

HOUSE BILL REPORT

HB 1702

As Reported by House Committee On:
Local Government

Title: An act relating to clarifying and restating the scope of local authority regarding regulation of fireworks by adopting uniform statewide standards and rules that continue the current limited scope of local authority.

Brief Description: Addressing local authority in the regulation of fireworks.

Sponsors: Representatives Moscoso, Vick, Ryu, Kochmar, Blake, McCabe, Hurst, Stanford, Kagi, Young and Griffey.

Brief History:

Committee Activity:

Local Government: 2/4/15, 2/19/15 [DPS].

Brief Summary of Substitute Bill

- Establishes that counties and cities may enact ordinances regulating fireworks that are more restrictive than state law as to the days and hours of legal sale or use of consumer fireworks, and the types of consumer fireworks sold and used, including limiting or prohibiting the sale or use.
- Establishes that in all counties and cities there is in effect a uniform, statewide fireworks standard, which consists of the following code adopted by reference and without amendment: *NFPA 1124: Code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles*, 2013 edition (NFPA 1124).
- Requires the Chief of the Washington State Patrol, through the Director of Fire Protection, to repeal all of its rules on fireworks that are inconsistent with NFPA 1124, and adopt new rules as may be required to implement and give full effect to the state fireworks law and NFPA 1124, by August 31, 2015.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Takko, Chair; Gregerson, Vice Chair; Fitzgibbon, McBride, McCaslin and Peterson.

Minority Report: Do not pass. Signed by 3 members: Representatives Taylor, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Pike.

Staff: Michaela Murdock (786-7289).

Background:

The Chief of the Washington State Patrol.

The Washington State Patrol (WSP) is a department of state government headed by the Chief of the WSP (Chief). The Chief is appointed by the Governor, and is responsible for appointing WSP officers, special deputies, and certain employees of the Office of the State Treasurer. The Chief and other officers of the WSP may exercise the police powers and duties vested in sheriffs and peace officers generally, as well as other powers and duties prescribed by law.

The Director of Fire Protection.

The Chief is responsible for appointing an officer known as the Director of Fire Protection (Director), also known as the State Fire Marshal. The Director must implement and administer all duties of the Chief that are to be carried out through the Director, as well as all duties of the Director.

The State Fireworks Law.

The State Fireworks Law (SFL) provides that fireworks purchased and used in compliance with its provisions are legal. "Fireworks" are any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, which also meets the definition of articles of pyrotechnic, consumer fireworks, or display fireworks:

- *Articles Pyrotechnic* - Pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction, but not intended for consumer use, and otherwise meet federal standards and regulations.
- *Consumer Fireworks* - Small fireworks devices designed to produce visible effects by combustion that comply with federal regulations of the U.S. Consumer Product Safety Commission.
- *Display Fireworks* - Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks include display pieces that exceed the limits of explosive materials for classification as consumer fireworks.

No license or permit is required to possess or use consumer fireworks that are lawfully purchased at retail. However, a state license must be obtained from the Chief, or a permit from the applicable county or city, for other fireworks activities, such as to manufacture or sell fireworks, make a public display of fireworks, or transport fireworks.

Under the SFL, it is legal to sell and purchase consumer fireworks during specified times from June 29 through July 5, and from December 27 through December 31. Similarly, it is legal to use or discharge consumer fireworks during specified times from June 29 through July 5, and from December 31 to January 1.

A city or county may enact an ordinance within 60 days of June 13, 2002, to limit or prohibit the sale, purchase, possession, or use of consumer fireworks on December 27, 2002, through December 31, 2002. Thereafter, counties and cities may adopt more restrictive ordinances than state law; however, such ordinances do not become effective until at least one year after their adoption.

Fireworks - Rules and Standards.

The Chief, through the Director, has various duties prescribed by the SFL, including to:

- enforce and administer the SFL;
- adopt rules related to fireworks;
- adopt rules to ensure statewide minimum standards for enforcement of the SFL; and
- prescribe uniform, statewide standards for retail fireworks stands.

In addition, each year by October 1, the Chief, through the Director, must adopt a list of the consumer fireworks that may be sold to the public and file the list with the Office of the Code Reviser for publication, unless the previous list is still current.

Counties and cities are required to comply with rules adopted by the Chief. For cities and counties that allow retail fireworks sales, they must also comply with the standards adopted by the Chief for retail fireworks stands.

The National Fire Protection Association.

The National Fire Protection Association (NFPA) is a nonprofit organization that develops and provides consensus codes and standards, research, training, and education related to fire safety and prevention. The NFPA develops standards related to the sale, manufacture, storage, and transportation of fireworks, pyrotechnic articles, and other explosive materials. The standards are known as "NFPA 1124."

The 2013 edition of NFPA 1124, also known as *NFPA 1124: Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*, was adopted in August 2012. This edition was temporarily withdrawn by the NFPA in 2014 for the purpose of deleting provisions related to consumer fireworks. The NFPA has announced that it will reissue NFPA 1124 after revisions are complete, and that future editions of NFPA 1124 will not contain standards for the storage and retail sale of consumer fireworks.

Summary of Substitute Bill:

Provisions of the SFL are modified to specify that a county or city may enact more restrictive ordinances than state law as to the following:

- the days and hours of legal sale of consumer fireworks, including limiting or prohibiting the sale;

- the days and hours of legal use of consumer fireworks, including limiting or prohibiting the use; and
- the types of consumer fireworks that may be sold and used within the geographical boundaries of the county or city, including limiting or prohibiting the sale or use of types of fireworks.

Authority requiring the Chief, through the Director to adopt uniform, statewide standards for retail fireworks stands is repealed. Instead, a uniform, statewide fireworks standard, which consists of the following code, is adopted by reference and without amendment: *NFPA 1124: Code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles*, 2013 edition, as published in August 2012 by the NFPA.

The Chief, through the Director, is required to repeal all of its published rules on fireworks that are inconsistent with the NFPA 1124, by August 31, 2015. The Chief, through the Director, is then required to adopt new rules as may be required to implement and give full effect to the SFL and the NFPA 1124 by August 31, 2015.

All counties and cities that allow retail fireworks sales must comply with the NFPA 1124 and the rules adopted by the Chief, through the Director. Any ordinance, standard, rule, or regulation adopted by a county or city that is in conflict with the SFL is null and void and has no effect. The Chief, through the Director, must enforce the SFL.

Substitute Bill Compared to Original Bill:

While the original bill provides that a county or city may enact more restrictive ordinances than state law as to the days and hours of legal sale and use of consumer fireworks, and the types of consumer fireworks that may be sold and used in the county or city, the substitute bill specifies that restrictions adopted by a county or city may include limiting or prohibiting the sale or use of consumer fireworks.

The substitute bill establishes that the NFPA 1124, adopted in the original bill, is a uniform, statewide standard in effect in all counties and cities. The Chief, through the Director, is required to repeal all of its rules on fireworks that are inconsistent with the NFPA 1124, and to adopt new rules as may be required to implement and give full effect to the SFL and the NFPA 1124 by August 31, 2015. All counties and cities allowing retail fireworks sales must comply with the NFPA 1124 and the rules adopted by the Chief, through the Director.

A section is added to the bill, providing that, if any provision of the bill or its application to any person or circumstance is held invalid, the remainder of the bill or the application of a provision to other persons or circumstances is not affected.

The substitute bill makes additional non-substantive, technical changes to applicable statutes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Now is a good time to have a discussion about the interpretation and implementation of state fireworks regulations. There is growing dispute about the current fireworks law, its enforcement, public safety, and the role of local regulations. This bill proposes adoption of a recently published fireworks code issued by a national non-profit association.

In 1984 the Legislature adopted statutory provisions that allow local jurisdictions to enact more restrictive ordinances as to the days and hours of fireworks sale and use. This bill does not change local control or option on this subject. Nor does the bill dispute the statewide fireworks rules and standards that were adopted in 1995. Instead, this is a straightforward bill about enforcing state law, rules, and regulations concerning fireworks.

If the organizations and people who sell fireworks violate state law, they are penalized. If a local jurisdiction violates state law, though, the Director will not enforce the law. The Director has refused to enforce the SFL and fireworks regulations. The law needs to be enforced equally against people who sell retail fireworks and jurisdictions that regulate them. State preemption on this matter must be observed and protected.

(With concerns) The code adopted by the bill is not up to snuff in terms of what the state has already adopted in rules. Also, local authority to regulate fireworks as proposed in the bill shrinks the authority currently held by local jurisdictions. Stakeholders would like to work with the bill's sponsors to modify the bill's language and address issues of concern.

The changes proposed represent a sea change in the law. Currently, state law requires all cities to meet minimum statewide standards, but allows cities to have more restrictive standards. Some cities do and others do not adopt more restrictive standards. This variation occurs because we are a geographically diverse state. Cities need flexibility to tailor regulations to local situations and environments. This bill will take away local options.

The NFPA 1124 is no longer supported by the NFPA. The standard is very minimal and was crafted with the fireworks industry in mind. It is not the minimum standard the Legislature should adopt. The NFPA 1124 goes against the mission of the NFPA. The NFPA code development process is not substantiated by third-party testing. Adoption of this standard would depart from the normal adoption process in Washington for codes and building standards (*e.g.*, the code adoption process used for the State Building Code). Circumventing usual code adoption processes creates conflict and problems.

Allegations that fire marshals are not enforcing the law is one point of view. The fireworks industry interprets the state law differently than the Director. Cities do comply with state minimum standards.

(Opposed) The proposed scope of state preemption of local government regulatory authority is too heavy-handed and raises significant concerns. Regulation by counties and cities varies

greatly across the state. Some jurisdictions ban or prohibit fireworks; other jurisdictions do not regulate fireworks beyond the minimum standards in state law. This demonstrates robust local control, and reflects community input and the best interest of communities.

If this bill passes, the only thing that counties and cities will be able to regulate are the dates and times of fireworks sale and use. Local jurisdictions will lose the ability to regulate the number of retail stands, the conditions placed on any issuance or revocation of permits, and many other aspects of retail sale that have previously been regulated at the local level. This is a heavy dose of preemption.

Losing local control and citizen input on whether or not to allow fireworks in a community is concerning. Fireworks create fire, noise, and pollution problems. Numerous jurisdictions in the state have adopted rules that are more stringent than state law, and this bill appears to preempt local bans and nullify existing ordinances.

(Other) The WSP is concerned about being required to enforce the SFL and rules adopted by the WSP. The WSP relies on local fire marshals for local oversight and is not currently staffed to provide the level of enforcement called for in the bill. Also, the effective date of the bill does not allow for rules to be updated in time, and the agency was never approached about a fiscal note.

The WSP is in the process of updating fireworks rules. Some updates would address penalties for violations of state rules. There is a difference of interpretation as to what the statute requires. This is an issue for the courts or the Legislature to take up. Current state rules adopt parts of the NFPA 1124, but not the entire standard. The NFPA 1124 is broader than what is currently provided for by state regulations. One distinct difference between state regulations and the NFPA 1124 is that the NFPA 1124 allows fireworks to be sold in a mixed mercantile facility. The fireworks industry would like to be able to do this; local jurisdictions have concerns.

Persons Testifying: (In support) Representative Moscoso, prime sponsor; and Jerald Farley, Consumer Fireworks Safety Association.

(With concerns) Candace Bock, Association of Washington Cities; and Joe Beck and Frank Shasky, City of Bothell.

(Opposed) Mark Brown, cities of Longview, Lacey, Vancouver, Ridgefield; and Robert Bradley, Washington State Association of Fire Marshals.

(Other) Rob Huss, Washington State Patrol; and Melissa Van Gorkom, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: None.