

April 10, 2017

Senate Committee on Finance and Revenue  
900 Court St. NE - HR A  
Salem, Oregon 97301

RE: SB 535

Chair Hass and members of the Committee:

My name is Courtney Lords and I'm an attorney with Multnomah County Attorney's Office. I'm also here on behalf of the Association of Oregon Counties (AOC) which shares Multnomah County's opposition to this bill.

ORS 35.346 and Proposed Changes in SB 535

ORS 35.346(1) currently requires that at least 40 days prior to filing any action for condemnation of real property that the condemner make a written offer to the property owner to purchase the property and pay just compensation for the property and any compensable damages to remaining property.

ORS 35.346(2) states that an offer *shall* be accompanied by a written appraisal in which the condemner relied upon in establishing the compensation offered. If the amount of just compensation due is less than \$20,000, ORS 35.346(2) gives the condemner the option of not providing a written appraisal, but providing instead a written explanation of the bases and method by which the condemner arrived at the valuation of the property.

The proposed changes in SB 535 add two things to ORS 35.346:

[1] If the condemner seeks condemnation of real property that is subject to tax assessment, the offer of just compensation may not be less than the RMV determined for the property by the county assessor or the Dept of Revenue for the purpose of taxation. [2] If the condemner seeks condemnation of a portion of the real property for which a determination of RMV was made by the county assessor or the department, the offer of just compensation may not be less than the percentage of the RMV that is calculated by dividing the area of the property to be condemned by the area for which the RMV was determined.

## Reasons for Opposing SB 535

The AOC and Multnomah County adamantly oppose this bill for the following reasons:

1. ORS 35.346(2) requirement that an offer must be accompanied by a written appraisal provides a better valuation of just compensation than the assessed RMV because it is an in-depth analysis of the property, the condemner's proposed taking, and the impact of the taking on the remaining property (if any).

A county assessor's valuation of RMV is a 30,000 foot evaluation at a point in time and does not consider the multiple factors that a certified appraiser does when appraising a property. An appraiser's value is more accurate because the appraiser:

- (1) visits the property near the time of condemnation (assessor likely hasn't personally viewed and evaluated a property),
- (2) takes note of any special conditions or abnormalities on the property (e.g. wetlands, contamination, inability to develop, etc),
- (3) uses recent comparable sales as a guide,
- (4) evaluates other similar properties on the market, and
- (5) actually accounts for market conditions.

In Multnomah County's experience and other member counties of the AOC, a property owner receives greater compensation for a property taking when the property is appraised by a certified appraiser than if the county were to use the assessor's RMV. In Multnomah County's opinion and the AOC, the proposed changes in SB 535 actually will hurt private property owners when their property is condemned, it will not help them to obtain higher compensation.

2. Government entities often only take portions of properties, i.e. easements, in which the assessor's value will not be adequate for determining the value of the partial taking as proposed by SB 535. SB 535 implies that the value of a partial taking can be determined by the percentage of the property taken versus the whole property. In many cases, this is not adequate because the value of partial takings is often not proportionate to the value of the whole property.

For example, imagine a 10,000 square foot property where the condemner is condemning 1,000 square feet for a drainage easement. Under SB 535, the partial taking value would be compensated at 10% of the assessed RMV. However, if the 1,000 square feet proposed for the easement was right in the middle of a productive

berry patch that property owner used for income, the value of the taking may be much higher than 10% based on the impact to the property and the remainder of the property. Similarly, if the 1,000 square foot area being taken was in a wetland area that was deemed “undevelopable,” the value could be less than 10%.

The language in SB 535 over simplifies the complexity of partial takings and is not a good method for evaluating just compensation for partial takings.

### Summary

The AOC and Multnomah County oppose SB 535 because (1) it ignores the importance and thoroughness of the written appraisal requirement in ORS 35.346, and (2) offers an inadequate method for calculating partial takings; both of which are likely to negatively impact just compensation for impacted property owners.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions.

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