

ENGROSSED HOUSE
BILL NO. 2485

By: Hastings of the House
and
Morgan of the Senate

(eminent domain - condemnation - amending 27 O.S.,
Section 11 - amending 12 O.S., Section 727 -
repealing 27 O.S., Section 15 - codification -
effective date)

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11.1 of Title 27, unless there is created a duplication in numbering, reads as follows:

A. Offer of Judgment. Before a condemnation proceeding is brought pursuant to any state statute or municipal charter, including Section 2 of Title 27 of the Oklahoma Statutes, Section 53 et seq. of Title 66 of the Oklahoma Statutes and/or Section 1203 of Title 69 of the Oklahoma Statutes and/or Section 1708 of Title 69 of the Oklahoma Statutes, the condemnor must deliver an offer of purchase directed to the owner of property to be acquired. An offer of purchase shall be deemed to include all statutory costs, attorney, appraiser, engineer and expert witness fees unless otherwise stated. The offer of purchase may be delivered in person or by U.S. mail to the last-known address of the owner as shown by tax rolls.

B. Acceptance-Rejection. If an offer of purchase has been delivered by the condemnor, the owner to whom the offer of purchase

has been made shall, within thirty (30) days from the date of the offer deliver a written (1) acceptance, or (2) rejection to said offer of purchase. In the event an offer or counteroffer is accepted, the proceedings shall end and appropriate sale/purchase documents shall be signed and filed. If the condemnee fails to make a timely response, the offer of purchase made by the condemnor shall be deemed rejected. Likewise if the condemnor fails to make a timely response, the counteroffer of purchase shall be deemed rejected.

C. Condemnee's Expenses Paid When. If no offer or counteroffer is made or accepted and, upon later trial, the jury verdict is greater than the condemnor's highest offer prior to suit, the condemnee shall be entitled to recover all statutory court costs, attorney, engineering, appraisal and expert witness fees and other litigation expenses which are approved by the court as reasonable or which are agreed by the parties. These fees, costs and expenses may be added to the judgment entered in favor of the condemnee.

D. Condemnee's Expenses Not Paid When. If no offer or counteroffer is made or accepted and, upon later trial, the jury verdict is less than the condemnor's highest offer prior to suit, the condemnee shall not be entitled to recover fees, court costs, attorney, engineering, appraisal and expert witness fees or other litigation expenses.

E. No Expenses to Condemnor. In no event shall the condemnor be entitled to recover court costs, attorney, engineering, appraisal or other litigation expenses from the condemnee. All expenses shall be paid by the condemnor as part of the constitutional mandate that just compensation be awarded to the condemnee.

F. Offers Not Evidence. Evidence of an offer of purchase or counteroffer of purchase shall not be admissible in any trial.

G. Mediation and Arbitration. The parties to any condemnation proceeding may agree to mediate or arbitrate any controversy,

including the amount of just compensation to be paid a condemnee, and submit same to nonbinding mediation or binding arbitration pursuant to a separate written agreement; or the Uniform Arbitration Act, Section 801 et seq. of Title 15 of the Oklahoma Statutes; or the Dispute Resolution Act, Section 1801 of Title 12 of the Oklahoma Statutes. Mediation or arbitration may be initiated by any party to the condemnation proceeding at any time.

H. Statutes Not Repealed. The provisions of paragraphs 1 and 2 of Section 11 and Sections 12, 13, 14 and 15 of Title 27 of the Oklahoma Statutes; Section 53 of Title 66 of the Oklahoma Statutes; Section 1203 of Title 69 of the Oklahoma Statutes; and Section 1708 of Title 69 of the Oklahoma Statutes; or other statutes granting powers of eminent domain to any city, town or municipality, as well as agencies of the State of Oklahoma or public service companies are not repealed by this act.

I. Inverse Condemnation Exempt. This act shall not apply to inverse condemnation proceedings.

J. Waiver of Jury Trial. Parties may, by agreement, waive jury trial and litigate before a judge sitting without a jury.

K. Judgments in eminent domain proceedings shall include all fees and costs and shall bear prejudgment interest and postjudgment interest in the manner prescribed by Section 727 of Title 12 of the Oklahoma Statutes.

L. Effective Date. This section shall apply to all condemnation proceedings or condemnation proceedings filed on or after November 1, 2000, and shall become effective November 1, 2000.

SECTION 2. AMENDATORY 27 O.S. 1991, Section 11, is 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. The final judgment is that the real property cannot be acquired by condemnation;

2. The proceeding is abandoned; or

3. If the award of the jury exceeds the ~~award of the court-~~
~~appointed commissioners by at least ten percent (10%)~~ highest offer
prior to suit, the owner of any right, title or interest in such real property may be paid such sum as in the opinion of the court will reimburse such owner for his reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. Such determination by the court shall be appealable to the Supreme Court in the same manner as any other final order. The final award of such sums will be paid by the person, agency or other entity which sought to condemn the property.

SECTION 3. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of Section 13 of Title 27 of the Oklahoma Statutes are hereby declared to be mandatory policies for all condemnation proceedings.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 727, as last amended by Section 7, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 1999, Section 727), is amended to read as follows:

Section 727.

POSTJUDGMENT INTEREST

A. 1. Except as otherwise provided by this section, all judgments of courts of record, including costs and attorney fees authorized by statute or otherwise and allowed by the court, including judgments in which the power of eminent domain was exercised by a governmental entity, shall bear interest at a rate prescribed pursuant to this section.

2. Costs and attorney fees allowed by the court shall bear interest from the earlier of the date the judgment or order is pronounced, if expressly stated in the written judgment or order

awarding the costs and attorney fees, or the date the judgment or order is filed with the court clerk.

B. Judgments, including costs and attorney fees authorized by statute or otherwise and allowed by the court, against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to this section, but not to exceed ten percent (10%), from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the

rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year or part of a calendar year a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate specified shall apply and be stated in the journal entry of judgment. The rate of interest shall not exceed the lawful rate for that obligation. Postjudgment interest shall be calculated and accrued in the same manner as prescribed in subsection C of this section.

PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, or damage to real property resulting from the exercise of the power of eminent domain by a governmental entity is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the date the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by

the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is filed, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section, but not to exceed ten percent (10%) from the date the suit was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar

year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on that award shall begin to accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing either postjudgment interest or prejudgment interest as authorized by this section, interest shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

J. For purposes of computing postjudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all judgments of the district courts rendered on or after January 1, 2000. Effective January 1, 2000, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, 2000.

K. For purposes of computing prejudgment interest, the provisions of this section, including the amendments prescribed by this act, shall be applicable to all actions which are filed in the district courts on or after January 1, 2000, for which an award of prejudgment interest is authorized by the provisions of this section.

SECTION 5. REPEALER 27 O.S. 1991, Section 15, is hereby repealed.

SECTION 6. This act shall become effective November 1, 2000.

Passed the House of Representatives the 7th day of March, 2000.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 2000.

President of the Senate