



Reprinted  
April 7, 2021

---

---

## ENGROSSED SENATE BILL No. 409

---

DIGEST OF SB 409 (Updated April 6, 2021 2:44 pm - DI 87)

**Citations Affected:** IC 12-7; IC 12-13; IC 12-20; IC 32-24; IC 36-1; IC 36-6; IC 36-9.

**Synopsis:** Township matters and eminent domain. Provides that a township trustee serves as a member of the township legislative body for purposes of casting a vote to break a tie, except for a tie on the adoption of an ordinance to increase the township executive's compensation. Makes changes to the information required to be submitted by a township in the township's annual report. Requires the  
(Continued next page)

**Effective:** July 1, 2021; January 1, 2022.

---

---

### Niemeyer, Rogers, Randolph Lonnie M

(HOUSE SPONSORS — SLAGER, AYLESWORTH, OLTHOFF)

---

---

January 25, 2021, read first time and referred to Committee on Local Government.  
February 11, 2021, amended, reported favorably — Do Pass.  
February 18, 2021, read second time, amended, ordered engrossed.  
February 19, 2021, engrossed.  
February 22, 2021, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 4, 2021, read first time and referred to Committee on Government and Regulatory Reform.  
April 1, 2021, amended, reported — Do Pass.  
April 6, 2021, read second time, amended, ordered engrossed.

---

---

ES 409—LS 7234/DI 87



## Digest Continued

township trustee to annually certify and note on the township budget submitted to the department that the township trustee has filed the township's uniform written standards for township assistance with the county board of commissioners. Allows a township trustee to be appointed as a director of a county building authority. Provides that a township is not required to publish the portion of its annual abstract of receipts and expenditures that provides statements of: (1) receipts, showing their source; and (2) expenditures, showing the combined gross payment, according to classification of expense, to each person. Provides that the abstract must state that a complete abstract containing the statements described in (1) and (2) is filed with and available for public inspection in the county auditor's office. Makes changes to condemnation proceedings in which appraisers are appointed after December 31, 2021. 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. Allows a business owner to claim compensation for intangible business losses and loss of driveway access due to condemnation.

**ES 409—LS 7234/DI 87**



Reprinted  
April 7, 2021

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.

## ENGROSSED SENATE BILL No. 409

---

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 12-7-2-24.9, AS ADDED BY P.L.180-2005,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2021]: Sec. 24.9. "Case contact", for purposes of  
4 IC 12-20-28-3, has the meaning set forth in IC 12-20-28-3(b). **This**  
5 **section expires January 1, 2023.**

6 SECTION 2. IC 12-7-2-192.4, AS AMENDED BY P.L.180-2005,  
7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2021]: Sec. 192.4. "Total number of recipients", for purposes  
9 of IC 12-20-28-3, has the meaning set forth in **the following:**

10 (1) IC 12-20-28-3(d). **This subdivision expires January 1, 2023.**

11 (2) **IC 12-20-28-3(e). This subdivision applies after December**  
12 **31, 2022.**

13 SECTION 3. IC 12-7-2-192.5, AS AMENDED BY P.L.180-2005,  
14 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2021]: Sec. 192.5. "Total number of requests for assistance",  
16 for purposes of IC 12-20-28-3, has the meaning set forth in  
17 ~~IC 12-20-28-3(e).~~ **IC 12-20-28-3(f).**

ES 409—LS 7234/DI 87



1 SECTION 4. IC 12-13-16-10, AS ADDED BY P.L.73-2020,  
 2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2021]: Sec. 10. Beginning July 1, 2021, the office of the  
 4 secretary shall:

- 5 (1) compile data regarding 211 services, including:  
 6 (A) community needs, including utility, housing, and food  
 7 assistance;  
 8 (B) the number of referrals to community resources;  
 9 (C) the number of individuals seeking assistance in each  
 10 county; and  
 11 (D) all community resource providers, **including township**  
 12 **trustees;** and  
 13 (2) enter into data sharing agreements with entities approved by  
 14 the office of the secretary that allow the approved entities to  
 15 access data compiled under this section in a manner that is  
 16 consistent with state and federal privacy laws.

17 SECTION 5. IC 12-20-5.5-1, AS AMENDED BY P.L.73-2005,  
 18 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2021]: Sec. 1. (a) The township trustee shall process all  
 20 applications for township assistance according to uniform written  
 21 standards and without consideration of the race, creed, nationality, or  
 22 gender of the applicant or any member of the applicant's household.

23 (b) The township's standards for the issuance of township assistance  
 24 and the processing of applications must be:

- 25 (1) governed by the requirements of this article;  
 26 (2) proposed by the township trustee, adopted by the township  
 27 board, and filed with the board of county commissioners;  
 28 (3) reviewed and updated annually to reflect changes in the cost  
 29 of basic necessities in the township and changes in the law;  
 30 (4) published in a single written document, including addenda  
 31 attached to the document; and  
 32 (5) posted in a place prominently visible to the public in all  
 33 offices of the township trustee where township assistance  
 34 applications are taken or processed.

35 **(c) The township trustee shall annually certify that the uniform**  
 36 **written standards for the issuance of township assistance have been**  
 37 **filed with the board of county commissioners as required under**  
 38 **subsection (b)(2). The certification shall be noted in the township's**  
 39 **budget submitted to the department of local government finance's**  
 40 **computer gateway under IC 6-1.1-17-3.**

41 SECTION 6. IC 12-20-5.5-3, AS AMENDED BY P.L.73-2005,  
 42 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2021]: Sec. 3. (a) The township trustee shall ensure adequate  
 2 access to township assistance services, including a ~~published~~ telephone  
 3 number in the name of the township **published in the annual report**  
 4 **as provided in IC 12-20-28-3 and the township's budget submitted**  
 5 **to the department of local government finance's computer gateway**  
 6 **under IC 6-1.1-17-3.**

7 (b) A township assistance office, if separate from the township  
 8 trustee's residence, must be designated by a clearly visible sign that  
 9 lists the:

- 10 (1) township trustee's name;  
 11 (2) availability of township assistance; and  
 12 (3) township assistance office's telephone number.

13 The sign must conform to all local zoning and signage restrictions.

14 SECTION 7. IC 12-20-28-3, AS AMENDED BY P.L.1-2009,  
 15 SECTION 106, IS AMENDED TO READ AS FOLLOWS  
 16 [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) The definitions in this section  
 17 apply to a report that is required to be filed under this section.

18 (b) As used in this section, "case contact" means any act of service  
 19 in which a township employee has reason to enter a comment or  
 20 narrative into the record of an application for township assistance  
 21 under this article regardless of whether the applicant receives or does  
 22 not receive township assistance funds. **This subsection expires**  
 23 **January 1, 2023.**

24 (c) As used in this section, "total number of households containing  
 25 township assistance recipients" means the sum to be determined by  
 26 counting the total number of individuals who file an application for  
 27 which assistance is granted. A household may be counted only once  
 28 during a calendar year regardless of the number of times assistance is  
 29 provided if the same individual makes the application for assistance.

30 (d) As used in this section, "total number of recipients" means the  
 31 number of individuals who are members of a household that receives  
 32 assistance on at least one (1) occasion during the calendar year. An  
 33 individual may be counted only one (1) time during a calendar year  
 34 regardless of the:

- 35 (1) number of times assistance is provided; or  
 36 (2) number of households in which the individual resides during  
 37 a particular year.

38 **This subsection expires January 1, 2023.**

39 (e) **This subsection applies to a report filed after December 31,**  
 40 **2022. As used in this section, "total number of recipients" means**  
 41 **the number of individuals who are members of a household that**  
 42 **receives assistance on at least one (1) occasion during the calendar**



1 year. An individual may be counted for each time assistance is  
 2 separately provided regardless of the:

3 (1) number of times assistance is provided; or

4 (2) number of households in which the individual resides  
 5 during a particular year.

6 ~~(e)~~ (f) As used in this section, "total number of requests for  
 7 assistance" means the number of times an individual or a household  
 8 separately requests any type of township assistance.

9 ~~(f)~~ (g) The township trustee shall file an annual statistical report on  
 10 township housing, medical care, utility assistance, food assistance,  
 11 burial assistance, food pantry assistance, services related to  
 12 representative payee programs, services related to special  
 13 nontraditional programs, and case management services with the state  
 14 board of accounts. The township trustee shall provide a copy of the  
 15 annual statistical report to the county auditor. The county auditor shall  
 16 keep the copy of the report in the county auditor's office. Except as  
 17 provided in subsection ~~(k)~~; (l), the report must be made on a form  
 18 provided by the state board of accounts. The report must contain the  
 19 following information:

20 (1) The total number of requests for assistance.

21 (2) The total number of each of the following:

22 (A) Recipients of township assistance.

23 (B) Households containing recipients of township assistance.

24 (C) Case contacts made with or on behalf of:

25 (i) recipients of township assistance; or

26 (ii) members of a household receiving township assistance.

27 **This subdivision expires January 1, 2023.**

28 (3) **This subdivision applies to a report filed after December**  
 29 **31, 2022. The total number of each of the following:**

30 (A) Recipients of township assistance.

31 (B) Households containing recipients of township  
 32 assistance.

33 (C) Individuals denied township assistance.

34 ~~(3)~~ (4) The total value of benefits provided to recipients of  
 35 township assistance.

36 (5) **This subdivision applies to a report filed after December**  
 37 **31, 2022. The total value of benefits denied to individuals**  
 38 **applying for township assistance.**

39 ~~(4)~~ (6) The total value of benefits provided through the efforts of  
 40 township staff from sources other than township funds.

41 ~~(5)~~ (7) The total number of each of the following:

42 (A) Recipients of township assistance and households



- 1 receiving utility assistance.
- 2 (B) Recipients assisted by township staff in receiving utility
- 3 assistance from sources other than township funds.
- 4 ~~(6)~~ **(8)** The total value of benefits provided for the payment of
- 5 utilities, including the value of benefits of utility assistance
- 6 provided through the efforts of township staff from sources other
- 7 than township funds.
- 8 ~~(7)~~ **(9)** The total number of each of the following:
- 9 (A) Recipients of township assistance and households
- 10 receiving housing assistance.
- 11 (B) Recipients assisted by township staff in receiving housing
- 12 assistance from sources other than township funds.
- 13 ~~(8)~~ **(10)** The total value of benefits provided for housing
- 14 assistance, including the value of benefits of housing assistance
- 15 provided through the efforts of township staff from sources other
- 16 than township funds.
- 17 ~~(9)~~ **(11)** The total number of each of the following:
- 18 (A) Recipients of township assistance and households
- 19 receiving food assistance.
- 20 (B) Recipients assisted by township staff in receiving food
- 21 assistance from sources other than township funds.
- 22 ~~(10)~~ **(12)** The total value of food assistance provided, including
- 23 the value of food assistance provided through the efforts of
- 24 township staff from sources other than township funds.
- 25 ~~(11)~~ **(13)** The total number of each of the following:
- 26 (A) Recipients of township assistance and households
- 27 provided health care.
- 28 (B) Recipients assisted by township staff in receiving health
- 29 care assistance from sources other than township funds.
- 30 ~~(12)~~ **(14)** The total value of health care provided, including the
- 31 value of health care assistance provided through the efforts of
- 32 township staff from sources other than township funds.
- 33 ~~(13)~~ **(15)** The total number of funerals, burials, and cremations.
- 34 ~~(14)~~ **(16)** The total value of funerals, burials, and cremations,
- 35 including the difference between the:
- 36 (A) actual value of the funerals, burials, and cremations; and
- 37 (B) amount paid by the township for the funerals, burials, and
- 38 cremations.
- 39 ~~(15)~~ **(17)** The total of each of the following:
- 40 (A) Number of nights of emergency shelter provided to the
- 41 homeless.
- 42 (B) Number of nights of emergency shelter provided to



- 1 homeless individuals through the efforts of township staff from  
 2 sources other than township funds.
- 3 (C) Value of the nights of emergency shelter provided to  
 4 homeless individuals by the township and the value of the  
 5 nights of emergency shelter provided through the efforts of the  
 6 township staff from sources other than township funds.
- 7 ~~(16)~~ **(18)** The total of each of the following:
- 8 (A) Number of referrals of township assistance applicants to  
 9 other programs.
- 10 (B) Value of the services provided by the township in making  
 11 referrals to other programs.
- 12 ~~(17)~~ **(19)** The total number of training programs or job placements  
 13 found for recipients of township assistance with the assistance of  
 14 the township trustee.
- 15 ~~(18)~~ **(20)** The number of hours spent by recipients of township  
 16 assistance at workfare.
- 17 ~~(19)~~ **(21)** The total value of the services provided by workfare to  
 18 the township and other agencies.
- 19 ~~(20)~~ **(22)** The total amount of reimbursement for assistance  
 20 received from:
- 21 (A) recipients;  
 22 (B) members of recipients' households; or  
 23 (C) recipients' estates;  
 24 under IC 12-20-6-10, IC 12-20-27-1, or IC 12-20-27-1.5.
- 25 ~~(21)~~ **(23)** The total amount of reimbursement for assistance  
 26 received from medical programs under IC 12-20-16-2(e).
- 27 ~~(22)~~ **(24)** The total of each of the following:
- 28 (A) Number of individuals assisted through a representative  
 29 payee program.
- 30 (B) Amount of funds processed through the representative  
 31 payee program that are not township funds.
- 32 ~~(23)~~ **(25)** The total of each of the following:
- 33 (A) Number of individuals assisted through special  
 34 nontraditional programs provided through the township  
 35 without the expenditure of township funds.
- 36 (B) Amount of funds used to provide the special nontraditional  
 37 programs that are not township funds.
- 38 ~~(24)~~ **(26)** The total of each of the following:
- 39 (A) Number of hours an investigator of township assistance  
 40 spends providing case management services to a recipient of  
 41 township assistance or a member of a household receiving  
 42 township assistance.





- 1 (B) Value of the case management services provided.  
 2 ~~(25)~~ (27) The total number of housing inspections performed by  
 3 the township.  
 4 **(28) The township trustee's name and telephone number as**  
 5 **provided in IC 12-20-5.5-3.**

6 If the total number or value of any item required to be reported under  
 7 this subsection is zero (0), the township trustee shall include the  
 8 notation "0" in the report where the total number or value is required  
 9 to be reported.

10 ~~(g)~~ (h) The state board of accounts shall compare and compile all  
 11 data reported under subsection ~~(f)~~ (g) into a statewide statistical report.  
 12 The department shall summarize the data compiled by the state board  
 13 of accounts that relate to the fixing of township budgets, levies, and tax  
 14 rates and shall include the department's summary within the statewide  
 15 statistical report prepared under this subsection. Before July 1 of each  
 16 year, the state board of accounts shall file the statewide statistical  
 17 report prepared under this subsection with the executive director of the  
 18 legislative services agency in an electronic format under IC 5-14-6.

19 ~~(h)~~ (i) The state board of accounts shall forward a copy of:  
 20 (1) each annual report forwarded to the board under subsection  
 21 ~~(f)~~; (g); and  
 22 (2) the statewide statistical report under subsection ~~(g)~~; (h);  
 23 to the department and the division of family resources.

24 ~~(i)~~ (j) The division of family resources shall include in the division's  
 25 periodic reports made to the United States Department of Health and  
 26 Human Services concerning the Temporary Assistance for Needy  
 27 Families (TANF) and Supplemental Security Income (SSI) programs  
 28 information forwarded to the division under subsection ~~(h)~~ (i)  
 29 concerning the total number of recipients of township assistance and  
 30 the total dollar amount of benefits provided.

31 ~~(j)~~ (k) The department may not approve the budget of a township  
 32 trustee who fails to file an annual report under subsection ~~(f)~~ (g) in the  
 33 preceding calendar year.

34 ~~(k)~~ (l) This section does not prevent the electronic transfer of data  
 35 required to be reported under IC 12-2-1-40 (before its repeal) or this  
 36 section if the following conditions are met:

- 37 (1) The method of reporting is acceptable to both the township  
 38 trustee reporting the information and the governmental entity to  
 39 which the information is reported.  
 40 (2) A written copy of information reported by electronic transfer  
 41 is on file with the township trustee reporting information by  
 42 electronic means.



1           (†) (m) The information required to be reported by the township  
2 trustee under this section shall be maintained by the township trustee  
3 in accordance with IC 5-15-6.

4           SECTION 8. IC 32-24-1-0.1 IS ADDED TO THE INDIANA CODE  
5 AS **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**  
6 **JANUARY 1, 2022]: Sec. 0.1. The amendments made to sections 3,**  
7 **7, 8, and 9 of this chapter by SEA 409-2021 during the 2021 regular**  
8 **session of the general assembly apply to condemnation proceedings**  
9 **in which appraisers are appointed after December 31, 2021.**

10           SECTION 9. IC 32-24-1-3, AS AMENDED BY P.L.84-2016,  
11 SECTION 143, IS AMENDED TO READ AS FOLLOWS  
12 [EFFECTIVE JANUARY 1, 2022]: Sec. 3. (a) Any person that may  
13 exercise the power of eminent domain for any public use under any  
14 statute may exercise the power only in the manner provided in this  
15 article, except as otherwise provided by law.

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

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

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

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

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

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

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

32           (3) Conducting good faith negotiations with the owner of the  
33 property.

34           (d) If the land or interest in the land, or property or right is owned  
35 by a person who is an incapacitated person (as defined in  
36 IC 29-3-1-7.5) or less than eighteen (18) years of age, the person  
37 seeking to acquire the property may purchase the property from the  
38 guardian of the incapacitated person or person less than eighteen (18)  
39 years of age. If the purchase is approved by the court appointing the  
40 guardian and the approval is written upon the face of the deed, the  
41 conveyance of the property purchased and the deed made and approved  
42 by the court are valid and binding upon the incapacitated person or



- 1 persons less than eighteen (18) years of age.
- 2 (e) The deed given, when executed instead of condemnation,  
3 conveys only the interest stated in the deed.
- 4 (f) If property is taken by proceedings under this article, the entire  
5 fee simple title may be taken and acquired.
- 6 (g) This subsection applies to a public utility (as defined in  
7 IC 32-24-1-5.9(a)) or a pipeline company (as defined in IC 8-1-22.6-7).  
8 If a public utility or a pipeline company seeks to acquire land or an  
9 interest in land under this article, the public utility or pipeline company  
10 may not enter upon the land to examine or survey the property sought  
11 to be acquired unless either of the following occur:
- 12 (1) The public utility or the pipeline company sends notice by  
13 certified mail to the affected landowner (as defined in  
14 IC 8-1-22.6-2) of the public utility's or the pipeline company's  
15 intention to enter upon the landowner's property for survey  
16 purposes. The notice required by this subdivision must be mailed  
17 not later than fourteen (14) days before the date of the public  
18 utility's or the pipeline company's proposed examination or  
19 survey.
- 20 (2) The public utility or the pipeline company receives the  
21 landowner's signed consent to enter the property to perform the  
22 proposed examination or survey.
- 23 An affected landowner may bring an action to enforce this subsection  
24 in the circuit court, superior court, or probate court of the county in  
25 which the landowner's property is located. A prevailing landowner is  
26 entitled to the landowner's actual damages as a result of the public  
27 utility's or the pipeline company's violation. In addition, the court may  
28 award a prevailing landowner reasonable costs of the action and  
29 attorney's fees.
- 30 SECTION 10. IC 32-24-1-7, AS AMENDED BY P.L.113-2006,  
31 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 JANUARY 1, 2022]: Sec. 7. (a) The notice, upon its return, must show  
33 its:
- 34 (1) service for ten (10) days; or  
35 (2) proof of publication for three (3) successive weeks in a weekly  
36 newspaper of general circulation printed and published in the  
37 English language in the county in which the property sought to be  
38 acquired is located.
- 39 The last publication of the notice must be five (5) days before the day  
40 set for the hearing.
- 41 (b) The clerk of the court in which the proceedings are pending,  
42 upon the first publication of the notice, shall send to the post office



1 address of each nonresident owner whose property will be affected by  
 2 the proceedings a copy of the notice, if the post office address of the  
 3 owner or owners can be ascertained by inquiry at the office of the  
 4 treasurer of the county.

5 **(c) If an owner (as defined in IC 32-24-2.6-4) intends to claim**  
 6 **compensation for loss of a going concern under IC 32-24-2.6, the**  
 7 **owner shall notify the court of the owner's intent not later than**  
 8 **ninety (90) days after the date of:**

- 9 **(1) the first service; or**
- 10 **(2) publication;**

11 **of the notice under subsection (a).**

12 ~~(e)~~ **(d)** The court, being satisfied of the regularity of the proceedings  
 13 and the right of the plaintiff to exercise the power of eminent domain  
 14 for the use sought, shall appoint:

- 15 (1) one (1) disinterested freeholder of the county; and
- 16 (2) two (2) disinterested appraisers licensed under IC 25-34.1;

17 who are residents of Indiana to assess the damages, or the benefits and  
 18 damages, as the case may be, that the owner or owners severally may  
 19 sustain, or be entitled to, by reason of the acquisition. One (1) of the  
 20 appraisers appointed under subdivision (2) must reside not more than  
 21 fifty (50) miles from the property. **If an owner notifies the court that**  
 22 **the owner intends to claim compensation for loss of a going**  
 23 **concern as provided in IC 32-24-2.6-5, at least one (1) appraiser**  
 24 **appointed under subdivision (2) must be qualified and capable of**  
 25 **determining the loss of a going concern.**

26 SECTION 11. IC 32-24-1-8, AS AMENDED BY P.L.80-2020,  
 27 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JANUARY 1, 2022]: Sec. 8. (a) A defendant may object to the  
 29 proceedings **and the court may sustain the objections, if the court**  
 30 **makes any of the following determinations:**

- 31 (1) ~~because~~ The court does not have jurisdiction either of the  
 32 subject matter or of the person.
- 33 (2) ~~because~~ The plaintiff does not have the right **or express**  
 34 **statutory authority** to exercise the power of eminent domain for  
 35 the use sought. ~~or~~
- 36 (3) **This subdivision applies only to a condemnation by a**  
 37 **municipality outside of the municipality's corporate**  
 38 **boundaries. The court determines that:**
  - 39 **(A) the written findings of the county legislative body**  
 40 **under IC 32-24-2.5-12 were arbitrary, capricious, or**  
 41 **erroneous; or**
  - 42 **(B) the municipality failed to prove by clear and**



- 1                   **convincing evidence all of the following:**  
 2                   **(i) There is a present and urgent necessity for the**  
 3                   **municipality's exercise of eminent domain.**  
 4                   **(ii) There is no property within the corporate boundaries**  
 5                   **of the municipality that is reasonably suitable to be used**  
 6                   **for the project.**  
 7                   **(iii) The property is no more than is necessary for**  
 8                   **completion of the project.**  
 9                   **(iv) The municipality intends to take the property only**  
 10                   **for a public purpose and not for any secondary purpose**  
 11                   **or for private development.**  
 12                   (3) **(4)** For any other reason disclosed in the complaint or set up  
 13                   in the objections.  
 14                   (b) Objections under subsection (a) must be:  
 15                   (1) in writing;  
 16                   (2) separately stated and numbered; and  
 17                   (3) filed not later than thirty (30) days after the date the notice  
 18                   required in section 6 of this chapter is served on the defendant.  
 19                   However, the court may extend the period for filing objections by  
 20                   not more than thirty (30) days upon written motion of the  
 21                   defendant.  
 22                   (c) The court may not allow pleadings in the cause other than the  
 23                   complaint, any objections, and the written exceptions provided for in  
 24                   section 11 of this chapter. However, the court may permit amendments  
 25                   to the pleadings.  
 26                   (d) If ~~an~~ **a defendant's** objection is sustained, the plaintiff may **do**  
 27                   **the following:**  
 28                   **(1) Amend the complaint. or**  
 29                   **(2) may** Appeal from the decision in the manner that appeals are  
 30                   taken from final judgments in civil actions. All the parties shall  
 31                   take notice and are bound by the judgment in an appeal.  
 32                   (e) If the objections are overruled, the court shall appoint appraisers  
 33                   as provided for in this chapter. Any defendant may appeal the  
 34                   interlocutory order overruling the objections and appointing appraisers  
 35                   in the manner that appeals are taken from final judgments in civil  
 36                   actions.  
 37                   (f) All the parties shall take notice of and be bound by the judgment  
 38                   in the appeal.  
 39                   (g) The transcript must be filed in the office of the clerk of the  
 40                   supreme court not later than thirty (30) days after the notice of the  
 41                   defendant's appeal is filed. The appeal does not stay proceedings in the  
 42                   cause.



1 (h) This subsection does not apply to a condemnation action brought  
 2 by a public utility (as defined in section 5.9(a) of this chapter), or by a  
 3 pipeline company. Notwithstanding section 14 of this chapter, if an  
 4 objection: (1) is sustained, and no appeal is filed; or (2) is sustained in  
 5 the judgment in the appeal; the court shall award the defendant the  
 6 reasonable costs and attorney's fees incurred for the objection, in an  
 7 amount not to exceed twenty-five thousand dollars (\$25,000).

8 SECTION 12. IC 32-24-1-9 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 9. (a) Each  
 10 appraiser shall take an oath that:

- 11 (1) the appraiser has no interest in the matter; and  
 12 (2) the appraiser will honestly and impartially make the  
 13 assessment.

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

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

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

- 19 (1) The fair market value of each parcel of property sought to be  
 20 acquired and the value of each separate estate or interest in the  
 21 property.  
 22 (2) The fair market value of all improvements pertaining to the  
 23 property, if any, on the portion of the property to be acquired.  
 24 (3) The damages, if any, to the residue of the property of the  
 25 owner or owners caused by taking out the part sought to be  
 26 acquired.  
 27 (4) The other damages, if any, that will result to any persons from  
 28 the construction of the improvements in the manner proposed by  
 29 the plaintiff.

30 **(5) The damages, if any, to an owner's loss of a going concern**  
 31 **under IC 32-24-2.6, if the owner (as defined in IC 32-24-2.6-4)**  
 32 **has notified the court in accordance with section 7(c) of this**  
 33 **chapter.**

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

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



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

11 (g) **This subsection does not apply to a claim for compensation**  
 12 **as a result of loss of driveway access under IC 32-24-2.6-7.** For the  
 13 purpose of assessing compensation and damages, the right to  
 14 compensation and damages is considered to have accrued as of the date  
 15 of the service of the notice provided in section 6 of this chapter, and  
 16 actual value of compensation and damages at that date shall be:

- 17 (1) the measure of compensation for all property to be actually  
 18 acquired; and
- 19 (2) the basis of damages to property not actually acquired but  
 20 injuriously affected;

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

22 SECTION 13. IC 32-24-2-0.1 IS ADDED TO THE INDIANA  
 23 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 24 [EFFECTIVE JANUARY 1, 2022]: **Sec. 0.1. The amendments made**  
 25 **to sections 8, 10, and 16 of this chapter by SEA 409-2021 during the**  
 26 **2021 regular session of the general assembly apply only to**  
 27 **condemnation proceedings in which appraisers are appointed after**  
 28 **December 31, 2021.**

29 SECTION 14. IC 32-24-2-8, AS AMENDED BY P.L.80-2020,  
 30 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JANUARY 1, 2022]: Sec. 8. (a) **Except as provided in subsection (b),**  
 32 upon the completion of the list, the works board shall award the  
 33 damages sustained and assess the benefits accruing to each piece of  
 34 property on the list.

35 (b) **This subsection applies only to a condemnation by a**  
 36 **municipality under IC 32-24-2.5. Upon completion of the list, the**  
 37 **municipality must file a petition for condemnation with the county**  
 38 **legislative body. If the petition is approved by the county legislative**  
 39 **body, the works board may proceed with awarding the damages**  
 40 **sustained, assessing the benefits accruing to each piece of property**  
 41 **on the list.**

42 (b) (c) When the assessments or awards are completed, the works



1 board shall have a written notice served upon the owner of each piece  
2 of property, showing the amount of the assessment or award, by:

- 3 (1) if the owner is a resident of the municipality, leaving a copy
- 4 of the notice at the owner's last usual place of residence in the
- 5 municipality or by delivering a copy to the owner personally and
- 6 mailing a copy of the notice to the owner's address of record; or
- 7 (2) if the owner is not a resident of the municipality, by sending
- 8 the notice to the owner's address of record by certified mail.

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

13 ~~(d)~~ **(e)** The notices must also name a day, at least thirty (30) days  
14 after service of notice or after the last publication, on which the works  
15 board will receive or hear remonstrances from owners with regard to:  
16 (1) the amount of their respective awards or assessments; and  
17 (2) objections to the municipality's right to exercise the power of  
18 eminent domain for the use sought.

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

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

27 SECTION 15. IC 32-24-2-10, AS AMENDED BY P.L.80-2020,  
28 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
29 JANUARY 1, 2022]: Sec. 10. (a) A person notified or considered to be  
30 notified under this chapter may appear before the works board on the  
31 day fixed for hearing remonstrances to:

- 32 (1) awards and assessments and the municipality's right to
- 33 exercise the power of eminent domain for the use sought and
- 34 remonstrate in writing against them; **or**
- 35 **(2) awards and assessments, in the case of a condemnation by**
- 36 **a municipality under IC 32-24-2.5.**

37 (b) After the remonstrances have been received, the works board  
38 shall either sustain or modify the awards or assessments in the case of  
39 remonstrances that have been filed that are based on the amount of the  
40 awards or assessments. The works board shall sustain the award or  
41 assessment in the case of an award or assessment against which a  
42 remonstrance has not been filed.





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

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

11 SECTION 16. IC 32-24-2-16 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 16. (a) This  
 13 section applies whenever the works board of a municipality located  
 14 upon or adjoining a harbor connected with a navigable stream or lake,  
 15 or upon any navigable channel, slip, waterway, or watercourse, wants  
 16 to acquire for the use of the municipality any property for a  
 17 right-of-way for seawalls, docks, or other improvement of the harbor,  
 18 channel, slip, waterway or watercourse.

19 (b) The works board shall adopt a resolution that the municipality  
 20 wants to acquire the property, describing the property that may be  
 21 injuriously or beneficially affected. All proceedings necessary for the  
 22 completion of and payment for any such undertaking, including **the**  
 23 **approval by the county legislative body of a petition for**  
 24 **condemnation under IC 34-24-2.5, if applicable,** notice,  
 25 remonstrance, appeal, letting of and performance of contracts,  
 26 assessment and collection of payment for benefits, and the  
 27 determination and payment of damages to property, are the same, to the  
 28 extent applicable, as those proceedings for street improvements of the  
 29 municipality by its works board or other entity charged by statute with  
 30 the performance of those duties on behalf of the municipality.

31 SECTION 17. IC 32-24-2.5 IS ADDED TO THE INDIANA CODE  
 32 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 33 JANUARY 1, 2022]:

34 **Chapter 2.5. Municipal Condemnation of Land in**  
 35 **Unincorporated Area**

36 **Sec. 1. This chapter applies only to condemnation proceedings**  
 37 **in which appraisers are appointed after December 31, 2021.**

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

- 40 (1) **located outside of the municipality's corporate boundaries;**  
 41 **and**  
 42 (2) **under IC 32-24-1-4, IC 32-24-2, or any other statute.**



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

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

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

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

10           (1) is expressly authorized by statute to exercise the power of  
11 eminent domain outside of the municipality's corporate  
12 boundaries; and

13           (2) complies with this chapter.

14           **Sec. 7.** (a) A municipality must adopt a petition for  
15 condemnation:

16           (1) before filing a complaint in condemnation under  
17 IC 32-24-1-4 or any other statute; or

18           (2) after the municipality takes final action on a resolution  
19 under IC 32-24-2-6 and before conducting a public hearing  
20 under IC 32-24-2-10.

21           (b) A petition must:

22           (1) contain a legal description and map of all parcels lying in  
23 the unincorporated area of the county that the municipality  
24 requires for the same project; and

25           (2) state how the municipality meets the requirements set  
26 forth in section 11 of this chapter.

27           **Sec. 8.** (a) This section applies if the municipality seeks to  
28 condemn property within the unincorporated area of two (2) or  
29 more counties.

30           (b) The legislative body of each county in which the  
31 unincorporated property is located must approve a petition.

32           **Sec. 9.** The municipality shall file the petition with the county  
33 legislative body. The county legislative body shall:

34           (1) conduct at least one (1) public hearing on the petition after  
35 providing actual notice to the affected landowners; and

36           (2) vote to approve or reject the petition;  
37 not later than thirty (30) days after the date the petition is filed.

38           **Sec. 10.** The county legislative body shall provide notice of the  
39 public hearing by both of the following methods:

40           (1) Notice by publication in accordance with IC 5-3-1.

41           (2) Notice:

42           (A) by certified mail, return receipt requested, or any



1 other means of delivery that includes a return receipt; and  
 2 (B) at least fifteen (15) days before the date of the hearing;  
 3 to each owner of real property, as shown on the county  
 4 auditor's current tax list, whose real property the  
 5 municipality proposes to acquire by condemnation. The  
 6 municipality shall provide the county legislative body with the  
 7 names and addresses of owners of real property to whom  
 8 notice under this subdivision must be sent. If the county  
 9 legislative body complies with this subdivision, the notice is  
 10 not invalidated if the owner does not receive the notice.

11 Sec. 11. The county legislative body may approve the petition  
 12 only if the municipality demonstrates all of the following:

- 13 (1) There is a present and urgent necessity for the  
 14 municipality's exercise of eminent domain.  
 15 (2) There is no property within the corporate boundaries of  
 16 the municipality that is reasonably suitable to be used for the  
 17 project.  
 18 (3) The property is no more than is necessary for completion  
 19 of the project.  
 20 (4) The municipality intends to take the property only for a  
 21 public purpose and not for any secondary purpose or for  
 22 private development.

23 Sec. 12. The municipality may proceed with condemnation if at  
 24 least a majority of the members of the county legislative body  
 25 make all of the findings set forth in section 11 of this chapter:

- 26 (1) in writing; and  
 27 (2) in the affirmative.

28 Sec. 13. If at least a majority of the members of the county  
 29 legislative body do not make all of the findings set forth in section  
 30 11 of this chapter in the affirmative, the municipality may not file  
 31 a complaint under IC 32-24-1-4 or conduct a public hearing under  
 32 IC 32-24-2-10. The municipality may petition the circuit or  
 33 superior court for judicial review of the findings of the county  
 34 legislative body. The judgment of the court is final and conclusive,  
 35 unless an appeal is taken as in other civil actions.

36 Sec. 14. (a) This section applies if a municipality does not obtain  
 37 the approval of the county legislative body on a petition for  
 38 condemnation:

- 39 (1) before filing a complaint in condemnation under  
 40 IC 32-24-1-4 or any other statute; or  
 41 (2) after the municipality takes final action on a resolution  
 42 under IC 32-24-2-6 and before conducting a public hearing



- 1           under IC 32-24-2-10.
- 2           **(b) A municipality shall be liable for:**
- 3               **(1) all reasonable costs, expenses, and attorney's fees incurred**
- 4               **by the property owner; and**
- 5               **(2) damages equal to:**
- 6                   **(A) ten percent (10%) of the assessed value of the property,**
- 7                   **if the owner shows the owner was unable to use the**
- 8                   **property during the proceedings;**
- 9                   **(B) any actual damages; and**
- 10                  **(C) treble damages.**

11           SECTION 18. IC 32-24-2.6 IS ADDED TO THE INDIANA CODE  
 12 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 13 JANUARY 1, 2022]:

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

15           **Sec. 1. This chapter applies only to condemnation proceedings**  
 16 **in which:**

- 17               **(1) any part of the land being condemned is located outside of**
- 18               **the condemnor's corporate boundaries; and**
- 19               **(2) appraisers are appointed after December 31, 2021.**

20           **Sec. 2. This chapter does not apply to a condemnation action**  
 21 **brought by the state acting through the Indiana department of**  
 22 **transportation.**

23           **Sec. 3. As used in this chapter, "going concern" means the**  
 24 **benefits that accrue to a business or trade as a result of the**  
 25 **business's or trade's:**

- 26               **(1) location;**
- 27               **(2) geographic features;**
- 28               **(3) reputation for dependability;**
- 29               **(4) skill or quality;**
- 30               **(5) customer base; or**
- 31               **(6) good will;**

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

34           **Sec. 4. As used in this chapter, "owner" means:**

- 35               **(1) the persons listed on the tax assessment rolls as being**
- 36               **responsible for the payment of real estate taxes imposed on**
- 37               **the property;**
- 38               **(2) the persons in whose name title to real estate is shown in**
- 39               **the records of the recorder of the county in which the real**
- 40               **estate is located; or**
- 41               **(3) a lessee who operates a business on the real property.**

42           **Sec. 5. If a business or trade is damaged by a taking,**



1 condemnation, or eminent domain proceeding, the owner shall be  
 2 compensated by the condemnor for the loss of the going concern,  
 3 unless the condemnor establishes by clear and convincing evidence  
 4 that:

- 5 (1) the loss is not caused by the taking of the property or the  
 6 injury to the remainder;  
 7 (2) the loss can be reasonably prevented by:  
 8 (A) relocating the business or trade to:  
 9 (i) the same or a similar location; and  
 10 (ii) a reasonably suitable location;  
 11 as the property that was taken; or  
 12 (B) taking steps and adopting procedures that a reasonably  
 13 prudent person:  
 14 (i) of a similar age; and  
 15 (ii) as the owner, under similar conditions;  
 16 would take and adopt in preserving the going concern of  
 17 the business or trade; or  
 18 (3) compensation for the loss of the going concern will be  
 19 duplicated in the compensation otherwise awarded to the  
 20 owner.

21 **Sec. 6. An owner's damages for loss of value to a going concern**  
 22 **shall be determined by appraisers as part of the compensation due**  
 23 **to the owner. An owner shall provide an appraiser reasonable**  
 24 **access to the records necessary to determine the value of the loss of**  
 25 **the going concern. The appraiser's decision regarding any award**  
 26 **for the loss of the going concern may be challenged by any party.**

27 **Sec. 7. (a) If a business owner establishes that:**

- 28 (1) the condemnor's actions permanently eliminated fifty-one  
 29 percent (51%) or more of the driveway access into and out of  
 30 the owner's business; and  
 31 (2) the owner's business revenue was reduced by fifty-one  
 32 percent (51%) or more as a result of the loss of driveway  
 33 access;

34 the owner is entitled to reasonable compensation, not to exceed the  
 35 business's average revenues minus the average cost of goods sold,  
 36 for the three (3) years immediately preceding the project start  
 37 date. Installation of a median does not constitute elimination of  
 38 driveway access under this section.

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

42 **STEP ONE: Determine the result of:**



- 1           (A) the average annual revenue of the business for the
- 2           thirty-six (36) months immediately preceding the project
- 3           start date; minus
- 4           (B) the average annual cost of goods sold by the business
- 5           for the thirty-six (36) months immediately preceding the
- 6           project start date.
- 7       **STEP TWO: Determine the result of:**
- 8           (A) the actual or reasonably estimated annual revenue of
- 9           the business for the twelve (12) months immediately
- 10          following the project's completion date; minus
- 11          (B) the annual cost of goods sold by the business for the
- 12          twelve (12) months immediately following the project's
- 13          completion date.
- 14       **STEP THREE: Determine the result of:**
- 15          (A) the STEP ONE result; minus
- 16          (B) the STEP TWO result.
- 17       **STEP FOUR: Divide the STEP THREE result by the STEP**
- 18       **ONE result expressed as a percentage.**
- 19       **(c) A business owner must make a claim for compensation under**
- 20       **this section not later than two (2) years after the completion date**
- 21       **of the project that resulted in the reduction of the driveway access.**
- 22       SECTION 19. IC 36-1-4-5, AS AMENDED BY P.L.277-2019,
- 23       SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24       JANUARY 1, 2022]: Sec. 5. (a) **Except as provided in subsection (b),**
- 25       a unit may acquire by eminent domain or other means; and own
- 26       interests in real and personal property (b) ~~A municipality may exercise~~
- 27       ~~the powers in subsection (a); except for the power of eminent domain;~~
- 28       within four (4) miles outside of its corporate boundaries.
- 29       **(b) A municipality may not exercise the power of eminent domain**
- 30       **outside of its corporate boundaries unless a if the municipality:**
- 31           **(1) is expressly authorized by statute;**
- 32           ~~expressly provides otherwise; and~~
- 33           **(2) complies with IC 32-24-2.5.**
- 34       SECTION 20. IC 36-6-4-13, AS AMENDED BY P.L.127-2017,
- 35       SECTION 157, IS AMENDED TO READ AS FOLLOWS
- 36       [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) When the executive prepares
- 37       the annual report required by section 12 of this chapter, the executive
- 38       shall also prepare, on forms prescribed by the state board of accounts,
- 39       an abstract of receipts and expenditures:
- 40           (1) showing the sum of money in each fund of the township at the
- 41           beginning of the year;
- 42           (2) showing the sum of money received in each fund of the



1 township during the year;  
 2 (3) showing the sum of money paid from each fund of the  
 3 township during the year;  
 4 (4) showing the sum of money remaining in each fund of the  
 5 township at the end of the year;  
 6 (5) containing a statement of receipts, showing their source; and  
 7 (6) containing a statement of expenditures, showing the combined  
 8 gross payment, according to classification of expense, to each  
 9 person.  
 10 (b) Within four (4) weeks after the third Tuesday following the first  
 11 Monday in February, the executive shall publish the **portion of the**  
 12 **abstract described in subsection (a)(1) through (a)(4) abstract**  
 13 **prescribed by subsection (a) in accordance with IC 5-3-1 with a**  
 14 **statement that a complete abstract that contains the statements**  
 15 **required under subsection (a)(5) and (a)(6) is available for**  
 16 **inspection in the county auditor's office.** The abstract must state that:  
 17 (1) a complete and detailed annual report, **a complete abstract,**  
 18 and the accompanying vouchers showing the names of persons  
 19 paid money by the township have been filed with the county  
 20 auditor; and  
 21 (2) ~~that~~ the chair of the township legislative body has a copy of  
 22 the report that is available for inspection by any taxpayer of the  
 23 township.  
 24 (c) An executive who fails to comply with this section commits a  
 25 Class C infraction.  
 26 SECTION 21. IC 36-6-6-4, AS AMENDED BY P.L.266-2013,  
 27 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2021]: Sec. 4. (a) Except as provided in subsections (b) and  
 29 (c), two (2) members of the legislative body constitute a quorum. **The**  
 30 **township executive shall serve by virtue of office as a member of**  
 31 **the township legislative body for the purpose of casting the**  
 32 **deciding vote to break a tie. However, the township executive may**  
 33 **not vote to break a tie on the adoption of an ordinance to increase**  
 34 **the township executive's compensation (as defined in section 10 of**  
 35 **this chapter).**  
 36 (b) Before January 1, 2017, four (4) members of the legislative body  
 37 in a county containing a consolidated city constitute a quorum. After  
 38 December 31, 2016, three (3) members of the legislative body in a  
 39 county having a consolidated city constitute a quorum. **The township**  
 40 **executive shall serve by virtue of office as a member of the**  
 41 **township legislative body for the purpose of casting the deciding**  
 42 **vote to break a tie. However, the township executive may not vote**



1 **to break a tie on the adoption of an ordinance to increase the**  
 2 **township executive's compensation (as defined in section 10 of this**  
 3 **chapter).**

4 (c) This subsection applies to a township government that:

5 (1) is created by a merger of township governments under  
 6 IC 36-6-1.5; and

7 (2) elects ~~a the township board~~ **legislative body** under section 2.1  
 8 of this chapter.

9 A majority of the members of the **township** legislative body constitute  
 10 a quorum. If a township ~~board~~ **legislative body** has an even number of  
 11 members, the township executive shall serve ~~as an ex officio by virtue~~  
 12 **of office as a** member of the township ~~board~~ **legislative body** for the  
 13 purpose of casting the deciding vote to break a tie. **However, the**  
 14 **township executive may not vote to break a tie on the adoption of**  
 15 **an ordinance to increase the township executive's compensation (as**  
 16 **defined in section 10 of this chapter).**

17 SECTION 22. IC 36-9-13-11, AS AMENDED BY P.L.127-2017,  
 18 SECTION 305, IS AMENDED TO READ AS FOLLOWS  
 19 [EFFECTIVE JULY 1, 2021]: Sec. 11. (a) A county building authority  
 20 is under the control of a board of directors. This board consists of five  
 21 (5) directors, who shall be appointed by a majority vote of the building  
 22 authority trustees. Each of the original directors shall serve from the  
 23 date of the director's appointment until the first day of February in the  
 24 second year after the director's appointment, and until the director's  
 25 successor is appointed and has qualified.

26 (b) A person may be appointed as a director only if the person  
 27 **satisfies all of the following:**

28 (1) **The person** is at least thirty (30) years of age.

29 (2) **The person** has been a resident of the county five (5) years  
 30 immediately preceding the person's appointment. ~~and~~

31 (3) **The person** is not an officer or employee of an eligible entity.

32 **However, a township executive may be appointed as a**  
 33 **director.**

34 (c) Before entering upon the director's duties, each director shall  
 35 take and subscribe an oath of office (in the usual form), which shall be  
 36 endorsed upon the director's certificate of appointment. The certificate  
 37 shall be promptly filed with the county clerk.

38 SECTION 23. IC 36-9-13-17, AS AMENDED BY P.L.127-2017,  
 39 SECTION 308, IS AMENDED TO READ AS FOLLOWS  
 40 [EFFECTIVE JULY 1, 2021]: Sec. 17. A trustee or director ~~who~~  
 41 **vacates the trustee's or director's office if the trustee or director**  
 42 **does any of the following:**

ES 409—LS 7234/DI 87





- 1           (1) **The trustee or director** ceases to be a resident of the county.  
2           or  
3           (2) **The trustee or director** becomes an officer or employee of an  
4           eligible entity. **However, a director does not vacate the**  
5           **director's office by becoming a township executive.**  
6           ~~vacates the trustee's or director's office.~~



## COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 409, 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 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 13.

Page 7, line 5, strike "(k)," and insert "(l),".

Page 10, line 19, after "(j)" insert "(k)".

Page 10, line 19, reset in roman "The department may not approve the budget of a township trustee".

Page 10, reset in roman lines 20 through 21.

Page 10, line 22, strike "(k)" and insert "(l)".

Page 10, line 31, strike "(l)" and insert "(m)".

Page 10, delete lines 34 through 42, begin a new paragraph and insert:

"SECTION 8. IC 36-6-4-13, AS AMENDED BY P.L.127-2017, SECTION 157, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) When the executive prepares the annual report required by section 12 of this chapter, the executive shall also prepare, on forms prescribed by the state board of accounts, an abstract of receipts and expenditures:

- (1) showing the sum of money in each fund of the township at the beginning of the year;
- (2) showing the sum of money received in each fund of the township during the year;
- (3) showing the sum of money paid from each fund of the township during the year;
- (4) showing the sum of money remaining in each fund of the township at the end of the year;
- (5) containing a statement of receipts, showing their source; and
- (6) containing a statement of expenditures, showing the combined gross payment, according to classification of expense, to each person.

(b) Within four (4) weeks after the third Tuesday following the first Monday in February, the executive shall publish the **portion of the abstract described in subsection (a)(1) through (a)(4) abstract prescribed by subsection (a) in accordance with IC 5-3-1 with a statement that a complete abstract that contains the statements required under subsection (a)(5) and (a)(6) is available for**



**inspection in the county auditor's office.** The abstract must state that:

(1) a complete and detailed annual report, **a complete abstract**, and the accompanying vouchers showing the names of persons paid money by the township have been filed with the county auditor; and

(2) ~~that~~ the chair of the township legislative body has a copy of the report that is available for inspection by any taxpayer of the township.

(c) An executive who fails to comply with this section commits a Class C infraction."

Page 11, delete lines 1 through 19.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 409 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 8, Nays 0.

---

SENATE MOTION

Madam President: I move that Senate Bill 409 be amended to read as follows:

Page 7, line 32, strike "(f)" and insert "(g)".

Page 9, line 2, after "tie." insert "**However, the township executive may not vote to break a tie on the adoption of an ordinance to increase the township executive's compensation (as defined in section 10 of this chapter).**".

Page 9, line 9, after "tie." insert "**However, the township executive may not vote to break a tie on the adoption of an ordinance to increase the township executive's compensation (as defined in section 10 of this chapter).**".

Page 9, line 19, after "tie." insert "**However, the township executive may not vote to break a tie on the adoption of an ordinance to increase the township executive's compensation (as defined in section 10 of this chapter).**".

(Reference is to SB 409 as printed February 12, 2021.)

NIEMEYER

ES 409—LS 7234/DI 87



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 409, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 8, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 8. IC 32-24-1-0.1 IS ADDED TO THE INDIANA CODE AS **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: **Sec. 0.1. The amendments made to sections 3, 7, 8, and 9 of this chapter by SEA 409-2021 during the 2021 regular session of the general assembly apply to condemnation proceedings in which appraisers are appointed after December 31, 2021.**

SECTION 9. IC 32-24-1-3, AS AMENDED BY P.L.84-2016, SECTION 143, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

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

- (1) may enter upon any land to examine and survey the property sought to be acquired; and
- (2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest in the property.

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

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

- (1) Establishing a proposed purchase price for the property.
- (2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.
- (3) Conducting good faith negotiations with the owner of the property.

(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the

ES 409—LS 7234/DI 87



guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

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

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

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

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

(2) The public utility or the pipeline company receives the landowner's signed consent to enter the property to perform the proposed examination or survey.

An affected landowner may bring an action to enforce this subsection in the circuit court, superior court, or probate court of the county in which the landowner's property is located. A prevailing landowner is entitled to the landowner's actual damages as a result of the public utility's or the pipeline company's violation. In addition, the court may award a prevailing landowner reasonable costs of the action and attorney's fees.

SECTION 10. IC 32-24-1-7, AS AMENDED BY P.L.113-2006, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 7. (a) The notice, upon its return, must show its:

(1) service for ten (10) days; or

(2) proof of publication for three (3) successive weeks in a weekly newspaper of general circulation printed and published in the English language in the county in which the property sought to be acquired is located.

The last publication of the notice must be five (5) days before the day



set for the hearing.

(b) The clerk of the court in which the proceedings are pending, upon the first publication of the notice, shall send to the post office address of each nonresident owner whose property will be affected by the proceedings a copy of the notice, if the post office address of the owner or owners can be ascertained by inquiry at the office of the treasurer of the county.

**(c) If an owner (as defined in IC 32-24-2.6-3) intends to claim compensation for loss of a going concern under IC 32-24-2.6, the owner shall notify the court of the owner's intent not later than ninety (90) days after the date of:**

**(1) the first service; or**

**(2) publication;**

**of the notice under subsection (a).**

~~(c)~~ **(d)** The court, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint:

(1) one (1) disinterested freeholder of the county; and

(2) two (2) disinterested appraisers licensed under IC 25-34.1;

who are residents of Indiana to assess the damages, or the benefits and damages, as the case may be, that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property. **If an owner notifies the court that the owner intends to claim compensation for loss of a going concern as provided in IC 32-24-2.6-4, at least one (1) appraiser appointed under subdivision (2) must be qualified and capable of determining the loss of a going concern.**

SECTION 11. IC 32-24-1-8, AS AMENDED BY P.L.80-2020, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 8. (a) A defendant may object to the proceedings **and the court may sustain the objections, if the court makes any of the following determinations:**

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

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

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

**(A) the written findings of the county legislative body**



under IC 32-24-2.5-12 were arbitrary, capricious, or erroneous; or

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

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

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

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

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

⊕ **(4)** For any other reason disclosed in the complaint or set up in the objections.

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

(1) in writing;

(2) separately stated and numbered; and

(3) filed not later than thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.

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

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

**(1)** Amend the complaint. ~~or~~

**(2)** ~~may~~ Appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the



supreme court not later than thirty (30) days after the notice of the defendant's appeal is filed. The appeal does not stay proceedings in the cause.

(h) This subsection does not apply to a condemnation action brought by a public utility (as defined in section 5.9(a) of this chapter), or by a pipeline company. Notwithstanding section 14 of this chapter, if an objection: (1) is sustained, and no appeal is filed; or (2) is sustained in the judgment in the appeal; the court shall award the defendant the reasonable costs and attorney's fees incurred for the objection, in an amount not to exceed twenty-five thousand dollars (\$25,000).

SECTION 12. IC 32-24-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 9. (a) Each appraiser shall take an oath that:

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

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

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

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

- (1) The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the property.
- (2) The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.
- (3) The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.
- (4) The other damages, if any, that will result to any persons from the construction of the improvements in the manner proposed by the plaintiff.

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

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





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

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

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

- (1) the measure of compensation for all property to be actually acquired; and
- (2) the basis of damages to property not actually acquired but injuriously affected;

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

SECTION 13. IC 32-24-2-0.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: **Sec. 0.1. The amendments made to sections 8, 10, and 16 of this chapter by SEA 409-2021 during the 2021 regular session of the general assembly apply only to condemnation proceedings in which appraisers are appointed after December 31, 2021.**

SECTION 14. IC 32-24-2-8, AS AMENDED BY P.L.80-2020, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 8. (a) **Except as provided in subsection (b)**, upon the completion of the list, the works board shall award the damages sustained and assess the benefits accruing to each piece of property on the list.

(b) **This subsection applies only to a condemnation by a municipality under IC 32-24-2.5. Upon completion of the list, the municipality must file a petition for condemnation with the county legislative body. If the petition is approved by the county legislative body, the works board may proceed with awarding the damages**



**sustained, assessing the benefits accruing to each piece of property on the list.**

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

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

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

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

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

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

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

SECTION 15. IC 32-24-2-10, AS AMENDED BY P.L.80-2020, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 10. (a) A person notified or considered to be notified under this chapter may appear before the works board on the day fixed for hearing remonstrances to:

- (1) awards and assessments and the municipality's right to exercise the power of eminent domain for the use sought and remonstrate in writing against them; or**
- (2) awards and assessments, in the case of a condemnation by a municipality under IC 32-24-2.5.**

(b) After the remonstrances have been received, the works board shall either sustain or modify the awards or assessments in the case of remonstrances that have been filed that are based on the amount of the



awards or assessments. The works board shall sustain the award or assessment in the case of an award or assessment against which a remonstrance has not been filed.

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

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

SECTION 16. IC 32-24-2-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 16. (a) This section applies whenever the works board of a municipality located upon or adjoining a harbor connected with a navigable stream or lake, or upon any navigable channel, slip, waterway, or watercourse, wants to acquire for the use of the municipality any property for a right-of-way for seawalls, docks, or other improvement of the harbor, channel, slip, waterway or watercourse.

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

SECTION 17. IC 32-24-2.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]:

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

**Sec. 1. This chapter applies only to condemnation proceedings in which appraisers are appointed after December 31, 2021.**

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



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

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

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

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

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

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

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

(2) complies with this chapter.

Sec. 7. (a) A municipality must adopt a petition for condemnation:

(1) before filing a complaint in condemnation under IC 32-24-1-4 or any other statute; or

(2) after the municipality takes final action on a resolution under IC 32-24-2-6 and before conducting a public hearing under IC 32-24-2-10.

(b) A petition must:

(1) contain a legal description and map of all parcels lying in the unincorporated area of the county that the municipality requires for the same project; and

(2) state how the municipality meets the requirements set forth in section 11 of this chapter.

Sec. 8. (a) This section applies if the municipality seeks to condemn property within the unincorporated area of two (2) or more counties.

(b) The legislative body of each county in which the unincorporated property is located must approve a petition.

Sec. 9. The municipality shall file the petition with the county legislative body. The county legislative body shall:

(1) conduct at least one (1) public hearing on the petition after providing actual notice to the affected landowners; and

(2) vote to approve or reject the petition;

not later than thirty (30) days after the date the petition is filed.

Sec. 10. The county legislative body shall provide notice of the public hearing by both of the following methods:



**(1) Notice by publication in accordance with IC 5-3-1.**

**(2) Notice:**

**(A) by certified mail, return receipt requested, or any other means of delivery that includes a return receipt; and**

**(B) at least fifteen (15) days before the date of the hearing; to each owner of real property, as shown on the county auditor's current tax list, whose real property the municipality proposes to acquire by condemnation. The municipality shall provide the county legislative body with the names and addresses of owners of real property to whom notice under this subdivision must be sent. If the county legislative body complies with this subdivision, the notice is not invalidated if the owner does not receive the notice.**

**Sec. 11. The county legislative body may approve the petition only if the municipality demonstrates all of the following:**

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

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

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

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

**Sec. 12. The municipality may proceed with condemnation if at least a majority of the members of the county legislative body make all of the findings set forth in section 11 of this chapter:**

**(1) in writing; and**

**(2) in the affirmative.**

**Sec. 13. If at least a majority of the members of the county legislative body do not make all of the findings set forth in section 11 of this chapter in the affirmative, the municipality may not file a complaint under IC 32-24-1-4 or conduct a public hearing under IC 32-24-2-10. The municipality may petition the circuit or superior court for judicial review of the findings of the county legislative body. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.**

**Sec. 14. (a) This section applies if a municipality does not obtain the approval of the county legislative body on a petition for condemnation:**

**(1) before filing a complaint in condemnation under**



IC 32-24-1-4 or any other statute; or

(2) after the municipality takes final action on a resolution under IC 32-24-2-6 and before conducting a public hearing under IC 32-24-2-10.

(b) A municipality shall be liable for:

(1) all reasonable costs, expenses, and attorney's fees incurred by the property owner; and

(2) damages equal to:

(A) ten percent (10%) of the assessed value of the property, if the owner shows the owner was unable to use the property during the proceedings;

(B) any actual damages; and

(C) treble damages.

SECTION 18. IC 32-24-2.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]:

**Chapter 2.6. Compensation for Business Losses**

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

(1) any part of the land being condemned is located outside of the condemnor's corporate boundaries; and

(2) appraisers are appointed after December 31, 2021.

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

(1) location;

(2) geographic features;

(3) reputation for dependability;

(4) skill or quality;

(5) customer base; or

(6) good will;

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

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

(1) the persons listed on the tax assessment rolls as being responsible for the payment of real estate taxes imposed on the property;

(2) the persons in whose name title to real estate is shown in the records of the recorder of the county in which the real estate is located; or

(3) a lessee who operates a business on the real property.

**Sec. 4. If a business or trade is damaged by a taking,**



condemnation, or eminent domain proceeding, the owner shall be compensated by the condemnor for the loss of the going concern, unless the condemnor establishes by clear and convincing evidence that:

- (1) the loss is not caused by the taking of the property or the injury to the remainder;
- (2) the loss can be reasonably prevented by:
  - (A) relocating the business or trade to:
    - (i) the same or a similar location; and
    - (ii) a reasonably suitable location;
 as the property that was taken; or
  - (B) taking steps and adopting procedures that a reasonably prudent person:
    - (i) of a similar age; and
    - (ii) as the owner, under similar conditions;
 would take and adopt in preserving the going concern of the business or trade; or
- (3) compensation for the loss of the going concern will be duplicated in the compensation otherwise awarded to the owner.

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

**Sec. 6. (a)** If a business owner establishes that:

- (1) the condemnor's actions permanently eliminated fifty-one percent (51%) or more of the driveway access into and out of the owner's business; and
- (2) the owner's business revenue was reduced by fifty-one percent (51%) or more as a result of the loss of driveway access;

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

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

**STEP ONE:** Determine the result of:



(A) the average annual revenue of the business for the thirty-six (36) months immediately preceding the project start date; minus

(B) the average annual cost of goods sold by the business for the thirty-six (36) months immediately preceding the project start date.

**STEP TWO: Determine the result of:**

(A) the actual or reasonably estimated annual revenue of the business for the twelve (12) months immediately following the project's completion date; minus

(B) the annual cost of goods sold by the business for the twelve (12) months immediately following the project's completion date.

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

(A) the STEP ONE result; minus

(B) the STEP TWO result.

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

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

SECTION 19. IC 36-1-4-5, AS AMENDED BY P.L.277-2019, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2022]: Sec. 5. (a) **Except as provided in subsection (b),** a unit may acquire ~~by eminent domain or other means;~~ and own interests in real and personal property ~~(b) A municipality may exercise the powers in subsection (a); except for the power of eminent domain;~~ within four (4) miles outside of its corporate boundaries.

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

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

~~expressly provides otherwise; and~~

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

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 409 as reprinted February 19, 2021.)

MILLER D

Committee Vote: yeas 7, nays 4.

ES 409—LS 7234/DI 87





## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 409 be amended to read as follows:

Page 10, line 5, delete "IC 32-24-2.6-3)" and insert "**IC 32-24-2.6-4)**".

Page 10, line 23, delete "IC 32-24-2.6-4" and insert "**IC 32-24-2.6-5**".

Page 12, line 31, delete "IC 32-24-2.6-3)" and insert "**IC 32-24-2.6-4)**".

Page 13, line 12, delete "IC 32-24-2.6-6." and insert "**IC 32-24-2.6-7.**".

Page 18, between lines 19 and 20, begin a new paragraph and insert:  
**"Sec. 2. This chapter does not apply to a condemnation action brought by the state acting through the Indiana department of transportation."**

Page 18, line 20, delete "2." and insert "**3.**".

Page 18, line 31, delete "3." and insert "**4.**".

Page 18, line 39, delete "4." and insert "**5.**".

Page 19, line 18, delete "5." and insert "**6.**".

Page 19, line 24, delete "6." and insert "**7.**".

(Reference is to ESB 409 as printed April 1, 2021.)

SLAGER

