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TESTIMONY FOR CONSOLIDATION OF SB 67 AND SB 127

The interim legislative subcommittee on Industrial Explosions has proposed SB 67 and SB 127. At this committee's hearing on these bills three weeks ago it was proposed to consolidate these bills. This proposed consolidated redraft does that and includes proposed changes by others and the Division.

Section 1 is from SB 127 and provides the Division with authority to conduct investigations at facilities handling highly hazardous substances including explosives. Subsection 6 is a change proposed by John Sande to qualify when the Division may conduct an investigation.

Section 2 is from SB 127 and makes the definitions apply to Section 1.

Section 3 is from SB 127 and was changed by the Division to clarify the definition of process and specially regarding vessels (tanks).

Section 4 is from SB 67 and removes the word "regulated".

Section 5 is from SB 67 and clarifies the application of Section 1 and the responsibility of an owner/operator of a process.

Section 6 is from SB 127 and adds the application of Section 1.

Section 7 is from SB 127 and deletes the list of highly hazardous substances, authorizes the State Environmental

Commission to adopt a list of highly hazardous substances and explosives in regulations and base that list on the CAA and OSHA and ATF regulation lists and definitions and any other guidelines and regulations. Subsections 2 and 4 reference the Federal lists and definitions.

1991 CAPP list of chemicals was based on an early draft of OSHA regulations. Statute was established because of an ammonium perchlorate explosion (2 million pounds) and a release of 40+ tons of liquid chlorine. Both facilities are near Henderson.

1992 OSHA list was revised and adopted in Federal regulations. Some chemicals were added, some removed and some quantities were adjusted. Gasoline was exempted by regulation.

1994 Agreement with State OSHA to eliminate duplication and coordinate the programs.

1997 EPA list was authorized by the CAA. State legislation authorized DEP to adopt an EPA RMP program and EPA's list which was slightly different than OSHA's and CAPP. Federal EPA regulations exempt gasoline.

1999 As a result of the Sierra Chemical explosion, explosives were added to CAPP oversight. ATF regulations define explosives.

Based on this information and to reduce confusion, the Subcommittee recommended that the lists be organized and consolidated into a regulatory list by the SEC and to delete the statutory list, which this bill does.

Section 8 is from SB67. It clarifies that the SEC adopts the regulations to include the implementation of the OSHA program (Chemical Process Safety Management) and the Division implements those regulations.

Section 9 is from SB 67. It removes the explosive definition. In Section 7, subsection 3, the SEC was authorized to define in regulations "explosives".

Section 10 is from SB 67. It clarifies the responsibilities of the SEC and the Division.

Section 11 is from SB 67. It authorizes the Division to request information from owner/operators and clarifies the confidentiality provision of trade secrets.

Section 12 is from SB 67. It authorizes the SEC to modify the amount and timing for payment of the annual fee based on a permit fee to construct and operate a new process. This section also requires civil fines to be placed in the Fund for the program as well as interest earned in the Fund.

Section 13 is from SB 67. It authorizes the SEC to adopt regulations for issuing construction and operating permits.

Section 14 is from SB 67. It authorizes the SEC to adopt regulations for certifying records, reports and information. It removes the certification language in the statute.

Section 15 is from SB 67. It authorizes the SEC to adopt regulations to carry out the CAA provision for the Risk Management program, which will include the list and the EPA regulatory exemption for gasoline.

Section 16 is from SB 67. It increases the civil penalty to \$25k and adds a felony provision for bodily harm or death.

Section 17 is from SB 67. It provides for confidential information to be protected by the Governor's Investigative Committee.

Section 18 is from SB 67. It authorizes the SEC to adopt regulations for requirements for inspections and the inspection record reports. It also authorizes the Division to issue orders for violations of law and regulations and establishes what must be in the orders. Subsection 4 requires the Division to work with the owner and operator before the order is issued.

Section 19 is from SB 67. The Section 1 applicability is added.

Section 20 is from SB 67. It revises the civil administrative penalties.

Section 21 is from SB 127. These changes are the result of removing the list and reference the SEC's regulatory list.

Section 22 is from SB 67 and lists the statutes to be repealed.

Section 23 is from SB 67 and allows regulations adopted by the Division to remain in force until the SEC adopts them and the bill is effective October 1, 2003.

Section 24 is from SB 67. It allows the SEC to adopt regulations upon bill approval and then become effective October 1, 2003.