

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3178

By: Phillips

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5  
6 AS INTRODUCED

7 An Act relating to condemnation; amending 69 O.S.  
8 2021, Section 1203, which relates to the acquisition  
9 of lands by purchase, donation or condemnation;  
10 requiring certain notice and hearing; deleting  
11 certain commissioner appointment requirement;  
12 requiring the appointment of appraisers; modifying  
13 parties responsible for certain reports; requiring  
14 the submittal of certain appraisal reports; modifying  
15 party responsible for certain expense; modifying  
16 definition; and declaring an emergency.

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

15 SECTION 1. AMENDATORY 69 O.S. 2021, Section 1203, is  
16 amended to read as follows:

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

1 highway construction and maintenance. Such acquisition may be for  
2 immediate or future use. The Department may acquire reasonable  
3 amounts of land adjacent to its normal right-of-way for the purpose  
4 of screening unsightly areas adjacent to highways, landscaping  
5 safety rest areas and scenic overlook areas.

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

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

18 ~~The~~ A district judge of the county in which the real property  
19 may be situated, upon petition of either party, ~~and after ten (10)~~  
20 ~~days'~~ the granting of a right to a public hearing and after five (5)  
21 years' notice to the opposite party, either by personal service or  
22 by leaving a copy thereof at his or her usual place of residence  
23 with some member of his or her family over fifteen (15) years of  
24 age, or, in the case of nonresidents, unknown heirs or other persons

1 whose whereabouts cannot be ascertained, by publication in two  
2 issues of a newspaper in general circulation in the county (the ~~ten-~~  
3 ~~day~~ five-year period to begin with the first publication), shall  
4 ~~direct the sheriff of the county to summon three disinterested~~  
5 ~~freeholders, to be selected by the judge as commissioners, and who~~  
6 ~~shall not be interested in a like question~~ require the appointment  
7 of three property appraisers. One appraiser shall be chosen by the  
8 entity proposing to acquire the property. A second appraiser shall  
9 be chosen by the private property owner. If the private property  
10 owner cannot afford the expense of appointing his or her appraiser,  
11 the acquiring entity shall bear the cost of the appointment with no  
12 requirement the private property owner repay such appraisal costs.  
13 The third appraiser shall be a disinterested and impartial third  
14 party appraiser chosen by the county commissioners' office of the  
15 county where the property lies or where a majority of the property  
16 lies, in the case of a property straddling a county line. The  
17 ~~commissioners~~ appraisers shall be sworn to perform their duties  
18 impartially and justly; and they shall inspect the real property and  
19 consider the injury which the owner may sustain by reason of the  
20 condemnation, and they shall assess the just compensation to which  
21 the owner is entitled; and they shall each forthwith make a report  
22 in writing to the clerk of the court, setting forth the quantity,  
23 boundaries and just compensation for the property taken, and amount  
24 of injury done to the property, either directly or indirectly, which

1 they assess to the owner, which report must be filed and recorded by  
2 the clerk. A certified copy of the ~~report~~ reports may be  
3 transmitted to the county clerk of the county where the land lies,  
4 to be filed and recorded by the county clerk (without further  
5 acknowledgment or proof) in the same manner and with like force and  
6 effect as is provided for the recording of deeds. The conclusion of  
7 just compensation value determined in each of the three appraisal  
8 reports shall be averaged together to determine purchase price of  
9 the property. The procedure for service by publication as  
10 authorized herein shall be the same as provided by law for service  
11 by publication in civil actions, except summons need not be issued  
12 and served, and except as otherwise provided herein.

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

21 ~~(e)~~ ~~(1)~~ E. 1. The ~~report~~ reports of ~~commissioners~~ the  
22 appraisers may be reviewed by the district court, on written  
23 exceptions filed by either party in the clerk's office within thirty  
24 (30) days after the filing of such report, and the court, after

1 hearing had, shall make such order therein as right and justice may  
2 require, either by confirmation, rejection or by ordering a new  
3 appraisement on good cause shown. Provided, that in the event a new  
4 appraisement is ordered, the Department shall have the continuing  
5 right of possession obtained under the first appraisal, unless and  
6 until its right to condemn has finally been determined otherwise; 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 the party than  
13 the assessment of the ~~commissioners~~ appraisers, all costs in the  
14 district court shall be taxed against the party. No owner upon whom  
15 proper service by publication has been had, as provided in this  
16 title, shall be let in to defend after expiration of time for appeal  
17 or review of the ~~report~~ reports of ~~commissioners~~ the appraisers as  
18 above provided has elapsed. Provided, that if, after the filing of  
19 exceptions to the ~~report~~ reports of ~~commissioners~~ the appraisers as  
20 hereinafter provided, the Department shall fail to establish its  
21 right to condemn such premises, or any part thereof, the landowner  
22 shall be restored to possession of the premises, or part thereof,  
23 and the Department shall pay for any damages sustained through the  
24 occupation by the Department, and if such damages cannot be

1 determined by amicable settlement they shall be determined by jury  
2 trial in the same proceedings.

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

1 Statutes. After issuing the notices provided herein the court clerk  
2 shall endorse on the notice form filed in the case the date and that  
3 a copy of the report together with the notice form filed in the case  
4 was forwarded to each condemnee and each attorney of record, or the  
5 date the notice was published in compliance with the provisions  
6 hereof.

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

17 ~~(f)~~ F. Either party aggrieved may appeal to the Oklahoma  
18 Supreme Court from the decision of the district court on exceptions  
19 to the ~~report~~ reports of ~~commissioners~~ the appraisers, or jury  
20 trial; but such review or appeal shall not delay the prosecution of  
21 the work on such highway over the premises in question if the award  
22 of ~~commissioners~~ the appraisers, or jury, as the case may be, has  
23 been deposited with the clerk for such owner, and in no case shall  
24 the Department be liable for the costs ~~on~~ of such review or appeal

1 unless the owner of the real property shall be adjudged entitled,  
2 upon either review or appeal, to a greater amount of damages than  
3 was awarded by the ~~commissioners~~ appraisers. ~~The Department shall~~  
4 ~~in all cases pay the cost of the commissioners' fees and expenses,~~  
5 ~~for their services, as determined and ordered paid by the judge of~~  
6 ~~the district court in which such case is pending, however, poundage~~  
7 Poundage fees and condemnation fees shall only be paid by the  
8 Department in the event of appeal resulting in a jury verdict in  
9 excess of the ~~commissioners'~~ appraisers' award, but under no  
10 circumstances shall any poundage fees or condemnation fees be  
11 assessed against the recipient of the award. And in case of review  
12 or appeal, a certified copy of the final order or judgment shall be  
13 transmitted by the clerk of the court, duly certified, to the proper  
14 county clerk, to be filed and recorded as hereinabove provided for  
15 the recording of the report, and with like effect.

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

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1        ~~(h)~~ H. "Just compensation", as used in this section, shall mean  
2 the value of the property taken, and in addition, any injury to any  
3 part of the property not taken. Any special and direct benefits to  
4 the part of the property not taken may be offset only against any  
5 injury to the property not taken. If only a part of a tract is  
6 taken, just compensation shall be ascertained by determining the  
7 difference between the fair market value of the whole tract  
8 immediately before the taking and the fair market value of that  
9 portion left remaining immediately after the taking. Just  
10 compensation shall be based on the actual replacement cost value at  
11 a product of one hundred percent (100%), with no reduction for  
12 depreciation. If it is determined that it is in the public's  
13 interest for the property to be condemned before the five-year  
14 period addressed in subsection C of this section, just compensation  
15 shall include the quadrupling of the average of the appraised value  
16 of the property.

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

1 the ~~commissioners'~~ appraisers' award and the jury's just  
2 compensation value. In all respects a mortgagee or ~~lien holder~~  
3 lienholder will only be liable to return to the condemnor any sums  
4 actually paid to and received by such party in excess of the  
5 determination of just compensation for the real property. The  
6 mortgagor would be and remain liable to the mortgagee or ~~lien holder~~  
7 lienholder for the excess that is paid by the mortgagee or  
8 lienholder to the condemning authority.

9 SECTION 2. It being immediately necessary for the preservation  
10 of the public peace, health or safety, an emergency is hereby  
11 declared to exist, by reason whereof this act shall take effect and  
12 be in full force from and after its passage and approval.

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