

HOUSE BILL No. 1172

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-24-1.

Synopsis: Eminent domain by public utilities. 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. 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) 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) 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) 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) 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) Makes conforming amendments. 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
(Continued next page)

Effective: July 1, 2022.

Cherry, Negele

January 6, 2022, read first time and referred to Committee on Judiciary.



Digest Continued

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).



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1172



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 32-24-1-2.1 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2022]: **Sec. 2.1. Except as otherwise provided in this chapter, as**
- 4 **used in this chapter, "pipeline company" means a person that**
- 5 **owns, operates, constructs, or proposes to construct one (1) or**
- 6 **more pipeline facilities (as defined in IC 8-1-22.5-1(d)).**
- 7 SECTION 2. IC 32-24-1-2.2 IS ADDED TO THE INDIANA CODE
- 8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 9 1, 2022]: **Sec. 2.2. Except as otherwise provided in this chapter, as**
- 10 **used in this chapter, "public utility" means a person described in**
- 11 **IC 8-1-8-1 or IC 32-24-4-1, including any of the following:**
- 12 (1) **A public utility.**
- 13 (2) **A municipally owned utility.**
- 14 (3) **A cooperatively owned utility.**
- 15 (4) **A not-for-profit utility.**



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) **Except as provided in subsection (d)**, 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 **the** 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, a 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



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

project.
6. If _____ (condemnor) files a suit to condemn and 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 **number** of the condemnor)
This offer was made to the owner(s):
_____ of _____,
_____ of _____,



1 public purposes. _____ (condemnor) needs (your
 2 property) (an easement across your property) for a
 3 _____ (brief description of the project)
 4 and needs to take _____ (legal description of the
 5 property or easement to be taken; the legal description may be
 6 made on a separate sheet and attached to this document if
 7 additional space is required)

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

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

- 20 1. By law, _____ (condemnor) is required to make a
 21 good faith effort to purchase (your property) (an easement
 22 across your property).
- 23 2. You do not have to accept this offer and _____
 24 (condemnor) is not required to agree to your demands.
- 25 3. However, if you do not accept this offer, and we cannot
 26 come to an agreement on the acquisition of (your property)
 27 (an easement), _____ (condemnor) has the right to
 28 file suit to condemn and acquire the (property) (easement) in
 29 the county in which the property is located.
- 30 4. You have the right to seek advice of an attorney, a real
 31 estate appraiser, or any other person of your choice on this
 32 matter.
- 33 5. You may object to the public purpose and necessity of this
 34 project.
- 35 6. If _____ (condemnor) files a suit to condemn and
 36 acquire (your property) (an easement) and the court grants its
 37 request to condemn, the court will then appoint three
 38 appraisers who will make an independent appraisal of the
 39 (property) (easement) to be acquired.
- 40 7. If you agree with the court appraisers' report, then the
 41 matter is settled, and _____ (condemnor) must pay
 42 you not less than the amount specified in the court appraisers'



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

report for the (property) (easement) condemned. However, if you disagree with the appraisers' report to the court, you have 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 you, then _____ (condemnor) must deposit the amount of the court appraisers' evaluation with the court. Upon such deposit 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.

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. However, the court's decision may be more, but not less, than the amount specified in the court appraisers' report for the (property) (easement) condemned. 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 number of the condemnor)

This offer was made to the owner(s):

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

on the ____ day of _____ 20__ ,

BY:

(signature)

(printed name and title)

Agent of: _____
(condemnor)



- 1 objections.
- 2 (b) Objections under subsection (a) must be:
- 3 (1) in writing;
- 4 (2) separately stated and numbered; and
- 5 (3) filed not later than thirty (30) days after the date the notice
- 6 required in section 6 of this chapter is served on the defendant.
- 7 However, the court may extend the period for filing objections by
- 8 not more than thirty (30) days upon written motion of the
- 9 defendant.
- 10 (c) The court may not allow pleadings in the cause other than the
- 11 complaint, any objections, and the written exceptions provided for in
- 12 section 11 of this chapter. However, the court may permit amendments
- 13 to the pleadings.
- 14 (d) If an objection is sustained, the plaintiff may amend the
- 15 complaint or may appeal from the decision in the manner that appeals
- 16 are taken from final judgments in civil actions. All the parties shall take
- 17 notice and are bound by the judgment in an appeal.
- 18 (e) If the objections are overruled, the court shall appoint appraisers
- 19 as provided for in this chapter. Any defendant may appeal the
- 20 interlocutory order overruling the objections and appointing appraisers
- 21 in the manner that appeals are taken from final judgments in civil
- 22 actions.
- 23 (f) All the parties shall take notice of and be bound by the judgment
- 24 in the appeal.
- 25 (g) The transcript must be filed in the office of the clerk of the
- 26 supreme court not later than thirty (30) days after the notice of the
- 27 defendant's appeal is filed. The appeal does not stay proceedings in the
- 28 cause.
- 29 (h) This subsection does not apply to a condemnation action brought
- 30 by a public utility ~~(as defined in section 5.9(a) of this chapter)~~ or by a
- 31 pipeline company **before July 1, 2022**. Notwithstanding section 14 of
- 32 this chapter, if an objection:
- 33 (1) is sustained, and no appeal is filed; or
- 34 (2) is sustained in the judgment in the appeal;
- 35 the court shall award the defendant the reasonable costs and attorney's
- 36 fees incurred for the objection, in an amount not to exceed twenty-five
- 37 thousand dollars (\$25,000).
- 38 SECTION 5. IC 32-24-1-10 IS AMENDED TO READ AS
- 39 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 10. (a) **This subsection**
- 40 **does not apply to an action filed under this article by a public**
- 41 **utility or a pipeline company after June 30, 2022**. If the plaintiff
- 42 pays to the circuit court clerk the amount of damages assessed under



1 section 9 of this chapter, the plaintiff may take possession of and hold
 2 the interest in the property so acquired for the uses stated in the
 3 complaint, subject to the appeal provided for in section 8 of this
 4 chapter. ~~But~~ **However**, the amount of the benefits or damages is
 5 subject to review as provided in section 11 of this chapter.

6 **(b) In the case of an action filed under this article by a public**
 7 **utility or a pipeline company after June 30, 2022, the plaintiff shall**
 8 **pay to the circuit court clerk the amount of damages assessed**
 9 **under section 9 of this chapter. Upon payment to the circuit court**
 10 **clerk of the amount of damages assessed under section 9 of this**
 11 **chapter, the plaintiff may take possession of and hold the interest**
 12 **in the property so acquired for the uses stated in the complaint,**
 13 **subject to the appeal provided for in section 8 of this chapter.**
 14 **However, the amount of the benefits or damages is subject to**
 15 **review as provided in section 11.1 of this chapter.**

16 ~~(b)~~ (c) Upon payment by the plaintiff of the amount of the award of
 17 the court appointed appraisers, the plaintiff shall file or cause to be
 18 filed with the auditor of the county in which the property is located a
 19 certificate, certifying the amount paid to the circuit court clerk and
 20 including the description of the property being acquired. The auditor
 21 of the county shall then transfer the property being acquired to the
 22 plaintiff on the tax records of the county.

23 SECTION 6. IC 32-24-1-11, AS AMENDED BY P.L.50-2012,
 24 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2022]: Sec. 11. (a) **This section does not apply to an action**
 26 **filed under this article by a public utility or a pipeline company**
 27 **after June 30, 2022.** When a report of the appraisers is filed with a
 28 court under this chapter, the circuit court clerk shall send written notice
 29 of the filing of the report by certified mail to:

- 30 (1) all known parties to the action; and
- 31 (2) the attorneys of record of the parties.

32 (b) Any party to an action under this chapter aggrieved by the
 33 assessment of benefits or damages in a report of the appraisers may file
 34 written exceptions to the assessment in the office of the circuit court
 35 clerk. Exceptions to the assessment must be filed by a party:

- 36 (1) after the report of the appraisers is filed with the court; and
- 37 (2) not later than forty-five (45) days after the date the circuit
 38 court clerk mails the report under subsection (a).

39 (c) The cause shall further proceed to issue, trial, and judgment as
 40 in civil actions. The court may make orders and render findings and
 41 judgments that the court considers just. Either party may appeal a
 42 judgment as to benefits or damages as in civil actions.



1 (d) Forty-five (45) days after the date the circuit court clerk mails
 2 the report under subsection (a), and if the plaintiff has paid the amount
 3 of damages assessed to the circuit court clerk, any one (1) or more of
 4 the defendants may file a written request for payment of each
 5 defendant's proportionate share of the damages held by the circuit court
 6 clerk. The defendants making a request for payment must also file
 7 sufficient copies of the request for service upon the plaintiff and all
 8 other defendants not joining in the request. The defendants making the
 9 request may withdraw and receive each defendant's proportionate share
 10 of the damages upon the following terms and conditions:

11 (1) Each written request must:

12 (A) be verified under oath; and

13 (B) state:

14 (i) the amount of the proportionate share of the damages to
 15 which each of the defendants joining in the request is
 16 entitled;

17 (ii) the interest of each defendant joining in the request; and

18 (iii) the highest offer made by the plaintiff to each of the
 19 defendants for each defendant's respective interests in or
 20 damages sustained in respect to the property that has been
 21 acquired by the plaintiff.

22 (2) Upon the filing of a written request for withdrawal and
 23 payment of damages to any of the defendants, the circuit court
 24 clerk shall immediately issue a notice to the plaintiff and all
 25 defendants of record in the cause who have not joined in the
 26 request for payment. The notice must contain the following:

27 (A) The names of the parties.

28 (B) The number of the cause.

29 (C) A statement that a request for payment has been filed.

30 (D) A notice to appear on a day, to be fixed by the court, and
 31 show cause, if any, why the amounts requested should not be
 32 withdrawn and paid over by the circuit court clerk to those
 33 defendants requesting the amounts to be paid.

34 (E) A copy of the request for payment.

35 If a defendant not requesting payment is a nonresident of Indiana,
 36 or if that defendant's name or residence is unknown, publication
 37 and proof of the notice and request for payment shall be made as
 38 provided in section 4 7 of this chapter.

39 (3) After a hearing held after notice of a written request made
 40 under this section, the court shall determine and order the
 41 payment by the circuit court clerk of the proportionate shares of
 42 the damages due to the defendants requesting payment. Any of



1 the defendants may appeal an order under this subdivision within
2 the same time and in the same manner as provided for allowable
3 appeals from interlocutory orders in civil actions.

4 (4) If exceptions to the appraisers' report have been duly filed by
5 the plaintiff or any defendant, the circuit court clerk may not
6 make payment to any defendant of any part of the damages
7 deposited with the clerk by the plaintiff until the defendants
8 requesting payment have filed with the circuit court clerk a
9 written undertaking, with surety approved by the court, for the
10 repayment to the plaintiff of all sums received by those
11 defendants in excess of the amount or amounts awarded as
12 damages to those defendants by the judgment of the court upon
13 trial held on the exceptions to the assessment of damages by the
14 appraisers. However, the court may waive the requirement of
15 separate surety as to any defendant who is a resident freeholder of
16 the county in which the cause is pending and who is owner of real
17 property in Indiana that is liable to execution, not included in the
18 real property appropriated by the plaintiff, and equal in value to
19 the amount by which the damages to be withdrawn exceed the
20 amount offered to the defendants as stated in their request or the
21 amount determined by the court if the plaintiff has disputed the
22 statement of the offer. A surety or written undertaking may not be
23 required for a defendant to withdraw those amounts previously
24 offered by the plaintiff to the defendant if the plaintiff has
25 previously notified the court in writing of the amounts so offered.
26 The liability of any surety does not exceed the amount by which
27 the damages to be withdrawn exceed the amount offered to the
28 defendants with whom the surety joins in the written undertaking.
29 Each written undertaking filed with the circuit court clerk shall be
30 immediately recorded by the clerk in the order book and entered
31 in the judgment docket, and from the date of the recording and
32 entry the written undertaking is a lien upon all the real property
33 in the county owned by the several obligors, and the undertaking
34 is also a lien upon all the real property owned by the several
35 obligors in each county of Indiana in which the plaintiff causes a
36 certified copy of the judgment docket entry to be recorded, from
37 the date of the recording.

38 (5) The withdrawal and receipt from the circuit court clerk by any
39 defendant of that defendant's proportionate share of the damages
40 awarded by the appraisers, as determined by the court upon the
41 written request and hearing, does not operate and is not
42 considered as a waiver of any exceptions duly filed by that



1 defendant to the assessment of damages by the appraisers.

2 (6) In any trial of exceptions, the court or jury shall compute and
3 allow interest at an annual rate of eight percent (8%) on the
4 amount of a defendant's damages from the date plaintiff takes
5 possession of the property. Interest may not be allowed on any
6 money paid by the plaintiff to the circuit court clerk:

7 (A) after the money is withdrawn by the defendant; or

8 (B) that is equal to the amount of damages previously offered
9 by the plaintiff to any defendant and which amount can be
10 withdrawn by the defendant without filing a written undertaking
11 or surety with the court for the withdrawal of that amount.

12 SECTION 7. IC 32-24-1-11.1 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2022]: **Sec. 11.1. (a) This section applies to an
15 action filed under this article by a public utility or a pipeline
16 company after June 30, 2022.**

17 **(b) When a report of the appraisers is filed with a court under
18 this chapter, the circuit court clerk shall send written notice of the
19 filing of the report by certified mail to:**

20 **(1) all known parties to the action; and**

21 **(2) the attorneys of record of the parties.**

22 **(c) A defendant aggrieved by the assessment of damages in a
23 report of the court appraisers may file written exceptions to the
24 assessment in the office of the circuit court clerk. Exceptions to the
25 assessment must be filed by a defendant:**

26 **(1) after the report of the appraisers is filed with the court;
27 and**

28 **(2) not later than forty-five (45) days after the date the circuit
29 court clerk mails the report under subsection (b).**

30 **A plaintiff may not file exceptions to the assessment of damages in
31 the report of the court appraisers.**

32 **(d) The cause shall further proceed to issue, trial, and judgment
33 as in civil actions. The court may make orders and render findings
34 and judgments that the court considers just. Either party may
35 appeal a judgment of the court as to damages as in civil actions.
36 However, the plaintiff in an action to which this section applies
37 may not appeal a judgment as to damages if the court's judgment
38 as to damages does not exceed the amount of damages specified in
39 the court appraisers' report for the property or easement
40 condemned.**

41 **(e) Forty-five (45) days after the date the circuit court clerk
42 mails the report under subsection (b), and after the plaintiff has**



1 paid the amount of damages assessed to the circuit court clerk, as
2 required under section 10(b) of this chapter, any one (1) or more
3 of the defendants may file a written request for payment of each
4 defendant's proportionate share of the damages held by the circuit
5 court clerk. The defendants making a request for payment must
6 also file sufficient copies of the request for service upon the
7 plaintiff and all other defendants not joining in the request. The
8 defendants making the request may withdraw and receive each
9 defendant's proportionate share of the damages upon the following
10 terms and conditions:

11 (1) Each written request must:

12 (A) be verified under oath; and

13 (B) state:

14 (i) the amount of the proportionate share of the damages
15 to which each of the defendants joining in the request is
16 entitled;

17 (ii) the interest of each defendant joining in the request;
18 and

19 (iii) the highest offer made by the plaintiff to each of the
20 defendants for each defendant's respective interests in or
21 damages sustained in respect to the property that has
22 been acquired by the plaintiff.

23 (2) Upon the filing of a written request for withdrawal and
24 payment of damages to any of the defendants, the circuit
25 court clerk shall immediately issue a notice to the plaintiff and
26 all defendants of record in the cause who have not joined in
27 the request for payment. The notice must contain the
28 following:

29 (A) The names of the parties.

30 (B) The number of the cause.

31 (C) A statement that a request for payment has been filed.

32 (D) A notice to appear on a day, to be fixed by the court,
33 and show cause, if any, why the amounts requested should
34 not be withdrawn and paid over by the circuit court clerk
35 to those defendants requesting the amounts to be paid.

36 (E) A copy of the request for payment.

37 If a defendant not requesting payment is a nonresident of
38 Indiana, or if that defendant's name or residence is unknown,
39 publication and proof of the notice and request for payment
40 shall be made as provided in section 7 of this chapter.

41 (3) After a hearing held after notice of a written request made
42 under this section, the court shall determine and order the



1 payment by the circuit court clerk of the proportionate shares
2 of the damages due to the defendants requesting payment.
3 Any of the defendants may appeal an order under this
4 subdivision within the same time and in the same manner as
5 provided for allowable appeals from interlocutory orders in
6 civil actions.

7 (4) If exceptions to the appraisers' report have been duly filed
8 by any defendant, the circuit court clerk may not make
9 payment to any defendant of any part of the damages
10 deposited with the clerk by the plaintiff until the defendants
11 requesting payment have filed with the circuit court clerk a
12 written undertaking, with surety approved by the court, for
13 the repayment to the court of all sums received by those
14 defendants in excess of the amount or amounts awarded as
15 damages to those defendants by the judgment of the court
16 upon trial held on the exceptions to the assessment of damages
17 by the appraisers. However, the court may waive the
18 requirement of separate surety as to any defendant who is a
19 resident freeholder of the county in which the cause is pending
20 and who is owner of real property in Indiana that is liable to
21 execution, not included in the real property appropriated by
22 the plaintiff, and equal in value to the amount by which the
23 damages to be withdrawn exceed the amount offered to the
24 defendants as stated in their request or the amount
25 determined by the court if the plaintiff has disputed the
26 statement of the offer. A surety or written undertaking may
27 not be required for a defendant to withdraw those amounts
28 previously offered by the plaintiff to the defendant if the
29 plaintiff has previously notified the court in writing of the
30 amounts so offered. The liability of any surety does not exceed
31 the amount by which the damages to be withdrawn exceed the
32 amount offered to the defendants with whom the surety joins
33 in the written undertaking. Each written undertaking filed
34 with the circuit court clerk shall be immediately recorded by
35 the clerk in the order book and entered in the judgment
36 docket, and from the date of the recording and entry the
37 written undertaking is a lien upon all the real property in the
38 county owned by the several obligors.

39 (5) The withdrawal and receipt from the circuit court clerk by
40 any defendant of that defendant's proportionate share of the
41 damages awarded by the appraisers, as determined by the
42 court upon the written request and hearing, does not operate



1 **and is not considered as a waiver of any exceptions duly filed**
 2 **by that defendant to the assessment of damages by the**
 3 **appraisers.**

4 **(6) In any trial of exceptions, the court or jury shall compute**
 5 **and allow interest at an annual rate of eight percent (8%) on**
 6 **the amount of a defendant's damages from the date plaintiff**
 7 **takes possession of the property. Interest may not be allowed**
 8 **on any money paid by the plaintiff to the circuit court clerk:**

9 **(A) after the money is withdrawn by the defendant; or**

10 **(B) that is equal to the amount of damages previously**
 11 **offered by the plaintiff to any defendant and which amount**
 12 **can be withdrawn by the defendant without filing a written**
 13 **undertaking or surety with the court for the withdrawal of**
 14 **that amount.**

15 SECTION 8. IC 32-24-1-12, AS AMENDED BY P.L.163-2006,
 16 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2022]: Sec. 12. (a) Not later than forty-five (45) days before
 18 a trial involving the issue of damages, the plaintiff shall, and a
 19 defendant may, file and serve on the other party an offer of settlement.
 20 **In the case of an action filed under this article by a public utility or**
 21 **a pipeline company after June 30, 2022, the plaintiff's offer of**
 22 **settlement may not be less than the amount of damages specified in**
 23 **the court appraisers' report for the property or easement**
 24 **condemned.** Not more than five (5) days after the date offer of
 25 settlement is served, the party served may respond by filing and serving
 26 upon the other party an acceptance or a counter offer of settlement. The
 27 offer must state that it is made under this section and specify the
 28 amount, exclusive of interest and costs, that the party serving the offer
 29 is willing to accept as just compensation and damages for the property
 30 sought to be acquired. The offer or counter offer supersedes any other
 31 offer previously made under this chapter by the party.

32 (b) An offer of settlement is considered rejected unless an
 33 acceptance in writing is filed and served on the party making the offer
 34 before the trial on the issue of the amount of damages begins.

35 (c) If the offer is rejected, it may not be referred to for any purpose
 36 at the trial but may be considered solely for the purpose of awarding
 37 costs and litigation expenses under section 14 of this chapter.

38 (d) This section does not limit or restrict the right of a defendant to
 39 payment of any amounts authorized by law in addition to damages for
 40 the property taken from the defendant.

41 (e) This section does not apply to an action brought under
 42 IC 8-1-13-19 (repealed).



1 SECTION 9. IC 32-24-1-14, AS AMENDED BY P.L.163-2006,
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 14. (a) Except as provided in subsection (b), the
4 plaintiff shall pay the costs of the proceedings.

5 (b) If there is a trial, the additional costs caused by the trial shall be
6 paid as ordered by the court. However, if there is a trial and the amount
7 of damages awarded to the defendant by the judgment, exclusive of
8 interest and costs, is greater than the amount specified in the last offer
9 of settlement made by the plaintiff under section 12 of this chapter, the
10 court shall allow the defendant the defendant's litigation expenses,
11 including reasonable attorney's fees, in an amount not to exceed ~~the~~
12 ~~lesser of:~~

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

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

