

IC 8-6-7.7

Chapter 7.7. Railroad Grade Crossings Fund

IC 8-6-7.7-1

"Grade crossing" defined

Sec. 1. The term "grade crossing" as used in this chapter means a crossing of any railroad and any public highway, street or roadway, at grade.

(Formerly: Acts 1973, P.L.66, SEC.1.)

IC 8-6-7.7-2

Automatic train-activated warning signal

Sec. 2. The Indiana department of transportation, in authorizing the construction of any new grade crossing under IC 8-6-1-7 and section 3.4 of this chapter, may order the installation of automatic train-activated warning signals at the crossing. The department may order the installation, replacement, relocation, modernization, or improvement of automatic train-activated warning signals at any grade crossing in the state in existence at the time the department issues such an order. The authority of the department to require the installation of the signals is exclusive and supersedes the power of any other state or local governmental agency.

(Formerly: Acts 1973, P.L.66, SEC.1.) As amended by P.L.384-1987(ss), SEC.65; P.L.18-1990, SEC.75; P.L.81-1996, SEC.4.

IC 8-6-7.7-3

Closing or abolishing grade crossing

Sec. 3. The Indiana department of transportation may order legally closed and abolished as a public way, within the limits of a railroad right-of-way, any grade crossing then in existence at the time the department assumes jurisdiction of the matter:

- (1) upon a finding that the enhancement of public safety resulting from the closing will outweigh any inconvenience caused by increased circuitry of highway routes; or
- (2) based upon criteria specified in rules adopted by the department under section 3.1 of this chapter.

The order by the department may be issued either in connection with, or independent of, an order relating to automatic train-activated warning signals. The authority of the department to legally close and abolish grade crossings is in addition to any authority by law granted to other state agencies or to local units of government to close and abolish grade crossings. Upon the issuance of an order by the department, the railroad or railroads involved shall physically remove the crossing from the tracks, and the governmental unit maintaining the highway shall remove or barricade the approaches to the crossing.

(Formerly: Acts 1973, P.L.66, SEC.1.) As amended by P.L.384-1987(ss), SEC.66; P.L.18-1990, SEC.76; P.L.81-1996, SEC.5.

IC 8-6-7.7-3.1

Duty of department to specify criteria; considerations in applying criteria

Sec. 3.1. (a) The Indiana department of transportation shall adopt rules under IC 4-22-2 specifying criteria for:

- (1) the department to use in determining whether to open a new public railroad grade crossing; and
- (2) the department or a unit (as defined in IC 36-1-2-23) to use in determining whether to abolish a public railroad grade crossing.

(b) In applying criteria required by subsection (a) to determine whether to open a new public railroad grade crossing, deny a public grade crossing closure, or abolish a public railroad grade crossing, the department or unit shall consider the following:

- (1) Timetable speed of passenger trains operated through the crossing.
- (2) Distance to an alternate crossing.
- (3) Accident history of the crossing for the five (5) years preceding the department's or the unit's consideration.
- (4) Amount of vehicular traffic and posted speed limits for the crossing.
- (5) Amount of freight trains and their timetable speeds operated through the crossing.
- (6) Type of warning device present at the crossing, if any.
- (7) Alignment of the roadway and the railroad, and the angle of the intersection of an alignment at the crossing.
- (8) Use of the crossing by:
 - (A) trucks carrying hazardous materials;
 - (B) vehicles carrying passengers for hire;
 - (C) school buses; and
 - (D) emergency vehicles.
- (9) Other appropriate criteria as determined by the department.

As added by P.L.81-1996, SEC.6.

IC 8-6-7.7-3.2

Petition for closure; public hearing; determination and findings by unit

Sec. 3.2. (a) A person may petition a unit (as defined in IC 36-1-2-23) under whose jurisdiction a public railroad crossing lies for the closure of a public railroad crossing. The unit shall conduct a public hearing on the petition.

(b) Except as provided in subsection (c), if the unit determines that the crossing meets the criteria adopted by the Indiana department of transportation under section 3.1 of this chapter for closing a crossing, the unit shall approve the petition described in subsection (a) and issue an order to close the crossing. The unit shall provide a copy of the unit's findings to the Indiana department of transportation.

(c) If the unit determines that:

- (1) the crossing meets the criteria for closure adopted by the

Indiana department of transportation under section 3.1 of this chapter; and

(2) a compelling reason has been shown to exist for the crossing to remain open;

the unit shall deny a petition to close the crossing. The unit shall provide a copy of the unit's findings to the Indiana department of transportation.

(d) If the unit determines that the crossing does not meet the criteria for closure adopted by the Indiana department of transportation and section 3.1 of this chapter, the unit may deny a petition to close the crossing.

(e) Notwithstanding subsections (a) through (d), a unit and a railroad may agree to close a crossing within the jurisdiction of the unit.

As added by P.L.81-1996, SEC.7.

IC 8-6-7.7-3.3

Appeal

Sec. 3.3. (a) If a unit denies a petition to close a crossing under section 3.2(c) of this chapter, the Indiana department of transportation may schedule an appeal on the denial of the petition as set forth in this section. The decision to schedule or not schedule an appeal is:

- (1) in the sole discretion of the department;
- (2) final and conclusive; and
- (3) not subject to review under IC 4-21.5.

(b) If the Indiana department of transportation after reviewing the findings of the local unit on the petition determines:

- (1) the crossing meets the criteria for closure, opening, or denial of a closure, adopted by the Indiana department of transportation under section 3.1 of this chapter; and
- (2) that a compelling reason has been shown for the crossing to remain open;

the Indiana department of transportation shall issue written findings that the crossing may remain open.

(c) If the Indiana department of transportation after reviewing the findings of the local unit on the petition determines:

- (1) the crossing meets the criteria for closure adopted by the Indiana department of transportation under section 3.1 of this chapter; and
- (2) that a compelling reason has not been shown for the crossing to remain open;

the Indiana department of transportation shall issue an order abolishing the crossing under section 3 of this chapter.

As added by P.L.81-1996, SEC.8.

IC 8-6-7.7-3.4

Order approving petition to open crossing

Sec. 3.4. If the Indiana department of transportation, upon receiving a petition to open a crossing, finds:

(1) that the proposed crossing meets the criteria required to open a new grade crossing adopted by the department under section 3.1 of this chapter; or

(2) that a compelling reason has been shown for the crossing to exist;

the department shall issue an order approving the petition.

As added by P.L.81-1996, SEC.9.

IC 8-6-7.7-4

Warning signals; costs; installation; time; civil penalties

Sec. 4. (a) The Indiana department of transportation, whenever it orders the construction, installation, replacement, relocation, modernization, or improvement of automatic train-activated warning signals, may prescribe the division of the costs of the equipment, the installation of the equipment, the construction, and the operation and maintenance of the equipment between the railroad and the public. The share of the costs allocated to the public shall be paid with funds appropriated to the department for such purpose. In allotting the costs, IC 8-23-5-2 applies except as provided in subsections (b) through (c).

(b) Whenever a grade crossing not protected by automatic warning signals is ordered so protected, the department shall prescribe the division of the cost of the equipment, its installation, its operation and maintenance, and its construction between the railroad involved and the public, giving due regard to the net benefits received by the parties, and the causes creating the need for signals at the crossing.

(c) The physical work of constructing, installing, replacing, relocating, modernizing, or improving, and thereafter operating and maintaining automatic warning signals under order of the department shall be performed by the railroad involved. All orders of the department relating to the signals shall provide for allocation among the parties involved for the extraordinary costs of signal repair or replacement if they are damaged or destroyed by accident or external causes.

(d) When the department orders the railroad to proceed with the construction, installation, relocation, modernization, or replacement of automatic signals at a grade crossing, the department shall order the railroad involved to complete the construction, installation, relocation, modernization, or replacement of signals not later than twelve (12) months after the date of the order.

(e) A railroad may request the department for additional time to complete the construction, installation, relocation, modernization, or replacement of signals specified in the department's order under subsection (d). The railroad shall submit the request for additional time in writing to the department. The request shall specifically set forth the basis for the railroad's need for additional time to complete the work. The department's decision to grant or deny a request for additional time is not subject to review under IC 4-21.5.

(f) If the railroad fails to complete the construction, installation,

relocation, modernization, or replacement of signals by the date specified:

- (1) in the department's order under subsection (d); or
- (2) by the department if a request for additional time is granted by the department under subsection (e);

the department may assess a civil penalty against the railroad of not more than one thousand dollars (\$1000) for each day the construction, installation, relocation, modernization, or replacement of signals is late.

(g) All civil penalties collected under this section shall be deposited with the treasurer of state to be deposited by the treasurer of state in the railroad grade crossing fund created under IC 8-6-7.7-6.1.

(Formerly: Acts 1973, P.L.66, SEC.1.) As amended by P.L.384-1987(ss), SEC.67; P.L.18-1990, SEC.77; P.L.87-1997, SEC.3.

IC 8-6-7.7-5

Orders and procedures of department; federal funds; contracts for work

Sec. 5. (a) Orders of the Indiana department of transportation relating to automatic train-activated warning signals and to the closing of grade crossings may be issued:

- (1) on the department's own initiative;
- (2) upon petition of a governing body or authorized official administering a public highway or street; or
- (3) upon petition of a person or entity operating a railroad.

All procedures shall be prescribed by rules established by the department, which must give regard to the requirements of notice and opportunity to be heard.

(b) Whenever any grade crossing is under consideration by the department for the installation of automatic warning signals, the department shall, in cooperation with other governmental agencies of the state, determine if the installation of signals can be made with the use of federal aid funds. If funds are available, the department's order may provide for the use of the funds and for all necessary compliance with applicable federal statutes and regulations.

(c) The authority vested in the department to order the installation, replacement, relocation, modernization, or improvement of automatic warning signals and the closing of grade crossings does not preclude the signal work or closing being performed by contract between a railroad and the governmental agency controlling the public way. If a mutually agreed upon contract for action has been made, no petition to the department is required, and if a contract is agreed upon after the department has assumed jurisdiction, the department may dismiss the proceeding upon the motion of a party.

(d) For the purpose of expediting railroad grade crossing protection projects that require the obligation of local funds to supplement federal aid funds available for railroad grade crossing protection, the department may make loans or grants to local units

from the railroad grade crossing fund created under section 6.1 of this chapter to provide the money necessary to supplement those federal aid funds. The loans or grants shall be made under terms and conditions established by the department under rules adopted under IC 4-22-2. A local unit may contract with a railroad concerning payment of the money necessary to supplement federal aid funds upon terms and conditions as they may agree.

(Formerly: Acts 1973, P.L.66, SEC.1.) As amended by P.L.97-1985, SEC.1; P.L.384-1987(ss), SEC.68; P.L.18-1990, SEC.78.

IC 8-6-7.7-6

Repealed

(Repealed by Acts 1979, P.L.88, SEC.2.)

IC 8-6-7.7-6.1

Railroad grade crossing fund

Sec. 6.1. (a) The railroad grade crossing fund is created.

(b) The railroad grade crossing fund may be used by the Indiana department of transportation for the following purposes:

- (1) To carry out the provisions of this chapter.
- (2) For passive railroad crossing safety improvement projects by a unit of government, including:
 - (i) illumination;
 - (ii) pavement markings;
 - (iii) median barriers;
 - (iv) signage; and
 - (v) other safety improvement measures.
- (3) For passive railroad crossing safety projects submitted by railroad companies, including:
 - (i) illumination;
 - (ii) sight obstruction removal;
 - (iii) signage;
 - (iv) reflectorized taping; and
 - (v) other safety improvement measures.

(c) Notwithstanding subsection (b), an entity undertaking a passive railroad crossing safety project under this section shall pay the cost of acquiring any easements required by the passive railroad crossing safety project and shall be responsible for the maintenance and operation of the completed project.

(d) The balance of money in the railroad grade crossing fund does not revert to the state general fund at the close of any fiscal year but remains available to the Indiana department of transportation.

As added by Acts 1979, P.L.88, SEC.1. Amended by P.L.384-1987(ss), SEC.69; P.L.18-1990, SEC.79; P.L.82-1996, SEC.1; P.L.121-2001, SEC.2.

IC 8-6-7.7-7

Repealed

(Repealed by Acts 1981, P.L.41, SEC.75.)