

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 2390

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2003

The Senate Environment Committee reports favorably and with committee amendments Senate Bill No. 2390.

The bill, as amended, provides for the uninterrupted regulation of facilities under the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.), the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.), P.L.1984, c.210 (C.13:1K-15 et seq.), P.L.1993, c.381 (C.58:28-1), the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.), and P.L.1986, c.142 (C.52:27D-222 et seq.) as the Standard Industrial Classification (SIC) System is phased out and the North American Industry Classification (NAIC) System is phased in. These State laws regulate industrial pollution, the cleanup of contaminated sites, hazardous discharges, public-private wastewater treatment contracts, and the use and handling of hazardous substances. The bill, as amended, provides for clarifying which facilities will continue to be regulated under these laws after the changeover to the NAIC System.

The bill, as amended, would also provide for the statutory reference to the SIC System under the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et seq.) to be addressed by the State Agriculture Development Committee (SADC) by regulation, in consultation with the Department of Labor (DOL).

More specifically, the bill would require the Department of Environmental Protection (DEP), in consultation with the DOL, to adopt rules and regulations that:

(1) identify the categories of employers, entities, establishments, or facilities contained in those SIC codes that are included in the definition of "business entity," "employer," "industrial establishment," "industrial facility," or "private firm," and that are regulated under the State laws cited in the bill; and

(2) identify the NAIC codes for the universe of those employers, entities, establishments or facilities that are generally equivalent to these regulated categories.

The bill, as amended, would then require that upon adoption of the regulations, the employers, entities, establishments or facilities

identified by the NAIC System of codes be regulated pursuant to the cited statutes. The bill, as amended, requires that the DEP ensure that the categories of employers, entities, establishments, or facilities regulated pursuant to the rules and regulations adopted pursuant to section 1 of the bill are consistent with those regulated prior to the bill's effective date. Further, no business entities, employers, industrial establishments, industrial facilities, or private firms could be subject to, or excluded from the provisions of the State laws cited in the bill solely as a result of the replacement of the Standard Industrial Classification codes with the North American Industrial Classification System of codes.

The bill, as amended, further provides that, prior to the adoption of the rules and regulations required under section 1 of the bill, the Commissioner of Environmental Protection may, immediately upon filing the proper notice with the Office of Administrative Law, adopt temporary regulations as the Commissioner determines is necessary to provide for classification under the North American Industry Classification System of business entities, employers, industrial establishments, industrial facilities, or private firms regulated under the State laws cited in the bill and classified under the Standard Industrial Classification codes.

The bill, as amended, requires that the temporary regulations not exclude any business entity, employer, industrial establishment, industrial facility, or private firm that was regulated prior to the effective date of this act, or include any business entity, employer, industrial establishment, industrial facility, or private firm that was not already regulated prior to the effective date of this act. The temporary regulations would be in effect for 270 days or no longer than one year after the bill's effective date, after which they may be amended, adopted, or readopted in accordance with the requirements of the "Administrative Procedure Act."

Finally, the bill, as amended, authorizes the SADC, in consultation with the DOL, to adopt regulations, and if necessary emergency regulations not to be in effect more than 270 days after the filing or one year after the effective date of the act, that determine the classification for agriculture, forestry, fishing, and trapping under the NAIC System of codes, and for the production of agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities that are described in the SIC codes for agriculture, forestry, fishing, and trapping, for the purposes of compliance with the "Right to Farm Act". The bill, as amended, adds the reference to the NAIC system to the appropriate section of the "Right to Farm Act," and further directs the SADC to ensure that the provisions of the "Right to Farm Act" will continue to apply to any owner or operator of a commercial farm, or other person, to whom the provisions applied to prior to the effective date of this bill, as amended.

The SIC System was originally developed in the 1930's to classify

establishments by the type of activity in which they are primarily engaged and to promote the comparability of establishment data describing various facets of the U.S. economy. The SIC System covers the entire field of economic activities by defining industries in accordance with the composition and structure of the economy. Several State statutes define the industrial companies, facilities and groups regulated pursuant to State laws by referencing specific SIC codes. However, changes made pursuant to the North American Free Trade Agreement have resulted in a gradual phasing out of the SIC System, replacing it with the NAIC System.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

(1) add "private firm" to the list of terms whose definitions include references to SIC codes;

(2) clarify that the SIC codes referenced under P.L.1984, c.210 (C.13:1K-15 et seq.) and P.L.1993, c.381 (C.58:28-1 et seq.) will also be addressed under the regulations required under the bill as amended;

(3) prohibit the DEP from subjecting to, or excluding from the provisions of the State laws cited in the bill any business entities, employers, industrial establishments, industrial facilities, or private firms solely as a result of the replacement of the SIC codes with the NAIC System;

(4) clarify the purpose of the temporary regulations;

(5) require the temporary regulations adopted by DEP provide that the regulated entities under the SIC system would continue to be regulated under the NAIC System;

(6) require the temporary regulations adopted by DEP provide the entities not regulated under the SIC system would continue to not be regulated under the NAIC System;

(7) provide for the statutory reference to the SIC System under the "Right to Farm Act" to be addressed by the SADC by regulation, in consultation with the DOL;

(8) add to the appropriate provision of the "Right to Farm Act" a reference to the NAIC System classifications; and

(9) make technical corrections to the bill.