



Reprinted  
March 1, 2022

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# ENGROSSED HOUSE BILL No. 1106

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DIGEST OF HB 1106 (Updated February 28, 2022 2:52 pm - DI 87)

**Citations Affected:** IC 32-24; IC 36-1.

**Synopsis:** Eminent domain. Makes changes to condemnation proceedings in which appraisers are appointed after December 31, 2022. Requires a city or town to obtain the county executive's approval of a condemnation of property within the unincorporated area of the county, unless the county executive waives review of the condemnation.

**Effective:** January 1, 2023; July 1, 2023.

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## Goodrich, Hostettler, Prescott, Moed

(SENATE SPONSORS — BUCK, DORIOT)

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January 4, 2022, read first time and referred to Committee on Local Government.  
January 20, 2022, amended, reported — Do Pass.  
January 24, 2022, read second time, ordered engrossed. Engrossed.  
January 25, 2022, read third time, passed. Yeas 66, nays 24.

SENATE ACTION

February 2, 2022, read first time and referred to Committee on Local Government.  
February 24, 2022, amended, reported favorably — Do Pass.  
February 28, 2022, read second time, amended, ordered engrossed.

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EH 1106—LS 6283/DI 87





Reprinted  
March 1, 2022

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.

## ENGROSSED HOUSE BILL No. 1106

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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 JANUARY 1, 2023]: **Sec. 0.1. The amendments made to sections 3,  
4 8, 9, and 14 of this chapter by this act during the 2022 regular  
5 session of the general assembly apply to condemnation proceedings  
6 in which appraisers are appointed after December 31, 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 JANUARY 1, 2023]: 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,

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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 32-24-2.5-8 is approved by the county executive.**

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 JANUARY 1, 2023]: 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 executive under**  
 27 **IC 32-24-2.5-13 were arbitrary, capricious, or erroneous;**

28 (B) **the municipality failed to prove by a preponderance of**  
 29 **the evidence that:**

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

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

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

37 (C) **the municipality failed to prove by a preponderance of**  
 38 **the evidence that:**

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

42 (ii) **the municipality's taking of the property is**



- 1 **authorized under IC 32-24-2.5.**  
 2 ~~(3) for any other reason disclosed in the complaint or set up in the~~  
 3 ~~objections:~~  
 4 (b) Objections under subsection (a) must be:  
 5 (1) in writing;  
 6 (2) separately stated and numbered; and  
 7 (3) filed not later than thirty (30) days after the date the notice  
 8 required in section 6 of this chapter is served on the defendant.  
 9 However, the court may extend the period for filing objections by  
 10 not more than thirty (30) days upon written motion of the  
 11 defendant.  
 12 (c) The court may not allow pleadings in the cause other than the  
 13 complaint, any objections, and the written exceptions provided for in  
 14 section 11 of this chapter. However, the court may permit amendments  
 15 to the pleadings.  
 16 (d) If ~~an~~ **a defendant's** objection is sustained, the plaintiff may **do**  
 17 **the following:**  
 18 (1) Amend the complaint. ~~or~~  
 19 (2) ~~may~~ Appeal from the decision in the manner that appeals are  
 20 taken from final judgments in civil actions. All the parties shall  
 21 take notice and are bound by the judgment in an appeal.  
 22 (e) If the objections are overruled, the court shall appoint appraisers  
 23 as provided for in this chapter. Any defendant may appeal the  
 24 interlocutory order overruling the objections and appointing appraisers  
 25 in the manner that appeals are taken from final judgments in civil  
 26 actions.  
 27 (f) All the parties shall take notice of and be bound by the judgment  
 28 in the appeal.  
 29 (g) The transcript must be filed in the office of the clerk of the  
 30 supreme court not later than thirty (30) days after the notice of the  
 31 defendant's appeal is filed. The appeal does not stay proceedings in the  
 32 cause.  
 33 (h) This subsection does not apply to a condemnation action brought  
 34 by a public utility (as defined in section 5.9(a) of this chapter) or by a  
 35 pipeline company. Notwithstanding section 14 of this chapter, if an  
 36 objection:  
 37 (1) is sustained, and no appeal is filed; or  
 38 (2) is sustained in the judgment in the appeal;  
 39 the court shall award the defendant the reasonable costs and attorney's  
 40 fees incurred for the objection, in an amount not to exceed twenty-five  
 41 thousand dollars (\$25,000).  
 42 SECTION 4. IC 32-24-1-9 IS AMENDED TO READ AS



- 1       FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) Each appraiser  
 2 shall take an oath that:  
 3           (1) the appraiser has no interest in the matter; and  
 4           (2) the appraiser will honestly and impartially make the  
 5           assessment.  
 6       (b) After the appraisers are sworn as provided in subsection (a), the  
 7 judge shall instruct the appraisers as to:  
 8           (1) their duties as appraisers; and  
 9           (2) the measure of the damages and benefits, if any, they allow.  
 10       (c) The appraisers shall determine and report all of the following:  
 11           (1) The fair market value of each parcel of property sought to be  
 12           acquired and the value of each separate estate or interest in the  
 13           property.  
 14           (2) The fair market value of all improvements pertaining to the  
 15           property, if any, on the portion of the property to be acquired.  
 16           (3) The damages, if any, to the residue of the property of the  
 17           owner or owners caused by taking out the part sought to be  
 18           acquired.  
 19           (4) The other damages, if any, that will result to any persons from  
 20           the construction of the improvements in the manner proposed by  
 21           the plaintiff.  
 22       (d) If the property is sought to be acquired by the state or by a  
 23 county for a public highway or a municipal corporation for a public use  
 24 that confers benefits on any property of the owner, the report must also  
 25 state the benefits that will accrue to each parcel of property, set  
 26 opposite the description of each parcel of property whether described  
 27 in the complaint or not.  
 28       (e) Except as provided in subsection (f), in estimating the damages  
 29 specified in subsection (c), the appraisers may not deduct for any  
 30 benefits that may result from the improvement.  
 31       (f) In the case of a condemnation by the state or by a county for a  
 32 public highway or a municipal corporation for public use, the  
 33 appraisers shall deduct any benefits assessed from the amount of  
 34 damage allowed, if any, under subsection (c)(3) and (c)(4) and the  
 35 difference, if any, plus the damages allowed under subsection (c)(1)  
 36 and (c)(2) shall be the amount of the award. However, the damages  
 37 awarded may not be less than the damages allowed under subsection  
 38 (c)(1) and (c)(2). **In the case of a condemnation taking a fee simple**  
 39 **interest in the property, the damages allowed under subsection**  
 40 **(c)(1) and (c)(2) must be at least one hundred twenty percent**  
 41 **(120%) of the fair market value of the property.** Upon the trial of  
 42 exceptions to the award by either party, a like measure of damages



1 must be followed.

2 (g) For the purpose of assessing compensation and damages, the  
3 right to compensation and damages is considered to have accrued as of  
4 the date of the service of the notice provided in section 6 of this  
5 chapter, and actual value of compensation and damages at that date  
6 shall be:

7 (1) the measure of compensation for all property to be actually  
8 acquired; and

9 (2) the basis of damages to property not actually acquired but  
10 injuriously affected;

11 except as to the damages stated in subsection (c)(4).

12 **(h) In the case of a condemnation taking a fee simple interest in**  
13 **property, the damages awarded under subsection (c)(1) and (c)(2)**  
14 **must be at least one hundred twenty percent (120%) of the fair**  
15 **market value of the property.**

16 SECTION 5. IC 32-24-1-14, AS AMENDED BY P.L.163-2006,  
17 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JANUARY 1, 2023]: Sec. 14. (a) Except as provided in subsection (b),  
19 the plaintiff shall pay the costs of the proceedings.

20 (b) If there is a trial, the additional costs caused by the trial shall be  
21 paid as ordered by the court. However, if there is a trial and the amount  
22 of damages awarded to the defendant by the judgment, exclusive of  
23 interest and costs, is greater than the amount specified in the last offer  
24 of settlement made by the plaintiff under section 12 of this chapter, the  
25 court shall allow the defendant the defendant's litigation expenses,  
26 including reasonable attorney's fees, in an amount not to exceed the  
27 lesser of:

28 (1) twenty-five thousand dollars (\$25,000); or

29 (2) the fair market value of the defendant's property or easement  
30 as determined under this chapter **or in the case of a**  
31 **condemnation taking a fee simple interest in property, the**  
32 **amount provided in section 9(f) or 9(h) of this chapter.**

33 SECTION 6. IC 32-24-2-0.1 IS ADDED TO THE INDIANA CODE  
34 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
35 JANUARY 1, 2023]: **Sec. 0.1. The amendments made to sections 8,**  
36 **10, and 16 of this chapter by this act during the 2022 regular**  
37 **session of the general assembly apply only to condemnation**  
38 **proceedings in which appraisers are appointed after December 31,**  
39 **2022.**

40 SECTION 7. IC 32-24-2-8, AS AMENDED BY P.L.152-2021,  
41 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JANUARY 1, 2023]: Sec. 8. (a) **Except as provided in subsection (b),**



1 upon the completion of the list, the works board shall award the  
 2 damages sustained and assess the benefits accruing to each piece of  
 3 property on the list.

4 **(b) This subsection applies only to a condemnation by a**  
 5 **municipality under IC 32-24-2.5. Upon completion of the list, the**  
 6 **municipality must file a petition for condemnation with the county**  
 7 **executive. If the petition is approved by the county executive, the**  
 8 **works board may proceed with awarding the damages sustained,**  
 9 **assessing the benefits accruing to each piece of property on the list.**

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

- 13 (1) if the owner is a resident of the municipality, leaving a copy  
 14 of the notice at the owner's last usual place of residence in the  
 15 municipality or by delivering a copy to the owner personally and  
 16 mailing a copy of the notice to the owner's address of record; or  
 17 (2) if the owner is not a resident of the municipality, by sending  
 18 the notice to the owner's address of record by certified mail.

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

- 22 (1) with each publication of notice in a daily newspaper of general  
 23 circulation in the municipality; or  
 24 (2) with the first publication of notice in a newspaper described  
 25 in subdivision (1) and the two (2) subsequent publications of  
 26 notice:  
 27 (A) in accordance with IC 5-3-5; and  
 28 (B) on the official web site of the municipality.

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

- 32 (1) the amount of their respective awards or assessments; and  
 33 (2) objections to the municipality's right to exercise the power of  
 34 eminent domain for the use sought.

35 ~~(e)~~ (f) Persons not included in the list of the assessments or awards  
 36 and claiming to be entitled to them are considered to have been notified  
 37 of the pendency of the proceedings by the original notice of the  
 38 resolution of the works board.

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



1 SECTION 8. IC 32-24-2-10, AS AMENDED BY P.L.80-2020,  
 2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JANUARY 1, 2023]: Sec. 10. (a) A person notified or considered to be  
 4 notified under this chapter may appear before the works board on the  
 5 day fixed for hearing remonstrances to:

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

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

11 (b) After the remonstrances have been received, the works board  
 12 shall either sustain or modify the awards or assessments in the case of  
 13 remonstrances that have been filed that are based on the amount of the  
 14 awards or assessments. The works board shall sustain the award or  
 15 assessment in the case of an award or assessment against which a  
 16 remonstrance has not been filed.

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

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

27 SECTION 9. IC 32-24-2-16 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JANUARY 1, 2023]: Sec. 16. (a) This  
 29 section applies whenever the works board of a municipality located  
 30 upon or adjoining a harbor connected with a navigable stream or lake,  
 31 or upon any navigable channel, slip, waterway, or watercourse, wants  
 32 to acquire for the use of the municipality any property for a  
 33 right-of-way for seawalls, docks, or other improvement of the harbor,  
 34 channel, slip, waterway or watercourse.

35 (b) The works board shall adopt a resolution that the municipality  
 36 wants to acquire the property, describing the property that may be  
 37 injuriously or beneficially affected. All proceedings necessary for the  
 38 completion of and payment for any such undertaking, including **the**  
 39 **approval by the county executive of a petition for condemnation**  
 40 **under IC 32-24-2.5, if applicable,** notice, remonstrance, appeal,  
 41 letting of and performance of contracts, assessment and collection of  
 42 payment for benefits, and the determination and payment of damages



1 to property, are the same, to the extent applicable, as those proceedings  
 2 for street improvements of the municipality by its works board or other  
 3 entity charged by statute with the performance of those duties on behalf  
 4 of the municipality.

5 SECTION 10. IC 32-24-2.5 IS ADDED TO THE INDIANA CODE  
 6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 7 JANUARY 1, 2023]:

8 **Chapter 2.5. Municipal Condemnation of Land in**  
 9 **Unincorporated Area**

10 **Sec. 1. This chapter applies only to condemnation proceedings**  
 11 **in which appraisers are appointed after December 31, 2022.**

12 **Sec. 2. Except as provided in section 3 of this chapter, this**  
 13 **chapter applies if a municipality seeks to condemn real property:**

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

17 **Sec. 3. This chapter does not apply to a condemnation of real**  
 18 **property by a municipality for the business of a municipally owned**  
 19 **utility (as defined in IC 8-1-2-1(h)) that:**

- 20 (1) is not under the jurisdiction of the Indiana utility  
 21 regulatory commission for the approval of rates and charges;  
 22 or  
 23 (2) provides water or wastewater service, or both, and is  
 24 under the jurisdiction of the Indiana utility regulatory  
 25 commission for the approval of rates and charges with respect  
 26 to water service.

27 **Sec. 4. As used in this chapter, "county executive" has the**  
 28 **meaning set forth in IC 36-1-2-5.**

29 **Sec. 5. As used in this chapter, "municipality" means a city or**  
 30 **a town.**

31 **Sec. 6. As used in this chapter, "petition" means a petition for**  
 32 **condemnation described in section 8 of this chapter.**

33 **Sec. 7. (a) A municipality may acquire property by eminent**  
 34 **domain that is within the unincorporated area of a county only if**  
 35 **the 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) subject to subsection (b), complies with this chapter.

40 **(b) A county executive may adopt a resolution by an affirmative**  
 41 **vote of a majority of members that waives review of:**

- 42 (1) all condemnation petitions for the period of time stated in



1           the resolution, not to exceed a period of one (1) year from the  
2           date of the resolution's adoption; or  
3           (2) an individual condemnation petition.  
4           (c) If a resolution is not in effect when a petition is adopted by  
5           the municipality, the county executive may only waive review of  
6           the condemnation if a resolution is adopted and in effect not later  
7           than ten (10) business days after the petition is filed with the  
8           county executive.

9           **Sec. 8. (a) A municipality must adopt a petition for**  
10          **condemnation:**  
11               (1) before filing a complaint in condemnation under  
12               IC 32-24-1-4 or any other statute; or  
13               (2) after the municipality takes final action on a resolution  
14               under IC 32-24-2-6 and before conducting a public hearing  
15               under IC 32-24-2-10.

16          **(b) A petition must:**  
17               (1) contain a legal description and map of all parcels lying in  
18               the unincorporated area of the county that the municipality  
19               requires for the same project; and  
20               (2) state how the municipality meets the requirements set  
21               forth in section 12 of this chapter.

22          **Sec. 9. (a) This section applies if the municipality seeks to**  
23          **condemn property within the unincorporated area of two (2) or**  
24          **more counties.**  
25          **(b) The executive of each county in which the unincorporated**  
26          **property is located must approve a petition.**

27          **Sec. 10. The municipality shall file the petition with the county**  
28          **executive. The county executive shall:**  
29               (1) conduct at least one (1) public hearing on the petition after  
30               providing actual notice to the affected landowners; and  
31               (2) vote to approve or reject the petition;  
32          **not later than thirty (30) days after the date the petition is filed.**

33          **Sec. 11. The county executive shall provide notice of the public**  
34          **hearing by both of the following methods:**  
35               (1) Notice by publication in accordance with IC 5-3-1.  
36               (2) Notice:  
37                    (A) by certified mail, return receipt requested, or any  
38                    other means of delivery that includes a return receipt; and  
39                    (B) at least fifteen (15) days before the date of the hearing;  
40               to each owner of real property, as shown on the county  
41               auditor's current tax list, whose real property the  
42               municipality proposes to acquire by condemnation. The



1 municipality shall provide the county executive with the  
2 names and addresses of owners of real property to whom  
3 notice under this subdivision must be sent. If the county  
4 executive complies with this subdivision, the notice is not  
5 invalidated if the owner does not receive the notice.

6 Sec. 12. The county executive may approve the petition only if  
7 the municipality demonstrates all of the following:

- 8 (1) There is a present and urgent necessity for the  
9 municipality's exercise of eminent domain.
- 10 (2) There is no property within the corporate boundaries of  
11 the municipality that is reasonably suitable to be used for the  
12 project.
- 13 (3) The property is no more than is necessary for completion  
14 of the project.

15 Sec. 13. The municipality may proceed with condemnation if at  
16 least a majority of the members of the county executive make all of  
17 the findings set forth in section 12 of this chapter:

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

20 Sec. 14. If at least a majority of the members of the county  
21 legislative body do not make all of the findings set forth in section  
22 12 of this chapter in the affirmative, the municipality may not file  
23 a complaint in condemnation under IC 32-24-1-4 or conduct a  
24 public hearing under IC 32-24-2-10. The municipality may petition  
25 the circuit or superior court for judicial review of the findings of  
26 the county executive. The judgment of the court is final and  
27 conclusive, unless an appeal is taken as in other civil actions.

28 Sec. 15. (a) This section applies if a municipality does not obtain  
29 the approval of the county executive on a petition for  
30 condemnation:

- 31 (1) before filing a complaint in condemnation under  
32 IC 32-24-1-4 or any other statute; or
- 33 (2) after the municipality takes final action on a resolution  
34 under IC 32-24-2-6 and before conducting a public hearing  
35 under IC 32-24-2-10.
- 36 (b) A municipality shall be liable for:
  - 37 (1) all reasonable costs, expenses, and attorney's fees incurred  
38 by the property owner; and
  - 39 (2) damages equal to:
    - 40 (A) ten percent (10%) of the assessed value of the property,  
41 if the owner shows the owner was unable to use the  
42 property during the proceedings;



1                   **(B) any actual damages; and**  
 2                   **(C) treble damages.**  
 3                   **The municipality also shall be enjoined from proceeding in eminent**  
 4                   **domain for a period of five (5) years against the same property,**  
 5                   **unless the municipality is able to show good cause to proceed and**  
 6                   **all damages have been paid.**  
 7                   SECTION 11. IC 36-1-4-5, AS AMENDED BY P.L.277-2019,  
 8                   SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9                   JANUARY 1, 2023]: Sec. 5. (a) **Except as provided in subsection (b),**  
 10                   a unit may acquire by eminent domain or other means, and own  
 11                   interests in real and personal property (b) ~~A municipality may exercise~~  
 12                   ~~the powers in subsection (a), except for the power of eminent domain,~~  
 13                   within four (4) miles outside of its corporate boundaries.  
 14                   **(b) A municipality may not exercise the power of eminent domain**  
 15                   **outside of its corporate boundaries unless a if the municipality:**  
 16                   **(1) is expressly authorized by statute;**  
 17                   ~~expressly provides otherwise; and~~  
 18                   **(2) complies with IC 32-24-2.5.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1106, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 9 with "[EFFECTIVE JANUARY 1, 2023]".

Page 1, line 6, delete "April 1," and insert "**December 31,**".

Page 5, line 6, delete "April 1," and insert "**December 31,**".

Page 7, line 21, delete "April 1," and insert "**December 31,**".

Page 10, delete line 8.

and when so amended that said bill do pass.

(Reference is to HB 1106 as introduced.)

MAY

Committee Vote: yeas 8, nays 3.

## COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1106, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, delete "3" and insert "**3, 8, 9, and 14**".

Page 1, line 4, delete "and 8".

Page 2, line 6, delete "IC 32-24-2.5-7" and insert "**IC 32-24-2.5-8**".

Page 3, line 27, delete "IC 32-24-2.5-12" and insert "**IC 32-24-2.5-13**".

Page 3, line 29, delete "clear and" and insert "**a preponderance of the**".

Page 3, line 30, delete "convincing".

Page 3, line 38, delete "clear and" and insert "**a preponderance of the**".

Page 3, line 39, delete "convincing".

Page 4, after line 42, begin a new paragraph and insert:

"SECTION 4. IC 32-24-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) Each appraiser shall take an oath that:

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- (1) the appraiser has no interest in the matter; and
- (2) the appraiser will honestly and impartially make the assessment.

(b) After the appraisers are sworn as provided in subsection (a), the judge shall instruct the appraisers as to:

- (1) their duties as appraisers; and
- (2) the measure of the damages and benefits, if any, they allow.

(c) The appraisers shall determine and report all of the following:

- (1) The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the property.
- (2) The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.
- (3) The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.
- (4) The other damages, if any, that will result to any persons from the construction of the improvements in the manner proposed by the plaintiff.

(d) If the property is sought to be acquired by the state or by a county for a public highway or a municipal corporation for a public use that confers benefits on any property of the owner, the report must also state the benefits that will accrue to each parcel of property, set opposite the description of each parcel of property whether described in the complaint or not.

(e) Except as provided in subsection (f), in estimating the damages specified in subsection (c), the appraisers may not deduct for any benefits that may result from the improvement.

(f) In the case of a condemnation by the state or by a county for a public highway or a municipal corporation for public use, the appraisers shall deduct any benefits assessed from the amount of damage allowed, if any, under subsection (c)(3) and (c)(4) and the difference, if any, plus the damages allowed under subsection (c)(1) and (c)(2) shall be the amount of the award. However, the damages awarded may not be less than the damages allowed under subsection (c)(1) and (c)(2). **In the case of a condemnation taking a fee simple interest in the property, the damages allowed under subsection (c)(1) and (c)(2) must be at least one hundred twenty percent (120%) of the fair market value of the property.** Upon the trial of exceptions to the award by either party, a like measure of damages must be followed.

(g) For the purpose of assessing compensation and damages, the



right to compensation and damages is considered to have accrued as of the date of the service of the notice provided in section 6 of this chapter, and actual value of compensation and damages at that date shall be:

- (1) the measure of compensation for all property to be actually acquired; and
- (2) the basis of damages to property not actually acquired but injuriously affected;

except as to the damages stated in subsection (c)(4).

**(h) In the case of a condemnation taking a fee simple interest in property, the damages awarded under subsection (c)(1) and (c)(2) must be at least one hundred twenty percent (120%) of the fair market value of the property.**

SECTION 5. IC 32-24-1-14, AS AMENDED BY P.L.163-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023]: Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses, including reasonable attorney's fees, in an amount not to exceed the lesser of:

- (1) twenty-five thousand dollars (\$25,000); or
- (2) the fair market value of the defendant's property or easement as determined under this chapter **or in the case of a condemnation taking a fee simple interest in property, the amount provided in section 9(f) or 9(h) of this chapter."**

Page 7, line 23, delete "This" and insert "**Except as provided in section 3 of this chapter, this**".

Page 7, between lines 27 and 28, begin a new paragraph and insert:

**"Sec. 3. This chapter does not apply to a condemnation of real property by a municipality for the business of a municipally owned utility (as defined in IC 8-1-2-1(h)) that:**

- (1) is not under the jurisdiction of the Indiana utility regulatory commission for the approval of rates and charges; or**
- (2) provides water or wastewater service, or both, and is under the jurisdiction of the Indiana utility regulatory commission for the approval of rates and charges with respect**



**to water service."**

- Page 7, line 28, delete "3." and insert "4."
  - Page 7, line 30, delete "4." and insert "5."
  - Page 7, line 32, delete "5." and insert "6."
  - Page 7, line 33, delete "7" and insert "8".
  - Page 7, line 34, delete "6." and insert "7."
  - Page 7, line 41, delete "7." and insert "8."
  - Page 8, line 11, delete "11" and insert "12".
  - Page 8, line 12, delete "8." and insert "9."
  - Page 8, line 17, delete "9." and insert "10."
  - Page 8, line 23, delete "10." and insert "11."
  - Page 8, line 38, delete "11." and insert "12."
  - Page 9, line 5, delete "12." and insert "13."
  - Page 9, line 7, delete "11" and insert "12".
  - Page 9, line 10, delete "13." and insert "14."
  - Page 9, line 12, delete "11" and insert "12".
  - Page 9, line 18, delete "14." and insert "15."
- Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1106 as printed January 20, 2022.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 4.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1106 be amended to read as follows:

Page 2, line 6, delete "approved." and insert "**approved by the county executive.**".

Page 3, line 26, delete "legislative body" and insert "**executive**".

Page 7, line 7, delete "the county" and insert "**the county executive.**  
**If the petition is approved by the county executive, the works board may proceed with awarding the damages sustained, assessing the benefits accruing to each piece of property on the list.**".

Page 7, delete lines 8 through 11.

Page 8, line 41, delete "legislative body" and insert "**executive**".

Page 9, line 29, delete "legislative body" and insert "**executive**".

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Page 9, line 30, delete "IC 36-1-2-9." and insert "IC 36-1-2-5."

Page 10, line 16, delete "legislative body" and insert "executive".

Page 10, delete line 19, and insert "**executive. The county executive shall:**".

Page 10, line 24, delete "legislative body" and insert "executive".

Page 10, line 34, delete "legislative body" and insert "executive".

Page 10, line 37, delete "legislative body" and insert "executive".

Page 10, line 39, delete "legislative body" and insert "executive".

Page 11, line 7, delete "legislative body" and insert "executive".

Page 11, line 17, delete "legislative body" and insert "executive".

Page 11, line 20, delete "legislative body" and insert "executive".

(Reference is to EHB 1106 as printed February 25, 2022.)

NIEMEYER

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1106 be amended to read as follows:

Page 9, delete lines 35 through 41, begin a new paragraph and insert:

**"Sec. 7. (a) A municipality may acquire property by eminent domain that is within the unincorporated area of a county only if the municipality:**

**(1) is expressly authorized by statute to exercise the power of eminent domain outside of the municipality's corporate boundaries; and**

**(2) subject to subsection (b), complies with this chapter.**

**(b) A county executive may adopt a resolution by an affirmative vote of a majority of members that waives review of:**

**(1) all condemnation petitions for the period of time stated in the resolution, not to exceed a period of one (1) year from the date of the resolution's adoption; or**

**(2) an individual condemnation petition.**



**(c) If a resolution is not in effect when a petition is adopted by the municipality, the county executive may only waive review of the condemnation if a resolution is adopted and in effect not later than ten (10) business days after the petition is filed with the county executive."**

(Reference is to EHB 1106 as printed February 25, 2022.)

BOEHNLEIN

