

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 41

By: Dahm

AS INTRODUCED

An Act relating to eminent domain; amending 27 O.S. 2021, Sections 5 and 17, which relate to local governments and resale of surplus property; conforming language; modifying requirements for disposition of surplus property; defining terms; prohibiting taking of private property unless for certain uses and with compensation; placing burden of proof on condemning authority; granting certain rights to private property owners; requiring court to strictly construe certain provisions; prohibiting expansion of eminent domain powers absent statutory authority; providing exception; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 27 O.S. 2021, Section 5, is amended to read as follows:

Section 5. Any county, city, town, township, school district, or board of education, or any board or official having charge of cemeteries created and existing under the laws of this state, shall have power to condemn lands in like manner as railroad companies, for highways, rights-of-way, building sites, cemeteries, public parks and other public ~~purposes~~ uses.

1 SECTION 2. AMENDATORY 27 O.S. 2021, Section 17, is

2 amended to read as follows:

3 Section 17. A. In the event that a portion of the total amount
4 of real property taken by eminent domain under the procedures set
5 forth in ~~Title 27 of the Oklahoma Statutes~~ this title for a public
6 purpose as described in Section 9 of ~~Title 27 of the Oklahoma~~
7 ~~Statutes~~ this title is not used for the ~~purposes~~ uses for which it
8 was condemned or for another public use by the agency or other
9 entity which acquired the real property, the portion of the real
10 property that is not used shall be declared surplus and shall be
11 ~~first offered for resale~~ returned at no cost to the person from whom
12 the property was taken or the heirs of the person ~~at the appraised~~
13 ~~value or the original price at which the acquiring agency or entity~~
14 ~~purchased that portion of the property, whichever is less.~~

15 B. For purposes of complying with subsection A of this section,
16 the agency or entity which acquired the real property by
17 condemnation shall notify the former landowner of the right of ~~first~~
18 ~~refusal~~ return of the surplus property by sending notice by
19 certified mail, return receipt requested, to the last-known address
20 of the person as provided by the person. If the mail is returned as
21 not subject to delivery or the former landowner is deceased, notice
22 of the right of ~~first refusal~~ return of the surplus property shall
23 be provided by publication in a newspaper of general circulation in
24 the community where the real property is located. The notice shall

1 contain the name of the former landowner and a legal description of
2 the surplus property. If the offer to ~~repurchase~~ return the surplus
3 property is not accepted within ninety (90) days from the date of
4 notice ~~or if the offer to repurchase is not accepted from the date~~
5 ~~the resale price on the property is determined~~, the property may
6 then be sold at public sale.

7 C. This section shall not apply to conveyances for
8 redevelopment under Sections 38-101 through 38-123 of Title 11 of
9 the Oklahoma Statutes.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 41 of Title 27, unless there is
12 created a duplication in numbering, reads as follows:

13 For the purposes of this act:

14 1. "Abandoned property" means property:

- 15 a. that has been substantially unoccupied or unused for
16 any commercial or residential purpose for at least one
17 (1) year by a person with a legal or equitable right
18 to occupy the property,
- 19 b. that has been cited for housing, maintenance,
20 building, or property code violations that have not
21 been remedied within a reasonable time after two
22 notices to cure the noncompliance, or
- 23 c. for which property taxes have not been paid for at
24 least two (2) years;
- 25

1 2. "Blighted property" means a structure that meets any two (2)
2 of the following factors:

3 a. was inspected by the appropriate local government and
4 cited for one or more enforceable housing,
5 maintenance, building, or property code violations
6 that affect the safety of the occupants or the public
7 involving one or more of the following:

- 8 (1) a roof and roof framing element,
9 (2) support walls, beams, and headers,
10 (3) foundation, footings, and subgrade conditions,
11 (4) light and ventilation,
12 (5) fire protection including egress,
13 (6) internal utilities including electricity, gas,
14 and water,
15 (7) flooring and flooring elements, or
16 (8) walls, insulation, and exterior envelope,

17 b. the satisfaction of the enforceable, cited, and
18 uncured housing, maintenance, building, or property
19 code violations listed in subparagraph a of this
20 paragraph cost more than fifty percent (50%) of the
21 assessor's taxable market value for the building,
22 excluding land value, for property taxes payable in
23 the year in which the condemnation is commenced,
24

- 1 c. the housing, maintenance, or building code violations
2 have not been remedied within a reasonable time after
3 two notices to cure the noncompliance, or
4 d. was inspected and cited by the appropriate local
5 government for any violation of health and safety
6 codes; and

7 3. "Public use" means:

- 8 a. the possession, occupation, ownership, and enjoyment
9 of the land by the general public, or by public
10 agencies,
11 b. the possession, occupation, and ownership of land
12 necessary for operations of a public utility that
13 serves the general public,
14 c. the remediation of a blighted property, or
15 d. the possession of an abandoned property.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 42 of Title 27, unless there is
18 created a duplication in numbering, reads as follows:

19 A. Private property may not be taken or damaged by a condemning
20 authority unless the taking or damage is necessary for a public use
21 and with just compensation. The public purpose or public benefit of
22 economic development including an increase in tax base, tax
23 revenues, employment, or general economic health, does not
24 constitute a public use.

1 B. In cases where addressing blight is the public use provided
2 by the condemning authority, the condemning authority bears the
3 burden of proving by clear and convincing evidence that:

4 1. The land, real estate, premises, or other property the
5 authority seeks to acquire is required for the public use stated in
6 the petition for condemnation; and

7 2. The public use stated in the petition for condemnation
8 cannot be accomplished by using or acquiring property that offers
9 similar access with the consent of the owner of the similar property
10 without undue financial burden.

11 C. The owner of private property being condemned for blight has
12 a right to have a court determine whether private property is being
13 taken for a public or private use, to remediate an abandoned
14 property, to remediate blighted property, or if such taking is
15 required to fulfill the public use as stated in the petition for
16 condemnation. The court shall strictly construe eminent domain
17 statutes in favor of the property owner and against the condemning
18 authority.

19 D. A governmental body subordinate to the state may not
20 exercise, create, extend, or expand a power of eminent domain in the
21 absence of statutory authority. Additional procedures, remedies, or
22 limitations that do not deny or diminish the substantive and
23 procedural rights and protections of property owners under this
24 section may be provided by other law, ordinance, or charter.

1 SECTION 5. This act shall become effective November 1, 2023.

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