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# HOUSE BILL No. 1055

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-6-4; IC 34-30-2-24.4.

**Synopsis:** Whistle posts. Requires a railroad company to erect a sign that is: (1) visible from an approaching train; and (2) at least 1/4 mile in advance of a crossing (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. Provides that a railroad company that violates this requirement is liable to the state for a penalty of at least \$250 but not more than \$5,000 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.

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January 7, 2009, read first time and referred to Committee on Interstate and International Cooperation.

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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:**



1           **(1) at least one-fourth (1/4) mile in advance of a crossing; and**  
 2           **(2) visible from an approaching train;**  
 3           **to notify the engineer or other person in charge of or operating an**  
 4           **engine to sound the engine's whistle in accordance with federal law.**  
 5           **The railroad company shall maintain the sign in good repair or**  
 6           **replace the sign. However, this subsection does not apply to a**  
 7           **crossing to which an ordinance adopted under subsection (d)**  
 8           **applies.**

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

19           ~~(c)~~ **(d)** A city, town, or county may adopt an ordinance to regulate  
 20 the sounding of a whistle or the ringing of a bell under subsection (a)  
 21 in the city, the town, or the county. However, an ordinance may not  
 22 prohibit the sounding of a whistle or the ringing of a bell at a crossing  
 23 that does not have an automatic train activated warning signal as set  
 24 forth in IC 8-6-7.7-2. An ordinance adopted after June 30, 2003, that  
 25 prohibits the sounding of a whistle or the ringing of a bell at a crossing  
 26 must require that signs be posted at the crossing to warn the public that  
 27 trains do not sound whistles or ring bells at that crossing. Before an  
 28 ordinance adopted under this subsection goes into effect, the city, town,  
 29 or county must receive the written permission of the department to  
 30 regulate the sounding or the ringing. The department shall grant  
 31 permission only if the department determines, based upon a study  
 32 conducted by the department, that the ordinance, as applied to the rail  
 33 corridor identified in the ordinance, increases the overall safety of the  
 34 corridor for the public. Notwithstanding anything to the contrary in this  
 35 subsection, the department shall grant permission to a city or a town to  
 36 regulate the sounding of a whistle or the ringing of a bell if the city or  
 37 town had an ordinance regulating the sounding of a whistle or the  
 38 ringing of a bell that was approved and in effect on January 1, 1991, if  
 39 the city or town amended or repealed the ordinance, and if the city or  
 40 town adopts a subsequent ordinance on the same subject. In making its  
 41 determination during the course of the study, the department shall  
 42 consider:

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

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

18 ~~(d)~~ **(e)** Notwithstanding a contrary provision in an ordinance  
 19 adopted under subsection ~~(c)~~, **(d)**, an engineer or other person who is  
 20 operating an engine shall sound the engine's whistle if, in the  
 21 determination of the engineer or other person who is operating the  
 22 engine, an apparent emergency exists.

23 ~~(e)~~ **(f)** A railroad company and the employees of the railroad  
 24 company are immune from criminal or civil liability for injury or  
 25 property damage that results from an accident that occurs at a crossing  
 26 to which an ordinance described in subsection ~~(c)~~ **(d)** applies if the  
 27 injury or property damage was proximately caused solely by the  
 28 railroad company and the employees failing to sound a whistle.

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

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

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

37 SECTION 2. IC 8-6-4-2 IS AMENDED TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 2009]: Sec. 2. **(a)** Every engineer or other  
 39 person in charge of or operating ~~any such an~~ engine, who shall fail or  
 40 neglect to comply with the provisions of section 1 of this chapter, shall  
 41 be held personally liable ~~therefor~~ to the state, ~~of Indiana~~, in a penalty  
 42 of not less than ten dollars (\$10.00) nor more than fifty dollars

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1 (\$50.00), to be recovered in a civil action ~~at the suit of said~~ **brought by**  
2 **the state** in the circuit or superior court of any county ~~wherein such~~  
3 **where the crossing may be is** located. ~~and~~

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

17 (c) **A railroad company that violates section 1(b) of this chapter**  
18 **shall be held liable to the state for a penalty of not less than two**  
19 **hundred fifty dollars (\$250) or more than five thousand dollars**  
20 **(\$5,000), to be recovered in a civil action brought by the state in the**  
21 **circuit or superior court of any county where the crossing is**  
22 **located.**

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

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