ENGROSSED HOUSE
BILL NO. 2165 By: McCullough of the House

and

Sykes of the Senate

[condemnation - mandating award of costs and attorney fees - Landowner's Bill Of Rights - land acquisition - directing award of costs and attorney fees - effective date]

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

SECTION 1. AMENDATORY 27 O.S. 2011, Section 11, is amended to read as follows:

Section 11. 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~~ shall 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. 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 Section 1, Chapter 160, O.S.L. 2012 (27 O.S. Supp. 2014, Section 18), is amended to read as follows:

Section 18. A. The Attorney General shall prepare a written statement that includes a "Landowner's Bill of Rights" for a property owner whose real property may be acquired by a person, acquiring agency, or other entity through the use of the entity's eminent domain authority under Title 27 or Title 66 of the Oklahoma Statutes. The statement shall be made available to the public and written in plain language designed to be easily understood by the average property owner.

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

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

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

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

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

5. An appeal of a judgment in a condemnation proceeding, including an appeal of an assessment of damages; and

6. Demand a jury trial to appeal an assessment of damages in a condemnation proceeding as long as the property owner holds any right, title or interest in the real property subject to condemnation.

C. The statement shall include:

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

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 3. AMENDATORY 69 O.S. 2011, Section 1203, is amended to read as follows:

Section 1203. ~~(a)~~ A. The Department 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. 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 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 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~~. 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 real property shall be paid such sum 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. 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 4. This act shall become effective November 1, 2015.

Passed the House of Representatives the 4th day of March, 2015.

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Presiding Officer of the House
of Representatives

Passed the Senate the ___ day of _____, 2015.

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Presiding Officer of the Senate