



Kristin Rhee

Final Analysis
Legislative Service Commission

Am. Sub. S.B. 42
123rd General Assembly
(As Passed by the General Assembly)

Sens. Gardner, Schafrath, Spada, Blessing, Carnes, White, Mumper, Latta, Watts, Finan, DiDonato

Reps. Van Vyven, Mottley, Terwilleger, Grendell, Barnes, Roberts, Corbin, O'Brien, Gerberry, Perry, Ogg, Oلمان, Callender, Peterson, Opfer, Haines, Austria, Logan

Effective date: *

ACT SUMMARY

- Extends the authority of townships to adopt noise control regulations.

CONTENT AND OPERATION

Former law

Under former law, a township had *limited* authority to regulate noise within the unincorporated territory of the township. The Township Law allowed a board of township trustees to adopt regulations and orders necessary to control noise at *any premises to which a D liquor permit* (permits authorizing sales for on and/or off premises consumption) had been issued by the Division of Liquor Control if the premises were contiguous to an area zoned for residential use (sec. 505.172--amended by the act). In addition, the Township Law allowed a board of township trustees to adopt necessary regulations and orders to control noise from passenger cars, motorcycles, and internal combustion engines and to regulate all vehicle parking in the unincorporated territory of the township (sec. 505.17--not in or affected by, but referred to in, the act).

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

Changes proposed by the act

The act authorizes a board of township trustees to control by regulation or order, within the unincorporated territory of the township, noise that is not exempt by the act or otherwise governed by the Township Law pertaining to vehicle noise and parking, but that is generated within any areas zoned for residential use or generated at any premises holding a D liquor permit. The act exempts from such a noise regulation or order (1) any person who is engaging in "agriculture" (see **COMMENT 1**), (2) any noise resulting from the drilling, completion, operation, maintenance, or construction of any crude oil or natural gas wells or pipelines or any appurtenances to those wells or pipelines or from the distribution, transportation, gathering, or storage of crude oil or natural gas, and (3) any person who is engaging in coal mining and reclamation operations or in surface mining activities (see **COMMENT 2** and 3). In addition to those exemptions, the act exempts from such a noise regulation or order any business (other than a business operating at a premises to which a D liquor permit has been issued) or industry which is in existence and operating on the act's effective date, but this exemption does not extend to any new operation or expansion of that business or industry if the new operation or expansion results in *substantially* increased noise levels from those generated by the business or industry *on the effective date of the act*.¹ (Sec. 505.172(A), (B), and (C).)

Any violation of a noise regulation or order adopted pursuant to the act is a minor misdemeanor, and any fines levied and collected for a violation must be paid into the township general fund (these provisions are continuing law). The act applies, to those violations, continuing authority for a person aggrieved by another person's violation of a noise regulation or order to seek a declaratory judgment, an injunction, or other appropriate relief against the other person for the violation and to recover reasonable attorney's fees if the aggrieved person prevails in the civil action. (Sec. 505.172(D) and (E).)

COMMENT

1. The definition of "agriculture" used in the act includes the following: farming; ranching; aquaculture; apiculture and related apicultural activities, production of honey, beeswax, honeycomb, and other related products; horticulture; viticulture, winemaking, and related activities; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-

¹ *This date will occur before it is possible for any township to actually adopt any regulation or order regulating noise as permitted by the act.*

bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production, the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production; and any additions or modifications to the foregoing made by the Director of Agriculture by rule adopted in accordance with the Administrative Procedure Act (sec. 1.61--not in, but referred to in, the act).

2. The definition of "surface mining" used in the act is as follows: "all or any part of a process followed in the production of minerals from the earth or from the surface of the land by surface excavation methods, such as open pit mining, dredging, placering, or quarrying, and includes the removal of overburden for the purpose of determining the location, quantity, or quality of mineral deposits, and the incidental removal of coal at a rate less than one-sixth the total weight of minerals and coal removed during the year, but does not include: test or exploration boring; mining operations carried out beneath the surface by means of shafts, tunnels, or similar mine openings; the extraction of minerals, other than coal, by a landowner for his own noncommercial use where such material is extracted and used in an unprocessed form on the same tract of land; the extraction of minerals, other than coal, from borrow pits for highway construction purposes, provided that the extraction is performed under a bond, a contract, and specifications that substantially provide for and require reclamation practices consistent with the requirements of this chapter; the removal of minerals incidental to construction work, provided that the owner or person having control of the land upon which the construction occurs, the contractor, or the construction firm possesses a valid building permit; or the removal of minerals to a depth of not more than five feet, measured from the highest original surface elevation of the area to be excavated, where not more than one acre of land is excavated during 12 successive calendar months" (sec. 1514.01(A)--not in, but referred to in, the act).

3. "Coal mining and reclamation operations," as used in the act, means coal mining operations and all activities necessary and incident to the reclamation of those operations (sec. 1513.01(B)--not in, but referred to in, the act).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-99	p. 82
Reported, S. State & Local Gov't & Veterans Affairs	03-16-99	p. 201
Passed Senate (33-0)	03-17-99	p. 213
Reported, H. Local Gov't and Townships	05-13-99	p. 662
Passed House (91-5)	05-25-99	pp. 705-706
Concurrence (33-0)	05-26-99	pp. 497-498

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