

Regular Session, 2012

HOUSE BILL NO. 274

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

PROPERTY/EXPROPRIATION: Provides relative to expropriation

1 AN ACT

2 To amend and reenact R.S. 19:2, 2.1(A)(2), 2.2(A)(introductory paragraph) and (2) and (B),
3 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),
4 (8)(E), and 16, and to repeal R.S. 9:3176 through 3191, relative to expropriation; to
5 provide notice, service, and filing requirements when property is sought to be
6 acquired through expropriation; to provide additional requirements when property
7 is sought to be acquired by expropriating authorities other than the state or its
8 political subdivisions or corporations; to provide procedures for delay periods, trial,
9 and burden of proof; to provide for determination of compensation and attorney fees;
10 to repeal outdated or duplicative expropriation statutes, and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

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

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

18 ~~Where a price cannot be agreed upon with the owner, Prior to filing an~~
19 expropriation suit, an expropriating authority shall attempt in good faith to reach an
20 agreement as to compensation with the owner of the property sought to be taken and

1 comply with all of the requirements of R.S. 19:2.2. If unable to reach an agreement
2 with the owner as to compensation, any of the following may expropriate needed
3 property:

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

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

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

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

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

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

1 (7) Any domestic or foreign corporation, limited liability company, or other
 2 legal entity created for the purpose of, or engaged in, generating, transmitting, and
 3 distributing or for transmitting or distributing electricity and steam for power,
 4 lighting, heating, or other such uses. The generating plants, buildings, transmission
 5 lines, stations, and substations expropriated or for which property was expropriated
 6 shall be so located, constructed, operated, and maintained as not to be dangerous to
 7 persons or property nor interfere with the use of the wires of other wire using
 8 companies or, more than is necessary, with the convenience of the landowners;

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

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

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

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

25 (12) Any domestic or foreign corporation, limited liability company, or other
 26 legal entity ~~or any partnership~~ composed of such corporations or wholly owned
 27 subsidiaries thereof engaged in the injection of carbon dioxide for the underground
 28 storage of carbon dioxide approved by the commissioner of conservation. Property
 29 located in Louisiana may be so expropriated for the underground storage of carbon

1 dioxide in connection with such storage facility projects located in Louisiana,
2 including but not limited to surface and subsurface rights, mineral rights, and other
3 property interests necessary or useful for the purpose of constructing, operating, or
4 modifying a carbon dioxide facility. This Paragraph ~~has~~ shall have no effect on nor
5 does it grant expropriation of the mineral rights or other property rights associated
6 with the approvals required for injection of carbon dioxide into enhanced recovery
7 projects approved by the commissioner under R.S. 30:4.

8 §2.1. Petition for expropriation; place of filing; contents; claims for damages;
9 prescription

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

12 * * *

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

17 * * *

18 §2.2. Expropriation by ~~state or its political corporations or subdivisions~~
19 expropriating authorities referred to in R.S. 19:2

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

23 * * *

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

26 B. In addition to the requirements of Subsection A of this Section, each
27 expropriating authority other than the state or its political corporations or
28 subdivisions shall, at least thirty days prior to the filing of a petition for

1 expropriation, send a letter by certified mail, return receipt requested, to the owner
2 at his last known address setting forth in detail or attaching the following:

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

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

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

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

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

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

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

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

26 * * *

27 §5. Time of trial; notice to defendant

28 * * *

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

6 C. The notice shall contain the following:

7 * * *

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

14 §6. Service of answer on plaintiff

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

20 §7. ~~Eaches~~ Failure to timely file by defendant ~~forfeits~~ forfeiture of defenses

21 Failure of the defendant in any such suit to timely file ~~his~~ any answer,
22 exceptions, or other responsive pleadings timely constitutes a waiver by the
23 defendant of all defenses to the suit except claims for ~~money as compensation for the~~
24 ~~property sought to be expropriated and claims for money as damages to other~~
25 ~~property~~.

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

28 A.(1) Expropriation suits shall be tried ~~in term time or in vacation~~ by
29 preference and shall be conducted ~~with preference and~~ with the greatest possible

1 dispatch. ~~Judgments may be signed in term time or in vacation.~~ All issues shall be
2 decided by the trial judge, except compensation when either party has demanded a
3 trial by jury to determine compensation. ~~However, when a jury trial has been~~
4 ~~demanded, the judge shall hear the evidence on all issues, other than the measure of~~
5 ~~compensation and shall render a decision within five days. If the trial judge decides~~
6 ~~in favor of the expropriating authority, then within thirty days after such decision,~~
7 ~~a jury shall be impaneled to determine the measure of compensation.~~

8 (2) If the defendant files a timely answer, exception, or other responsive
9 pleading challenging any issue other than compensation, the court shall set the matter
10 for hearing within thirty days after filing of the pleading and shall render a decision
11 within five days after the case is submitted. If the court rules in favor of the
12 expropriating authority, upon motion of either party, the trial on compensation shall
13 be set within forty-five days thereafter, which time period may be extended for good
14 cause shown.

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

25 B. If either party has demanded a trial by jury to determine compensation,
26 the trial shall be in accordance with the general laws regulating trial by jury, except
27 as provided in this ~~part~~ Part and except that in order to render any verdict, five of the
28 jurors must concur therein. The jury shall consist of six jurors. The judge may allow
29 the jurors to take a concise summary into the jury room as provided in R.S.

1 48:451.18. The number of peremptory challenges is as provided for in R.S.
2 48:451.9.

3 * * *

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

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

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

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

18 * * *

19 §12. Tender of true value refused; costs

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

26 * * *

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

28 * * *

1 B. In the case where any ~~corporation~~ expropriating authority referred to in
2 R.S. 19:2, other than the state or its political corporations or subdivisions, has
3 actually, in good faith believing it had the authority to do so, taken possession of
4 privately owned immovable property of another and constructed facilities upon,
5 under, or over such property with the consent or acquiescence of the owner of the
6 property, it ~~will~~ shall be presumed that the owner of the property has waived his right
7 to receive just compensation prior to the taking, and he shall be entitled only to bring
8 an action for judicial determination of whether the taking was for a public and
9 necessary purpose and for just compensation to be determined in accordance with
10 R.S. 19:9, as of the time of the taking of the property, or right or interest therein, and
11 such action shall proceed as nearly as may be as if the ~~corporation~~ expropriating
12 authority had filed a petition for expropriation as provided for in R.S. 19:2.1.

* * *

14 §16. Expropriation by public entity; authority

15 Nothing in this Part shall alter or amend the authority of the state or its
16 political corporations or subdivisions to expropriate property as otherwise provided
17 by law.

* * *

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

20 A. A court of Louisiana having jurisdiction of a proceeding instituted by a
21 ~~public or private entity vested with the power of expropriation, to acquire immovable~~
22 ~~property by expropriation, any expropriating authority referred to in R.S. 19:2 shall~~
23 award the owner of any right, or title to, or interest in ~~such immovable~~ the
24 expropriated property such sum as will, in the opinion of the court, reimburse such
25 owner for his reasonable attorney fees, and court costs, actually incurred because of
26 the expropriation proceeding, if the final judgment is that the plaintiff does not
27 acquire at least fifty percent of the immovable property requested in the petition for
28 expropriation or if the proceeding is abandoned by the plaintiff. If the expropriating
29 authority is the state or its political corporations or subdivisions, Any any such award

1 shall be paid from the same funds from which the purchase price of the property
2 would have been paid.

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

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Foil

HB No. 274

Abstract: Provides revisions on the laws of expropriation relative to the state, political subdivisions, and nonpublic legal entities having the authority to expropriate, including requirements as to notice, compensation, and attorney fees.

Present law (R.S.19:2) provides for expropriating authority of the state and its subdivisions and corporations and of certain listed entities.

Proposed law adds limited liability companies (LLCs) and other legal entities to listed authorities, and adds requirement of good faith attempt to reach agreement prior to filing of expropriation suit, with reference to additional requirements in proposed law (R.S. 19:2.2) for private entities.

Present law (R.S. 19:2.1) requires the petition to contain the name of the owner if known and present in this state.

Proposed law deletes the requirement that the owner be "present in this state".

Present law (R.S. 19:2.2) lists information to be supplied the property owner prior to any expropriation and requires an offer of compensation.

Proposed law provides additional requirements to be supplied to the owner in expropriations by authorities other than the state.

Present law (R.S. 19:5) requires issuance of notice and a copy of the petition, without copies of exhibits, to the defendant, signed and sealed by the clerk, with notice of a 15-day period to answer.

Proposed law requires copies of exhibits in the notice, deletes signature and seal requirement, and changes the notice of a 15-day period for filing an answer to 30 days.

Present law (R.S. 19:6) provides 15 days for the filing of an answer and provides for the service of the answer.

Proposed law extends the time for the answer to 30 days and adds that exceptions or other responsive pleadings are to be served with service of the answer.

Present law (R.S. 19:7) provides that the failure to file an answer timely constitutes waiver of all defenses to the expropriation except claims for compensation for the property to be expropriated and claims for money as damages to other property.

Proposed law adds "exceptions or other responsive pleadings" as filings that avoid waiver, and rewords the statute such that it is clarified that the only claims waived are those "other than for compensation".

Present law (R.S. 19:8) provides procedures for the expropriation trial.

Proposed law adds provisions to expedite the trial by requiring hearings to be set within 30 days of the defendant's pleading challenging the expropriation, and by requiring that the subsequent trial on compensation, if any, shall be set within 45 days thereafter, upon motion of either party.

Present law (R.S. 19:9) provides for estimating the measure of compensation.

Proposed law changes "estimating" property value to "determining", specifies damages as a part of the determination of "compensation" and specifies that the valuation shall not include deduction for "general or specific" benefits derived by the owner.

Present law (R.S. 19:12) provides that the court "shall" assess costs to the owner when the "true value" of the property had been offered prior to the forced expropriation.

Proposed law changes the provision to provide that the court "may" assess costs against the owner when the final award is equal to or less than the highest amount offered prior to the filing of the suit.

Present law (R.S. 19:14) provides for instances when facilities have been constructed in good faith with acquiescence of the owner.

Proposed law changes "corporation" to "expropriating authority other than the state or its political corporations or subdivisions".

Provides that proposed law shall not alter or amend the authority of the state or its political corporations or subdivisions to expropriate property as otherwise provided by law.

Present law (R.S. 19:201) provides for the award of attorney fees to the owner in unsuccessful suits by the state.

Proposed law adds private entity expropriations to the purview of R.S. 19:201.

(Amends R.S. 19:2, 2.1(A)(2), 2.2(A)(intro. para.) and (2) and (B), 5(B) and (C)(6), 6, 7, 8(A) and (B), 9, 12, 14(B), and 201; Adds R.S. 19:2.2(C), (8)(E), and 16; Repeals R.S. 9:3176 - 3191)