



February 10, 2009

SENATE BILL No. 299

DIGEST OF SB 299 (Updated February 5, 2009 2:11 pm - DI 103)

Citations Affected: IC 8-1; IC 8-1.5; IC 32-24.

Synopsis: Condemnation of public utility property. Specifies the procedures by which a municipality may exercise the power of eminent domain to acquire the property of a public utility.

Effective: July 1, 2009.

Merritt

January 7, 2009, read first time and referred to Committee on Utilities & Technology.
February 9, 2009, amended, reported favorably — Do Pass.

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SB 299—LS 7346/DI 103+



February 10, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 299



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

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

1 SECTION 1. IC 8-1-2-92 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2009]: Sec. 92. **(a)** Every license, permit, or
 3 franchise granted after April 30, 1913, to any public utility shall have
 4 the effect of an indeterminate permit subject to the provisions of this
 5 chapter, and subject to the provisions that:
 6 **(1)** the license, franchise, or permit may be revoked by the
 7 commission for cause; or ~~that~~
 8 **(2)** the municipality may purchase **or condemn** the property of
 9 ~~such public utility~~; as provided in ~~this section~~: **IC 8-1.5-2.**
 10 Any such municipality is authorized to purchase such property and
 11 every such public utility is required to sell such property at the value
 12 and according to the terms and conditions as provided in ~~this chapter~~:
 13 **IC 8-1.5-2.**
 14 **(b)** If this chapter should be repealed or annulled, then all such
 15 indeterminate franchises, permits, or grants shall cease and become
 16 inoperative, and in place thereof such utility shall be reinstated in the
 17 possession and enjoyment of the license, permit, or franchise

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1 surrendered by such utility at the time of the issue of the indeterminate
2 franchise, permit, or grant; but in no event shall such reinstated license,
3 permit, or franchise be terminated within a less period than five (5)
4 years from the date of the repeal or annulment of this chapter.

5 SECTION 2. IC 8-1-2-93 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2009]: Sec. 93. Any public utility accepting or
7 operating under any indeterminate license, permit, or franchise granted
8 after April 30, 1913, shall by acceptance of any such indeterminate
9 license, permit, or franchise be deemed to have consented to a future
10 purchase **or condemnation** of its property including property located
11 in contiguous territory within six (6) miles of the corporate limits of
12 such municipality by the municipality in which such utility is located,
13 at the value and under the terms and conditions as provided in ~~this~~
14 ~~chapter, IC 8-1.5-2~~, and shall thereby be deemed to have waived the
15 right of requiring the necessity of such taking to be established by the
16 judgment of a court, and to have waived all other remedies and rights
17 relative to condemnation, except such rights and remedies as are
18 provided in ~~this chapter IC 8-1.5-2~~ and shall have been deemed to have
19 consented to the revocation of its license, permit, or franchise by the
20 commission for cause.

21 SECTION 3. IC 8-1.5-2-7 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A certificate of
23 public convenience and necessity is not required as a condition
24 precedent to the owning, leasing, acquisition, construction, or operation
25 of a utility by a municipality, even if there is a public utility engaged in
26 a similar service. The acquisition of electric utility property and
27 assignment of a municipal electric utility's service area are, however,
28 subject to the provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

29 (b) A municipality that wants to own and operate, **including by**
30 **purchase or condemnation under IC 8-1-2-92, IC 8-1-2-93, or**
31 **another law**, a utility where there is a public utility engaged in a
32 similar service:

- 33 (1) under a franchise granted by the municipality; or
34 (2) under an indeterminate permit as defined in IC 8-1-2-1;
35 **may, shall**, after a hearing ~~as provided by~~ **under** section 10 of this
36 chapter and an election as ~~provided~~ **required** by section 16 of this
37 chapter, declare by ordinance that public convenience and necessity
38 require the establishment, **including by purchase or condemnation**
39 **under IC 8-1-2-92, IC 8-1-2-93, or otherwise**, of a municipally
40 owned utility. **However, an election under section 16 of this chapter**
41 **is not required if the municipality and the public utility enter into**
42 **a mutually acceptable agreement for the municipality's acquisition**

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1 **of the property of the public utility, including the compensation**
2 **paid by the municipality to the public utility. An ordinance adopted**
3 **under this subsection is final.**

4 SECTION 4. IC 8-1.5-2-11 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) If the municipal
6 legislative body adopts an ordinance **under section 7 of this chapter**
7 for the construction or acquisition of a utility, **or under section 15 of**
8 **this chapter for the condemnation of the property of a public**
9 **utility**, not more than thirty (30) days after the adoption of the
10 ordinance a public utility engaged in rendering the same kind of utility
11 service in the municipality, or in the contiguous area in which the
12 municipality proposes to operate, may bring an action against the
13 municipality in the circuit court or superior court of the county in
14 which the municipality is located for the purpose of securing a judicial
15 review and determination of the question of public convenience and
16 necessity.

17 (b) Pending such a determination, further action may not be taken
18 by the municipality for the construction or acquisition of the utility.

19 (c) The cause shall be heard without delay and determined by the
20 court without a jury, and at the hearing, either party may introduce
21 evidence.

22 (d) The cause may be appealed to the court of appeals following
23 determination.

24 **(e) This section does not apply to the acquisition of a subject**
25 **utility company under IC 8-1-30-5.**

26 SECTION 5. IC 8-1.5-2-15 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) **Before a**
28 **municipality may exercise the power of eminent domain under**
29 **IC 8-1-2-92, IC 8-1-2-93, or otherwise, to acquire the property of**
30 **a public utility, the municipality shall make a good faith offer to**
31 **purchase the property of the public utility.**

32 (b) If the municipality and the owners of a the public utility are
33 unable to agree upon a price to be paid for the property of the public
34 utility, the municipality may:

35 (1) by ordinance declare that a public necessity exists for the
36 condemnation of the utility property; **exercise the power of**
37 **eminent domain;** and

38 (2) bring an action in the circuit or superior court of the county
39 where the municipality is located against the utility for the
40 condemnation of the property.

41 (b) An ordinance adopted under subsection (a) is final.

42 (c) For the purpose of acquiring the property of a public utility **under**

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1 **subdivision (2)**, the municipality ~~(1)~~ **may shall** exercise the power of
2 eminent domain ~~in accordance with IC 32-24~~; and ~~(2) is required only~~
3 ~~to establish the necessity of taking as this chapter requires. under~~
4 **IC 32-24-1.**

5 ~~(d)~~ **(c)** The provisions of this section do not apply to the acquisition
6 of:

7 **(1)** electric utility property or the assignment of service areas
8 covered by IC 8-1-2.3 and IC 8-1-2-95.1; **or**

9 **(2) a subject utility company under IC 8-1-30-5.**

10 SECTION 6. IC 8-1.5-2-17 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) A municipality,
12 by exercising the power of eminent domain in accordance with
13 ~~IC 32-24 or other~~ applicable law, may acquire property rights ~~inside or~~
14 ~~outside its corporate boundaries~~ **within the territory described in**
15 **section 3(b) of this chapter** as necessary for the business of a
16 municipally owned utility.

17 (b) The municipal legislative body may provide for utility lines to
18 be laid through the municipality as the municipally owned utility
19 requires. The municipality may use any property or property rights
20 necessary for constructing, acquiring, operating, or protecting from
21 injury or pollution the municipally owned utility services.

22 (c) For the purpose of preserving and protecting from injury or
23 pollution the municipal water services, the municipality may exercise
24 its powers in areas within twenty-five (25) miles outside its corporate
25 boundaries.

26 (d) All attachments made to the utility fixtures, whether intended for
27 public or private use, are subject to the supervision and rules of the
28 utility for protection against abuse or destruction or the inordinate use
29 or waste of utility services.

30 SECTION 7. IC 32-24-2-5 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **(a) Except as**
32 **provided in subsection (b), if:**

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

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

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

39 **(b) If a municipality acquires property under IC 8-1.5-2, the**
40 **municipality shall proceed under IC 32-24-1 instead of this**
41 **chapter.**

42 SECTION 8. IC 32-24-2-6 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) This chapter
 2 applies if the works board of a municipality wants to acquire property
 3 for the use of the municipality or to open, change, lay out, or vacate a
 4 street, an alley, or a public place in the municipality, including a
 5 proposed street or alley crossings of railways or other rights-of-way.
 6 **However, this chapter does not apply if a municipality wants to**
 7 **acquire the property of a public utility (as defined in IC 8-1-2-1).**
 8 (b) The works board must adopt a resolution that the municipality
 9 wants to acquire the property. The resolution must describe the
 10 property that may be injuriously or beneficially affected. The board
 11 shall have notice of the resolution published in a newspaper of general
 12 circulation published in the municipality once each week for two (2)
 13 consecutive weeks. The notice must name a date, at least ten (10) days
 14 after the last publication, at which time the board will receive or hear
 15 remonstrances from persons interested in or affected by the proceeding.
 16 (c) The works board shall consider the remonstrances, if any, and
 17 then take final action, confirming, modifying, or rescinding its original
 18 resolution. This action is conclusive as to all persons.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Technology, to which was referred Senate Bill No. 299, 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, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-92 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 92. (a) Every license, permit, or franchise granted after April 30, 1913, to any public utility shall have the effect of an indeterminate permit subject to the provisions of this chapter, and subject to the provisions that:

(1) the license, franchise, or permit may be revoked by the commission for cause; or ~~that~~

(2) the municipality may purchase **or condemn** the property of ~~such public utility~~; as provided in ~~this section~~: **IC 8-1.5-2.**

Any such municipality is authorized to purchase such property and every such public utility is required to sell such property at the value and according to the terms and conditions as provided in ~~this chapter~~: **IC 8-1.5-2.**

(b) If this chapter should be repealed or annulled, then all such indeterminate franchises, permits, or grants shall cease and become inoperative, and in place thereof such utility shall be reinstated in the possession and enjoyment of the license, permit, or franchise surrendered by such utility at the time of the issue of the indeterminate franchise, permit, or grant; but in no event shall such reinstated license, permit, or franchise be terminated within a less period than five (5) years from the date of the repeal or annulment of this chapter.

SECTION 2. IC 8-1-2-93 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 93. Any public utility accepting or operating under any indeterminate license, permit, or franchise granted after April 30, 1913, shall by acceptance of any such indeterminate license, permit, or franchise be deemed to have consented to a future purchase **or condemnation** of its property including property located in contiguous territory within six (6) miles of the corporate limits of such municipality by the municipality in which such utility is located, at the value and under the terms and conditions as provided in ~~this chapter~~: **IC 8-1.5-2**, and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the judgment of a court, and to have waived all other remedies and rights relative to condemnation, except such rights and remedies as are provided in ~~this chapter~~ **IC 8-1.5-2** and shall have been deemed to have

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consented to the revocation of its license, permit, or franchise by the commission for cause.

SECTION 3. IC 8-1.5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A certificate of public convenience and necessity is not required as a condition precedent to the owning, leasing, acquisition, construction, or operation of a utility by a municipality, even if there is a public utility engaged in a similar service. The acquisition of electric utility property and assignment of a municipal electric utility's service area are, however, subject to the provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

(b) A municipality that wants to own and operate, **including by purchase or condemnation under IC 8-1-2-92, IC 8-1-2-93, or another law**, a utility where there is a public utility engaged in a similar service:

- (1) under a franchise granted by the municipality; or
- (2) under an indeterminate permit as defined in IC 8-1-2-1;

~~may~~, **shall**, after a hearing ~~as provided by~~ **under** section 10 of this chapter and an election ~~as provided~~ **required** by section 16 of this chapter, declare by ordinance that public convenience and necessity require the establishment, **including by purchase or condemnation under IC 8-1-2-92, IC 8-1-2-93, or otherwise**, of a municipally owned utility. **However, an election under section 16 of this chapter is not required if the municipality and the public utility enter into a mutually acceptable agreement for the municipality's acquisition of the property of the public utility, including the compensation paid by the municipality to the public utility. An ordinance adopted under this subsection is final.**"

Page 2, line 4, after "utility," insert "**or under section 15 of this chapter for the condemnation of the property of a public utility,**".

Page 2, delete lines 19 through 38, begin a new paragraph and insert:

"(e) This section does not apply to the acquisition of a subject utility company under IC 8-1-30-5.

SECTION 5. IC 8-1.5-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) **Before a municipality may exercise the power of eminent domain under IC 8-1-2-92, IC 8-1-2-93, or otherwise, to acquire the property of a public utility, the municipality shall make a good faith offer to purchase the property of the public utility.**

(b) If the municipality and the owners of ~~a~~ **the** public utility are unable to agree upon a price to be paid for the property of the public utility, the municipality may:

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(1) by ordinance declare that a public necessity exists for the condemnation of the utility property; exercise the power of eminent domain; and

(2) bring an action in the circuit or superior court of the county where the municipality is located against the utility for the condemnation of the property.

(b) An ordinance adopted under subsection (a) is final:

(c) For the purpose of acquiring the property of a public utility under subdivision (2), the municipality (1) may shall exercise the power of eminent domain in accordance with IC 32-24; and (2) is required only to establish the necessity of taking as this chapter requires: under IC 32-24-1.

(d) (c) The provisions of this section do not apply to the acquisition of:

(1) electric utility property or the assignment of service areas covered by IC 8-1-2.3 and IC 8-1-2-95.1; or

(2) a subject utility company under IC 8-1-30-5."

Page 3, after line 16, begin a new paragraph and insert:

"SECTION 7. IC 32-24-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Except as provided in subsection (b), if:

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

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

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

(b) If a municipality acquires property under IC 8-1.5-2, the municipality shall proceed under IC 32-24-1 instead of this chapter.

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

(b) The works board must adopt a resolution that the municipality wants to acquire the property. The resolution must describe the property that may be injuriously or beneficially affected. The board shall have notice of the resolution published in a newspaper of general

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circulation published in the municipality once each week for two (2) consecutive weeks. The notice must name a date, at least ten (10) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

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

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 299 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 7, Nays 3.

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