

THE HOUSE OF REPRESENTATIVES  
Monday, March 5, 2007

Committee Substitute for  
House Bill No. 1832

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1832 - By: KIESEL, THOMPSON  
AND INMAN of the House and COATES of the Senate.

An Act relating to eminent domain; amending 27 O.S. 2001, Section 11, which relates to reimbursement of expenses in certain circumstances; providing for burden of proof when jury trial is not demanded; amending 69 O.S. 2001, Section 1203, which relates to roads, bridges, and ferries; providing for three methodologies in awarding just compensation in condemnation actions; mandating acceptance of just compensation valuation; providing exceptions to acceptance of just compensation valuation; amending 69 O.S. 2001, Section 1280, which relates to acquisition of outdoor advertising and property rights by the Department of Transportation; modifying definition of outdoor advertising for condemnation purposes; providing for acquisition of leasehold, easement rights, the outdoor advertising structure, and permit rights by the Department of Transportation if compensation is not agreed upon; and providing an effective date.

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

1 SECTION 1. AMENDATORY 27 O.S. 2001, Section 11, is amended to read as  
2 follows:

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

6 1. The final judgment is that the ~~real~~ property cannot be acquired by  
7 condemnation;

1           2. The proceeding is abandoned; or

2           3. If the award of the jury exceeds the award of the court-appointed commissioners  
3 by at least ten percent (10%),  
4 the owner of any right, title or interest in such ~~real~~ property may be paid such sum as in  
5 the opinion of the court will reimburse such owner for ~~his~~ the reasonable attorney,  
6 appraisal and engineering fees, actually incurred because of the condemnation  
7 proceedings.

8           B. If an owner of any right, title, or interest in such property does not demand a  
9 jury trial, then the party demanding a jury trial shall have the burden of recovering a  
10 verdict ten percent (10%) more favorable to that party than the award of the court-  
11 appointed commissioners; otherwise, the owner of any right, title, or interest in such  
12 property may be paid such sums as in the opinion of the court will reimburse such owner  
13 for reasonable attorney, appraisal, and engineering fees actually incurred because of the  
14 condemnation proceedings.

15           C. Such determination by the court shall be appealable to the Supreme Court in the  
16 same manner as any other final order. The final award of such sums will be paid by the  
17 person, agency or other entity which sought to condemn the property.

18           SECTION 2.    AMENDATORY    69 O.S. 2001, Section 1203, is amended to read  
19 as follows:

20           Section 1203. ~~(a)~~ A. The Department shall have authority to acquire in fee simple  
21 in the name of the State of Oklahoma, by purchase, donation or condemnation, lands or  
22 such interests therein as in its discretion may be necessary for the purpose of

1 establishing, constructing and maintaining state highways or relocations thereof, and  
2 facilities necessary or incident thereto, including borrow areas, channel changes and  
3 deposits of rock, gravel, sand and other road building material for use in highway  
4 construction and maintenance. Such acquisition may be for immediate or future use.  
5 The Department may acquire reasonable amounts of land adjacent to its normal  
6 right-of-way for the purpose of screening unsightly areas adjacent to highways,  
7 landscaping safety rest areas and scenic overlook areas.

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

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

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

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

21 ~~(d)~~ D. Immediately upon payment to the clerk of the court for the use of the owner  
22 the sum so assessed and reported to the court clerk as aforesaid, the Department shall

1 thereby be authorized to enter upon the condemned premises, and remove and dispose of  
2 any obstructions thereon, by sale or otherwise. If the landowner shall refuse to deliver  
3 up possession to the Department, the court shall issue an order to the sheriff of the  
4 county to place the Department in possession thereof.

5 ~~(e)~~ ~~(1)~~ E. 1. The condemning authority shall accept the report of the  
6 commissioners as the just compensation for the property being taken unless the  
7 condemning authority can show fraud, conspiracy, or undue influence as between one  
8 party, or a representative thereof, and the court-appointed commissioners. In the event  
9 such fraud, conspiracy, or undue influence is evident, the report of commissioners may be  
10 reviewed by the district court, on written exceptions filed by either party in the clerk's  
11 office within thirty (30) days after the filing of such report, and the court, after hearing  
12 had, shall make such order therein as right and justice may require, either by  
13 confirmation, rejection or by ordering a new appraisal on good cause shown.

14 Provided, that in the event a new appraisal is ordered, the Department shall have  
15 the continuing right of possession obtained under the first appraisal, unless and until its  
16 right to condemn has finally been determined otherwise; or either party may within sixty  
17 (60) days after the filing of such report file with the clerk a written demand for a trial by  
18 jury, in which case the amount of damages shall be assessed by a jury, and the trial shall  
19 be conducted and judgment entered in the same manner as civil actions in the district  
20 court. If the party demanding such trial does not recover a verdict more favorable to the  
21 party than the assessment of the commissioners, all costs in the district court shall be  
22 taxed against the party. No owner upon whom proper service by publication has been

1 had, as provided in this title, shall be let in to defend after expiration of time for appeal  
2 or review of the report of commissioners as above provided has elapsed. Provided, that if,  
3 after the filing of exceptions to the report of commissioners as hereinafter provided, the  
4 Department shall fail to establish its right to condemn such premises, or any part  
5 thereof, the landowner shall be restored to possession of the premises, or part thereof,  
6 and the Department shall pay for any damages sustained through the occupation by the  
7 Department, and if such damages cannot be determined by amicable settlement they  
8 shall be determined by jury trial in the same proceedings.

9 ~~(2)~~ 2. Within ten (10) days after the Report of Commissioners is filed, the court  
10 clerk shall forward to the attorney of record for the condemnor, the attorney of record for  
11 each condemnee, and to all unrepresented condemnees, a copy of the commissioners'  
12 report and a notice, stating the time limits for filing an exception or demand for jury trial  
13 as specified in paragraph (A) of Section 55 of Title 66 of the Oklahoma Statutes. The  
14 attorney of record for the condemnor shall provide the clerk of the court with the names  
15 and last-known addresses of the parties to whom notice and the report of the  
16 commissioners shall be mailed, sufficient copies of the notice and report to be mailed, and  
17 pre-addressed, postage-paid envelopes. This notice shall be on a form prepared by the  
18 Court Administrator, which shall be approved by the Supreme Court, and shall be  
19 distributed to all clerks of the district court by said Court Administrator. If a party has  
20 been served by publication, the clerk shall forward a copy of the report of commissioners  
21 and notice of time limits for filing an exception or demand for jury trial to the last-known  
22 mailing address, if any, and shall cause a copy of the notice of time limits to be published

1 in one issue of a newspaper qualified to publish legal notices, as defined in Title 25 of the  
2 Oklahoma Statutes, Section 106. After issuing the notices provided herein the court  
3 clerk shall endorse on the notice form filed in the case the date and that a copy of the  
4 report together with the notice form filed in the case was forwarded to each condemnee  
5 and each attorney of record, or the date the notice was published in compliance with the  
6 provisions hereof.

7 ~~(3)~~ 3. The time limits for filing an exception and demand for jury trial, as  
8 prescribed in paragraph (A) of Section 55 of Title 66 of the Oklahoma Statutes, shall be  
9 calculated from the date the report of the commissioners is filed in the case. On failure of  
10 the court clerk to give notice within the time prescribed in paragraph (B) of Section 55 of  
11 Title 66 of the Oklahoma Statutes, the court, on application of any party, may extend the  
12 time for filing an exception to the report, or a demand for trial by jury for a period not to  
13 exceed twenty (20) days from the date the application is heard.

14 ~~(4)~~ F. Either party aggrieved may appeal to the Supreme Court from the decision of  
15 the district court on exceptions to the report of commissioners, or jury trial; but such  
16 review or appeal shall not delay the prosecution of the work on such highway over the  
17 premises in question if the award of commissioners, or jury, as the case may be, has been  
18 deposited with the clerk for such owner, and in no case shall the Department be liable for  
19 the costs on such review or appeal unless the owner of the real property shall be  
20 adjudged entitled, upon either review or appeal, to a greater amount of damages than  
21 was awarded by the commissioners. The Department shall in all cases pay the cost of the  
22 commissioners' fees and expenses, for their services, as determined and ordered paid by

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 the judge of the district court in which such case is pending, however, poundage fees and  
2 condemnation fees shall only be paid by the department in the event of appeal resulting  
3 in a jury verdict in excess of the commissioners' award, but under no circumstances shall  
4 any poundage fees or condemnation fees be assessed against the recipient of said award.  
5 And in case of review or appeal, a certified copy of the final order or judgment shall be  
6 transmitted by the clerk of the court, duly certified, to the proper county clerk, to be filed  
7 and recorded as hereinabove provided for the recording of the report, and with like effect.

8 ~~(g)~~ G. When an estate is being probated, or a minor or incompetent person has a  
9 legal guardian, the administrator or executor of the estate, or guardian of the minor or  
10 incompetent person, shall have the authority to execute all instruments of conveyance  
11 provided for in this title on behalf of the estate, minor or incompetent person without  
12 other proceedings than approval by the judge of the district court endorsed on the  
13 instrument of conveyance.

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

21 SECTION 3. AMENDATORY 69 O.S. 2001, Section 1280, is amended to read  
22 as follows:

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

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

11 C. If the Department and the owners are unable to agree upon the amount of  
12 compensation to be paid by the Department, the Department may acquire by  
13 condemnation such outdoor advertising and property rights pertaining thereto, including  
14 the leasehold or easement rights of the outdoor advertising company, the outdoor  
15 advertising structure and the permit rights described in Section 1277 of this title. This  
16 right of eminent domain or condemnation shall be exercised in the manner provided by  
17 law.

18 D. Any outdoor advertising authorized under Sections 1274 and 1275 of this title  
19 which does not conform with standards set forth in Sections 1274 and 1275 of this title  
20 except as provided in Section 1278 of this title, and any outdoor advertising prohibited by  
21 law and not subject to compensation under other terms of this section shall be a public  
22 nuisance. The Department shall give notice by certified mail to the owner of the sign and

1 to the owner of the land upon which the outdoor advertising is located, ordering the  
2 notified owners to cause the outdoor advertising to conform with rules relating to outdoor  
3 advertising or to remove prohibited outdoor advertising. If the owner of the sign or the  
4 landowner fails to act within ninety (90) days after mailing of the notice, the Department  
5 may, at its discretion, remove the outdoor advertising device.

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

- 13 1. Location and dimensions of the sign;
- 14 2. Distance from the nearest edge of the right-of-way;
- 15 3. Date erected; and
- 16 4. Name and address of the owner of the property on which the sign is located.

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

20 G. Regardless of any local ordinance requiring amortization, the compensation  
21 provided in subsections A through C of this section and subsections (a) through (d) of  
22 Section 1279 of this title shall be the exclusive remedy for taking such outdoor

1 advertising and property rights pertaining thereto. Such compensation shall also be  
2 required for the partial taking or diminishment of the value of such outdoor advertising  
3 and property right caused by any local ordinance which forces the owners of such outdoor  
4 advertising to downsize, reduce the height or width or otherwise alter legal  
5 nonconforming signs.

6 SECTION 4. This act shall become effective November 1, 2007.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,  
8 dated 03-01-07 - DO PASS, As Amended and Coauthored.