

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1124

AN ACT to amend the Indiana Code concerning transportation.

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

SECTION 1. IC 8-3-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) ~~The Indiana department of transportation (referred to as "the department" in this chapter) has the duty, as provided in this chapter:~~

- (1) to supervise all railroad freight and passenger tariffs; and to adopt all necessary rules to govern car distribution and delivery; train service and accommodations; and demurrage rules and charges; and for car service; or the transfer and switching of cars from one (1) railroad to another at junction points; or where entering the same city or town; and to supervise charges therefor;
- (2) to require and supervise the location and construction of sidings and connections between railroads;
- (3) to supervise the crossing of the tracks and sidetracks of railroads by other railroads in process of construction or extension; and to prescribe the terms and conditions and manner in which the crossings shall be made; and the character thereof; whether at grade or over or under grade; and the authority vested on April 15, 1905; in the auditor of state under state statutes with reference to the crossings of railroads by other railroads; or by railroads operated by electricity; and the installation and maintenance of interlocking appliances at the crossings;
- (4) to supervise and regulate private car line service and private

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tracks where the tracks are operated in connection with any railroad in this state or share in the rates or earnings of any common carrier subject to the provisions of this chapter;

(5) to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads; and

(6) to enforce the same by proceedings for the enforcement of penalties provided by law through courts of competent jurisdiction.

The classification of freight adopted by the railroads shall be uniform and shall apply to and be the same for all railroads subject to the provisions of this chapter.

(b) The department has the duty, as provided in this chapter, upon the failure of the railroad companies so to do, to fix and establish for all or any connecting lines of railroads in this state reasonable joint rates of freight, transfer, and switching charges for the various classes of freight and cars that may pass over two (2) or more lines of the railroads.

(c) If any two (2) or more connecting railroad companies shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers, or cars over their lines, the department shall, as provided in this chapter, fix the pro rata part of the charges to be received by each of said connecting lines.

(d) As provided in this chapter, the department has the duty to:

(1) alter, change, amend, or abolish any classification or rates established by any railroad company or companies whenever found to be unjust, unreasonable, or discriminative;

(2) to make and substitute for the unjust, unreasonable, or discriminative rates or classifications amended, altered, or new classifications or rates, which shall be put into effect by the railroad company or companies; and

(3) in case any carrier fails to have any rate or schedule of rates to any point on its line or on any connecting line in this state, the department, as provided in this chapter, may make and order a rate or schedule of rates, which shall be published and put into effect by the carrier or carriers.

(e) The department may adopt and enforce the rules and modes of procedure it considers proper to hear and determine complaints and for the conduct of all investigations held by it or its appointees and to regulate the conduct of the department's inspectors and appointees.

(f) The department:

(1) shall enforce, as provided in this chapter, reasonable and just

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rates of charges for each railroad company subject to this chapter for the use or transportation of loaded or empty cars on its road; and

(2) may enforce, for each railroad or for all railroads alike, reasonable rates for storing and handling of freight, and for the use of cars not loaded or unloaded within forty-eight (48) hours after notice of arrival and placement for service, not to include Sundays or legal holidays.

(g) The department shall enforce reasonable rates as provided in this chapter for the transportation of passengers over each or all of the railroads subject in this chapter, which rates shall not exceed the rates fixed by law. The department may enforce reasonable rates, tolls, or charges for all other services performed by any railroad subject to this chapter.

(h) Under this section, the power of the department extends to any case where any person, firm, corporation, limited liability company, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, complains of anything done or omitted to be done by any common carrier subject to this chapter, and applies to the department by petition, which shall briefly state the facts. A statement of the charges thus made shall be forwarded by the department to the common carrier, who shall be called upon to satisfy the complaint or to answer the complaint in writing, within a reasonable time specified by the department. If the carrier does not satisfy the complaint within the time specified, or there appears to be any reasonable ground for investigating the complaint, the department shall investigate the matters complained of, and no complaint shall, at any time, be dismissed because of the absence of direct damage to the complainant. The department may, after the investigation, make the corrections, alterations, changes, or new rules or rates as may be necessary to prevent injustice or discrimination to the party complaining or to any other person, firm, limited liability company, or corporation. When any rate, charge, classification, or rule is made, changed, modified, or added to by the department, such order shall operate for the benefit of all persons or corporations situated similarly with the complaining party.

(i) (a) As used in this chapter, "department" refers to the Indiana department of transportation.

(b) Every such carrier shall annually, before April 1, file with the department, under the signature and oath of the department's principal accounting officer, a detailed report, in the form prescribed by the department, of all the carrier's financial and business operations in

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Indiana for the year ending on the preceding December 31. The report shall embrace the other information and facts as shall be prescribed by the **Interstate Commerce Commission Surface Transportation Board** for reports of interstate carriers thereto, and the reports shall be in the form prescribed, insofar as the same is applicable. Any carrier failing to make the report for thirty (30) days after the same is due, unless the time therefor is extended by the department, shall forfeit and pay to the state the sum of one hundred dollars (\$100) for each day of the default, to be collected as provided in this chapter.

(j) All carriers subject to this chapter and operating railroads shall afford reasonable and proper facilities for the interchange of traffic between the carriers' respective lines at junction points, and for there receiving, forwarding, and delivering passengers and property, and each carrier shall transfer, deliver, and accept, without delay or discrimination, and promptly forward, all freight or cars, loaded or empty, and all or any passengers there tendered by the connecting lines and destined to any point on the carrier's line or any connecting line. The department may not, by virtue of any provision in this chapter compel any railway company to carry any freight prohibited by any municipal ordinance or contract.

(k) Every carrier engaged in handling freight in carload lots may be required, upon application therefor by the party having use for the same, to construct upon the carrier's property and properly connect with the carrier's line, when the same can be done with safety, and is reasonably necessary, all siding, switch, spur, or turnout tracks; necessary to accommodate the business of any elevator, mill, factory, or other industrial enterprise that is on or after April 9, 1907, constructed abutting the carrier's line, and where there is no space for the proprietor thereof to construct the same on the proprietor's property. Title to any siding shall remain in the carrier, which may remove the same whenever it becomes necessary so to do to accommodate the public interests, upon payment of the value of the material in the track, if the cost of original construction shall have been paid by the industry, and providing that the track may be used by the carrier in performing switching service to any industry located beyond the elevator, mill, factory, or other industrial enterprise. In case the carrier and the proprietor cannot agree upon the terms for constructing and maintaining the facilities, the department, upon application, shall prescribe the terms upon which the same shall be constructed and maintained. Every carrier shall, upon request and upon the payment of reasonable compensation therefor, construct a switch connection from the carrier's line to and connecting with any lateral or branch line of

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railroad, or any private or industrial switch, which shall be constructed adjacent to the carrier's line and property in this state, whenever the connection is reasonably practicable and can be put in with safety, and a reasonable necessity therefor exists. In case of a disagreement thereon, the department, upon application, shall determine the compensation for making the connection and maintaining same.

(t) All carriers handling freight in carload lots, at all points in this state where they connect with, or cross, at, over, or under grade, the line or lines of any one (1) or more carriers engaged in like business, shall construct and maintain proper interchange tracks and switches at all such points so that carload traffic may be conveniently interchanged between the carriers at the points, and, for the purpose of enabling the carriers to comply with this requirement, they are empowered to jointly purchase and own, or appropriate, under state statutes concerning the exercise of the powers of eminent domain, any additional lands or property necessary to enable them to comply with this requirement. Upon a sufficient showing, the department may relieve the carrier from the operation of this provision until the time as the necessity therefor shall arise. In case the connecting carriers cannot agree as to the division of the expense of making and maintaining the facilities and tracks, the department, upon application therefor, shall determine the same.

(m) Every connecting carrier shall, upon the order of the department, made upon complaint filed and after a hearing is had, as provided in this chapter, received from the carrier's connecting lines, at junction points all carload shipments tendered by the connecting line, and, upon payment of reasonable transfer or switching charges therefor, transport the car over the carrier's tracks and deliver the same to the consignee on the consignee's private track connected with the tracks. Every connecting carrier, at junction or terminal points, upon like complaint, proceedings, and order of the department, as provided in this subsection, shall accept from any other connecting carrier any empty car there tendered, and, upon payment of a reasonable switching charge therefor, shall transport such empty car to any industry or private track connected with the carrier's line at such junction or terminal point for loading, and return the same, when loaded, to the line making the delivery. Any carrier is not required to perform switching services in any case where the carrier can transport the freight to destination and point of delivery with reasonable dispatch and at the same rate as the line offering the car, and shall, at the time offer the car and be prepared to perform the services. Every carrier subject to this chapter who shall receive a car or cars belonging to

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another carrier at a terminal or junction point shall, upon the demand of the owner of the car or cars, promptly return the same, loaded or empty, to the terminal or junction point by the most direct available route; and any court of competent jurisdiction shall, upon proper application, have full power and authority to enforce this requirement.

(n) All railroad companies doing business in this state shall, upon the demand of any person or persons interested; establish reasonable joint rates for the transportation of freight between points upon respective lines within this state; and shall receive and transport freight and cars over the route or routes as the shipper may direct. Carload lots shall be transferred without unloading into other cars; unless unloading into other cars shall be done without charge therefor to the shipper or receiver of the carload lots; and unless the transfer be made without unreasonable delay. Less than carload lots shall be transferred into the connecting railway's cars at cost, which shall be included in and made a part of the joint rate adopted by the railroad companies; or established as provided in this chapter.

(o) No carrier shall construct a line of railroad across another line of railroad in this state without the approval of the department; nor until an application therefor and an instrument of appropriation to acquire the rights has been filed with the department and notice given to the connecting lines and a hearing thereon had. The department may, in any proceedings, determine in what manner and at what point the crossing shall be made; and whether the crossing shall be at grade; or over or under grade. When the department determines the place and manner of crossing; it shall determine the damages; if any, which the junior line shall pay to the senior line or lines for the privilege of crossing. The department, by the department's order, shall determine and define the manner in which the crossing shall be made; and thereafter maintained; and the manner in which the expense thereof shall be apportioned between the connecting lines; and, in what manner, the work shall be performed; and by whom and within what time; and other matters as may be necessary to fully determine the controversy between the parties. The junior line; upon the payment or tender of the damages awarded; may proceed with the construction of the crossing; in accordance with the order of the department. In case any crossing shall be on a street in any city or incorporated town in this state; then the order of the department concerning the same shall not become operative until the legislative body of the city or town shall consent thereto by resolution.

(p) Any carrier which shall be dissatisfied with the damages awarded by the department may commence in any circuit or superior

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court of the county where a crossing is located; an action against the other connecting line or lines at the point; for the purpose of having damages reassessed by the court in accordance with state statutes concerning the exercise of the powers and privileges of eminent domain; and, in the court, the only question triable shall be the amount of damages properly chargeable against the crossing line on account of the crossing being made and constructed in the manner fixed and upon the terms prescribed by the department therefor; and to be maintained in the manner and upon the terms prescribed by the department. Any interurban railroad company may cross with the interurban railroad company's feed and transmission wires over or under the right-of-way; tracks; wires; and railroad of any steam interurban railroad company; and the wires and other appliances of any telegraph, telephone, electric light, power, or other company maintaining wires; after an application therefor and an instrument of appropriation to acquire the right has been filed with the department and at least ten (10) days notice thereof given to the company whose property is to be crossed and a hearing had thereon. The department may determine in what manner the crossing shall be made at any point other than upon streets and highways and; as to crossings of streets and highways; the applicable law shall control the rights of the parties. The department, by the department's order; shall determine and define the manner in which the crossings shall be made and thereafter maintained; and the manner in which the expense thereof shall be apportioned between the crossing companies; and in what manner the work shall be performed and by whom and within what time; and other matters as may be necessary to fully determine the controversy between the parties. The department may determine the amount of damages, if any, allowed to the company whose property is to be crossed at any point other than upon streets or highways by feed or transmission wires; and any party dissatisfied with any award of damages may appeal therefrom to the circuit court of the proper county upon the question of damages only. Upon the payment or tender of damages, if any, allowed by the department; the company desiring to cross may proceed with the construction of the company's feed or transmission wires over or under the right-of-way; tracks; wires; railroad; and other appliances of any of the companies.

(q) In addition to the authority conferred on April 9, 1907; upon the department to order the installation and maintenance of interlocking devices and appliances at railroad crossings in this state; the department may order any carriers subject to this chapter whose railroad lines cross each other at grade; or to order any carrier subject to the provisions of this chapter whose line of railroad crosses any

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stream in this state by a swing or draw bridge; to install, maintain, or operate, at the crossing, or at the bridge, an approved interlocking and derailing device; or to make connecting or other changes in any existing device. Notice shall be given the carriers, as in other proceedings before the department; and plans submitted and approved by the department; and the department shall determine, when necessary; or when the carriers fail to agree; the division of expense for the construction, maintenance, and operation of the interlocker; and may assign to one (1) of the connecting lines the construction, maintenance, and operation thereof. Every carrier which shall fail to install such interlocker or make such changes within the time fixed by the department shall forfeit and pay to the state the sum of one hundred dollars (\$100) for each week that the failure shall be continued. The carrier or carriers shall not be requested to install a device in any city or incorporated town in this state until the city or town legislative body shall approve the same; by resolution; duly entered of record. This subsection does not apply to any interurban railroad crossing; any railroad; interurban railroad; any street; highway; or private right-of-way in any city or town in this state.

(r) The department, whenever it determines that life and property will be best secured thereby, shall order the operation of any interlocking device in use in this state to be discontinued until the same shall be put in the condition required by the department. The operation of a device by a carrier, after the same has been forbidden by the department, is unlawful.

(s) The department may, on the application of any railroad corporation, authorize the corporation to use any safeguard or device, approved by the department, in place of any safeguard or device required by this chapter. The same penalties for neglect or refusal to install or use the same shall be incurred and imposed as for a failure to install or use the safeguard or device required by this chapter, in lieu of which the same is to be used.

(t) Every railroad shall, when within the railroad's power to do, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots. In case of insufficiency of cars at any time to meet all requirements, cars as are available shall be distributed among the several applicants therefor in proportion to the applicant's respective immediate requirements, without discrimination between shippers or competitive or noncompetitive places; however, preference may be given to shipments of livestock and perishable property.

SECTION 2. IC 8-3-1-21 IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2011]: Sec. 21. (a) It is the duty of the department to keep informed as to the condition of railroads and railways and the manner in which they are operated with reference to the security and accommodation of the public; and as to the compliance of the several corporations with their charters and the laws of the state.

(b) (a) Every railroad company subject to this chapter shall report again to the department by telegraph or telephone as soon as possible after it has occurred, every accident and the general cause thereof, involving loss of life or serious injury to passenger or employee. and; within twenty (20) days after such accident, the company shall make a full report of the cause thereof to the department and the department shall investigate in such manner and by such persons as it may deem best the causes of any accident on any railroad involving loss of life; and every corporation; at all times; shall furnish to the department; its appointees; or its inspectors any information relative to such accidents. Such reports and information shall not be used in the trial of any suits for damages arising out of said accidents. After such investigation, the department shall make a report to the railroad company of its conclusion and recommendations regarding such accidents and the causes thereof; and the proper steps to be taken by the railroad company to prevent like accidents; and unless the railroad company shall, in a reasonable time; comply with and carry out said recommendations; said department shall make the same public; if it shall deem best so to do; by publishing the same in any newspaper or newspapers in the state; or in the locality where the accident took place.

(c) Whenever the department secures reliable information; or complaint shall have been made; or; because of reports made by its inspectors; shall have reason to believe; that any carrier in this state does not keep its road or equipment in proper condition and repair for the health and safety of its employees or the public; or that any carrier as now required by law does not maintain adequate and suitable passenger depot buildings and platforms; said depot with the passageway to the adjacent street to be well lighted; to be kept well heated and in approved sanitary condition; supplied with wholesome water and closets for men and women; and kept open at least one (1) hour before and fifteen (15) minutes after the arrival of each passenger train stopping at said station; or that any carrier does not keep its passenger cars well cleaned and in good sanitary condition; well lighted and properly heated; and supplied with closets for men and women; or that any carrier does not keep and maintain adequate and suitable freight depots; buildings; switches; and side tracks for the receiving; protecting; handling; forwarding; and delivery of all freight offered for

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shipment or received at said stations; or that any carrier or carriers do not so run; operate; or schedule their passenger trains as to make reasonable and proper connections at places where they intersect each other; or that there is a dangerous defect in connection with the operation of any railroad or in any railroad bridge; culvert; curve; embankment; water tank; crane; frog; railroad or wagon crossing; ties or tracks; motive power; stations; rolling stock; machinery; or in any roadbed or ground used in connection with the operation of any railroad or any dangerous neglect or fault in the construction; equipment; or management of any railroad within the state of Indiana; it shall be the duty of the department to cause such investigation to be made as it may deem necessary. When such investigation shall have been made; the department shall make a report to the manager or superintendent of the railroad company. In said report and recommendations; the department shall make an accurate statement of the time such examination was made; of the exact location; character; and extent of such defects or omissions; if any such shall have been found; and shall also recommend such reasonable changes and improvements; additions; buildings; and accommodations; as are; in the opinion of the department; necessary to remedy such faults; neglects; requirements; or defects. Such recommendations shall set out specifically a reasonable time within which such improvements or changes or additions shall be made by the railroad company; and if they are not so made within said time so specified; then the department; if it deem it best so to do; may commence proceedings by mandamus or other remedy; in some circuit or superior court having jurisdiction of the carriers; to enforce compliance with its order. All courts; circuit; superior; appellate; or supreme; as shall obtain jurisdiction in these cases; shall give preference to such cases and shall hear and determine the same speedily to the end that the public interests may not suffer.

(d) (b) Whenever the department shall secure reliable information, or complaint shall have been made, or, because of reports made by its inspectors, shall have reason to believe, that any carrier in this state does not provide and adequately maintain sanitary drinking water and sanitary dispensers therefor on all locomotives and cabooses in use, or that any such carrier does not provide a room or rooms at all terminals, for the use of the department's employees, containing adequate wash basins, shower baths, inside toilets, sanitary drinking water dispensed in a sanitary manner, and sufficient lockers for checking employees' clothing, it shall be the duty of the department to cause such investigation to be made as it may deem necessary, and when such investigation shall have been made, the department shall make a report

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to the manager or superintendent of the railroad company. In said report and recommendations, the department shall make an accurate statement of the time such examination was made, of the exact location, character, and extent of such defects or omissions, if any such shall have been found, and shall also recommend such reasonable changes and improvements, additions, buildings, and accommodations, as are, in the opinion of the department, necessary to remedy such faults, neglects, requirements, or defects. Such recommendations shall set out specifically a reasonable time within which such improvements or changes or additions shall be made by the railroad company, and if they are not so made within said time so specified, then the department, if it considers it best so to do, may commence proceedings by mandamus or other remedy, in some circuit or superior court having jurisdiction of the carriers, to enforce compliance with its order. All courts, circuit, superior, appellate, or supreme, as shall obtain jurisdiction in these cases, shall give preference to such cases, and shall hear and determine the same speedily to the end that the employees' interests and the public interests may not suffer.

(e) If two (2) or more railroad corporations whose tracks cross each other at the same level; agree to separate the grades; they may apply to the department; which shall thereupon determine when; and in what manner and by which corporation said work and each portion of it shall be done; and shall apportion all charges and expenses caused by making such alterations and all future charges for keeping the necessary structure connected therewith in repair among said corporations. For said purpose; the corporations may; under the direction of the department; make all necessary changes in the location; grade; and construction of said railroad; and; so far as may be necessary; may take additional land therefor; and may raise; lower; or otherwise change any and all highways. In the exercise of such powers; said corporations; and any person who sustains any damages thereby; shall have all rights; privileges; and remedies; and be subject to all the duties; liabilities; and restrictions provided by law in the case of land taken by railroad corporations.

(f) If one (1) of two (2) or more railroad corporations whose tracks cross each other at the same level; desires to separate the grades; said railroad corporation may file its petition with the department; with blueprints and maps attached; setting out in detail how such crossing can best be made. Thereupon; the department shall give notice to the corporation or corporations complained of; as in other cases; and such petition shall be tried; and the department shall determine whether or not said grades shall be separated; in what manner and by which

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corporation said work and each portion of it shall be done, and shall apportion all charges and expenses caused by making such alterations; and all future charges for keeping the necessary structure connected therewith in repair among said corporations. For said purpose, the corporations may, under the direction of the department, make all necessary changes in the location, grade, and construction of said railroads; and, so far as may be necessary, may take additional land therefor and may raise, lower, or otherwise change any and all highways. In the exercise of such powers, said corporations, and any person who sustains any damage thereby, have all the rights, privileges, and remedies and are subject to all the duties, liabilities, and restrictions provided by law in the case of land taken by railroad corporations.

SECTION 3. IC 8-9-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) As used in this chapter, "operating crew member" means a railroad employee described in ~~IC 8-9-2-1(n)~~: **who is able to:**

- (1) read and understand the timetables of the carrier that employs the railroad employee;
- (2) read ordinary handwriting in the English language;
- (3) speak, hear, and understand the English language; and
- (4) see, distinguish, and understand the signals required by the book of rules of the carrier governing the operation of the locomotives and trains of the carrier.

(b) In addition to satisfying the requirements of subsection (a), the following railroad employees must pass the regular examination prescribed by the carrier concerning the rules and regulations governing their particular position:

- (1) Engineers.
- (2) Conductors.
- (3) Flagmen.
- (4) Firemen, brakemen, or yard brakemen or helpers.
- (5) Yard conductors or foremen.

SECTION 4. IC 9-21-8-41.7, AS ADDED BY P.L.8-2010, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 41.7. (a) For purposes of this section, "railroad flagman" ~~has the meaning set forth in IC 8-9-2-1(i)~~: **means a person who furnishes flag protection as prescribed by rules of the carrier.**

(b) A person who operates a vehicle shall obey the instructions of a railroad flagman to stop the vehicle before approaching a location in which a train or other on-track equipment is or may be located.

SECTION 5. THE FOLLOWING ARE REPEALED [EFFECTIVE

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JULY 1, 2011]: IC 8-3-1-3; IC 8-3-1-4; IC 8-3-1-5; IC 8-3-1-6;
IC 8-3-1-7; IC 8-3-1-8; IC 8-3-1-9; IC 8-3-1-10; IC 8-3-1-11;
IC 8-3-1-12; IC 8-3-1-13; IC 8-3-1-14; IC 8-3-1-15; IC 8-3-1-16;
IC 8-3-1-17; IC 8-3-1-19; IC 8-3-20; IC 8-9-2.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

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