



March 22, 2017

ENGROSSED HOUSE BILL No. 1260

DIGEST OF HB 1260 (Updated March 21, 2017 10:55 am - DI 128)

Citations Affected: IC 8-3; IC 8-4; IC 32-24; IC 36-1.

Synopsis: Railroads and eminent domain. Defines "corporation", "rail carrier", and "railroad". Specifies that eminent domain may be exercised by a rail carrier incorporated in Indiana or authorized to do business in Indiana, and prescribes the manner in which a railroad (including a rail carrier) may incorporate. Requires a rail carrier to demonstrate that property will be used for a public use before the carrier may use eminent domain to take the property. Eliminates the provisions in the law under which a defendant in an eminent domain proceeding who appeals an interlocutory order overruling the defendant's objections to the proceeding is required to file an appeal bond.

Effective: July 1, 2017.

**Soliday, Aylesworth,
Candelaria Reardon, Pressel**
(SENATE SPONSORS — CHARBONNEAU, NIEMEYER)

January 10, 2017, read first time and referred to Committee on Roads and Transportation.

January 18, 2017, reported — Do Pass.

January 24, 2017, read second time, ordered engrossed. Engrossed.

January 26, 2017, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 20, 2017, read first time and referred to Committee on Homeland Security and Transportation.

March 21, 2017, amended, reported favorably — Do Pass.

EH 1260—LS 7233/DI 106



March 22, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1260

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

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

1 SECTION 1. IC 8-3-5-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2017]: Sec. 1. ~~Any railroad company organized~~
3 ~~under Indiana statutes but not under IC 8-4-1~~, **The following** may
4 adopt the provisions of ~~that chapter IC 8-4-1~~ for condemning real
5 estate: ~~provided, that~~

6 (1) **Before July 1, 2017, any railroad company organized**
7 **under Indiana statutes but not under IC 8-4-1.**

8 (2) **After June 30, 2017, a rail carrier (as defined in 49 U.S.C.**
9 **10102(5)) that is:**

10 (A) **incorporated in Indiana; or**

11 (B) **a foreign corporation, partnership, or limited liability**
12 **company authorized to do business in Indiana.**

13 **However**, nothing in this section contained shall be deemed or held to
14 authorize such ~~corporations~~ **entities** to condemn for any purpose ~~or to~~
15 ~~any extent not that is not a public use~~ authorized by its charter, but
16 such ~~company entity~~ adopting the provisions of that chapter shall not
17 condemn more, or for any purpose than as authorized **as a public use**

EH 1260—LS 7233/DI 106



1 by its charter; neither shall such ~~corporation~~ **entity** be deemed to have
 2 surrendered or abandoned its charter by condemning real estate as
 3 authorized in this section.

4 SECTION 2. IC 8-4-1-0.3 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 6 **1, 2017]: Sec. 0.3. As used in this chapter, unless the context clearly**
 7 **requires otherwise, "corporation" includes a foreign corporation,**
 8 **partnership, or limited liability company authorized to do business**
 9 **in Indiana.**

10 SECTION 3. IC 8-4-1-0.5 IS ADDED TO THE INDIANA CODE
 11 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 12 **1, 2017]: Sec. 0.5. As used in this chapter, "rail carrier" has the**
 13 **meaning set forth in 49 U.S.C. 10102(5).**

14 SECTION 4. IC 8-4-1-0.6 IS ADDED TO THE INDIANA CODE
 15 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 16 **1, 2017]: Sec. 0.6. As used in this chapter, "railroad" includes a rail**
 17 **carrier.**

18 SECTION 5. IC 8-4-1-1 IS AMENDED TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) A railroad may incorporate
 20 under any of the following:

- 21 (1) **Before July 1, 2017**, this chapter.
- 22 (2) The Indiana Business Corporation Law (IC 23-1) **(before its**
 23 **repeal).**
- 24 (3) Any other applicable statute.

25 **After June 30, 2017, a railroad may not incorporate under this**
 26 **chapter.**

27 (b) Any number of persons, not less than fifteen (15), being
 28 subscribers to the stock of any contemplated railroad may be formed
 29 into a corporation for the purpose of constructing, owning, and
 30 maintaining such railroad by complying with the following
 31 requirements:

- 32 (1) Whenever stock to the amount (measured by the consideration
 33 to be received therefor) of at least fifty thousand dollars
 34 (\$50,000), or one thousand dollars (\$1,000) for each and every
 35 mile of the proposed road, shall have been subscribed, the
 36 subscribers to such stock shall elect directors for such company
 37 from their own number and shall severally subscribe articles of
 38 association in which shall be set forth the following:
 - 39 (A) The name of the corporation.
 - 40 (B) The total number of shares into which its authorized
 41 capital stock is to be divided.
 - 42 (C) Whether all or part of said shares are to have a par value



- 1 and if so, the number and par value of such shares.
- 2 (D) Whether all or part of said shares are to be without par
- 3 value and if so, the number of such shares.
- 4 (E) The consideration for which the company may issue and
- 5 sell its shares without par value or authorization to the board
- 6 of directors to fix such consideration from time to time.
- 7 (F) If said shares are to be divided into classes or kinds, the
- 8 designations of the different classes, the number and par value,
- 9 if any, of the shares of each class, and a statement of the
- 10 relative rights, preferences, limitations, restrictions, and voting
- 11 rights of each class.
- 12 (G) The number of directors and their names to manage the
- 13 affairs of the company.
- 14 (H) The names of the place from which and the place to which
- 15 the proposed road is to be constructed and each county into
- 16 which or through which it is intended to pass.
- 17 (I) Its length as near as may be.

18 (2) Each subscriber to such articles of association shall state ~~his~~
 19 **the subscriber's** place of residence and the number and class (if
 20 there be more than one (1) class) of shares taken by ~~him~~ **the**
 21 **subscriber** in such company.

22 SECTION 6. IC 8-4-1-15 IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2017]: Sec. 15. ~~In case any company formed If~~
 24 **a rail carrier authorized** under this chapter **to exercise the power of**
 25 **eminent domain** is unable to agree for the purchase of any real estate,
 26 in any county, required for the construction of the track, turn-outs and
 27 water stations, **upon a demonstration of public use**, it shall have the
 28 right to acquire the title to the same in the manner and by the special
 29 proceedings prescribed in this chapter.

30 SECTION 7. IC 8-4-1-16, AS AMENDED BY P.L.113-2006,
 31 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2017]: Sec. 16. (a) A ~~corporation formed under this chapter~~
 33 **railroad** is authorized to enter upon any land for the purpose of
 34 examining and surveying its railroad line. ~~and A rail carrier~~ may
 35 appropriate as much land as is deemed necessary for its railroad,
 36 including necessary side-tracks and water stations, materials for
 37 constructing, except timber, a right-of-way over adjacent lands
 38 sufficient to enable the company to construct and repair its road, and
 39 a right to conduct water by aqueducts, and the right of making proper
 40 drains.

41 (b) The ~~corporation~~ **rail carrier** shall deposit with the clerk of the
 42 circuit court of the county where the land lies, a description of the



1 rights and interests intended to be appropriated. The land, rights, and
 2 interests shall belong to the ~~company~~, **rail carrier**, to use for the
 3 purpose specified, by making or tendering payment as provided in this
 4 section.

5 (c) The ~~corporation~~ **rail carrier** may, by its directors, purchase
 6 lands, materials, rights-of-way, or interests of the owner of the land, or,
 7 in case the land is owned by a mentally incompetent person or a person
 8 under eighteen (18) years of age, at a price to be agreed upon by the
 9 guardian or parent of the mentally incompetent person or person under
 10 eighteen (18) years of age, if the land, material, right-of-way, or interest
 11 is appraised by the court in which the description is filed. Upon
 12 agreement and approval, the owner, guardian, or parent, as the case
 13 may be, shall convey the premises purchased, in fee simple or
 14 otherwise, as the parties may agree, to the ~~railroad corporation~~: **rail**
 15 **carrier**. The deed, when made, shall be valid in law.

16 (d) If the ~~corporation~~ **rail carrier** does not agree with the owner of
 17 the land, or with the owner's guardian, if the owner is incapable of
 18 contracting, concerning the damages sustained by the appropriation,
 19 the ~~corporation~~ **rail carrier** shall deliver to the owner or guardian, if
 20 within the county, a copy of the instrument of appropriation. If the
 21 owner or the owner's guardian, in case the owner is incapable of
 22 contracting, is unknown or does not reside within the county, the
 23 ~~corporation~~ **rail carrier** shall publish, in a newspaper of general
 24 circulation in the county, for three (3) weeks, an advertisement,
 25 concerning the substance of the instrument of appropriation.

26 (e) Upon filing an act of appropriation and delivery of a copy, or
 27 making the publication, the circuit court in the county where the land
 28 lies, upon the application of either party, shall appoint, by warrant:

29 (1) one (1) disinterested freeholder of the county; and

30 (2) two (2) disinterested appraisers licensed under IC 25-34.1;

31 who are residents of Indiana to appraise the damages which the owner
 32 of the land may sustain by the appropriation. One (1) of the appraisers
 33 appointed under subdivision (2) must reside not more than fifty (50)
 34 miles from the land. The appraisers shall be duly sworn. They shall
 35 consider the injury that the owner may sustain by reason of the ~~railroad~~:
 36 **rail carrier**. The appraisers shall return their assessment of damages
 37 to the clerk of the court, setting forth the value of the property taken or
 38 injury to the property which they assess to the owner, or owners
 39 separately, to be filed and recorded by the clerk. The ~~corporation~~ **rail**
 40 **carrier** shall pay to the clerk the amount thus assessed, or tender the
 41 amount to the party in whose favor the damages are awarded or
 42 assessed.



1 (f) On making payment or tender in the manner required, it is lawful
 2 for the ~~corporation~~ **rail carrier** to hold the interests in the lands or
 3 materials appropriated, and to use the materials on the roadway and
 4 within fifty (50) feet on each side of the center of the roadway. The cost
 5 of the award shall be paid by the ~~corporation;~~ **rail carrier**. On notice
 6 by any interested party, the court may order payment and enforce the
 7 payment by execution.

8 (g) The award of the arbitrators may be reviewed by the court in
 9 which proceedings may be had, on written exceptions filed by either
 10 party in the clerk's office within twenty (20) days after the filing of the
 11 award. Notice of filing of the arbitrators' award shall be given by the
 12 clerk of the court to all known parties to the action and their attorneys
 13 of record by certified mail. The period of exceptions shall run from and
 14 after the date of mailing. The court shall make an order as right and
 15 justice may require by ordering a new appraisal on good cause
 16 shown.

17 (h) Notwithstanding an appeal, the ~~corporation~~ **rail carrier** may
 18 take possession of the property described in the exceptions, and the
 19 subsequent proceedings on the appeal only affect the amount of
 20 compensation to be allowed. If, prior to the assessment, the ~~corporation~~
 21 **rail carrier** shall tender to the owner (or the owner's guardian, if the
 22 owner is unable to contract) an amount equal to the award that was
 23 made, exclusive of costs, the costs of arbitration shall be paid equally
 24 by the ~~corporation~~ **rail carrier** and the owner or guardian.

25 SECTION 8. IC 8-4-1-19 IS AMENDED TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2017]: Sec. 19. At any time after an attempt to
 27 acquire title by appraisal of damages or otherwise, if it shall be found
 28 that the title thereby attempted to be acquired is defective, the ~~company~~
 29 **rail carrier** may proceed anew to acquire or perfect the same in the
 30 same manner as if no appraisal had been made. At any stage of such
 31 new proceedings, the court may authorize the ~~corporation;~~ **rail carrier**,
 32 if in possession, to continue in possession, and, if not in possession, to
 33 take possession of and use such real estate during the pendency and
 34 until the final conclusion of such new proceedings; and may stay all
 35 actions and proceedings against the ~~company;~~ **rail carrier**, or any
 36 officer, agent or workman of ~~such company;~~ **the rail carrier**, on
 37 account thereof, on ~~such company~~ **the rail carrier** paying into court a
 38 sufficient sum, as the court may direct to pay the compensation therefor
 39 when finally ascertained; and in every such case, the party interested
 40 in such real estate may conduct the proceedings to a conclusion, if the
 41 ~~company~~ **rail carrier** delays or omits to prosecute the same.

42 SECTION 9. IC 8-4-1-20 IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2017]: Sec. 20. ~~Such company~~ **A railroad** may,
 2 from time to time, borrow such sums of money as they may deem
 3 necessary for completing or operating their railroad, and issue and
 4 dispose of their bonds for any amounts so borrowed, for such sums, and
 5 at such rate of interest as is allowed by the laws of the state where such
 6 contract is made, and mortgage their corporate property and franchises
 7 to secure the payment of any debt contracted by ~~such company the~~
 8 **railroad**; and the directors of ~~such company the~~ **railroad** may confer
 9 on any holder of any bond issued for money borrowed as aforesaid the
 10 right to convert the principal due or owing thereon into stock of said
 11 company, at any time not exceeding fifteen (15) years from the date of
 12 said bond, under such regulations as the ~~company~~ **railroad** may adopt;
 13 and ~~such company the~~ **railroad** may sell their bonds, either within or
 14 without this state, at such rates and prices as permitted by law, and
 15 such sales shall be as valid as if such bonds should be sold at par value.

16 SECTION 10. IC 8-4-1-21 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 21. If, at any time after
 18 the location of the track of such road, in whole or in part, and the filing
 19 of the map thereof, it shall appear to the directors of ~~such company the~~
 20 **railroad** that the line thereof may be improved, such directors may,
 21 from time to time, alter the line, and cause a new map to be filed in the
 22 office where the map showing the first location is filed, and may
 23 thereupon take possession of the lands embraced in such new location
 24 that may be required for the construction and maintenance of such road
 25 on such new line, either by agreement with the owner or, **if the**
 26 **railroad is a rail carrier**, by such **condemnation** proceedings as are
 27 authorized under this chapter, and use the same in place of the line for
 28 which the new is substituted. But nothing in this chapter shall be so
 29 construed as to confer upon any railroad ~~company~~ already incorporated,
 30 any powers to locate its road on any route which would not have been
 31 authorized by the charters previously granted. And nothing in this
 32 chapter contained shall authorize the ~~said company~~ **railroad** to make
 33 a location of their track within any city without the consent of the
 34 common council of said city; nor shall the ~~company~~ **railroad** have
 35 power so to change their road as to avoid any point named in their
 36 articles of association.

37 SECTION 11. IC 8-4-1-22 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 22. Whenever the track
 39 of such railroad shall cross a road or highway, such road or highway
 40 may be carried under or over the track, as may be most expedient; and
 41 in cases where an embankment or cutting shall make a change in the
 42 line of such road or highway desirable, with a view to a more easy



1 ascent or descent, the ~~said company~~ **rail carrier** may take such
 2 additional lands for the construction of such road or highway, or such
 3 new line, as may be deemed requisite by said directors. Unless the
 4 lands so taken shall be purchased or voluntarily given for the purposes
 5 aforesaid, compensation therefor shall be ascertained, in the manner in
 6 this chapter provided, as nearly as may be, and duly made by ~~such~~
 7 ~~corporation~~ **the rail carrier** to the owners and persons interested in
 8 such lands; and the same, when so taken and compensation made, to
 9 become part of such intersecting road or highway, in such manner and
 10 by such terms as the adjacent parts of such highway may be held for
 11 highway purposes.

12 SECTION 12. IC 32-24-1-8, AS AMENDED BY P.L.163-2006,
 13 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2017]: Sec. 8. (a) A defendant may object to the proceedings:

- 15 (1) because the court does not have jurisdiction either of the
 16 subject matter or of the person;
 17 (2) because the plaintiff does not have the right to exercise the
 18 power of eminent domain for the use sought; or
 19 (3) for any other reason disclosed in the complaint or set up in the
 20 objections.

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

- 22 (1) in writing;
 23 (2) separately stated and numbered; and
 24 (3) filed not later than thirty (30) days after the date the notice
 25 required in section 6 of this chapter is served on the defendant.
 26 However, the court may extend the period for filing objections by
 27 not more than thirty (30) days upon written motion of the
 28 defendant.

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

33 (d) If an objection is sustained, the plaintiff may amend the
 34 complaint or may appeal from the decision in the manner that appeals
 35 are taken from final judgments in civil actions. All the parties shall take
 36 notice and are bound by the judgment in an appeal.

37 (e) If the objections are overruled, the court shall appoint appraisers
 38 as provided for in this chapter. Any defendant may appeal the
 39 interlocutory order overruling the objections and appointing appraisers
 40 in the manner that appeals are taken from final judgments in civil
 41 actions. ~~upon filing with the circuit court clerk a bond:~~

- 42 (1) ~~with the penalty that the court fixes;~~



- 1 (2) with sufficient surety;
 2 (3) payable to the plaintiff; and
 3 (4) conditioned for the diligent prosecution of the appeal and for
 4 the payment of the judgment and costs that may be affirmed and
 5 adjudged against the appellants:

6 The appeal bond must be filed not later than ten (10) days after the
 7 appointment of the appraisers:

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

10 (g) The transcript must be filed in the office of the clerk of the
 11 supreme court not later than thirty (30) days after the ~~filing of the~~
 12 ~~appeal bond.~~ **notice of the defendant's appeal is filed.** The appeal
 13 does not stay proceedings in the cause.

14 SECTION 13. IC 36-1-10.5-1, AS AMENDED BY P.L.194-2007,
 15 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2017]: Sec. 1. (a) Except as provided in subsection (b), this
 17 chapter applies to:

- 18 (1) political subdivisions; and
 19 (2) their agencies.

20 (b) This chapter does not apply to the purchase of:

- 21 (1) real property having a total price (including land and
 22 structures, if any) of twenty-five thousand dollars (\$25,000) or
 23 less;
 24 (2) airport land or structures under IC 8-22;
 25 (3) library land or structures under IC 36-12;
 26 (4) school land or structures under IC 20-47;
 27 (5) hospital land or structures by a hospital or health and hospital
 28 corporation established and operated under IC 16-22 or IC 16-23;
 29 (6) land or structures acquired for a road or street right-of-way for
 30 a federal-aid project funded in any part under 23 U.S.C. 101 et
 31 seq.;
 32 (7) land or structures by redevelopment commissions under
 33 IC 36-7-14 or IC 36-7-15.1, or redevelopment authorities under
 34 IC 36-7-14.5; ~~or~~
 35 (8) land by a municipally owned water utility, if:
 36 (A) the municipally owned water utility has performed or
 37 contracted with another party to perform sampling and drilling
 38 tests of the land; and
 39 (B) the sampling and drilling tests indicate the land has water
 40 resources; ~~or~~
 41 **(9) land or structures acquired for railroad right-of-way or**
 42 **other railroad purposes for a federal aid project funded in**



1 **any part under 49 U.S.C. 103 et seq.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1260, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1260 as introduced.)

SOLIDAY

Committee Vote: Yeas 10, Nays 1

COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security and Transportation, to which was referred House Bill No. 1260, 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 7, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 12. IC 32-24-1-8, AS AMENDED BY P.L.163-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) A defendant may object to the proceedings:

- (1) because the court does not have jurisdiction either of the subject matter or of the person;
- (2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or
- (3) for any other reason disclosed in the complaint or set up in the objections.

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

- (1) in writing;
- (2) separately stated and numbered; and
- (3) filed not later than thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.

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

(d) If an objection is sustained, the plaintiff may amend the

EH 1260—LS 7233/DI 106



complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions. ~~upon filing with the circuit court clerk a bond:~~

- (1) ~~with the penalty that the court fixes;~~
- (2) ~~with sufficient surety;~~
- (3) ~~payable to the plaintiff; and~~
- (4) ~~conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.~~

~~The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.~~

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

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

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1260 as printed January 19, 2017.)

CRIDER, Chairperson

Committee Vote: Yeas 9, Nays 0.

