

## **IC 8-4-10**

### Chapter 10. Lateral Railroads

#### **IC 8-4-10-1**

##### **Authority to construct and operate; eminent domain**

Sec. 1. (a) The owner or owners or their lessees of lands, mills, blast-furnaces, quarries, iron ore, coal mines, or other minerals, or other real estate or any company of persons who desire to construct a lateral railroad, not exceeding ten (10) miles in length, may locate and construct the lateral railroad to any other railroad, canal, or slack-water navigation on, over, through, or under any intervening lands. Their engineers, agents, artists, and assistants may enter upon any intervening lands, doing no unnecessary damage, and survey, mark, and lay out a route for the proposed lateral railroad.

(b) A person described in subsection (a) may present a petition to the circuit court of the county in which the intervening lands are situated that sets forth the beginning, course, distance, and termination of the proposed lateral railroad, together with a map or profile of the route, indicating the excavations and embankments on the route, and designating, particularly, the name or names of the owner, owners, occupant or occupants, and agent or agents of such intervening lands, with a particular description of the same. The petition must be filed in the court.

(c) After the petition is filed, the court 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 as viewers. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the land.

(d) After five (5) days notice, to be given by the applicant to each of the owners, occupants, or agents of the intervening lands, of the time and place, and after being duly sworn to discharge their duties fairly and honorably as viewers, the viewers shall view the proposed route as marked and laid out for the railroad. They, or a majority of them, shall assess the damages, if any, that may be sustained by the owners, separately, of the intervening lands by reason of the location, construction, and use of the proposed lateral railroad, and report the assessment in writing to the clerk of the court immediately after the assessments are made. The report shall be filed in the office of the clerk of the court.

(e) If a party does not reject the report within twenty (20) days after the filing of the report, by writing on the report "not accepted" and signing the report, the report shall be confirmed by the court. If any party rejects the report, the report shall stand for trial.

(f) At trial, the general denial to the petition and report shall be taken as filed, and all matters of defense and reply may be given in evidence under the general denial. The party rejecting the report has the affirmative of the issues. The viewers or jury trying the cause shall, in assessing damages, take into consideration the advantages that may be derived by the owner or owners of the lands passed on,

over, through, or under by the proposed lateral road by its location and construction.

(g) Upon the filing of the report by the viewers in the court, the damages assessed by them shall be paid to the clerk, to be tendered to the party in whose favor the damages are awarded or assessed.

(h) After payment or tender is made under this section, the person, persons, or company of persons, and their lessees described in subsection (a), may hold and take possession of the interests in the intervening lands or materials appropriated, and the privileges of using any materials on the roadway within fifty (50) feet on each side of the center of the roadway for the use described in subsection (a).

(i) The costs of the assessments by the viewers and the costs in case of trial shall be paid as in other cases.

*(Formerly: Acts 1869(ss), c.46, s.1.) As amended by P.L.1-1990, SEC.118; P.L.113-2006, SEC.4.*

#### **IC 8-4-10-2**

##### **Width of road; route restriction**

Sec. 2. Such proposed lateral railroad shall not exceed one hundred (100) feet in width, except where excavations, embankments, or other necessity require it; nor shall the same pass through any burial ground, place of public worship, or any public building or dwelling-house without the consent of the owner.

*(Formerly: Acts 1869(ss), c.46, s.2.)*

#### **IC 8-4-10-3**

##### **Adjoining lands; entry to secure materials**

Sec. 3. It shall be lawful for any such person or persons, or company of persons, their agents or employees, desiring to construct such lateral railroad, to enter upon any land near or adjoining thereto, to search for stone, wood, gravel or other materials to be used in the construction thereof; but no stone, gravel, wood or other materials shall be taken from any land, for said purpose, until the rate of compensation therefor shall be ascertained and tendered to the owner thereof; but if the parties can not agree thereon, each party shall choose a disinterested and reputable freeholder of the neighborhood who, if they can not agree, shall choose an umpire of like qualifications who shall, under oath or affirmation, fairly and impartially estimate the same; and such award shall be final and conclusive—the amount of which said award shall be paid or tendered to the person or persons entitled thereto, if within the state or known.

*(Formerly: Acts 1869(ss), c.46, s.3.)*

#### **IC 8-4-10-4**

##### **Connections with other roads**

Sec. 4. It shall be lawful for any such person or persons or company of persons to connect such lateral railroad with any railroad or railroads incorporated or to be incorporated in this state, and also with any highway or public improvement; provided, that if the parties interested can not agree upon the mode, manner, or point of

connection with such railroad or railroads, the same shall be determined in the same manner as the compensation for materials prescribed in section 3 of this chapter.

*(Formerly: Acts 1869(ss), c.46, s.4.) As amended by P.L.62-1984, SEC.56.*

#### **IC 8-4-10-5**

##### **Sheriff as owner; nonresident, incompetent, or unknown party**

Sec. 5. If any of the owners of any intervening lands aforesaid shall be unknown, nonresident, or incompetent to act, then the occupant of such lands or the agent of such owner shall be deemed and taken to be the owner of such lands; and in case where such owner or agent is unknown and such lands are unoccupied, then, in all such cases, the sheriff of such county shall be deemed the owner of such lands for all the purposes contemplated in this chapter, and shall be paid two dollars (\$2) per day for every day's service in and about such matter.

*(Formerly: Acts 1869(ss), c.46, s.5.) As amended by P.L.62-1984, SEC.57.*

#### **IC 8-4-10-6**

##### **Certificate of organization and route description; general powers and duties**

Sec. 6. Such person or persons or company of persons, who shall determine to construct such lateral railroad, shall make out, under oath a certificate of the name or names of such person or persons, or company of persons, setting out the beginning, termination, and length of said proposed lateral railroad, and file the same in the recorder's office in the county or counties in which said road is located; and shall have the power and capacity to contract and be contracted with, to sue and to be sued, and generally to exercise such powers and perform such acts and duties as may be necessary and proper to carry out the purposes contemplated by this chapter; and in cases of sale or assignment, the purchasers, assignees, or lessees thereof shall file the same in such recorder's office; and such certificate of organization, sale, or assignment shall be, by the recorder, recorded in the proper record of his office; and for all services aforesaid, such recorder shall be entitled to receive fifteen cents (\$.15) for each one hundred (100) words.

*(Formerly: Acts 1869(ss), c.46, s.6.) As amended by P.L.62-1984, SEC.58.*

#### **IC 8-4-10-7**

##### **Viewers; fee**

Sec. 7. The viewers mentioned in this chapter shall each receive two dollars (\$2) per day for their services, to be paid by said petitioners.

*(Formerly: Acts 1869(ss), c.46, s.7.) As amended by P.L.62-1984, SEC.59.*

**IC 8-4-10-8****Construction across highways or roads; prohibition**

Sec. 8. It shall be lawful for any such person or persons, or company, or owner, or owners, or their lessees as referred to in IC 1971, 8-4-10-1 to construct such lateral railroad across public highways or roads. This chapter is to apply to all such lateral railroads and highway or road crossings presently planned, under construction, previously constructed, or to be constructed in the future. Said person, or persons, or company, or owner, or owners, or their lessees, shall comply with all laws or regulations of the State of Indiana, or any agency thereof, concerning the location, construction, or maintenance of such railroads or crossings of public highways or roads.

*(Formerly: Acts 1974, P.L.29, SEC.1.) As amended by P.L.112-1995, SEC.1.*