

A-Engrossed
Senate Bill 794

Ordered by the Senate April 30
Including Senate Amendments dated April 30

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides that defendant in condemnation action may not recover attorney fees from condemner unless amount of just compensation assessed by verdict exceeds highest written settlement offer submitted by condemner before filing of action.

Allows condemner to make offer of compromise to defendant in condemnation action after filing of action and not less than 10 days before trial. **Requires court, if defendant accepts offer and if offer does not specifically indicate otherwise, to give judgment to defendant for amount of costs and disbursements, attorney fees and other costs incurred before offer.** Provides that, if defendant rejects offer and fails to obtain judgment more favorable than offer, defendant may not recover costs, prevailing party fees, disbursements or attorney fees that were incurred **on or** after date of offer, **that defendant shall recover costs and disbursements, attorney fees and expenses incurred before date of offer,** and that condemner [*may*] **shall** recover costs and disbursements incurred by condemner after service of offer.

A BILL FOR AN ACT

1
2 Relating to condemnation; creating new provisions; and amending ORS 35.346 and 35.348.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 35.346 is amended to read:

5 35.346. (1) At least 40 days before the filing of any action for condemnation of property or any
6 interest in property, the condemner shall make [*an initial*] **a** written offer to the owner or party
7 having an interest to purchase the property or interest, and to pay just compensation therefor and
8 for any compensable damages to remaining property.

9 (2) The offer shall be accompanied by any written appraisal upon which the condemner relied
10 in establishing the amount of compensation offered. If the condemner determines that the amount
11 of just compensation due is less than \$20,000, the condemner, in lieu of a written appraisal, may
12 provide to the owner or other person having an interest in the property a written explanation of the
13 bases and method by which the condemner arrived at the specific valuation of the property. The
14 amount of just compensation offered shall not be reduced by amendment or otherwise before or
15 during trial except on order of the court entered not less than 60 days prior to trial. An order for
16 reduction of just compensation offered, pleaded by the condemner in the complaint or deposited with
17 the court for the use and benefit of the owner pending outcome of the condemnation action, may
18 be entered only upon motion of the condemner and a finding by clear and convincing evidence that
19 the appraisal upon which the original offer is based was the result of a mistake of material fact that
20 was not known and could not reasonably have been known at the time of the original appraisal or
21 was based on a mistake of law.

22 (3) Unless otherwise agreed to by the condemner and the owner, prior to appraising the property

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 the condemner shall provide not less than 15 days' written notice to the owner of the planned ap-
 2 praisal inspection. The property owner and designated representative, if any, shall be invited to ac-
 3 company the condemner's appraiser on any inspection of the property for appraisal purposes.

4 (4) The owner has not less than 40 days from the date the owner receives the [initial] written
 5 offer required by subsection (1) of this section, accompanied by the appraisal or written explanation
 6 required by subsection (2) of this section, to accept or reject the offer. If the owner rejects the
 7 condemner's offer and obtains a separate appraisal, the owner shall provide the condemner with a
 8 copy of the owner's appraisal not less than 60 days prior to trial or arbitration.

9 (5)(a) Failure to provide the opposing party with a copy of the appropriate appraisal as provided
 10 in subsections (2) and (4) of this section shall prohibit the use of the appraisal in arbitration or at
 11 trial.

12 (b) In the event the owner and condemner are unable to reach agreement and proceed to trial
 13 or arbitration as provided in subsection (6) of this section, each party to the proceeding shall pro-
 14 vide to every other party a copy of every appraisal obtained by the party as part of the condemna-
 15 tion action.

16 (6)(a) If an action based on the condemnation is filed, the owner may elect to have compensation
 17 determined by binding arbitration if the total amount of compensation claimed by any party does
 18 not exceed \$20,000. Notice of an election of binding arbitration must be given to the condemner at
 19 least 90 days prior to the date on which an arbitration hearing is scheduled under ORS 36.420.

20 (b) Notwithstanding the amount established under ORS 36.400, if the owner elects to proceed
 21 with binding arbitration, the arbitration shall be conducted according to the mandatory arbitration
 22 program established under ORS 36.400 to 36.425. Notwithstanding ORS 36.425, no party may request
 23 a trial de novo after the filing of the decision and award of the arbitrator. Within 20 days after the
 24 filing of the decision and award of the arbitrator under ORS 36.425, any party may file a motion
 25 with the court for the vacation, modification or correction of the award. The court may vacate an
 26 award only if there is a basis to vacate the award described in ORS 36.705 (1)(a) to (d). The court
 27 may modify or correct an award only for the grounds given in ORS 36.710. Except as provided in
 28 this subsection, no party may appeal from the decision and award of an arbitrator if the owner
 29 elects binding arbitration in lieu of trial.

30 (c) If the total amount of compensation claimed exceeds \$20,000 but is less than \$50,000, the
 31 owner may elect to have compensation determined by nonbinding arbitration under the applicable
 32 provisions of ORS 36.400 to 36.425.

33 (7) If a trial is held or arbitration conducted for the fixing of the amount of compensation to be
 34 awarded to the defendant owner or party having an interest in the property being condemned, the
 35 court or arbitrator shall award [said] **the** defendant costs and disbursements including reasonable
 36 attorney fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no
 37 other:

38 (a) If the amount of just compensation assessed by the verdict in the trial exceeds the [initial]
 39 **highest** written offer in settlement submitted by condemner **before the filing of the action** to those
 40 defendants appearing in the action pursuant to subsection (1) of this section; or

41 (b) If the court finds that the first written offer made by condemner to defendant in settlement
 42 [prior to] **before the** filing of the action did not constitute a good faith offer of an amount reason-
 43 ably believed by condemner to be just compensation.

44 (8) If any appraisal provided to a party under this section relies on a written report, opinion or
 45 estimate of a person who is not an appraiser, a copy of the written report, opinion or estimate must

1 be provided with the appraisal. If any appraisal provided under this section relies on an unwritten
2 report, opinion or estimate of a person who is not an appraiser, the party providing the appraisal
3 must also provide the name and address of the person who provided the unwritten report, opinion
4 or estimate.

5 (9) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS
6 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled
7 to costs and disbursements under subsection (7) of this section.

8 **SECTION 2.** ORS 35.348 is amended to read:

9 35.348. Notwithstanding ORS 35.346, if a condemner determines that an emergency that poses
10 a threat to persons or property exists and that immediate possession of the property is necessary,
11 the condemner may immediately file a condemnation action after making [*an initial*] **the** written of-
12 fer **required** under ORS 35.346 (1) accompanied by the appraisal or explanation required by ORS
13 35.346 (2).

14 **SECTION 3.** The amendments to ORS 35.346 and 35.348 by sections 1 and 2 of this 2009
15 Act apply only to condemnation actions filed on or after the effective date of this 2009 Act.

16 **SECTION 4.** Section 5 of this 2009 Act is added to and made a part of ORS chapter 35.

17 **SECTION 5.** (1) After the filing of a condemnation action, a condemner may make an
18 offer of compromise to the defendant in a condemnation action after the filing of the action.
19 An offer of compromise must be made under this section not later than 10 days before the
20 trial of the action. The offer of compromise must indicate whether the offer includes any
21 amount for expenses, attorney fees or other costs and, if so, the amounts included for ex-
22 penses, attorney fees and other costs. If the defendant accepts the offer, the defendant shall
23 file with the court an acceptance signed by the defendant or the defendant's attorney. The
24 acceptance must be filed not more than three days after the time the offer was served on
25 the defendant. A copy of the offer and a judgment document incorporating the terms of the
26 offer must be attached to the acceptance.

27 (2) Unless an offer of compromise under this section specifically includes amounts for
28 expenses, attorney fees and other costs, upon acceptance of the offer the court shall give
29 judgment to the defendant for the amount of the offer and, in addition, for the costs and
30 disbursements, attorney fees and expenses as defined in ORS 35.335 that are determined by
31 the court to have been incurred before the date of the offer.

32 (3) If an offer of compromise is not accepted within the time allowed by subsection (1)
33 of this section, the offer is withdrawn and may not be given in evidence at trial. If the de-
34 fendant fails to obtain a judgment more favorable than the offer:

35 (a) The defendant may not recover prevailing party fees or costs and disbursements, at-
36 torney fees or expenses as defined in ORS 35.335 that were incurred on or after the date of
37 the offer;

38 (b) Unless the parties agree otherwise, the court shall give judgment to the defendant for
39 costs and disbursements, attorney fees and expenses as defined in ORS 35.335 that were in-
40 curred before the date of the offer; and

41 (c) The court shall give judgment to the condemner for the condemner's costs and dis-
42 bursements, other than prevailing party fees, incurred by the condemner after service of the
43 offer.

44 (4) For the purpose of determining whether the defendant has failed to obtain a judgment
45 more favorable than an offer of compromise under this section, the court shall disregard all

1 **amounts identified in the offer as expenses, attorney fees or other costs.**

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