

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1641

By: Ritze

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6 AS INTRODUCED

7 An Act relating to eminent domain; amending 27 O.S.
8 2001, Section 10, which relates to reimbursing owner
9 for expenses after acquisition; requiring entity
10 provide certain service if displacement is caused by
11 acquisition; directing entity pay certain expenses if
12 displacement is caused by acquisition; amending 27
13 O.S. 2001, Section 13, which relates to policies for
14 entities exercising eminent domain; requiring entity
15 to make bona fide offer to acquire property; defining
16 term; mandating court to dismiss suit in certain
17 circumstances and award certain costs; removing
18 entity's ability to waive appraisal in certain cases;
19 requiring entity to file petition in district court;
20 requiring entity to give notice before taking land;
21 specifying information to be included in petition;
22 amending 27 O.S. 2001, Section 16, which relates to
23 the right of just compensation; modifying definition;
24 defining term; directing Attorney General to prepare
a Landowner's Bill of Rights; requiring certain
notices and information to be included in Landowner's
Bill of Rights; mandating that entity disclose
certain information at the time of acquisition;
allowing for owner to repurchase property if certain
conditions occur; setting repurchase price for owner;
requiring notice be sent by entity to owner if
property is unused; stating information to be
included in required notice; describing when owner's
right to repurchase expires; requiring that entity
take recorded vote at public meeting prior to
initiating condemnation proceedings; allowing entity
to adopt single order to condemn all property units
under certain conditions; describing process for
motions and voting procedures; permitting entity's
order to identify general area to be condemned;
allowing certain property owners to construct streets

1 or roads above condemned easements; setting size
2 limit for roads; providing that breach of duties are
3 a dispute between the parties; providing for
4 codification; and providing an effective date.

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

7 SECTION 1. AMENDATORY 27 O.S. 2001, Section 10, is
8 amended to read as follows:

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

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

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

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

1 B. A department, agency, instrumentality, political subdivision
2 of this state, or entity authorized to exercise eminent domain in
3 this state shall provide a relocation advisory service that is
4 compatible with the Federal Uniform Relocation Assistance Advisory
5 Program for an individual, family, a business concern, a farming or
6 ranching operation, or a nonprofit organization that is displaced in
7 connection with the acquisition.

8 C. This state or a political subdivision of this state or the
9 entity authorized to exercise eminent domain in this state shall, as
10 a cost of acquiring real property, pay moving expenses and rental
11 supplements, make relocation payments, and provide financial
12 assistance to acquire replacement housing and compensate for
13 expenses incidental to the transfer of property if an individual,
14 family, personal property of a business, a farming and ranching
15 operation, or a nonprofit organization is displaced in connection
16 with the acquisition.

17 SECTION 2. AMENDATORY 27 O.S. 2001, Section 13, is
18 amended to read as follows:

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

22 1. Every reasonable effort shall be made to acquire,
23 expeditiously, real property by negotiation. In order to acquire
24 real property for a public use, an entity with eminent domain

1 authority shall make a bona fide offer to acquire the property from
2 the property owner voluntarily. A bona fide offer is an offer that
3 is not arbitrary or capricious and is based on a reasonably thorough
4 investigation and honest assessment of the amount of the just
5 compensation due to the landowner as a result of the taking. If a
6 court hearing a suit under this title determines the condemning
7 entity failed to make a bona fide offer to acquire the property from
8 the property owner voluntarily as required, the court shall dismiss
9 the suit and order the condemning entity to make a bona fide offer
10 and pay all costs and reasonable attorney fees incurred by the
11 property owner in the condemnation.

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

21 3. Before the initiation of negotiations for real property, an
22 amount shall be established which is reasonably believed to be just
23 compensation therefor and such amount shall be promptly offered for
24 the property. In no event shall such amount be less than the

1 approved appraisal of the fair market value of such real property.
2 Any decrease ~~or increase~~ in the fair market value of real property
3 prior to the date of valuation caused by the public improvement for
4 which such property is acquired, or by the likelihood that the
5 property would be acquired for such improvement, other than that due
6 to physical deterioration within the reasonable control of the
7 owner, will be disregarded in determining the compensation for the
8 property. The owner of the real property to be acquired shall be
9 provided with a written statement of, and summary of the basis for,
10 the amount established as just compensation. Where appropriate, the
11 just compensation for the real property acquired and for damages to
12 remaining real property shall be separately stated.

13 4. No owner shall be required to surrender possession of real
14 property before the agreed purchase price is paid or deposited with
15 the state court, in accordance with applicable law, for the benefit
16 of the owner of an amount not less than the approved appraisal of
17 the fair market value of such property, or the amount of the award
18 of compensation in the condemnation proceeding of such property.

19 5. The construction or development of a public improvement
20 shall be so scheduled that, to the greatest extent practicable, no
21 person lawfully occupying real property shall be required to move
22 from a dwelling, assuming a replacement dwelling, as required by the
23 Oklahoma Relocation Assistance Act, will be available, or to move
24

1 ~~his~~ a business or farm operation without at least ninety (90) days'
2 written notice from the date by which such move is required.

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

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

13 8. If an interest in real property is to be acquired by
14 exercise of power of eminent domain, formal condemnation proceedings
15 shall be instituted pursuant to the procedures set forth in Section
16 3 of this act. The acquiring authority shall not intentionally make
17 it necessary for an owner to institute legal proceedings to prove
18 the fact of the taking of ~~his~~ real property.

19 9. If the acquisition of only part of the property would leave
20 its owner with an uneconomic remnant, an offer to acquire that
21 remnant shall be made. For the purposes of this section, an
22 uneconomic remnant is a parcel of real property in which the owner
23 is left with an interest after the partial acquisition of the
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1 property of the owner which has little or no value or utility to the
2 owner.

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

9 11. As used in this section:

10 a. "appraisal" means a written statement independently
11 and impartially prepared by a qualified appraiser
12 setting forth an opinion of defined value of an
13 adequately described property as of a specific date,
14 supported by the presentation and analysis of relevant
15 market information⁺, and

16 b. "acquiring agency" means:

17 (1) a state agency which has the authority to acquire
18 property by eminent domain pursuant to state law,
19 and

20 (2) a state agency or person which does not have such
21 authority, to the extent provided by regulation.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 13.1 of Title 27, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Before any person, acquiring agency or other entity
2 authorized to exercise the right of eminent domain under Title 27 of
3 the Oklahoma Statutes shall have the right to condemn or take any
4 part of such lands, a petition shall be filed with the district
5 court of the county where such land is located and notice shall be
6 given to the property owner by first class, certified mail, return
7 receipt requested.

8 B. The petition required by subsection A of this section shall:

9 1. Provide a legal description of the land that is proposed to
10 be taken, along with the plat of the particular subdivision;

11 2. Include a sworn statement of the engineer or superintendent
12 in charge of the public work project, stating the taking of such
13 lands is necessary to the exercise of the powers of such
14 municipality or corporation;

15 3. State the purpose for which the entity intends to use the
16 property;

17 4. State the name of the owners of the property if the owner is
18 known;

19 5. State that the entity and the property owner are unable to
20 agree on the damages;

21 6. If applicable, state that the entity provided the property
22 owners with the Landowner's Bill of Rights statement, as set forth
23 in Section 5 of this act; and
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1 7. State the entity made a bona fide offer to acquire the
2 property from the property owner voluntarily.

3 SECTION 4. AMENDATORY 27 O.S. 2001, Section 16, is
4 amended to read as follows:

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

8 B. "Just compensation", as used in subsection A of this
9 section, ~~shall mean~~ means the market value of the property taken,
10 and in addition, any injury to any part of the property not taken.
11 Any special and direct benefits to the part of the property not
12 taken may be offset only against any injury to the property not
13 taken. If only a part of a tract is taken, just compensation shall
14 be ascertained by determining the difference between the fair market
15 value of the whole tract immediately before the taking and the fair
16 market value of that portion left remaining immediately after the
17 taking.

18 C. "Market value", as used in this section, means the price a
19 property will bring when offered for sale by a person who wants to
20 sell the property, but is not obliged to sell the property, and is
21 bought by a person who wants to buy the property, but is not under a
22 necessity to buy the property.

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 17 of Title 27, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Attorney General shall prepare a written statement that
5 includes a "Landowner's Bill of Rights" for a property owner whose
6 real property may be acquired by a person, acquiring agency, or
7 other entity through the use of the entity's eminent domain
8 authority under Title 27 of the Oklahoma Statutes. The statement
9 should be made available to the public and written in plain language
10 designed to be easily understood by the average property owner.

11 B. The "Landowner's Bill of Rights" shall notify each property
12 owner of the right to:

13 1. Notice of the proposed acquisition of the owner's property;

14 2. A bona fide good faith effort to negotiate by the entity
15 proposing to acquire the property;

16 3. An assessment of damages to the owner that will result from
17 the taking of the property;

18 4. A hearing under Title 27 of the Oklahoma Statutes, including
19 a hearing on the assessment of damages; and

20 5. An appeal of a judgment in a condemnation proceeding,
21 including an appeal of an assessment of damages.

22 C. The statement shall include:

23 1. The title "Landowner's Bill of Rights"; and

24 2. A description of:

- a. the condemnation procedures provided by Title 27 of the Oklahoma Statutes,
- b. the condemning entity's obligations to the property owner, and
- c. the property owner's options during a condemnation, including the property owner's right to object to and appeal an amount of damages awarded.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18 of Title 27, unless there is created a duplication in numbering, reads as follows:

A. The person, acquiring agency, or other entity authorized to exercise eminent domain shall disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that:

1. The owner or the owner's heirs, successors, or assigns shall be entitled to repurchase the property if the public use for which the property was acquired through eminent domain is canceled within ten (10) years of the date of acquisition; or if the entity fails to begin the operation or construction of the project for which the property was acquired within ten (10) years of the date of acquisition; and

2. The repurchase price shall be the price paid to the property owner by the person, acquiring agency, or other entity authorized to

1 exercise eminent domain at the time the entity acquired the property
2 through eminent domain.

3 B. No later than ninety (90) days after the date of the
4 cancellation of the public use for which real property was acquired
5 through eminent domain or ninety (90) days after the ten-year
6 expiration of the date on which the property was acquired, if the
7 entity authorized to exercise eminent domain fails to begin the
8 operation or construction of the project for which the property was
9 acquired within ten (10) years of the date of acquisition, the
10 entity authorized to exercise eminent domain shall send by certified
11 mail, return receipt requested, to the property owner or the owner's
12 heirs, successors, or assigns a notice containing:

- 13 1. A legal description of the property that was acquired;
- 14 2. An identification of the public use for which the property
15 was acquired and a statement that the public use has been canceled
16 or the entity authorized to exercise eminent domain has failed to
17 begin the operation or construction of the project for which the
18 property was acquired; and
- 19 3. A description of the person's right under this section to
20 repurchase the property.

21 C. As soon as practicable after receipt of notification under
22 subsection B of this section, the entity authorized to exercise
23 eminent domain shall offer to sell the property interest to the
24 original owner or the owner's heirs, successors, or assigns for the

1 price paid to the owner by the entity authorized to exercise eminent
2 domain at the time the entity acquired the property through eminent
3 domain. The person's right to repurchase the property expires one
4 hundred eighty (180) days after the date on which the entity makes
5 the offer.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 19 of Title 27, unless there is
8 created a duplication in numbering, reads as follows:

9 A. Before an entity initiates a condemnation proceeding by
10 filing a petition required under Section 3 of this act, the
11 governing body of the entity shall authorize the initiation of the
12 condemnation proceedings at a public meeting by a recorded vote.

13 B. A single ordinance, resolution, or order may be adopted for
14 all units of property to be condemned if:

15 1. The motion required by subsection E of this section
16 indicates that the first recorded vote applies to all units of
17 property to be condemned; and

18 2. The minutes of the entity reflect that the first vote
19 applies to all of those units.

20 C. If more than one member of the governing body objects to
21 adopting a single ordinance, resolution, or order by a recorded vote
22 for all units of property for which condemnation proceedings are to
23 be initiated, a separate recorded vote shall be taken for each unit
24 of property.

1 D. For purposes of subsections A and C of this section, if two
2 or more units of real property are owned by the same person, the
3 entity may treat those units of property as one unit of property.

4 E. The motion to adopt an ordinance, resolution, or order
5 authorizing the initiation of condemnation proceedings shall be made
6 in a form substantially similar to the following: "I move that the
7 (name of entity) authorize the use of power of eminent domain to
8 acquire (property description) for (public use description)." The
9 description of the location of and interest in the property that the
10 entity seeks to acquire is substantially similar to the description
11 that is or could properly be used in a petition to condemn the
12 property.

13 F. If a project for a public use requires an entity to acquire
14 multiple tracts or units of property to construct facilities
15 connecting one location to another location, the governing body of
16 the entity may adopt a single ordinance, resolution, or order by a
17 recorded vote that delegates the authority to initiate condemnation
18 proceedings to the chief administrative official of the entity.

19 G. An ordinance, resolution, or order adopted under subsection
20 F of this section is not required to identify specific properties
21 that the entity will acquire. The ordinance, resolution, or order
22 shall identify the general area to be covered by the project or the
23 general route that will be used by the entity for the project in a
24 way that provides property owners in and around the area or along

1 the route reasonable notice that the owners' properties may be
2 subject to condemnation proceedings during the planning or
3 construction of the project.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 20 of Title 27, unless there is
6 created a duplication in numbering, reads as follows:

7 A. A property owner whose property is acquired through the use
8 of eminent domain for the purposes of creating an easement through
9 that owner's property may construct streets or roads, including a
10 gravel, asphalt, or concrete road, at any location above the
11 easement that the property owner chooses.

12 B. The portion of a road constructed under this section that is
13 over the easement shall not exceed forty (40) feet in width.

14 SECTION 9. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 20.1 of Title 27, unless there
16 is created a duplication in numbering, reads as follows:

17 Any breach of the duties and obligations created in this act
18 shall be considered a dispute between parties.

19 SECTION 10. This act shall become effective November 1, 2011.

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