

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2029

By: Coody (Jeff)

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to roads and bridges; amending 69
9 O.S. 2011, Section 1203, which relates to acquisition
10 of land by the Department of Transportation;
11 requiring Department to give owner a written offer of
12 just compensation; providing for additional
13 communications with the owner prior to filing;
14 directing minimum amount for jury to consider in
15 awarding damages; requiring comparable sales to be
16 included in fair market value calculation; and
17 providing an effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 69 O.S. 2011, Section 1203, is
20 amended to read as follows:

21 Section 1203. (a) The Department shall have authority to
22 acquire in fee simple in the name of the State of Oklahoma, by
23 purchase, donation or condemnation, lands or such interests therein
24 as in its discretion may be necessary for the purpose of
establishing, constructing and maintaining state highways or
relocations thereof, and facilities necessary or incident thereto,

1 including borrow areas, channel changes and deposits of rock,
2 gravel, sand and other road building material for use in highway
3 construction and maintenance. Such acquisition may be for immediate
4 or future use. The Department may acquire reasonable amounts of
5 land adjacent to its normal right-of-way for the purpose of
6 screening unsightly areas adjacent to highways, landscaping safety
7 rest areas and scenic overlook areas.

8 (b) In determining the amount of land required, or width of
9 right-of-way necessary for such state highways, the Department shall
10 take into consideration the present and probable future needs in
11 connection with maintaining and reconstructing the highways, and the
12 prevention of traffic congestion and hazards.

13 (c) Except in instances where there are nonresident owners,
14 unknown heirs, imperfect titles and owners whose whereabouts cannot
15 be ascertained with reasonable diligence, the Department shall, in a
16 written offer of just compensation, give the owner an opportunity to
17 sell the necessary lands or interests therein to the State of
18 Oklahoma before resort to condemnation may be had. ~~The~~ If the owner
19 does not respond or declines to sell the necessary lands or
20 interests therein, the Department shall contact the owner to ensure
21 the owner is fully advised and aware of the offer from the
22 Department and make efforts to resolve any matter that would cause
23 the owner to subsequently accept the offer from the Department. If
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1 an agreement cannot be reached, the Department may condemn such
2 lands or interests therein in the following manner:

3 The district judge of the county in which the real property may
4 be situated, upon petition of either party, and after ten (10) days'
5 notice to the opposite party, either by personal service or by
6 leaving a copy thereof at his usual place of residence with some
7 member of his family over fifteen (15) years of age, or, in the case
8 of nonresidents, unknown heirs or other persons whose whereabouts
9 cannot be ascertained, by publication in two issues of a newspaper
10 in general circulation in the county (the ten-day period to begin
11 with the first publication), shall direct the sheriff of the county
12 to summon three disinterested freeholders, to be selected by the
13 judge as commissioners, and who shall not be interested in a like
14 question. The commissioners shall be sworn to perform their duties
15 impartially and justly; and they shall inspect the real property and
16 consider the injury which the owner may sustain by reason of the
17 condemnation, and they shall assess the just compensation to which
18 the owner is entitled; and they shall forthwith make a report in
19 writing to the clerk of the court, setting forth the quantity,
20 boundaries and just compensation for the property taken, and amount
21 of injury done to the property, either directly or indirectly, which
22 they assess to the owner, which report must be filed and recorded by
23 the clerk. A certified copy of the report may be transmitted to the
24 county clerk of the county where the land lies, to be filed and

1 recorded by the county clerk (without further acknowledgment or
2 proof) in the same manner and with like force and effect as is
3 provided for the recording of deeds. The procedure for service by
4 publication as authorized herein shall be the same as provided by
5 law for service by publication in civil actions, except summons need
6 not be issued and served, and except as otherwise provided herein.

7 (d) Immediately upon payment to the clerk of the court for the
8 use of the owner the sum so assessed and reported to the court clerk
9 as aforesaid, the Department shall thereby be authorized to enter
10 upon the condemned premises, and remove and dispose of any
11 obstructions thereon, by sale or otherwise. If the landowner shall
12 refuse to deliver up possession to the Department, the court shall
13 issue an order to the sheriff of the county to place the Department
14 in possession thereof.

15 (e) (1) The report of commissioners may be reviewed by the
16 district court, on written exceptions filed by either party in the
17 clerk's office within thirty (30) days after the filing of such
18 report, and the court, after hearing had, shall make such order
19 therein as right and justice may require, either by confirmation,
20 rejection or by ordering a new appraisement on good cause shown.
21 Provided, that in the event a new appraisement is ordered, the
22 Department shall have the continuing right of possession obtained
23 under the first appraisal, unless and until its right to condemn has
24 finally been determined otherwise; or either party may within sixty

1 (60) days after the filing of such report file with the clerk a
2 written demand for a trial by jury, in which case the amount of
3 damages shall be assessed by a jury, and the trial shall be
4 conducted and judgment entered in the same manner as civil actions
5 in the district court. The amount of the original offer given by
6 the Department and described in subsection (c) of this section shall
7 be the minimum amount presented to and considered by the jury in
8 determining damages. If the party demanding such trial does not
9 recover a verdict more favorable to the party than the assessment of
10 the commissioners, all costs in the district court shall be taxed
11 against the party. No owner upon whom proper service by publication
12 has been had, as provided in this title, shall be let in to defend
13 after expiration of time for appeal or review of the report of
14 commissioners as above provided has elapsed. Provided, that if,
15 after the filing of exceptions to the report of commissioners as
16 hereinafter provided, the Department shall fail to establish its
17 right to condemn such premises, or any part thereof, the landowner
18 shall be restored to possession of the premises, or part thereof,
19 and the Department shall pay for any damages sustained through the
20 occupation by the Department, and if such damages cannot be
21 determined by amicable settlement they shall be determined by jury
22 trial in the same proceedings.

23 (2) Within ten (10) days after the ~~Report~~ report of
24 ~~Commissioners~~ commissioners is filed, the court clerk shall forward

1 to the attorney of record for the condemnor, the attorney of record
2 for each condemnee, and to all unrepresented condemnees, a copy of
3 the commissioners' report and a notice, stating the time limits for
4 filing an exception or demand for jury trial as specified in
5 paragraph (A) of Section 55 of Title 66 of the Oklahoma Statutes.
6 The attorney of record for the condemnor shall provide the clerk of
7 the court with the names and last-known addresses of the parties to
8 whom notice and the report of the commissioners shall be mailed,
9 sufficient copies of the notice and report to be mailed, and pre-
10 addressed, postage-paid envelopes. This notice shall be on a form
11 prepared by the Court Administrator, which shall be approved by the
12 Supreme Court, and shall be distributed to all clerks of the
13 district court by said Court Administrator. If a party has been
14 served by publication, the clerk shall forward a copy of the report
15 of commissioners and notice of time limits for filing an exception
16 or demand for jury trial to the last-known mailing address, if any,
17 and shall cause a copy of the notice of time limits to be published
18 in one issue of a newspaper qualified to publish legal notices, as
19 defined in Section 106 of Title 25 of the Oklahoma Statutes, ~~Section~~
20 ~~106~~. After issuing the notices provided herein the court clerk
21 shall endorse on the notice form filed in the case the date and that
22 a copy of the report together with the notice form filed in the case
23 was forwarded to each condemnee and each attorney of record, or the
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1 date the notice was published in compliance with the provisions
2 hereof.

3 (3) The time limits for filing an exception and demand for jury
4 trial, as prescribed in paragraph (A) of Section 55 of Title 66 of
5 the Oklahoma Statutes, shall be calculated from the date the report
6 of the commissioners is filed in the case. On failure of the court
7 clerk to give notice within the time prescribed in paragraph (B) of
8 Section 55 of Title 66 of the Oklahoma Statutes, the court, on
9 application of any party, may extend the time for filing an
10 exception to the report, or a demand for trial by jury for a period
11 not to exceed twenty (20) days from the date the application is
12 heard.

13 (f) Either party aggrieved may appeal to the Supreme Court from
14 the decision of the district court on exceptions to the report of
15 commissioners, or jury trial; but such review or appeal shall not
16 delay the prosecution of the work on such highway over the premises
17 in question if the award of commissioners, or jury, as the case may
18 be, has been deposited with the clerk for such owner, and in no case
19 shall the Department be liable for the costs on such review or
20 appeal unless the owner of the real property shall be adjudged
21 entitled, upon either review or appeal, to a greater amount of
22 damages than was awarded by the commissioners. The Department shall
23 in all cases pay the cost of the commissioners' fees and expenses,
24 for their services, as determined and ordered paid by the judge of

1 the district court in which such case is pending⁷; however, poundage
2 fees and condemnation fees shall only be paid by the ~~department~~
3 Department in the event of appeal resulting in a jury verdict in
4 excess of the commissioners' award, but under no circumstances shall
5 any poundage fees or condemnation fees be assessed against the
6 recipient of said award. And in case of review or appeal, a
7 certified copy of the final order or judgment shall be transmitted
8 by the clerk of the court, duly certified, to the proper county
9 clerk, to be filed and recorded as hereinabove provided for the
10 recording of the report, and with like effect.

11 (g) When an estate is being probated, or a minor or incompetent
12 person has a legal guardian, the administrator or executor of the
13 estate, or guardian of the minor or incompetent person, shall have
14 the authority to execute all instruments of conveyance provided for
15 in this title on behalf of the estate, minor or incompetent person
16 without other proceedings than approval by the judge of the district
17 court endorsed on the instrument of conveyance.

18 (h) "Just compensation", as used in this section, shall mean
19 the value of the property taken, and in addition, any injury to any
20 part of the property not taken. Any special and direct benefits to
21 the part of the property not taken may be offset only against any
22 injury to the property not taken. If only a part of a tract is
23 taken, just compensation shall be ascertained by determining the
24 difference between the fair market value of the whole tract

1 immediately before the taking and the fair market value of that
2 portion left remaining immediately after the taking. The fair
3 market value calculation shall include comparable sales used to
4 value the interest taken and shall include the actual amount paid or
5 awarded for other tracts of any type.

6 SECTION 2. This act shall become effective November 1, 2016.

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