

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 SENATE BILL 836

By: Rader

6 AS INTRODUCED

7 An Act relating to right of way; amending 69 O.S.  
8 2021, Section 1203, which relates to acquisition of  
9 lands or interests by purchase, donation, or  
condemnation; creating certain time limit for certain  
liability; updating statutory language; providing an  
effective date; and declaring an emergency.

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

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

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

1 land adjacent to its normal right-of-way for the purpose of  
2 screening unsightly areas adjacent to highways, landscaping safety,   
3 rest areas,  and scenic overlook areas.

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

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

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

1 to summon three disinterested freeholders, to be selected by the  
2 judge as commissioners, and who shall not be interested in a like  
3 question. The commissioners shall be sworn to perform their duties  
4 impartially and justly; and they shall inspect the real property and  
5 consider the injury which the owner may sustain by reason of the  
6 condemnation, and they shall assess the just compensation to which  
7 the owner is entitled; and they shall forthwith make a report in  
8 writing to the clerk of the court, setting forth the quantity,  
9 boundaries and just compensation for the property taken, and amount  
10 of injury done to the property, either directly or indirectly, which  
11 they assess to the owner, which report must be filed and recorded by  
12 the clerk. A certified copy of the report may be transmitted to the  
13 county clerk of the county where the land lies, to be filed and  
14 recorded by the county clerk (without further acknowledgment or  
15 proof) in the same manner and with like force and effect as is  
16 provided for the recording of deeds. The procedure for service by  
17 publication as authorized herein shall be the same as provided by  
18 law for service by publication in civil actions, except summons need  
19 not be issued and served, and except as 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) 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 may within sixty  
14 (60) days after the filing of such report file with the clerk a  
15 written demand for a trial by jury, in which case the amount of  
16 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. No owner upon whom proper service by publication  
22 has been had, as provided in this title, shall be let in to defend  
23 after expiration of time for appeal or review of the report of  
24 commissioners as above provided has elapsed. Provided, that if,

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

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

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

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

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

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

19           (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.

12       (i) I. 1. In the event that the determination of just  
13 compensation of a property is less than the commissioners' award for  
14 such real property, any mortgagee or lien holder who received  
15 payment from the commissioners' award in an amount in excess of the  
16 finding of just compensation value of the real property taken will  
17 only be liable for and required to pay back to the condemnor no more  
18 than the difference between what was actually received by the  
19 mortgagee or lien holder from the commissioners' award and the  
20 jury's just compensation value.

21       2. In all respects a mortgagee or lien holder will only be  
22 liable to return to the condemnor any sums actually paid to and  
23 received by such party in excess of the determination of just  
24 compensation for the real property. The mortgagor would be and

1 remain liable to the mortgagee or lien holder for the excess that is  
2 paid by the mortgagee or lienholder to the condemning authority.

3 3. The mortgagee or lien holder shall only be liable for and  
4 required to pay back to the condemnor the monies required in  
5 paragraph 1 of this subsection if such determination of just  
6 compensation is made within one (1) year of the mortgagee or lien  
7 holder receiving payment from the commissioners' award.

8 SECTION 2. This act shall become effective July 1, 2025.

9 SECTION 3. 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.

14 60-1-510 MSBB 1/16/2025 8:12:48 AM