

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2936

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 in specified proceedings; amending Section 1, Chapter 160, O.S.L. 2012 (27 O.S. Supp. 2015, Section 18), which relates to Landowner's Bill of Rights; adding the right to demand a jury trial in certain condemnation proceedings; amending 69 O.S. 2011, Section 1203, which relates to land acquisition; updating statutory citation; directing award of costs and attorney fees if verdict exceeds 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

1 3. ~~If the~~ The award of the jury exceeds the award of the court-
2 appointed commissioners by at least ~~ten percent (10%)~~ five percent
3 (5%),

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

12 SECTION 2. AMENDATORY Section 1, Chapter 160, O.S.L.
13 2012 (27 O.S. Supp. 2015, Section 18), is amended to read as
14 follows:

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

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

- 1 1. Notice of the proposed acquisition of the owner's property;
- 2 2. A bona fide good-faith effort to negotiate by the entity
- 3 proposing to acquire the property;
- 4 3. An assessment of damages to the owner that will result from
- 5 the taking of the property;
- 6 4. A hearing under ~~Title 27 of the Oklahoma Statutes~~ this
- 7 title, including a hearing on the assessment of damages; ~~and~~
- 8 5. An appeal of a judgment in a condemnation proceeding,
- 9 including an appeal of an assessment of damages; and
- 10 6. Demand a jury trial to appeal an assessment of damages in a
- 11 condemnation proceeding as long as the property owner holds any
- 12 right, title or interest in the real property subject to
- 13 condemnation.

14 C. The statement shall include:

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

16 2. A description of:

17 a. the condemnation procedures provided by ~~Title 27 of~~

18 ~~the Oklahoma Statutes~~ this title,

19 b. the condemning entity's obligations to the property

20 owner, and

21 c. the property owner's options during a condemnation,

22 including the property owner's right to object to and

23 appeal an amount of damages awarded.

24

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

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

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

21 ~~(c)~~ C. Except in instances where there are nonresident owners,
22 unknown heirs, imperfect titles and owners whose whereabouts cannot
23 be ascertained with reasonable diligence, the Department shall give
24 the owner an opportunity to sell the necessary lands or interests

1 therein to the State of Oklahoma before resort to condemnation may
2 be had. The Department may condemn such lands or interests therein
3 in the following manner:

4 The district judge of the county in which the real property may
5 be situated, upon petition of either party, and after ten (10) days'
6 notice to the opposite party, either by personal service or by
7 leaving a copy thereof at ~~his~~ the party's usual place of residence
8 with some member of ~~his~~ the family over fifteen (15) years of age,
9 or, in the case of nonresidents, unknown heirs or other persons
10 whose whereabouts cannot be ascertained, by publication in two
11 issues of a newspaper in general circulation in the county (the ten-
12 day period to begin with the first publication), shall direct the
13 sheriff of the county to summon three disinterested freeholders, to
14 be selected by the judge as commissioners, and who shall not be
15 interested in a like question. The commissioners shall be sworn to
16 perform their duties impartially and justly; and they shall inspect
17 the real property and consider the injury which the owner may
18 sustain by reason of the condemnation, and they shall assess the
19 just compensation to which the owner is entitled; and they shall
20 forthwith make a report in writing to the clerk of the court,
21 setting forth the quantity, boundaries and just compensation for the
22 property taken, and amount of injury done to the property, either
23 directly or indirectly, which they assess to the owner, which report
24 must be filed and recorded by the clerk. A certified copy of the

1 report may be transmitted to the county clerk of the county where
2 the land lies, to be filed and recorded by the county clerk (without
3 further acknowledgment or proof) in the same manner and with like
4 force and effect as is provided for the recording of deeds. The
5 procedure for service by publication as authorized herein shall be
6 the same as provided by law for service by publication in civil
7 actions, except summons need not be issued and served, and except as
8 otherwise provided herein.

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

17 ~~(e)~~ ~~(1)~~ E. 1. The report of commissioners may be reviewed by
18 the district court, on written exceptions filed by either party in
19 the clerk's office within thirty (30) days after the filing of such
20 report, and the court, after hearing had, shall make such order
21 therein as right and justice may require, either by confirmation,
22 rejection or by ordering a new appraisalment on good cause shown.
23 Provided, that in the event a new appraisalment is ordered, the
24 Department shall have the continuing right of possession obtained

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

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

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

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

11 ~~(f)~~ F. Either party aggrieved may appeal to the Supreme Court
12 from the decision of the district court on exceptions to the report
13 of commissioners, or jury trial; but such review or appeal shall not
14 delay the prosecution of the work on such highway over the premises
15 in question if the award of commissioners, or jury, as the case may
16 be, has been deposited with the clerk for such owner, ~~and in no case~~
17 ~~shall the Department be liable for the costs on such review or~~
18 ~~appeal unless the owner of the real property shall be adjudged~~
19 ~~entitled, upon either review or appeal, to a greater amount of~~
20 ~~damages than was awarded by the commissioners.~~ If the award of the
21 jury exceeds the award of the court-appointed commissioners by at
22 least five percent (5%), the owner of any right, title or interest
23 in real property shall be paid such sum as in the opinion of the
24 court will reimburse such owner for reasonable attorney, appraisal

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

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

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

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

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

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