



COUNTY ADVISORY BULLETIN

CAB

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LEGISLATION TO PROTECT SHOOTING RANGES MAY AFFECT LOCAL LAWS

INTRODUCTION

Legislation was recently enacted by the General Assembly and signed by the Governor that will protect owners, operators, and users of shooting ranges. The primary purpose of the Act was to protect shooting ranges that are in existence and have operated for a number of years from legal action by residents in the vicinity of the shooting range. Many shooting ranges were established decades ago in isolated areas; however, as development has taken place and people have moved near shooting ranges, more complaints and legal action to suppress or stop objectionable noise have put some shooting ranges out of business. Proponents of the legislation argued that they should receive protections similar to that of farmers under Ohio's Right-To-Farm Law.

[Amended Substitute House Bill 209](#) will become effective on November 21, 1997. This legislation was sponsored by Representative Twyla Roman (R - Akron) at the request of the Wildlife Legislative Fund of America and was also supported by the National Rifle Association. The bill generally:

1. Expands the current Hunter Harassment Law by prohibiting the creation of noise that will interfere with hunting when the noise is not created on lands or waters on which hunting is legal.
2. Requires the Chief of the Department of Natural Resources' Division of Wildlife to establish standards for shooting ranges by rule.
3. Provides limited immunity from civil and criminal liability to persons who own, operate or use shooting ranges in substantial compliance with the Chief's rules.
4. Prohibits courts from issuing injunctions against owners or operators shooting ranges in nuisance actions if the court finds that the shooting range was in substantial compliance with the Chief's rules.
5. Impacts on the ability of local governments to regulate shooting ranges under zoning regulations and certain other local laws.

The primary purpose of this CAB is to summarize the law with particular emphasis on how the Act applies to the local regulation of shooting ranges under zoning or other local laws. The CAB also will generally explain the other provisions of the Act.

WHAT IS A SHOOTING RANGE?

Under the Act, a shooting range is defined as a facility operated for the purpose of shooting firearms or archery equipment. It also includes commercial bird shooting ranges and wild animal preserves. It does not include shooting ranges owned or operated by municipalities, counties, or township police districts.

CONTENT ON DIVISION OF WILDLIFE RULES ON SHOOTING RANGES

The Chief of the Division of Wildlife, within 180 days must adopt rules that establish generally accepted standards for shooting ranges. The rules of the Chief may not be more stringent than National Rifle Association standards. The rules must include:

1. Standards for the limitation and suppression of noise.
2. Standards for the hours of operation of shooting ranges of various types at various locations.
3. Standards for public safety.

In addition, the rules may include standards for the reconstruction, enlargement, remodeling, or repair of any structure or facility that is part of a shooting range.

IMPACT ON LOCAL LAWS REGULATING THE ESTABLISHMENT OF NEW SHOOTING RANGES

The new law has very little impact on local laws dealing with the establishment of new shooting ranges. The Act specifically requires shooting ranges, at the time of their establishment, to "comply with all existing local ordinances, regulations, or laws." As such, new shooting ranges must comply with county and township zoning regulations when being established.

IMPACT ON MODIFICATIONS TO EXISTING SHOOTING RANGES

The major impact of the bill as it relates to local laws, including county or township zoning, appears to be limited to the reconstruction, enlargement, remodeling, or repair of structures or facilities that are part of existing shooting ranges.

While the Chief of the Division of Wildlife may adopt rules establishing standards for the reconstruction, enlargement, remodeling, or repair of any structure or facility that is part of a shooting range, these standards do not pre-empt local laws that also establish standards for structures or facilities that apply generally to all structures or facilities and

not exclusively or primarily " to structures or facilities that are part of a shooting range." In other words, if a county or township zoning resolution includes standards relating to the reconstruction, enlargement, remodeling or repair of structures or facilities that generally apply to all structures or facilities, there is no question that the shooting range must comply. If the standards single out structures or facilities that are part of a shooting range, however, they may no longer be authorized.

To complicate the matter even further, the Act specifically reserves the right of counties and townships to issue or deny conditional zoning certificates for the reconstruction, enlargement, remodeling, or repair of an existing shooting range pursuant to Division C of ORC 303.14 or 519.14.

Thus, notwithstanding the previous provision, if a county or township zoning resolution specifically requires a conditional use permit for the modification of structures or facilities that are part of an existing shooting range, no pre-emption is anticipated under the Act. In this case, however, as is required under current practices, the zoning resolution must require modifications of structures or facilities that are part of an existing shooting range to obtain a conditional use permit. The zoning resolution must also include reasonable and specific standards which, if met, entitles the owner of the existing shooting range to approval of the conditional use permit. In our experience, however, conditional uses are generally used for the establishment of new uses, not the modification of existing uses as this is generally governed by provisions of the zoning resolution dealing with non-conforming uses.

In this regard, the Act also addresses current law related to nonconforming uses. Nothing in the Act limits the authority of the county or township zoning resolution as it applies to the "completion, restoration, reconstruction, extension, or substitution of nonconforming uses pursuant to section 303.19 or 519.19 of the Revised Code." This language thus conforms with the existing requirement of law that a county or township zoning resolution provide for "non-conforming uses upon such reasonable terms and conditions as are set forth in the zoning resolution."

GENERAL SUMMARY OF STATUTORY PROVISIONS

HB 209 enacts four new sections of the Ohio Revised Code as follows:

ORC SECTION	GENERAL TOPIC
1533.031	<p>Generally prohibits any person from purposely attempting to prevent a hunter from hunting a wild animal by creating loud sounds or noise when the intention is to affect the behavior of the animal being hunted.</p> <p>The prohibition applies when the noise originates on land or water where hunting is not legal and affects animals being hunted on land or water where hunting is legal.</p> <p>The prohibition does not apply to noise that results in the due course of farming, forestry or commercial practices.</p>

1533.83	Includes a series of definitions that are used in ORC Sections 1533.84 and 1533.85.
1533.84	<p>Provides for the adoption of rules by DNR's Chief of the Division of Wildlife, establishing generally accepted standards for shooting ranges.</p> <p>Establishes procedures for the adoption of the rules; requires consultation with political subdivisions or other interested parties; and provides for formal comments on proposed rules.</p> <p>Specifies and provides certain limitations on how county and township zoning and other local laws apply to the establishment, reconstruction, enlargement, remodeling or repair of shooting ranges and structures that are part of a shooting range.</p>
1533.85(A) & (B)	<p>Provides a limited civil and criminal immunity to the owner, operator, or user of a shooting range for harm that is alleged by the creation of noise or the failure to limit or suppress noise at a shooting range.</p> <p>Generally provides that an owner, operator, or user of a shooting range is immune from such civil actions if the individual is in substantial compliance with the Division of Wildlife's rules relating to noise. Likewise, the owner of a shooting range is not subject to criminal prosecution under state law or local laws relating to the creation, limitation or suppression of noise if the owner, operator, or user substantially complies with the Chief's noise rules.</p>
1533.85 (C)	Generally prohibits courts from granting an injunction against the owner or operator of a shooting range in a nuisance action if the court finds the owner or operator was in substantial compliance with the noise or public safety rules of the Division of Wildlife. This applies to injunctive relief sought pursuant to state law, local law, or under common law.