



LOUISIANA STATE LAW INSTITUTE
PAUL M. HEBERT LAW CENTER, ROOM W127
UNIVERSITY STATION
BATON ROUGE, LA 70803-1016

OFFICE OF
THE DIRECTOR
(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

November 24, 2015

Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

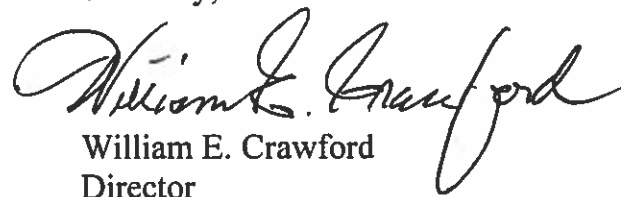
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR 162 of the 2014 Regular Session

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its final report to the legislature in response to 2014 House Concurrent Resolution No. 162, relative to disclosure notices in expropriations.

Sincerely,


William E. Crawford
Director

WEC/puc
Enclosure

cc: Representative Raymond Garofalo

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
HCR 162 COMMITTEE, EXPROPRIATION**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR 162 OF THE 2014 REGULAR SESSION**

Disclosure Notices in Expropriations

Prepared for the
Louisiana Legislature on

November 24, 2015

Baton Rouge

LOUISIANA STATE LAW INSTITUTE

HCR 162 COMMITTEE, EXPROPRIATION

M. Taylor Darden, New Orleans

David M. Ellison, Jr., Baton Rouge

Brandon Frey, Baton Rouge

Steven Giambrone, Baton Rouge

Guy Holdridge, Gonzales

Henry Alan McCall, Lake Charles

Jack K. Whitehead, Jr., Baton Rouge

Kay C. Medlin, Reporter

Lynette Roberson, Staff Attorney

Mallory Chatelain, Staff Attorney

Regular Session, 2014

HOUSE CONCURRENT RESOLUTION NO. 162

BY REPRESENTATIVE GAROFALO

A CONCURRENT RESOLUTION

To authorize and direct the Louisiana State Law Institute to study and make recommendations for the inclusion of information in a disclosure notice to landowners whose property is subject to expropriation by public or private entities.

WHEREAS, expropriation of private property is a process which should be employed only as necessary and with great caution as it involves the derogation of a closely protected right under the constitutions of Louisiana and the United States; and

WHEREAS, the representative of a public or private entity expropriating property may often have more knowledge of the expropriation laws and procedures than the owner of the property being expropriated; and

WHEREAS, the state of Texas has developed a "Landowner's Bill of Rights" which requires that all entities with expropriation authority provide a brief summary of the landowner's rights to the landowner prior to the filing of the expropriation proceeding; and

WHEREAS, in an effort to ensure that the owner of the property being expropriated in Louisiana is more aware of his rights and remedies regarding the taking of his property by a public or private entity, House Bill No. 1281 was introduced during the 2014 Regular Session of the Legislature of Louisiana; and

WHEREAS, the policy behind requiring disclosures similar to the Texas "Landowner's Bill of Rights" is to provide Louisiana landowners with more information that can assist them in making more informed decisions about such issues as adequate compensation, a public purpose for the taking, proper notice of the taking, access to written appraisals, the right to hire an attorney and an appraiser, and the right to a court hearing; and

WHEREAS, in developing its recommendations for information to be included in a disclosure notice, the Louisiana State Law Institute should include and solicit information

from representatives from the Public Service Commission and the Department of Natural Resources, office of conservation.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute, with input from the Public Service Commission and the Department of Natural Resources, office of conservation, to study and make recommendations for the inclusion of information in a disclosure notice to landowners whose property is the subject of an expropriation proceeding.

BE IT FURTHER RESOLVED that the study of the inclusion of a Landowner's Bill of Rights is not intended to create additional expropriation statutes outside of the scope of this Resolution.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute report its findings and recommendations to the Legislature of Louisiana on or before January 1, 2016.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR 162 OF THE 2014 REGULAR SESSION
RELATIVE TO DISCLOSURE NOTICES IN EXPROPRIATIONS**

HCR 162 and SCR 172 of the 2014 Regular Session appear to have been passed as a result of one or more complaints made by constituents whose property was expropriated by a pipeline company. The Senate Resolution directed its study request to the Commissioner of Conservation, who was instructed to cooperate with appropriate entities, including the Louisiana Public Service Commission, the Federal Energy Regulatory Commission, and the U.S. Department of Transportation. The request was limited to a study of pipelines transmitting hydrocarbons and included a request for consideration of the feasibility of creating and maintaining a registry available to the public listing authorities with expropriation authority. The Office of Conservation filed its report, as instructed, with the legislature at least sixty days before the 2015 session.

HCR 162 was directed to the Louisiana State Law Institute and included a request that the Law Institute study a possible disclosure notice to all landowners whose property is subject to expropriation by public or private entities. HCR 162 specifically identified the disclosures in the Texas “Landowner’s Bill of Rights” and requested a report and recommendations on the inclusion of information in a “disclosure notice to landowners whose property is the subject of an expropriation proceeding”. The Resolution directed the Law Institute to seek input from the Public Service Commission and the Department of Natural Resources, Office of Conservation.

The Law Institute formed a special committee to comply with the requests in HCR 162.

The members are:

Brandon Frey, Louisiana Public Service Commission
David M. Ellison, Jr., Ellison & Ellison
Hon. Guy Holdridge, Louisiana Court of Appeal, First Circuit
Henry A. McCall, Stockwell, Sievert, Viccellio, Clements & Shaddock, L.L.P.
Jack K. Whitehead, Jr., Whitehead Law Firm
Steven Giambone, Louisiana Department of Natural Resources, Office of Conservation
M. Taylor Darden, Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux LLC
Kay Cowden Medlin, Bradley Murchison Kelly & Shea LLC (Reporter)
Lynette Roberson, Louisiana State Law Institute (Staff Attorney)
Mallory Chatelain, Louisiana State Law Institute (Staff Attorney)

Subsequently, the Committee asked Brandon Brown of the Louisiana Department of Transportation to attend meetings to address issues peculiar to the DOTD.

The Committee reviewed the Texas “Landowner Bill of Rights,” as well as statutes in six states with similar, although much less detailed, provisions. The Committee also reviewed the Landowner Bill of Rights legislation proposed in Arkansas and Kansas, both of which stalled in their respective legislative committees.

The comparison of rights in the Texas statute with the landowner rights in the Louisiana statutes revealed that rights granted to landowners in Louisiana are superior to those in Texas. This is in part due to Act 702 of 2012, which was developed by the Law Institute Expropriation Committee. The Committee was concerned that the restatement of the law in the Texas provision, although arguably in “plain language” was lengthy, confusing and may create issues because it had language different from the statute. The Committee also found guidance in comments from those who have experience with the Texas provision. Some landowners found the notice to be contentious and unsettling, especially when delivered early in the negotiation process.

The Committee decided that a much shorter notice, prepared by the expropriating authority and directing interested property owners to sources of additional information, was

preferable to a lengthy restatement of the statutes. The Committee also decided that only private expropriating authorities should be required to provide the notice. Although HCR 162 indicates that it intends to cover public and private expropriations, the directive to obtain input only from the LPSC and the DNR is inconsistent with this indication.

If limited to private expropriations, notices to landowners could be required at little or no cost to the state by imposing upon the private authority the responsibility for providing the notice, for maintaining the information on its website, and for directing property owners to the State entity responsible for regulating it. None of the complaints that prompted the Concurrent Resolutions was the result of a public expropriation.¹

The Committee concluded that the general notice to be provided to the property owner early in the process should set out basic rights in simple language. Those property owners who want more information should be directed to a website with the relevant statutory language and provided with the name and contact information of the agency responsible for regulating the expropriating authority. In this way, the property owners who are content with the process know that they have basic rights and how to easily acquire additional information. Those property owners who are not content will have access to the entire statute rather than a confusing restatement, as well as to the website and contact information of the agency regulating the expropriating authority.

The Committee and Council concluded that the following information should be included in the notice:

1. A statement that the property owner is entitled to receive just compensation for the property to be acquired to the fullest extent allowed by law.

¹ Both the LPSC and the DNR representatives reported that no additional landowner complaints have been received by either agency since the 2014 legislature passed the concurrent resolutions.

2. A statement that the property can be acquired only by an authority authorized by law to do so.
3. A statement that the landowner is entitled to receive from the expropriating authority a written appraisal or evaluation of the amount of compensation due.
4. A statement identifying the website of the expropriating authority where the property owner can read the expropriation statutes upon which the expropriating authority relies.
5. A statement offering to provide a copy of the expropriation statutes upon which the expropriating authority relies upon the request of the property owner.
6. A statement identifying the agency or agencies responsible for regulating the expropriating authority, including the name, website and telephone number of the agency or agencies.
7. A statement that the landowner may hire an agent or attorney to negotiate with the expropriating authority and an attorney to represent the property owner in any legal proceedings involving the expropriation.

The Committee also considered a suggestion that the notice include a statement that, in the event expropriation proceedings are filed, the property owner can seek compensation, damages, attorney's fees, and costs. However, having found that the statement may induce property owners to incur costs to their own detriment, the Committee decided against including such a statement.

The Committee discussed the logistics of establishing a registry of expropriating authorities and agreed that a state-wide site, such as the Attorney General's website, would be an appropriate location. Since this was beyond the mandate of HCR 162, no specific recommendation is made.

Proposed legislation is attached.

Regular Session, 2016

HOUSE BILL NO. _____

BY REPRESENTATIVE _____

(On Recommendation of the Louisiana State Law Institute)

PROPERTY/EXPROPRIATION: Provides for disclosure of information to property owners whose property is subject to expropriation.

AN ACT

To amend and reenact R.S. 19:2.2, relative to expropriation by expropriating authorities referred to in R.S. 19:2; to provide for disclosures of information to property owners prior to the making of an offer to acquire an interest in property; to require notice to be provided by expropriating authorities identified in R.S. 19:2, other than the State or its political corporations or subdivisions; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 19:2.2 is hereby amended and reenacted to read as follows:

3 §19:2.2. Expropriation by expropriating authorities referred to in R.S. 19:2

4 A. Before exercising the rights of expropriation provided by R.S. 19:2, any
5 expropriating authority referred to in R.S. 19:2 shall comply with the following:

6 (1) Provide the owner whose property is to be taken with the following
7 information from its appraisal or evaluation as to the amount of compensation due the
8 owner for the full extent of his loss:

1 (a) The name, address, and qualifications of the person or persons preparing the
2 appraisal or evaluation.

3 (b) The amount of compensation estimated in the appraisal or evaluation.

4 (c) A description of the methodology used in the appraisal or evaluation.

5 (2) Offer to compensate the owner a specific amount not less than the lowest
6 appraisal or evaluation.

7 B. Before making an offer to acquire an interest in property, each expropriating
8 authority identified in R.S. 19.2, other than the State or its political corporations or
9 subdivisions, shall provide notice to the property owner that includes all of the following:

10 (1) A statement that the property owner is entitled to receive just compensation
11 for the property to be acquired to the fullest extent allowed by law.

12 (2) A statement that the property may be acquired only by an authority authorized
13 by law to do so.

14 (3) A statement that the property owner is entitled to receive from the
15 expropriating authority a written appraisal or evaluation of the amount of compensation
16 due.

17 (4) A statement identifying the website of the expropriating authority where the
18 property owner can read the expropriation statutes upon which the expropriating
19 authority relies.

20 (5) A statement offering to provide a copy of the expropriation statutes upon
21 which the expropriating authority relies upon the request of the property owner.

22 (6) A statement identifying the agency or agencies responsible for regulating the

1 expropriating authority, including the name, website, and telephone number of the agency
2 or agencies.

3 (7) A statement that the property owner may hire an agent or attorney to
4 negotiate with the expropriating authority and an attorney to represent the property owner
5 in any legal proceedings involving the expropriation.

6 ~~B.~~ C. In addition to the requirements of Subsection A of this Section, each
7 expropriating authority other than the state or its political corporations or subdivisions
8 shall, at least thirty days prior to the filing of a petition for expropriation, send a letter by
9 certified mail, return receipt requested, to the owner at his last known address setting
10 forth in detail or attaching the following:

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

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

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

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

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

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

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

3 ~~E. D.~~ Prior to exercising the rights of expropriation provided by R.S. 19:2, the
4 state or any of its departments, offices, boards, commissions, agencies, or
5 instrumentalities, except the Department of Transportation and Development, and except
6 political subdivisions, but specifically including levee districts and their boards, shall,
7 upon request of the owner whose property is to be taken, provide the owner with the
8 results of tests by the Louisiana Geological Survey that show whether or not sand or
9 gravel is present in the property. The test shall be done at no cost to the property owner.

DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. 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)]

Rep. _____ HB _____

Abstract: Provides for disclosure of information to property owners whose property is subject to expropriation.

Present law provides for expropriation by expropriating authorities.

Proposed law (R.S. 19:2.2(B)) provides for disclosures of information to property owners by expropriating authorities referred to in R.S. 19:2, other than the State or its political corporations or subdivisions, prior to the making of an offer to acquire an interest in property.

(Amends R.S. 19:2.2)