STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

SENATE BILL 566 By: Ballenger

AS INTRODUCED

An Act relating to outdoor advertising; amending 27 O.S. 2001, Section 11, which relates to condemnation proceedings; stating requirement to be met for person demanding a jury trial; stating that payment of certain monies be paid to property owners not demanding a jury trial; amending 69 O.S. 2001, Section 1203, which relates to acquisition of lands by certain methods; providing certain methodologies for determining just compensation for certain property; requiring parties to accept certain report; stating exception; amending 69 O.S. 2001, Section 1280, which relates to acquisition of outdoor advertising and property rights; defining certain real property; authorizing the Department of Transportation to condemn certain leasehold or easement rights of outdoor advertising companies; and declaring an emergency.

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. 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 2. 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. <u>In determining the just compensation to be awarded to the owner, the commissioners shall employ three methodologies to</u>

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 Section 106 of 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 3. 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 4. 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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