

HOUSE BILL No. 1527

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-24; IC 36-1-4-5; IC 36-9-23-14.

Synopsis: Eminent domain. Provides the following for condemnation proceedings in which appraisers are appointed after December 31, 2020: (1) Requires a city or town (municipality) condemning property within the unincorporated area of the county to obtain the county legislative body's approval by demonstrating the necessity for the taking and that it is for a public purpose. (2) Provides that if a defendant's objection to the condemnation is sustained: (A) the plaintiff must pay the defendant's attorney's fees and costs in order to amend the complaint; and (B) the plaintiff is prohibited from filing a new complaint in condemnation against the same property for five years, unless the plaintiff proves urgent necessity for the condemnation and demonstrates payment of the defendant's attorney's fees and costs incurred for the previous condemnation action. For condemnation proceedings in which appraisers are appointed after December 31, 2021, allows a business owner to claim compensation for intangible business losses and loss of driveway access due to condemnation.

Effective: January 1, 2021 (retroactive).

Goodrich, Ellington

January 14, 2021, read first time and referred to Committee on Local Government.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1527

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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, 2021 (RETROACTIVE)]: **Sec. 0.1. The amendments**
4 **made to sections 3, 7, 8, 9, and 14 of this chapter by this act during**
5 **the 2021 regular session of the general assembly apply to**
6 **condemnation proceedings in which appraisers are appointed after**
7 **December 31, 2020.**

8 SECTION 2. IC 32-24-1-3, AS AMENDED BY P.L.84-2016,
9 SECTION 143, IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JANUARY 1, 2021 (RETROACTIVE)]: Sec. 3. (a) Any
11 person that may exercise the power of eminent domain for any public
12 use under any statute may exercise the power only in the manner
13 provided in this article, except as otherwise provided by law.

14 (b) Except as provided in subsection (g), before proceeding to
15 condemn, the person:

16 (1) may enter upon any land to examine and survey the property
17 sought to be acquired; and



1 (2) must make an effort to purchase for the use intended the land,
 2 right-of-way, easement, or other interest in the property.

3 **In the case of a municipality condemning property within the**
 4 **unincorporated area of the county as provided in IC 32-24-2.5, the**
 5 **municipality may not file a complaint under section 4 of this**
 6 **chapter, unless the municipality's petition for condemnation under**
 7 **IC 32-24-2.5-7 is approved.**

8 (c) The effort to purchase under subsection (b)(2) must include the
 9 following:

10 (1) Establishing a proposed purchase price for the property.

11 (2) Providing the owner of the property with an appraisal or other
 12 evidence used to establish the proposed purchase price.

13 (3) Conducting good faith negotiations with the owner of the
 14 property.

15 (d) If the land or interest in the land, or property or right is owned
 16 by a person who is an incapacitated person (as defined in
 17 IC 29-3-1-7.5) or less than eighteen (18) years of age, the person
 18 seeking to acquire the property may purchase the property from the
 19 guardian of the incapacitated person or person less than eighteen (18)
 20 years of age. If the purchase is approved by the court appointing the
 21 guardian and the approval is written upon the face of the deed, the
 22 conveyance of the property purchased and the deed made and approved
 23 by the court are valid and binding upon the incapacitated person or
 24 persons less than eighteen (18) years of age.

25 (e) The deed given, when executed instead of condemnation,
 26 conveys only the interest stated in the deed.

27 (f) If property is taken by proceedings under this article, the entire
 28 fee simple title may be taken and acquired.

29 (g) This subsection applies to a public utility (as defined in
 30 IC 32-24-1-5.9(a)) or a pipeline company (as defined in IC 8-1-22.6-7).
 31 If a public utility or a pipeline company seeks to acquire land or an
 32 interest in land under this article, the public utility or pipeline company
 33 may not enter upon the land to examine or survey the property sought
 34 to be acquired unless either of the following occur:

35 (1) The public utility or the pipeline company sends notice by
 36 certified mail to the affected landowner (as defined in
 37 IC 8-1-22.6-2) of the public utility's or the pipeline company's
 38 intention to enter upon the landowner's property for survey
 39 purposes. The notice required by this subdivision must be mailed
 40 not later than fourteen (14) days before the date of the public
 41 utility's or the pipeline company's proposed examination or
 42 survey.



- 1 (2) The public utility or the pipeline company receives the
 2 landowner's signed consent to enter the property to perform the
 3 proposed examination or survey.
 4 An affected landowner may bring an action to enforce this subsection
 5 in the circuit court, superior court, or probate court of the county in
 6 which the landowner's property is located. A prevailing landowner is
 7 entitled to the landowner's actual damages as a result of the public
 8 utility's or the pipeline company's violation. In addition, the court may
 9 award a prevailing landowner reasonable costs of the action and
 10 attorney's fees.
- 11 SECTION 3. IC 32-24-1-7, AS AMENDED BY P.L.113-2006,
 12 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JANUARY 1, 2021 (RETROACTIVE)]: Sec. 7. (a) The notice, upon
 14 its return, must show its:
- 15 (1) service for ten (10) days; or
 - 16 (2) proof of publication for three (3) successive weeks in a weekly
 17 newspaper of general circulation printed and published in the
 18 English language in the county in which the property sought to be
 19 acquired is located.
- 20 The last publication of the notice must be five (5) days before the day
 21 set for the hearing.
- 22 (b) The clerk of the court in which the proceedings are pending,
 23 upon the first publication of the notice, shall send to the post office
 24 address of each nonresident owner whose property will be affected by
 25 the proceedings a copy of the notice, if the post office address of the
 26 owner or owners can be ascertained by inquiry at the office of the
 27 treasurer of the county.
- 28 **(c) If an owner (as defined in IC 32-24-2.6-3) intends to claim**
 29 **compensation for loss of a going concern under IC 32-24-2.6, the**
 30 **owner shall notify the court of the owner's intent not later than**
 31 **ninety (90) days after the date of:**
- 32 **(1) the first service; or**
 - 33 **(2) publication;**
- 34 **of the notice under subsection (a).**
- 35 ~~(c)~~ **(d)** The court, being satisfied of the regularity of the proceedings
 36 and the right of the plaintiff to exercise the power of eminent domain
 37 for the use sought, shall appoint:
- 38 (1) one (1) disinterested freeholder of the county; and
 - 39 (2) two (2) disinterested appraisers licensed under IC 25-34.1;
- 40 who are residents of Indiana to assess the damages, or the benefits and
 41 damages, as the case may be, that the owner or owners severally may
 42 sustain, or be entitled to, by reason of the acquisition. One (1) of the



1 appraisers appointed under subdivision (2) must reside not more than
 2 fifty (50) miles from the property. **If an owner notifies the court that**
 3 **the owner intends to claim compensation for loss of a going**
 4 **concern as provided in IC 32-24-2.6-2, at least one (1) appraiser**
 5 **appointed under subdivision (2) must be qualified and capable of**
 6 **determining the loss of a going concern.**

7 SECTION 4. IC 32-24-1-8, AS AMENDED BY P.L.80-2020,
 8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JANUARY 1, 2021 (RETROACTIVE)]: Sec. 8. (a) A defendant may
 10 object to the proceedings **and the court may sustain the objections,**
 11 **if the court makes any of the following determinations:**

12 (1) ~~because~~ The court does not have jurisdiction either of the
 13 subject matter or of the person.

14 (2) ~~because~~ The plaintiff does not have the right **or express**
 15 **statutory authority** to exercise the power of eminent domain for
 16 the use sought. ~~or~~

17 (3) **This subdivision applies only to a condemnation by a**
 18 **municipality outside of the municipality's corporate**
 19 **boundaries. The court determines that:**

20 (A) **the written findings of the county legislative body**
 21 **under IC 32-24-2.5-12 were arbitrary, capricious, or**
 22 **erroneous; or**

23 (B) **the municipality failed to prove by clear and**
 24 **convincing evidence all of the following:**

25 (i) **There is a present and urgent necessity for the**
 26 **municipality's exercise of eminent domain.**

27 (ii) **There is no property within the corporate boundaries**
 28 **of the municipality that is reasonably suitable to be used**
 29 **for the project.**

30 (iii) **The property is no more than is necessary for**
 31 **completion of the project.**

32 (iv) **The municipality intends to take the property only**
 33 **for a public purpose and not for any secondary purpose**
 34 **or for private development.**

35 ~~(3)~~ (4) For any other reason disclosed in the complaint or set up
 36 in the objections.

37 (b) Objections under subsection (a) must be:

38 (1) in writing;

39 (2) separately stated and numbered; and

40 (3) filed not later than thirty (30) days after the date the notice
 41 required in section 6 of this chapter is served on the defendant.

42 However, the court may extend the period for filing objections by



1 not more than thirty (30) days upon written motion of the
2 defendant **for good cause and reasonable necessity.**

3 (c) The court may not allow pleadings in the cause other than the
4 complaint, any objections, and the written exceptions provided for in
5 section 11 of this chapter. However, the court may permit amendments
6 to the pleadings.

7 (d) If ~~an~~ **a defendant's** objection is sustained, the plaintiff may **do**
8 **the following:**

9 (1) Amend the complaint, **if the court sustaining the objection**
10 **allows the amendment. A court may not allow a plaintiff to**
11 **amend a complaint unless the plaintiff shows that the plaintiff**
12 **has reimbursed the defendant for all reasonable costs,**
13 **expenses, and attorney's fees awarded by the court under**
14 **subsection (h). or**

15 (2) ~~may~~ Appeal from the decision in the manner that appeals are
16 taken from final judgments in civil actions. All the parties shall
17 take 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. ~~Notwithstanding section 14 of this chapter, if an~~
32 ~~objection: (1) is sustained, and no appeal is filed; or (2) is sustained in~~
33 ~~the judgment in the appeal; the court shall award the defendant the~~
34 ~~reasonable costs and attorney's fees incurred for the objection; in an~~
35 ~~amount not to exceed twenty-five thousand dollars (\$25,000). If a~~
36 ~~defendant's objection is sustained:~~

37 (1) ~~the court shall award; and~~

38 (2) ~~the plaintiff shall reimburse;~~

39 ~~the defendant for the reasonable costs, expenses, and attorney's~~
40 ~~fees incurred by the defendant in filing the objections or otherwise~~
41 ~~defending against the condemnation action. If the plaintiff appeals~~
42 ~~the court's decision as provided in subsection (d)(2), and the~~



1 defendant prevails on the appeal, the court shall award the
 2 defendant an additional amount to be reimbursed by the plaintiff,
 3 equal to the reasonable costs, expenses, and attorney's fees
 4 incurred by the defendant for the appeal. The total amount
 5 awarded to a defendant by a court under this subsection may not
 6 exceed seventy-five thousand dollars (\$75,000).

7 (i) If a defendant's objection is sustained in a condemnation
 8 action, the condemning authority may not file a new complaint in
 9 condemnation against the same property for five (5) years after the
 10 date of the judgment of the circuit or superior court or the date of
 11 the final disposition of all appeals, whichever is later, unless the
 12 plaintiff demonstrates to the court that:

13 (1) the condemnor has a present and urgent necessity for the
 14 exercise of eminent domain; and

15 (2) the plaintiff has reimbursed the defendant for all
 16 reasonable costs, expenses, and attorney's fees awarded by the
 17 court under subsection (h).

18 SECTION 5. IC 32-24-1-9 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JANUARY 1, 2021 (RETROACTIVE)]:

20 Sec. 9. (a) Each appraiser shall take an oath that:

21 (1) the appraiser has no interest in the matter; and

22 (2) the appraiser will honestly and impartially make the
 23 assessment.

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

26 (1) their duties as appraisers; and

27 (2) the measure of the damages and benefits, if any, they allow.

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

29 (1) The fair market value of each parcel of property sought to be
 30 acquired and the value of each separate estate or interest in the
 31 property.

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

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

37 (4) The other damages, if any, that will result to any persons from
 38 the construction of the improvements in the manner proposed by
 39 the plaintiff.

40 (5) The damages, if any, to an owner's loss of a going concern
 41 under IC 32-24-2.6, if the owner (as defined in IC 32-24-2.6-3)
 42 has notified the court in accordance with section 7(c) of this



1 **chapter.**

2 (d) If the property is sought to be acquired by the state or by a
3 county for a public highway or a municipal corporation for a public use
4 that confers benefits on any property of the owner, the report must also
5 state the benefits that will accrue to each parcel of property, set
6 opposite the description of each parcel of property whether described
7 in the complaint or not.

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

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

21 (g) **This subsection does not apply to a claim for compensation**
22 **as a result of loss of driveway access under IC 32-24-2.6-6.** For the
23 purpose of assessing compensation and damages, the right to
24 compensation and damages is considered to have accrued as of the date
25 of the service of the notice provided in section 6 of this chapter, and
26 actual value of compensation and damages at that date shall be:

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

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

31 except as to the damages stated in subsection (c)(4).

32 SECTION 6. IC 32-24-1-14, AS AMENDED BY P.L.163-2006,
33 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JANUARY 1, 2021 (RETROACTIVE)]: Sec. 14. (a) Except as
35 provided in subsection (b), the plaintiff shall pay the costs of the
36 proceedings.

37 (b) If there is a trial, the additional costs caused by the trial shall be
38 paid as ordered by the court. However, if there is a trial and the amount
39 of damages awarded to the defendant by the judgment, exclusive of
40 interest and costs, is greater than the amount specified in the last offer
41 of settlement made by the plaintiff under section 12 of this chapter, the
42 court shall allow the defendant the defendant's litigation expenses,



1 including reasonable attorney's fees, in an amount not to exceed the
2 lesser of:

3 (1) ~~twenty-five~~ **seventy-five** thousand dollars (~~\$25,000~~);
4 **(\$75,000)**; or

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

7 SECTION 7. IC 32-24-2-0.1 IS ADDED TO THE INDIANA CODE
8 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE
9 JANUARY 1, 2021 (RETROACTIVE)]: **Sec. 0.1. The amendments**
10 **made to sections 8, 10, and 16 of this chapter by this act during the**
11 **2021 regular session of the general assembly apply only to**
12 **condemnation proceedings in which appraisers are appointed after**
13 **December 31, 2020.**

14 SECTION 8. IC 32-24-2-8, AS AMENDED BY P.L.80-2020,
15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JANUARY 1, 2021 (RETROACTIVE)]: Sec. 8. (a) **Except as**
17 **provided in subsection (b)**, upon the completion of the list, the works
18 board shall award the damages sustained and assess the benefits
19 accruing to each piece of property on the list.

20 **(b) This subsection applies only to a condemnation by a**
21 **municipality under IC 32-24-2.5. Upon completion of the list, the**
22 **municipality must file a petition for condemnation with the county**
23 **legislative body. If the petition is approved by the county legislative**
24 **body, the works board may proceed with awarding the damages**
25 **sustained, assessing the benefits accruing to each piece of property**
26 **on the list.**

27 ~~(b)~~ **(c)** When the assessments or awards are completed, the works
28 board shall have a written notice served upon the owner of each piece
29 of property, showing the amount of the assessment or award, by:

30 (1) if the owner is a resident of the municipality, leaving a copy
31 of the notice at the owner's last usual place of residence in the
32 municipality or by delivering a copy to the owner personally and
33 mailing a copy of the notice to the owner's address of record; or
34 (2) if the owner is not a resident of the municipality, by sending
35 the notice to the owner's address of record by certified mail.

36 ~~(c)~~ **(d)** If the owner's residence is unknown, the municipality shall
37 notify the owner by publication in a daily newspaper of general
38 circulation in the municipality once each week for three (3) successive
39 weeks.

40 ~~(d)~~ **(e)** The notices must also name a day, at least thirty (30) days
41 after service of notice or after the last publication, on which the works
42 board will receive or hear remonstrances from owners with regard to:



- 1 (1) the amount of their respective awards or assessments; and
 2 (2) objections to the municipality's right to exercise the power of
 3 eminent domain for the use sought.

4 ~~(e)~~ **(f)** Persons not included in the list of the assessments or awards
 5 and claiming to be entitled to them are considered to have been notified
 6 of the pendency of the proceedings by the original notice of the
 7 resolution of the works board.

8 ~~(f)~~ **(g)** The notice required by this section must provide the full text
 9 of subsection ~~(d)~~ **(e)** to provide notice to the property owners of their
 10 right to object to the condemnation and be in substantially the same
 11 form as the notice required under IC 32-24-1-6(a).

12 SECTION 9. IC 32-24-2-10, AS AMENDED BY P.L.80-2020,
 13 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JANUARY 1, 2021 (RETROACTIVE)]: Sec. 10. (a) A person notified
 15 or considered to be notified under this chapter may appear before the
 16 works board on the day fixed for hearing remonstrances to:

17 **(1)** awards and assessments and the municipality's right to
 18 exercise the power of eminent domain for the use sought and
 19 remonstrate in writing against them; **or**

20 **(2) awards and assessments, in the case of a condemnation by**
 21 **a municipality under IC 32-24-2.5.**

22 (b) After the remonstrances have been received, the works board
 23 shall either sustain or modify the awards or assessments in the case of
 24 remonstrances that have been filed that are based on the amount of the
 25 awards or assessments. The works board shall sustain the award or
 26 assessment in the case of an award or assessment against which a
 27 remonstrance has not been filed.

28 **(c) This subsection does not apply to a condemnation by a**
 29 **municipality under IC 32-24-2.5.** If a person remonstrates in writing
 30 an objection to the municipality's right to exercise the power of eminent
 31 domain for the use sought, the works board shall consider the
 32 remonstrance and confirm, modify, or rescind its original resolution.

33 (d) A person remonstrating in writing who is aggrieved by the
 34 decision of the works board may, not later than thirty (30) days after the
 35 decision is made, take an appeal to a court that has jurisdiction in the
 36 county in which the municipality is located. The appeal affects only the
 37 assessment or award of the person appealing.

38 SECTION 10. IC 32-24-2-16 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JANUARY 1, 2021 (RETROACTIVE)]:
 40 Sec. 16. (a) This section applies whenever the works board of a
 41 municipality located upon or adjoining a harbor connected with a
 42 navigable stream or lake, or upon any navigable channel, slip,



1 waterway, or watercourse, wants to acquire for the use of the
 2 municipality any property for a right-of-way for seawalls, docks, or
 3 other improvement of the harbor, channel, slip, waterway or
 4 watercourse.

5 (b) The works board shall adopt a resolution that the municipality
 6 wants to acquire the property, describing the property that may be
 7 injuriously or beneficially affected. All proceedings necessary for the
 8 completion of and payment for any such undertaking, including **the**
 9 **approval by the county legislative body of a petition for**
 10 **condemnation under IC 34-24-2.5, if applicable,** notice,
 11 remonstrance, appeal, letting of and performance of contracts,
 12 assessment and collection of payment for benefits, and the
 13 determination and payment of damages to property, are the same, to the
 14 extent applicable, as those proceedings for street improvements of the
 15 municipality by its works board or other entity charged by statute with
 16 the performance of those duties on behalf of the municipality.

17 SECTION 11. IC 32-24-2.5 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JANUARY 1, 2021 (RETROACTIVE)]:

20 **Chapter 2.5. Municipal Condemnation of Land in**
 21 **Unincorporated Area**

22 **Sec. 1. This chapter applies only to condemnation proceedings**
 23 **in which appraisers are appointed after December 31, 2020.**

24 **Sec. 2. This chapter applies if a municipality seeks to condemn**
 25 **real property:**

26 **(1) located outside of the municipality's corporate boundaries;**
 27 **and**

28 **(2) under IC 32-24-1-4, IC 32-24-2, or any other statute.**

29 **Sec. 3. As used in this chapter, "county legislative body" has the**
 30 **meaning set forth in IC 36-1-2-9.**

31 **Sec. 4. As used in this chapter, "municipality" means a city or**
 32 **a town.**

33 **Sec. 5. As used in this chapter, "petition" means a petition for**
 34 **condemnation described in section 7 of this chapter.**

35 **Sec. 6. A municipality may only acquire property by eminent**
 36 **domain that is within the unincorporated area of a county if the**
 37 **municipality:**

38 **(1) is expressly authorized by statute to exercise the power of**
 39 **eminent domain outside of the municipality's corporate**
 40 **boundaries; and**

41 **(2) complies with this chapter.**

42 **Sec. 7. (a) A municipality must adopt a petition for**



- 1 **condemnation:**
 2 (1) before filing a complaint in condemnation under
 3 IC 32-24-1-4 or any other statute; or
 4 (2) after the municipality takes final action on a resolution
 5 under IC 32-24-2-6 and before conducting a public hearing
 6 under IC 32-24-2-10.
 7 (b) A petition must:
 8 (1) contain a legal description and map of all parcels lying in
 9 the unincorporated area of the county that the municipality
 10 requires for the same project; and
 11 (2) state how the municipality meets the requirements set
 12 forth in section 11 of this chapter.
 13 **Sec. 8. (a) This section applies if the municipality seeks to**
 14 **condemn property within the unincorporated area of two (2) or**
 15 **more counties.**
 16 (b) The legislative body of each county in which the
 17 unincorporated property is located must approve a petition.
 18 **Sec. 9. The municipality shall file the petition with the county**
 19 **legislative body. The county legislative body shall:**
 20 (1) conduct at least one (1) public hearing on the petition after
 21 providing actual notice to the affected landowners; and
 22 (2) vote to approve or reject the petition;
 23 not later than thirty (30) days after the date the petition is filed.
 24 **Sec. 10. The county legislative body shall provide notice of the**
 25 **public hearing by both of the following methods:**
 26 (1) Notice by publication in accordance with IC 5-3-1.
 27 (2) Notice:
 28 (A) by certified mail, return receipt requested, or any
 29 other means of delivery that includes a return receipt; and
 30 (B) at least fifteen (15) days before the date of the hearing;
 31 to each owner of real property, as shown on the county
 32 auditor's current tax list, whose real property the
 33 municipality proposes to acquire by condemnation. The
 34 municipality shall provide the county legislative body with the
 35 names and addresses of owners of real property to whom
 36 notice under this subdivision must be sent. If the county
 37 legislative body complies with this subdivision, the notice is
 38 not invalidated if the owner does not receive the notice.
 39 **Sec. 11. The county legislative body may approve the petition**
 40 **only if the municipality demonstrates all of the following:**
 41 (1) There is a present and urgent necessity for the
 42 municipality's exercise of eminent domain.



1 **(2) There is no property within the corporate boundaries of**
2 **the municipality that is reasonably suitable to be used for the**
3 **project.**
4 **(3) The property is no more than is necessary for completion**
5 **of the project.**
6 **(4) The municipality intends to take the property only for a**
7 **public purpose and not for any secondary purpose or for**
8 **private development.**
9 **Sec. 12. The municipality may proceed with condemnation if at**
10 **least a majority of the members of the county legislative body**
11 **make all of the findings set forth in section 11 of this chapter:**
12 **(1) in writing; and**
13 **(2) in the affirmative.**
14 **Sec. 13. If at least a majority of the members of the county**
15 **legislative body do not make all of the findings set forth in section**
16 **11 of this chapter in the affirmative, the municipality may not file**
17 **a complaint under IC 32-24-1-4 or conduct a public hearing under**
18 **IC 32-24-2-10. The municipality may petition the circuit or**
19 **superior court for judicial review of the findings of the county**
20 **legislative body. The judgment of the court is final and conclusive,**
21 **unless an appeal is taken as in other civil actions.**
22 **Sec. 14. (a) This section applies if a municipality does not obtain**
23 **the approval of the county legislative body on a petition for**
24 **condemnation:**
25 **(1) before filing a complaint in condemnation under**
26 **IC 32-24-1-4 or any other statute; or**
27 **(2) after the municipality takes final action on a resolution**
28 **under IC 32-24-2-6 and before conducting a public hearing**
29 **under IC 32-24-2-10.**
30 **(b) A municipality shall be liable for:**
31 **(1) all reasonable costs, expenses, and attorney's fees incurred**
32 **by the property owner; and**
33 **(2) damages equal to:**
34 **(A) ten percent (10%) of the assessed value of the property,**
35 **if the owner shows the owner was unable to use the**
36 **property during the proceedings;**
37 **(B) any actual damages; and**
38 **(C) treble damages.**
39 **The municipality also shall be enjoined from proceeding in eminent**
40 **domain for a period of five (5) years against the same property,**
41 **unless the municipality is able to show good cause to proceed and**
42 **all damages have been paid.**



1 SECTION 12. IC 32-24-2.6 IS ADDED TO THE INDIANA CODE
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JANUARY 1, 2021 (RETROACTIVE)]:

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

5 **Sec. 1. This chapter applies only to condemnation proceedings**
 6 **in which:**

- 7 (1) any part of the land being condemned is located outside of
 8 the condemnor's corporate boundaries; and
 9 (2) appraisers are appointed after December 31, 2020.

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

- 13 (1) location;
 14 (2) geographic features;
 15 (3) reputation for dependability;
 16 (4) skill or quality;
 17 (5) customer base; or
 18 (6) good will;

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

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

- 22 (1) the persons listed on the tax assessment rolls as being
 23 responsible for the payment of real estate taxes imposed on
 24 the property;
 25 (2) the persons in whose name title to real estate is shown in
 26 the records of the recorder of the county in which the real
 27 estate is located; or
 28 (3) a lessee who operates a business on the real property.

29 **Sec. 4. If a business or trade is damaged by a taking,**
 30 **condemnation, or eminent domain proceeding, the owner shall be**
 31 **compensated by the condemnor for the loss of the going concern,**
 32 **unless the condemnor establishes by clear and convincing evidence**
 33 **that:**

- 34 (1) the loss is not caused by the taking of the property or the
 35 injury to the remainder;
 36 (2) the loss can be reasonably prevented by:
 37 (A) relocating the business or trade to:
 38 (i) the same or a similar location; and
 39 (ii) a reasonably suitable location;
 40 as the property that was taken; or
 41 (B) taking steps and adopting procedures that a reasonably
 42 prudent person:



- 1 (i) of a similar age; and
- 2 (ii) as the owner, under similar conditions;
- 3 would take and adopt in preserving the going concern of
- 4 the business or trade; or
- 5 (3) compensation for the loss of the going concern will be
- 6 duplicated in the compensation otherwise awarded to the
- 7 owner.

8 **Sec. 5. An owner's damages for loss of value to a going concern**
 9 **shall be determined by appraisers as part of the compensation due**
 10 **to the owner. An owner shall provide an appraiser reasonable**
 11 **access to the records necessary to determine the value of the loss of**
 12 **the going concern. The appraiser's decision regarding any award**
 13 **for the loss of the going concern may be challenged by any party.**

- 14 **Sec. 6. (a) If a business owner establishes that:**
- 15 (1) the condemnor's actions permanently eliminated fifty-one
 - 16 percent (51%) or more of the driveway access into and out of
 - 17 the owner's business; and
 - 18 (2) the owner's business revenue was reduced by fifty-one
 - 19 percent (51%) or more as a result of the loss of driveway
 - 20 access;

21 **the owner is entitled to reasonable compensation, not to exceed the**
 22 **business's average revenues minus the average cost of goods sold,**
 23 **for the three (3) years immediately preceding the project start**
 24 **date. Installation of a median does not constitute elimination of**
 25 **driveway access under this section.**

26 **(b) For purposes of subsection (a)(2), the percentage reduction**
 27 **of the owner's business revenue is equal to the result determined in**
 28 **STEP FOUR of the following formula:**

- 29 **STEP ONE: Determine the result of:**
- 30 (A) the average annual revenue of the business for the
 - 31 thirty-six (36) months immediately preceding the project
 - 32 start date; minus
 - 33 (B) the average annual cost of goods sold by the business
 - 34 for the thirty-six (36) months immediately preceding the
 - 35 project start date.

- 36 **STEP TWO: Determine the result of:**
- 37 (A) the actual or reasonably estimated annual revenue of
 - 38 the business for the twelve (12) months immediately
 - 39 following the project's completion date; minus
 - 40 (B) the annual cost of goods sold by the business for the
 - 41 twelve (12) months immediately following the project's
 - 42 completion date.



1 **STEP THREE: Determine the result of:**

2 (A) the STEP ONE result; minus

3 (B) the STEP TWO result.

4 **STEP FOUR: Divide the STEP THREE result by the STEP**
 5 **ONE result expressed as a percentage.**

6 (c) A business owner must make a claim for compensation under
 7 this section not later than two (2) years after the completion date
 8 of the project that resulted in the reduction of the driveway access.

9 SECTION 13. IC 36-1-4-5, AS AMENDED BY P.L.277-2019,
 10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JANUARY 1, 2021 (RETROACTIVE)]: Sec. 5. (a) **Except as**
 12 **provided in subsection (b)**, a unit may acquire by eminent domain or
 13 other means; and own interests in real and personal property ~~(b) A~~
 14 municipality may exercise the powers in subsection (a); ~~except for the~~
 15 power of eminent domain; within four (4) miles outside of its corporate
 16 boundaries.

17 (b) A municipality may ~~not~~ exercise the power of eminent domain
 18 outside of its corporate boundaries ~~unless a~~ **if the municipality:**

19 (1) **is expressly authorized by statute;**

20 ~~expressly provides otherwise. and~~

21 (2) **complies with IC 32-24-2.5.**

22 SECTION 14. IC 36-9-23-14 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JANUARY 1, 2021 (RETROACTIVE)]:
 24 Sec. 14. (a) A municipality may, in the manner prescribed by IC 32-24,
 25 condemn:

26 (1) sewage works; and

27 (2) any land, easements, franchises, and other property it
 28 considers necessary for the construction of sewage works or for
 29 improvements to sewage works;

30 **that is located entirely within the municipality's corporate**
 31 **boundaries.** However, the municipality may pay for any property
 32 condemned or purchased only from money provided under this chapter.

33 (b) In any proceedings to condemn, orders that are just to the
 34 municipality and to the owners of the property to be condemned may
 35 be made. An undertaking or other security securing the property
 36 owners against any loss or damage resulting from the failure of the
 37 municipality to accept and pay for the property may be required, but the
 38 undertaking or security imposes liability upon the municipality only in
 39 the amount that may be paid from money provided under this chapter.

40 (c) If the board wants to purchase sewage works, it may obtain and
 41 exercise an option for the purchase of the works, or may enter into a
 42 contract for the purchase in the manner and under the terms and



1 conditions that it considers proper.
2 (d) If the board wants to purchase or condemn sewage works already
3 constructed, it must, at or before the time of adoption of the ordinance
4 authorizing the acquisition, determine what repairs, replacements,
5 additions, and other actions are required to make the works effective
6 for their purpose. An estimate of the cost of these actions shall be
7 included in the estimate of cost made under section 11 of this chapter.
8 These actions shall be taken upon the acquisition of the works, as a part
9 of the cost of the acquisition.
10 **SECTION 15. An emergency is declared for this act.**

