

House Bill 3146

Sponsored by Representative THATCHER (at the request of Dean Werth)

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 **as introduced**.

Provides that offer of just compensation for condemned property may not be less than real market value of property as determined by county assessor or Department of Revenue.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to eminent domain; creating new provisions; amending ORS 35.346; and declaring an emer-
3 gency.

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

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

6 35.346. (1) At least 40 days before the filing of any action for condemnation of property or any
7 interest in property, the condemner shall make a written offer to the owner or party having an in-
8 terest to purchase the property or interest, and to pay just compensation therefor and for any
9 compensable damages to remaining property. **If the condemner seeks condemnation of real
10 property that is subject to tax assessment, the offer of just compensation for the property
11 may not be less than the most recent real market value determined for the property by the
12 county assessor or the Department of Revenue for the purposes of taxation. If the
13 condemner seeks condemnation of a portion of the real property for which a determination
14 of real market value was made by the county assessor or the Department of Revenue, the
15 offer of just compensation may not be less than the percentage of the real market value that
16 is calculated by dividing the area of the property to be condemned by the area for which the
17 real market value was determined.**

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

31 (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 written offer re-
 5 quired by subsection (1) of this section, accompanied by the appraisal or written explanation re-
 6 quired 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 the defendant costs and disbursements including reasonable attorney
 36 fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no other:

37 (a) If the amount of just compensation assessed by the verdict in the trial exceeds the highest
 38 written offer in settlement submitted by condemner before the filing of the action to those defend-
 39 ants appearing in the action pursuant to subsection (1) of this section; or

40 (b) If the court finds that the first written offer made by condemner to defendant in settlement
 41 before the filing of the action did not constitute a good faith offer of an amount reasonably believed
 42 by condemner to be just compensation.

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

1 report, opinion or estimate of a person who is not an appraiser, the party providing the appraisal
2 must also provide the name and address of the person who provided the unwritten report, opinion
3 or estimate.

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

7 **SECTION 2. The amendments to ORS 35.346 by section 1 of this 2011 Act apply only to**
8 **written offers made under ORS 35.346 (1) on or after the effective date of this 2011 Act.**

9 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
10 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
11 **on its passage.**

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