

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 504

By: Easley

AS INTRODUCED

An Act relating to eminent domain; prescribing procedures prior to actions in condemnation; requiring offers of purchase; prescribing procedures with respect to acceptance or rejection of offers; authorizing recovery of certain expenses and fees; prohibiting recovery of certain expenses and fees under certain conditions; prohibiting recovery of certain amounts by condemnors; providing certain evidence inadmissible; authorizing certain mediation or arbitration; exempting inverse condemnation; providing for waiver of jury trial; prescribing applicability of procedures; amending 27 O.S. 1991, Section 11, which relates to eminent domain; modifying basis upon which certain fees reimbursed; requiring mandatory application of certain policies; providing for codification; and providing an 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 Purchase. Before a condemnation proceeding is brought pursuant to any state statute or municipal charter, including Section 2 of Title 27, Section 53 et seq. of Title 66, and Sections 1203 and 1708 of Title 69 of the Oklahoma Statutes, the condemnor must deliver an offer of purchase directed to the owner of the 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 respond within thirty (30) days from the date of delivery of the offer by delivering to the condemnor a written acceptance, rejection, or counteroffer to the 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. 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 a later trial, the jury verdict is ten percent (10%) greater than the condemnor's highest offer prior to suit, the condemnee shall be entitled to recover all statutory court costs, attorney, appraiser, engineer, appraisal and expert witness fees and other litigation expenses which are approved by the court as reasonable or which are agreed to 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 a later trial, the jury verdict is ten percent (10%) less than the condemnor's highest offer prior to suit, the condemnee shall not be entitled to recover fees, court costs, attorney, appraiser, engineer, 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, appraiser, engineer, 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 action or proceeding for any purpose except to enforce a settlement arising out of an offer of judgment or counteroffer of judgment.

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

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

J. Effective Date. This section shall apply to all condemnation proceedings or condemnation proceedings filed on or after November 1, 2001.

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 by ten percent (10%), the owner of any right, title or interest in such real property may be paid ~~such~~ the sum as in the

opinion of the court will reimburse ~~such~~ the 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. This act shall become effective November 1, 2001.

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