

HOUSE BILL No. 1117

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-24-1.

Synopsis: Eminent domain. Allows a business owner, including a lessee, that operates a business located on property subject to an eminent domain action to seek business damages. Provides for the assessment of business damages in an eminent domain matter. Expands the right to an award of attorney's fees in an eminent domain matter.

Effective: July 1, 2020.

Shackleford

January 8, 2020, read first time and referred to Committee on Judiciary.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1117

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 32-24-1-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2020]: **Sec. 0.5. "Business owner" means a person that:**
4 (1) **owns or leases property sought to be acquired under this**
5 **chapter; and**
6 (2) **operates a business that:**
7 (A) **is located on the property to be acquired under this**
8 **chapter; and**
9 (B) **was established at least five (5) years before the date of**
10 **the notice provided under section 3.5 of this chapter.**
11 SECTION 2. IC 32-24-1-3.5 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2020]: **Sec. 3.5. (a) Before proceeding to condemnation under this**
14 **chapter, the person seeking to acquire property under section 3 of**
15 **this chapter must also make a good faith effort to notify a business**
16 **owner that operates a business located on the property to be**
17 **acquired. The person seeking to acquire the property must notify**



1 the business owner of the following:

2 (1) That all or a portion of the property is necessary for
3 acquisition.

4 (2) The reason for the acquisition of the property, and the
5 parcel designation of the property to be acquired.

6 (3) That, within fourteen (14) days after receipt of a request
7 by the business owner, the person seeking to acquire the
8 property will provide:

9 (A) a copy of the appraisal report upon which the offer to
10 the property owner is based;

11 (B) copies, to the extent prepared, of the right-of-way maps
12 or other documents that depict the proposed taking; and

13 (C) copies, to the extent prepared, of the construction plans
14 that depict project improvements to be constructed on the
15 property taken and improvement to be constructed
16 adjacent to the remaining property, including plan, profile,
17 cross-section, drainage, pavement marking sheets, and
18 driveway connection detail.

19 The person shall provide any additional plan sheets within fifteen
20 (15) days of a request. The notice under this section must be made
21 at the time or after the person conducts the efforts to purchase
22 under section 3 of this chapter.

23 (b) If the business intends to claim business damages due to the
24 acquisition of property, the business owner must, not later than one
25 hundred eighty (180) days after receiving the notice or a date
26 mutually agreed upon by the business owner and the person
27 seeking to acquire the property, submit to the person seeking to
28 acquire the property a good faith written offer to settle any claims
29 of business damages.

30 (c) The business damages offer must include an explanation of
31 the nature, extent, and monetary amount of such damages and
32 must be prepared by the business owner, a certified accountant, or
33 a business damages expert familiar with the nature of the
34 operations of the business. The business owner shall also provide
35 to the person seeking acquisition of the property copies of the
36 business owner's business records that substantiate the good faith
37 offer to settle the business damages claim.

38 (d) Not later than one hundred twenty (120) days after receipt
39 of the good faith business damages offer and supporting business
40 records, the person seeking to acquire the property must accept or
41 reject the business owner's offer or make a counter offer. If the
42 person seeking to acquire the property fails to respond to the



1 **business owner's offer, the failure to respond will be deemed a**
 2 **counter offer of zero dollars (\$0) for purposes of section 14 of this**
 3 **chapter.**

4 **(e) If settlement is reached between the person seeking to**
 5 **acquire the property and a business owner prior to litigation, the**
 6 **business owner shall be entitled to recover costs and attorney's fees**
 7 **as provided in section 14 of this chapter.**

8 SECTION 3. IC 32-24-1-4 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. **(a) For purposes of**
 10 **this section, "owner" includes a business owner.**

11 ~~(a)~~ **(b)** If the person seeking to acquire the property does not agree
 12 with the owner of an interest in the property or with the guardian of an
 13 owner concerning the damages sustained by the owner, the person
 14 seeking to acquire the property may file a complaint for that purpose
 15 with the clerk of the circuit court of the county where the property is
 16 located.

17 ~~(b)~~ **(c)** The complaint must state the following:

18 (1) The name of the person seeking to acquire the property. This
 19 person shall be named as the plaintiff.

20 (2) The names of all owners, claimants to, and holders of liens on
 21 the property, if known, or a statement that they are unknown.
 22 These owners, claimants, and holders of liens shall be named as
 23 defendants.

24 (3) The use the plaintiff intends to make of the property or right
 25 sought to be acquired.

26 (4) If a right-of-way is sought, the location, general route, width,
 27 and the beginning and end points of the right-of-way.

28 (5) A specific description of each piece of property sought to be
 29 acquired and whether the property includes the whole or only part
 30 of the entire parcel or tract. If property is sought to be acquired by
 31 the state or by a county for a public highway or by a municipal
 32 corporation for a public use and the acquisition confers benefits
 33 on any other property of the owner, a specific description of each
 34 piece of property to which the plaintiff alleges the benefits will
 35 accrue. Plats of property alleged to be affected may accompany
 36 the descriptions.

37 (6) That the plaintiff has been unable to agree for the purchase of
 38 the property with the owner, owners, or guardians, as the case
 39 may be, or that the owner is mentally incompetent or less than
 40 eighteen (18) years of age and has no legally appointed guardian,
 41 or is a nonresident of Indiana.

42 ~~(c)~~ **(d)** All parcels lying in the county and required for the same



1 public use, whether owned by the same parties or not, may be included
2 in the same or separate proceedings at the option of the plaintiff.
3 However, the court may consolidate or separate the proceedings to suit
4 the convenience of parties and the ends of justice. The filing of the
5 complaint and a lis pendens notice in any eminent domain action under
6 this article constitutes notice of proceedings to all subsequent
7 purchasers and persons taking encumbrances of the property, who are
8 bound by the notice.

9 SECTION 4. IC 32-24-1-5, AS AMENDED BY P.L.163-2006,
10 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2020]: Sec. 5. (a) **Except as provided in subsection (e)**, as
12 a condition precedent to filing a complaint in condemnation, and
13 except for an action brought under IC 8-1-13-19 (repealed), a
14 condemnor may enter upon the property as provided in this chapter and
15 must, at least thirty (30) days before filing a complaint, make an offer
16 to purchase the property in the form prescribed in subsection (c). The
17 offer must be served personally or by certified mail upon:

- 18 (1) the owner of the property sought to be acquired; or
- 19 (2) the owner's designated representative.
- 20 (b) If the offer cannot be served personally or by certified mail, or
21 if the owner or the owner's designated representative cannot be found,
22 notice of the offer shall be given by publication in a newspaper of
23 general circulation in the county in which the property is located or in
24 the county where the owner was last known to reside. The notice must
25 be in the following form:

26 NOTICE

27 TO: _____, _____ (owner(s)),
28 _____ (condemnor) needs your property for
29 a _____ (description
30 of project), and will need to acquire the following from you:
31 _____ (general
32 description of the property to be acquired). We have made you a formal
33 offer for this property that is now on file in the Clerk's Office in the
34 _____ County Court House. Please pick up the offer. If you do not
35 respond to this notice or accept the offer by _____ (a date 30 days from
36 1st date of publication) 20____, we shall file a suit to condemn the
37 property.

38 _____
39 Condemnor

40 The condemnor must file the offer with the clerk of the circuit court
41 with a supporting affidavit that diligent search has been made and that
42 the owner cannot be found. The notice shall be published twice as



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

follows:

- (1) One (1) notice immediately.
- (2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT
ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. _____ (condemnor) needs (your property) (an easement across your property) for a _____ (brief description of the project) and needs to take _____ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is \$ _____, and, therefore, _____ (condemnor) offers you \$ _____ for the above described (property) (easement). You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

- 1. By law, _____ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).
- 2. You do not have to accept this offer and _____ (condemnor) is not required to agree to your demands.
- 3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit to condemn and acquire the (property) (easement) in the county in which the property is located.
- 4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.
- 5. You may object to the public purpose and necessity of this project.
- 6. If _____ (condemnor) files a suit to condemn and



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.

7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.

8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).

10. If you have any questions concerning this matter you may contact us at:

(full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

_____ of _____,
_____ of _____,
_____ of _____,
_____ of _____,



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

on the ____ day of _____ 20__.

BY:

(signature)

(printed name and title)

Agent of:

(condemnor)

If you decide to accept the offer of \$ ____ made by _____ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____, owner(s) of the above described property or interest in property, hereby accept the offer of \$ _____ made by _____ (condemnor) on this ____ day of _____, 20__.

NOTARY'S CERTIFICATE

STATE OF _____)
_____) SS:
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20__.

My Commission Expires: _____

(Signature)

(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.



1 **(e) As a condition precedent to filing an action for condemnation**
 2 **of a property where a business owner has been notified under**
 3 **section 3.5 of this chapter, the condemnor must also comply with**
 4 **the negotiation requirements specified in section 3.5 of this chapter.**

5 SECTION 5. IC 32-24-1-9 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 9. (a) Each appraiser
 7 shall take an oath that:

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

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

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

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

16 (1) The fair market value of each parcel of property sought to be
 17 acquired and the value of each separate estate or interest in the
 18 property.

19 (2) The fair market value of all improvements pertaining to the
 20 property, if any, on the portion of the property to be acquired.

21 (3) The damages, if any, to the residue of the property of the
 22 owner or owners caused by taking out the part sought to be
 23 acquired.

24 **(4) The damages, including prospective and consequential**
 25 **damages, if any, to a business established more than five (5)**
 26 **years before the date of the appraisal that is owned by a**
 27 **person that rents, leases, or owns the property or a portion of**
 28 **the property:**

29 **(A) on which the business is located; and**

30 **(B) sought to be acquired.**

31 ~~(4)~~ **(5)** The other damages, if any, that will result to any persons
 32 from the construction of the improvements in the manner
 33 proposed by the plaintiff.

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

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



1 (f) In the case of a condemnation by the state or by a county for a
 2 public highway or a municipal corporation for public use, the
 3 appraisers shall deduct any benefits assessed from the amount of
 4 damage allowed, if any, under subsection (c)(3) and ~~(c)(4)~~ **(c)(5)** and
 5 the difference, if any, plus the damages allowed under subsection (c)(1)
 6 and (c)(2) shall be the amount of the award. However, the damages
 7 awarded may not be less than the damages allowed under subsection
 8 (c)(1) and (c)(2). Upon the trial of exceptions to the award by either
 9 party, a like measure of damages must be followed.

10 (g) For the purpose of assessing compensation and damages, the
 11 right to compensation and damages is considered to have accrued as of
 12 the date of the service of the notice provided in section 6 of this
 13 chapter, and actual value of compensation and damages at that date
 14 shall be:

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

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

19 except as to the damages stated in subsection (c)(4) **and (c)(5)**.

20 SECTION 6. IC 32-24-1-14, AS AMENDED BY P.L.163-2006,
 21 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2020]: Sec. 14. **(a) As used in this section, "benefits" means**
 23 **the difference, exclusive of interests and costs, between the final**
 24 **judgment and the last offer of settlement made by the plaintiff**
 25 **under sections 3.5 (if applicable) and 12 of this chapter.**

26 ~~(a)~~ **(b)** Except as provided in subsection ~~(b)~~; **(c)**, the plaintiff shall
 27 pay the costs of the proceedings.

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

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

37 ~~(2) the fair market value of the defendant's property or easement~~
 38 ~~as determined under this chapter.~~

39 **(d) The court shall award attorney's fees in an amount based**
 40 **upon benefits achieved, in accordance with the following schedule:**

41 **(1) Thirty-three percent (33%) of any benefit up to two**
 42 **hundred fifty thousand dollars (\$250,000).**



1 **(2) Twenty-five percent (25%) of any portion of the benefit**
2 **between two hundred fifty thousand dollars (\$250,000) and**
3 **one million dollars (\$1,000,000).**

4 **(3) Twenty percent (20%) of any portion of the benefit**
5 **exceeding one million dollars (\$1,000,000).**

6 **(e) The court may also consider nonmonetary benefits obtained**
7 **for the client through the efforts of the attorney, to the extent that**
8 **the nonmonetary benefits are specifically identified by the court**
9 **and can, within a reasonable degree of certainty, be quantified.**

10 **(f) In assessing attorney's fees in defeating an order of taking,**
11 **or for apportionment, or other supplemental proceeding, the court**
12 **shall consider the following:**

13 **(1) The novelty, difficulty, and importance of the questions**
14 **involved.**

15 **(2) The skill employed by the attorney in conducting the**
16 **cause.**

17 **(3) The amount of money involved.**

18 **(4) The responsibility incurred and fulfilled by the attorney.**

19 **(5) The attorney's time and labor reasonably required to**
20 **adequately represent the client in relation to the benefits**
21 **resulting to the client.**

22 **(6) The fee, or rate of fee, customarily charged for legal**
23 **services of a comparable or similar nature.**

24 **(7) An attorney's fees award made under subsection (d).**

25 **(g) In determining the amount of attorney's fees to be paid by**
26 **the plaintiff under subsection (f), the court shall be guided by the**
27 **fees the defendant would ordinarily be expected to pay for the**
28 **services described in subsection (f) if the plaintiff were not**
29 **responsible for the payment of those fees.**

