

Regular Session, 2014

SENATE BILL NO. 371

BY SENATOR MORRELL

EXPROPRIATION. Provides relative to procedures in certain expropriation proceedings.  
(8/1/14)

1 AN ACT

2 To amend and reenact R.S. 19:147, 150, 151, and 159, relative to expropriation; to provide  
3 relative to certain expropriation procedures; to provide for final judgments for  
4 purposes of immediate appeal; to provide for the delay within which to request a jury  
5 trial; to provide relative to appeals; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 19:147, 150, 151, and 159 are hereby amended and reenacted to read  
8 as follows:

9 §147. Contesting validity or extent of taking; waiver of defenses; judgment on  
10 validity or extent of taking

11 A. Any defendant desiring to contest the validity or extent of the taking on  
12 the ground that the property was not expropriated for a public use may file a motion  
13 to dismiss the suit within ten days from the date the notice was served on him. He  
14 shall certify thereon that a copy thereof has been served personally or by mail on  
15 either the plaintiff or his attorney of record in the suit. This motion shall be tried  
16 contradictorily with the plaintiff.

17 B. Failure to file the motion ~~within the time provided~~ to dismiss or to serve

1 a copy thereof on the plaintiff **within ten days from the date the notice was served**  
 2 **on him** constitutes a waiver of all defenses to the suit except claims for  
 3 compensation.

4 **C. In the event a defendant files a timely motion to dismiss challenging**  
 5 **the validity or the extent of the taking, the court shall set the matter for hearing**  
 6 **within thirty days after the filing of the motion to dismiss and shall render a**  
 7 **decision within five days after the case is submitted. A judgment determining**  
 8 **the validity or the extent of the taking pursuant to this Part shall be signed and**  
 9 **designated as a final judgment by the court for the purpose of an immediate**  
 10 **appeal.**

11 \* \* \*

12 §150. Determining value where entire tract expropriated; **jury demand**

13 **A.** Where an entire lot, block or tract of land is expropriated, any defendant  
 14 may apply for a trial to determine the market value of the property expropriated,  
 15 provided:

16 (1) He files an answer within thirty days from the date he is served with the  
 17 notice **required by R.S. 19:146;**

18 (2) His answer sets forth the amount he claims;

19 (3) His answer has a certificate thereon showing that a copy thereof has been  
 20 served personally or by mail on all parties to the suit who have not joined in the  
 21 answer.

22 **B. If the defendant desires a trial by jury, he shall file his demand for a**  
 23 **jury trial within thirty days from the date he is served with the notice required**  
 24 **by R.S. 19:146. Failure to demand a jury within the time provided constitutes**  
 25 **a waiver of the right to a jury trial.**

26 **C.** Upon the filing of the answer, the court shall issue an order fixing the time  
 27 of the trial of the suit. The clerk of court shall thereupon issue a notice to all parties  
 28 who did not join in the answer of the time fixed for the trial. This notice shall be  
 29 served at least twenty days before the time fixed for the trial and in the manner

1 provided by law for the service of citations.

2 §151. Determining value and damages where part of a tract is expropriated; **jury**

3 **demand**

4 **A.** Where a portion of a lot, block or tract of land is expropriated, any  
5 defendant may apply for a trial to determine the just and adequate compensation to  
6 which he is entitled, provided:

7 (1) He files an answer within one year from the date he is notified in writing,  
8 **by certified mail**, by the plaintiff that it has finally accepted the construction of the  
9 facility or facilities for which the property was expropriated;

10 (2) His answer sets forth the amount he claims as the value of each parcel  
11 expropriated and the amount he claims as damages to the remainder of his property;

12 (3) His damage claim is reasonably itemized;

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

16 **B. If the defendant desires a trial by jury, he shall include a demand for**  
17 **trial by jury in his answer or separate pleading. The answer or separate**  
18 **pleading demanding a trial by jury shall be filed not later than the time period**  
19 **which defendant has to file his answer pursuant to this Section. Failure to**  
20 **demand a jury within the time provided constitutes a waiver of the right to a**  
21 **jury trial.**

22 **C.** Upon the filing of the answer, the court shall issue an order fixing the time  
23 of the trial of the suit **on compensation**. The clerk of court shall thereupon issue a  
24 notice to all parties who did not join in the answer of the time fixed for the trial.  
25 This notice shall be served at least twenty days before the time fixed for trial and in  
26 the same manner provided for the service of citations.

27 \* \* \*

28 §159. ~~Effect~~ **Appeal; expedited review; effect** of appeal

29 **A. No party to an expropriation proceeding filed pursuant to this Part**

1           shall be entitled to or granted a suspensive appeal from any order, judgment,  
 2           or decree rendered in such proceeding, whether such order, judgment, or  
 3           decree is on the merits, exceptions, or special pleas and defenses, or  
 4           compensation, or any or all of them.

5           B. Any judgment determining the validity or extent of the taking  
 6           pursuant to R.S. 19:147, shall be subject to the decision of the appellate court  
 7           on review under a devolutive appeal, and the delays for taking such an appeal  
 8           shall commence upon the signing of that judgment.

9           C. The appellate court shall consider an appeal of a judgment rendered  
 10          pursuant to R.S. 19:147, on an expedited basis.

11          D. No appeal in any expropriation suit brought under these provisions shall  
 12          operate to prevent or delay the vesting of title in the plaintiff.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Dawn Romero Watson.

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#### DIGEST

Morrell (SB 371)

Present law provides that any defendant desiring to contest the validity of the taking on the ground that the property was not expropriated for a public use can file a motion to dismiss the suit within 10 days from the date the notice was served on him, and that failure to file the motion timely or to serve a copy on the plaintiff constitutes a waiver of all defenses to the suit except claims for compensation.

Proposed law retains present law and expands to contests on the extent of the taking. Provides that a judgment rendered determining the validity or extent of the taking be designated as a final judgment for the purpose of an immediate appeal.

Present law provides that in a proceeding where an entire lot, block or tract of land is expropriated, any defendant may apply for a trial to determine the market value of the property expropriated if he files an answer within 30 days from the date he is served with the notice, his answer sets forth the amount he claims, and his answer has a certificate showing that a copy has been served personally or by mail on all parties to the suit who have not joined in the answer.

Proposed law retains present law and provides that if the defendant desires a trial by jury, he shall file his demand for a jury trial within 30 days from the date he is served with the notice of taking, and that failure to demand a jury timely constitutes a waiver of the right to a jury trial.

Present law provides that where a portion of a lot, block or tract of land is expropriated, any defendant may apply for a trial to determine the just and adequate compensation to which he is entitled if he files an answer within one year from the date he is notified in writing by the plaintiff that it has finally accepted the construction of the facility or facilities for which the property was expropriated, his answer sets forth the amount he claims as the value of

each parcel expropriated and the amount he claims as damages to the remainder of his property, his damage claim is reasonably itemized, and his answer has a certificate showing that a copy has been served personally or by mail on all parties to the suit who have not joined in the answer.

Proposed law retains present law and provides that if the defendant desires a trial by jury, he shall file his demand for a jury trial at the same time he files his answer and that failure to demand a jury timely constitutes a waiver of the right to a jury trial.

Present law provides that no appeal in any expropriation suit brought under the provisions of present law shall operate to prevent or delay the vesting of title in the plaintiff.

Proposed law retains present law and provides that no party to an expropriation proceeding shall be granted a suspensive appeal. Provides that the judgment determining the validity or the extent of the taking is subject to the decision of the appellate court on review under a devolutive appeal, and the delays for taking such an appeal commence upon the signing of that judgment. Requires the appellate court to consider such an appeal on an expedited basis.

Effective August 1, 2014.

(Amends R.S. 19:147, 150, 151, and 159)