

1 **SENATE FLOOR VERSION**

2 February 23, 2016

3 **AS AMENDED**

4 SENATE BILL NO. 1126

5 By: Crain of the Senate

6 and

7 Kirby of the House

8 An Act relating to eminent domain; amending 66 O.S.
9 2011, Section 53, which relates to taking by eminent
10 domain; modifying certain procedure; amending 66 O.S.
11 2011, Section 55, which relates to review of the
12 commissioner's report; deleting language; modifying
13 certain judgment award; amending 27 O.S. 2011,
14 Section 11, which relates to reimbursement of
15 expenses; modifying certain judgment award; providing
16 an effective date; and declaring an emergency.

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

18 SECTION 1. AMENDATORY 66 O.S. 2011, Section 53, is
19 amended to read as follows:

20 Section 53. A. If the owner of any real property or interest
21 therein, over which any railroad corporation, incorporated under the
22 laws of this state, may desire to locate its road, shall refuse to
23 grant the right-of-way through and over his premises, the district
24 judge of the county in which said real property may be situated
shall, upon the application or petition of either party, and after
ten (10) days' notice to the opposite party, ~~direct the sheriff of~~

1 ~~said county to~~ summon three disinterested freeholders, to be
2 ~~selected~~ appointed by said judge as commissioners, and who shall not
3 be interested in a like question.

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

23 C. The commissioners shall be sworn to perform their duties
24 impartially and justly; and they shall inspect said real property

1 and consider the injury which said owner may sustain by reason of
2 the condemnation and they shall assess the just compensation to
3 which said owner is entitled; and they shall forthwith make report
4 in writing to the clerk of the court, setting forth the quantity,
5 boundaries, and just compensation for the property taken, and amount
6 of injury done to the property, either directly or indirectly, which
7 they assess to the owner; which report must be filed and recorded by
8 the clerk. A certified copy of the report may be transmitted to the
9 county clerk of the county where the land lies, to be by him filed
10 and recorded, without further acknowledgment or proof, in the manner
11 and with like force and effect as is provided for the recording of
12 deeds. And if said corporation shall, at any time before it enters
13 upon said real property for the purpose of constructing said road,
14 pay to said clerk for the use of said owner the sum so assessed and
15 reported to him as aforesaid, it shall thereby be authorized to
16 construct and maintain its road over and across said premises.

17 D. "Just compensation", as used in subsection C of this
18 section, shall mean the value of the property taken, and in
19 addition, any injury to any part of the property not taken. Any
20 special and direct benefits to the part of the property not taken
21 may be offset only against any injury to the property not taken. If
22 only a part of a tract is taken, just compensation shall be
23 ascertained by determining the difference between the fair market
24 value of the whole tract immediately before the taking and the fair

1 market value of that portion left remaining immediately after the
2 taking.

3 SECTION 2. AMENDATORY 66 O.S. 2011, Section 55, is
4 amended to read as follows:

5 Section 55. (A) The report of the commissioners may be
6 reviewed by the district court, on written exceptions filed by
7 either party, in the clerk's office within thirty (30) days after
8 the filing of such report; and the court shall make such order
9 therein as right and justice may require, either by confirmation,
10 rejection or by ordering a new appraisalment on good cause shown; or
11 either party may within sixty (60) days after the filing of such
12 report file with the clerk a written demand for a trial by jury, in
13 which case the amount of damages shall be assessed by a jury, and
14 the trial shall be conducted and judgment entered in the same manner
15 as civil actions in the district court. **If the party demanding such**
16 **trial does not recover a verdict more favorable to him than the**
17 **assessment of the commissioners, all costs in the district court may**
18 **be taxed against him.**

19 (B) Within ten (10) days after the report of commissioners is
20 filed, the court clerk shall forward to the attorney of record for
21 the condemnor, the attorney of record for each condemnee, and to all
22 unrepresented condemnees, a copy of the commissioners' report and a
23 notice stating the time limits for filing an exception or demand for
24 jury trial as specified in paragraph (A) of this section. This

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

15 (C) The time limits for filing an exception and demand for jury
16 trial, as prescribed in paragraph (A) of this section, shall be
17 calculated from the date the report of the commissioners is filed in
18 the case. On failure of the court clerk to give notice within the
19 time prescribed in paragraph (B) of this section, the court, on
20 application of any party, may extend the time for filing an
21 exception to the report or a demand for trial by jury for a period
22 not to exceed twenty (20) days from the date the application is
23 heard.

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1 (D) Where the ~~party instituting a condemnation proceeding~~
2 condemnor abandons such proceeding, or where the final judgment is
3 that the real property cannot be acquired by condemnation or if the
4 award of the jury exceeds the **award of the court-appointed**
5 **commissioners by at least ten percent (10%)** or the condemnor's last
6 offer to settle as provided in Section 1101.1 of Title 12 of the
7 Oklahoma Statutes, whichever is greater, then the owner of any
8 right, title or interest in the property involved may be paid such
9 sum as in the opinion of the court will reimburse such owner for his
10 reasonable attorney, appraisal, engineering, and expert witness fees
11 actually incurred because of the condemnation proceeding. The sum
12 awarded shall be paid by the party instituting the condemnation
13 proceeding.

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

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

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

21 2. The proceeding is abandoned; or

22 3. If the award of the jury exceeds **the award of the court-**
23 **appointed commissioners by at least ten percent (10%)** or the
24 condemnor's last offer to settle as provided in Section 1101.1 of

1 Title 12 of the Oklahoma Statutes, whichever is greater, the owner
2 of any right, title or interest in such real property may be paid
3 such sum as in the opinion of the court will reimburse such owner
4 for his reasonable attorney, appraisal and engineering fees,
5 actually incurred because of the condemnation proceedings. Such
6 determination by the court shall be appealable to the Supreme Court
7 in the same manner as any other final order. The final award of
8 such sums will be paid by the person, agency or other entity which
9 sought to condemn the property.

10 SECTION 4. This act shall become effective July 1, 2016.

11 SECTION 5. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
16 February 23, 2016 - DO PASS AS AMENDED
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