January 24, 2012

SENATE BILL No. 329

DIGEST OF SB 329 (Updated January 20, 2012 11:07 am - DI 106)

Citations Affected: IC 32-24.

Synopsis: Eminent domain filing deadlines. Specifies that a party to an eminent domain action aggrieved by the assessment of benefits or damages in a report of the appraisers filed with a court may file written exceptions to the assessment in the office of the circuit court clerk: (1) after the report of the appraisers is filed with the court; and (2) not later than 45 days after the date the circuit court mails the report.

Effective: July 1, 2012.

Hume, Steele

January 9, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 23, 2012, amended, reported favorably — Do Pass.

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January 24, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 329

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

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

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

(1) all known parties to the action; and

(2) the attorneys of record of the parties.

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

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

(2) not later than ~~twenty (20)~~ **forty-five (45)** days after the ~~filing of the report.~~ **date the circuit court clerk mails the report under subsection (a).**

~~(b)~~ **(c)** The cause shall further proceed to issue, trial, and judgment

as in civil actions. The court may make orders and render findings and judgments that the court considers just.

~~(c) Notice of filing of the appraisers' report shall be given by the circuit court clerk to all known parties to the action and their attorneys of record by certified mail. The period of exceptions shall run from and after the date of mailing.~~ Either party may appeal a judgment as to benefits or damages as in civil actions.

(d) ~~Twenty (20)~~ **Forty-five (45)** days after the **date the circuit court clerk mails the report under subsection (a),** ~~filing of the report of the appraisers~~ and if the plaintiff has paid the amount of damages assessed to the circuit court clerk, any one (1) or more of the defendants may file a written request for payment of each defendant's proportionate share of the damages held by the circuit court clerk. The defendants making a request for payment must also file sufficient copies of the request for service upon the plaintiff and all other defendants not joining in the request. The defendants making the request may withdraw and receive each defendant's proportionate share of the damages upon the following terms and conditions:

(1) Each written request must:

(A) be verified under oath; and

(B) state:

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

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

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

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

(A) The names of the parties.

(B) The number of the cause.

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

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

(E) A copy of the request for payment.

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

(3) After a hearing held after notice of a written request made under this section, the court shall determine and order the payment by the circuit court clerk of the proportionate shares of the damages due to the defendants requesting payment. Any of the defendants may appeal an order under this subdivision within the same time and in the same manner as provided for allowable appeals from interlocutory orders in civil actions.

(4) If exceptions to the appraisers' report have been duly filed by the plaintiff or any defendant, the circuit court clerk may not make payment to any defendant of any part of the damages deposited with the clerk by the plaintiff until the defendants requesting payment have filed with the circuit court clerk a written undertaking, with surety approved by the court, for the repayment to the plaintiff of all sums received by those defendants in excess of the amount or amounts awarded as damages to those defendants by the judgment of the court upon trial held on the exceptions to the assessment of damages by the appraisers. However, the court may waive the requirement of separate surety as to any defendant who is a resident freeholder of the county in which the cause is pending and who is owner of real property in Indiana that is liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn exceed the amount offered to the defendants as stated in their request or the amount determined by the court if the plaintiff has disputed the statement of the offer. A surety or written undertaking may not be required for a defendant to withdraw those amounts previously offered by the plaintiff to the defendant if the plaintiff has previously notified the court in writing of the amounts so offered. The liability of any surety does not exceed the amount by which the damages to be withdrawn exceed the amount offered to the defendants with whom the surety joins in the written undertaking. Each written undertaking filed with the circuit court clerk shall be immediately recorded by the clerk in the order book and entered in the judgment docket, and from the date of the recording and entry the written undertaking is a lien upon all the real property in the county owned by the several obligors, and the undertaking is also a lien upon all the real property owned by the several

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obligors in each county of Indiana in which the plaintiff causes a certified copy of the judgment docket entry to be recorded, from the date of the recording.

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

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

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

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

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 329, 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, line 14, strike "twenty (20)" and insert "**forty-five (45)**".

Page 1, line 15, delete "the party receives the written notice of the filing of the".

Page 1, line 16, delete "report sent by".

Page 1, line 16, after "clerk" insert "**mails the report**".

Page 2, line 8, strike "Twenty (20)" and insert "**Forty-five (45)**".

Page 2, line 8, delete "latest".

Page 2, line 8, delete "a party receives the".

Page 2, line 9, delete "written notice sent by".

Page 2, line 9, delete "by certified mail" and insert "**mails the report**".

Page 2, line 10, delete "concerning the" and insert "**,**".

Page 2, line 10, strike "filing of the report of the".

Page 2, line 11, strike "appraisers".

and when so amended that said bill do pass.

(Reference is to SB 329 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 0.

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