



February 20, 2009

HOUSE BILL No. 1055

DIGEST OF HB 1055 (Updated February 17, 2009 8:11 pm - DI 44)

Citations Affected: IC 8-6; IC 34-30.

Synopsis: Whistle posts. Requires a railroad company to erect a sign that is: (1) visible from an approaching train; and (2) not more than 1/4 mile in advance of a crossing or multiple consecutive crossings (except a crossing subject to a local whistle ban) to notify the operator of the engine to sound the locomotive's whistle. Requires the railroad company to maintain the sign in good repair or replace the sign. Requires the engineer or other person in charge of the train to notify, in writing, the railroad of any missing or damaged whistle post, and gives the railroad 10 days to replace or repair the whistle post. Provides that a railroad company that violates these requirements is liable to the state for a penalty of at least \$250 but not more than \$1,000 to be recovered in a civil action brought by the state in the circuit or superior court of the county where the crossing is located. Makes technical changes.

Effective: July 1, 2009.

Kersey, Neese

January 7, 2009, read first time and referred to Committee on Interstate and International Cooperation.
February 19, 2009, amended, reported — Do Pass.

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February 20, 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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HOUSE BILL No. 1055



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 8-6-4-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A railroad company operating
3 in this state shall equip every locomotive engine with a whistle and a
4 bell, maintained in good working order, such as are used by other
5 railroad companies. Except when approaching a crossing to which an
6 ordinance adopted under subsection ~~(c)~~ (d) applies, the engineer or
7 other person in charge of or operating an engine upon the line of a
8 railroad shall, when the engine approaches the crossing of a turnpike,
9 public highway, or street in this state: ~~beginning not less than~~
10 ~~one-fourth (1/4) mile from the crossings:~~

- 11 (1) sound the whistle on the engine distinctly not less than four
- 12 (4) times, which sounding shall be prolonged or repeated until the
- 13 crossing is reached; and
- 14 (2) ring the bell attached to the engine continuously from the time
- 15 of sounding the whistle until the engine has fully passed the
- 16 crossing.

17 (b) A railroad company shall erect a sign that is:

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1 **(1) not more than one-fourth (1/4) mile in advance of a**
 2 **crossing or multiple consecutive crossings; and**
 3 **(2) visible from an approaching train;**
 4 **to notify the engineer or other person in charge of or operating an**
 5 **engine to sound the engine's whistle in accordance with federal law.**
 6 **The railroad company shall maintain the sign in good repair or**
 7 **replace the sign. However, this subsection does not apply to a**
 8 **crossing to which an ordinance adopted under subsection (d)**
 9 **applies. The locomotive engineer or other person in charge of the**
 10 **train shall notify, in writing, the appropriate maintenance of way**
 11 **supervisor of the railroad of any missing or damaged whistle post,**
 12 **and the railroad shall, within ten (10) days after the maintenance**
 13 **of way supervisor is notified under this subsection, repair or**
 14 **replace the missing or damaged whistle post.**

15 ~~(b)~~ **(c)** It is unlawful for an engineer or other person in charge of a
 16 locomotive to move the locomotive, or allow it to be moved, over or
 17 across a turnpike, public highway, or street crossing if the whistle and
 18 bell are not in good working order. It is unlawful for a railroad
 19 company to order or permit a locomotive to be moved over or across a
 20 turnpike, public highway, or street crossing if the whistle and bell are
 21 not in good working order. When a whistle or bell is not in good
 22 working order, the locomotive must stop before each crossing and
 23 proceed only after manual protection is provided at the crossing by a
 24 member of the crew unless manual protection is known to be provided.

25 ~~(c)~~ **(d)** A city, town, or county may adopt an ordinance to regulate
 26 the sounding of a whistle or the ringing of a bell under subsection (a)
 27 in the city, the town, or the county. However, an ordinance may not
 28 prohibit the sounding of a whistle or the ringing of a bell at a crossing
 29 that does not have an automatic train activated warning signal as set
 30 forth in IC 8-6-7.7-2. An ordinance adopted after June 30, 2003, that
 31 prohibits the sounding of a whistle or the ringing of a bell at a crossing
 32 must require that signs be posted at the crossing to warn the public that
 33 trains do not sound whistles or ring bells at that crossing. Before an
 34 ordinance adopted under this subsection goes into effect, the city, town,
 35 or county must receive the written permission of the department to
 36 regulate the sounding or the ringing. The department shall grant
 37 permission only if the department determines, based upon a study
 38 conducted by the department, that the ordinance, as applied to the rail
 39 corridor identified in the ordinance, increases the overall safety of the
 40 corridor for the public. Notwithstanding anything to the contrary in this
 41 subsection, the department shall grant permission to a city or a town to
 42 regulate the sounding of a whistle or the ringing of a bell if the city or

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1 town had an ordinance regulating the sounding of a whistle or the
2 ringing of a bell that was approved and in effect on January 1, 1991, if
3 the city or town amended or repealed the ordinance, and if the city or
4 town adopts a subsequent ordinance on the same subject. In making its
5 determination during the course of the study, the department shall
6 consider:

- 7 (1) school bus routes;
- 8 (2) emergency service routes;
- 9 (3) hazardous materials routes;
- 10 (4) pedestrian traffic;
- 11 (5) trespassers;
- 12 (6) recreational facilities;
- 13 (7) trails; and
- 14 (8) measures to increase safety in the corridor, including:
 - 15 (A) four (4) quadrant gates;
 - 16 (B) median barriers;
 - 17 (C) crossing closures;
 - 18 (D) law enforcement programs; and
 - 19 (E) public education.

20 The study by the department required under this subsection must be
21 completed not later than one hundred twenty (120) days after the
22 department receives notice of the passage of the ordinance from the
23 city, town, or county.

24 ~~(c)~~ (e) Notwithstanding a contrary provision in an ordinance
25 adopted under subsection ~~(c)~~; (d), an engineer or other person who is
26 operating an engine shall sound the engine's whistle if, in the
27 determination of the engineer or other person who is operating the
28 engine, an apparent emergency exists.

29 ~~(c)~~ (f) A railroad company and the employees of the railroad
30 company are immune from criminal or civil liability for injury or
31 property damage that results from an accident that occurs at a crossing
32 to which an ordinance described in subsection ~~(c)~~ (d) applies if the
33 injury or property damage was proximately caused solely by the
34 railroad company and the employees failing to sound a whistle.

35 ~~(f)~~ (g) The Indiana department of transportation shall review
36 crossing safety at each crossing to which an ordinance adopted under
37 subsection ~~(c)~~ (d) applies not less than one (1) time in a five (5) year
38 period.

39 ~~(g)~~ (h) The Indiana department of transportation may not revoke the
40 permission granted under subsection ~~(c)~~ (d) for an ordinance.

41 ~~(h)~~ (i) The Indiana department of transportation may create pilot
42 railroad crossing safety projects to improve railroad crossing safety.

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1 SECTION 2. IC 8-6-4-2 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Every engineer or other
 3 person in charge of or operating ~~any such an~~ engine, who shall fail or
 4 neglect to comply with the provisions of section 1 of this chapter, shall
 5 be held personally liable ~~therefor~~ to the state, ~~of Indiana~~, in a penalty
 6 of not less than ten dollars (\$10.00) nor more than fifty dollars
 7 (\$50.00), to be recovered in a civil action ~~at the suit of said~~ **brought by**
 8 **the state** in the circuit or superior court of any county ~~wherein such~~
 9 **where the crossing may be is** located. ~~and~~

10 (b) A railroad company that violates ~~the provisions of IC 1971,~~
 11 ~~8-6-4-1(b)~~ **section 1(c) of this chapter** shall be held liable therefor to
 12 the state ~~of Indiana~~, ~~in for~~ a penalty of not less than two hundred fifty
 13 dollars (\$250) nor more than five thousand dollars (\$5,000), to be
 14 recovered in a civil action ~~at the suit of said~~ **brought by the state** in the
 15 circuit or superior court of any county ~~wherein such~~ **where the**
 16 **crossing may be is** located. ~~and~~ The **railroad** company in whose
 17 employ such ~~enginner~~ **engineer** or person may be, as well as the
 18 **engineer or person himself, in charge of or operating the engine,**
 19 shall be liable in damages to any person, or ~~his~~ **the person's**
 20 representatives, who may be injured in property or person, or to any
 21 corporation that may be injured in property, by the neglect or failure of
 22 said engineer or other person as aforesaid.

23 (c) **A railroad company that violates section 1(b) of this chapter**
 24 **shall be held liable to the state for a penalty of not less than two**
 25 **hundred fifty dollars (\$250) or more than one thousand dollars**
 26 **(\$1,000), to be recovered in a civil action brought by the state in the**
 27 **circuit or superior court of any county where the crossing is**
 28 **located.**

29 SECTION 3. IC 34-30-2-24.4 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24.4. ~~IC 8-6-4-1(e)~~
 31 **IC 8-6-4-1(f)** (Concerning a railroad company and its employees for
 32 injury or property damage resulting from certain accidents).

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Interstate and International Cooperation, to which was referred House Bill 1055, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 1, delete "at least" and insert "**not more than**".

Page 2, line 1, delete ";" and insert "**or multiple consecutive crossings;**".

Page 2, line 8, after "applies." insert "**The locomotive engineer or other person in charge of the train shall notify, in writing, the appropriate maintenance of way supervisor of the railroad of any missing or damaged whistle post, and the railroad shall, within ten (10) days after the maintenance of way supervisor is notified under this subsection, repair or replace the missing or damaged whistle post.**".

Page 4, line 19, delete "five" and insert "**one**".

Page 4, line 20, delete "(\$5,000)," and insert "**(\$1,000),**".

and when so amended that said bill do pass.

(Reference is to HB 1055 as introduced.)

HARRIS, Chair

Committee Vote: yeas 10, nays 0.

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