## SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION Senator Bill Dodd Chair 2021 - 2022 Regular

Bill No: Author:	SB 277 Archuleta, et al.	Hearing Date:	4/20/2021
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Consultant:		Tiscui.	103

SUBJECT: Fireworks: dangerous fireworks: seizure: management

**DIGEST:** This bill, among other things, expands the definition of a dangerous firework; requires that any seized dangerous or safe and sane fireworks be managed by the State Fire Marshal (SFM), as specified; requires commercially viable, federally approved dangerous consumer fireworks or safe and sane fireworks that are seized and managed be made available for sale by any California licensed fireworks importer-exporter, as specified; and requires the SFM to establish and collect an additional fee on permits for dangerous fireworks issued to licensees, as specified.

## ANALYSIS:

Existing law:

- 1) Authorizes the annual retail sale of safe and sane fireworks within this state from the 28<sup>th</sup> of June through the 6<sup>th</sup> of July, pursuant to a license issued by the SFM, as specified.
- 2) Makes the possession of dangerous fireworks, except when the person possessing the dangerous fireworks holds and is operating within the scope of a valid license, subject to various penalties depending on the gross weight in possession, including the penalty of a misdemeanor.
- 3) Requires various entities, including the SFM, to seize certain prohibited fireworks, as specified.
- 4) Authorizes the SFM to issue licenses related to fireworks and pyrotechnic devices, including a wholesaler's license, and to collect an original and renewal fee for these licenses, and authorizes the SFM to deny or revoke a license if the SFM finds certain conditions have occurred, as specified.

# SB 277 (Archuleta)

- 5) Requires the SFM to examine and classify all fireworks or pyrotechnic devices intended for sale in the state that are products of nonlicensed manufacturers, upon application and a fee of \$10 for each label of an item of identical size and design of a given lot or batch, as specified.
- 6) Establishes the SFM Fireworks Enforcement and Disposal Fund (FED Fund), within the State Treasury, for the exclusive use in statewide programs for the enforcement, prosecution related to, disposal, and management of seized dangerous fireworks, as specified.
- 7) Provides that if dangerous fireworks are seized pursuant to a local ordinance that provides for administrative fines or penalties, the local government is required to forward 65% of the collected moneys to the Controller for deposit in the FED Fund.
- 8) Defines "dangerous fireworks" to include: any firework that includes a number of specified chemicals such as, among others, arsenic sulfide, boron, and phosphorous that is red or white, except that red phosphorous is permissible in caps and party poppers; firecrackers; skyrockets and rockets, as specified; Roman candles, as specified; chasers, as specified; sparklers more than 10 inches in length or one-fourth of one inch in diameter; all fireworks designed and intended to create the element of surprise, as specified; fireworks known as devil-on-the-walk, as specified; torpedoes of all kinds which explode on impact; fireworks kits, as specified; and such other fireworks examined and tested by the SFM and determined to possess characteristics of design or construction which make such fireworks unsafe for use by any person not specially qualified or trained in the use of fireworks.
- 9) Defines "exempt fireworks" to mean any special item containing pyrotechnic compositions which the SFM has investigated and determined to be limited to industrial, commercial, agricultural use, or religious ceremonies when authorized by a permit granted by the authority having jurisdiction, as specified.
- 10) Defines "safe and sane fireworks" to mean any fireworks which do not come within the definition of "dangerous fireworks" or "exempt fireworks."

This bill:

1) Expands the definition of "dangerous fireworks" to include fireworks that include lead and lead compounds, including red oxide; and, hexachlorobenzene (perchlorobenzene) at the limit to 0.01% by weight.

## SB 277 (Archuleta)

- 2) Additionally authorizes the SFM to deny or revoke a license if the licensee has engaged in or facilitated the distribution or unauthorized sale of dangerous fireworks to a person or entity not holding a requisite SFM license.
- 3) Provides that it is the intent of the Legislature to create a uniform statewide policy regarding a state, county, special district, or local government entity's safe seizure, storage, repurposing, destruction, or disposal of dangerous fireworks and safe and sane fireworks, as specified; and, that it is further the intent of the Legislature that any savings achieved to the FED Fund because of this bill be allocated to enforcement efforts targeting the sale, storage, transportation, importation, and use of dangerous fireworks, as specified.
- 4) Requires the SFM to, in consultation with the relevant federal and state agencies and local jurisdictions, to develop specific protocols and procedures for the safe seizure, storage, repurposing, destruction, or disposal of federally approved dangerous fireworks and California classified safe and sane fireworks, as specified.
- 5) Requires the state, special district, and local government entities to handle, transport, and store seized fireworks in a manner prescribed by the SFM.
- 6) Requires a seizing entity to separate fireworks that are not legal for sale to consumers in California or any other state, and ensure that this material is stored in accordance with all applicable state and federal hazardous waste laws and regulations until the time when these fireworks can be disposed of by the appropriate local bomb squad, as specified.
- 7) Requires a seizing entity to notify the SFM within three days of the determination that the seized product may be transferred, as specified.
- 8) Requires the SFM to arrange for pickup or transportation of all federally approved dangerous consumer fireworks or safe and sane fireworks that are at the collection site, as specified.
- 9) Provides that the SFM is not required to accept any of the following materials: military ordinance; explosives, as specified; blasting caps; explosive precursor chemicals; loose pyrotechnic powder; black powder; smokeless powder; destructive devices; improvised explosive devices; homemade fireworks; emergency signaling devices; agricultural and wildlife devices; road flares; fuzees; electric matches; hobby fuses; butane lighters; matches; class 1.3G fireworks; wet fireworks; hazardous waste; and, banned hazardous substances.

## SB 277 (Archuleta)

- 10) Prohibits the SFM from accepting any seized fireworks without an accompanying completed seizure form, as created by the SFM.
- 11) Provides that any commercially viable, federally approved dangerous consumer fireworks or safe and sane fireworks be made available for sale by any California licensed fireworks importer-exporter or wholesaler. The revenue from the sales shall be deposited in the FED Fund.
- 12) Authorizes an importer-exporter or wholesaler who purchases fireworks pursuant to this bill to repurpose and retain any seized commercially viable federally approved dangerous consumer fireworks within the state for a period not exceeding 90 days, as specified.
- 13) Requires a seizing entity, on a quarterly basis, to notify the SFM of all administrative, civil, or criminal fines or penalties levied or collected for any violations of existing law relating to fireworks.
- 14) Reduces the percentage of total collected fines or penalties that local governments must forward to the Controller for deposit in the FED Fund from 65% to 25%, as specified.
- 15) Requires the SFM, on or by January 31 of each year, to advise each seizing entity of all of the following:
  - a. The total poundage of all seized fireworks the seizing entity delivered during the last calendar year.
  - b. The total poundage of all seized fireworks delivered by the seizing entity in the last calendar year that could not be repurposed and the cost of disposing the fireworks.
  - c. That the seizing entity shall be responsible for 50% of the cost incurred for disposal minus all sums transmitted to the SFM during the last calendar year by that seizing entity.
- 16) Establishes the SFM Dangerous Fireworks Training and Education Fund (DFTE Fund), within the State Treasury and continuously appropriated without regard to fiscal years, for the purpose of training local fire and law enforcement agencies regarding the identification, risks, dangers, and proper storage and management associated with dangerous fireworks and safe and sane fireworks seized.
- 17) Requires the SFM to establish and collect an additional fee on permits for dangerous fireworks in an amount necessary to enforce this bill with respect to

training and education regarding dangerous fireworks, and to be deposited within the DFTE Fund.

- 18) Authorizes a local fire department, a local fire protection agency, a local law enforcement agency, or any other public agency authorized by law to enforce the SFM's regulations to apply to the SFM for a grant for its reasonable costs in participating in the SFM's education and training program pursuant to this bill.
- 19) Deletes the existing \$10 fee provision for fireworks and pyrotechnic devices that are products of nonlicensed manufacturers, and instead authorizes the SFM to determine the fee amount, as specified.
- 20) Defines "collection site" to mean a recognized site where seizing entities shall deposit fireworks for collection by the SFM.
- 21) Defines "commercially viable" to mean federally approved dangerous consumer fireworks or California classified safe and sane fireworks that have been determined by the SFM to be in a physical condition to be repurposed or resold in states that are not contiguous to California.
- 22) Defines "federally approved dangerous fireworks" to mean dangerous fireworks, as specified, that are approved by the United States Consumer Product Safety Commission and comply with specified federal requirements and regulations.
- 23) Defines "management" or "managed" to mean adherence to a uniform statewide policy regarding the state, a county, a special district, or a local government entity's safe seizure, storage, repurposing, destruction, or disposal of federally approved dangerous fireworks or California classified safe and sane fireworks seized by any of the above entities, as specified.

# Background

*Purpose of the bill.* According to the author's office, "for too long, our communities have been plagued by the persistent booms and bangs of illegal, amateur fireworks displays. Local fire and law enforcement agencies have been kept from other duties as they are busy responding nightly to residents' complaints about these illegal aerial displays and celebratory explosives. The relentless disruptions to our neighborhoods and communities are disruptive and unwelcome. It seems no community has been left undisrupted by illegal displays of fireworks. Despite public demands for increased enforcement, increased public education, use of administrative fines, and deploying dedicated illegal fireworks patrols, the

volume of illegal aerial items and loud explosives remains at unacceptable levels. SB 277 seeks to present a solution to getting illegal fireworks off of our streets by better coordinating enforcement efforts between the SFM and local entities as well as establishing a fireworks management and repurposing component that will help manage the seizing, storage, transfer and repurposing of both federally-approved fireworks and California safe and sane fireworks."

*California Fireworks Program.* California's Fireworks Law AB 475 (Redwine, Chapter 534, Statutes of 1939) tasked the SFM, which is today within the Department of Forestry and Fire Protection (Cal FIRE), as the only fireworks classification authority in California. Fireworks are classified through laboratory analysis, field examinations and test firing of items. As part of the program, SFM requires the licensing of all pyrotechnic operators, fireworks manufacturers, importer-exporters, wholesalers, retailers, and public display companies. Pyrotechnic operators who discharge fireworks at public displays or launch high powered and experimental rockets, must also pass a written examination and provide proof of experience.

Existing law defines dangerous fireworks as any firework containing any of a specified list of chemicals such as, among others, arsenic sulfide, boron, and phosphorous that is red or white, except that red phosphorous is permissible in caps and party poppers; firecrackers; skyrockets; Roman candles; chasers; large sparklers; any firework designed to create an element of surprise, including but not limited to auto foolers, cigarette loads, exploding golf balls, and trick matches; devil-on-the-walk; torpedoes of all kinds that explode on impact; fireworks kits; and other fireworks examined and tested by the SFM and determined to possess characteristics of design or construction that make the fireworks unsafe for use by a person not specially qualified or trained in the use of fireworks.

This bill specifically adds any firework that includes lead and lead compounds – including red oxide – and hexachlorobenzene (perchlorobenzene) at the limit to 0.01% by weight to the list of dangerous fireworks. Hexachlorobenzene, or perchlorobenzene, is an organochloride formerly used as a seed treatment to control the fungal disease bunt, however it has been banned globally under the Stockholm Convention on Persistent Organic Pollutants.

A 2020 study published in *Particle and Fibre Toxicology* titled "Toxicity of particles emitted by fireworks" analyzed 12 different popular consumer fireworks and found that once set off, five of them released particle emissions that could damage human cells and animal lungs. Specifically, the fountain-style firework known as the Cuckoo registered the most toxic of the group, at 10 times more damaging to human cells than a nontoxic saline solution, according to the findings.

The firework emitted lead particles at 40,000 parts per million, which according to the researchers is exceedingly high as normally, lead should not be emitted at all.

*Dangerous Fireworks Education and Training*. The State's Explosives Law authorizes the SFM to adopt regulations for the safe use, handling, storage, and transportation of explosives. Under those regulations local law enforcement agencies track the location of storage magazines within their jurisdictions through a permit process. Special exemptions have been provided within the regulations to allow for limited possession and storage of some explosives, such as black powder, used by hunters and the sporting community.

There are several categories in which the federal government classifies fireworks. However, there are two main categories of United States fireworks classifications that nearly all of the fireworks anyone is likely to come into contact with are classified under. These are known as the 1.3G – display fireworks – and 1.4G – consumer fireworks – classifications. The 1.3G classification is given to the large fireworks and pyrotechnics that are seen at shows put on by cities and events. Formerly known as "Class B" fireworks, you typically need training and a special permit to possess or use fireworks in this grade. The 1.4G classification is given by the federal government to the smaller fireworks that are typically bought at local firework pop-up stores, formerly known as "Class C" fireworks.

This bill creates the DFTE Fund for the purpose of training local fire and law enforcement agencies regarding the identification, risks, dangers, and proper storage and management associated with seized dangerous fireworks and safe and sane fireworks. The bill requires the SFM to establish and collect an additional fee on permits for dangerous fireworks in an amount necessary to enforce this part of the bill with respect to training and education regarding dangerous fireworks. Local public agencies that are authorized to enforce the SFM's regulations will be authorized to apply for grants for their reasonable costs in participating in the SFM's education and training program.

*Seized fireworks in California*. Fireworks not designated "safe and sane" are considered to be illegal in the State of California. As a result, there are illegal fireworks seized in California that are legal to be sold in other states per federal and other state regulations. Existing law requires the SFM to dispose of "dangerous fireworks" within 60 days upon receiving notification from the local jurisdictions that seized them. These seized fireworks range from unpackaged improvised devices, to fireworks that are legal to be sold in other states, as well as safe and sane fireworks that have been seized in any part of the state that does not permit the sale. According to the SFM the seizures of these fireworks have been

increasing each year and begin to occur around March with an uptick in interdictions moving towards the  $4^{th}$  of July period of the year.

Each year, the state seizes on average over 220,000 pounds of fireworks that will need to be disposed. In 2020, a statewide operation conducted between June 26 and 30 designed to prevent illegal fireworks from entering California resulted in the confiscation of nearly 50,000 pounds of illegal fireworks, and resulted in 29 felonies, 165 misdemeanors, and 25 infractions. Over the years, the focus has been on properly disposing of the stockpiles leaving few resources, if any, for enforcement. In addition, a federally approved waste hauler must transport all seized fireworks to an approved out-of-state hazardous waste facility.

The problem of illegal fireworks in California is exacerbated by the fact that so many legal fireworks in other western states arrive in California at the Ports of Long Beach, Los Angeles, and Oakland, and are then shipped via ground either by rail or truck to their final destination. In recent years, there have been major seizures of illegal fireworks, particularly in Southern California warehouses, that have ranged from 15 to 25 tons each, which were drop-shipments from one of the two Southern California ports.

With rapid population growth in the state and the commensurate growth of the sale of state-approved "safe and sane" fireworks, along with illegal and dangerous fireworks that continue to flow into California, additional pressures are being placed on Cal FIRE and the SMF to provide enforcement, education, and disposal of seized illegal and dangerous fireworks. The lack of enforcement of illegal fireworks has been a continuing issue for California. The accumulation of seized fireworks creates a significant hazard to the environment. It also presents fire and safety risks, which in turn creates an increased liability to both SFM and the state. In 2015, the SFM began contracting with vendors to transport fireworks out of the state for disposal, however, the program received no funding in Fiscal Year (FY) 2017-18, and for most of FY 2018-19 resulting in a stockpiling of illegal fireworks by the state.

In October 2018, the Brown Administration produced a budget change proposal and moved \$3.6 million into the FED Fund to fund illegal fireworks enforcement, disposal, and public education for the balance of FY 2018-2019. When Governor Newsom introduced and proposed his State Budget for FY 2019-2020, he included an ongoing \$3.6 million for Fireworks Enforcement, Education and Disposal. That \$3.6 million is also included in Governor Newsom's FY 2020-2021 proposal. Since the start of FY 2020-2021, 226,000 pounds of illegal fireworks have already been collected. The SFM's Fire Engineering Division is attempting to regain its footing, staff-up and re-assert itself over an illegal fireworks marketplace that has gone from firecrackers and bottle-rockets in 2000 to rampant use of illegal mortars and aerial shells, some even of the commercial size and variety in 2020.

This bill requires a seizing entity to separate fireworks that are not legal for sale to consumers in California or any other state. Any commercially viable, federally approved dangerous consumer fireworks or safe and sane fireworks that are seized in California for various reasons shall be repurposed and made available for sale by any California licensed fireworks importer-exporter or wholesaler in good standing. The revenue from the sales will then be deposited into the FED Fund for the exclusive use in statewide programs for the enforcement, prosecution related to, disposal, and management of seized dangerous fireworks, as specified. Supporters of the bill argue that this will save the SFM as much as \$2 million in annual disposal costs, thus freeing up money to focus on the enforcement at the state and local level.

*Firework sales.* Current law authorizes the retail sale of safe and sane fireworks from June 28 to July 6 annually, pursuant to a license issued by the SFM – unless otherwise prohibited or regulated by law or ordinance. Currently, there are approximately 290 communities in California that permit the sale and use of state-approved fireworks each July Fourth.

Sellers are first required to obtain a license, good for one year, from the SFM and pay associated fees to the state. Local jurisdictions may include an administrative fee related to the processing of permits and a percentage of gross sales collected by the jurisdiction. This is generally used for education, over-time staffing, enforcement duties and other fireworks related additional activities.

Fireworks stands are generally run by non-profit groups such as battered women's shelters, service clubs (such as Rotary), Boy Scout and Girl Scout troops, PTAs, Little Leagues, and other local organizations. If an organization is selling safe and sane fireworks without a permit the individual or organization could face a significant fine and possible criminal charges.

City requirements for fireworks sale permits vary slightly from city to city, but each applicant generally has to comply with the same basic requirements. The non-profit organization must obtain designation as a certified, legal non-profit from the State of California; pay a city permit fee and a sales booth inspection fee for building and safety, and SFM compliance; pay an additional annual SFM fee; show proof of insurance with various amounts of coverage in case of property damage or injury in the vicinity of the sales booth; obtain a sales site, usually in a strip mall or other commercial location; take delivery of the sales booth; attend a meeting with city officials to learn of any annual municipal code updates or city council policy changes relating to the sale of legal fireworks; obtain a Seller's Permit from the Board of Equalization (BOE) for required sales tax collection; and take delivery of the product, supply a sales staff to sell the product and determine the price they will charge for the product. The SFM determines which fireworks are legal. The "safe and sane" varieties carry an official SFM seal. Everything else is classified dangerous and illegal.

*Fireworks-related injuries and fires.* In 2020 the National Fire Protection Association (NFPA) released a study titled, "Fireworks Fires and Injuries," which found that in 2018, an estimated 19,500 fires started by fireworks were reported to local United States fire departments. These fires caused five civilian deaths, 46 civilian injuries, and \$105 million in direct property damage. Further, the report states that the, "Consumer Product Safety Commission (CPSC) estimates that 9,100 consumer fireworks-related injuries were seen in US hospital emergency departments in 2018." The annual total number of fireworks-related injuries has remained fairly stable between 10,000 and 12,000 for much of the last decade. According to the NFPA the risk of fire death relative to usage shows fireworks to be more risky per hour of usage than cigarettes.

After years of catastrophic and record breaking wildfire seasons, California enters the 2021 wildfire season facing exceptional and extreme drought conditions throughout the state. Last year's more moderate rainfall deficits, combined with extreme heat waves, ushered in a record-setting fire year. It brought five of the largest fires in modern state history, over 10,000 destroyed structures, and 33 fatalities. The current water year is now tied for the third driest on record.

San Jose State University's Wildfire Interdisciplinary Research Center recently found that the fuel-moisture content (FMC) – a measure of the ratio of moisture to combustible material in plants that indicates how prone they are to burning – of plants in the Santa Cruz Mountains is at the lowest level on record. When FMC is high because plants are lush with water, wildfires don't ignite and spread as easily. When it's low because vegetation is dry, parched, or even dead, wildfires start easily and spread rapidly.

*Increased use of illegal fireworks during COVID-19.* During most of 2020, growing anecdotal and empirical evidence suggested a noticeable increase in the use of illegal fireworks spread out over a longer period of time than previously reported. A July 3, 2020, *New York Times* article titled "Why Are Fireworks Going Off Every Night in California?" discussed the topic. According to the article, the Los Angeles Police Department (LAPD) reported complaints about illegal fireworks increased 170% during the first three weeks of June 2020, compared to June 2019. Similarly, the LAPD reported dispatching officers 1,429

times during the first three weeks of June compared to 528 times during the same period in 2019. The Alameda County Sheriff's Office reported similar increases.

### **Prior/Related Legislation**

AB 2740 (Carrillo, 2020) was substantially similar to SB 277, and would have expanded the definition of dangerous fireworks; required the SFM to identify and evaluate methods to track all containers containing dangerous fireworks, as specified; repeal existing law relating to a model ordinance governing enforcement and administrative fine procedures; required any seized dangerous and safe and sane fireworks to be managed by the SFM; and would have required commercially viable, federally approved dangerous consumer fireworks or safe and sane fireworks, seized and managed pursuant to the bill, to be made available for sale by any California licensed fireworks importer-exporter or wholesaler of fireworks, as specified. (Died at the Assembly Desk)

SB 794 (Stern, 2017) would have, until January 1, 2024, established the Fireworks Stewardship Program to create a uniform statewide policy regarding a state, county, special district, and local government entity's safe seizure, storage, repurposing, destruction, or disposal of 1.4G federally approved dangerous fireworks and 1.4G California, classified safe and sane fireworks. (Never heard in the Assembly Governmental Organization Committee)

SB 677 (Mendoza, 2015) would have authorized the sale of safe and sane fireworks during the week preceding New Year's Day and would have made numerous changes to the state laws governing fireworks sales and disposals. (Failed passage in the Senate Governmental Organization Committee)

SB 777 (Hernandez, 2014) would have allowed for licenses to sell fireworks during the week before New Year's Day, and would have established a fireworks sell-back program, as specified. (Gutted and amended into an unrelated issue)

SB 1468 (Calderon, 2012) would have authorized the sale of specified fireworks between Christmas and New Year'' Day in 2014-15 and 2015-16, would have permitted limited recovery of specified costs by local governments, and would have provided for a two-year fireworks data collection effort to be funded by voluntary contributions from the fireworks industry. (Held on the Assembly Appropriations Committee Suspense File)

AB 2090 (Miller, Chapter 363, Statutes of 1998) authorized the SFM to license the sale of fireworks from December 26, 1999 through January 2, 2020 in order to celebrate the millennium.

AB 475 (Redwine, Chapter 534, Statutes of 1939) California's Fireworks Law, among other things, defined "dangerous fireworks" and "safe and sane fireworks," and prohibited any person without a permit from manufacturing, possessing, or selling any dangerous fireworks, from selling any safe and sane fireworks as a retailer, and from discharging dangerous fireworks in any place.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

## **SUPPORT:**

American Promotional Events, Inc., dba TNT Fireworks (Source) Phantom Fireworks Numerous individuals

# **OPPOSITION:**

#### None received

**ARGUMENTS IN SUPPORT:** In support of the bill, TNT Fireworks writes that in "California all fireworks are illegal with the exception of the sale and use of California State Fire Marshal-Approved Fireworks, also known as 'Safe and Sane Fireworks.' In addition to federal restrictions, California has enacted even more stringent construction and performance safety standards to ensure that the fireworks items that are legal to sell in California are as safe as possible. Safe and Sane Fireworks consist of primarily static, ground-based fountains, some handheld items, a few spinners and novelty items. All of these items have undergone extensive testing as well as must meet stringent constructions, performance, labeling and safety requirements imposed by both the federal government and the State of California."

Further, TNT Fireworks states that, "SB 277 addresses an important public safety issue in our State by establishing a fireworks management/repurposing component that will help manage the seizing, storage, transfer and repurposing of both seized federally-approved fireworks and California State Fire Marshal-Approved, Safe and Sane Fireworks, freeing up state resources to focus on the enforcement and prevention of the importation of dangerous illegal fireworks into California. It is estimated that this component will save the State Fire Marshal as much as \$2 million in annual disposal costs, freeing up this money to focus on enforcement at the state and local level. This legislation also creates a totally new section in the Health and Safety Code creating a State Fire Marshal Dangerous Fireworks Training and Education Fund. The purpose of this fund would be to provide resources as part of CAL FIRE's and/or the State Fire Marshal's current regional

education programs to include training for local fire and law enforcement officials on the identification, risks, dangers and proper storage and management of both dangerous illegal fireworks and California State Fire Marshal-Approved, Safe and Sane Fireworks that have been seized by their jurisdiction. This training would be funded in part by increased license fees on all fireworks industry wholesalers and fireworks industry importers/exporters."

**DUAL REFERRAL:** Senate Governmental Organization Committee & Judiciary Committee