

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1175

BY: Bryant (John)

AS INTRODUCED

An Act relating to eminent domain and railroads;
amending 27 O.S. 1991, Section 12, which relates to
inverse condemnation; limiting certain attorney
fees; amending 66 O.S. 1991, Section 55, which
relates to judicial review of Commissioner's
report; limiting certain attorney fees; and
providing an effective date.

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

SECTION 1. AMENDATORY 27 O.S. 1991, Section 12, is
amended to read as follows:

Section 12. Where an inverse condemnation proceeding is
instituted by the owner of any right, title or interest in real
property because of use of his property in any public program or
project described in Section ~~4~~ 9 of this ~~act~~ title, the court,
rendering a judgment for the plaintiff in such proceeding and
awarding compensation for the taking of property, or the state's
attorney effecting a settlement of any such proceeding, shall
determine an award or allow to such plaintiff, as a part of such
judgment or settlement, such sum as will, in the opinion of the
court or the acquiring entity's attorney, respectively, reimburse

such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding. If the condemnee has a contingency fee contract with his attorney, then the maximum attorney fee that may be awarded is the lesser of twenty percent (20%) of the condemnee's first offer or ten percent (10%) of the total amount awarded by the court. A determination by the court shall be appealable to the Supreme Court in the same manner as any other final order.

SECTION 2. AMENDATORY 66 O.S. 1991, Section 55, is amended to read as follows:

Section 55. (A) The report of the commissioners may be reviewed by the district court, on written exceptions filed by either party, in the clerk's office within thirty (30) days after the filing of such report; and the court shall make such order therein as right and justice may require, either by confirmation, rejection or by ordering a new appraisal on good cause shown; or either party may within sixty (60) days after the filing of such report file with the clerk a written demand for a trial by jury, in which case the amount of damages shall be assessed by a jury, and the trial shall be conducted and judgment entered in the same manner as civil actions in the district court. If the party demanding such trial does not recover a verdict more favorable to him than the assessment of the commissioners, all costs in the district court may be taxed against him.

(B) Within ten (10) days after the report of commissioners is filed, the court clerk shall forward to the attorney of record for the condemnor, the attorney of record for each condemnee, and to all unrepresented condemnees, a copy of the commissioners' report and a notice stating the time limits for filing an exception or demand for jury trial as specified in ~~paragraph~~ subsection (A) of this section. This notice shall be on a form prepared by the Court Administrator,

which shall be approved by the Supreme Court, and shall be distributed to all clerks of the district court by said Court Administrator. If a party has been served by publication, the clerk shall forward a copy of the report of commissioners and notice of time limits for filing an exception or demand for jury trial to the last-known mailing address, if any, and shall cause a copy of the notice of time limits to be published in one (1) issue of a newspaper qualified to publish legal notices, as defined in Section 106 of Title 25 of the Oklahoma Statutes. After issuing the notices provided herein, the court clerk shall endorse on the notice form filed in the case, the date and that a copy of the report together with the notice was mailed to each party or his attorney of record, or the date the notice was published in compliance with the provisions hereof.

(C) The time limits for filing an exception and demand for jury trial, as prescribed in ~~paragraph~~ subsection (A) of this section, shall be calculated from the date the report of the commissioners is filed in the case. On failure of the court clerk to give notice within the time prescribed in ~~paragraph~~ subsection (B) of this section, the court, on application of any party, may extend the time for filing an exception to the report or a demand for trial by jury for a period not to exceed twenty (20) days from the date the application is heard.

(D) Where the part instituting a condemnation proceeding abandons such proceeding, or where the final judgment is that the real property cannot be acquired by condemnation or if the award of the jury exceeds the award of the court-appointed commissioners by at least ten percent (10%), then the owner of any right, title or interest in the property involved may be paid such sum as in the opinion of the court will reimburse such owner for his reasonable attorney, appraisal, engineering, and expert witness fees actually incurred because of the condemnation proceeding. The sum awarded

shall be paid by the party instituting the condemnation proceeding.
If the condemnee has a contingency fee contract with his attorney,
then the maximum attorney fee that may be awarded is twenty percent
(20%) of the difference between the condemnee's first offer and the
ultimate jury verdict if it exceeds said ten percent (10%) excess
over the Commissioner's award.

SECTION 3. This act shall become effective September 1, 1993.

44-1-5495

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