

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 55th Legislature (2015)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2165

By: McCullough of the House

and

Sykes of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to condemnation; amending 27 O.S.
11 2011, Section 11, which relates to condemnation
12 proceedings; mandating award of costs and attorney
13 fees; amending Section 1, Chapter 160, O.S.L. 2012
14 (27 O.S. Supp. 2014, Section 18), which relates to
15 Landowner's Bill Of Rights; adding the right to
16 demand a jury trial in certain condemnation
17 proceedings; amending 69 O.S. 2011, Section 1203,
18 which relates to land acquisition; updating statutory
19 citation; directing award of costs and attorney fees
20 if verdict exceeds specified amount; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 27 O.S. 2011, Section 11, is
24 amended to read as follows:

 Section 11. Where a condemnation proceeding is instituted by
any person, agency or other entity to acquire real property for use
as provided in Section 9 of this title and:

1 1. The final judgment is that the real property cannot be
2 acquired by condemnation;
3 2. The proceeding is abandoned; or
4 3. If the award of the jury exceeds the award of the court-
5 appointed commissioners by at least ten percent (10%),
6 the owner of any right, title or interest in such real property ~~may~~
7 shall be paid such sum as in the opinion of the court will reimburse
8 such owner for ~~his~~ reasonable attorney, appraisal and engineering
9 fees, actually incurred because of the condemnation proceedings.
10 Such determination by the court shall be appealable to the Supreme
11 Court in the same manner as any other final order. The final award
12 of such sums will be paid by the person, agency or other entity
13 which sought to condemn the property.

14 SECTION 2. AMENDATORY Section 1, Chapter 160, O.S.L.
15 2012 (27 O.S. Supp. 2014, Section 18), is amended to read as
16 follows:

17 Section 18. A. The Attorney General shall prepare a written
18 statement that includes a "Landowner's Bill of Rights" for a
19 property owner whose real property may be acquired by a person,
20 acquiring agency, or other entity through the use of the entity's
21 eminent domain authority under Title 27 or Title 66 of the Oklahoma
22 Statutes. The statement shall be made available to the public and
23 written in plain language designed to be easily understood by the
24 average property owner.

1 B. The Landowner's Bill of Rights shall notify each property
2 owner of the right to:

3 1. Notice of the proposed acquisition of the owner's property;

4 2. A bona fide good-faith effort to negotiate by the entity
5 proposing to acquire the property;

6 3. An assessment of damages to the owner that will result from
7 the taking of the property;

8 4. A hearing under Title 27 of the Oklahoma Statutes, including
9 a hearing on the assessment of damages; ~~and~~

10 5. An appeal of a judgment in a condemnation proceeding,
11 including an appeal of an assessment of damages; and

12 6. Demand a jury trial to appeal an assessment of damages in a
13 condemnation proceeding as long as the property owner holds any
14 right, title or interest in the real property subject to
15 condemnation.

16 C. The statement shall include:

17 1. The title "Landowner's Bill of Rights"; and

18 2. A description of:

19 a. the condemnation procedures provided by Title 27 of
20 the Oklahoma Statutes,

21 b. the condemning entity's obligations to the property
22 owner, and
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1 c. the property owner's options during a condemnation,
2 including the property owner's right to object to and
3 appeal an amount of damages awarded.

4 SECTION 3. AMENDATORY 69 O.S. 2011, Section 1203, is
5 amended to read as follows:

6 Section 1203. ~~(a)~~ A. The Department shall have authority to
7 acquire in fee simple in the name of the State of Oklahoma, by
8 purchase, donation or condemnation, lands or such interests therein
9 as in its discretion may be necessary for the purpose of
10 establishing, constructing and maintaining state highways or
11 relocations thereof, and facilities necessary or incident thereto,
12 including borrow areas, channel changes and deposits of rock,
13 gravel, sand and other road-building material for use in highway
14 construction and maintenance. Such acquisition may be for immediate
15 or future use. The Department may acquire reasonable amounts of
16 land adjacent to its normal right-of-way for the purpose of
17 screening unsightly areas adjacent to highways, landscaping safety
18 rest areas and scenic overlook areas.

19 ~~(b)~~ B. In determining the amount of land required, or width of
20 right-of-way necessary for such state highways, the Department shall
21 take into consideration the present and probable future needs in
22 connection with maintaining and reconstructing the highways, and the
23 prevention of traffic congestion and hazards.

1 ~~(e)~~ C. Except in instances where there are nonresident owners,
2 unknown heirs, imperfect titles and owners whose whereabouts cannot
3 be ascertained with reasonable diligence, the Department shall give
4 the owner an opportunity to sell the necessary lands or interests
5 therein to the State of Oklahoma before resort to condemnation may
6 be had. The Department may condemn such lands or interests therein
7 in the following manner:

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

1 boundaries and just compensation for the property taken, and amount
2 of injury done to the property, either directly or indirectly, which
3 they assess to the owner, which report must be filed and recorded by
4 the clerk. A certified copy of the report may be transmitted to the
5 county clerk of the county where the land lies, to be filed and
6 recorded by the county clerk (without further acknowledgment or
7 proof) in the same manner and with like force and effect as is
8 provided for the recording of deeds. The procedure for service by
9 publication as authorized herein shall be the same as provided by
10 law for service by publication in civil actions, except summons need
11 not be issued and served, and except as otherwise provided herein.

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

20 ~~(e)~~ ~~(1)~~ E. 1. The report of commissioners may be reviewed by
21 the district court, on written exceptions filed by either party in
22 the clerk's office within thirty (30) days after the filing of such
23 report, and the court, after hearing had, shall make such order
24 therein as right and justice may require, either by confirmation,

1 rejection or by ordering a new appraisement on good cause shown.
2 Provided, that in the event a new appraisement is ordered, the
3 Department shall have the continuing right of possession obtained
4 under the first appraisal, unless and until its right to condemn has
5 finally been determined otherwise; or either party may within sixty
6 (60) days after the filing of such report file with the clerk a
7 written demand for a trial by jury, in which case the amount of
8 damages shall be assessed by a jury, and the trial shall be
9 conducted and judgment entered in the same manner as civil actions
10 in the district court. If the party demanding such trial does not
11 recover a verdict more favorable to the party than the assessment of
12 the commissioners, all costs in the district court shall be taxed
13 against the party. No owner upon whom proper service by publication
14 has been had, as provided in this title, shall be let in to defend
15 after expiration of time for appeal or review of the report of
16 commissioners as above provided has elapsed. Provided, that if,
17 after the filing of exceptions to the report of commissioners as
18 hereinafter provided, the Department shall fail to establish its
19 right to condemn such premises, or any part thereof, the landowner
20 shall be restored to possession of the premises, or part thereof,
21 and the Department shall pay for any damages sustained through the
22 occupation by the Department, and if such damages cannot be
23 determined by amicable settlement they shall be determined by jury
24 trial in the same proceedings.

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

1 each condemnee and each attorney of record, or the date the notice
2 was published in compliance with the provisions hereof.

3 ~~(3)~~ 3. The time limits for filing an exception and demand for
4 jury trial, as prescribed in paragraph (A) of Section 55 of Title 66
5 of the Oklahoma Statutes, shall be calculated from the date the
6 report of the commissioners is filed in the case. On failure of the
7 court clerk to give notice within the time prescribed in paragraph
8 (B) of Section 55 of Title 66 of the Oklahoma Statutes, the court,
9 on 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)~~ F. Either party aggrieved may appeal to the Supreme Court
14 from the decision of the district court on exceptions to the report
15 of 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.~~ If the award of the
23 jury exceeds the award of the court-appointed commissioners by at
24 least ten percent (10%), the owner of any right, title or interest

1 in real property shall be paid such sum as in the opinion of the
2 court will reimburse such owner for reasonable attorney, appraisal
3 and engineering fees, actually incurred because of the condemnation
4 proceedings. The Department shall in all cases pay the cost of the
5 commissioners' fees and expenses, for their services, as determined
6 and ordered paid by the judge of the district court in which such
7 case is pending~~7~~; however, poundage fees and condemnation fees shall
8 only be paid by the department in the event of appeal resulting in a
9 jury verdict in excess of the commissioners' award, but under no
10 circumstances shall any poundage fees or condemnation fees be
11 assessed against the recipient of said award. And in case of review
12 or appeal, a certified copy of the final order or judgment shall be
13 transmitted by the clerk of the court, duly certified, to the proper
14 county clerk, to be filed and recorded as hereinabove provided for
15 the recording of the report, and with like effect.

16 ~~(g)~~ G. When an estate is being probated, or a minor or
17 incompetent person has a legal guardian, the administrator or
18 executor of the estate, or guardian of the minor or incompetent
19 person, shall have the authority to execute all instruments of
20 conveyance provided for in this title on behalf of the estate, minor
21 or incompetent person without other proceedings than approval by the
22 judge of the district court endorsed on the instrument of
23 conveyance.

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1 ~~(h)~~ H. "Just compensation", as used in this section, shall mean
2 the value of the property taken, and, in addition, any injury to any
3 part of the property not taken. Any special and direct benefits to
4 the part of the property not taken may be offset only against any
5 injury to the property not taken. If only a part of a tract is
6 taken, just compensation shall be ascertained by determining the
7 difference between the fair market value of the whole tract
8 immediately before the taking and the fair market value of that
9 portion left remaining immediately after the taking.

10 SECTION 4. This act shall become effective November 1, 2015.

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12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND CIVIL PROCEDURE,
13 dated 02/25/2015 - DO PASS, As Amended and Coauthored.

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