

**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

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**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

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

87 (b) During the application process, a local jurisdictional authority may request that the

88 applicant make efforts to mitigate unreasonable noise disturbances caused by nighttime  
89 highway construction or permitted activities.

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

94 (7) (a) After construction and operations have begun, a local jurisdictional authority  
95 may request adjustments to a nighttime highway construction permit to mitigate unreasonable  
96 noise disturbances caused by nighttime highway construction or permitted activities.

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

100 ~~[(6)]~~ (8) (a) For the exemption provided in Subsection (3) and in accordance with Title  
101 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules  
102 establishing procedures:

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

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

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