

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6907**

**BILL NUMBER: HB 1172**

**NOTE PREPARED: Dec 31, 2021**

**BILL AMENDED:**

**SUBJECT:** Eminent Domain by Public Utilities.

**FIRST AUTHOR:** Rep. Cherry

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**    **GENERAL**  
                          **X DEDICATED**  
                          **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill defines a "pipeline company" and a "public utility" for purposes of the statute governing the general procedures to be used in acquiring property by eminent domain. It amends the statute with respect to an eminent domain action filed by a public utility or a pipeline company after June 30, 2022, as follows:

- (1) It provides that the public utility or pipeline company must pay the defendant landowner not less than the amount of damages specified in the court appraisers' report for the property or easement condemned, subject to the landowner's right to file written exceptions to the court appraisers' assessment and proceed to trial.
- (2) It eliminates a provision in current law exempting a plaintiff public utility or pipeline company from having to pay a defendant's reasonable costs and attorney's fees (not to exceed \$25,000) incurred by the defendant in filing an objection to an eminent domain action, if the objection is sustained by a trial court or on appeal.
- (3) It requires a plaintiff public utility or pipeline company to pay to the circuit court clerk the amount of damages assessed by the court appraisers. (Current law allows a plaintiff in an eminent domain action to pay such amount to the court in order to take possession of and hold interest in the property acquired.)
- (4) The bill provides that the plaintiff public utility's or pipeline company's required offer of settlement before trial may not be less than the amount of damages specified in the court appraisers' report for the property or easement condemned.
- (5) It also makes conforming amendments.

The bill amends the statute with respect to an eminent domain action filed by any plaintiff to provide that if there is a trial and the amount of damages awarded to the defendant by the judgment is greater than the

amount specified in the plaintiff's last offer of settlement, the court shall award the defendant costs, including reasonable attorney's fees, in an amount not to exceed the fair market value of the defendant's property or easement (versus an amount not to exceed the lesser of: (1) \$25,000; or (2) the fair market value of the defendant's property or easement; under current law).

**Effective Date:** July 1, 2022.

**Explanation of State Expenditures:** *INDOT Legal Fees:* This bill changes the maximum attorney's fees that can be awarded to a property owner by the court. The changes to the statute include that a defendant's litigation expenses, including reasonable attorney's fees, can be compensated in an amount not to exceed the fair market value of the property or easement. The overall impact of these provisions may be significant for INDOT when engaged in eminent domain condemnation cases. [From 2018 to 2020, INDOT settled all condemnation cases. No case was decided by a court. Additionally, LSA has requested updated information for FY 2021 and will update this fiscal note accordingly.]

**Explanation of State Revenues:** *Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. The proceeds from the automated record keeping fee (\$20) are deposited into the State User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**Explanation of Local Expenditures:** *Legal Fees:* This bill changes the maximum attorney's fees that can be awarded to a property owner by the court. The changes to the statute include that a defendant's litigation expenses including reasonable attorney's fees can be compensated in an amount not to exceed the fair market value of the property or easement. It also eliminates a provision in current law exempting a plaintiff municipal utility from having to pay a defendant's reasonable costs and attorney's fees up to \$25,000, if the defendant's objection to an eminent domain action is sustained by a trial court or on appeal.

*Damages:* The bill requires that a municipal utility: (1) must pay the defendant landowner not less than the amount of damages specified in the court appraisers' report for the property or easement condemned, (2) must pay to the circuit court clerk the amount of damages assessed by the court appraisers, and (3) that the required offer of settlement before trial may not be less than the amount of damages specified in the court appraisers' report.

The overall impact of these provisions may be significant for municipalities or municipal utilities when engaged in eminent domain condemnation cases.

**Explanation of Local Revenues:** *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund

and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$5) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per page) are charged for preparing transcripts or copies of record or certificate under seal.
- A civil garnishee defendant service fee (\$10) is collected from the filing party for each defendant beyond the first three garnishee defendants cited in the lawsuit.

**State Agencies Affected:** INDOT.

**Local Agencies Affected:** Municipal utilities, municipalities, trial courts, city and town courts.

**Information Sources:** INDOT.

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