

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.

## HOUSE ENROLLED ACT No. 1260

---

AN ACT to amend the Indiana Code concerning transportation.

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

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

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

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

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

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

**However,** nothing in this section contained shall be deemed or held to authorize such ~~corporations entities~~ to condemn for any purpose ~~or to any extent not that is not a public use~~ authorized by its charter, but such ~~company entity~~ adopting the provisions of that chapter shall not condemn more, or for any purpose than as authorized **as a public use** by its charter; neither shall such ~~corporation entity~~ be deemed to have surrendered or abandoned its charter by condemning real estate as authorized in this section.

SECTION 2. IC 8-4-1-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY

**HEA 1260 — Concur**



1, 2017]: **Sec. 0.3. As used in this chapter, unless the context clearly requires otherwise, "corporation" includes a foreign corporation, partnership, or limited liability company authorized to do business in Indiana.**

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

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

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

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

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

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

- (1) Whenever stock to the amount (measured by the consideration to be received therefor) of at least fifty thousand dollars (\$50,000), or one thousand dollars (\$1,000) for each and every mile of the proposed road, shall have been subscribed, the subscribers to such stock shall elect directors for such company from their own number and shall severally subscribe articles of association in which shall be set forth the following:
  - (A) The name of the corporation.
  - (B) The total number of shares into which its authorized capital stock is to be divided.
  - (C) Whether all or part of said shares are to have a par value and if so, the number and par value of such shares.
  - (D) Whether all or part of said shares are to be without par value and if so, the number of such shares.
  - (E) The consideration for which the company may issue and sell its shares without par value or authorization to the board



of directors to fix such consideration from time to time.

(F) If said shares are to be divided into classes or kinds, the designations of the different classes, the number and par value, if any, of the shares of each class, and a statement of the relative rights, preferences, limitations, restrictions, and voting rights of each class.

(G) The number of directors and their names to manage the affairs of the company.

(H) The names of the place from which and the place to which the proposed road is to be constructed and each county into which or through which it is intended to pass.

(I) Its length as near as may be.

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

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

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

(b) The ~~corporation~~ **rail carrier** shall deposit with the clerk of the circuit court of the county where the land lies, a description of the rights and interests intended to be appropriated. The land, rights, and interests shall belong to the ~~company~~, **rail carrier**, to use for the purpose specified, by making or tendering payment as provided in this section.

(c) The ~~corporation~~ **rail carrier** may, by its directors, purchase



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

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

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

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

(2) two (2) disinterested appraisers licensed under IC 25-34.1; who are residents of Indiana to appraise the damages which the owner of the land may sustain by the appropriation. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the land. The appraisers shall be duly sworn. They shall consider the injury that the owner may sustain by reason of the ~~railroad~~ **rail carrier**. The appraisers shall return their assessment of damages to the clerk of the court, setting forth the value of the property taken or injury to the property which they assess to the owner, or owners separately, to be filed and recorded by the clerk. The ~~corporation~~ **rail carrier** shall pay to the clerk the amount thus assessed, or tender the amount to the party in whose favor the damages are awarded or assessed.

(f) On making payment or tender in the manner required, it is lawful for the ~~corporation~~ **rail carrier** to hold the interests in the lands or materials appropriated, and to use the materials on the roadway and within fifty (50) feet on each side of the center of the roadway. The cost of the award shall be paid by the ~~corporation~~ **rail carrier**. On notice



by any interested party, the court may order payment and enforce the payment by execution.

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

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

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

SECTION 9. IC 8-4-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 20. ~~Such company~~ **A railroad** may, from time to time, borrow such sums of money as they may deem necessary for completing or operating their railroad, and issue and dispose of their bonds for any amounts so borrowed, for such sums, and at such rate of interest as is allowed by the laws of the state where such



contract is made, and mortgage their corporate property and franchises to secure the payment of any debt contracted by ~~such company~~ **the railroad**; and the directors of ~~such company~~ **the railroad** may confer on any holder of any bond issued for money borrowed as aforesaid the right to convert the principal due or owing thereon into stock of said company, at any time not exceeding fifteen (15) years from the date of said bond, under such regulations as the ~~company~~ **railroad** may adopt; and ~~such company~~ **the railroad** may sell their bonds, either within or without this state, at such rates and prices as permitted by law, and such sales shall be as valid as if such bonds should be sold at par value.

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

SECTION 11. IC 8-4-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 22. Whenever the track of such railroad shall cross a road or highway, such road or highway may be carried under or over the track, as may be most expedient; and in cases where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the ~~said company~~ **rail carrier** may take such additional lands for the construction of such road or highway, or such new line, as may be deemed requisite by said directors. Unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, compensation therefor shall be ascertained, in the manner in



this chapter provided, as nearly as may be, and duly made by ~~such corporation~~ **the rail carrier** to the owners and persons interested in such lands; and the same, when so taken and compensation made, to become part of such intersecting road or highway, in such manner and by such terms as the adjacent parts of such highway may be held for highway purposes.

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 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.

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

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

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

- (1) real property having a total price (including land and structures, if any) of twenty-five thousand dollars (\$25,000) or less;
- (2) airport land or structures under IC 8-22;
- (3) library land or structures under IC 36-12;
- (4) school land or structures under IC 20-47;
- (5) hospital land or structures by a hospital or health and hospital corporation established and operated under IC 16-22 or IC 16-23;
- (6) land or structures acquired for a road or street right-of-way for a federal-aid project funded in any part under 23 U.S.C. 101 et seq.;
- (7) land or structures by redevelopment commissions under IC 36-7-14 or IC 36-7-15.1, or redevelopment authorities under IC 36-7-14.5; ~~or~~
- (8) land by a municipally owned water utility, if:
  - (A) the municipally owned water utility has performed or contracted with another party to perform sampling and drilling tests of the land; and
  - (B) the sampling and drilling tests indicate the land has water resources; **or**
- (9) land or structures acquired for railroad right-of-way or other railroad purposes for a federal aid project funded in any part under 49 U.S.C. 103 et seq.**





\_\_\_\_\_  
Speaker of the House of Representatives

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1260 — Concur**

