



**New York State Department of Labor**

David A. Paterson, *Governor*

M. Patricia Smith, *Commissioner*

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June 20, 2008

## **Explosives Bill S.3911-A/A.9006-A**

The following is a summary of the Department's agreement to the Senate's proposed amendments to A.9006-A/S.3911-A. This agreement will be included in the provisions of a bill amendment, or as explained below.

1. Employee Licenses (*Amendment 1*)

Rather than require licenses for employees at the facilities listed in 2(a), (b) and (c), the Department will allow employees to perform their duties under the direct supervision of a license holder for the facility if such employee has an approved government criminal history check. The license holder will be required to provide proof of such background check to the Department, as provided by regulation.

2. Renewal Fees (*Amendment 2*)

The amended bill will allow the commissioner to grant multi-year licenses and renewals through regulation, including 3-year licenses. License and renewal fees for manufacturing, testing and other explosive uses under labor law section 458(2) will be set at \$100 annually payable at time of the application or renewal.

3. Denial and Revocation, Hearings and Appeals (*Amendments 3, 5*)

Evidentiary standards for revocation will be raised to require the Department to establish intentional violation of the terms of the license and permit. The standard of proof for denials and revocation will be raised to a clear and convincing standard.

Hearings for denial, revocation, seizures and civil penalties will require a hearing date to be set within 15 days of the commissioner's notice, and 15 days' notice to the licensee. Appeals may be taken to the Industrial Board of Appeals and to state court.

4. Seizures (*Amendment 4*)

Seized materials may not be destroyed until the owner has exhausted all appeals, except where public safety is endangered or for a violation of federal or state laws or regulations.

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### 5. Costs (*Amendment 6*)

All appeals must be exhausted prior to cost enforcement.

### 6. Penalties (*Amendment 7*)

The \$10,000 maximum daily civil penalty will be restricted to instances where the public safety is endangered. The daily penalty until corrected would be reduced based upon the violator's good faith in trying to correct the violation, his lack of prior violations and other criteria listed in the bill.

The criminal penalty will be downgraded to a class A misdemeanor from a class E felony, and to a class E felony from a class D felony.

### 7. Pyrotechnics Board (*Amendment 8*)

The Department will establish a pyrotechnics board pursuant to general business law section 483(3), similar to the blasters board for high explosives established by regulation under 12 NYCRR 39.5(f) pursuant to GBL 483(3). The Department will issue proposed regulations for public comment relating to the establishment of the pyrotechnics board.

### 8. Firework Permits (*Amendment 9*)

The bill amendment will include provisions from S.7899/A.10750 to allow individuals to apply for local firework display permits. It will also maintain the additional safeguards under S.3911-A/A.9006-A to ensure the safe operation by individuals of firework shows.