



February 10, 2023

SENATE BILL No. 220

DIGEST OF SB 220 (Updated February 9, 2023 11:28 am - DI 87)

Citations Affected: IC 32-24.

Synopsis: Compensation for the taking of a business. Provides that if a city or town (municipality) condemns property, a person operating a business on the property may be compensated for business losses resulting from the condemnation. Provides that a municipality may not acquire property using an alternative condemnation procedure conducted by the public works board if the municipality is notified of the person's intent to claim compensation for business losses.

Effective: January 1, 2024.

Buck, Bohacek

January 10, 2023, read first time and referred to Committee on Local Government.
February 9, 2023, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

SB 220—LS 6859/DI 87



February 10, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 220

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 **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2024]: **Sec. 0.1. The amendments made to sections 7**
4 **and 9 of this chapter by this act during the 2023 regular session of**
5 **the general assembly apply to condemnation proceedings in which**
6 **appraisers are appointed after December 31, 2023.**

7 SECTION 2. IC 32-24-1-7, AS AMENDED BY P.L.152-2021,
8 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JANUARY 1, 2024]: Sec. 7. (a) The notice, upon its return, must show
10 its:

- 11 (1) service for ten (10) days; or
12 (2) proof of publication for three (3) successive weeks:
13 (A) with each publication of the notice in a weekly newspaper
14 of general circulation printed and published in the English
15 language in the county in which the property sought to be
16 acquired is located; or
17 (B) with the first publication of notice in a newspaper

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1 described in clause (A) and the two (2) subsequent
2 publications of notice:

- 3 (i) in accordance with IC 5-3-5; and
4 (ii) on the official web site of the county.

5 The last publication of the notice must be five (5) days before the day
6 set for the hearing.

7 (b) The clerk of the court in which the proceedings are pending,
8 upon the first publication of the notice, shall send to the post office
9 address of each nonresident owner whose property will be affected by
10 the proceedings a copy of the notice, if the post office address of the
11 owner or owners can be ascertained by inquiry at the office of the
12 treasurer of the county.

13 **(c) An owner (as defined in IC 32-24-2.6-3) shall notify the court**
14 **of the owner's intent to claim compensation for loss of a going**
15 **concern under IC 32-24-2.6 not later than ninety (90) days after the**
16 **date of:**

- 17 **(1) the first service; or**
18 **(2) publication;**

19 **of the notice under subsection (a).**

20 ~~(c)~~ **(d)** The court, being satisfied of the regularity of the proceedings
21 and the right of the plaintiff to exercise the power of eminent domain
22 for the use sought, shall appoint:

- 23 (1) one (1) disinterested freeholder of the county; and
24 (2) two (2) disinterested appraisers licensed under IC 25-34.1;

25 who are residents of Indiana to assess the damages, or the benefits and
26 damages, as the case may be, that the owner or owners severally may
27 sustain, or be entitled to, by reason of the acquisition. One (1) of the
28 appraisers appointed under subdivision (2) must reside not more than
29 fifty (50) miles from the property. **If an owner notifies the court**
30 **under subsection (c), at least one (1) appraiser appointed under**
31 **subdivision (2) must be qualified and capable of determining the**
32 **loss of a going concern.**

33 SECTION 3. IC 32-24-1-9 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JANUARY 1, 2024]: Sec. 9. (a) Each
35 appraiser shall take an oath that:

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

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

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



- 1 (c) The appraisers shall determine and report all of the following:
 2 (1) The fair market value of each parcel of property sought to be
 3 acquired and the value of each separate estate or interest in the
 4 property.
 5 (2) The fair market value of all improvements pertaining to the
 6 property, if any, on the portion of the property to be acquired.
 7 (3) The damages, if any, to the residue of the property of the
 8 owner or owners caused by taking out the part sought to be
 9 acquired.
 10 (4) The other damages, if any, that will result to any persons from
 11 the construction of the improvements in the manner proposed by
 12 the plaintiff.
 13 **(5) The damages, if any, to an owner's loss of a going concern**
 14 **under IC 32-24-2.6, if the owner (as defined in IC 32-24-2.6-3)**
 15 **has notified the court in accordance with section 7(c) of this**
 16 **chapter.**
 17 (d) If the property is sought to be acquired by the state or by a
 18 county for a public highway or a municipal corporation for a public use
 19 that confers benefits on any property of the owner, the report must also
 20 state the benefits that will accrue to each parcel of property, set
 21 opposite the description of each parcel of property whether described
 22 in the complaint or not.
 23 (e) Except as provided in subsection (f), in estimating the damages
 24 specified in subsection (c), the appraisers may not deduct for any
 25 benefits that may result from the improvement.
 26 (f) In the case of a condemnation by the state or by a county for a
 27 public highway or a municipal corporation for public use, the
 28 appraisers shall deduct any benefits assessed from the amount of
 29 damage allowed, if any, under subsection (c)(3) and (c)(4) and the
 30 difference, if any, plus the damages allowed under subsection (c)(1),
 31 **and (c)(2), and if applicable, (c)(5)** shall be the amount of the award.
 32 However, the damages awarded may not be less than the damages
 33 allowed under subsection (c)(1), **and (c)(2), and if applicable, (c)(5).**
 34 Upon the trial of exceptions to the award by either party, a like measure
 35 of damages must be followed.
 36 (g) For the purpose of assessing compensation and damages, the
 37 right to compensation and damages is considered to have accrued as of
 38 the date of the service of the notice provided in section 6 of this
 39 chapter, and actual value of compensation and damages at that date
 40 shall be:
 41 (1) the measure of compensation for all property to be actually
 42 acquired; and



- 1 (2) the basis of damages to property not actually acquired but
 2 injuriously affected;
 3 except as to the damages stated in subsection (c)(4).
 4 SECTION 4. IC 32-24-2-0.1 IS ADDED TO THE INDIANA CODE
 5 AS **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 6 **JANUARY 1, 2024]: Sec. 0.1. The amendments made to sections 5**
 7 **and 6 of this chapter by this act during the 2023 regular session of**
 8 **the general assembly apply to condemnation proceedings in which**
 9 **appraisers are appointed after December 31, 2023.**
 10 SECTION 5. IC 32-24-2-5 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JANUARY 1, 2024]: Sec. 5. If:
 12 (1) a municipality has the power to acquire property under this
 13 chapter; or
 14 (2) another statute provides for proceedings by a municipality for
 15 acquiring property under this chapter;
 16 the board exercising those powers may proceed under IC 32-24-1
 17 instead of this chapter. **However, if an owner notifies the board of**
 18 **the owner's intent to claim compensation for loss of a going**
 19 **concern under IC 32-24-2.6, the municipality must proceed under**
 20 **IC 32-24-1 to acquire the property instead of this chapter.**
 21 SECTION 6. IC 32-24-2-6, AS AMENDED BY P.L.152-2021,
 22 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JANUARY 1, 2024]: Sec. 6. (a) This chapter applies if the works board
 24 of a municipality wants to acquire property for the use of the
 25 municipality or to open, change, lay out, or vacate a street, an alley, or
 26 a public place in the municipality, including a proposed street or alley
 27 crossings of railways or other rights-of-way. However, this chapter
 28 does not apply if a municipality wants to acquire the property of a
 29 public utility (as defined in IC 8-1-2-1).
 30 (b) The works board must adopt a resolution that the municipality
 31 wants to acquire the property. The resolution must describe the
 32 property that may be injuriously or beneficially affected. The board
 33 shall have notice of the resolution:
 34 (1) published for two (2) consecutive weeks:
 35 (A) with each publication of notice in a newspaper of general
 36 circulation published in the municipality; or
 37 (B) with the first publication of notice in a newspaper
 38 described in clause (A) and the second publication of notice:
 39 (i) in accordance with IC 5-3-5; and
 40 (ii) on the official web site of the municipality; and
 41 (2) mailed to the owner of each piece of property affected by the
 42 proposed acquisition.



1 The notice must name a date, at least ~~thirty (30)~~ **forty-five (45)** days
 2 after the last publication, at which time the board will receive or hear
 3 remonstrances from persons interested in or affected by the proceeding.

4 (c) The works board shall consider the remonstrances, if any, and
 5 then take final action, confirming, modifying, or rescinding its original
 6 resolution. **However, if an owner (as defined in IC 32-24-2.6-3)**
 7 **notifies the works board of the owner's intent to claim**
 8 **compensation for loss of a going concern under IC 32-24-2.6, the**
 9 **works board must terminate proceedings under this chapter and**
 10 **proceed under IC 32-24-1 to acquire the property.**

11 SECTION 7. IC 32-24-2.6 IS ADDED TO THE INDIANA CODE
 12 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 13 JANUARY 1, 2024]:

14 **Chapter 2.6. Compensation for Business Losses**

15 **Sec. 1. This chapter applies only to condemnation proceedings**
 16 **in which appraisers are appointed after December 31, 2023.**

17 **Sec. 2. As used in this chapter, "going concern" means the**
 18 **benefits that accrue to a business or trade as a result of the**
 19 **business's or trade's:**

- 20 (1) location;
- 21 (2) geographic features;
- 22 (3) reputation for dependability;
- 23 (4) skill or quality;
- 24 (5) customer base; or
- 25 (6) good will;

26 **or any other circumstances resulting in the probable retention of**
 27 **old or acquisition of new patronage.**

28 **Sec. 3. As used in this chapter, "owner" means:**

- 29 (1) the persons listed on the tax assessment rolls as being
 30 responsible for the payment of real estate taxes imposed on
 31 the property;
- 32 (2) the persons in whose name title to real estate is shown in
 33 the records of the recorder of the county in which the real
 34 estate is located; or
- 35 (3) a lessee who operates a business on the real property.

36 **Sec. 4. If a business or trade is damaged by a taking,**
 37 **condemnation, or eminent domain proceeding, the owner shall be**
 38 **compensated by the condemnor for the loss of the going concern,**
 39 **unless the condemnor establishes by a preponderance of the**
 40 **evidence that:**

- 41 (1) the loss is not caused by the taking of the property or the
 42 injury to the remainder;



- 1 **(2) the loss can be reasonably prevented by:**
2 **(A) relocating the business or trade to:**
3 **(i) the same or a similar location; and**
4 **(ii) a reasonably suitable location;**
5 **as the property that was taken; or**
6 **(B) taking steps and adopting procedures that a reasonably**
7 **prudent person:**
8 **(i) of a similar age; and**
9 **(ii) as the owner, under similar conditions;**
10 **would take and adopt in preserving the going concern of**
11 **the business or trade; or**
12 **(3) compensation for the loss will be duplicated in the**
13 **compensation otherwise awarded to the owner.**
14 **Sec. 5. An owner's damages for loss of value to a going concern**
15 **shall be determined by appraisers as part of the compensation due**
16 **to the owner. An owner shall provide an appraiser reasonable**
17 **access to the records necessary to determine the value of the loss of**
18 **the going concern. The appraiser's decision regarding any award**
19 **for the loss of the going concern may be challenged by any party.**



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 220, 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 5, delete lines 15 through 19, begin a new paragraph and insert:

"Sec. 1. This chapter applies only to condemnation proceedings in which appraisers are appointed after December 31, 2023."

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 220 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 7, Nays 3.

