

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

January 23, 2024

3:32 p.m.

MEMBERS PRESENT

Senator Scott Kawasaki, Chair
Senator Matt Claman, Vice Chair
Senator Jesse Bjorkman
Senator Bill Wielechowski
Senator Kelly Merrick

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 117

"An Act relating to fireworks; repealing restrictions on the sale of fireworks; directing the Department of Public Safety to adopt fireworks regulations; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 117

SHORT TITLE: REGULATION OF FIREWORKS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

| | | |
|----------|-----|-----------------------------------|
| 03/29/23 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/29/23 | (S) | STA, L&C |
| 01/23/24 | (S) | STA AT 3:30 PM BELTZ 105 (TSBldg) |

WITNESS REGISTER

ROBERT HALL, President
Houston Chamber of Commerce
Houston, Alaska

POSITION STATEMENT: Testified in support of SB 117.

BRYAN BARLOW
Deputy Commissioner

Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Provided a sectional analysis of SB 117.

LLOYD NAKANO, Director, State Fire Marshal
Division of Fire and Safety
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Presented SB 117 on behalf of the Senate Rules Committee, sponsor by request.

ACTION NARRATIVE

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CHAIR SCOTT KAWASAKI called the Senate State Affairs Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Bjorkman, Merrick, and Chair Kawasaki. Senators Claman and Wielechowski arrived thereafter.

SB 117-REGULATION OF FIREWORKS

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CHAIR KAWASAKI announced the consideration of SENATE BILL NO. 117 "An Act relating to fireworks; repealing restrictions on the sale of fireworks; directing the Department of Public Safety to adopt fireworks regulations; and providing for an effective date."

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SENATOR WIELECHOWSKI joined the meeting.

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CHAIR KAWASAKI invited Mr. Nakano, State Fire Marshal from the Department of Public, to present SB 117.

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LLOYD NAKANO, Director, State Fire Marshal, Department of Public Safety (DPS), Anchorage, Alaska, introduced SB 117 on behalf of Governor Dunleavy. The bill would eliminate the substantive statutes governing fireworks and authorize and direct the Department of Public Safety (DPS) to adopt regulations for the sale, storage, and use of fireworks.

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BRYAN BARLOW, Deputy Commissioner, Department of Public Safety, Anchorage, Alaska, provided the sectional analysis of SB 117:

[Original punctuation provided.]

Senate Bill 117
Regulation of Fireworks
Sectional Analysis - Version 33-GS1356\A

Section 1: Amends the definition of "explosive" under Alaska Statute (AS) 11.81.900(b)(24) to conform to the proposed repeal of AS 18.72.100 under Section 5 of the bill. Currently, AS 18.72.100 provides the definitions for terms used in AS 18.72 and fireworks regulations adopted in the state fire safety code. Under this bill, these definitions would be adopted in regulations.

Section 2: Repeals and reenacts AS 18.72.010 relating to regulation of the sale of dangerous fireworks. It directs the Department of Public Safety (DPS) to adopt regulations relating to minimum standards for fireworks, including sale, storage, distribution, and use; permits DPS to establish by regulation, and to charge, reasonable fees for fireworks permits and inspections; and provides DPS the authority to enter any building where fireworks are stored or kept for the purpose of inspecting fireworks for compliance with regulations adopted under this section.

Section 3: Amends AS 18.72.040 relating to criminal penalties for failing to comply with firework laws by deleting "provisions of this chapter" in favor of "regulations adopted under AS 18.72.010" to conform with the proposed changes made in Section 2.

Section 4: Amends AS 18.72.060 relating to municipal regulation of fireworks to conform to the proposed changes made in this bill by deleting references to the standards under AS 18.72. The authority remains for municipalities to adopt fireworks standards that are more restrictive, but not less, than state regulations.

Section 5: Repeals AS 18.72.020 and the regulation of sale of salable fireworks; AS 18.72.030 and a fireworks wholesaler's license; and AS 18.72.100 and the definitions under chapter 72. The standards and definitions outlined in these sections would be adopted in regulations.

Section 6: Provides transition language to allow DPS to proceed with adopting regulations before the bill takes effect. The regulations would not take effect before the effective date of the bill.

Section 7: Provides an immediate effective date for Section 6. The remainder of the bill has no effective date provision and would therefore take effect 90 days after enactment.

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SENATOR CLAMAN joined the meeting.

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SENATOR MERRICK asked for clarification on the fiscal note update timeline and the January 1, 2024, deadline to adopt regulations.

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MR. NAKANO stated that the deadline is 2025.

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SENATOR WIELECHOWSKI questioned the proposed repeal of AS 18.72.010 under Section 2 of SB 117. He asked if fireworks are currently used for agricultural or wildlife control.

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MR. NAKANO said that he is unaware of agricultural or other business use other than retail wholesale and displays in Alaska.

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SENATOR WIELECHOWSKI stated that he has no knowledge of fireworks usage for agricultural purposes. He asked if repealing this section would allow fireworks usage for wildlife control.

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MR. NAKANO said he would follow up after consulting with the wildlife industry.

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SENATOR WIELECHOWSKI referred to Section 5 of the sectional analysis and inquired about a liability insurance requirement under SB 117.

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MR. NAKANO replied that there would be a liability insurance requirement to modernize current statute to appropriately reflect necessary standards, codes, and regulations. Current statute was written in 1969 and has undergone minimal changes since. He provided an example of wholesale retail licenses requiring a social security number in accordance with statute.

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SENATOR WIELECHOWSKI asked if a regulations draft exists.

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MR. NAKANO responded no.

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SENATOR WIELECHOWSKI asked about the bill's minimum effective date and whether a change is recommended to allow time for regulation updates.

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MR. NAKANO replied yes, no later than 2025.

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SENATOR WIELECHOWSKI asked for confirmation that the effective date should be updated to 2025.

MR. NAKANO confirmed that the effective date should be updated to 2025.

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SENATOR CLAMAN noted that he is aware of rural residents who travel to Canada to obtain firework-like devices used for game management or unexpected bear encounters, and asked if such usage would be regulated.

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MR. NAKANO stated that research would need to be conducted to determine product safety.

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SENATOR CLAMAN asked whether sales would be permitted in Alaska if the definition was met.

MR. NAKANO reiterated that he would have to do research on the composition of the material in order to provide an answer.

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CHAIR KAWASAKI shifted to the presentation on SB 117.

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MR. NAKANO moved to slide 2 and said that SB 117 would require the Department of Public Safety (DPS) to adopt regulations to protect life and property from explosions:

[Original punctuation provided.]

What does the bill do?

Repeals and reenacts Alaska Statute (AS) 18.72.010:
the regulation of fireworks

- o Requires regulations to establish minimum standards for sale and use of fireworks
 - National Fire Protection Association (NFPA) Standards
 - American Pyrotechnic Association (APA)
 - U.S. Consumer Product Safety Commission

He said fireworks would be for sale, storage, and American Pyrotechnics displays, ensuring safety for businesses, firework showrunners, and individual consumers.

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CHAIR KAWASAKI asked if current regulations are more strict than existing minimum standards under federal regulations.

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MR. NAKANO said he would follow up on the question.

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SENATOR WIELECHOWSKI asked if SB 117 would need to meet federal standards.

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MR. NAKANO shared that the bill would require standards to follow suit with the fireworks industry and American Pyrotechnics Association standards.

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SENATOR WIELECHOWSKI asked Mr. Nakano where in SB 117 federal fire standards are referenced.

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CHAIR KAWASAKI clarified that Section 2 of the sectional analysis mentions general standards but does not cite specific federal regulatory agencies.

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MR. NAKANO stated that because definitions in statute are obsolete, the fireworks industry in Alaska came to DPS with recommended standards & regulations in an attempt to more closely align the definitions in statute with current definitions.

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SENATOR WIELECHOWSKI wondered if the legislature could specify that the regulations should follow the standards at a minimum.

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MR. NAKANO said that he would not reject that proposal and recommended building upon current language.

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CHAIR KAWASAKI asked how standards differ from current law.

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MR. NAKANO stated that the goal is to modernize and justify statute regarding retail and wholesale sales.

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SENATOR WIELECHOWSKI asked how American Pyrotechnic Association's standards differ from current law.

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MR. NAKANO suggested that the definitions are old and do not match current statute.

SENATOR WIELECHOWSKI asked for a side-by-side comparison of current state statutes and regulations within federal standards.

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CHAIR KAWASAKI said that Mr. Nakano would report back to the legislature.

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MR. NAKANO referenced slide 3.

[Original punctuation provided.]

What does the bill repeal?

- AS 18.72.020: Regulation of salable fireworks

- AS 18.72.030: Fireworks wholesaler's license
- AS 18.72.100: Definitions

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MR. NAKANO spoke to slide 4.

[Original punctuation provided.]

Why is this bill needed?

- Existing statute (AS 18.72) originally adopted over 50 years ago without being substantially amended
- Out of date with modern regulations set at the national and international level
- Statutory changes not easily undertaken

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MR. NAKANO continued to slide 5.

[Original punctuation provided.]

What is changed under this bill?

Criminal penalties under AS 18.72.040 would be based on failure to comply with regulations under AS 18.72.010 instead of the Fire Safety Code

Regulations under AS 18.72.010 would supersede the provisions of an ordinance adopted by a city or borough, whether before or after May 23, 1969, that are less restrictive than the regulations

The Fire Safety Code defined in AS 18.72.100 would be repealed in regulations adopted by the Department of Public Safety, Division of Fire and Life Safety

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SENATOR CLAMAN said that as a legislator from Anchorage, traveling to less regulated sale locations, such as Gorilla Fireworks, is necessary to obtaining fireworks. He asked about the proposed legislation's effect on these types of businesses.

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MR. NAKANO replied that local jurisdictions would set ordinances or resolutions to align with state standards.

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SENATOR CLAMAN asked if Gorilla Fireworks are under less restrictive standards than federal standards due to location.

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MR. NAKANO responded that he was unsure.

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CHAIR KAWASAKI added that due to city ordinances, Fairbanks residents had to travel to Nenana to acquire fireworks. However, fireworks are now available in the Fairbanks North Star Borough, but are illegal within city limits.

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SENATOR CLAMAN noted that Fairbanks restricts the sale of fireworks, but the North Star borough does not.

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SENATOR WIELECHOWSKI suggested that according to AS 18.72.010, state regulations would supersede provisions of city or borough ordinances. In theory, a future regulatory body could enforce exceedingly restrictive regulations.

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MR. NAKANO confirmed that the scenario is possible but noted that local jurisdictions are the bodies establishing more restrictive regulations.

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SENATOR WIELECHOWSKI stated that he understands that is the case currently but opined that a future regulatory body could effectively ban or severely restrict fireworks in the state under the provision.

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MR. NAKANO replied that the aim of the statute change was to modernize the fireworks program in Alaska, rather than make it more restrictive.

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SENATOR WIELECHOWSKI reiterated that the state could adopt base regulations so municipalities would automatically reach more or restrictive regulations.

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MR. BARLOW stated that while it is possible, the intent is to update fireworks laws that haven't been updated in more than 50 years to reflect best practices and international standards to ensure citizen safety.

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CHAIR KAWASAKI said that caveats exist under the Administrative Procedures Act (APA) that could apply general law to areas with a higher fire risk regarding emergency regulations. He asked if this understanding was correct under the American Pyrotechnics Association.

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MR. BARLOW replied that emergency closures or enactments based on environmental conditions would remain the same.

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CHAIR KAWASAKI opened public testimony.

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ROBERT HALL, President, Houston Chamber of Commerce, Houston, Alaska, testified in support of SB 117. He stated that he is also the owner of Gorilla Fireworks. The biggest hurdle is outdated shipping definitions for firework sales. The 1.4g international shipping category has increased consumer firework sales regulations. Other federal regulatory agencies have increasingly restricted labeling and explosive limit standards. Alaska was left with an antiquated and confusing law, mandating legislative statute updates.

MR. HALL stated that he or the State Fire Marshal could provide updated definitions through the regulatory process. One existing loophole allows the distribution of professional fireworks to Alaska. The definition of 'professionals' was reclassified as 1.4G, creating confusion in interpretation.

There is an urgent need to update the definition of saleable consumer fireworks. The State Fire Marshal cannot change the definition in statute. Unlike Alaska, other states allow consumers to load up a truck of fireworks. For the last 20 years, the State Fire Marshal has experienced obstacles as a result of an unclear definition. A recent loophole was exposed as a result of COVID-19 and Chinese shipping categories that are difficult to enforce. Two years ago, a 17-page letter was sent to the State Fire Marshal with recommended statute updates. The regulatory process has caused challenges with enforcement.

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MR. HALL urged redefining the statutory definition of consumer fireworks through the legislature or allowing the State Fire Marshal to do it.

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SENATOR WIELECHOWSKI said that the testimony was helpful. He asked for a definition of saleable fireworks.

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MR. HALL relayed that there is no simple federal definition for consumer fireworks, which are regulated by several federal regulatory bodies, so there is no individual control. However, a composite definition was offered by the industry along with 3-4 recommendations to address the issue. The State Fire Marshal may require more authority in some cases. He offered to follow up with one of two definitions provided by the fireworks industry to the committee.

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CHAIR KAWASAKI agreed to accept definitions once provided.

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SENATOR CLAMAN asked why state statute could not adopt regulations consistent with federal standards.

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MR. HALL clarified that it is doable, but the State Fire Marshal prefers to directly update statute for future ease. Flexibility is needed so future statute amendments are less likely necessary.

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SENATOR CLAMAN asked whether it is difficult for a business to know and comply with federal fireworks regulations.

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MR. HALL responded no. There are no challenges complying with regulations as a reputable dealer. Dealers even comply with regulations the Fire Marshall isn't even aware of. The problem lays with the black market, existing loopholes, and antiquated state definitions. Certain grey areas surrounding definitions need clarification.

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SENATOR CLAMAN opined that permitting the State Fire Marshal to adopt regulations could risk discrepancies between state and federal regulations.

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MR. HALL replied yes. He suggested that the State Fire Marshal could adopt regulations by reference. Federal regulations are well defined, but local jurisdictions maintain more limitations than the State Fire Marshal and can determine when a product can be used. Maintaining limitations can be challenging in rural areas where there is no fire chief. Adopting good clean definitions is necessary. While the current law is confusing, there are no legal penalties surrounding 1.4G fireworks.

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CHAIR KAWASAKI closed public testimony.

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CHAIR KAWASAKI asked Mr. Nakano to provide additional materials to the committee before the next hearing.

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MR. NAKANO said the local laws do not include pyrotechnic operators and displays covered under the official fire code.

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CHAIR KAWASAKI referenced Section 2 of SB 117 and asked if regulations exist for reasonable fees for firework permits.

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MR. NAKANO replied that there are only retail and wholesale charges.

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CHAIR KAWASKI held SB 117 for future consideration.

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There being no further business to come before the committee, Chair Kawasaki adjourned the Senate State Affairs Standing Committee meeting at 4:26 p.m.