

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 2194

By: Park

AS INTRODUCED

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 13, which relates to policies for acquiring property; disallowing use of larger parcel theory in appraisals; 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; amending 69 O.S. 2011, Section 1203, as amended by Section 1, Chapter 175, O.S.L. 2016 (69 O.S. Supp. 2016, Section 1203), which relates to acquisition of real property by the Department of Transportation; requiring condemnor to ensure condemnee is fully aware of offer; requiring condemnation annual report from Department of Transportation; and providing an effective date.

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

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

19 SECTION 2. AMENDATORY 27 O.S. 2011, Section 13, is
20 amended to read as follows:

21 Section 13. Any person, acquiring agency or other entity
22 acquiring real property for any public project or program described
23 in Section 9 of this title shall comply with the following policies:

24

1 1. Every reasonable effort shall be made to acquire,
2 expeditiously, real property by negotiation.

3 2. Real property shall be appraised before the initiation of
4 negotiations, and the owner or his designated representative shall
5 be given an opportunity to accompany the appraiser during his
6 inspection of the property, except that the head or governing body
7 of the entity acquiring real property, if so mandated by federal law
8 or regulation, may prescribe a procedure to waive the appraisal in
9 cases involving the acquisition by sale or donation of property with
10 a low fair market value as such value is defined by federal law or
11 regulation.

12 3. Before the initiation of negotiations for real property, an
13 amount shall be established which is reasonably believed to be just
14 compensation therefor and such amount shall be promptly offered for
15 the property. In no event shall such amount be less than the
16 approved appraisal of the fair market value of such real property.
17 Any decrease or increase in the fair market value of real property
18 prior to the date of valuation caused by the public improvement for
19 which such property is acquired, or by the likelihood that the
20 property would be acquired for such improvement, other than that due
21 to physical deterioration within the reasonable control of the
22 owner, will be disregarded in determining the compensation for the
23 property. The owner of the real property to be acquired shall be
24 provided with a written statement of, and summary of the basis for,

1 the amount established as just compensation. Where appropriate, the
2 just compensation for the real property acquired and for damages to
3 remaining real property shall be separately stated.

4 4. No owner shall be required to surrender possession of real
5 property before the agreed purchase price is paid or deposited with
6 the state court, in accordance with applicable law, for the benefit
7 of the owner of an amount not less than the approved appraisal of
8 the fair market value of such property, or the amount of the award
9 of compensation in the condemnation proceeding of such property.

10 5. The construction or development of a public improvement
11 shall be so scheduled that, to the greatest extent practicable, no
12 person lawfully occupying real property shall be required to move
13 from a dwelling, assuming a replacement dwelling, as required by the
14 Oklahoma Relocation Assistance Act, will be available, or to move
15 his business or farm operation without at least ninety (90) days'
16 written notice from the date by which such move is required.

17 6. If any owner or tenant is permitted to occupy the real
18 property acquired on a rental basis for a short term or for a period
19 subject to termination on short notice, the amount of rent required
20 shall not exceed the fair rental value of the property to a short-
21 term occupier.

22 7. In no event shall the time of condemnation be advanced, on
23 negotiations or condemnation and the deposit of funds in court for
24 the use of the owner be deferred, or any other coercive action be

1 taken to compel an agreement on the price to be paid for the
2 property.

3 8. If an interest in real property is to be acquired by
4 exercise of power of eminent domain, formal condemnation proceedings
5 shall be instituted. The acquiring authority shall not
6 intentionally make it necessary for an owner to institute legal
7 proceedings to prove the fact of the taking of his real property.

8 9. If the acquisition of only part of the property would leave
9 its owner with an uneconomic remnant, an offer to acquire that
10 remnant shall be made. For the purposes of this section, an
11 uneconomic remnant is a parcel of real property in which the owner
12 is left with an interest after the partial acquisition of the
13 property of the owner which has little or no value or utility to the
14 owner.

15 10. A person whose real property is being acquired in
16 accordance with this title may, after the person has been fully
17 informed of his right to receive just compensation for such
18 property, donate such property, any part thereof, any interest
19 therein, or any compensation paid therefor, as such person shall
20 determine.

21 11. As used in this section:

22 a. "Appraisal" means a written statement independently
23 and impartially prepared by a qualified appraiser
24 setting forth an opinion of defined value of an

adequately described property as of a specific date,
supported by the presentation and analysis of relevant
market information; and

b. "Acquiring agency" means:

(1) a state agency which has the authority to acquire
property by eminent domain pursuant to state law,
and

(2) a state agency or person which does not have such
authority, to the extent provided by regulation.

SECTION 3. AMENDATORY 27 O.S. 2011, Section 16, is
amended to read as follows:

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

B. "Just compensation", as used in subsection A of this
section, shall mean the value of the property taken, and in
addition, any injury to any part of the property not taken. Any
special and direct benefits to the part of the property not taken
may be offset only against any injury to the property not taken. If
only a part of a tract is taken, just compensation shall be
ascertained by determining the difference between the fair market
value of the whole tract immediately before the taking and the fair
market value of that portion left remaining immediately after the
taking. The fair market value calculation may include comparable

1 sales used to value the interest taken and may include the actual
2 amount paid or awarded for other tracts of the same intended use and
3 in the closest proximity to the subject property.

4 SECTION 4. AMENDATORY Section 1, Chapter 160, O.S.L.
5 2012 (27 O.S. Supp. 2016, Section 18), is amended to read as
6 follows:

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

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

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

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

22 4. A hearing under ~~Title 27 of the Oklahoma Statutes~~ this
23 title, including a hearing on the assessment of damages; ~~and~~
24

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

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

7 C. The statement shall include:

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

9 2. A description of:

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

12 b. the condemning entity's obligations to the property
13 owner, and

14 c. the property owner's options during a condemnation,
15 including the property owner's right to object to and
16 appeal an amount of damages awarded.

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

19 Section 53. A. If the owner of any real property or interest
20 therein, over which any railroad corporation, incorporated under the
21 laws of this state, may desire to locate its road, shall refuse to
22 grant the right-of-way through and over his premises, the district
23 judge of the county in which said real property may be situated
24 shall, upon the application or petition of either party, and after

1 ten (10) days' notice to the opposite party, direct the sheriff of
2 said county to summon three disinterested freeholders, to be
3 selected by said judge as commissioners, and who shall not be
4 interested in a like question.

5 B. The condemnor shall give notice to a condemnee by personal
6 service or by leaving a copy of the notice at the condemnee's place
7 of residence with some member of his family over fifteen (15) years
8 of age, or by publication in the case of a condemnee who resides out
9 of this state or a resident of this state who has departed herefrom
10 with intent to avoid service of notice, or whose whereabouts or
11 identity the condemnor, or his attorney, upon diligent inquiry is
12 unable to ascertain, or an unknown heir, successor or assign of one
13 in whom some right, title or interest in the property concerned was
14 possessed, by publishing such notice once a week for two (2)
15 consecutive weeks in a newspaper authorized by law to publish legal
16 notices in the county where the petition is filed, the ten-day
17 period provided in subsection A of this section to begin with the
18 first publication. A copy of such notice and a copy of the petition
19 shall be mailed to such opposite party's last-known mailing address
20 within five (5) days of the first publication thereof. The
21 procedure for service by publication as authorized herein shall in
22 all other respects be as provided by law for service by publication
23 in civil actions, except summons need not first be issued.

24 C. The commissioners shall be sworn to ~~perform~~:

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

3 2. Inspect the real property and consider the injury which ~~said~~
4 the owner may sustain by reason of the condemnation ~~and they shall~~
5 ~~assess;~~

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

8 4. Make a report in writing to the clerk of the court, setting
9 forth the quantity, boundaries, and just compensation for the
10 property taken, and amount of injury done to the property, either
11 directly or indirectly, which they assess to the owner, ~~which.~~ The
12 report must be filed and recorded by the clerk. A certified copy of
13 the report may be transmitted to the county clerk of the county
14 where the land lies, to be ~~by him~~ filed and recorded by him or her,
15 without further acknowledgment or proof, in the manner and with like
16 force and effect as is provided for the recording of deeds. ~~And if~~
17 ~~said~~ If the corporation ~~shall~~, at any time before it enters upon
18 ~~said~~ the real property for the purpose of constructing ~~said~~ the
19 road, shall pay to ~~said~~ the clerk for the use of ~~said~~ the owner the
20 sum so assessed and reported to ~~him~~ the owner as aforesaid, it shall
21 thereby be authorized to construct and maintain its road over and
22 across ~~said~~ the premises.

23 D. "Just compensation", as used in subsection C of this
24 section, shall mean the value of the property taken, ~~and,~~ and in

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

12 SECTION 6. AMENDATORY 66 O.S. 2011, Section 55, is
13 amended to read as follows:

14 Section 55. ~~(A)~~ A. The report of the commissioners may be
15 reviewed by the district court, on written exceptions filed by
16 either party, in the clerk's office within thirty (30) days after
17 the filing of such report; and the court 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; or
20 either party may within sixty (60) days after the filing of such
21 report file with the clerk a written demand for a trial by jury, in
22 which case the amount of damages shall be assessed by a jury, and
23 the trial shall be conducted and judgment entered in the same manner
24 as civil actions in the district court. ~~If the party demanding such~~

1 ~~trial does not receive a verdict more favorable to him than the~~
2 ~~assessment of the commissioners, all costs in the district court may~~
3 ~~be taxed against him~~ The condemnor shall have the burden of proof in
4 proving damages at trial to establish just compensation. If the
5 condemnee appeals or the condemnor takes the case to trial by jury,
6 the condemnnee shall not be required to post bond. The amount of the
7 original offer given by the condemnor and described in subsection D
8 of this section shall be the minimum amount presented to and
9 considered by the jury in determining damages. Regardless of the
10 outcome of the case, if the condemnor appeals, all incurred costs
11 and attorney fees shall be paid by the condemnor. Upon settlement
12 or judgment, the condemnor has ten (10) business days to render
13 payment to condemnnee.

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 condemnnee, and to
17 all unrepresented condemnnees, 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%)~~ any amount, then the owner of any right,
24 title or interest in the property involved may be paid such sum as

1 in the opinion of the court will reimburse such owner for ~~his~~
2 reasonable attorney, appraisal, engineering, and expert witness fees
3 actually incurred because of the condemnation proceeding. The sum
4 awarded shall be paid by the party instituting the condemnation
5 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. If it is
9 discovered that the condemnor or anyone acting on behalf of the
10 condemnor threatened the condemnee, the condemnor may be subject to
11 the loss of license or a felony.

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

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

18 2. The burden of proof to establish damages shall lie with the
19 condemnee.

20 G. Any state agency with condemnation powers shall provide an
21 annual report to the Legislature and Office of the Attorney General
22 disclosing the number of condemnation cases that resulted in a jury
23 or nonjury trial, whether the award was more or less than the report
24 of commissioners, how attorney fees were awarded, how much the

1 agency spent in attorney fees and other expenses, what cases were
2 appealed and other information related to condemnation as requested
3 by the Legislature or Attorney General.

4 SECTION 7. AMENDATORY 69 O.S. 2011, Section 1203, as
5 amended by Section 1, Chapter 175, O.S.L. 2016 (69 O.S. Supp. 2016,
6 Section 1203), is amended to read as follows:

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

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

1 ~~(e)~~ C. Except in instances where there are nonresident owners,
2 unknown heirs, imperfect titles and owners whose whereabouts cannot
3 be ascertained with reasonable diligence, the Department shall, in a
4 written offer of just compensation, give the owner an opportunity to
5 sell the necessary lands or interests therein to the State of
6 Oklahoma before resort to condemnation may be had. ~~The~~ If the owner
7 does not respond or declines to sell the necessary lands or
8 interests therein, the Department shall make every reasonable effort
9 to contact the owner to ensure the owner is fully advised and aware
10 of the offer from the Department and make efforts to resolve any
11 matter that would cause the owner to subsequently accept the offer
12 from the Department. If an agreement cannot be reached, the
13 Department may condemn such lands or interests therein in the
14 following manner:

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

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

20 ~~(d)~~ D. Immediately upon payment to the clerk of the court for
21 the use of the owner the sum so assessed and reported to the court
22 clerk as aforesaid, the Department shall thereby be authorized to
23 enter 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)~~ E. 1. The report of commissioners may be reviewed by
5 the district court, on written exceptions filed by either party in
6 the 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~~ the landowner may
14 within sixty (60) days after the filing of such report file with the
15 clerk a written demand for a trial by jury, in which case the amount
16 of 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.~~ If the condemnee appeals or the condemnor takes
22 the case to trial by jury, the condemnee shall not be required to
23 post bond. The amount of the original offer given by the Department
24 and described in subsection F of this section shall be the minimum

1 amount presented to and considered by the jury in determining
2 damages. The Department shall have the burden of proof in providing
3 damages at trial for establishing just compensation. Regardless of
4 the outcome of the case, if the condemnor appeals, all incurred
5 costs and attorney fees shall be paid by the condemnor. Upon
6 settlement or judgment, the condemnor has ten (10) business days to
7 render payment to the condemnee. No owner upon whom proper service
8 by publication has been had, as provided in this title, shall be let
9 in to defend after expiration of time for appeal or review of the
10 report of commissioners as above provided has elapsed. Provided,
11 that if, after the filing of exceptions to the report of
12 commissioners as hereinafter provided, the Department shall fail to
13 establish its right to condemn such premises, or any part thereof,
14 the landowner shall be restored to possession of the premises, or
15 part thereof, and the Department shall pay for any damages sustained
16 through the occupation by the Department, and if such damages cannot
17 be determined by amicable settlement they shall be determined by
18 jury trial in the same proceedings.

19 ~~(2)~~ 2. Within ten (10) days after the ~~Report~~ report of
20 ~~Commissioners~~ commissioners is filed, the court clerk shall forward
21 to the attorney of record for the condemnor, the attorney of record
22 for each condemnee, and to all unrepresented condemnees, a copy of
23 the ~~commissioners'~~ report of commissioners and a notice~~7~~ stating the
24 time limits for filing an exception or demand for jury trial as

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

22 ~~(3)~~ 3. The time limits for filing an exception and demand for
23 jury trial, as prescribed in ~~paragraph (A)~~ subsection A of Section
24 55 of Title 66 of the Oklahoma Statutes, shall be calculated from

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

8 ~~(f)~~ 4. If a question of damages at trial is related to a
9 foregone legitimate business purpose planned for the subject land:

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

14 2. The burden of proof to establish damages shall lie with the
15 condemnee.

16 F. Either party aggrieved may appeal to the Supreme Court from
17 the decision of the district court on exceptions to the report of
18 commissioners, or jury trial; but such review or appeal shall not
19 delay the prosecution of the work on such highway over the premises
20 in question if the award of commissioners, or jury, as the case may
21 be, has been deposited with the clerk for such owner, ~~and in no case~~
22 ~~shall the Department be liable for the costs on such review or~~
23 ~~appeal unless the owner of the real property shall be adjudged~~
24 ~~entitled, upon either review or appeal, to a greater amount of~~

1 ~~damages than was awarded by the commissioners.~~ If the award of the
2 jury exceeds the award of the court-appointed commissioners by any
3 amount, the owner of any rights, title or interest in real property
4 shall be paid such sum as in the opinion of the court will reimburse
5 such owner for reasonable attorney, appraisal and engineering fees
6 actually incurred because of the condemnation proceedings. The
7 Department shall in all cases pay the cost of the commissioners'
8 fees and expenses, for their services, as determined and ordered
9 paid by the judge of the district court in which such case is
10 pending; ~~however,~~ however, poundage fees and condemnation fees shall only be
11 paid by the Department in the event of appeal resulting in a jury
12 verdict in excess of the commissioners' award, but under no
13 circumstances shall any poundage fees or condemnation fees be
14 assessed against the recipient of the award. And in case of review
15 or appeal, a certified copy of the final order or judgment shall be
16 transmitted by the clerk of the court, duly certified, to the proper
17 county clerk, to be filed and recorded as hereinabove provided for
18 the recording of the report, and with like effect.

19 ~~(g)~~ G. When an estate is being probated, or a minor or
20 incompetent person has a legal guardian, the administrator or
21 executor of the estate, or guardian of the minor or incompetent
22 person, shall have the authority to execute all instruments of
23 conveyance provided for in this title on behalf of the estate, minor
24 or incompetent person without other proceedings than approval by the

1 judge of the district court endorsed on the instrument of
2 conveyance.

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

16 ~~(i)~~ I. In the event that the determination of just compensation
17 of a property is less than the commissioners' award for such real
18 property, any mortgagee or lien holder who received payment from the
19 commissioners' award in an amount in excess of the finding of just
20 compensation value of the real property taken will only be liable
21 for and required to pay back to the condemnor no more than the
22 difference between what was actually received by the mortgagee or
23 lien holder from the commissioners' award and the jury's just
24 compensation value. In all respects a mortgagee or lien holder will

1 only be liable to return to the condemnor any sums actually paid to
2 and received by such party in excess of the determination of just
3 compensation for the real property. The mortgagor would be and
4 remain liable to the mortgagee or lien holder for the excess that is
5 paid by the mortgagee or lienholder to the condemning authority.

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

15 K. If the court finds the Department or its agent willfully and
16 wantonly failed to negotiate in good faith with the condemnee, the
17 court may award attorney fees and other sanctions to the condemnee.
18 If it is discovered that the Department or its agent threatened the
19 condemnee, the Department employee or agent may be subject to the
20 loss of license or a felony.

21 SECTION 8. This act shall become effective November 1, 2017.

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