

HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 794

By COMMITTEE ON JUDICIARY

June 2

1 On page 3 of the printed A-engrossed bill, delete lines 17 through 45 and delete page 4 and in-
2 sert:

3 **“SECTION 5. (1) After the filing of a condemnation action, a condemner may serve an**
4 **offer of compromise on the defendant in the action. An offer of compromise must be served**
5 **on the defendant not later than 10 days before the trial of the action. The offer of compro-**
6 **mise must identify the amount offered as just compensation for the property and as**
7 **compensable damages to remaining property of the defendant. The offer of compromise must**
8 **also indicate whether the offer includes any amount for costs and disbursements, attorney**
9 **fees and expenses and, if so, the amounts included for costs and disbursements, attorney fees**
10 **and expenses. If the defendant accepts the amount offered as just compensation for the**
11 **property and as compensable damages to remaining property of the defendant, the defendant**
12 **shall file with the court an acceptance signed by the defendant or the defendant’s attorney.**
13 **The acceptance must be filed not more than three days after the time the offer was served**
14 **on the defendant. A copy of the offer must be attached to the acceptance.**

15 **“(2) If an offer of compromise under this section does not specifically include amounts**
16 **for costs and disbursements, attorney fees and expenses, upon acceptance of the offer the**
17 **court shall give judgment to the defendant for the amount offered as just compensation for**
18 **the property and as compensable damages to remaining property of the defendant and, in**
19 **addition, for costs and disbursements, attorney fees and expenses that are determined by the**
20 **court to have been incurred before service of the offer on the defendant.**

21 **“(3) If an offer of compromise under this section specifically includes amounts for costs**
22 **and disbursements, attorney fees and expenses, the defendant may accept all amounts of-**
23 **fered, or may accept only that portion of the offer identified as just compensation for the**
24 **property and as compensable damages to remaining property of the defendant. If the de-**
25 **fendant accepts only that portion of the offer identified as just compensation for the property**
26 **and as compensable damages to remaining property of the defendant, the defendant is enti-**
27 **tled to an award for costs and disbursements, attorney fees and expenses incurred by the**
28 **defendant before service of the offer on the defendant. The court shall determine the amount**
29 **of costs and disbursements, attorney fees and expenses to be awarded to the defendant after**
30 **acceptance of the offer is filed under subsection (1) of this section.**

31 **“(4) If an offer of compromise is not accepted within the time allowed under subsection**
32 **(1) of this section, the offer is withdrawn and may not be given in evidence at trial. If the**
33 **defendant fails to obtain a judgment more favorable than the offer:**

34 **“(a) The defendant may not recover prevailing party fees or costs and disbursements,**
35 **attorney fees and expenses that were incurred on and after service of the offer;**

1 “(b) Unless the parties agree otherwise, the court shall give judgment to the defendant
2 for costs and disbursements, attorney fees and expenses that were incurred by the defendant
3 before service of the offer; and

4 “(c) The court shall give judgment to the condemner for the condemner’s costs and dis-
5 bursements, other than prevailing party fees, incurred by the condemner on and after ser-
6 vice of the offer.

7 “(5) For the purpose of determining whether the defendant has failed to obtain a judg-
8 ment more favorable than an offer of compromise that specifically includes amounts for
9 costs and disbursements, attorney fees and expenses, the court shall first determine the
10 amount of costs and disbursements, attorney fees and expenses incurred by the defendant
11 before service of the offer on the defendant. The court shall add that amount to the amounts
12 awarded under the judgment as just compensation for the property and as compensable
13 damages to remaining property of the defendant. If the sum of those amounts is equal to
14 or less than the total amount specified in the offer of compromise, the defendant has not
15 obtained a judgment more favorable than the offer of compromise.

16 “(6) For the purposes of this section, ‘expenses’ has the meaning given that term in ORS
17 35.335.”.