

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1772

By: Laster, Crain, Jolley,  
Lerblance, Lawler, Shurden,  
Gumm, Garrison, Eason  
McIntyre, Wilson and  
Crutchfield of the Senate

and

Sullivan of the House

COMMITTEE SUBSTITUTE

( eminent domain - limiting power of eminent domain -  
codification -  
emergency )

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 22-104, is  
amended to read as follows:

Section 22-104. Every municipality shall have the right to:

1. Engage in any business or enterprise which may be engaged in  
by a person, firm, or corporation by virtue of a franchise from the  
municipality and to do all things necessary and proper in the  
discretion of the governing body of the municipality pursuant to the  
authority granted to it by the Constitution and laws of this state  
to maintain said business or enterprise for the benefit of the  
municipality;

2. Acquire, own, and maintain, within or without its corporate  
limits, real estate for sites and rights-of-way for any municipal  
purpose including but not limited to public utility and public park  
purposes, and for the location thereon of waterworks, electric light  
and gas plants and other facilities for generating or distributing

energy, ports, airports, hospitals, quarantine stations, garbage reduction plants, pipelines for the transmission and transportation of gas, water, stormwater, and sewerage, and for any plant for the manufacture of any material for public improvement purposes and public buildings;

3. Exercise the right of eminent domain for ~~any municipal purpose~~ the purposes enumerated in paragraph 2 of this section, and subject to the provisions of Section 2 of this act, within or without its corporate limits, and to establish, lay, and operate any plant or pipeline upon any land or right-of-way taken pursuant to eminent domain. Any business or profession which is affected by the right of eminent domain as exercised pursuant to the provisions of this section shall be considered as a property right of the owner thereof and proper allowance therefor shall be made;

4. Exercise the right to manufacture any material for public improvement purposes, and to barter or exchange the same for other material to be used in public improvements in the municipality, or to sell the same;

5. Issue and sell bonds subject to and by virtue of the provisions of the Constitution of this state and in the manner and form provided by law in order to raise the monies to establish and maintain public utilities, parks, and improvements;

6. Sell or lease to any consumer or corporation, within or without its boundaries, the commodities and services supplied by such municipally owned or controlled public utility, business enterprise, or improvement and to enter into such short- or long-term contracts, agreements, and stipulations and do all things necessary and proper to further the capability of the municipality pursuant to the authority granted to it by the Oklahoma Statutes and the Constitution of this state to provide said commodities and services as may be deemed appropriate by the governing body of the municipality;

7. Lease at a stipulated rental rate any public improvement or utility from any person, firm, or corporation which will contract to furnish the same. Any such rental contract shall reserve for the municipality the option to purchase the improvement or utility in the future; and

8. Exercise powers necessary to carry out the purpose of the Local Development Act as set forth in Section 854 of Title 62 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 40-109, is amended to read as follows:

Section 40-109. Before any redevelopment project shall be initiated under this act, a relocation assistance plan shall be approved by the redevelopment trust proposing to undertake the project. Such relocation assistance plan shall:

1. Provide for relocation payments to be made to persons, families and businesses who move from real property or who move personal property from real property as a result of the acquisition of the real property by the city in carrying out the provisions of this act, the plan to specify the time and manner of any such payments agreed to;

2. Provide that no persons or families residing in the project area shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by such displaced person or family at rents within their ability to pay. Such housing units shall be suitable to the needs of such displaced persons or families and must be a decent, safe, sanitary and otherwise standard dwelling;

3. Provide for the payment of any damages sustained by a retailer by reason of the liquidation of inventories necessitated by relocation; and

4. Provide for ~~conformance with requirements promulgated~~ relocation assistance equivalent to that required and allowable

under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, ~~as amended~~ 42 U.S. Code, Section 4601 et seq., regardless of whether the project is otherwise subject to such federal act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5.1 of Title 27, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Property Owners Protection Act".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5.2 of Title 27, unless there is created a duplication in numbering, reads as follows:

A. No public entity may exercise the power of eminent domain or allow the exercise of such power by an entity to which such power has been delegated, to take property for use solely for economic development.

B. For the purposes of this section, the term "economic development" means activity designed to increase tax revenue, tax base, employment, or general economic health.

C. The prohibition in this section shall not prohibit the exercise of eminent domain to eliminate blight pursuant to the Neighborhood Redevelopment Act and Sections 38-101 through 38-123 of Title 11 of the Oklahoma Statutes, relating to urban renewal, or to clear slums pursuant to the Oklahoma Housing Authorities Act.

SECTION 5. AMENDATORY 27 O.S. 2001, Section 9, is amended to read as follows:

Section 9. The provisions of Section 9 et seq. of this act ~~act~~ title shall be applicable to the acquisition of ~~real~~ property under the laws of this state for public use in any project or program in which federal, state or local funds are used.

SECTION 6. AMENDATORY 27 O.S. 2001, Section 10, is amended to read as follows:

Section 10. Any person, agency or other entity acquiring ~~real~~ property for public use under the laws of this state shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire ~~real~~ property, whichever is the earlier, reimburse the owner for expenses he necessarily incurred for:

1. Recording fees, transfer taxes and similar expenses incidental to conveying such ~~real~~ property;

2. Penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such ~~real~~ property; and

3. The pro rata portion of ~~real~~ property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring entity, or the effective date of possession of such ~~real~~ property by the acquiring entity, whichever is the earlier.

SECTION 7. AMENDATORY 27 O.S. 2001, Section 11, is amended to read as follows:

Section 11. A. 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%), 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.

B. If an owner of any right, title, or interest in such property does not demand a jury trial, then the party demanding a

jury trial shall have the burden of recovering a verdict ten percent (10%) more favorable to that party than the award of the court-appointed commissioners; otherwise, the owner of any right, title, or interest in such property may be paid such sums as in the opinion of the court will reimburse such owner for reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings.

C. 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 8. AMENDATORY 27 O.S. 2001, 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~~ the property in any public program or project described in Section ~~±~~ 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. A determination by the court shall be appealable to the Supreme Court in the same manner as any other final order.

SECTION 9. AMENDATORY 27 O.S. 2001, Section 13, is amended to read as follows:

Section 13. Any person, acquiring agency or other entity acquiring ~~real~~ property for any public project or program described in Section 9 of this title shall comply with the following policies:

1. Every reasonable effort shall be made to acquire, expeditiously, ~~real~~ property by negotiation.

2. ~~Real property~~ Property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head or governing body of the entity acquiring ~~real~~ property, if so mandated by federal law or regulation, may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value as such value is defined by federal law or regulation.

3. Before the initiation of negotiations for ~~real~~ property, an amount shall be established which is reasonably believed to be just compensation therefor and such amount shall be promptly offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such ~~real~~ property. Any decrease or increase in the fair market value of ~~real~~ property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the ~~real~~ property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the ~~real~~ property acquired and for damages to remaining ~~real~~ property shall be separately stated.

4. No owner shall be required to surrender possession of ~~real~~ property before the agreed purchase price is paid or deposited with

the state court, in accordance with applicable law, for the benefit of the owner of an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

5. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying ~~real~~ property shall be required to move from a dwelling, assuming a replacement dwelling, as required by the Oklahoma Relocation Assistance Act, will be available, or to move his business or farm operation without at least ninety (90) days' written notice from the date by which such move is required.

6. If any owner or tenant is permitted to occupy the ~~real~~ property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

7. In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

8. If an interest in ~~real~~ property is to be acquired by exercise of power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring authority shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his ~~real~~ property.

9. If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire that remnant shall be made. For the purposes of this section, an uneconomic remnant is a parcel of ~~real~~ property in which the owner is left with an interest after the partial acquisition of the

property of the owner which has little or no value or utility to the owner.

10. A person whose ~~real~~ property is being acquired in accordance with this title may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, any part thereof, any interest therein, or any compensation paid therefor, as such person shall determine.

11. As used in this section:

- a. "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information; and
- b. "Acquiring agency" means:
  - (1) a state agency which has the authority to acquire property by eminent domain pursuant to state law, and
  - (2) a state agency or person which does not have such authority, to the extent provided by regulation.

SECTION 10. AMENDATORY 27 O.S. 2001, Section 16, is amended to read as follows:

Section 16. A. In every case wherein private property is taken or damaged for public use, the person whose property is taken or damaged shall be entitled to just compensation.

B. "Just compensation", as used in subsection A of this section, shall mean the value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be offset only against any injury to the property not taken. If only a part of a tract is taken, just compensation shall be

ascertained by determining the difference between the fair market value of the whole tract immediately before the taking and the fair market value of that portion left remaining immediately after the taking.

C. Any public entity exercising the power of eminent domain shall provide relocation assistance and follow procedures equivalent to those required and provided in the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S. Code, Section 4601 et seq., regardless of whether the project is otherwise subject to such federal act.

SECTION 11. AMENDATORY 62 O.S. 2001, Section 854, as last amended by Section 2, Chapter 210, O.S.L. 2005 (62 O.S. Supp. 2005, Section 854), is amended to read as follows:

Section 854. In addition to any other powers conferred by law, a city, town or county may exercise any powers necessary to carry out the purpose of this act, including power to:

1. Establish districts and create plans pursuant to the provisions of this act;
2. Cause project plans to be prepared, to approve the plans, and to implement the provisions and effectuate the purposes of the plans;
3. Cause bonds to be issued by public entities as provided for in Section 863 of this title;
4. Apportion local taxes or local fees and direct the use of local taxes and local fees for the purpose provided for in this act. Pursuant to Section 6C of Article X of the Constitution of the State of Oklahoma, a direction of apportionment may be prospective and may continue for one (1) or more years, and apportioned tax increments may be pledged beyond the current fiscal year to the repayment of indebtedness of other public entities, notwithstanding the provisions of Section 26 of Article X of the Constitution of the State of Oklahoma or any other provisions of law;

5. Enter into any contracts or agreements determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

6. Receive, from the federal government or the state, loans and grants for, or in aid of a project and to receive contributions from any other source to defray project costs;

7. Grant tax incentives or exemptions in the manner provided for in this act;

8. Acquire by purchase, donation or lease, and own, convey, lease, mortgage, or dispose of land and other property, real or personal, or rights or interests therein;

9. Clear and improve property acquired by it pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration, or repair of the property;

10. Cause parks, playgrounds, or schools, including capital improvements to public schools, or water, sewer, or drainage facilities or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed, or furnished in connection with the project;

11. Lay out and construct, alter, relocate, change the grade of, make specific repairs upon, or discontinue public ways and construct sidewalks in, or adjacent to, the project area;

12. Cause sidewalks, ways for vehicular travel, playgrounds, or water, sewer, or drainage facilities and similar improvements to be constructed within the project area for the particular benefit of the project area or those dwelling or working in it;

13. Adopt ordinances or resolutions or repeal or modify such ordinances or resolutions or establish exceptions to existing ordinances and resolutions regulating the design, construction, and use of buildings;

14. Sell, mortgage, lease, transfer, or dispose of any property, or interest therein, acquired by it pursuant to the project plan for development, redevelopment, or rehabilitation in accordance with the plan, upon such terms and conditions determined by the governing body to be appropriate for achieving the objectives of the project plan; provided, in the event of disposition by lease or sublease to a lessee not entitled to a tax exemption, the improvements placed thereon shall not be entitled to a tax exemption;

15. Incur project costs;

16. Designate a public entity to exercise the powers enumerated in this section, except paragraphs 1, 4 and 7 of this section;

17. Invest project revenues as provided in this act; and

18. Do all things necessary or convenient to carry out the powers granted in this act and otherwise authorized by the laws of this state. Provided, nothing in the Local Development Act shall be construed to grant a public entity the power of eminent domain or authorize the exercise of such power.

SECTION 12. AMENDATORY 63 O.S. 2001, Section 1092.2, is amended to read as follows:

Section 1092.2 A. When any department, agency or instrumentality of the state, or any county, municipality, or other political subdivision of the state, or any other public or private entity subject to the provisions of the ~~Federal~~ federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, ~~as amended, Public Laws 91-646, and 100-17, Title IV~~ 42 U.S. Code, Section 4601 et seq., hereinafter referred to as the Federal Uniform Relocation Act, undertakes any project which results in the acquisition of real property or in any person being displaced from the home, business, or farm of such person, such department, agency or instrumentality of the state, county, municipality or other political subdivision of the state, or other public or private

entity ~~may~~ is hereby authorized and directed to provide relocation assistance, and make relocation payments to such displaced person and do such other acts and follow such procedures and practices as may be necessary to comply with the provisions of the ~~Federal~~ federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S. Code, Section 4601 et seq. Any public entity exercising the power of eminent domain shall provide relocation assistance and follow procedures and practices equivalent to those required under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S. Code, Section 4601 et seq., regardless whether such project is otherwise subject to the requirements of such federal act.

B. Any payment made or to be made pursuant to the ~~authority granted in~~ requirements of this section shall be for compensating or reimbursing the displaced person or owner of real property in accordance with or equivalent to the requirements of the ~~Federal~~ federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S. Code, Section 4601 et seq., and such payment shall not for any purpose be deemed or considered compensation for real property acquired or compensation for damages to remaining property.

SECTION 13. AMENDATORY 63 O.S. 2001, Section 1094, is amended to read as follows:

Section 1094. Funds appropriated or otherwise available to any ~~state agency~~ entity for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this act as applied to that program or project.

SECTION 14. AMENDATORY 69 O.S. 2001, Section 1203, is amended to read as follows:

Section 1203. ~~(a)~~ A. The Department of Transportation shall have authority to acquire in fee simple in the name of the State of

Oklahoma, by purchase, donation or condemnation, lands or such interests therein 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, including borrow areas, channel changes and deposits of rock, gravel, sand and other road building material for use in highway construction and maintenance. Such acquisition may be for immediate or future use. The Department may acquire reasonable amounts of land adjacent to its normal right-of-way for the purpose of screening unsightly areas adjacent to highways, landscaping safety rest areas and scenic overlook areas.

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

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

The district judge of the county in which the real property may be situated, upon petition of either party, and after ten (10) days' notice to the opposite party, either by personal service or by leaving a copy thereof at his usual place of residence with some member of his family over fifteen (15) years of age, or, in the case of nonresidents, unknown heirs or other persons whose whereabouts cannot be ascertained, by publication in two issues of a newspaper in general circulation in the county (the ten-day period to begin with the first publication), shall direct the sheriff of the county

to summon three disinterested freeholders, to be selected by the judge as commissioners, and who shall not be interested in a like question. The commissioners shall be sworn to perform their duties impartially and justly; and they shall inspect the ~~real~~ property and consider the injury which the owner may sustain by reason of the condemnation, and they shall assess the just compensation to which the owner is entitled; and they shall forthwith make a report in writing to the clerk of the court, setting forth the quantity, boundaries and just compensation for the property taken, and amount of injury done to the property, either directly or indirectly, which they assess to the owner, which report must be filed and recorded by the clerk. In determining the just compensation to be awarded to the owner, the commissioners shall employ three methodologies to value the property to be taken. These methodologies shall be the cost approach, the income approach, and the comparable sales approach, as these methods are generally prescribed and used by appraisers to value property. A certified copy of the report may be transmitted to the county clerk of the county where the land lies, to be filed and recorded by the county clerk (without further acknowledgment or proof) in the same manner and with like force and effect as is provided for the recording of deeds. The procedure for service by publication as authorized herein shall be the same as provided by law for service by publication in civil actions, except summons need not be issued and served, and except as otherwise provided herein.

~~(d)~~ D. Immediately upon payment to the clerk of the court for the use of the owner the sum so assessed and reported to the court clerk as aforesaid, the Department shall thereby be authorized to enter upon the condemned premises, and remove and dispose of any obstructions thereon, by sale or otherwise. If the landowner shall refuse to deliver up possession to the Department, the court shall

issue an order to the sheriff of the county to place the Department in possession thereof.

~~(e)~~—(1) E. 1. The parties shall accept the report of the commissioners as the just compensation for the property being taken unless the party can show fraud, conspiracy, or undue influence as between one party, or a representative thereof, and the court-appointed commissioners. In the event such fraud, conspiracy, or undue influence is evident, 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, after hearing had, shall make such order therein as right and justice may require, either by confirmation, rejection or by ordering a new appraisement on good cause shown. Provided, that in the event a new appraisement is ordered, the Department shall have the continuing right of possession obtained under the first appraisal, unless and until its right to condemn has finally been determined otherwise; 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 the party than the assessment of the commissioners, all costs in the district court shall be taxed against the party. No owner upon whom proper service by publication has been had, as provided in this title, shall be let in to defend after expiration of time for appeal or review of the report of commissioners as above provided has elapsed. Provided, that if, after the filing of exceptions to the report of commissioners as hereinafter provided, the Department shall fail to establish its right to condemn such premises, or any part thereof, the landowner shall be restored to possession of the premises, or

part thereof, and the Department shall pay for any damages sustained through the occupation by the Department, and if such damages cannot be determined by amicable settlement they shall be determined by jury trial in the same proceedings.

~~(2)~~ 2. 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 (A) of Section 55 of Title 66 of the Oklahoma Statutes. The attorney of record for the condemnor shall provide the clerk of the court with the names and last-known addresses of the parties to whom notice and the report of the commissioners shall be mailed, sufficient copies of the notice and report to be mailed, and pre-addressed, postage-paid envelopes. 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 issue of a newspaper qualified to publish legal notices, as defined in Title 25 of the Oklahoma Statutes, Section 106. 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 form filed in the case was forwarded to each condemnee and each attorney of record, or the date the notice was published in compliance with the provisions hereof.

~~(3)~~ 3. The time limits for filing an exception and demand for jury trial, as prescribed in paragraph (A) of Section 55 of Title 66

of the Oklahoma Statutes, 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 (B) of Section 55 of Title 66 of the Oklahoma Statutes, 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.

~~(f)~~ F. Either party aggrieved may appeal to the Supreme Court from the decision of the district court on exceptions to the report of commissioners, or jury trial; but such review or appeal shall not delay the prosecution of the work on such highway over the premises in question if the award of commissioners, or jury, as the case may be, has been deposited with the clerk for such owner, and in no case shall the Department be liable for the costs on such review or appeal unless the owner of the real property shall be adjudged entitled, upon either review or appeal, to a greater amount of damages than was awarded by the commissioners. The Department shall in all cases pay the cost of the commissioners' fees and expenses, for their services, as determined and ordered paid by the judge of the district court in which such case is pending, however, poundage fees and condemnation fees shall only be paid by the department in the event of appeal resulting in a jury verdict in excess of the commissioners' award, but under no circumstances shall any poundage fees or condemnation fees be assessed against the recipient of said award. And in case of review or appeal, a certified copy of the final order or judgment shall be transmitted by the clerk of the court, duly certified, to the proper county clerk, to be filed and recorded as hereinabove provided for the recording of the report, and with like effect.

~~(g)~~ G. When an estate is being probated, or a minor or incompetent person has a legal guardian, the administrator or

executor of the estate, or guardian of the minor or incompetent person, shall have the authority to execute all instruments of conveyance provided for in this title on behalf of the estate, minor or incompetent person without other proceedings than approval by the judge of the district court endorsed on the instrument of conveyance.

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

SECTION 15. AMENDATORY 69 O.S. 2001, Section 1280, is amended to read as follows:

Section 1280. A. Outdoor advertising and property rights pertaining thereto may be acquired by the Department of Transportation under agreement between the Department, the owner of the outdoor advertising and the owner of the land upon which the outdoor advertising is located if the outdoor advertising is lawfully in existence pursuant to Sections 1274 and 1275 of this title and located within areas prohibited to advertising by the Highway Advertising Control Act of 1968. The compensation must be based on fair market value.

B. ~~Outdoor~~ For condemnation purposes only, outdoor advertising is a trade fixture, and the property rights pertaining thereto shall be considered real property and owners shall be awarded just and fair compensation for its taking.

C. If the Department and the owners are unable to agree upon the amount of compensation to be paid by the Department, the

Department may acquire by condemnation such outdoor advertising and property rights pertaining thereto, including the leasehold or easement rights of the outdoor advertising company, the outdoor advertising structure and the permit rights described in Section 1277 of this title. This right of eminent domain or condemnation shall be exercised in the manner provided by law.

D. Any outdoor advertising authorized under Sections 1274 and 1275 of this title which does not conform with standards set forth in Sections 1274 and 1275 of this title except as provided in Section 1278 of this title, and any outdoor advertising prohibited by law and not subject to compensation under other terms of this section shall be a public nuisance. The Department shall give notice by certified mail to the owner of the sign and to the owner of the land upon which the outdoor advertising is located, ordering the notified owners to cause the outdoor advertising to conform with rules relating to outdoor advertising or to remove prohibited outdoor advertising. If the owner of the sign or the landowner fails to act within ninety (90) days after mailing of the notice, the Department may, at its discretion, remove the outdoor advertising device.

E. All persons or business entities engaged in the outdoor advertising business, which includes but is not limited to, the erection, maintenance and selling of advertising space on and along the interstate and federal-aid primary highways of this state, shall, not later than October 31, 1972, furnish the Director of the Department of Transportation a written inventory of all outdoor advertising signs, displays or devices erected and being maintained by the person or entity. The inventory shall include, with respect to each such sign, not less than the following information:

1. Location and dimensions of the sign;
2. Distance from the nearest edge of the right-of-way;
3. Date erected; and

4. Name and address of the owner of the property on which the sign is located.

F. For failure to comply with the conditions set forth in subsection E of this section, the Department may declare such outdoor advertising signs, displays or devices to be a public nuisance and remove them in the manner provided by subsection D of this section.

G. Regardless of any local ordinance requiring amortization, the compensation provided in subsections A through C of this section and subsections (a) through (d) of Section 1279 of this title shall be the exclusive remedy for taking such outdoor advertising and property rights pertaining thereto. Such compensation shall also be required for the partial taking or diminishment of the value of such outdoor advertising and property right caused by any local ordinance which forces the owners of such outdoor advertising to downsize, reduce the height or width or otherwise alter legal nonconforming signs.

SECTION 16. AMENDATORY 69 O.S. 2001, Section 1708, is amended to read as follows:

Section 1708. ~~(a)~~ A. Except in instances where there are nonresident owners, unknown heirs, imperfect titles, and owners whose whereabouts cannot be ascertained with reasonable diligence, the Authority shall give the owner an opportunity to sell the necessary land or interests therein to the Authority before resort to condemnation may be had.

~~(b)~~ B. The Authority may condemn such lands or interests therein in the following manner:

~~(1)~~ 1. The district judge of the county in which the ~~real~~ property may be situated, upon petition of either party, and after ten (10) days' notice to the opposite party, either by personal service or by leaving a copy thereof at his usual place of residence with some member of his family over fifteen (15) years of age, or,

in the case of nonresidents, unknown heirs, or other persons whose whereabouts cannot be ascertained, by publication in two issues of a weekly newspaper in general circulation in the county (the ten-day period to begin with the first publication), shall direct the sheriff of the county to summons three disinterested freeholders, to be selected by the judge as commissioners, and who shall not be interested in a like question. The commissioners shall be sworn to perform their duties impartially and justly; and they shall inspect the ~~real~~ property and consider the just compensation to which the owner is entitled, and they shall forthwith make report in writing to the clerk of the court, setting forth the quantity, boundaries and just compensation for the property taken, and amount of injury done to the property, either directly or indirectly, which they assess to the owner; which report must be filed and recorded by the clerk, and a certified copy thereof may be transmitted to the county clerk of the county where the land lies, to be by him filed and recorded (without further acknowledgment of proof) in the same manner and with like force and effect as is provided for the recording of deeds. Procedure for service by publication as authorized herein shall be the same as provided by law for service by publication in civil actions, except summons need not be issued and served, and except as otherwise provided herein. 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. 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 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-;

~~(2)~~ 2. Immediately upon payment to the clerk of the court for the use of the owner the sum so assessed and reported to him as aforesaid, the Authority shall thereby be authorized to enter upon the condemned premises, and remove and dispose of any obstructions thereon, by sale or otherwise. If the landowner shall refuse to deliver up possession to the Authority, the court shall issue an order to the sheriff of the county to place the Authority in possession thereof-;

~~(3)~~ 3. The report of 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, after hearing had, shall make such order therein as right and justice may require, either by confirmation, rejection or by ordering a new appraisement on good cause shown. Provided, that in the event a new appraisement is ordered, the Authority shall have the continuing right of possession obtained under the first appraisal, unless and until its right to condemn has finally been determined otherwise; 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. No owner upon whom proper service by publication has been had as provided in this article shall be let in to defend after expiration of time for appeal or review of the report of commissioners, as above provided, has elapsed. Provided, that if, after the filing of exceptions to the report of commissioners as herein provided, the Authority shall fail to establish its right to condemn the premises, or any part thereof, the landowner shall be restored to possession of the premises, or part thereof, and the Authority shall pay him for any damages sustained through the occupation by the Authority, and if the damages cannot be determined by amicable settlement they shall be determined by jury trial in the same proceedings. The time limits for filing an exception and demand for jury trial shall be calculated from the date the report of commissioners is filed in the case. On failure of the court clerk to give notice within the time prescribed in paragraph (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; and

~~(4)~~ 4. Either party aggrieved may appeal to the Supreme Court from the decision of the district court on exception to the report of commissioners, or jury trial; but such review or appeal shall not delay the prosecution of the work on such turnpike project over the premises in question if the award of commissioners, or jury, as the case may be, has been deposited with the clerk for the owner. The Authority shall in all cases pay the cost and expenses of the first assessment. And in case of review or appeal, a certified copy of the final order or judgment shall be transmitted by the clerk of the court, duly certified, to the proper county clerk, to be by him filed and recorded as hereinabove provided for the recording of the report, and with like effect.

~~(e)~~ C. Where an estate is being probated, or a minor or incompetent person has a legal guardian, the administrator or executor of such estate, or the guardian of such minor or incompetent person, shall have authority to execute all instruments of conveyance provided for in this article on behalf of the estate, minor or incompetent person without other proceedings than approval by the judge of the district court endorsed on the instrument of conveyance.

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

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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MD

04/04/06