

Representative Kay J. Christofferson proposes the following substitute bill:

1 **NIGHTTIME HIGHWAY CONSTRUCTION NOISE**

2 **AMENDMENTS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kay J. Christofferson**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Transportation Code by amending provisions relating to
11 nighttime highway construction.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies definitions related to nighttime highway construction;
- 15 ▶ requires a local jurisdiction to permit certain activities related to nighttime highway
16 construction;
- 17 ▶ allows a local jurisdiction to request mitigation for unreasonable noise disturbances
18 caused by nighttime highway construction; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:



26 [72-6-112.5](#), as enacted by Laws of Utah 2016, Chapter 178

27

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **72-6-112.5** is amended to read:

30 **72-6-112.5. Definitions -- Nighttime highway construction noise -- Exemptions --**
31 **Permits.**

32 (1) As used in this section:

33 (a) (i) "Front row receptor" means a noise-sensitive residential receptor that is:

34 (A) immediately adjacent to a transportation facility; or

35 (B) within 800 feet of a transportation facility that is within a commercial or
36 industrialized area.

37 (ii) "Front row receptor" includes a residence that is contiguous to a property
38 immediately adjacent to a transportation facility in a residential area.

39 (b) "Nighttime highway construction" means highway construction occurring between
40 the hours of 10:00 p.m. and 7:00 a.m.

41 (c) "Nuisance" means the same as that term is defined in Section [78B-6-1101](#).

42 (d) (i) "Permitted activities" means activities occurring between the hours of 7:00 p.m.
43 and 7:00 a.m. that are related to and necessary for nighttime highway construction, whether
44 occurring at the construction site or at a gravel pit or other site for production of raw materials,
45 and includes:

46 (A) loading and unloading of trucks;

47 (B) asphalt mixing and hauling; and

48 (C) concrete mixing and hauling.

49 (ii) "Permitted activities" does not include:

50 (A) blasting;

51 (B) crushing; or

52 (C) operating a vehicle with a backup alarm engaged.

53 (2) A state highway construction project conducted on a road where the normal posted
54 speed limit is 55 miles per hour or greater is exempt from any noise ordinance, regulation, or
55 standard of a local jurisdictional authority.

56 (3) A state highway construction project conducted on a road where the normal posted

57 speed limit is less than 55 miles per hour is exempt from any noise ordinance, regulation, or
58 standard of a local jurisdictional authority if the department:

59 (a) provides reasonable written notice at least 48 hours in advance of any required
60 nighttime highway construction to each residential dwelling located within front row receptors
61 of the activity;

62 (b) determines a net community, including traveler community, benefit exists to
63 conduct nighttime highway construction after considering the following:

- 64 (i) public health;
- 65 (ii) project completion time;
- 66 (iii) air quality;
- 67 (iv) traffic;
- 68 (v) economics;
- 69 (vi) safety; and
- 70 (vii) local jurisdiction concerns; and

71 (c) institutes best management noise reduction practices, as determined by the
72 department, for front row receptors, in consultation with local government or the local
73 jurisdictional authority for all nighttime highway construction, which may include:

- 74 (i) equipment maintenance;
- 75 (ii) noise shielding;
- 76 (iii) scheduling the most noise intrusive activities during the day; and
- 77 (iv) other noise mitigation methods.

78 (4) (a) Subject to Subsection (2) or (3), a state highway project shall secure required
79 noise permits from the local jurisdictional authority to conduct nighttime highway construction.

80 (b) To the extent practical, the department shall coordinate with the local jurisdictional
81 authority during the pre-construction phase of a project to address noise exemption conditions.

82 (5) A local jurisdictional authority shall issue a nighttime highway construction permit
83 limited to permitted activities if:

84 (a) the applicant provides evidence that the permitted activities are directly related to
85 and necessary for a nighttime highway construction project for which the department has
86 obtained a nighttime highway construction permit from a local jurisdictional authority pursuant
87 to Subsection (2) or (3); and

88 (b) the local jurisdictional authority determines that any nuisance that may be caused
89 by the nighttime highway construction may be reasonably mitigated.

90 [~~5~~] (6) (a) A local jurisdictional authority shall issue a nighttime highway
91 construction noise permit without additional requirements to the department at the request of
92 the department or the department's designated project agent if the requirements of Subsections
93 (2) and (3) are met.

94 (b) In conjunction with the corrective action described in Subsection (7)(b), a local
95 jurisdictional authority may request adjustments to a noise permit to mitigate unreasonable
96 noise disturbances caused by nighttime highway construction or permitted activities.

97 [~~6~~] (7) (a) For the exemption provided in Subsection (3) and in accordance with Title
98 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules
99 establishing procedures:

100 (i) for a local jurisdictional authority or local government to appeal the decision of the
101 department to conduct nighttime highway construction on roads where the normal posted speed
102 limit is less than 55 miles per hour; and

103 (ii) for the local jurisdictional authority to request that the department enforce the terms
104 of a noise permit.

105 (b) After review and upon receiving a written notice from a local jurisdictional
106 authority that the conditions for the noise exemption permit are not met, the department shall
107 take corrective action to ensure nighttime highway construction activities meet requirements of
108 the local permit.