

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1832

By: Kiesel

4  
5  
6 AS INTRODUCED

7 An Act relating to eminent domain; amending 27 O.S.  
8 2001, Section 11, which relates to reimbursement of  
9 expenses in certain circumstances; providing for  
10 burden of proof when jury trial is not demanded;  
11 amending 69 O.S. 2001, Section 1203, which relates to  
12 roads, bridges, and ferries; providing for three  
13 methodologies in awarding just compensation in  
14 condemnation actions; mandating acceptance of just  
15 compensation valuation; providing exceptions to  
16 acceptance of just compensation valuation; amending  
17 69 O.S. 2001, Section 1280, which relates to  
18 acquisition of outdoor advertising and property  
19 rights by the Department of Transportation; modifying  
20 definition of outdoor advertising for condemnation  
21 purposes; providing for acquisition of leasehold,  
22 easement rights, the outdoor advertising structure,  
23 and permit rights by the Department of Transportation  
24 if compensation is not agreed upon; and providing an  
effective date.

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

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

3        2. The proceeding is abandoned; or

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

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

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

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

1       Section 1203. ~~(a)~~ A. The Department shall have authority to  
2 acquire in fee simple in the name of the State of Oklahoma, by  
3 purchase, donation or condemnation, lands or such interests therein  
4 as in its discretion may be necessary for the purpose of  
5 establishing, constructing and maintaining state highways or  
6 relocations thereof, and facilities necessary or incident thereto,  
7 including borrow areas, channel changes and deposits of rock,  
8 gravel, sand and other road building material for use in highway  
9 construction and maintenance. Such acquisition may be for immediate  
10 or future use. The Department may acquire reasonable amounts of  
11 land adjacent to its normal right-of-way for the purpose of  
12 screening unsightly areas adjacent to highways, landscaping safety  
13 rest areas and scenic overlook areas.

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

19       ~~(c)~~ C. Except in instances where there are nonresident owners,  
20 unknown heirs, imperfect titles and owners whose whereabouts cannot  
21 be ascertained with reasonable diligence, the Department shall give  
22 the owner an opportunity to sell the necessary lands or interests  
23 therein to the State of Oklahoma before resort to condemnation may  
24

1 be had. The Department may condemn such lands or interests therein  
2 in the following manner:

3 The district judge of the county in which the real property may  
4 be situated, upon petition of either party, and after ten (10) days'  
5 notice to the opposite party, either by personal service or by  
6 leaving a copy thereof at his usual place of residence with some  
7 member of his family over fifteen (15) years of age, or, in the case  
8 of nonresidents, unknown heirs or other persons whose whereabouts  
9 cannot be ascertained, by publication in two issues of a newspaper  
10 in general circulation in the county (the ten-day period to begin  
11 with the first publication), shall direct the sheriff of the county  
12 to summon three disinterested freeholders, to be selected by the  
13 judge as commissioners, and who shall not be interested in a like  
14 question. The commissioners shall be sworn to perform their duties  
15 impartially and justly; and they shall inspect the ~~real~~ property and  
16 consider the injury which the owner may sustain by reason of the  
17 condemnation, and they shall assess the just compensation to which  
18 the owner is entitled; and they shall forthwith make a report in  
19 writing to the clerk of the court, setting forth the quantity,  
20 boundaries and just compensation for the property taken, and amount  
21 of injury done to the property, either directly or indirectly, which  
22 they assess to the owner, which report must be filed and recorded by  
23 the clerk. In determining the just compensation to be awarded to  
24 the owner, the commissioners shall employ three methodologies to

1 value the property to be taken. These methodologies shall be the  
2 cost approach, the income approach, and the comparable sales  
3 approach, as these methods are generally prescribed and used by  
4 appraisers to value property. A certified copy of the report may be  
5 transmitted to the county clerk of the county where the land lies,  
6 to be filed and recorded by the county clerk (without further  
7 acknowledgment or proof) in the same manner and with like force and  
8 effect as is provided for the recording of deeds. The procedure for  
9 service by publication as authorized herein shall be the same as  
10 provided by law for service by publication in civil actions, except  
11 summons need not be issued and served, and except as otherwise  
12 provided herein.

13 ~~(d)~~ D. Immediately upon payment to the clerk of the court for  
14 the use of the owner the sum so assessed and reported to the court  
15 clerk as aforesaid, the Department shall thereby be authorized to  
16 enter upon the condemned premises, and remove and dispose of any  
17 obstructions thereon, by sale or otherwise. If the landowner shall  
18 refuse to deliver up possession to the Department, the court shall  
19 issue an order to the sheriff of the county to place the Department  
20 in possession thereof.

21 ~~(e)~~ ~~(1)~~ The E. 1. The parties shall accept the report of the  
22 commissioners as the just compensation for the property being taken  
23 unless the party can show fraud, conspiracy, or undue influence as  
24 between one party, or a representative thereof, and the court-

1 appointed commissioners. In the event such fraud, conspiracy, or  
2 undue influence is evident, the report of commissioners may be  
3 reviewed by the district court, on written exceptions filed by  
4 either party in the clerk's office within thirty (30) days after the  
5 filing of such report, and the court, after hearing had, shall make  
6 such order therein as right and justice may require, either by  
7 confirmation, rejection or by ordering a new appraisalment on good  
8 cause shown. Provided, that in the event a new appraisalment is  
9 ordered, the Department shall have the continuing right of  
10 possession obtained under the first appraisal, unless and until its  
11 right to condemn has finally been determined otherwise; or either  
12 party may within sixty (60) days after the filing of such report  
13 file with the clerk a written demand for a trial by jury, in which  
14 case the amount of damages shall be assessed by a jury, and the  
15 trial shall be conducted and judgment entered in the same manner as  
16 civil actions in the district court. If the party demanding such  
17 trial does not recover a verdict more favorable to the party than  
18 the assessment of the commissioners, all costs in the district court  
19 shall be taxed against the party. No owner upon whom proper service  
20 by publication has been had, as provided in this title, shall be let  
21 in to defend after expiration of time for appeal or review of the  
22 report of commissioners as above provided has elapsed. Provided,  
23 that if, after the filing of exceptions to the report of  
24 commissioners as hereinafter provided, the Department shall fail to

1 establish its right to condemn such premises, or any part thereof,  
2 the landowner shall be restored to possession of the premises, or  
3 part thereof, and the Department shall pay for any damages sustained  
4 through the occupation by the Department, and if such damages cannot  
5 be determined by amicable settlement they shall be determined by  
6 jury trial in the same proceedings.

7 ~~(2)~~ 2. Within ten (10) days after the Report of Commissioners  
8 is filed, the court clerk shall forward to the attorney of record  
9 for the condemnor, the attorney of record for each condemnee, and to  
10 all unrepresented condemnees, a copy of the commissioners' report  
11 and a notice, stating the time limits for filing an exception or  
12 demand for jury trial as specified in paragraph (A) of Section 55 of  
13 Title 66 of the Oklahoma Statutes. The attorney of record for the  
14 condemnor shall provide the clerk of the court with the names and  
15 last-known addresses of the parties to whom notice and the report of  
16 the commissioners shall be mailed, sufficient copies of the notice  
17 and report to be mailed, and pre-addressed, postage-paid envelopes.  
18 This notice shall be on a form prepared by the Court Administrator,  
19 which shall be approved by the Supreme Court, and shall be  
20 distributed to all clerks of the district court by said Court  
21 Administrator. If a party has been served by publication, the clerk  
22 shall forward a copy of the report of commissioners and notice of  
23 time limits for filing an exception or demand for jury trial to the  
24 last-known mailing address, if any, and shall cause a copy of the

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

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

19 ~~(f)~~ F. Either party aggrieved may appeal to the Supreme Court  
20 from the decision of the district court on exceptions to the report  
21 of commissioners, or jury trial; but such review or appeal shall not  
22 delay the prosecution of the work on such highway over the premises  
23 in question if the award of commissioners, or jury, as the case may  
24 be, has been deposited with the clerk for such owner, and in no case

1 shall the Department be liable for the costs on such review or  
2 appeal unless the owner of the real property shall be adjudged  
3 entitled, upon either review or appeal, to a greater amount of  
4 damages than was awarded by the commissioners. The Department shall  
5 in all cases pay the cost of the commissioners' fees and expenses,  
6 for their services, as determined and ordered paid by the judge of  
7 the district court in which such case is pending, however, poundage  
8 fees and condemnation fees shall only be paid by the department in  
9 the event of appeal resulting in a jury verdict in excess of the  
10 commissioners' award, but under no circumstances shall any poundage  
11 fees or condemnation fees be assessed against the recipient of said  
12 award. And in case of review or appeal, a certified copy of the  
13 final order or judgment shall be transmitted by the clerk of the  
14 court, duly certified, to the proper county clerk, to be filed and  
15 recorded as hereinabove provided for the recording of the report,  
16 and with like effect.

17 ~~(g)~~ G. When an estate is being probated, or a minor or  
18 incompetent person has a legal guardian, the administrator or  
19 executor of the estate, or guardian of the minor or incompetent  
20 person, shall have the authority to execute all instruments of  
21 conveyance provided for in this title on behalf of the estate, minor  
22 or incompetent person without other proceedings than approval by the  
23 judge of the district court endorsed on the instrument of  
24 conveyance.

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

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

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

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

1 C. If the Department and the owners are unable to agree upon  
2 the amount of compensation to be paid by the Department, the  
3 Department may acquire by condemnation such outdoor advertising and  
4 property rights pertaining thereto, including the leasehold or  
5 easement rights of the outdoor advertising company, the outdoor  
6 advertising structure and the permit rights described in Section  
7 1277 of this title. This right of eminent domain or condemnation  
8 shall be exercised in the manner provided by law.

9 D. Any outdoor advertising authorized under Sections 1274 and  
10 1275 of this title which does not conform with standards set forth  
11 in Sections 1274 and 1275 of this title except as provided in  
12 Section 1278 of this title, and any outdoor advertising prohibited  
13 by law and not subject to compensation under other terms of this  
14 section shall be a public nuisance. The Department shall give  
15 notice by certified mail to the owner of the sign and to the owner  
16 of the land upon which the outdoor advertising is located, ordering  
17 the notified owners to cause the outdoor advertising to conform with  
18 rules relating to outdoor advertising or to remove prohibited  
19 outdoor advertising. If the owner of the sign or the landowner  
20 fails to act within ninety (90) days after mailing of the notice,  
21 the Department may, at its discretion, remove the outdoor  
22 advertising device.

23 E. All persons or business entities engaged in the outdoor  
24 advertising business, which includes but is not limited to, the

1 erection, maintenance and selling of advertising space on and along  
2 the interstate and federal-aid primary highways of this state,  
3 shall, not later than October 31, 1972, furnish the Director of the  
4 Department of Transportation a written inventory of all outdoor  
5 advertising signs, displays or devices erected and being maintained  
6 by the person or entity. The inventory shall include, with respect  
7 to each such sign, not less than the following information:

- 8 1. Location and dimensions of the sign;
- 9 2. Distance from the nearest edge of the right-of-way;
- 10 3. Date erected; and
- 11 4. Name and address of the owner of the property on which the  
12 sign is located.

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

18 G. Regardless of any local ordinance requiring amortization,  
19 the compensation provided in subsections A through C of this section  
20 and subsections (a) through (d) of Section 1279 of this title shall  
21 be the exclusive remedy for taking such outdoor advertising and  
22 property rights pertaining thereto. Such compensation shall also be  
23 required for the partial taking or diminishment of the value of such  
24 outdoor advertising and property right caused by any local ordinance

1 which forces the owners of such outdoor advertising to downsize,  
2 reduce the height or width or otherwise alter legal nonconforming  
3 signs.

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

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