



Reprinted
February 1, 2022

SENATE BILL No. 288

DIGEST OF SB 288 (Updated January 31, 2022 6:46 pm - DI 101)

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 an eminent domain action filed by a public utility or a pipeline company after June 30, 2022, if a defendant files written exceptions to the assessment of the court appointed appraisers, the defendant may file a request for mediation at the same time the exceptions are filed. Provides that if the defendant files a request for mediation: (1) the court shall appoint a mediator not later than 10 days after the request is filed; (2) the plaintiff shall engage in good faith mediation with the defendant; (3) the mediation must be concluded not later than 90 days after the appointment of the mediator; and (4) the plaintiff shall pay the costs of the mediator. Provides that if the parties are unable to reach an agreement as to the assessment of the damages in a mediation, the case shall proceed to trial. Provides that in any trial of exceptions in an eminent domain proceeding: (1) the court appointed appraisers' report; and (2) the amount of the court appointed appraisers' (Continued next page)

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.
January 31, 2022, read second time, amended, ordered engrossed.

SB 288—LS 7043/DI 101



Digest Continued

assessment of damages upon which the exceptions in the trial are based; are not admissible as evidence in the proceedings. Provides, however, that a court appointed appraiser may: (1) testify at trial without reference to the report of the court appointed appraisers or to the appraiser's previous appointment in the case; and (2) be examined as to the value of the property sought to be acquired independent of the report and without reference to it; as set forth in existing Indiana case law. 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.

SB 288—LS 7043/DI 101



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February 1, 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.

SB 288—LS 7043/DI 101



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) **Subject to subsection (c)**, any party to an action under this
17 chapter aggrieved by the assessment of benefits or damages in a report
18 of the appraisers may file written exceptions to the assessment in the
19 office of the circuit court clerk. Exceptions to the assessment must be
20 filed by a party:

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

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

24 (c) **This subsection applies to an action filed under this article by**
25 **a public utility or a pipeline company after June 30, 2022. This**
26 **subdivision does not apply to a communications service provider**
27 **(as defined in IC 8-1-32.5-4). The defendant may file a request for**
28 **mediation at the time the defendant files written exceptions to the**
29 **assessment under subsection (b). If the defendant files a request for**
30 **mediation under this subsection, the mediation shall occur as**
31 **follows:**

32 (1) **The court shall appoint a mediator not later than ten (10)**
33 **days after the request for mediation is filed.**

34 (2) **The plaintiff shall engage in good faith mediation with the**
35 **defendant.**

36 (3) **The mediation must be concluded not later than ninety**
37 **(90) days after the appointment of the mediator.**

38 (4) **The plaintiff shall pay the costs of the mediator.**

39 **If the parties are not able to reach an agreement as to the**
40 **assessment of the damages in a mediation under this subsection,**
41 **the case shall proceed as described in subsection (d).**

42 (e) **(d)** The cause shall further proceed to issue, trial, and judgment



1 as in civil actions. The court may make orders and render findings and
 2 judgments that the court considers just. Either party may appeal a
 3 judgment as to benefits or damages as in civil actions.

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

14 (1) Each written request must:

15 (A) be verified under oath; and

16 (B) state:

17 (i) the amount of the proportionate share of the damages to
 18 which each of the defendants joining in the request is
 19 entitled;

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

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

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

30 (A) The names of the parties.

31 (B) The number of the cause.

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

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

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

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

42 (3) After a hearing held after notice of a written request made



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

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

41 (5) The withdrawal and receipt from the circuit court clerk by any
42 defendant of that defendant's proportionate share of the damages



1 awarded by the appraisers, as determined by the court upon the
 2 written request and hearing, does not operate and is not
 3 considered as a waiver of any exceptions duly filed by that
 4 defendant to the assessment of damages by the appraisers.

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

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

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

16 **(7) In any trial of exceptions, the following apply:**

17 **(A) The:**

18 **(i) report of the court appointed appraisers; and**

19 **(ii) amount of the court appointed appraisers'**
 20 **assessment of damages upon which the exceptions in the**
 21 **trial are based;**

22 **are not admissible as evidence in the proceedings.**

23 **(B) Notwithstanding clause (A), a court appointed**
 24 **appraiser may:**

25 **(i) testify at trial without reference to the report of the**
 26 **court appointed appraisers or to the appraiser's previous**
 27 **appointment in the case; and**

28 **(ii) be examined as to the value of the property sought to**
 29 **be acquired independent of the report and without**
 30 **reference to it;**

31 **as set forth in AGT, Inc. v. City of Lafayette, 802 N.E.2d 1**
 32 **(Ind. Ct. App. 2003).**

33 **(C) report of the court appointed appraisers, including the**
 34 **amount of the court appointed appraiser's assessment of**
 35 **damages upon which the exceptions in the trial are based;**

36 **(D) report of a private appraiser retained by a party to the**
 37 **trial of exceptions, including the amount of the appraiser's**
 38 **assessment of damages upon which the exceptions in the**
 39 **trial are based; and**

40 **(E) individual testimony of any court appointed or**
 41 **privately retained appraiser;**

42 SECTION 4. IC 32-24-1-14, AS AMENDED BY P.L.163-2006,



1 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2022]: Sec. 14. (a) Except as provided in subsection (b), the
3 plaintiff shall pay the costs of the proceedings.

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

- 12 (1) ~~twenty-five~~ **fifty** thousand dollars (~~\$25,000~~); **(\$50,000)**; or
13 (2) **one-third (1/3)** of the fair market value of the defendant's
14 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)".

SB 288—LS 7043/DI 101



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.

SENATE MOTION

Madam President: I move that Senate Bill 288 be amended to read as follows:

Page 2, line 16, delete "Any" and insert "**Subject to subsection (c), any**".

Page 2, between lines 22 and 23, begin a new paragraph and insert:

"(c) This subsection applies to an action filed under this article by a public utility or a pipeline company after June 30, 2022. This subdivision does not apply to a communications service provider (as defined in IC 8-1-32.5-4). The defendant may file a request for mediation at the time the defendant files written exceptions to the assessment under subsection (b). If the defendant files a request for mediation under this subsection, the mediation shall occur as follows:

- (1) The court shall appoint a mediator not later than ten (10) days after the request for mediation is filed.**
- (2) The plaintiff shall engage in good faith mediation with the defendant.**
- (3) The mediation must be concluded not later than ninety (90) days after the appointment of the mediator.**
- (4) The plaintiff shall pay the costs of the mediator.**

If the parties are not able to reach an agreement as to the assessment of the damages in a mediation under this subsection, the case shall proceed as described in subsection (d)."

Page 2, line 23, strike "(c)" and insert "**(d)**".

Page 2, line 27, strike "(d)" and insert "**(e)**".

Page 4, line 39, delete "This subdivision applies to an action filed under this article".

Page 4, delete line 40.

Page 4, run in lines 39 through 41.

SB 288—LS 7043/DI 101



Page 4, line 41, delete "exceptions:" and insert "**exceptions, the following apply:**".

Page 4, line 42, delete "the report of the court appointed appraisers, including" and insert "**The:**

- (i) report of the court appointed appraisers; and**
- (ii) amount of the court appointed appraisers' assessment of damages upon which the exceptions in the trial are based;**

are not admissible as evidence in the proceedings.

(B) Notwithstanding clause (A), a court appointed appraiser may:

- (i) testify at trial without reference to the report of the court appointed appraisers or to the appraiser's previous appointment in the case; and**
- (ii) be examined as to the value of the property sought to be acquired independent of the report and without reference to it;**

as set forth in AGT, Inc. v. City of Lafayette, 802 N.E.2d 1 (Ind. Ct. App. 2003)."

Page 5, delete lines 1 through 12.

Page 5, line 24, delete "greater" and insert "**lesser**".

(Reference is to SB 288 as printed January 28, 2022.)

BUCHANAN

SENATE MOTION

Madam President: I move that Senate Bill 288 be amended to read as follows:

Page 4, line 41, delete "exceptions:" and insert "**exceptions, the:**".

Page 4, delete line 42, begin a new line double block indented and insert:

- "(A) report of the court appointed appraisers, including the amount of the court appointed appraiser's assessment of damages upon which the exceptions in the trial are based;**
- (B) report of a private appraiser retained by a party to the trial of exceptions, including the amount of the appraiser's assessment of damages upon which the exceptions in the trial are based; and**
- (C) individual testimony of any court appointed or**

SB 288—LS 7043/DI 101



privately retained appraiser;".

Page 5, delete lines 1 through 5.

Page 5, line 8, delete "applies, the" and insert "**applies, a court appointed appraiser may testify and a report of a court appointed appraiser may be admissible as evidence at a trial of exceptions without reference that the appraiser or report was court ordered and without reference to the appraiser's previous appointment in the case. The**".

(Reference is to SB 288 as printed January 28, 2022.)

YOUNG M

