

FIREWORKS SAFETY ACT AMENDMENTS

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House Bill 4743 as enacted

Public Act 65 of 2013

Sponsor: Rep. Harold Haugh

House Committee: Regulatory Reform

Senate Committee: Regulatory Reform

Complete to 6-26-13

A SUMMARY OF HOUSE BILLS 4743 (S-5) AS ENACTED 6-19-13

The bill would amend the Fireworks Safety Act (2011 PA 256) to do the following, among other things:

- Allow local units of government, based on population, to regulate the use of consumer fireworks during certain hours on the day before, day of, and day after a national holiday;
- Allow the Department of Licensing and Regulatory Affairs (LARA) to establish a program for the delegation of inspection duties to local units of government;
- Eliminate a January 1, 2014, sunset on the requirement for payment of a consumer fireworks certificate application fee of \$1,000 for retail locations that are permanent buildings or structures and \$600 for retail locations that are not permanent buildings or structures; and
- Alter the distribution of revenues collected under the act.

Local ordinances

Currently, the act allows local units of government to enact ordinances regulating the ignition, discharge, and use of consumer fireworks, including setting the hours of the day or night when fireworks could be used. However, they cannot impose such regulations for the three-day period surrounding a national holiday. The bill would modify this provision, so that if a local unit of government chooses to enact an ordinance of this nature, it could not regulate the ignition discharge, or use of consumer fireworks on the day before, day of, and day after a national holiday, except as follows below:

- Any local unit of government with a population of 50,000 or more, or any local unit of government that is located in a county with a population of at least 750,000, could regulate the use of consumer fireworks between midnight and 8:00 a.m. or, on New Year's Day, between 1:00 a.m. and 8:00 a.m.

- Any local unit of government with a population less than 50,000 that is located in a county with a population of less than 750,000 could regulate the use of consumer fireworks between 1:00 a.m. and 8:00 a.m.

Fines under such ordinances would be restricted to a \$500 maximum fine for each violation and violations could not be subject to any further fine or sanction.

Elimination of sunsets

The bill would eliminate the January 1, 2014, sunset on provisions (1) requiring the application for a consumer fireworks certificate be accompanied by a \$1,000 fee for a certificate for each retail location that is a permanent building or structure and \$600 for each retail location that is not a permanent building or structure; and (2) limiting the fireworks certificate fee for a retail location that is not a permanent building from exceeding 60% of the fee for a location that is a permanent building.

Compliance with NFPA

The bill would require retail locations to comply with the applicable requirements of NFPA 101 and NFPA 1124 (of the National Fire Protection Association Code) that are not in conflict with the Fireworks Safety Act and the Stille-DeRossett-Hale Single State Construction Act. Under the bill, any provision of the Construction Code Act that is inconsistent with the requirements of NFPA 101 and 1124 would be superseded to the extent of the inconsistency or conflict.

Fireworks safety fee remittance

The bill would clarify that a retailer or a person issued a consumer fireworks certificate is responsible for remitting all fireworks safety fees to LARA, must hold fireworks safety fees in trust until remitted, and is personally liable for the payment of all fireworks safety fees to the state. Currently, these requirements only apply to retailers.

LARA would be permitted to refer past due amounts of the fireworks safety fee to the Department of Treasury for collection. Additionally the bill would require retailers to remit fireworks safety fees within 20 days after the end of each month. Retailers operating 25 or more retail locations in the state that are permanent buildings or structures would be permitted to remit the fireworks safety fees in an aggregate filing under a common identification number, as determined by LARA. LARA would be required to investigate any reported, but unpaid, fireworks safety fees by a retailer by September 30 of each year.

Fireworks safety fund distribution

LARA would be required to spend money deposited in the Fireworks Safety Fund as follows:

- All of the money received from fireworks safety fees for the training of firefighters under the direction and approval of the Firefighters Training Council.

- All of the money received from consumer fireworks safety certificates to administer the Fireworks Safety Act and to pay the costs of delegating inspections to local units of government (see below).

LARA would be permitted to establish a program for delegating inspection duties to one or more local units of government. If a local unit agreed to perform the inspection duties, LARA would be required to pay the local unit 70% of the consumer fireworks safety certificate fee paid by each retail location inspected by the local unit. LARA would retain the remaining 30% of the fee collected. LARA would retain inspection responsibilities under the act if a local unit of government declined to participate in the program.

Currently, money in the Fireworks Safety Fund can be spent to carry out the purposes of the act, the Fire Prevention Code, and the Firefighters Training Council. Of the first \$1.0 million collected in the fund in each fiscal year, LARA is permitted to spend up to \$1.0 million in discretionary grants to local units of government to offset inspection costs.

MCL 28.454 et al.

FISCAL IMPACT:

House Bill 4743 (S-5) would have several fiscal impacts on both state and local units of government, including:

- 1) House Bill 4743 (S-5) would have an overall positive fiscal impact on the Bureau of Fire Services (BFS) within the Department of Licensing and Regulatory Affairs (LARA) and local units of government delegated safety inspection responsibilities in fiscal years subsequent to 2013 due to the elimination of sunsets on the Consumer Fireworks Certificate fees. If the sunsets remained in effect, the BFS would no longer collect fees from retailers seeking to sell consumer fireworks under the Fireworks Safety Act of 2011.
- 2) House Bill 4743 (S-5) could have a marginally negative fiscal impact on the Bureau of Fire Services (BFS) within the Department of Licensing and Regulatory Affairs (LARA) and the local units of government that are delegated safety inspection responsibilities to the extent that local ordinances limiting the use of consumer fireworks during certain times could reduce the number of retail locations and sales of consumer fireworks, resulting in reduced revenue generated by Consumer Fireworks Certificate and Fireworks Safety fees, respectively.
- 3) House Bill 4743 could have another positive fiscal impact on local units of government to the extent that individuals violate local ordinances and are liable to pay civil fines.

Furthermore, House Bill 4743 (S-5) would have an impact on the distribution of Consumer Fireworks Certificate fees and Fireworks Safety Fees. Under current law both

of these fees are deposited into the Fireworks Safety Fund and expended, contingent upon annual appropriation, for the purposes of the Fireworks Safety Act of 2011 (including up to \$1.0 million in discretionary grants to local units of government to defray inspection costs associated with the Act), the Fire Prevention Code of 1941, and the Firefighters Training Council Act of 1966. House Bill 4743 (S-5) would stipulate that 100% of Fireworks Safety Fees be used for firefighter training under the direction and approval of the Firefighters training Council and that 100% of the Consumer Fireworks Certificate fees be used for the administration of the Fireworks Safety Act of 2011 (including grants to local units of government for the inspection of retail locations equivalent to 70% of the Consumer Fireworks Safety Certificate fees paid by retail locations inspected by local units of government).

Subsequent to House Bill 4743 (S-5) being enacted into law, the Legislature would likely have to make supplemental adjustments to both the FY 2012-13 and 2013-14 appropriations from the Fireworks Safety Fund since House Bill 4743 (S-5) would establish statutory restrictions on the purposes for which revenues within the Fund could be expended and a formula for the distribution of payments to reimburse local units of government for the costs of delegated safety inspections. These statutory restrictions would likely result in distributions from the Fireworks Safety Fund that would be incongruent with the FY 2012-13 and 2013-14 appropriations from the Fund.

Lastly, since House Bill 4743 (S-5) requires that BFS administrative costs are to only be supported with revenue generated from consumer fireworks safety certificate fees and that 70% of the certificate fees paid by retail locations inspected by local units of government must be returned to local units of government, the revenue generated by certificate fees may not be sufficient to support the administrative costs of the BFS to implement and enforce the Michigan Fireworks Safety Act.

Whether the 30% of consumer fireworks safety certificate fees retained by the BFS from retail locations inspected by local units of government is sufficient to support BFS administrative costs is likely contingent on the population density of the local units of government that opt to perform safety inspections. If several high-density local units of government opt to perform safety inspections of retail fireworks locations, then it is more likely that the revenue generated by certificate fees retained by the BFS would be insufficient to support its administrative costs.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.