

# SENATE BILL No. 155

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-24.

**Synopsis:** Compensation for business losses. Provides that a person operating a business on a property may be compensated for business losses resulting from a condemnation of the property. Provides that a municipality may not acquire property using an alternative condemnation procedure if the municipality is notified of the person's intent to claim compensation for business losses.

**Effective:** Upon passage.

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January 8, 2024, read first time and referred to Committee on Local Government.

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Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

# SENATE BILL No. 155



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

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-24-1-0.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: **Sec. 0.1. The amendments made to sections 7**  
4 **and 9 of this chapter by this act during the 2024 regular session of**  
5 **the general assembly apply to condemnation proceedings filed after**  
6 **April 1, 2024.**

7 SECTION 2. IC 32-24-1-7, AS AMENDED BY P.L.152-2021,  
8 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 UPON PASSAGE]: Sec. 7. (a) The notice, upon its return, must show  
10 its:

- 11 (1) service for ten (10) days; or
- 12 (2) proof of publication for three (3) successive weeks:
  - 13 (A) with each publication of the notice in a weekly newspaper
  - 14 of general circulation printed and published in the English
  - 15 language in the county in which the property sought to be
  - 16 acquired is located; or
  - 17 (B) with the first publication of notice in a newspaper



1 described in clause (A) and the two (2) subsequent  
2 publications of notice:

3 (i) in accordance with IC 5-3-5; and

4 (ii) on the official ~~web site~~ **website** of the county.

5 The last publication of the notice must be five (5) days before the day  
6 set for the hearing.

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

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

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

18 **(2) publication;**

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

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

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

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

25 who are residents of Indiana to assess the damages, or the benefits and  
26 damages, as the case may be, that the owner or owners severally may  
27 sustain, or be entitled to, by reason of the acquisition. One (1) of the  
28 appraisers appointed under subdivision (2) must reside not more than  
29 fifty (50) miles from the property. **If an owner notifies the court**  
30 **under subsection (c), at least one (1) appraiser appointed under**  
31 **subdivision (2) must be qualified and capable of determining the**  
32 **loss of a going concern.**

33 SECTION 3. IC 32-24-1-9 IS AMENDED TO READ AS  
34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) Each  
35 appraiser shall take an oath that:

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

37 (2) the appraiser will honestly and impartially make the  
38 assessment.

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

41 (1) their duties as appraisers; and

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



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

2 (1) The fair market value of each parcel of property sought to be  
3 acquired and the value of each separate estate or interest in the  
4 property.

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

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

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

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

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

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

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

36 (g) For the purpose of assessing compensation and damages, the  
37 right to compensation and damages is considered to have accrued as of  
38 the date of the service of the notice provided in section 6 of this  
39 chapter, and actual value of compensation and damages at that date  
40 shall be:

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



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

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

4 SECTION 4. IC 32-24-2-0.1 IS ADDED TO THE INDIANA CODE  
5 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**  
6 **UPON PASSAGE]: Sec. 0.1. The amendments made to sections 5**  
7 **and 6 of this chapter by this act during the 2024 regular session of**  
8 **the general assembly apply to proceedings under this chapter**  
9 **commenced after April 1, 2024.**

10 SECTION 5. IC 32-24-2-5 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a) Except as**  
12 **provided in subsection (b), if:**

13 (1) a municipality has the power to acquire property under this  
14 chapter; or

15 (2) another statute provides for proceedings by a municipality for  
16 acquiring property under this chapter;

17 the board exercising those powers may proceed under IC 32-24-1  
18 instead of this chapter.

19 **(b) If an owner (as defined in IC 32-24-2.6-3) notifies the board**  
20 **of the owner's intent to claim compensation for loss of a going**  
21 **concern under IC 32-24-2.6, the board exercising those powers**  
22 **must proceed under IC 32-24-1 to acquire the property.**

23 SECTION 6. IC 32-24-2-6, AS AMENDED BY P.L.152-2021,  
24 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 UPON PASSAGE]: Sec. 6. (a) This chapter applies if the works board  
26 of a municipality wants to acquire property for the use of the  
27 municipality or to open, change, lay out, or vacate a street, an alley, or  
28 a public place in the municipality, including a proposed street or alley  
29 crossings of railways or other rights-of-way. However, this chapter  
30 does not apply if a municipality wants to acquire the property of a  
31 public utility (as defined in IC 8-1-2-1).

32 (b) The works board must adopt a resolution that the municipality  
33 wants to acquire the property. The resolution must describe the  
34 property that may be injuriously or beneficially affected. The board  
35 shall have notice of the resolution:

36 (1) published for two (2) consecutive weeks:

37 (A) with each publication of notice in a newspaper of general  
38 circulation published in the municipality; or

39 (B) with the first publication of notice in a newspaper  
40 described in clause (A) and the second publication of notice:

41 (i) in accordance with IC 5-3-5; and

42 (ii) on the official ~~web site~~ **website** of the municipality; and



- 1 (2) mailed to the owner of each piece of property affected by the  
 2 proposed acquisition.  
 3 The notice must name a date, at least ~~thirty (30)~~ **forty-five (45)** days  
 4 after the last publication, at which time the board will receive or hear  
 5 remonstrances from persons interested in or affected by the proceeding.  
 6 (c) The works board shall consider the remonstrances, if any, and  
 7 then take final action, confirming, modifying, or rescinding its original  
 8 resolution.  
 9 (d) **If an owner (as defined in IC 32-24-2.6-3) submits a**  
 10 **remonstrance that notifies the works board of the owner's intent**  
 11 **to claim compensation for loss of a going concern under**  
 12 **IC 32-24-2.6, the works board must terminate proceedings under**  
 13 **this chapter and proceed under IC 32-24-1 to acquire the property.**  
 14 SECTION 7. IC 32-24-2.6 IS ADDED TO THE INDIANA CODE  
 15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 16 UPON PASSAGE]:  
 17 **Chapter 2.6. Compensation for Business Losses**  
 18 **Sec. 1. This chapter applies only to condemnation proceedings**  
 19 **filed after April 1, 2024.**  
 20 **Sec. 2. As used in this chapter, "going concern" means the**  
 21 **benefits that accrue to a business or trade as a result of the**  
 22 **business's or trade's:**  
 23 (1) location;  
 24 (2) geographic features;  
 25 (3) reputation for dependability;  
 26 (4) skill or quality;  
 27 (5) customer base; or  
 28 (6) good will;  
 29 **or any other circumstances resulting in the probable retention of**  
 30 **old or acquisition of new patronage.**  
 31 **Sec. 3. As used in this chapter, "owner" means:**  
 32 (1) the persons listed on the tax assessment rolls as being  
 33 responsible for the payment of real estate taxes imposed on  
 34 the property;  
 35 (2) the persons in whose name title to real estate is shown in  
 36 the records of the recorder of the county in which the real  
 37 estate is located; or  
 38 (3) a lessee who operates a business on the real property.  
 39 **Sec. 4. If a business or trade is damaged by a taking,**  
 40 **condemnation, or eminent domain proceeding, the owner shall be**  
 41 **compensated by the condemnor for the loss of the going concern,**  
 42 **unless the condemnor establishes by a preponderance of the**



- 1 evidence that:
- 2 (1) the loss is not caused by the taking of the property or the
- 3 injury to the remainder;
- 4 (2) the loss can be reasonably prevented by:
- 5 (A) relocating the business or trade to:
- 6 (i) the same or a similar location; and
- 7 (ii) a reasonably suitable location;
- 8 as the property that was taken; or
- 9 (B) taking steps and adopting procedures that a reasonably
- 10 prudent person:
- 11 (i) of a similar age; and
- 12 (ii) as the owner, under similar conditions;
- 13 would take and adopt in preserving the going concern of
- 14 the business or trade; or
- 15 (3) compensation for the loss will be duplicated in the
- 16 compensation otherwise awarded to the owner.
- 17 **Sec. 5. An owner's damages for loss of value to a going concern**
- 18 **shall be determined by appraisers as part of the compensation due**
- 19 **to the owner. An owner shall provide an appraiser reasonable**
- 20 **access to the records necessary to determine the value of the loss of**
- 21 **the going concern. The appraiser's decision regarding any award**
- 22 **for the loss of the going concern may be challenged by any party.**
- 23 **SECTION 8. An emergency is declared for this act.**

