

1 ENGROSSED HOUSE
2 BILL NO. 2936

By: McCullough of the House

3 and

4 Silk of the Senate

5
6 [condemnation - mandating award of costs and
7 attorney fees in specified proceedings - directing
8 award of costs and attorney fees if verdict exceeds
9 specified amount - effective date]
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11

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

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

15 Section 11. Where a condemnation proceeding is instituted by
16 any person, agency or other entity to acquire real property for use
17 as provided in Section 9 of this title and:

18 1. The final judgment is that the real property cannot be
19 acquired by condemnation;

20 2. The proceeding is abandoned; or

21 3. ~~If the~~ The award of the jury exceeds the award of the court-
22 appointed commissioners by at least ~~ten percent (10%)~~ fifteen
23 percent (15%),
24

1 the owner of any right, title or interest in such real property ~~may~~
2 shall be paid such sum as in the opinion of the court will reimburse
3 such owner for ~~his~~ reasonable attorney, appraisal and engineering
4 fees, actually incurred because of the condemnation proceedings.
5 Such determination by the court shall be appealable to the Supreme
6 Court in the same manner as any other final order. The final award
7 of such sums will be paid by the person, agency or other entity
8 which sought to condemn the property.

9 SECTION 2. AMENDATORY Section 1, Chapter 160, O.S.L.
10 2012 (27 O.S. Supp. 2015, Section 18), is amended to read as
11 follows:

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

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

- 22 1. Notice of the proposed acquisition of the owner's property;
- 23 2. A bona fide good-faith effort to negotiate by the entity
- 24 proposing to acquire the property;

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

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

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

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

11 C. The statement shall include:

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

13 2. A description of:

14 a. the condemnation procedures provided by ~~Title 27 of~~
15 ~~the Oklahoma Statutes~~ this title,

16 b. the condemning entity's obligations to the property
17 owner, and

18 c. the property owner's options during a condemnation,
19 including the property owner's right to object to and
20 appeal an amount of damages awarded.

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

23 Section 1203. ~~(a)~~ A. The Department shall have authority to
24 acquire in fee simple in the name of the State of Oklahoma, by

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

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

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

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1 The district judge of the county in which the real property may
2 be situated, upon petition of either party, and after ten (10) days'
3 notice to the opposite party, either by personal service or by
4 leaving a copy thereof at ~~his~~ the party's usual place of residence
5 with some member of ~~his~~ the family over fifteen (15) years of age,
6 or, in the case of nonresidents, unknown heirs or other persons
7 whose whereabouts cannot be ascertained, by publication in two
8 issues of a newspaper in general circulation in the county (the ten-
9 day period to begin with the first publication), shall direct the
10 sheriff of the county to summon three disinterested freeholders, to
11 be selected by the judge as commissioners, and who shall not be
12 interested in a like question. The commissioners shall be sworn to
13 perform their duties impartially and justly; and they shall inspect
14 the real property and consider the injury which the owner may
15 sustain by reason of the condemnation, and they shall assess the
16 just compensation to which the owner is entitled; and they shall
17 forthwith make a report in writing to the clerk of the court,
18 setting forth the quantity, boundaries and just compensation for the
19 property taken, and amount of injury done to the property, either
20 directly or indirectly, which they assess to the owner, which report
21 must be filed and recorded by the clerk. A certified copy of the
22 report may be transmitted to the county clerk of the county where
23 the land lies, to be filed and recorded by the county clerk ~~(without~~
24 ~~further acknowledgment or proof)~~ in the same manner and with like

1 force and effect as is provided for the recording of deeds. The
2 procedure for service by publication as authorized herein shall be
3 the same as provided by law for service by publication in civil
4 actions, except summons need not be issued and served, and except as
5 otherwise provided herein.

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

14 ~~(e)~~ ~~(1)~~ E. 1. The report of commissioners may be reviewed by
15 the district court, on written exceptions filed by either party in
16 the clerk's office within thirty (30) days after the filing of such
17 report, and the court, after hearing had, shall make such order
18 therein as right and justice may require, either by confirmation,
19 rejection or by ordering a new appraisement on good cause shown.
20 Provided, that in the event a new appraisement is ordered, the
21 Department shall have the continuing right of possession obtained
22 under the first appraisal, unless and until its right to condemn has
23 finally been determined otherwise; or ~~either party~~ the landowner may
24 within sixty (60) days after the filing of such report file with the

1 clerk a written demand for a trial by jury, in which case the amount
2 of damages shall be assessed by a jury, and the trial shall be
3 conducted and judgment entered in the same manner as civil actions
4 in the district court. ~~If the party demanding such trial does not~~
5 ~~recover a verdict more favorable to the party than the assessment of~~
6 ~~the commissioners, all costs in the district court shall be taxed~~
7 ~~against the party~~ The Department shall have the burden of proof in
8 providing damages at trial for establishing just compensation. No
9 owner upon whom proper service by publication has been had, as
10 provided in this title, shall be let in to defend after expiration
11 of time for appeal or review of the report of commissioners as above
12 provided has elapsed. Provided, that if, after the filing of
13 exceptions to the report of commissioners as hereinafter provided,
14 the Department shall fail to establish its right to condemn such
15 premises, or any part thereof, the landowner shall be restored to
16 possession of the premises, or part thereof, and the Department
17 shall pay for any damages sustained through the occupation by the
18 Department, and if such damages cannot be determined by amicable
19 settlement they shall be determined by jury trial in the same
20 proceedings.

21 ~~(2)~~ 2. Within ten (10) days after the report of commissioners
22 is filed, the court clerk shall forward to the attorney of record
23 for the condemnor, the attorney of record for each condemnee, and to
24 all unrepresented condemnees, a copy of the ~~commissioners'~~ report of

1 commissioners and a notice~~7~~ stating the time limits for filing an
2 exception or demand for jury trial as specified in paragraph (A) of
3 Section 55 of Title 66 of the Oklahoma Statutes. The attorney of
4 record for the condemnor shall provide the clerk of the court with
5 the names and last-known addresses of the parties to whom notice and
6 the report of ~~the~~ commissioners shall be mailed, sufficient copies
7 of the notice and report to be mailed, and pre-addressed, postage-
8 paid envelopes. This notice shall be on a form prepared by the
9 Court Administrator, which shall be approved by the Supreme Court,
10 and shall be distributed to all clerks of the district court by said
11 Court Administrator. If a party has been served by publication, the
12 clerk shall forward a copy of the report of commissioners and notice
13 of time limits for filing an exception or demand for jury trial to
14 the last-known mailing address, if any, and shall cause a copy of
15 the notice of time limits to be published in one issue of a
16 newspaper qualified to publish legal notices, as defined in Section
17 106 of Title 25 of the Oklahoma Statutes, ~~Section 106~~. After
18 issuing the notices provided herein the court clerk shall endorse on
19 the notice form filed in the case the date and that a copy of the
20 report together with the notice form filed in the case was forwarded
21 to each condemnee and each attorney of record, or the date the
22 notice was published in compliance with the provisions hereof.

23 ~~(3)~~ 3. The time limits for filing an exception and demand for
24 jury trial, as prescribed in paragraph (A) of Section 55 of Title 66

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

9 ~~(f)~~ F. Either party aggrieved may appeal to the Supreme Court
10 from the decision of the district court on exceptions to the report
11 of commissioners, or jury trial; but such review or appeal shall not
12 delay the prosecution of the work on such highway over the premises
13 in question if the award of commissioners, or jury, as the case may
14 be, has been deposited with the clerk for such owner, ~~and in no case~~
15 ~~shall the Department be liable for the costs on such review or~~
16 ~~appeal unless the owner of the real property shall be adjudged~~
17 ~~entitled, upon either review or appeal, to a greater amount of~~
18 ~~damages than was awarded by the commissioners.~~ If the award of the
19 jury exceeds the award of the court-appointed commissioners by at
20 least fifteen percent (15%), the owner of any right, title or
21 interest in real property shall be paid such sum as in the opinion
22 of the court will reimburse such owner for reasonable attorney,
23 appraisal and engineering fees actually incurred because of the
24 condemnation proceedings. The Department shall in all cases pay the

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

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

21 ~~(h)~~ H. "Just compensation", as used in this section, shall mean
22 the value of the property taken, and in addition, any injury to any
23 part of the property not taken. Any special and direct benefits to
24 the part of the property not taken may be offset only against any

1 injury to the property not taken. If only a part of a tract is
2 taken, just compensation shall be ascertained by determining the
3 difference between the fair market value of the whole tract
4 immediately before the taking and the fair market value of that
5 portion left remaining immediately after the taking.

6 I. The Department shall provide an annual report to the
7 Legislature and Office of the Attorney General disclosing the number
8 of condemnation cases that resulted in a jury or nonjury trial,
9 whether the award was more or less than the report of commissioners,
10 how attorney fees were awarded, what cases were appealed and other
11 information related to condemnation as requested by the Legislature
12 or Attorney General.

13 SECTION 4. This act shall become effective November 1, 2016.

14 Passed the House of Representatives the 10th day of March, 2016.

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17 Presiding Officer of the House
of Representatives

18 Passed the Senate the ___ day of _____, 2016.

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21 Presiding Officer of the Senate

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