

1 ENGROSSED SENATE
2 BILL NO. 1378

By: Jolley of the Senate

3 and

4 McCall of the House

5
6 An Act relating to transportation; amending 69 O.S.
7 2011, Section 1203, which relates to acquisition of
8 lands or interests; modifying certain excess sums be
9 returned to certain parties in condemnation
10 proceedings; providing an effective date; and
11 declaring an emergency.

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

13 SECTION 1. AMENDATORY 69 O.S. 2011, Section 1203, is
14 amended to read as follows:

15 Section 1203. (a) The Department shall have authority to
16 acquire in fee simple in the name of the State of Oklahoma, by
17 purchase, donation or condemnation, lands or such interests therein
18 as in its discretion may be necessary for the purpose of
19 establishing, constructing and maintaining state highways or
20 relocations thereof, and facilities necessary or incident thereto,
21 including borrow areas, channel changes and deposits of rock,
22 gravel, sand and other road building material for use in highway
23 construction and maintenance. Such acquisition may be for immediate
24 or future use. The Department may acquire reasonable amounts of
land adjacent to its normal right-of-way for the purpose of

1 screening unsightly areas adjacent to highways, landscaping safety
2 rest areas and scenic overlook areas.

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

8 (c) Except in instances where there are nonresident owners,
9 unknown heirs, imperfect titles and owners whose whereabouts cannot
10 be ascertained with reasonable diligence, the Department shall give
11 the owner an opportunity to sell the necessary lands or interests
12 therein to the State of Oklahoma before resort to condemnation may
13 be had. The Department may condemn such lands or interests therein
14 in the 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 usual place of residence with some
19 member of his family over fifteen (15) years of age, or, in the case
20 of nonresidents, unknown heirs or other persons whose whereabouts
21 cannot be ascertained, by publication in two issues of a newspaper
22 in general circulation in the county (the ten-day period to begin
23 with the first publication), shall direct the sheriff of the county
24 to summon three disinterested freeholders, to be selected by the

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

19 (d) Immediately upon payment to the clerk of the court for the
20 use of the owner the sum so assessed and reported to the court clerk
21 as aforesaid, the Department shall thereby be authorized to enter
22 upon the condemned premises, and remove and dispose of any
23 obstructions thereon, by sale or otherwise. If the landowner shall
24 refuse to deliver up possession to the Department, the court shall

1 issue an order to the sheriff of the county to place the Department
2 in possession thereof.

3 (e) (1) The report of commissioners may be reviewed by the
4 district court, on written exceptions filed by either party in the
5 clerk's office within thirty (30) days after the filing of such
6 report, and the court, after hearing had, shall make such order
7 therein as right and justice may require, either by confirmation,
8 rejection or by ordering a new appraisalment on good cause shown.
9 Provided, that in the event a new appraisalment is ordered, the
10 Department shall have the continuing right of possession obtained
11 under the first appraisal, unless and until its right to condemn has
12 finally been determined otherwise; or either party may within sixty
13 (60) days after the filing of such report file with the clerk a
14 written demand for a trial by jury, in which case the amount of
15 damages shall be assessed by a jury, and the trial shall be
16 conducted and judgment entered in the same manner as civil actions
17 in the district court. If the party demanding such trial does not
18 recover a verdict more favorable to the party than the assessment of
19 the commissioners, all costs in the district court shall be taxed
20 against the party. No owner upon whom proper service by publication
21 has been had, as provided in this title, shall be let in to defend
22 after expiration of time for appeal or review of the report of
23 commissioners as above provided has elapsed. Provided, that if,
24 after the filing of exceptions to the report of commissioners as

1 hereinafter provided, the Department shall fail to establish its
2 right to condemn such premises, or any part thereof, the landowner
3 shall be restored to possession of the premises, or part thereof,
4 and the Department shall pay for any damages sustained through the
5 occupation by the Department, and if such damages cannot be
6 determined by amicable settlement they shall be determined by jury
7 trial in the same proceedings.

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

1 last-known mailing address, if any, and shall cause a copy of the
2 notice of time limits to be published in one issue of a newspaper
3 qualified to publish legal notices, as defined in Section 106 of
4 Title 25 of the Oklahoma Statutes, ~~Section 106~~. After issuing the
5 notices provided herein the court clerk shall endorse on the notice
6 form filed in the case the date and that a copy of the report
7 together with the notice form filed in the case was forwarded to
8 each condemnee and each attorney of record, or the date the notice
9 was published in compliance with the provisions hereof.

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

20 (f) Either party aggrieved may appeal to the Supreme Court from
21 the decision of the district court on exceptions to the report of
22 commissioners, or jury trial; but such review or appeal shall not
23 delay the prosecution of the work on such highway over the premises
24 in question if the award of commissioners, or jury, as the case may

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

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

1 (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.

10 (i) In the event that the determination of just compensation of
11 a property is less than the commissioner's award for such real
12 property, any mortgagee or lien holder who received payment from the
13 commissioner's award in an amount in excess of the finding of just
14 compensation value of the real property taken will only be liable
15 for and required to pay back to the condemnor no more than the
16 difference between what was actually received by the mortgagee or
17 lien holder from the commissioner's award and the jury's just
18 compensation value. In all respects a mortgagee or lien holder will
19 only be liable to return to the condemnor any sums actually paid to
20 and received by such party in excess of the determination of just
21 compensation for the real property. The mortgagor would be and
22 remain liable to the mortgagee or lien holder for the excess that is
23 paid by the mortgagee or lienholder to the condemning authority.

24 SECTION 2. This act shall become effective July 1, 2016.

