

Representative Kay J. Christofferson proposes the following substitute bill:

NIGHTTIME HIGHWAY CONSTRUCTION NOISE

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: David G. Buxton

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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; or

51 (B) crushing.

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

55 (3) A state highway construction project conducted on a road where the normal posted
56 speed limit is less than 55 miles per hour is exempt from any noise ordinance, regulation, or

57 standard of a local jurisdictional authority if the department:

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

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

63 (i) public health;

64 (ii) project completion time;

65 (iii) air quality;

66 (iv) traffic;

67 (v) economics;

68 (vi) safety; and

69 (vii) local jurisdiction concerns; and

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

73 (i) equipment maintenance;

74 (ii) noise shielding;

75 (iii) scheduling the most noise intrusive activities during the day; and

76 (iv) other noise mitigation methods.

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

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

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

83 (a) the applicant provides evidence that the permitted activities are directly related to
84 and necessary for a nighttime highway construction project for which the department has
85 obtained a noise permit from a local jurisdictional authority pursuant to Subsection (4); and

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

88 ~~[(5)]~~ (6) A local jurisdictional authority shall issue a nighttime highway construction
89 noise permit without additional requirements to the department at the request of the department
90 or the department's designated project agent if the requirements of Subsections (2) and (3) are
91 met.

92 (7) (a) A local jurisdictional authority may request adjustments to a nighttime highway
93 construction permit to mitigate unreasonable noise disturbances caused by nighttime highway
94 construction or permitted activities.

95 (b) If adjustments are requested as described in Subsection (7)(a), the nighttime
96 highway construction permit holder shall use best management noise reduction practices to
97 mitigate unreasonable noise disturbances.

98 ~~[(6)]~~ (8) (a) For the exemption provided in Subsection (3) and in accordance with Title
99 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules
100 establishing procedures:

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

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

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