

# SENATE BILL No. 340

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Private property protection matters. Requires the summons accompanying a complaint for condemnation to include language regarding the defendants' right to object to the condemnation within 30 days from the date notice is served. Requires a court to award reasonable costs and attorney's fees to a defendant whose objection to a complaint for condemnation is sustained. Requires a municipality to provide notice by mail to affected owners, both residents and nonresidents of the municipality, of a condemnation. Permits an affected owner to file an objection that a municipality does not have the right to exercise the power of eminent domain for the use sought. Amends the time for a remonstrance hearing for a municipal condemnation and the defendant's right to judicial review of the decision made at the hearing to 30 days. (Current law requires a remonstrance hearing to be set later than 10 days after notice and the defendant to appeal the decision within 20 days.) Provides parties the right to appeal a court's judgment in the judicial review of a municipal condemnation. Amends the statute regarding the award of attorney's fees to the defendant in a municipal condemnation proceeding. Revises the statute allowing a municipality to condemn property for economic development to require a 3/4 affirmative vote of the municipality's legislative body to exercise the power of eminent domain. (Current law requires a 2/3 affirmative vote of the municipality's legislative body.) Allows a property owner to challenge a condemnation for economic development purposes by providing clear and convincing evidence that the owner's parcel is not necessary for the project.

**Effective:** July 1, 2020.

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January 13, 2020, read first time and referred to Committee on Judiciary.

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Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

# SENATE BILL No. 340

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 32-24-1-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. (a) Upon the filing  
3 of a complaint under this chapter, the circuit court clerk shall issue a  
4 notice requiring the defendants to appear before the court on the day to  
5 be fixed by the plaintiff by indorsement on the complaint at the time of  
6 filing the complaint, and to show cause, if any, why the property sought  
7 to be condemned should not be acquired. **The notice must also**  
8 **provide notice to defendants of their right to object to the**  
9 **acquisition of the property under section 8 of this chapter not later**  
10 **than thirty (30) days from the date the notice is served.** The notice  
11 shall be substantially in the following form:

12 In the \_\_\_\_\_ Court of Indiana.  
13 To the Sheriff of \_\_\_\_\_ County, Indiana:  
14 You are hereby commanded to notify \_\_\_\_\_,  
15 defendants, to appear before the \_\_\_\_\_ Court of \_\_\_\_\_  
16 County, Indiana on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at  
17 \_\_\_\_\_ o'clock, \_\_ M. to show cause, if any, they have why the



1 property sought to be acquired in the complaint of \_\_\_\_\_ should not  
 2 be acquired. **If defendants object to the acquisition of the property,**  
 3 **defendants must file objections with the court under IC 32-24-1-8**  
 4 **not later than thirty (30) days after the date this notice is served.**  
 5 **The court may extend the period for filing objections by an**  
 6 **additional thirty (30) days upon written motion of the defendants.**

7 Witness my hand and the seal of the court affixed at  
 8 \_\_\_\_\_, Indiana, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
 9 Clerk of \_\_\_\_\_ Court.

10 (b) The notice shall be served in the same manner as a summons is  
 11 served in civil actions. Upon a showing by affidavit that any defendant  
 12 is a nonresident of Indiana or that the defendant's name or residence is  
 13 unknown, publication and proof of the notice may be made as provided  
 14 in section 7 of this chapter.

15 SECTION 2. IC 32-24-1-8, AS AMENDED BY P.L.146-2017,  
 16 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 2020]: Sec. 8. (a) A defendant may object to the proceedings:

- 18 (1) because the court does not have jurisdiction either of the  
 19 subject matter or of the person;  
 20 (2) because the plaintiff does not have the right to exercise the  
 21 power of eminent domain for the use sought; or  
 22 (3) for any other reason disclosed in the complaint or set up in the  
 23 objections.

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

- 25 (1) in writing;  
 26 (2) separately stated and numbered; and  
 27 (3) filed not later than thirty (30) days after the date the notice  
 28 required in section 6 of this chapter is served on the defendant.  
 29 However, the court may extend the period for filing objections by  
 30 not more than thirty (30) days upon written motion of the  
 31 defendant.

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

36 (d) If an objection is sustained, the plaintiff may amend the  
 37 complaint or may appeal from the decision in the manner that appeals  
 38 are taken from final judgments in civil actions. All the parties shall take  
 39 notice and are bound by the judgment in an appeal.

40 (e) If the objections are overruled, the court shall appoint appraisers  
 41 as provided for in this chapter. Any defendant may appeal the  
 42 interlocutory order overruling the objections and appointing appraisers



1 in the manner that appeals are taken from final judgments in civil  
2 actions.

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

5 (g) The transcript must be filed in the office of the clerk of the  
6 supreme court not later than thirty (30) days after the notice of the  
7 defendant's appeal is filed. The appeal does not stay proceedings in the  
8 cause.

9 **(h) Notwithstanding section 14 of this chapter, if an objection:**  
10 **(1) is sustained, and no appeal is filed; or**  
11 **(2) is sustained in the judgment in the appeal;**  
12 **the court shall award the defendant the reasonable costs and**  
13 **attorney's fees incurred for the objection.**

14 SECTION 3. IC 32-24-2-6, AS AMENDED BY P.L.172-2009,  
15 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2020]: Sec. 6. (a) This chapter applies if the works board of  
17 a municipality wants to acquire property for the use of the municipality  
18 or to open, change, lay out, or vacate a street, an alley, or a public place  
19 in the municipality, including a proposed street or alley crossings of  
20 railways or other rights-of-way. However, this chapter does not apply  
21 if a municipality wants to acquire the property of a public utility (as  
22 defined in IC 8-1-2-1).

23 (b) The works board must adopt a resolution that the municipality  
24 wants to acquire the property. The resolution must describe the  
25 property that may be injuriously or beneficially affected. The board  
26 shall have notice of the resolution:

- 27 **(1) published in a newspaper of general circulation published in**  
28 **the municipality once each week for two (2) consecutive weeks;**  
29 **and**  
30 **(2) mailed to the owner of each piece of property affected by**  
31 **the proposed acquisition.**

32 The notice must name a date, at least ~~ten (10)~~ **thirty (30)** days after the  
33 last publication, at which time the board will receive or hear  
34 remonstrances from persons interested in or affected by the proceeding.

35 (c) The works board shall consider the remonstrances, if any, and  
36 then take final action, confirming, modifying, or rescinding its original  
37 resolution. ~~This action is conclusive as to all persons.~~

38 SECTION 4. IC 32-24-2-8 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. (a) Upon the  
40 completion of the list, the works board shall award the damages  
41 sustained and assess the benefits accruing to each piece of property on  
42 the list.

43 (b) When the assessments or awards are completed, the works board



1 shall have a written notice served upon the owner of each piece of  
2 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;**  
7 **or**

8 **(2) if the owner is not a resident of the municipality, by**  
9 **sending the notice to the owner's address of record by**  
10 **certified mail.**

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

15 (d) The notices must also name a day, at least ~~ten (10)~~ **thirty (30)**  
16 days after service of notice or after the last publication, on which the  
17 works board will receive or hear remonstrances from ~~persons~~ **owners**  
18 with regard to:

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

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

26 SECTION 5. IC 32-24-2-10 IS AMENDED TO READ AS  
27 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10. (a) A person  
28 notified or considered to be notified under this chapter may appear  
29 before the works board on the day fixed for hearing remonstrances to  
30 awards and assessments **and the municipality's right to exercise the**  
31 **power of eminent domain for the use sought** and remonstrate in  
32 writing against them.

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

39 **(c) If a person remonstrates in writing an objection to the**  
40 **municipality's right to exercise the power of eminent domain for**  
41 **the use sought, the works board shall consider the remonstrance**  
42 **and confirm, modify, or rescind its original resolution.**

43 ~~(e)~~ (d) A person remonstrating in writing who is aggrieved by the



1 decision of the works board may, not later than ~~twenty (20)~~ **thirty (30)**  
 2 days after the decision is made, take an appeal to a court that has  
 3 jurisdiction in the county in which the municipality is located. ~~The~~  
 4 ~~appeal affects only the assessment or award of the person appealing.~~

5 SECTION 6. IC 32-24-2-11 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11. (a) ~~The~~ **An appeal**  
 7 **from a remonstrance based on the amount of an award or**  
 8 **assessment** may be taken by filing an original complaint in the court  
 9 against the municipality within the time required by section ~~10(c)~~ **10(d)**  
 10 of this chapter, setting forth the action of the works board with respect  
 11 to the assessment and stating the facts relied upon as showing an error  
 12 on the part of the board. The court shall rehear the matter of the  
 13 assessment de novo and confirm, reduce, or increase the assessment.  
 14 If the court reduces the amount of benefit assessed or increases the  
 15 amount of damages awarded, the plaintiff may recover costs. If the  
 16 court confirms the amount of the assessment, the plaintiff may not  
 17 recover costs. ~~The judgment of the court is conclusive, and an appeal~~  
 18 ~~may not be taken from the court's judgment.~~

19 (b) If upon appeal the benefits assessed or damages awarded by the  
 20 works board are reduced or increased, the municipality may, upon the  
 21 payment of costs, discontinue the proceedings. It may also, through the  
 22 works board, make and adopt an additional assessment against all the  
 23 property originally assessed in the proceeding, or that part that is  
 24 benefitted, in the manner provided for the original assessment.  
 25 However, such an assessment against any one (1) piece of property may  
 26 not exceed ten percent (10%) of the original assessment against it.

27 (c) If the municipality decides to discontinue the proceedings upon  
 28 payment of costs and if assessments for benefits have already been  
 29 paid, the amounts paid shall be paid back to the person or persons  
 30 paying them.

31 **(d) An appeal from a remonstrance based on an objection to the**  
 32 **municipality's right to exercise the power of eminent domain for**  
 33 **the use sought may be taken by filing an original complaint in the**  
 34 **court against the municipality within the time required by section**  
 35 **10(d) of this chapter, setting forth the action of the works board**  
 36 **with respect to the objection and stating the facts relied upon as**  
 37 **showing the municipality does not have the power of eminent**  
 38 **domain for the use sought. If an objection is sustained, the plaintiff**  
 39 **may recover the costs of the proceedings.**

40 **(e) The parties may appeal a court's judgment under this section**  
 41 **in the manner that appeals are taken from final judgments in civil**  
 42 **actions. All the parties shall take notice of and be bound by the**  
 43 **judgment of the appeal.**



1 SECTION 7. IC 32-24-2-17, AS ADDED BY P.L.163-2006,  
 2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2020]: Sec. 17. ~~If applicable,~~ A landowner who incurs  
 4 attorney's fees through the exercise of eminent domain under this  
 5 chapter is entitled to reasonable attorney's fees. ~~in accordance with~~  
 6 ~~IC 32-24-1-14.~~

7 SECTION 8. IC 32-24-4.5-11, AS ADDED BY P.L.163-2006,  
 8 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2020]: Sec. 11. (a) This section applies to a parcel of real  
 10 property located in a project area:

- 11 (1) that is located in only one (1) county;
- 12 (2) that is at least ten (10) acres in size; and
- 13 (3) in which a condemnor or its agents has acquired clear title to  
 14 at least ninety percent (90%) of the parcels in the project area.

15 (b) As used in this section, "project area" means an area designated  
 16 by a condemnor and the legislative body for the condemnor for  
 17 economic development.

18 (c) Notwithstanding sections 7 and 8 of this chapter, a condemnor  
 19 may acquire a parcel of real property by the exercise of eminent  
 20 domain under this section only if all of the following conditions are  
 21 met:

- 22 (1) The parcel of real property is not occupied by the owner of the  
 23 parcel as a residence.
- 24 (2) The legislative body for the condemnor adopts a resolution by  
 25 a ~~two-thirds (2/3)~~ **three-fourths (3/4)** vote that authorizes the  
 26 condemnor to exercise eminent domain over a particular parcel of  
 27 real property.

28 (d) A condemnor that acquires a parcel of real property through the  
 29 exercise of eminent domain under this section shall compensate the  
 30 owner of the parcel as follows:

- 31 (1) Payment to the owner equal to one hundred twenty five  
 32 percent (125%) of the fair market value of the parcel as  
 33 determined under IC 32-24-1.
- 34 (2) Payment of any other damages as determined under  
 35 IC 32-24-1 and any loss incurred in a trade or business that is  
 36 attributable to the exercise of eminent domain.
- 37 (3) Payment of the owner's relocation costs, if any.

38 (e) The condemnor may not acquire a parcel of real property  
 39 through the exercise of eminent domain under this section if the owner  
 40 of the parcel demonstrates by clear and convincing evidence that:

- 41 (1) the location of the parcel is essential to the viability of the  
 42 owner's commercial activity and **the payment of damages and**  
 43 **relocation costs cannot adequately compensate the owner of**



1           **the parcel; or**  
2           (2) the payment of damages and relocation costs cannot  
3           adequately compensate the owner of the parcel: **the parcel is not**  
4           **necessary for the economic development project for which it**  
5           **is sought.**  
6           (f) The court shall award the payment of reasonable attorney's fees  
7           to the owner of a parcel in accordance with this chapter.

