

Regular Session, 2009

HOUSE BILL NO. 182

BY REPRESENTATIVE ROBIDEAUX

PROPERTY/EXPROPRIATION: Authorizes the city of Lafayette and the parish of Lafayette to expropriate property by a declaration of taking under certain circumstances

1 AN ACT

2 To enact Part III-I of Title 19 of the Louisiana Revised Statutes of 1950, to be comprised of  
3 R.S. 19:139 through 139.7, relative to expropriation by a declaration of taking; to  
4 authorize the city of Lafayette and parish of Lafayette to expropriate property for the  
5 Kaliste Saloom Road Widening Project; to provide procedures for the expropriation  
6 by a declaration of taking; and to provide for related matters.

7 Notice of intention to introduce this Act has been published  
8 as provided by Article III, Section 13 of the Constitution of  
9 Louisiana.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part III-I of Title 19 of the Louisiana Revised Statutes of 1950,  
12 comprised of R.S. 19:139 through 139.7, is hereby enacted to read as follows:

13 PART III-I. EXPROPRIATION OF PROPERTY BY A DECLARATION  
14 OF TAKING BY CITY OF LAFAYETTE AND PARISH OF LAFAYETTE

15 §139. City of Lafayette and parish of Lafayette; Kaliste Saloom Road Widening  
16 Project; acquisition of property prior to judgment; definitions

17 A. When the governing authority cannot amicably acquire property needed  
18 by the city of Lafayette and the parish of Lafayette for the Kaliste Saloom Road  
19 Widening Project, it may acquire the same by expropriation and may acquire the

1 property prior to judgment in the trial court fixing the amount of compensation due  
2 to the owner of the property.

3 B. At least fifteen days prior to filing a petition for expropriation, the  
4 governing authority shall notify the owner or owners by certified mail, return receipt  
5 requested, of its intention to expropriate the property pursuant to this Part. The letter  
6 of notification shall also inform the owner that if, within fifteen days after being  
7 served with the notice of suit, he does not object to the taking on the ground that it  
8 is not for a public purpose, he will waive all defenses to the taking except claims for  
9 compensation or damages. A copy of this Part shall be enclosed with the letter of  
10 notification.

11 C. Except as otherwise provided in this Part, such expropriation by the  
12 governing authority shall be conducted in the manner that the Department of  
13 Transportation and Development may expropriate property for highway purposes,  
14 as set forth in R.S. 48:441 through 460.

15 D. As used in this Part, the term "property" means any portion of immovable  
16 property, including servitudes, rights-of-way, and other rights in or to immovable  
17 property; the term "governing authority" means the city of Lafayette and parish of  
18 Lafayette; and the term "project" means the Kaliste Saloom Road Widening Project.

19 §139.1. Contents of petition; place of filing

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

22 (1) A petition shall be filed by the governing authority in the district court  
23 of the parish in which the property to be expropriated is situated.

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

28 (3) The petition shall have annexed to it all of the following:

1           (a) A certified copy of a resolution or ordinance adopted by the governing  
2           authority authorizing the taking and declaring that it is necessary or useful for the  
3           purposes of this Part.

4           (b) A certificate signed by the consulting engineer for the governing  
5           authority declaring that (i) he has fixed the right-of-way in a manner sufficient in his  
6           judgment to provide for the public interest, safety, and convenience and (ii) the  
7           location and design of the proposed improvements are in accordance with the best  
8           modern practices adopted in the interest of the safety and convenience of the public.

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

13          (d) A copy of the return receipt from the letter of notification of intention to  
14          expropriate the property, as required by R.S. 19:139(B).

15          §139.2. Prayer of the petition; ex parte order of taking

16          The petition shall conclude with a prayer that the property be declared taken  
17          for public purposes and, upon presentation of the petition, the court shall issue an  
18          order directing that the amount of the estimate be deposited in the registry of the  
19          court and declaring that the property described in the petition has been taken for  
20          public purposes at the time of the deposit.

21          §139.3. Vesting of title

22          Title to the property and the property rights specified in the petition shall vest  
23          in the governing authority upon final court order declaring that the property  
24          described in the petition has been taken for the project, and the right to just and  
25          adequate compensation therefor shall vest in the persons entitled thereto. Upon  
26          vesting of title, the governing authority may enter upon and take possession of the  
27          property.

1        §139.4. Notice to defendant

2                A. Upon receipt of the deposit, the clerk of court shall issue a notice to each  
3        defendant in the suit, notifying him that the property described in the petition has  
4        been expropriated for public purposes.

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

8        §139.5. Contesting validity of taking; waiver of defenses

9                A. Any defendant desiring to contest the validity of the taking on the ground  
10       that the property was not expropriated for a public use may file a motion to dismiss  
11       the suit within fifteen days from the date the notice was served on him. He shall  
12       certify thereon that a copy thereof has been served personally or by mail on either  
13       the plaintiff or his attorney of record in the suit. This motion shall be tried  
14       contradictorily with preference to the judge alone and shall be decided prior to fixing  
15       the case for trial on the compensation or damages due to the defendant.

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

19       §139.6. Defendant's answer; requirements; delay for filing

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

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

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

29               (3) His damage claim is reasonably itemized.

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

4           §139.7. Grant as additional authority

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

9           Section 2. This Act shall become effective upon signature by the governor or, if not  
10          signed by the governor, upon expiration of the time for bills to become law without signature  
11          by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
12          vetoed by the governor and subsequently approved by the legislature, this Act shall become  
13          effective on the day following such approval.

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#### 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)]

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Robideaux

HB No. 182

**Abstract:** Authorizes the expropriation by a declaration of taking, "quick-take", by the city of Lafayette and the parish of Lafayette in order to acquire property for the Kaliste Saloom Road Widening Project.

Present law provides for general expropriation by the state and political subdivisions. Under existing general expropriation authority, the property owner can demand a jury trial to determine the value of the property expropriated. The governing authority is only entitled to the property after the amount fixed by the final judgment is deposited in the registry of the court.

Proposed law defines "property", "governing authority", and "project".

Proposed law authorizes the city of Lafayette and the parish of Lafayette to expropriate by a declaration of taking property needed for the Kaliste Saloom Road Widening Project.

Proposed law provides all of the following:

- (1) The governing authority shall give, at least, a 15-day notice to the property owner before filing a petition for expropriation.
- (2) The governing authority shall file a petition, which includes an itemized statement of the full extent of the owner's loss.

- (3) The court shall issue an order directing that the amount of the estimate be deposited in the registry of the court and declare that the property has been taken for the public purpose.
- (4) Title to the property shall vest in the governing authority upon final court order, and the right to just and adequate compensation shall vest in the former property owner.
- (5) Upon vesting of title the governing authority may take possession of the property.
- (6) The former property owner may apply for a trial to determine the measure of compensation to which he is entitled by filing an answer within one year from the date he is notified in writing by the governing authority of the expropriation.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 19:139-139.7)