

House Bill 2355

Sponsored by Representative BURLEY (at the request of Edward Fitch)

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**.

Allows defendant in condemnation action to amend or revise appraisal at any time before trial as long as amendment or revision does not result in substantial change in amount of claimed compensation. Allows plaintiff in condemnation action to amend or revise appraisal at any time before trial, subject to restrictions on reduction of amount of just compensation offered, pleaded or deposited.

A BILL FOR AN ACT

1 Relating to appraisals in condemnation actions; creating new provisions; and amending ORS 35.346.

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

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

4 35.346. (1) At least 40 days before the filing of any action for condemnation of property or any
5 interest in property, the condemner shall make an initial written offer to the owner or party having
6 an interest to purchase the property or interest, and to pay just compensation therefor and for any
7 compensable damages to remaining property.
8

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

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

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

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

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

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

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

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

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

35 (8) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS
 36 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled
 37 to costs and disbursements under subsection (7) of this section.

38 **(9) A defendant in a condemnation action may amend or revise an appraisal at any time**
 39 **before trial as long as the amendment or revision does not result in a substantial change in**
 40 **the amount of compensation claimed by the party. A plaintiff in a condemnation action may**
 41 **amend or revise an appraisal at any time before trial, but the plaintiff may reduce the**
 42 **amount of just compensation offered, pleaded or deposited by the plaintiff only as provided**
 43 **by subsection (2) of this section.**

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

1 **of this 2005 Act.**

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