

A-Engrossed
House Bill 2268

Ordered by the House March 10
Including House Amendments dated March 10

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon Law Commission)

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.

Modifies rules governing appraisal exchanges in condemnation actions. Provides that if appraisal relies on written report, opinion or estimate of person who is not appraiser, appraisal must have attached copy of report, opinion or estimate. Provides that if appraisal relies on unwritten report, opinion or estimate of person who is not appraiser, party providing appraisal must also provide name and address of person who provided unwritten report, opinion or estimate.

A BILL FOR AN ACT

1
2 Relating to eminent domain; creating new provisions; and amending ORS 35.346.

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 written offer to the owner or party having
7 an interest to purchase the property or interest, and to pay just compensation therefor and for any
8 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
23 the condemner shall provide not less than 15 days' written notice to the owner of the planned ap-
24 praisal inspection. The property owner and designated representative, if any, shall be invited to ac-
25 company the 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 initial written

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 offer required by subsection (1) of this section, accompanied by the appraisal or written explanation
 2 required by subsection (2) of this section, to accept or reject the offer. If the owner rejects the
 3 condemner's offer and obtains a separate appraisal, the owner shall provide the condemner with a
 4 copy of the owner's appraisal not less than 60 days prior to trial or arbitration.

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

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

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

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

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

29 (7) If a trial is held or arbitration conducted for the fixing of the amount of compensation to be
 30 awarded to the defendant owner or party having an interest in the property being condemned, the
 31 court or arbitrator shall award said defendant costs and disbursements including reasonable attor-
 32 ney fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no other:

33 (a) If the amount of just compensation assessed by the verdict in the trial exceeds the highest
 34 written offer in settlement submitted by condemner to those defendants appearing in the action at
 35 least 30 days prior to commencement of said trial; or

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

39 **(8) If any appraisal provided to a party under this section relies on a written report,**
 40 **opinion or estimate of a person who is not an appraiser, a copy of the written report, opinion**
 41 **or estimate must be provided with the appraisal. If any appraisal provided under this section**
 42 **relies on an unwritten report, opinion or estimate of a person who is not an appraiser, the**
 43 **party providing the appraisal must also provide the name and address of the person who**
 44 **provided the unwritten report, opinion or estimate.**

45 [(8)] (9) Costs and disbursements other than reasonable attorney fees and expenses as defined

1 in ORS 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant
2 is entitled to costs and disbursements under subsection (7) of this section.

3 **SECTION 2. The amendments to ORS 35.346 by section 1 of this 2005 Act apply only to**
4 **condemnation actions commenced as described in ORS 12.020 on or after the effective date**
5 **of this 2005 Act.**

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