

**FLOOR AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2936  
Page 1 Section 1 Lines 18  
Of the printed Bill  
Of the Engrossed Bill

By deleting Sections 1 and 3 of the bill and inserting in lieu thereof the following: [SEE ATTACHED]

And by renumbering the subsequent section.

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Mark McCullough \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

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

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

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

8 2. The proceeding is abandoned; or

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

12 the owner of any right, title or interest in such real property ~~may~~  
13 shall be paid such sum as in the opinion of the court will reimburse  
14 such owner for ~~his~~ reasonable attorney, appraisal and engineering  
15 fees, actually incurred because of the condemnation proceedings.  
16 Such determination by the court shall be appealable to the Supreme  
17 Court in the same manner as any other final order. The final award  
18 of such sums will be paid by the person, agency or other entity  
19 which sought to condemn the property.

20 SECTION 3. AMENDATORY 66 O.S. 2011, Section 55, is  
21 amended to read as follows:

22 Section 55. ~~(A)~~ A. The report of the commissioners may be  
23 reviewed by the district court, on written exceptions filed by  
24 either party, in the clerk's office within thirty (30) days after

1 the filing of such report; and the court shall make such order  
2 therein as right and justice may require, either by confirmation,  
3 rejection or by ordering a new appraisalment on good cause shown; or  
4 either party may within sixty (60) days after the filing of such  
5 report file with the clerk a written demand for a trial by jury, in  
6 which case the amount of damages shall be assessed by a jury, and  
7 the trial shall be conducted and judgment entered in the same manner  
8 as civil actions in the district court. The condemnor shall have  
9 the burden of proof in proving damages at trial to establish just  
10 compensation. If the party demanding such trial does not recover a  
11 verdict more favorable to ~~him~~ the party than the assessment of the  
12 commissioners, all costs in the district court may be taxed against  
13 ~~him~~ the party.

14 ~~(B)~~ B. Within ten (10) days after the report of commissioners  
15 is filed, the court clerk shall forward to the attorney of record  
16 for the condemnor, the attorney of record for each condemnee, and to  
17 all unrepresented condemnees, a copy of the commissioners' report  
18 and a notice stating the time limits for filing an exception or  
19 demand for jury trial as specified in ~~paragraph (A)~~ subsection A of  
20 this section. This notice shall be on a form prepared by the Court  
21 Administrator, which shall be approved by the Supreme Court, and  
22 shall be distributed to all clerks of the district court by said  
23 Court Administrator. If a party has been served by publication, the  
24 clerk shall forward a copy of the report of commissioners and notice

1 of time limits for filing an exception or demand for jury trial to  
2 the last-known mailing address, if any, and shall cause a copy of  
3 the notice of time limits to be published in one (1) issue of a  
4 newspaper qualified to publish legal notices, as defined in Section  
5 106 of Title 25. After issuing the notices provided herein, the  
6 court clerk shall endorse on the notice form filed in the case, the  
7 date and that a copy of the report together with the notice was  
8 mailed to each party or his attorney of record, or the date the  
9 notice was published in compliance with the provisions hereof.

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

19 ~~(D)~~ D. Where the party instituting a condemnation proceeding  
20 abandons such proceeding, or where the final judgment is that the  
21 real property cannot be acquired by condemnation or if the award of  
22 the jury exceeds the award of the court-appointed commissioners by  
23 at least ~~ten percent (10%)~~ fifteen percent (15%), then the owner of  
24 any right, title or interest in the property involved may be paid

1 such sum as in the opinion of the court will reimburse such owner  
2 for his reasonable attorney, appraisal, engineering, and expert  
3 witness fees actually incurred because of the condemnation  
4 proceeding. The sum awarded shall be paid by the party instituting  
5 the condemnation proceeding.

6 E. If the court finds the condemnor willfully and wantonly  
7 failed to negotiate in good faith with the condemnee, the court may  
8 award attorney fees and other sanctions to the condemnee.

9 SECTION 4. AMENDATORY 69 O.S. 2011, Section 1203, is  
10 amended to read as follows:

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

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

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

13        The district judge of the county in which the real property may  
14 be situated, upon petition of either party, and after ten (10) days'  
15 notice to the opposite party, either by personal service or by  
16 leaving a copy thereof at ~~his~~ the party's usual place of residence  
17 with some member of ~~his~~ the family over fifteen (15) years of age,  
18 or, in the case of nonresidents, unknown heirs or other persons  
19 whose whereabouts cannot be ascertained, by publication in two  
20 issues of a newspaper in general circulation in the county (the ten-  
21 day period to begin with the first publication), shall direct the  
22 sheriff of the county to summon three disinterested freeholders, to  
23 be selected by the judge as commissioners, and who shall not be  
24 interested in a like question. The commissioners shall be sworn to

1 perform their duties impartially and justly; and they shall inspect  
2 the real property and consider the injury which the owner may  
3 sustain by reason of the condemnation, and they shall assess the  
4 just compensation to which the owner is entitled; and they shall  
5 forthwith make a report in writing to the clerk of the court,  
6 setting forth the quantity, boundaries and just compensation for the  
7 property taken, and amount of injury done to the property, either  
8 directly or indirectly, which they assess to the owner, which report  
9 must be filed and recorded by the clerk. A certified copy of the  
10 report may be transmitted to the county clerk of the county where  
11 the land lies, to be filed and recorded by the county clerk ~~(without~~  
12 ~~further acknowledgment or proof)~~ in the same manner and with like  
13 force and effect as is provided for the recording of deeds. The  
14 procedure for service by publication as authorized herein shall be  
15 the same as provided by law for service by publication in civil  
16 actions, except summons need not be issued and served, and except as  
17 otherwise provided herein.

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

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

1 provided has elapsed. Provided, that if, after the filing of  
2 exceptions to the report of commissioners as hereinafter provided,  
3 the Department shall fail to establish its right to condemn such  
4 premises, or any part thereof, the landowner shall be restored to  
5 possession of the premises, or part thereof, and the Department  
6 shall pay for any damages sustained through the occupation by the  
7 Department, and if such damages cannot be determined by amicable  
8 settlement they shall be determined by jury trial in the same  
9 proceedings.

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

1 clerk shall forward a copy of the report of commissioners and notice  
2 of time limits for filing an exception or demand for jury trial to  
3 the last-known mailing address, if any, and shall cause a copy of  
4 the notice of time limits to be published in one issue of a  
5 newspaper qualified to publish legal notices, as defined in Section  
6 106 of Title 25 of the Oklahoma Statutes, ~~Section 106~~. After  
7 issuing the notices provided herein the court clerk shall endorse on  
8 the notice form filed in the case the date and that a copy of the  
9 report together with the notice form filed in the case was forwarded  
10 to each condemnee and each attorney of record, or the date the  
11 notice was published in compliance with the provisions hereof.

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

22 ~~(F)~~ F. Either party aggrieved may appeal to the Supreme Court  
23 from the decision of the district court on exceptions to the report  
24 of commissioners, or jury trial; but such review or appeal shall not

1 delay the prosecution of the work on such highway over the premises  
2 in question if the award of commissioners, or jury, as the case may  
3 be, has been deposited with the clerk for such owner, ~~and in no case~~  
4 ~~shall the Department be liable for the costs on such review or~~  
5 ~~appeal unless the owner of the real property shall be adjudged~~  
6 ~~entitled, upon either review or appeal, to a greater amount of~~  
7 ~~damages than was awarded by the commissioners.~~ If the award of the  
8 jury exceeds the award of the court-appointed commissioners by at  
9 least fifteen percent (15%), the owner of any right, title or  
10 interest in real property shall be paid such sum as in the opinion  
11 of the court will reimburse such owner for reasonable attorney,  
12 appraisal and engineering fees actually incurred because of the  
13 condemnation proceedings. The Department shall in all cases pay the  
14 cost of the commissioners' fees and expenses, for their services, as  
15 determined and ordered paid by the judge of the district court in  
16 which such case is pending; ~~and~~ however, poundage fees and condemnation  
17 fees shall only be paid by the ~~department~~ Department in the event of  
18 appeal resulting in a jury verdict in excess of the commissioners'  
19 award, but under no circumstances shall any poundage fees or  
20 condemnation fees be assessed against the recipient of said award.  
21 And in case of review or appeal, a certified copy of the final order  
22 or judgment shall be transmitted by the clerk of the court, duly  
23 certified, to the proper county clerk, to be filed and recorded as

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1 hereinabove provided for the recording of the report, and with like  
2 effect.

3 ~~(g)~~ G. When an estate is being probated, or a minor or  
4 incompetent person has a legal guardian, the administrator or  
5 executor of the estate, or guardian of the minor or incompetent  
6 person, shall have the authority to execute all instruments of  
7 conveyance provided for in this title on behalf of the estate, minor  
8 or incompetent person without other proceedings than approval by the  
9 judge of the district court endorsed on the instrument of  
10 conveyance.

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

20 I. The Department shall provide an annual report to the  
21 Legislature and Office of the Attorney General disclosing the number  
22 of condemnation cases that resulted in a jury or nonjury trial,  
23 whether the award was more or less than the report of commissioners,  
24 how attorney fees were awarded, what cases were appealed and other

1 information related to condemnation as requested by the Legislature  
2 or Attorney General."

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