

Senate Bill 535

Sponsored by Senator THATCHER (Presession filed.)

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 interest*
8 *to purchase the property or interest, and to pay just compensation therefor and for any compensable*
9 *damages to remaining property.]*

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

22 *[(3) Unless otherwise agreed to by the condemner and the owner, prior to appraising the property*
23 *the condemner shall provide not less than 15 days' written notice to the owner of the planned appraisal*
24 *inspection. The property owner and designated representative, if any, shall be invited to accompany the*
25 *condemner's appraiser on any inspection of the property for appraisal purposes.]*

26 *[(4) The owner has not less than 40 days from the date the owner receives the written offer required*
27 *by subsection (1) of this section, accompanied by the appraisal or written explanation required by*
28 *subsection (2) of this section, to accept or reject the offer. If the owner rejects the condemner's offer and*
29 *obtains a separate appraisal, the owner shall provide the condemner with a copy of the owner's ap-*
30 *praisal not less than 60 days prior to trial or arbitration.]*

31 *[(5)(a) Failure to provide the opposing party with a copy of the appropriate appraisal as provided*

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 *in subsections (2) and (4) of this section shall prohibit the use of the appraisal in arbitration or at*
2 *trial.]*

3 *[(b) In the event the owner and condemner are unable to reach agreement and proceed to trial or*
4 *arbitration as provided in subsection (6) of this section, each party to the proceeding shall provide to*
5 *every other party a copy of every appraisal obtained by the party as part of the condemnation action.]*

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

10 *[(b) Notwithstanding the amount established under ORS 36.400, if the owner elects to proceed with*
11 *binding arbitration, the arbitration shall be conducted according to the mandatory arbitration program*
12 *established under ORS 36.400 to 36.425. Notwithstanding ORS 36.425, no party may request a trial*
13 *de novo after the filing of the decision and award of the arbitrator. Within 20 days after the filing of*
14 *the decision and award of the arbitrator under ORS 36.425, any party may file a motion with the court*
15 *for the vacation, modification or correction of the award. The court may vacate an award only if there*
16 *is a basis to vacate the award described in ORS 36.705 (1)(a) to (d). The court may modify or correct*
17 *an award only for the grounds given in ORS 36.710. Except as provided in this subsection, no party*
18 *may appeal from the decision and award of an arbitrator if the owner elects binding arbitration in lieu*
19 *of trial.]*

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

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

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

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

33 *[(8) If any appraisal provided to a party under this section relies on a written report, opinion or*
34 *estimate of a person who is not an appraiser, a copy of the written report, opinion or estimate must*
35 *be provided with the appraisal. If any appraisal provided under this section relies on an unwritten*
36 *report, opinion or estimate of a person who is not an appraiser, the party providing the appraisal must*
37 *also provide the name and address of the person who provided the unwritten report, opinion or esti-*
38 *mate.]*

39 *[(9) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS*
40 *35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled*
41 *to costs and disbursements under subsection (7) of this section.]*

42 **(1) At least 40 days before the filing of any action for condemnation of property or any**
43 **interest in property, the condemner shall make a written offer to the owner or party having**
44 **an interest to purchase the property or interest, and to pay just compensation therefor and**
45 **for any compensable damages to remaining property. If the condemner seeks condemnation**

1 of real property that is subject to tax assessment, the offer of just compensation for the
2 property may not be less than the most recent real market value determined for the prop-
3 erty by the county assessor or the Department of Revenue for the purposes of taxation. If
4 the condemner seeks condemnation of a portion of the real property for which a determi-
5 nation of real market value was made by the county assessor or the department, the offer
6 of just compensation may not be less than the percentage of the real market value that is
7 calculated by dividing the area of the property to be condemned by the area for which the
8 real market value was determined.

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

23 (3) Unless otherwise agreed to by the condemner and the owner, before appraising the
24 property the condemner shall provide at least 15 days' written notice to the owner of the
25 planned appraisal inspection. The property owner and designated representative, if any, must
26 be invited to accompany the condemner's appraiser on any inspection of the property for
27 appraisal purposes.

28 (4) The owner has 40 days from the date the owner receives the written offer required
29 by subsection (1) of this section, accompanied by the appraisal or written explanation re-
30 quired by subsection (2) of this section, to accept or reject the offer. If the owner rejects the
31 condemner's offer and obtains a separate appraisal, the owner shall provide the condemner
32 with a copy of the owner's appraisal not less than 60 days prior to trial or arbitration.

33 (5)(a) Failure to provide the opposing party with a copy of the appropriate appraisal as
34 provided in subsections (2) and (4) of this section precludes the use of the appraisal in arbi-
35 tration or at trial.

36 (b) In the event the owner and condemner are unable to reach agreement and proceed
37 to trial or arbitration as provided in subsection (6) of this section, each party to the pro-
38 ceeding shall provide to every other party a copy of every appraisal obtained by the party
39 as part of the condemnation action.

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

45 (b) Notwithstanding the amount established under ORS 36.400, if the owner elects to

1 proceed with binding arbitration, the arbitration shall be conducted according to the man-
2 datory arbitration program established under ORS 36.400 to 36.425. Notwithstanding ORS
3 36.425, no party may request a trial de novo after the filing of the decision and award of the
4 arbitrator. Within 20 days after the filing of the decision and award of the arbitrator under
5 ORS 36.425, any party may file a motion with the court for the vacation, modification or
6 correction of the award. The court may vacate an award only if there is a basis to vacate
7 the award described in ORS 36.705 (1)(a) to (d). The court may modify or correct an award
8 only for the grounds given in ORS 36.710. Except as provided in this subsection, no party
9 may appeal from the decision and award of an arbitrator if the owner elects binding arbi-
10 tration in lieu of trial.

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

14 (7) If a trial is held or arbitration conducted for the fixing of the amount of compensation
15 to be awarded to the defendant owner or party having an interest in the property being
16 condemned, the court or arbitrator shall award the defendant costs and disbursements in-
17 cluding reasonable attorney fees and reasonable expenses as defined in ORS 35.335 (2) in the
18 following cases, and no other:

19 (a) If the amount of just compensation assessed by the verdict in the trial exceeds the
20 highest written offer in settlement submitted by condemner before the filing of the action
21 to those defendants appearing in the action pursuant to subsection (1) of this section; or

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

25 (8) If any appraisal provided to a party under this section relies on a written report,
26 opinion or estimate of a person who is not an appraiser, a copy of the written report, opinion
27 or estimate must be provided with the appraisal. If any appraisal provided under this section
28 relies on an unwritten report, opinion or estimate of a person who is not an appraiser, the
29 party providing the appraisal must also provide the name and address of the person who
30 provided the unwritten report, opinion or estimate.

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

34 **SECTION 2.** The amendments to ORS 35.346 by section 1 of this 2017 Act apply only to
35 written offers made under ORS 35.346 (1) on or after the effective date of this 2017 Act.

36 **SECTION 3.** This 2017 Act being necessary for the immediate preservation of the public
37 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
38 on its passage.