

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 2165

By: McCullough

AS INTRODUCED

An Act relating to condemnation; amending 27 O.S. 2011, Section 11, which relates to condemnation proceedings; mandating award of costs and attorney fees if verdict is less than specified amount; amending 69 O.S. 2011, Section 1203, which relates to land acquisition; directing award of costs and attorney fees if verdict is less than specified amount; and providing an 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%),

1 the owner of any right, title or interest in such real property may
2 be paid such sum as in the opinion of the court will reimburse such
3 owner for ~~his~~ reasonable attorney, appraisal and engineering fees,
4 actually incurred because of the condemnation proceedings. If the
5 party demanding the jury trial does not receive a verdict that is at
6 least ten percent (10%) more than the assessment award of the
7 appraisers, all court costs including reasonable attorney fees shall
8 be assessed against the party demanding the jury trial. Such
9 determination by the court shall be appealable to the Supreme Court
10 in the same manner as any other final order. The final award of
11 such sums will be paid by the person, agency or other entity which
12 sought to condemn the property.

13 SECTION 2. AMENDATORY 69 O.S. 2011, Section 1203, is
14 amended to read as follows:

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

1 land adjacent to its normal right-of-way for the purpose of
2 screening unsightly areas adjacent to highways, landscaping safety
3 rest areas and scenic overlook areas.

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

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

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

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

20 (d) Immediately upon payment to the clerk of the court for the
21 use of the owner the sum so assessed and reported to the court clerk
22 as aforesaid, the Department shall thereby be authorized to enter
23 upon the condemned premises, and remove and dispose of any
24 obstructions thereon, by sale or otherwise. If the landowner shall

1 refuse to deliver up possession to the Department, the court shall
2 issue an order to the sheriff of the county to place the Department
3 in possession thereof.

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

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

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

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

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

21 (f) Either party aggrieved may appeal to the Supreme Court from
22 the decision of the district court on exceptions to the report of
23 commissioners, or jury trial; but such review or appeal shall not
24 delay the prosecution of the work on such highway over the premises

1 in question if the award of commissioners, or jury, as the case may
2 be, has been deposited with the clerk for such owner, ~~and in no case~~
3 ~~shall the Department be liable for the costs on such review or~~
4 ~~appeal unless the owner of the real property shall be adjudged~~
5 ~~entitled, upon either review or appeal, to a greater amount of~~
6 ~~damages than was awarded by the commissioners. If the party~~
7 ~~demanding the jury trial does not receive a verdict that is at least~~
8 ~~ten percent (10%) more than the assessment award of the appraisers,~~
9 ~~all court costs including reasonable attorney fees shall be assessed~~
10 ~~against the party demanding the jury trial.~~ The Department shall in
11 all cases pay the cost of the commissioners' fees and expenses, for
12 their services, as determined and ordered paid by the judge of the
13 district court in which such case is pending⁷; however, poundage
14 fees and condemnation fees shall only be paid by the department in
15 the event of appeal resulting in a jury verdict in excess of the
16 commissioners' award, but under no circumstances shall any poundage
17 fees or condemnation fees be assessed against the recipient of said
18 award. And in case of review or appeal, a certified copy of the
19 final order or judgment shall be transmitted by the clerk of the
20 court, duly certified, to the proper county clerk, to be filed and
21 recorded as hereinabove provided for the recording of the report,
22 and with like effect.

23 (g) When an estate is being probated, or a minor or incompetent
24 person has a legal guardian, the administrator or executor of the

1 estate, or guardian of the minor or incompetent person, shall have
2 the authority to execute all instruments of conveyance provided for
3 in this title on behalf of the estate, minor or incompetent person
4 without other proceedings than approval by the judge of the district
5 court endorsed on the instrument of conveyance.

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

15 SECTION 3. This act shall become effective November 1, 2015.

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17 55-1-5368 EK 12/17/14
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