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1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2194

By: Park and Bennett (John) of

By: Park and Bennett (John) of
the House

and

Simpson of the Senate

COMMITTEE SUBSTITUTE

An Act relating to condemnation and eminent domain; amending 27 O.S. 2011, Section 11, which relates to real property not acquired property; allowing for the recovery of attorney fees and costs; amending 27 O.S. 2011, Section 16, which relates to just compensation for property; adding certain considerations to calculating fair market value; amending Section 1, Chapter 160, O.S.L. 2012 (27 O.S. Supp. 2016, Section 18), which relates to the Landowner's Bill of Rights; allowing condemnee to demand jury trial; amending 66 O.S. 2011, Section 53, which relates to eminent domain; adding certain considerations to calculating fair market value; amending 66 O.S. 2011, Section 55, which relates to condemnation procedure; directing no bond to be posted by condemnee; requiring original offer to be minimum considered by jury; requiring condemnor to prove just compensation; requiring certain costs and fees to be paid by condemnor upon appeal; specifying punishment for condemnor for not negotiating in good faith; establishing burden of proof for legitimate business purpose claims; requiring annual report from agencies with condemnation powers; and providing an effective date.

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

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

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

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

9 2. The proceeding is abandoned; or

10 3. ~~If the~~ The award of the jury exceeds the award of the court-
11 appointed commissioners by ~~at least ten percent (10%)~~ any amount,
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 2. AMENDATORY 27 O.S. 2011, Section 16, is
21 amended to read as follows:

22 Section 16. A. In every case wherein private property is taken
23 or damaged for public use, the person whose property is taken or
24 damaged shall be entitled to just compensation.

1 B. "Just compensation", as used in subsection A of this
2 section, shall mean the value of the property taken, and in
3 addition, any injury to any part of the property not taken. Any
4 special and direct benefits to the part of the property not taken
5 may be offset only against any injury to the property not taken. If
6 only a part of a tract is taken, just compensation shall be
7 ascertained by determining the difference between the fair market
8 value of the whole tract immediately before the taking and the fair
9 market value of that portion left remaining immediately after the
10 taking. The fair market value calculation may include comparable
11 sales used to value the interest taken and may include the actual
12 amount paid for other tracts of the same or similar use in close
13 proximity to the subject property.

14 SECTION 3. AMENDATORY Section 1, Chapter 160, O.S.L.
15 2012 (27 O.S. Supp. 2016, Section 18), is amended to read as
16 follows:

17 Section 18. A. The Attorney General shall prepare a written
18 statement that includes a "Landowner's Bill of Rights" for a
19 property owner whose real property may be acquired by a person,
20 acquiring agency, or other entity through the use of the entity's
21 eminent domain authority under ~~Title 27 or~~ this title, Title 66 or
22 Title 69 of the Oklahoma Statutes. The statement shall be made
23 available to the public and written in plain language designed to be
24 easily understood by the average property owner.

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

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

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

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

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

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

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

16 C. The statement shall include:

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

18 2. A description of:

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

21 b. the condemning entity's obligations to the property
22 owner, and
23
24

1 c. the property owner's options during a condemnation,
2 including the property owner's right to object to and
3 appeal an amount of damages awarded.

4 SECTION 4. AMENDATORY 66 O.S. 2011, Section 53, is
5 amended to read as follows:

6 Section 53. A. If the owner of any real property or interest
7 therein, over which any railroad corporation, incorporated under the
8 laws of this state, may desire to locate its road, shall refuse to
9 grant the right-of-way through and over his premises, the district
10 judge of the county in which said real property may be situated
11 shall, upon the application or petition of either party, and after
12 ten (10) days' notice to the opposite party, direct the sheriff of
13 said county to summon three disinterested freeholders, to be
14 selected by said judge as commissioners, and who shall not be
15 interested in a like question.

16 B. The condemnor shall give notice to a condemnee by personal
17 service or by leaving a copy of the notice at the condemnee's place
18 of residence with some member of his family over fifteen (15) years
19 of age, or by publication in the case of a condemnee who resides out
20 of this state or a resident of this state who has departed herefrom
21 with intent to avoid service of notice, or whose whereabouts or
22 identity the condemnor, or his attorney, upon diligent inquiry is
23 unable to ascertain, or an unknown heir, successor or assign of one
24 in whom some right, title or interest in the property concerned was

1 possessed, by publishing such notice once a week for two (2)
2 consecutive weeks in a newspaper authorized by law to publish legal
3 notices in the county where the petition is filed, the ten-day
4 period provided in subsection A of this section to begin with the
5 first publication. A copy of such notice and a copy of the petition
6 shall be mailed to such opposite party's last-known mailing address
7 within five (5) days of the first publication thereof. The
8 procedure for service by publication as authorized herein shall in
9 all other respects be as provided by law for service by publication
10 in civil actions, except summons need not first be issued.

11 C. The commissioners shall be sworn to perform:

12 1. Perform their duties impartially and justly; ~~and they shall~~
13 ~~inspect said~~

14 2. Inspect the real property and consider the injury which ~~said~~
15 the owner may sustain by reason of the condemnation ~~and they shall~~
16 ~~assess;~~

17 3. Assess the just compensation to which ~~said~~ the owner is
18 entitled; ~~and they shall forthwith make~~

19 4. Make a report in writing to the clerk of the court, setting
20 forth the quantity, boundaries, and just compensation for the
21 property taken, and amount of injury done to the property, either
22 directly or indirectly, which they assess to the owner; ~~which.~~ The
23 report must be filed and recorded by the clerk. A certified copy of
24 the report may be transmitted to the county clerk of the county

1 where the land lies, to be ~~by him~~ filed and recorded by him or her,
2 without further acknowledgment or proof, in the manner and with like
3 force and effect as is provided for the recording of deeds. ~~And if~~
4 ~~said~~ If the corporation ~~shall~~, at any time before it enters upon
5 ~~said~~ the real property for the purpose of constructing ~~said~~ the
6 road, shall pay to ~~said~~ the clerk for the use of ~~said~~ the owner the
7 sum so assessed and reported to ~~him~~ the owner as aforesaid, it shall
8 thereby be authorized to construct and maintain its road over and
9 across ~~said~~ the premises.

10 D. "Just compensation", as used in subsection C of this
11 section, shall mean the value of the property taken, ~~and~~, in
12 addition, any injury to any part of the property not taken. Any
13 special and direct benefits to the part of the property not taken
14 may be offset only against any injury to the property not taken. If
15 only a part of a tract is taken, just compensation shall be
16 ascertained by determining the difference between the fair market
17 value of the whole tract immediately before the taking and the fair
18 market value of that portion left remaining immediately after the
19 taking. The fair market value calculation may include comparable
20 sales used to value the interest taken and may include the actual
21 amount paid for other tracts of the same or similar use in close
22 proximity to the subject property.

23 SECTION 5. AMENDATORY 66 O.S. 2011, Section 55, is
24 amended to read as follows:

1 Section 55. ~~(A)~~ A. The report of the commissioners may be
2 reviewed by the district court, on written exceptions filed by
3 either party, in the clerk's office within thirty (30) days after
4 the filing of such report; and the court shall make such order
5 therein as right and justice may require, either by confirmation,
6 rejection or by ordering a new appraisalment on good cause shown; or
7 either party may within sixty (60) days after the filing of such
8 report file with the clerk a written demand for a trial by jury, in
9 which case the amount of damages shall be assessed by a jury, and
10 the trial shall be conducted and judgment entered in the same manner
11 as civil actions in the district court. ~~If the party demanding such~~
12 ~~trial does not recover a verdict more favorable to him than the~~
13 ~~assessment of the commissioners, all costs in the district court may~~
14 ~~be taxed against him~~ The condemnee shall never be required to post
15 bond. The condemnor shall have the burden of proof in proving
16 damages at trial to establish just compensation. The amount of the
17 original offer given by the condemnor and described in subsection D
18 of this section shall be the minimum amount presented to and
19 considered by the jury in determining damages. Regardless of the
20 outcome of the case, if the condemnor appeals, all incurred costs
21 and attorney fees shall be paid by the condemnor. Upon settlement
22 or judgment, the condemnor has ten (10) business days to render
23 payment to condemnee.
24

1 ~~(B)~~ B. Within ten (10) days after the report of commissioners
2 is filed, the court clerk shall forward to the attorney of record
3 for the condemnor, the attorney of record for each condemnee, and to
4 all unrepresented condemnees, a copy of the commissioners' report
5 and a notice stating the time limits for filing an exception or
6 demand for jury trial as specified in ~~paragraph (A)~~ subsection A of
7 this section. This notice shall be on a form prepared by the Court
8 Administrator, which shall be approved by the Supreme Court, and
9 shall be distributed to all clerks of the district court by said
10 Court Administrator. If a party has been served by publication, the
11 clerk shall forward a copy of the report of commissioners and notice
12 of time limits for filing an exception or demand for jury trial to
13 the last-known mailing address, if any, and shall cause a copy of
14 the notice of time limits to be published in one (1) issue of a
15 newspaper qualified to publish legal notices, as defined in Section
16 106 of Title 25. After issuing the notices provided herein, the
17 court clerk shall endorse on the notice form filed in the case, the
18 date and that a copy of the report together with the notice was
19 mailed to each party or his attorney of record, or the date the
20 notice was published in compliance with the provisions hereof.

21 ~~(C)~~ C. The time limits for filing an exception and demand for
22 jury trial, as prescribed in ~~paragraph (A)~~ subsection A of this
23 section, shall be calculated from the date the report of the
24 commissioners is filed in the case. On failure of the court clerk

1 to give notice within the time prescribed in ~~paragraph (B)~~
2 subsection B of this section, the court, on application of any
3 party, may extend the time for filing an exception to the report or
4 a demand for trial by jury for a period not to exceed twenty (20)
5 days from the date the application is heard.

6 ~~(D)~~ D. Where the party instituting a condemnation proceeding
7 abandons such proceeding, or where the final judgment is that the
8 real property cannot be acquired by condemnation or if the award of
9 the jury exceeds the award of the court-appointed commissioners by
10 ~~at least ten percent (10%)~~ any amount, then the owner of any right,
11 title or interest in the property involved ~~may~~ shall be paid such
12 sum as in the opinion of the court will reimburse such owner for ~~his~~
13 reasonable attorney, appraisal, engineering, and expert witness fees
14 actually incurred because of the condemnation proceeding. The sum
15 awarded shall be paid by the party instituting the condemnation
16 proceeding.

17 E. If the court finds the condemner willfully and wantonly
18 failed to negotiate in good faith with the condemnee, the court may
19 award attorney fees and other sanctions to the condemnee. If it is
20 discovered that the condemnor or agent of the condemnor threatened
21 the condemnee, the condemnor or agent may be subject to the loss of
22 license or a felony.

23 F. If a question of damages at trial is related to a foregone
24 legitimate business purpose planned for the subject land:

1 1. There is presumption for an award damages for the condemnee
2 if condemnee developed the business purpose prior to notification of
3 condemnation. The burden of proof to disprove damages shall lie
4 with the condemnor; or

5 2. The burden of proof to establish damages shall lie with the
6 condemnee.

7 G. Any state agency with condemnation powers shall provide an
8 annual report to the Legislature and Office of the Attorney General
9 disclosing the number of condemnation cases that resulted in a jury
10 or nonjury trial, whether the award was more or less than the report
11 of commissioners, how attorney fees were awarded, how much the
12 agency spent in attorney fees and other expenses, what cases were
13 appealed and other information related to condemnation as requested
14 by the Legislature or Attorney General.

15 SECTION 6. This act shall become effective November 1, 2017.

16
17 COMMITTEE REPORT BY: COMMITTEE ON WILDLIFE, dated 03/02/2017 - DO
18 PASS, As Amended and Coauthored.