February 22, 2013

SENATE BILL No. 383

DIGEST OF SB 383 (Updated February 20, 2013 1:12 pm - DI 106)

Citations Affected: IC 32-24.

Synopsis: State university use of eminent domain. Provides that before a state supported college or university may acquire property that contains an operating business (other than a business that primarily consists of renting residential property) through the use of eminent domain, the college or university must pay to the owner of the property: (1) the fair market value of the real property and all improvements pertaining to the real property; and (2) compensation for the loss of the value of the business as a going concern, unless the college or university establishes that the loss of the value of the business as a going concern is not caused by the taking of the property or by injury to the owner's remaining property, or that the loss of the value of the business as a going concern can be reasonably prevented or mitigated by relocating the business or trade in the same or a similar and reasonably suitable location. Specifies that the compensation required does not include any compensation for a loss to the value of the business as a going concern that: (1) is mitigated by relocating the business or trade in the same or a similar and reasonably suitable location; or (2) could be prevented if the owner of the property takes the actions and adopts the policies that a reasonable, prudent person of a similar age and under similar conditions as the owner would take and adopt in preserving the value of the business as a going concern.

Effective: July 1, 2013.

Eckerty

January 10, 2013, read first time and referred to Committee on Judiciary.
February 21, 2013, amended, reported favorably — Do Pass.

C o p y

February 22, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 383

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 32-24-1-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 0.7. As used in this chapter, "business" means any lawful activity conducted primarily for the:**

(1) purchase, sale, lease, or rental of personal or real property;

(2) manufacture, processing, or marketing of products, commodities, or any other personal property; or

(3) sale of services to the public.

However, the term does not include a business whose primary activity is the rental or lease of residential property.

SECTION 2. IC 32-24-1-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 2.5. (a) As used in this chapter, "state educational institution" means any university, college, or other educational institution:**

(1) in Indiana;

(2) that provides programs of:
(A) collegiate or university education; or
(B) other postsecondary education; and
(3) that is supported in whole or in part by appropriations made by the general assembly.
(b) The term includes the following:
(1) Ball State University.
(2) Indiana State University.
(3) Indiana University.
(4) Ivy Tech Community College.
(5) Purdue University.
(6) University of Southern Indiana.
(7) Vincennes University.

SECTION 3. IC 32-24-1-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 3.5. (a) This section does not apply to property that is primarily rented or leased as residential property.**

(b) If a state educational institution wants to acquire property that contains an operating business through the use of eminent domain, the state educational institution must, before the state educational institution may acquire the property, pay to the owner of the property:
(1) the fair market value of the real property and the fair market value of all improvements pertaining to the real property; and
(2) compensation for the loss of the value of the business as a going concern, unless the state educational institution establishes either of the following by a preponderance of evidence:
(A) The loss of the value of the business as a going concern is not caused by the taking of the property or by injury to the owner's remaining property.
(B) The loss of the value of the business as a going concern can be reasonably prevented or mitigated by relocating the business or trade in the same or a similar and reasonably suitable location.
The compensation required under this subdivision does not include any compensation for a loss to the value of the business as a going concern that is mitigated under clause (B) or that could be prevented if the owner of the property takes the actions and adopts the policies that a reasonable, prudent person of a similar age and under similar conditions as the

C o p y

owner would take and adopt in preserving the value of the business as a going concern.

(c) For purposes of this chapter, if a state educational institution attempts to acquire property that contains an operating business through the use of eminent domain as described in subsection (b), the following apply to the acquisition attempt:

(1) If the owner of the property is not the owner of the business:

(A) the state educational institution must submit a copy of any documents the state educational institution is required to submit to the owner of the property to the owner of the business; and

(B) the owner of the business must be named as a defendant in any action brought in which the owner of the property is named as a defendant.

(2) The state educational institution must include:

(A) the compensation for the loss of the value of the business as a going concern after the date the state educational institution would acquire the property; and

(B) the data and calculations used to estimate the compensation for the loss of the value of the business as a going concern;

in any proposed purchase price, offer to purchase, or offer of settlement submitted by the state educational institution to the owner of the property.

(3) If the state educational institution does not agree with the owner of the operating business concerning the compensation for the loss of the value of the business as a going concern after the date the state educational institution would acquire the property, the state educational institution may file a complaint for that purpose with the clerk of the circuit court of the county where the property is located as provided in section 4 of this chapter.

(4) If the state educational institution pays damages under section 10 of this chapter as assessed under section 9 of this chapter concerning property that contains an operating business:

(A) except as provided in subsection (b)(2), the state educational institution must also pay the owner of the business the compensation for the loss of the value of the business as a going concern after the date the state educational institution would acquire the property before

C o p y

the state educational institution may take possession of and hold the interest in the property; and

(B) the payment and amount of the compensation for the loss of the value of the business as a going concern is subject to:

(i) appeal by the owner of the business as a defendant in an action as provided in section 8 of this chapter; and

(ii) review by any party in an action as provided in section 11 of this chapter.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 383, 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, between lines 9 and 10, begin a new line blocked left and insert:

"**However, the term does not include a business whose primary activity is the rental or lease of residential property.**".

Page 2, line 14, after "(a)" insert "**This section does not apply to property that is primarily rented or leased as residential property.**

(b)".

Page 2, line 41, delete "(b)" and insert "**(c)**".

Page 3, line 1, delete "(a)," and insert "**(b),**".

Page 3, line 34, delete "(a)(2)," and insert "**(b)(2),**".

and when so amended that said bill do pass.

(Reference is to SB 383 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 5, Nays 1.

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