political corporations or subdivisions, has
26 actually, in good faith believing it had the authority to do so, taken possession of
27 privately owned immovable property of another and constructed facilities upon,
28 under, or over such property with the consent or acquiescence of the owner of the
29 property, it ~~will~~ shall be presumed that the owner of the property has waived his right
30 to receive just compensation prior to the taking, and he shall be entitled only to bring

1 an action for judicial determination of whether the taking was for a public and
 2 necessary purpose and for just compensation to be determined in accordance with
 3 R.S. 19:9, as of the time of the taking of the property, or right or interest therein, and
 4 such action shall proceed as nearly as may be as if the ~~corporation~~ expropriating
 5 authority had filed a petition for expropriation as provided for in R.S. 19:2.1.

* * *

7 §16. Expropriation by public entity; authority

8 Nothing in this Part shall alter or amend the authority of or the procedure for
 9 the state or its political corporations or subdivisions to expropriate property as
 10 otherwise provided by law.

* * *

12 §201. Attorney fees; unsuccessful or abandoned expropriation suits

13 A. A court of Louisiana having jurisdiction of a proceeding instituted by a
 14 ~~public or private entity vested with the power of expropriation, to acquire immovable~~
 15 ~~property by expropriation,~~ any expropriating authority referred to in R.S. 19:2 shall
 16 award the owner of any right, or title to, or interest in ~~such immovable~~ the property
 17 sought to be expropriated such sum as will, in the opinion of the court, reimburse
 18 such owner for his reasonable attorney fees, and court costs, actually incurred
 19 because of the expropriation proceeding, if the final judgment is that the plaintiff
 20 does not acquire at least fifty percent of the immovable property requested in the
 21 petition for expropriation or if the proceeding is abandoned by the plaintiff. If the
 22 expropriating authority is the state or its political corporations or subdivisions, ~~Any~~
 23 any such award shall be paid from the same funds from which the purchase price of
 24 the property would have been paid.

1 B. The rights of the ~~landowner~~ owner herein fixed are in addition to any
2 other rights he may have under the Constitution of Louisiana.

3 Section 2. R.S. 9:3176 through 3191 are hereby repealed in their entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____