First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1310

AN ACT to amend the Indiana Code concerning transportation.

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

SECTION 1. IC 8-6-4-0.3, AS ADDED BY P.L.220-2011, SECTION 193, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 0.3. (a) An ordinance that would be permitted under section ~~1(c)~~ **1(e)** of this chapter, as added by P.L.101-1993, that was adopted before April 27, 1993:

(1) is legalized; and

(2) may be enforced after May 11, 1993.

(b) The Indiana department of transportation shall conduct a review of crossing safety levels at all crossings to which an ordinance legalized under this section applies. The department shall complete a study required by this subsection not later than one (1) year after April 27, 1993.

(c) If the Indiana department of transportation finds, based upon the results of the department's review under subsection (b), that the crossing safety level at a crossing to which an ordinance legalized under this section applies creates an undue risk of harm to the public, the department shall, after consulting with the railroad and the municipality, develop a program to increase crossing safety at the crossing to an acceptable level, as determined by the department.

(d) A program to increase crossing safety under subsection (c) must be decided after an evaluation of all remedies available to the Indiana department of transportation and the costs and benefits of each remedy.

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The department must consider the following in an evaluation of the costs and benefits of each remedy upon the municipality:

(1) The degree to which the remedy is likely to increase safety at the crossing.

(2) The economic impact of the cost of the remedy, including possible cost-sharing mechanisms.

(3) The impact of the remedy upon the environment in the municipality.

SECTION 2. IC 8-6-4-1, AS AMENDED BY P.L.182-2009(ss), SECTION 507, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) A railroad company operating in this state shall equip every locomotive engine with a whistle and a bell, maintained in good working order, such as are used by other railroad companies. Except when approaching a crossing to which an ordinance adopted under subsection ~~(d)~~ **(e)** applies, the engineer or other person in charge of or operating an engine upon the line of a railroad shall, when the engine approaches the crossing of a turnpike, public highway, or street in this state:

(1) sound the whistle on the engine distinctly not less than four (4) times, which sounding shall be prolonged or repeated until the crossing is reached; and

(2) ring the bell attached to the engine continuously from the time of sounding the whistle until the engine has fully passed the crossing.

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

(1) not more than one-fourth (1/4) mile in advance of a crossing or multiple consecutive crossings; and

(2) visible from an approaching train;

to notify the engineer or other person in charge of or operating an engine to sound the engine's whistle in accordance with federal law. The railroad company shall maintain the sign in good repair or replace the sign. However, this subsection does not apply to a crossing to which an ordinance adopted under subsection ~~(d)~~ **(e)** applies. 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 thirty (30) days after the maintenance of way supervisor is notified under this subsection, repair or replace the missing or damaged whistle post.

(c) **Except as provided in subsection (d),** it is unlawful for an engineer or other person in charge of a locomotive to move the locomotive, or allow it to be moved, over or across a turnpike, public

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highway, or street crossing if the whistle ~~and bell are~~ **is** not in good working order. **Except as provided in subsection (d),** it is unlawful for a railroad company to order or permit a locomotive to be moved over or across a turnpike, public highway, or street crossing if the whistle ~~and bell are~~ **is** not in good working order. When a whistle ~~or bell~~ is not in good working order, the locomotive must stop before each crossing and proceed only after manual protection is provided at the crossing by a member of the crew unless manual protection is known to be provided.

(d) If the bell of a locomotive becomes inoperable after the daily inspection required under 49 CFR 229.21, the locomotive may be operated until the next daily inspection required under 49 CFR 229.21.

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

(1) school bus routes;
(2) emergency service routes;
(3) hazardous materials routes;
(4) pedestrian traffic;
(5) trespassers;

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(6) recreational facilities;
(7) trails; and
(8) measures to increase safety in the corridor, including:
(A) four (4) quadrant gates;
(B) median barriers;
(C) crossing closures;
(D) law enforcement programs; and
(E) public education.

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

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

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

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

~~(h)~~ **(i)** The Indiana department of transportation may not revoke the permission granted under subsection ~~(d)~~ **(e)** for an ordinance.

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

SECTION 3. IC 8-6-4-1.3, AS ADDED BY P.L.220-2011, SECTION 194, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.3. (a) An ordinance that would be permitted under section ~~1(c)~~ **1(e)** of this chapter, as added by P.L.101-1993, that was adopted before April 27, 1993:

(1) is legalized; and
(2) may be enforced on May 12, 1993.

(b) The Indiana department of transportation shall conduct a review of crossing safety levels at all crossings to which an ordinance legalized under this section applies. ~~The department shall complete a study required by this subsection not later than April 27, 1994.~~

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(c) If the Indiana department of transportation finds, based upon the results of the department's review under subsection (b), that the crossing safety level at a crossing to which an ordinance legalized under this section applies creates an undue risk of harm to the public, the department shall, after consulting with the railroad and the municipality, develop a program to increase crossing safety to an acceptable level, as determined by the department, at the crossing.

(d) A program to increase crossing safety under subsection (c) must be decided after an evaluation of all remedies available to the Indiana department of transportation and the costs and benefits of each remedy. The department must consider the following in an evaluation of the costs and benefits of each remedy upon the municipality:

(1) The degree to which the remedy is likely to increase safety at the crossing.

(2) The economic impact of the cost of the remedy, including possible cost-sharing mechanisms.

(3) The impact of the remedy upon the environment in the municipality.

SECTION 4. IC 34-30-2-24.4, AS AMENDED BY P.L.182-2009(ss), SECTION 509, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 24.4. ~~IC 8-6-4-1(f)~~ **IC 8-6-4-1(g)** (Concerning a railroad company and its employees for injury or property damage resulting from certain accidents).

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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