

HOUSE BILL No. 1106

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-24; IC 36-1-4-5.

Synopsis: Eminent domain. Makes changes to condemnation proceedings in which appraisers are appointed after April 1, 2022. Requires a city or town to obtain the county legislative body's approval of a condemnation of property within the unincorporated area of the county.

Effective: Upon passage.

Goodrich, Hostettler, Prescott

January 4, 2022, read first time and referred to Committee on Local Government.



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1106

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-24-1-0.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 0.1. The amendments made to sections 3**
4 **and 8 of this chapter by this act during the 2022 regular session of**
5 **the general assembly apply to condemnation proceedings in which**
6 **appraisers are appointed after April 1, 2022.**

7 SECTION 2. IC 32-24-1-3, AS AMENDED BY P.L.84-2016,
8 SECTION 143, IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may
10 exercise the power of eminent domain for any public use under any
11 statute may exercise the power only in the manner provided in this
12 article, except as otherwise provided by law.

13 (b) Except as provided in subsection (g), before proceeding to
14 condemn, the person:

- 15 (1) may enter upon any land to examine and survey the property
16 sought to be acquired; and
- 17 (2) must make an effort to purchase for the use intended the land,



1 right-of-way, easement, or other interest in the property.

2 **In the case of a municipality condemning property within the**
 3 **unincorporated area of the county as provided in IC 32-24-2.5, the**
 4 **municipality may not file a complaint under section 4 of this**
 5 **chapter, unless the municipality's petition for condemnation under**
 6 **IC 32-24-2.5-7 is approved.**

7 (c) The effort to purchase under subsection (b)(2) must include the
 8 following:

9 (1) Establishing a proposed purchase price for the property.

10 (2) Providing the owner of the property with an appraisal or other
 11 evidence used to establish the proposed purchase price.

12 (3) Conducting good faith negotiations with the owner of the
 13 property.

14 (d) If the land or interest in the land, or property or right is owned
 15 by a person who is an incapacitated person (as defined in
 16 IC 29-3-1-7.5) or less than eighteen (18) years of age, the person
 17 seeking to acquire the property may purchase the property from the
 18 guardian of the incapacitated person or person less than eighteen (18)
 19 years of age. If the purchase is approved by the court appointing the
 20 guardian and the approval is written upon the face of the deed, the
 21 conveyance of the property purchased and the deed made and approved
 22 by the court are valid and binding upon the incapacitated person or
 23 persons less than eighteen (18) years of age.

24 (e) The deed given, when executed instead of condemnation,
 25 conveys only the interest stated in the deed.

26 (f) If property is taken by proceedings under this article, the entire
 27 fee simple title may be taken and acquired.

28 (g) This subsection applies to a public utility (as defined in
 29 ~~IC 32-24-1-5.9(a)~~ **section 5.9(a) of this chapter**) or a pipeline
 30 company (as defined in IC 8-1-22.6-7). If a public utility or a pipeline
 31 company seeks to acquire land or an interest in land under this article,
 32 the public utility or pipeline company may not enter upon the land to
 33 examine or survey the property sought to be acquired unless either of
 34 the following occur:

35 (1) The public utility or the pipeline company sends notice by
 36 certified mail to the affected landowner (as defined in
 37 IC 8-1-22.6-2) of the public utility's or the pipeline company's
 38 intention to enter upon the landowner's property for survey
 39 purposes. The notice required by this subdivision must be mailed
 40 not later than fourteen (14) days before the date of the public
 41 utility's or the pipeline company's proposed examination or
 42 survey.



1 (2) The public utility or the pipeline company receives the
 2 landowner's signed consent to enter the property to perform the
 3 proposed examination or survey.

4 An affected landowner may bring an action to enforce this subsection
 5 in the circuit court, superior court, or probate court of the county in
 6 which the landowner's property is located. A prevailing landowner is
 7 entitled to the landowner's actual damages as a result of the public
 8 utility's or the pipeline company's violation. In addition, the court may
 9 award a prevailing landowner reasonable costs of the action and
 10 attorney's fees.

11 SECTION 3. IC 32-24-1-8, AS AMENDED BY P.L.80-2020,
 12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 UPON PASSAGE]: Sec. 8. (a) A defendant may object to the
 14 proceedings **under grounds set forth in this section, or for any other**
 15 **reason disclosed in the complaint or set up in the objections. The**
 16 **court may sustain the objections, if the court makes any of the**
 17 **following determinations:**

18 (1) ~~because~~ The court does not have jurisdiction either of the
 19 subject matter or of the person.

20 (2) ~~because~~ The plaintiff does not have the right **or express**
 21 **statutory authority** to exercise the power of eminent domain for
 22 the use sought. ~~or~~

23 (3) **This subdivision applies only to a condemnation by a**
 24 **municipality outside of the municipality's corporate**
 25 **boundaries. The court determines that:**

26 (A) **the written findings of the county legislative body**
 27 **under IC 32-24-2.5-12 were arbitrary, capricious, or**
 28 **erroneous;**

29 (B) **the municipality failed to prove by clear and**
 30 **convincing evidence that:**

31 (i) **there is a present and urgent necessity for the**
 32 **municipality's exercise of eminent domain;**

33 (ii) **there is no property within the corporate boundaries**
 34 **of the municipality that is reasonably suitable to be used**
 35 **for the project; and**

36 (iii) **the property is no more than is necessary for**
 37 **completion of the project; or**

38 (C) **the municipality failed to prove by clear and**
 39 **convincing evidence that:**

40 (i) **the municipality intends to take the property only for**
 41 **a public use and not for any secondary use or for private**
 42 **development; or**



1 (ii) the municipality's taking of the property is
2 authorized under IC 32-24-2.5.

3 ~~(3) for any other reason disclosed in the complaint or set up in the~~
4 objections.

5 (b) Objections under subsection (a) must be:

6 (1) in writing;

7 (2) separately stated and numbered; and

8 (3) filed not later than thirty (30) days after the date the notice
9 required in section 6 of this chapter is served on the defendant.

10 However, the court may extend the period for filing objections by
11 not more than thirty (30) days upon written motion of the
12 defendant.

13 (c) The court may not allow pleadings in the cause other than the
14 complaint, any objections, and the written exceptions provided for in
15 section 11 of this chapter. However, the court may permit amendments
16 to the pleadings.

17 (d) If ~~an~~ a defendant's objection is sustained, the plaintiff may **do**
18 the following:

19 (1) Amend the complaint. ~~or~~

20 (2) ~~may~~ Appeal from the decision in the manner that appeals are
21 taken from final judgments in civil actions. All the parties shall
22 take notice and are bound by the judgment in an appeal.

23 (e) If the objections are overruled, the court shall appoint appraisers
24 as provided for in this chapter. Any defendant may appeal the
25 interlocutory order overruling the objections and appointing appraisers
26 in the manner that appeals are taken from final judgments in civil
27 actions.

28 (f) All the parties shall take notice of and be bound by the judgment
29 in the appeal.

30 (g) The transcript must be filed in the office of the clerk of the
31 supreme court not later than thirty (30) days after the notice of the
32 defendant's appeal is filed. The appeal does not stay proceedings in the
33 cause.

34 (h) This subsection does not apply to a condemnation action brought
35 by a public utility (as defined in section 5.9(a) of this chapter) or by a
36 pipeline company. Notwithstanding section 14 of this chapter, if an
37 objection:

38 (1) is sustained, and no appeal is filed; or

39 (2) is sustained in the judgment in the appeal;

40 the court shall award the defendant the reasonable costs and attorney's
41 fees incurred for the objection, in an amount not to exceed twenty-five
42 thousand dollars (\$25,000).



1 SECTION 4. IC 32-24-2-0.1 IS ADDED TO THE INDIANA CODE
 2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: **Sec. 0.1. The amendments made to sections 8,
 4 10, and 16 of this chapter by this act during the 2022 regular
 5 session of the general assembly apply only to condemnation
 6 proceedings in which appraisers are appointed after April 1, 2022.**

7 SECTION 5. IC 32-24-2-8, AS AMENDED BY P.L.152-2021,
 8 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 8. (a) **Except as provided in subsection (b),**
 10 upon the completion of the list, the works board shall award the
 11 damages sustained and assess the benefits accruing to each piece of
 12 property on the list.

13 **(b) This subsection applies only to a condemnation by a
 14 municipality under IC 32-24-2.5. Upon completion of the list, the
 15 municipality must file a petition for condemnation with the county
 16 legislative body. If the petition is approved by the county legislative
 17 body, the works board may proceed with awarding the damages
 18 sustained, assessing the benefits accruing to each piece of property
 19 on the list.**

20 ~~(b)~~ (c) When the assessments or awards are completed, the works
 21 board shall have a written notice served upon the owner of each piece
 22 of property, showing the amount of the assessment or award, by:

- 23 (1) if the owner is a resident of the municipality, leaving a copy
 24 of the notice at the owner's last usual place of residence in the
 25 municipality or by delivering a copy to the owner personally and
 26 mailing a copy of the notice to the owner's address of record; or
 27 (2) if the owner is not a resident of the municipality, by sending
 28 the notice to the owner's address of record by certified mail.

29 ~~(c)~~ (d) If the owner's residence is unknown, the municipality shall
 30 notify the owner by publication once each week for three (3) successive
 31 weeks:

- 32 (1) with each publication of notice in a daily newspaper of general
 33 circulation in the municipality; or
 34 (2) with the first publication of notice in a newspaper described
 35 in subdivision (1) and the two (2) subsequent publications of
 36 notice:
 37 (A) in accordance with IC 5-3-5; and
 38 (B) on the official web site of the municipality.

39 ~~(d)~~ (e) The notices must also name a day, at least thirty (30) days
 40 after service of notice or after the last publication, on which the works
 41 board will receive or hear remonstrances from owners with regard to:

- 42 (1) the amount of their respective awards or assessments; and



1 (2) objections to the municipality's right to exercise the power of
2 eminent domain for the use sought.

3 ~~(e)~~ **(f)** Persons not included in the list of the assessments or awards
4 and claiming to be entitled to them are considered to have been notified
5 of the pendency of the proceedings by the original notice of the
6 resolution of the works board.

7 ~~(f)~~ **(g)** The notice required by this section must provide the full text
8 of subsection ~~(d)~~ **(e)** to provide notice to the property owners of their
9 right to object to the condemnation and be in substantially the same
10 form as the notice required under IC 32-24-1-6(a).

11 SECTION 6. IC 32-24-2-10, AS AMENDED BY P.L.80-2020,
12 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 UPON PASSAGE]: Sec. 10. (a) A person notified or considered to be
14 notified under this chapter may appear before the works board on the
15 day fixed for hearing remonstrances to:

16 **(1)** awards and assessments and the municipality's right to
17 exercise the power of eminent domain for the use sought and
18 remonstrate in writing against them; **or**

19 **(2) awards and assessments, in the case of a condemnation by**
20 **a municipality under IC 32-24-2.5.**

21 (b) After the remonstrances have been received, the works board
22 shall either sustain or modify the awards or assessments in the case of
23 remonstrances that have been filed that are based on the amount of the
24 awards or assessments. The works board shall sustain the award or
25 assessment in the case of an award or assessment against which a
26 remonstrance has not been filed.

27 **(c) This subsection does not apply to a condemnation by a**
28 **municipality under IC 32-24-2.5.** If a person remonstrates in writing
29 an objection to the municipality's right to exercise the power of eminent
30 domain for the use sought, the works board shall consider the
31 remonstrance and confirm, modify, or rescind its original resolution.

32 (d) A person remonstrating in writing who is aggrieved by the
33 decision of the works board may, not later than thirty (30) days after the
34 decision is made, take an appeal to a court that has jurisdiction in the
35 county in which the municipality is located. The appeal affects only the
36 assessment or award of the person appealing.

37 SECTION 7. IC 32-24-2-16 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) This section
39 applies whenever the works board of a municipality located upon or
40 adjoining a harbor connected with a navigable stream or lake, or upon
41 any navigable channel, slip, waterway, or watercourse, wants to acquire
42 for the use of the municipality any property for a right-of-way for



1 seawalls, docks, or other improvement of the harbor, channel, slip,
2 waterway or watercourse.

3 (b) The works board shall adopt a resolution that the municipality
4 wants to acquire the property, describing the property that may be
5 injuriously or beneficially affected. All proceedings necessary for the
6 completion of and payment for any such undertaking, including **the**
7 **approval by the county legislative body of a petition for**
8 **condemnation under IC 32-24-2.5, if applicable,** notice,
9 remonstrance, appeal, letting of and performance of contracts,
10 assessment and collection of payment for benefits, and the
11 determination and payment of damages to property, are the same, to the
12 extent applicable, as those proceedings for street improvements of the
13 municipality by its works board or other entity charged by statute with
14 the performance of those duties on behalf of the municipality.

15 SECTION 8. IC 32-24-2.5 IS ADDED TO THE INDIANA CODE
16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
17 UPON PASSAGE]:

18 **Chapter 2.5. Municipal Condemnation of Land in**
19 **Unincorporated Area**

20 **Sec. 1. This chapter applies only to condemnation proceedings**
21 **in which appraisers are appointed after April 1, 2022.**

22 **Sec. 2. This chapter applies if a municipality seeks to condemn**
23 **real property:**

- 24 (1) located outside of the municipality's corporate boundaries;
25 and
26 (2) under IC 32-24-1-4, IC 32-24-2, or any other statute.

27 **Sec. 3. As used in this chapter, "county legislative body" has the**
28 **meaning set forth in IC 36-1-2-9.**

29 **Sec. 4. As used in this chapter, "municipality" means a city or**
30 **a town.**

31 **Sec. 5. As used in this chapter, "petition" means a petition for**
32 **condemnation described in section 7 of this chapter.**

33 **Sec. 6. A municipality may acquire property by eminent domain**
34 **that is within the unincorporated area of a county only if the**
35 **municipality:**

- 36 (1) is expressly authorized by statute to exercise the power of
37 eminent domain outside of the municipality's corporate
38 boundaries; and
39 (2) complies with this chapter.

40 **Sec. 7. (a) A municipality must adopt a petition for**
41 **condemnation:**

- 42 (1) before filing a complaint in condemnation under



1 **IC 32-24-1-4 or any other statute; or**
 2 **(2) after the municipality takes final action on a resolution**
 3 **under IC 32-24-2-6 and before conducting a public hearing**
 4 **under IC 32-24-2-10.**

5 **(b) A petition must:**

6 **(1) contain a legal description and map of all parcels lying in**
 7 **the unincorporated area of the county that the municipality**
 8 **requires for the same project; and**

9 **(2) state how the municipality meets the requirements set**
 10 **forth in section 11 of this chapter.**

11 **Sec. 8. (a) This section applies if the municipality seeks to**
 12 **condemn property within the unincorporated area of two (2) or**
 13 **more counties.**

14 **(b) The legislative body of each county in which the**
 15 **unincorporated property is located must approve a petition.**

16 **Sec. 9. The municipality shall file the petition with the county**
 17 **legislative body. The county legislative body shall:**

18 **(1) conduct at least one (1) public hearing on the petition after**
 19 **providing actual notice to the affected landowners; and**

20 **(2) vote to approve or reject the petition;**

21 **not later than thirty (30) days after the date the petition is filed.**

22 **Sec. 10. The county legislative body shall provide notice of the**
 23 **public hearing by both of the following methods:**

24 **(1) Notice by publication in accordance with IC 5-3-1.**

25 **(2) Notice:**

26 **(A) by certified mail, return receipt requested, or any**
 27 **other means of delivery that includes a return receipt; and**

28 **(B) at least fifteen (15) days before the date of the hearing;**
 29 **to each owner of real property, as shown on the county**
 30 **auditor's current tax list, whose real property the**
 31 **municipality proposes to acquire by condemnation. The**
 32 **municipality shall provide the county legislative body with the**
 33 **names and addresses of owners of real property to whom**
 34 **notice under this subdivision must be sent. If the county**
 35 **legislative body complies with this subdivision, the notice is**
 36 **not invalidated if the owner does not receive the notice.**

37 **Sec. 11. The county legislative body may approve the petition**
 38 **only if the municipality demonstrates all of the following:**

39 **(1) There is a present and urgent necessity for the**
 40 **municipality's exercise of eminent domain.**

41 **(2) There is no property within the corporate boundaries of**
 42 **the municipality that is reasonably suitable to be used for the**



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project.

(3) The property is no more than is necessary for completion of the project.

Sec. 12. The municipality may proceed with condemnation if at least a majority of the members of the county legislative body make all of the findings set forth in section 11 of this chapter:

- (1) in writing; and**
- (2) in the affirmative.**

Sec. 13. If at least a majority of the members of the county legislative body do not make all of the findings set forth in section 11 of this chapter in the affirmative, the municipality may not file a complaint in condemnation under IC 32-24-1-4 or conduct a public hearing under IC 32-24-2-10. The municipality may petition the circuit or superior court for judicial review of the findings of the county legislative body. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.

Sec. 14. (a) This section applies if a municipality does not obtain the approval of the county legislative body on a petition for condemnation:

- (1) before filing a complaint in condemnation under IC 32-24-1-4 or any other statute; or**
- (2) after the municipality takes final action on a resolution under IC 32-24-2-6 and before conducting a public hearing under IC 32-24-2-10.**

(b) A municipality shall be liable for:

- (1) all reasonable costs, expenses, and attorney's fees incurred by the property owner; and**
- (2) damages equal to:**
 - (A) ten percent (10%) of the assessed value of the property, if the owner shows the owner was unable to use the property during the proceedings;**
 - (B) any actual damages; and**
 - (C) treble damages.**

The municipality also shall be enjoined from proceeding in eminent domain for a period of five (5) years against the same property, unless the municipality is able to show good cause to proceed and all damages have been paid.

SECTION 9. IC 36-1-4-5, AS AMENDED BY P.L.277-2019, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), a unit may acquire by eminent domain or other means, and own interests in real and personal property (b) A municipality may exercise



1 the powers in subsection (a), except for the power of eminent domain;
2 within four (4) miles outside of its corporate boundaries.

3 (b) A municipality may ~~not~~ exercise the power of eminent domain
4 outside of its corporate boundaries ~~unless a~~ **if the municipality:**

5 (1) **is expressly authorized by** statute;

6 expressly provides otherwise. **and**

7 (2) **complies with IC 32-24-2.5.**

8 SECTION 10. **An emergency is declared for this act.**

