

Regular Session, 2014

HOUSE BILL NO. 478

BY REPRESENTATIVE MILLER

PROPERTY/EXPROPRIATION: Provides relative to procedures in certain expropriation proceedings

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

1 merits, exceptions, or special pleas and defenses, or compensation, or any or all of
2 them.

3 B. Any judgment determining the validity or the extent of the taking
4 pursuant to R.S. 19:147, shall be subject to a devolutive appeal, and the delays for
5 taking such an appeal shall commence upon the signing of that judgment.

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

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

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)]

Miller

HB No. 478

Abstract: Provides that a judgment determining the validity or extent of a taking in an expropriation proceeding shall be a final judgment for purposes of an immediate appeal, provides for the delays in which to request a jury trial, and provides for the effects of an appeal.

Present law provides that any defendant desiring to contest the validity of the taking in an expropriation proceeding on the ground that the property was not expropriated for a public use may 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 within the time provided or to serve a copy thereof on the plaintiff constitutes a waiver of all defenses to the suit except claims for compensation.

Proposed law retains present law and specifies that the failure to file the motion to dismiss within 10 days of service of the notice constitutes a waiver of all defenses.

Proposed law provides that if a motion to dismiss is timely filed, the court shall set the hearing within 30 days and render a decision within five days, and provides that a judgment rendered determining the validity of the taking shall 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 the defendant files an answer within 30 days from the date he is served with the notice.

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 required by R.S. 19:146, and provides that failure to demand a jury within the time provided 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 for which the property was expropriated.

Proposed law retains present law, requires notice by certified mail, and provides that if the defendant desires a trial by jury, he shall include a demand for a jury trial in his answer or separate pleading demanding a jury trial, which shall be filed within the time allowed to file an answer.

Proposed law provides that failure to demand a jury within the time provided 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 a suspensive appeal shall not be available in an expropriation proceeding, that the judgment determining the validity or the extent of the taking shall be subject to a devolutive appeal, that the delays for taking such an appeal shall commence upon the signing of that judgment, and that the appellate court shall consider an appeal of a judgment rendered pursuant to R.S. 19:147 on an expedited basis.

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

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added provisions specifying that the contest of the taking may be for the validity or the extent of the taking.
2. Added provision that failure to file the motion to dismiss within 10 days of service constitutes a waiver of defenses.
3. Added requirements that the hearing on the motion to dismiss shall be set within 30 days and the decision shall be rendered within five days.
4. Added provision that notice of final acceptance of construction be made by certified mail.
5. Added provision that if the defendant desires a jury trial, he shall include such a demand in his answer or separate pleading, and that such separate pleading is required to be filed within the same period as the answer.
6. Added provision that no party to an expropriation shall be entitled to a suspensive appeal and that a judgment determining the validity or extent of the taking shall be subject to a devolutive appeal.