



January 28, 2022

SENATE BILL No. 288

DIGEST OF SB 288 (Updated January 26, 2022 7:06 pm - DI 149)

Citations Affected: IC 32-24.

Synopsis: Eminent domain proceedings. 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. Provides that in certain eminent domain actions filed by a public utility or a pipeline company after June 30, 2022: (1) the report of the court appointed appraisers, including the amount of the court appointed appraisers' assessment of damages upon which the defendant's exceptions are based; and (2) the individual testimony of any of the court appointed appraisers; are admissible as evidence in the proceedings, notwithstanding Indiana case law to the contrary. Changes the amount of litigation expenses a court shall allow a defendant in any trial in an eminent domain proceeding in which the amount of damages awarded to the defendant by the judgment is greater than the amount specified in the plaintiff's last offer of settlement.

Effective: July 1, 2022.

Buchanan

January 10, 2022, read first time and referred to Committee on Judiciary.
January 27, 2022, amended, reported favorably — Do Pass.

SB 288—LS 7043/DI 101



January 28, 2022

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.

SENATE BILL No. 288

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.

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1 **(5) A joint agency created under IC 8-1-2.2.**

2 **(6) A municipal sanitation department operating under**
3 **IC 36-9-23.**

4 **(7) A sanitary district operating under IC 36-9-25.**

5 **(8) An agency operating as a storm water utility.**

6 **(9) A department of public utilities created by IC 8-1-11.1.**

7 **(10) A utility company owned, operated, or held in trust by a**
8 **consolidated city.**

9 SECTION 3. IC 32-24-1-11, AS AMENDED BY P.L.50-2012,
10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2022]: Sec. 11. (a) When a report of the appraisers is filed
12 with a court under this chapter, the circuit court clerk shall send written
13 notice of the filing of the report by certified mail to:

14 (1) all known parties to the action; and

15 (2) the attorneys of record of the parties.

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

20 (1) after the report of the appraisers is filed with the court; and

21 (2) not later than forty-five (45) days after the date the circuit
22 court clerk mails the report under subsection (a).

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

27 (d) Forty-five (45) days after the date the circuit court clerk mails
28 the report under subsection (a), and if the plaintiff has paid the amount
29 of damages assessed to the circuit court clerk, any one (1) or more of
30 the defendants may file a written request for payment of each
31 defendant's proportionate share of the damages held by the circuit court
32 clerk. The defendants making a request for payment must also file
33 sufficient copies of the request for service upon the plaintiff and all
34 other defendants not joining in the request. The defendants making the
35 request may withdraw and receive each defendant's proportionate share
36 of the damages upon the following terms and conditions:

37 (1) Each written request must:

38 (A) be verified under oath; and

39 (B) state:

40 (i) the amount of the proportionate share of the damages to
41 which each of the defendants joining in the request is
42 entitled;



- 1 (ii) the interest of each defendant joining in the request; and
2 (iii) the highest offer made by the plaintiff to each of the
3 defendants for each defendant's respective interests in or
4 damages sustained in respect to the property that has been
5 acquired by the plaintiff.
- 6 (2) Upon the filing of a written request for withdrawal and
7 payment of damages to any of the defendants, the circuit court
8 clerk shall immediately issue a notice to the plaintiff and all
9 defendants of record in the cause who have not joined in the
10 request for payment. The notice must contain the following:
- 11 (A) The names of the parties.
12 (B) The number of the cause.
13 (C) A statement that a request for payment has been filed.
14 (D) A notice to appear on a day, to be fixed by the court, and
15 show cause, if any, why the amounts requested should not be
16 withdrawn and paid over by the circuit court clerk to those
17 defendants requesting the amounts to be paid.
18 (E) A copy of the request for payment.
- 19 If a defendant not requesting payment is a nonresident of Indiana,
20 or if that defendant's name or residence is unknown, publication
21 and proof of the notice and request for payment shall be made as
22 provided in section ~~4~~ 7 of this chapter.
- 23 (3) After a hearing held after notice of a written request made
24 under this section, the court shall determine and order the
25 payment by the circuit court clerk of the proportionate shares of
26 the damages due to the defendants requesting payment. Any of
27 the defendants may appeal an order under this subdivision within
28 the same time and in the same manner as provided for allowable
29 appeals from interlocutory orders in civil actions.
- 30 (4) If exceptions to the appraisers' report have been duly filed by
31 the plaintiff or any defendant, the circuit court clerk may not
32 make payment to any defendant of any part of the damages
33 deposited with the clerk by the plaintiff until the defendants
34 requesting payment have filed with the circuit court clerk a
35 written undertaking, with surety approved by the court, for the
36 repayment to the plaintiff of all sums received by those
37 defendants in excess of the amount or amounts awarded as
38 damages to those defendants by the judgment of the court upon
39 trial held on the exceptions to the assessment of damages by the
40 appraisers. However, the court may waive the requirement of
41 separate surety as to any defendant who is a resident freeholder of
42 the county in which the cause is pending and who is owner of real



1 property in Indiana that is liable to execution, not included in the
 2 real property appropriated by the plaintiff, and equal in value to
 3 the amount by which the damages to be withdrawn exceed the
 4 amount offered to the defendants as stated in their request or the
 5 amount determined by the court if the plaintiff has disputed the
 6 statement of the offer. A surety or written undertaking may not be
 7 required for a defendant to withdraw those amounts previously
 8 offered by the plaintiff to the defendant if the plaintiff has
 9 previously notified the court in writing of the amounts so offered.
 10 The liability of any surety does not exceed the amount by which
 11 the damages to be withdrawn exceed the amount offered to the
 12 defendants with whom the surety joins in the written undertaking.
 13 Each written undertaking filed with the circuit court clerk shall be
 14 immediately recorded by the clerk in the order book and entered
 15 in the judgment docket, and from the date of the recording and
 16 entry the written undertaking is a lien upon all the real property
 17 in the county owned by the several obligors, and the undertaking
 18 is also a lien upon all the real property owned by the several
 19 obligors in each county of Indiana in which the plaintiff causes a
 20 certified copy of the judgment docket entry to be recorded, from
 21 the date of the recording.

22 (5) The withdrawal and receipt from the circuit court clerk by any
 23 defendant of that defendant's proportionate share of the damages
 24 awarded by the appraisers, as determined by the court upon the
 25 written request and hearing, does not operate and is not
 26 considered as a waiver of any exceptions duly filed by that
 27 defendant to the assessment of damages by the appraisers.

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

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

34 (B) that is equal to the amount of damages previously offered
 35 by the plaintiff to any defendant and which amount can be
 36 withdrawn by the defendant without filing a written
 37 undertaking or surety with the court for the withdrawal of that
 38 amount.

39 **(7) This subdivision applies to an action filed under this article**
 40 **by a public utility or a pipeline company after June 30, 2022.**
 41 **In any trial of exceptions:**

42 (A) the report of the court appointed appraisers, including



1 the amount of the court appointed appraisers' assessment
 2 of damages upon which the defendant's exceptions are
 3 based; and
 4 **(B) the individual testimony of any one (1) or more of the**
 5 **court appointed appraisers;**
 6 are admissible as evidence in the proceedings,
 7 notwithstanding Indiana case law to the contrary. With
 8 respect to an action to which this subdivision applies, the
 9 rulings in *Halstead et al. v. Vandalia*, 48 Ind. App. 96 (1911)
 10 and its progeny, including *AGT, Inc. v. City of Lafayette*, 802
 11 N.E.2d 1 (Ind. Ct. App. 2003), prohibiting the admission of
 12 such evidence are abrogated.
 13 SECTION 4. IC 32-24-1-14, AS AMENDED BY P.L.163-2006,
 14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2022]: Sec. 14. (a) Except as provided in subsection (b), the
 16 plaintiff shall pay the costs of the proceedings.
 17 (b) If there is a trial, the additional costs caused by the trial shall be
 18 paid as ordered by the court. However, if there is a trial and the amount
 19 of damages awarded to the defendant by the judgment, exclusive of
 20 interest and costs, is greater than the amount specified in the last offer
 21 of settlement made by the plaintiff under section 12 of this chapter, the
 22 court shall allow the defendant the defendant's litigation expenses,
 23 including reasonable attorney's fees, in an amount not to exceed the
 24 tesser greater of:
 25 (1) ~~twenty-five~~ **fifty** thousand dollars (~~\$25,000~~); **(\$50,000)**; or
 26 (2) **one-third (1/3)** of the fair market value of the defendant's
 27 property or easement as determined under this chapter.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 288, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, delete lines 9 through 42.

Delete pages 3 through 9.

Page 10, delete lines 1 through 22.

Page 10, line 25, delete "This section does not apply to an action".

Page 10, delete line 26.

Page 10, line 27, delete "after June 30, 2022.".

Page 10, run in lines 25 through 27.

Page 13, between lines 11 and 12, begin a new line block indented and insert:

"(7) This subdivision applies to an action filed under this article by a public utility or a pipeline company after June 30, 2022. In any trial of exceptions:

(A) the report of the court appointed appraisers, including the amount of the court appointed appraisers' assessment of damages upon which the defendant's exceptions are based; and

(B) the individual testimony of any one (1) or more of the court appointed appraisers;

are admissible as evidence in the proceedings, notwithstanding Indiana case law to the contrary. With respect to an action to which this subdivision applies, the rulings in *Halstead et al. v. Vandalia*, 48 Ind. App. 96 (1911) and its progeny, including *AGT, Inc. v. City of Lafayette*, 802 N.E.2d 1 (Ind. Ct. App. 2003), prohibiting the admission of such evidence are abrogated."

Page 13, delete lines 12 through 42.

Delete pages 14 through 16.

Page 17, delete line 1.

Page 17, line 12, reset in roman "the".

Page 17, line 13, after "lesser" insert "**greater**".

Page 17, line 13, reset in roman "of:".

Page 17, line 14, reset in roman "(1)".

Page 17, line 14, after "twenty-five" insert "**fifty**".

Page 17, line 14, reset in roman "thousand dollars".

Page 17, line 14, after "(\$25,000);" insert "**(\$50,000);**".

Page 17, line 14, reset in roman "or".

Page 17, line 15, reset in roman "(2)".

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Page 17, line 15, after "(2)" insert "**one-third (1/3) of**".
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 288 as introduced.)

BROWN L, Chairperson

Committee Vote: Yeas 8, Nays 3.

