

Regular Session, 2012

SENATE BILL NO. 703

BY SENATOR AMEDEE AND REPRESENTATIVES BERTHELOT, LAMBERT AND SCHEXNAYDER

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

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; to authorize the governing

4 authority of Ascension Parish to expropriate by a declaration of taking; to provide

5 certain terms, conditions, procedures, definitions, requirements, and effects; to

6 prohibit expropriation for certain purposes; and 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 BY THE**

12 **PARISH OF ASCENSION**

13 **§361. Ascension Parish government; authority to expropriate; acquisition of**

14 **property prior to judgment; definitions**

15 **A. After August 1, 2012, and until August 1, 2016, when the Ascension**

16 **Parish governing authority cannot amicably acquire property needed for a**

17 **road or sewage project, it may acquire it by expropriation. The parish**

1 governing authority shall give proper notice to the property owner of the
2 intention to expropriate the property and the property owner shall have one
3 year from the time of service of such notice before the parish may proceed with
4 expropriation. It may acquire the property only after a court of competent
5 jurisdiction finds it necessary for a public purpose at a rule to show cause
6 hearing, but prior to judgment in the trial court fixing the amount of
7 compensation due to the owner of the property.

8 B. If the owners are known and can be located, the governing authority
9 must engage in good faith negotiations with the owner or owners of the subject
10 property to acquire the property by conventional agreement, and it must make
11 at least one written offer to purchase the property for a specific price.
12 Thereafter, if the governing authority concludes that it cannot amicably acquire
13 the subject property, it must, at least thirty days prior to filing a petition, notify
14 the owner or owners by certified mail, return receipt requested, of its intention
15 to expropriate the property pursuant to this Part. If the notice is returned
16 unclaimed, the governing authority shall mail the letter of notification by
17 regular mail and wait thirty days from the date of mailing prior to filing suit.
18 The letter of notification must also inform the owner that if, within thirty days
19 after being served with the notice of suit, he does not object to the taking on the
20 ground that it is not for a public purpose, he will waive all defenses to the taking
21 except claims for compensation or damages. A copy of this Part must be
22 enclosed with the letter of notification.

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

27 D. As used in this Part, the term "property" means any portion of
28 immovable property including servitudes, rights-of-way, and other rights in or
29 to immovable property.

1 E. The provisions of this Part shall not apply to investor owned gas,
2 electric, and telecommunication utilities or member owned electric co-
3 operatives regulated by the Louisiana Public Service Commission.

4 §362. Contents of petition; place of filing

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

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

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

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

14 (a) A certified copy of the ordinance adopted by the parish council
15 authorizing the taking and declaring that it is for a public purpose in
16 accordance with this Part.

17 (b) A certificate signed by the parish or consulting engineer declaring (i)
18 that he has fixed the right-of-way in a manner sufficient in his judgment to
19 provide for the public interest, safety, and convenience and (ii) that the location
20 and design of the proposed improvements are in accordance with the best
21 modern practices adopted in the interest of the safety and convenience of the
22 public.

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

27 (d) A copy of the return receipt from the letter of notification of intention
28 to expropriate the property, as required by R.S. 19:361.

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

1 The petition shall conclude with a prayer that the property be declared
2 taken for sewage or road projects and, upon presentation of the petition, the
3 court shall issue an order directing that the amount of the appraisal be
4 deposited in the registry of the court. Upon the deposit of the amount of the
5 appraisal in the registry of the court, for the use and benefit of the persons
6 entitled thereto, the clerk shall issue a receipt showing the amount deposited,
7 the date it was deposited, the style and number of the cause, and the description
8 of the property and property rights, as contained in the petition.

9 §364. Vesting of title

10 Title to the property and the property rights specified in the petition
11 shall vest in the governing authority upon final court order declaring that the
12 property described in the petition has been taken for sewer, drainage, or road
13 projects, and the right to just and adequate compensation therefor shall vest in
14 the persons entitled thereto. Upon vesting of title, the governing authority may
15 enter upon and take possession of the property.

16 §365. Notice to defendant

17 A. Upon receipt of the deposit, the clerk of court shall issue a notice to
18 each defendant in the suit, notifying him that a petition has been filed to
19 expropriate the property described in the petition.

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

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

25 A. Any defendant desiring to contest the validity of the taking on the
26 ground that the property was not expropriated for a sewer, drainage, or road
27 project purpose shall file a motion to dismiss or other defenses to the taking
28 within thirty days after the date on which the notice was served on him. He
29 shall certify thereon that a copy thereof has been served personally or by mail

1 on either the plaintiff or his attorney of record in the suit. This motion shall be
2 tried contradictorily with preference to the judge alone and shall be decided
3 prior to fixing the case for trial on the compensation or damages due to the
4 defendant.

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

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

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

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

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

19 (3) His damage claim is reasonably itemized.

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

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

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

28 Section 2. The provisions of this Act shall be interpreted so as to be consistent with

29 Article 1, Section 4 of the Louisiana Constitution of 1974.

The original instrument was prepared by Jerry G. Jones. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

Amedee (SB 703)

Proposed law authorizes the Ascension Parish governing authority to expropriate certain property after August 1, 2013, and until August 1, 2016, and provides procedures.

Proposed law provides that when the Ascension Parish governing authority cannot amicably acquire property needed for a road or sewage project, it may acquire the same by expropriation. Requires the governing authority to properly notify the property owner of the intention to expropriate and provides for the property owner to have one year before the expropriation proceedings may begin. Provides that the governing authority may acquire the property only after a court finds it necessary for a public purpose at a rule to show cause hearing, but prior to judgment in the trial court fixing the amount of compensation due to the owner of the property.

Proposed law further provides that it shall not apply to investor owned gas, electric, and telecommunication utilities or member owned electric co-operatives regulated by the Louisiana Public Service Commission.

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.

Proposed law requires that proposed law be interpreted in a manner consistent with Article 1, Section 4 of the Louisiana Constitution of 1974 regarding the right to property.

Effective August 1, 2012.

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Local and Municipal Affairs to the original bill

1. Limits proposed law authority of Ascension Parish to after August 1, 2012, and until August 1, 2016.
2. Deletes authority for parish to use proposed law procedure to expropriate property needed for the purposes of a major infrastructure project.
3. Adds requirement for parish to engage in negotiations with owners before initiating proposed law expropriation procedures.
4. Removes requirement of a 2/3 vote by parish council before proposed law expropriation procedures may be initiated.
5. Increases the advance notice time to owners by the parish from 15 to 30 days before filing petition to initiate proposed law expropriation procedures.

6. Increases the time for owners to object to proposed law expropriation procedures on the basis that such taking is not for the public purpose from 15 to 30 days of being served with notice of suit.
7. Changes applicability of proposed law procedures from not authorizing expropriation for the purposes of bicycle facilities or paths to not applying to investor owned gas, electric and telecommunication utilities or member electric cooperatives.
8. Removes requirement for court to issue an order that the parish's expropriation of the property was for a public purpose if no owner objection is timely filed.
9. Changes the notice to the property owners upon the filing of a petition from stating that the property has been expropriated to stating that a petition for expropriation has been filed.
10. Adds requirement that proposed law be interpreted in a manner consistent with the state constitution's right to property provision.

Senate Floor Amendments to engrossed bill

1. Prohibits the parish from proceeding with expropriation for a year after notifying the property owner of its intention.
2. Further prohibits the parish from acquiring the property until the court rules that the expropriation is necessary for a public purpose.
3. Technical amendments.