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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Government Operations and Spending Limitations...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly

Record of Committee Proceedings

Committee on Government Operations and Spending Limitations

Assembly Bill 486

Relating to: periods in which state agencies will act on certain applications, approval of certain applications, refunds of fees, and granting rule-making authority.

By Representatives Montgomery, Suder, Nischke, Musser, Ladwig, Seratti, McCormick, Olsen, F. Lasee, Owens, Ainsworth, Hines, Jensen, Petrowski, Bies, Weber, Kestell and J. Fitzgerald; cosponsored by Senators Stepp, Schultz, Roessler, Harsdorf and A. Lasee.

August 26, 2003 Referred to Committee on Government Operations and Spending
Limitations.

August 27, 2003 **PUBLIC HEARING HELD**

Present: (6) Representatives F. Lasee, Loeffelholz, Musser,
Weber, Zepnick and Wasserman.

Absent: (0) None.

Appearances For

- Phil Montgomery, 4th Assembly District
- Jerry Deschane, Wisconsin Builders Association
- Rick Lewandowski, Wisconsin Paper Council

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Tom Larson, Wisconsin Realtors Association
- Mike Semmonn, Wisconsin Builders Association
- Kathi Kilgore, Outdoor Advertising Association of Wisconsin
- Joan Hansen, Wisconsin Manufacturers and Commerce

Registrations Against

- None.

September 17, 2003 **EXECUTIVE SESSION HELD**

Present: (0) None.
Absent: (0) None.

September 23, 2003 **EXECUTIVE SESSION HELD**

Present: (6) Representatives F. Lasee, Loeffelholz, Musser,
Weber, Zepnick and Wasserman.
Absent: (0) None.

Moved by Representative Weber, seconded by Representative
Loeffelholz that be recommended for adoption.

Ayes: (4) Representatives F. Lasee, Loeffelholz,
Musser and Weber.
Noes: (2) Representatives Zepnick and Wasserman.

ADOPTION RECOMMENDED, Ayes 4, Noes 2

Moved by Representative Musser, seconded by Representative
Weber that **Assembly Bill 486** be recommended for passage as
amended.

Ayes: (4) Representatives F. Lasee, Loeffelholz,
Musser and Weber.
Noes: (2) Representatives Zepnick and Wasserman.

PASSAGE AS AMENDED RECOMMENDED, Ayes 4, Noes 2

Lance Burri
Committee Clerk

Vote Record

Committee on Government Operations and Spending Limitations

Date: _____

Moved by: W _____

Seconded by: Lo _____

AB 456 _____

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt 1 _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

Committee Member

Representative Frank Lasee, Chair

Aye

No

Absent

Not Voting

Representative Gabe Loeffelholz

Representative Terry Musser

Representative Becky Weber

Representative Josh Zepnick

Representative Sheldon Wasserman

Totals:

4

2

Motion Carried

Motion Failed

Vote Record
Committee on Government Operations and Spending
Limitations

Date: _____

Moved by: M

Seconded by: W

AB 486

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage
 Adoption
 Confirmation
 Concurrence
 Indefinite Postponement
 Introduction
 Rejection
 Tabling
 Nonconcurrency

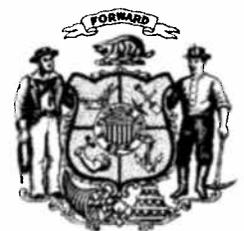
<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Frank Lasee, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Gabe Loeffelholz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Terry Musser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Becky Weber	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Josh Zepnick	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Sheldon Wasserman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u> 4 </u>	<u> 2 </u>	_____	_____

Motion Carried

Motion Failed



WISCONSIN STATE LEGISLATURE





**Wisconsin
Manufacturers
& Commerce**

Memo

**TO: Assembly Committee on Government
Operations and Spending Limitations**
FROM: Jeff Schoepke, Director, Environmental Policy
RE: LRB 1899/2
DATE: August 27, 2003

Thank you for the opportunity to provide comments on LRB 1899/2, Legislation requiring time limits for state agency permit and license issuance. WMC supports this bill draft with modifications.

Earlier this year WMC held listening sessions across the state to hear from the business community on the state of Wisconsin's regulatory climate. The WMC report, *The Case for Regulatory Reform*, released May 14, 2003, outlines the findings from those sessions and other follow-up meetings and online forums sponsored by WMC. Without exception, companies and consultants with experience in other states found Wisconsin's regulatory climate more hostile toward business than any other state, including neighboring Midwest states and California.

The inability to obtain timely permits was the most significant regulatory impediment facing companies wishing to expand or locate in Wisconsin. Business opportunities have gone to other states because of the ability to provide regulatory approvals more quickly. We applaud Rep. Montgomery's attempts to address these concerns. Agencies which process permits should be required to meet deadlines and failure to do so should come with consequences.

Unfortunately, one of the state's most problematic permit programs, the DNR's Air Management program, cannot be fixed by a presumptive permitting law. It requires a different, broader approach.

For example, the U.S. Environmental Protection Agency must be considered when working on air permitting issues. Wisconsin manages major source air permits with authority delegated by the federal government. That is, DNR issues permits under the federal Clean Air Act that are enforceable by the EPA. Air permits are large and complex; even the best written state permits can fall prey to traps in the process and be challenged by EPA. Companies that face such a challenge open themselves up to significant legal liability. Many industry attorneys have indicated to WMC that they fear a permit approved "presumptively" could be especially susceptible to EPA challenge. The time and resources spent to fight back a challenge would then certainly outweigh the benefits from the timely turnaround.

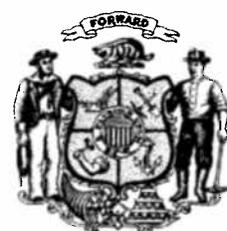
Therefore, while we support the concept of presumptive permitting, WMC requests the Legislature remove section 48 related to DNR air permitting. (Page 64, line 10)

WMC is in the process of developing other statutory changes that could help address permitting issues with the Air program. We look forward to sharing recommendations on these matters with Legislators later this fall.

While time certain permitting may not work for the air program, it may for other permit programs. We are working with interested industry groups and members and will provide further comments on this bill draft before the committee takes executive action.



WISCONSIN STATE LEGISLATURE





File
with
Bill

WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVES PHIL MONTGOMERY AND FRANK LASEE
FROM: Dan Schmidt, Analyst
RE: Comparison of 1999 Assembly Bill 602 and 2003 Assembly Bill 486
DATE: September 5, 2003

This memorandum, prepared at the request of your staff, compares certain substantive provisions of 1999 Assembly Bill 602 and 2003 Assembly Bill 486.

The general provisions of 1999 Assembly Bill 602 and 2003 Assembly Bill 486 are substantially the same. In either bill, an applicant for a specified license, permit, or other agency approval may receive one of the following remedies for a specified agency's failure to take action on an application:

1. An applicant may receive a refund of fees (fee refund).
2. An applicant may consider the application approved subject to the terms and conditions for the license, permit, approval, or determination (automatic approval).

The bills primarily differ in the application of these remedies. Assembly Bill 602 specifically and only applies to the Department of Natural Resources' (DNR's) determination of whether the following activities are authorized:

1. Placing a dam, bridge, or other obstruction in or over a navigable water.
2. Placing any material or structure upon the bed of a navigable water.
3. Activities in wetlands that may not be undertaken until DNR issues a water quality certification, based on DNR's determination that the proposed activity is wetland dependent or will not adversely affect wetland functioning.
4. Construction, improvement, extension, or other modification of a sewerage system, including all structures, conduits, and pipes by which sewage is collected, treated or disposed of (except indoor plumbing).

5. Diverting water from a lake or stream.
6. Constructing, dredging, or enlarging an artificial water or waterway.
7. Grading or removing topsoil from the bank of a navigable water.
8. Removing material from the bed of a lake or stream.
9. Constructing or operating a high-capacity well.
10. Discharging pollutants in stormwater from industrial activity or municipal storm sewers into the waters of this state. [See 1999 Assembly Bill 602.]

2003 Assembly Bill 486 applies to a number of specified agencies and assigns *one* of the two remedies to each of the specified types of licenses, permits, and other approvals issued by those agencies. For example, a specified agency that failed to act by a specified deadline would result in an *automatic approval* in the following circumstances: high-capacity well approvals, water and air pollution permits, and grain dealer licenses. The fee refund provision applies to those application procedures which are not subject to automatic approval under the bill. A *fee refund* may include procedures such as: well driller registrations, bait dealer licenses, and teacher licenses.

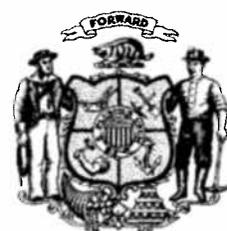
While both bills permit their specified agencies to promulgate rules establishing time periods for licenses, permits, or other agency approvals, 2003 Assembly Bill 486 permits agencies to extend their review periods by up to 60 days (except for issues relating to navigable waters and similar matters) by providing a written notification of extension to the applicant prior to the expiration of the review period for matters which may be automatically approved and 30 days for matters which may result in a fee refund. 1999 Assembly Bill 602 does not provide for such extensions. Both bills permit review period extensions for incomplete or modified applications or to prevent substantial harm to the public safety or the environment.

If you have any questions regarding this memorandum, please feel free to contact me at the Legislative Council staff offices.

DWS:jal:tlu;rv



WISCONSIN STATE LEGISLATURE



September 10, 2003

To: Rep. Frank Lasee, Chair
Members of the Assembly Government Operations and Spending
Limitations Committee
Members of the Wisconsin Legislature

From: Gary Radloff, DHFS Legislative Liaison

Re: Assembly Bill 486

Thank you for the opportunity to provide written comments on Assembly Bill 486. The Department of Health and Family Services (DHFS) supports the position of Governor Doyle to provide fair and efficient review of permits and licenses. DHFS does not believe this bill advances that goal. DHFS has numerous concerns with the provisions of AB 486. Provided in this memo are the concerns as they impact a variety of department programs.

AB 486 imposes the following requirements on various licensing/certification activities (listed below) of the department:

1. A rule must be implemented to establish a period within which the department intends to approve or disapprove an application.
2. If the department fails to provide written notice of approval or disapproval (including specific facts upon which disapproval is based) within the period established by rule, application fees must be refunded.
3. Disapproval cannot be based on the department's inability to complete review within the period.
4. Upon receipt of an application, the department is required to inform the applicant of the time period.
5. The department can extend the period based on an incomplete application if it provides written notice within 30 days of receipt of the application specifying info that must be provided to complete the application.

The above provisions apply to the following DHFS licensing/certification activities:

- A) care management organization certification (see pp. 21-22 of the bill)
- B) child welfare agency, group home, shelter care facility and day care center licensing (pp. 22-23)
- C) MA provider certification (pp. 23-24)
- D) licensing/registration/certification of nursing homes, institutions for mental diseases, CBRFs, adult family homes, RCACs, hospitals, home health agencies, rural medical centers and hospices (pp. 24-25)
- E) certification/approval of outpatient mental health clinics, treatment facilities, community mental health programs and community support program providers (pp. 25-27)
- F) certification/approval/licensing of nurse/home health/hospice aide instructional and competency evaluation programs, ambulance service providers, EMTs, EMT training, defibrillation performance, first responders, defibrillator training programs and emergency medical services instructional programs and program plans (pp. 52-53)
- G) certification/licensing/permitting/registration/approval/accreditation of sanitarians, public health dispensaries, HIV tests/test kits, tattooists/body piercers and establishments, lead hazard reduction/lead management activity performance/supervision, lead training courses and instructors, lead-free/lead-safe status, asbestos abatement/management activities, ionizing radiation sources, radiation source plans/specifications, ionizing radiation installation sites, radioactive materials, campgrounds/camping resorts/recreation or educational camps/public swimming pools, food sanitarians, hotels/restaurants/temp restaurants/tourist rooming houses/vending machines and commissaries, B&Bs, food protection practices, Grade A dairy operations, tanning facilities and labs for performing chemical analyses of blood or urine for alcohol, controlled substances or controlled substance analogs (pp. 59-61)

DHFS Bureau of Quality Assurance acts as an agent of the federal government, specifically the Center for Medicaid/Medicare Services (CMS).

Applying strict deadlines to granting certificates of approval for hospitals, home health agencies (HHAs) and hospices, especially if 90 days or less, would directly conflict with our obligations as a contractor for CMS. As CMS prioritizes our workload annually, we are expected to complete our work in that order. For at least the last three fiscal years, CMS has prioritized initial surveys as the lowest on the list of priorities. Other survey work such as investigation of complaints, recertification of HHAs, and completion of validation surveys must be done within strict time frames, and we are at risk of federal disallowance's if we fail to meet them. With revenue shortfalls in the HHA and HSPC state licensure fee appropriation, we could not afford to be refunding fees and still conduct our necessary state survey responsibilities.

In addition, although the bill language indicates it applies to building plan approvals issued by the Dept of Commerce, our Memorandum of understanding indicates that DHFS is an agent with Commerce. This raises the question of whether this would then apply to DHFS? If so, this would be problematic considering the high volume of hospital construction plans and projects that the Department receives.

Other potential impacts on the Bureau of Quality Assurance.

As noted above, in spite of the best efforts by all staff, it is reasonable to expect some initial processing of licenses to be late. BQA included over 400 initial surveys in the FFY04 workload estimate. With even 20-30 refunded application fees per year, (this is a conservative estimate) the impact to program fees could be anywhere from \$6,000 - \$25,000 based on the provider type and size. Any lost revenue would strain further already pressed program fee accounts.

If plan review fees are included via the Department of Commerce memorandum of understanding the fiscal impact could be significant. The plan review rules generally require approval/conditions/disapproval within 45 days. Inspection staff works diligently to meet this time frame, but occasionally exceed the 45 days. Again, for sake of argument if one-quarter of the plan reviews were late the lost revenue in this one budget area could be as much as \$250,000 annually. This revenue is used to fund inspection staff creating further strain on the regulation system.

Impact on regulation and Licensing of residential care centers, child placing agencies, day care centers, group homes, and shelter care facilities.

- Our rules currently indicate that we have 60 days to act on a completed application. This bill indicates that we can grant one extension of 30 days if we have not received all of the information we need to make a decision, but does not allow for the reality of incomplete applications. *The bill should be amended to indicate that the time clock starts ticking once a completed application is received.*

In the rare instances where the time frame is not met, it is generally a result of the applicant not providing all of the required information (e.g., a building inspection). This is beyond the control of the Department. In these circumstances it is the applicant who should be accountable.

- Presently, we refund the application fee if the license is ultimately denied. The possibility of losing funding in cases where a time frame is not met would probably require us to stop refunding application fees in cases of denial. This provision of the bill needs further justification or it should be deleted.
- Approximately 12% of the BRL budget are comprised of funds received from application fees. Although we do not anticipate losing any significant dollars because of this bill, we must be concerned any time funds are put at risk.

- It must be noted that staff is already overburdened by the number of facilities currently licensed. Processing license applications is time consuming and staff must also respond to complaints and emergencies in licensed facilities that place the health, safety and welfare of children at risk. The monitoring of existing facilities where children are present should not be considered a secondary responsibility vis a vis processing initial applications.
- The bill would require us to send a letter to applicants informing them of the law regarding reimbursement of application fees if time frames aren't met. This seems like an unnecessary administrative burden if we could simply add that language to our licensing rules. Adding language to our rules would save time and money.
- In addition, because the time frame is not dependent on us having received a completed application, it may, in some instances, be beneficial for the applicant to draw the process out so that we are unable to complete action on the application in the allotted time.

Impact on Radiation Protection Section (RPS)

Negative impacts on the Radiation Protection Section range from:

- a. Increased staff time, printing and postage costs to send a 'notification of approval period' letter to applicants after receiving an application.
- b. Possible fee increases in low revenue programs, such as tanning registration, to offset increased personnel, printing and postage costs.
- c. Establishment of an application form and review fee for radiation installation plan review (no form or fee currently exists).
- d. Allowing insufficient time to provide written notice to the applicant describing information needed to complete the application.
- e. In our case, no acknowledgement that a fee is part of a complete application.
- f. Potential for automatic approval of a radioactive materials license, violating Wisconsin's agreement with Nuclear Regulatory Commission and causing public health and materials security issues.

The problems mentioned above could be eliminated or minimized by ensuring the following:

1. Modify the bill language, as follows:

- s. 250.043 (3) Notice of deadline. ~~Upon receiving an application for a license, certification, certificate, permit, registration, or approval specified in sub. (1),~~ The department shall inform the applicant of the period established under sub. (1) for approval (**review ??**) of the license, certification, certificate, permit, registration or approval.

Note: This revision would allow for notification of review/approval period to be placed on application forms and web sites, with minimal fiscal impact, rather than using a separate letter. Also, consider replacing the first 'approval' with 'review'.

- s. 250.043 (4) Permitted extension of deadline. The department may extend the period established under sub. (1) because an application is incomplete if, within ~~30~~ **60** days after receiving the application, the department provides written notice to the applicant describing specifically the information or fee that must be provided to complete the application.

Note: Radioactive material license applications are assigned to one individual, who may take more than 30 working days to initially review large license applications, such as a broad scope license for a university, to determine what information may be missing. The associated fee is part of the application - the application is thus incomplete until we receive the fee. HFS 157.10 (2) specifically mentions that we may not begin reviewing a license application until we receive the fee (due to the extensive staff time involved). HFS 157.11 (9) already contains a materials license review period of 180 days, consistent with the intent of AB 468. We also inform applicants in writing of missing items from the application.

2. All Radiation Protection Section registrations and licenses must be considered as 'not subject to automatic approval'. This is especially important for radioactive materials licenses to ensure that we do not violate the agreement with Nuclear Regulatory Commission or jeopardize the established safety and security requirements for use of radioactive materials.
3. The Radiation Protection Section must be allowed to continue retention of a materials license application fee even if the application is denied. HFS 157.10 (2) specifically indicates that we keep a license application fee even if DHFS disapproves the license. This reimburses us for the significant time and expenses generally needed to review a license application, and minimizes the potential for frivolous license applications.

Discussion:

The Radiation Protection Section routinely processes registration and license applications in a timely manner (30-90 days, depending on type), and informs applicants of denials or missing information. Assembly Bill 486 (as worded) impacts all regulatory activities within the Radiation Protection Section (RPS) in some fashion. The activities and associated impacts are as follows:

- Registration of x-ray devices (fee)

RPS registers approximately 5,000 x-ray facilities in Wisconsin. We receive about 150 new applications each year. The only requirements for receiving a permit are a) submit a complete application and b) pay the appropriate fee. AB 486 would thus have minimal

impact on this program. However, the requirement in AB 486 to inform applicants of the review period after receiving the application is unnecessarily burdensome, since it would result in increased staff time, printing and postage costs to send this letter. A preferred approach would be to place the review time info (ex: The department will take up to 60 days to process your application and issue a permit.) on the application so the applicant is aware of the review period on the front end of the process. A separate letter would thus be unnecessary.

- Registration of tanning facilities (fee)

Radiation Protection Section registers approximately 1,300 tanning facilities, with about 50 new applicants each year. Same process as x-ray - submit the application and fee, receive a permit. However, the \$10 fee is insufficient to absorb the additional staff time, printing and postage costs to comply with the notification of review time requirement after receiving the application. The fee would likely have to be increased, if this language is retained. As above, a more cost-effective approach would be to put the review time directly on the application. This would negate the need to raise the tanning registration fee.

- Review and approval of radiation installation shielding plans (no fee)

The RPS is required to review and approve shielding plans for new or remodeled radiation installations to ensure that facility operation does not expose any member of the public to radiation levels exceeding specified dose limits. RPS staff reviews about 150 plans per year. There is no fee currently authorized for this review. The plans are the application. Companies often submit the plans for the facility. If AB 486 passes, as written, we would have to consider requesting a new fee to recover the extra staff time, printing and postage costs to notify facilities of the plan review time.

- Registration of generally-licensed devices (fee)

The RPS registers certain generally licensed devices at approximately 300 facilities in WI. This is a new program associated with our Nuclear Regulatory Commission agreement. AB 486 would complicate this activity, because the device manufacturers, who are required to notify us of devices sold in the state on a quarterly basis, often provide the registration forms to their customer as a service. The customer must complete them and submit with the appropriate fee. We will either send applicants a permit or a letter notifying them of the approved registration, and info on specific requirements. We also update our registrant database and bill the facilities possessing the devices on an annual basis. Again, notifying applicants after receiving the application is not cost effective. A preferred alternative would be to add the review period and related info to the application form, negating the need for a separate letter notifying them of the review period.

- Licensing of radioactive materials (fee)

AB 486, as written, would have three negative impacts on licensing of radioactive materials: a) the provision in Wis. Stat. 250.043 (4) establishing a preliminary application review period of 30 days, b) no acknowledgement that a fee is part of a complete application, and c) the potential that an applicant could receive a radioactive materials license automatically if RPS was unable to complete review within the defined period. HFS 157.11 (9) already contains a stated license application review period (180 days), and staff informs applicants in writing of any missing items in the application (including lack of fee). On rare occasion, the RPS may require more than 30 working days to review a license application (such as for a university campus or other complex license) to determine what is missing from the application and to conduct a site inspection. We do not envision needing more than 60 working days for this preliminary review.

HFS 157.10 (2) also states that we may not begin reviewing a license application until receiving the appropriate fee. An application is not considered complete until we receive the application fee. This ensures reimbursement of program expenses to review the application.

Finally, the most problematic portion of AB 486 is "Disapproval cannot be based on the department's inability to complete review within the period." The Nuclear Regulatory Commission requires that anyone who receives a materials license must meet very stringent requirements to ensure that radioactive materials are used safely and securely. DHFS must ensure that no person can receive a materials license automatically, even if we fail to perform within a defined period. If AB 486 (as currently written) requires this, it would contradict our states agreement with the Nuclear Regulatory Commission and, we could be forced to violate our agreement with NRC and it could cause public health and security issues. DHFS requests that the authors of AB 486 make sure that the bill does not require the Radiation Protection Section to automatically issue a materials license under any conditions.

Impact on Division of Public Health Asbestos & Lead Section

The comments made will reference AB486, Section 46, as this section proposes regulation specific to the programs the Asbestos and Lead Section administers.

1. Section 46, sub. (1) DEADLINES. Creates s. 250.043 of the statute, and requires the Department to establish, by rule, periods within which the Department will approve or disapprove applications, and includes the following Asbestos and Lead Section application processes under ch. 254, state statutes:
 - Lead certification
 - Lead instructor approval
 - Lead accreditation
 - Lead-free/lead-safe certification
 - Asbestos certification
 - Asbestos certification renewals

This subsection relates to approximately 5,000-6,000 applications per year processed by the Section. The Section would be required to add additional processing procedures for each application, increasing the costs of processing applications and adding to the time required to process each application.

S. 46, sub. (2) FAILURE TO MEET DEADLINE. Requires the Department to refund fees to the applicant if the department fails to provide written notice of application approval or disapproval, including the reasons upon which disapproval is based, before the expiration of the approval processing period set under sub. (1).

Fiscal Impact: The Department currently has application processing timelines set in rule as follows:

- Lead certification – 10 working days
- Lead instructor approval – 10 working days
- Lead accreditation – no timeline in rule
- Lead-free/lead-safe certification – 10 working days
- Asbestos certification – 14 days
- Asbestos certification renewals – 14 days

In order to minimize the fiscal impact, the processing timelines would need to be adjusted to allow for additional processing days. During peak periods, it becomes difficult to meet the 10 working day/14 day timelines for processing applications. Currently, including incomplete applications, 95% of applications are processed within 30 days of receipt and 98% within 60 days. When fully staffed, penalties for failing to meet the timeline would be minimal.

However, when there are staff shortages, as experienced in 2003, processing time dramatically increases, particularly affecting the ability to meet the 10/14 day timelines and cutting in half the number of applications processed within the first 10 days of receipt. An assessment of processing data indicates that a more realistic timeline, perhaps 20 working days or 30 days, would be key to avoiding a significant negative fiscal impact of this subsection.

In order to process the most applications in the shortest time possible and with the lowest administrative costs, staff time needs to focus on processing applications rather than responding to additional regulatory mandates. Additional fiscal and staffing time costs accrue each time an application fee refund is required, making it more difficult to meet the timeline requirements. Avoiding significant fiscal impact from this subsection requirement would depend on maintaining sufficient staffing levels to be able to efficiently process applications.

Additional funding to enable electronic filing of applications, with electronically sent confirmations of receipt and notice of the processing timelines, could reduce the impact of these requirements and help speed up processing times. However, this capability comes at a price for online development and tie-ins to current databases.

S. 46, sub (3) NOTICE OF DEADLINE. Requires the Department to inform applicants, after receiving their applications, of the period within which the Department must process the application for approval.

Fiscal Impact: As indicated in sub. (2), above, our current timelines for processing applications are very short, ranging from 10 working days to 14 calendar days. This leaves very little time for processing after receiving applications, and does not allow for an additional step without adding significantly to processing time. New processes would have to be developed to send notice of receipt to applicants and additional costs would include database upgrades to handle the process, mailing of letters, and staff time to manage the process.

These processes would add up to 0.5 FTE staff time (\$20,000) for processing, approximately \$25,000 for computer database upgrades, and \$5,000 for printing and postage costs for a total of \$50,000 in costs the first year. The 0.5 FTE staff time is based on averaging about 12 additional minutes per each of the 6,000 applications received annually for processing the notice of deadline. Of the 6,000, approximately 800 would be received as electronic submittals of lead-free/lead-safe registry certification applications that are managed and approved by the online database system. The application submittal is automatically checked against the conditions set in the database and is instantaneously approved or disapproved. Thus, the applicant has immediate notification of the status of the application at the time of submittal. This process could be replicated for processing other applications online, at an additional cost.

The 12 minutes allotted per application includes data entry of application information for the notice (applicant name, address, application receipt date, type of application, status of notice), running the query to mail merge new applicants for the notice letters, printing the letters and preparing them for and mailing them on a daily basis. Overall additional cost per application would run at least \$10 per application in the first year, and about \$6 in subsequent years.

A less costly option would be to include with application materials prominent information about the timelines for processing applications and for notifying applicants of approvals, denials and extensions for incomplete applications.

Impacts on the Medicaid Program, BadgerCare and MA waiver programs

Section 49.481 affects the certification of Medicaid providers.

If enacted as provided in AB-486, s. 49.481 would require the department to establish, by administrative rule, a period within which the department must act to approve or disapprove an application to be a certified Medicaid provider. If the Department were to fail to meet the deadline the Department would be required to refund fees paid by the applicant for the certification. The Department would be required to provide the applicant with written notice that the Department had approved or disapproved the application for

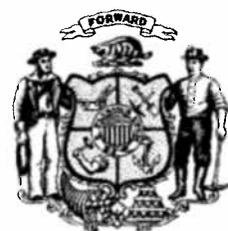
the certification, including the specific facts upon which any disapproval is based, before the expiration of the deadline for action on the certification application. The Department would be required to inform the applicant of the Department's deadline for action upon receiving an application for certification. The Department could extend the period established for action on an application for certification as a Medicaid provider if an application is incomplete. However, the Department could only do so if the Department provided written notice to the applicant providing a specific description of the information that must be provided to complete the application.

Section 46.284 provides for similar circumstances relating to applications for certification to be a care management organization (CMO). This would affect the Family Care program. Under this provision, the Department would be required to act on an application to be a CMO within the period of time it specified in administrative rule. If the Department failed to act within the specified period of time, or failed to notify the applicant of its action, the Department would be required to refund any application fee. The Department would be forbidden from denying an application for the reason that it was unable to complete action on the application within the required period of time.

Department staff continues to research other areas of potential impacts of AB 486 and may provide additional comment at a later date. Again, thank you for allowing DHFS to share this information.



WISCONSIN STATE LEGISLATURE



A QUALITY
EDUCATION
FOR
EVERY
CHILD



State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

September 15, 2003

Representative Frank Lasee, Chairperson
Assembly Committee on Government Operations and Spending Limitations
Room 105 West, State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Representative Lasee:

2003 Assembly Bill 486 would require several agencies, including the Department of Public Instruction, (DPI) to act on license and permit applications within periods established by rule or refund fees if this time period is exceeded. While I applaud the intent of the bill to make state agencies more responsive to those with whom we do business, I am concerned that this bill, if enacted, may actually delay our response time, impose another cost that we cannot afford, and further dilute the revenues of the department.

AB 486 would affect the teacher licensing program at DPI. The teacher licensing program is funded with fees received from applicants for educational licenses and permits. The fiscal note attached to AB 486 describes a potential cost to the department related to notifying applicants of the time period established to approve applications. Although not exorbitant, the cost is of some concern in these difficult fiscal times. It is also unknown at this time if any added paperwork as a result of this provision would adversely affect the time needed to issue teacher licenses.

The department is committed to issuing licenses and permits for teachers in a timely manner, and is working on a pilot on-line application process for teacher interns. We continue to streamline the application process for all applicants. However, it is difficult to define an appropriate period in which to approve applications. Certain times of the year see large numbers of applicants. For example, the department receives more than 5,000 applications, one-sixth of all applications, every June, reflecting the fact that most teacher licenses expire on June 30. Contrast that figure with December's average of 800, and the wide disparity in the volume of work is readily apparent. The number of applications received for processing rose from 20,000 in 1993 to 33,300 in 2003. In that same time period, the full time equivalent positions on the team that issues teaching licenses and permits were reduced. Based on these numbers, it is obvious that we are doing more with less.

Recently, the licensing program has had to absorb unanticipated financial mandates. In 2003, the department incurred \$420,250 in background investigation costs. Up until August, 2003, the Department of Justice (DOJ) charged the department \$34 for an out-of-state background check and \$5 for an in-state investigation. 2003 Wisconsin Act 33 increased each of these costs by \$5 with no increase in revenues. This is expected to cost the program over \$150,000 annually in additional payments to DOJ. In 1995, Wisconsin Act 27 required the department to lapse ten percent of teacher license fees to the general fund annually. Last year, the required lapse amounted to \$327,300. 2001 Wisconsin Act 16 and Act 109, the

budget reform bill, required that the teacher licensing program lapse an additional \$135,600 in fiscal year 2003 to the general fund. Continued financial mandates such as these seriously hamper our ability to maintain service levels, and could easily cause the department to exceed the time frames required to be established by AB 486.

The department has worked diligently to provide quality educators for our schools. In doing so, the accurate and timely processing of teacher licenses is of paramount importance. It would be unfortunate if Assembly Bill 486 imposes another cost that the department is not prepared to face. It would also hurt the teacher-supported licensing program if any of its revenue were further depleted.

Please contact me with any questions you may have.

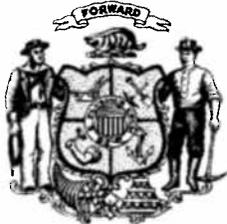
Sincerely,

A handwritten signature in black ink that reads "Elizabeth Burmaster". The signature is written in a cursive style with a large initial "E" and a stylized "B".

Elizabeth Burmaster
State Superintendent



WISCONSIN STATE LEGISLATURE





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

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Madison, Wisconsin 53707-7873
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SEP 29 2003

September 23, 2003

Representative Frank Lasee
Room 105 West
State Capitol
P.O. Box 8952
Madison 53708

RE: Assembly Bill 486

Dear Representative Lasee:

Thank you for your note about Assembly Bill 486 asking for comment on the substance of the bill. OCI is currently working on the Fiscal Estimate as requested and should be forwarding that as soon as it is completed.

Assembly Bill 486 would require OCI to promulgate administrative rules that would establish a defined period of time in which OCI would be required to approve or disapprove applications for insurance agent and company, viatical settlement provider and broker, and employee benefit plan administrator (EBPA) licenses. Failure to approve/disapprove license applications within the established time period would require the agency to refund the application fees associated with the approval process. I will describe the application process for companies and individuals conducting an insurance business in the State of Wisconsin and then identify where an arbitrary time frame may raise serious issues of concern.

The first point that needs to be identified is the inherent difference between an application of an insurance company to become licensed in Wisconsin (including employee benefit plan administrators) and an application for an insurance agent's license. The requirements to be satisfied before each type of license is issued are vastly different in their form, substance and focus. Therefore, I must assume that it will be necessary for the Office to establish a minimum of two separate timeframes for compliance with AB 486, one for insurance agents and one for insurance companies, including EBPA's. Possibly more than two time periods may be necessary once further review of the bill is conducted.

The application process for insurance agent licensure is different for residents and nonresidents. Wisconsin residents are required to complete prelicensing education and then sit for an examination. To speed up this process, we have worked with our current

Representative Frank Lasee
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September 23, 2003

vendor to computer-generate the resident applications at the test site. An additional application fee is not collected. Therefore, all fees associated with the resident application are due the test vendor for their contractual examination services. There would be no fee to reimburse to the candidate if the time period for review goes beyond 30 days as identified in the proposed law.

Once an applicant is successful on the examination, the application and any additional documentation required are compiled and sent to our office. We currently receive a download of data and the hard copy applications once each week. Most of the applications are clean and can be processed within one to two working days from receipt. However, between five and ten percent of the applications include criminal background information that requires further review to determine if their crimes relate to the practice of insurance. This review is necessary not only to conform with current state law, but with the 1994 Federal Crime Bill as well. This review, depending on the information received and if further documentation is required, can take longer than 30 days to render a decision. If administrative actions taken regarding any professional license, lawsuits involving allegations of misrepresentation, fraud and other activities, terminations by insurers involving allegations of wrongdoing are disclosed by the applicant, these must be further investigated. Merely getting the information from another state or other entity may take over 30 days.

Nonresident applicants are not required to complete prelicensing education or an examination. They can file a paper application, or log on to a website and file electronically. Electronic applications generally take 7 to 10 working days to complete unless there are further issues to be investigated as described for resident agents previously. Due to current staffing levels, nonresident paper applications can take 4 to 6 weeks to process. If the nonresident applicants want faster turnaround on their license application, they do have the electronic option.

The bottom line for insurance agent applications is that the agency already meets an extraordinary quick time frame for "clean" resident agent applications. An understandably longer time frame results when an applicant has a criminal record, administrative actions or other issues that requires further review. However, these applications are given quick and efficient service so that they are handled as quickly as possible. For nonresident agent applications, an electronic process is in place for licensure that takes between 7 and 10 days. The nonresident paper process can take up to 6 weeks which also is already a reasonable time frame for licensure. Finally, the fee structure for insurance agent license applications is such that it would be very difficult and costly to develop a process to return fees if designated time frames are not met.

Insurance companies wishing to do business in Wisconsin are required to obtain a certificate of authority from OCI. This can be accomplished by completing an application for admission developed by OCI, in conjunction with the National Association of Insurance Commissioners. This application is virtually uniform in all 50 states.

Representative Frank Lasee
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September 23, 2003

In order for an insurance company to gain admission to Wisconsin, it must meet certain financial and market conduct standards. Prior to licensing an insurance company we carefully review a company's overall ability to provide consistent, stable insurance services in the state. How an insurer meets or intends to meet these standards are reviewed by OCI from both a subjective and objective standpoint. This is because evaluating and determining an insurer's future financial condition and market conduct is more of an art than a science.

Wisconsin has always had a very vibrant and competitive insurance market place with more than 1,700 insurance companies doing business in our State. For example, we have approximately 200 insurers writing homeowners insurance in Wisconsin, more than 260 insurers writing automobile insurance in our State, more than 260 insurers writing commercial property and casualty insurance, over 285 insurers writing group accident and health, and more than 420 insurers writing ordinary life insurance. I firmly believe that one of the reasons we have such a successful insurance market in Wisconsin is the care and thoughtfulness in which OCI licenses companies to do business. This process does not lend itself to arbitrary time constraints.

OCI has delayed issuing company licenses until their financial performance improves, sometimes delaying the issuance for a year or more. We have also asked for company management teams to document more experience before allowing them to operate in this State. Under AB 486, an insurer or EBPA in this type of situation could supply OCI with complete information, but that information may raise concerns that merit delay in issuance of the license. OCI would be required, under the bill, to refund the fees associated with the application even though the application raised issues that warranted further scrutiny. This would seem to be antithetical to good consumer protection, both for company and individual licensing.

Currently, OCI has one senior level examiner who is responsible for the insurance company admissions process, among other things. The setting of review time frames by statute and rule would require the Office to allocate additional resources to this process. As you know, in these times of budget constraints and reductions, we have no such resources available to allocate without significantly adversely impacting our financial monitoring responsibilities. This could result in insurance company and consumer harm should an already licensed insurer come into financial difficulty without the Office's knowing it.

We believe we have an obligation to our state insurance guarantee fund, the Wisconsin Insurance Security Fund, to make every reasonable effort to ensure that the companies we license can meet their obligations to Wisconsin consumers. Should a Wisconsin-licensed insurer become insolvent, other licensed companies in the state are obligated to make up for any financial shortfalls, adding unnecessary cost to insurance company expense and the resultant insurance premiums to consumers. Admitting marginal insurance companies into the State because of compressed time frame requirements is

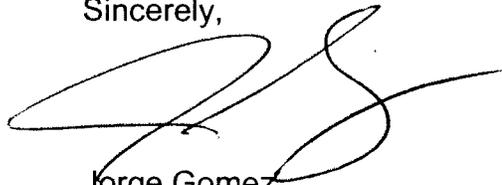
Representative Frank Lasee
2003 AB-486
September 23, 2003

not in the best interests of insurance companies, agents and consumers currently participating in our successful insurance market place.

In addition to the above policy issues, as an agency head, I have concerns about the difficulty of providing faster administrative action with fewer resources. Our agency now has four fewer positions and a smaller budget than last year. In addition to requiring defined time limits for reviews, the bill adds procedures that necessitate new notifications, more postage, more programming, and so forth. I believe that we cannot absorb any additional duties mandated by this legislation without additional resources to carry out those duties.

I strongly support a more effective and efficient government. Our agency has the track record to prove its commitment to providing fast, effective service to all of its customers and continues to be a national model in the insurance industry for providing efficient, effective service with a limited number of staff. However, I am committed to continuing this legacy and am always more than happy to discuss how we can further improve our processes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jorge Gomez', with a large, stylized flourish extending to the right.

Jorge Gomez
Commissioner



WISCONSIN STATE LEGISLATURE





STATE OF WISCONSIN
ETHICS BOARD

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September 23, 2003

Roth Judd
Director

Representative Phil Montgomery
State Capitol, RM 129W
Madison, WI HAND DELIVERED

Subject: 2003 AB 486 relating to license
review periods

Dear Rep. Montgomery:

I respectfully ask that the Ethics Board's licensing of lobbyists be omitted from the requirements of 2003 Assembly Bill 486.

AB 486 would create a new bureaucratic hoop and hurdle to the licensing of lobbyists. That, I think, is antithetical to what you are trying to accomplish.

There are no qualifications that a person must demonstrate to be licensed as a lobbyist. It is sufficient for a person to provide name and address and pay the appropriate licensing fee. A license is granted on the day of application upon payment. The Ethics Board lists the information about newly licensed lobbyists on the Ethics Board's award-winning website the same day. The information is also reported in the *Senate Journal* weekly.

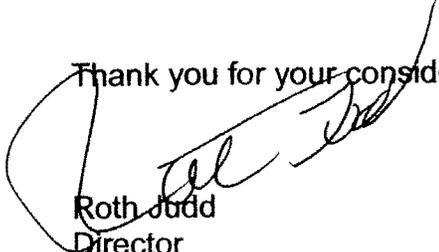
Under the Ethics Board's practice the license would be issued even before the Board could send a notice to the applicant telling the applicant of the "review period".

Until 1991 the Secretary of State, who administered the lobbying laws until that year, issued a printed license for each lobbyist. Ten years ago the Ethics Board abandoned that practice because it was just busy work and unnecessary paper.

Rep. Phil Montgomery
September 23, 2003
Page Two

No license request has ever been delayed. Because our near instantaneous posting of license information on the internet, any additional requirement is unwarranted.

Thank you for your consideration,



Roth Judd
Director

cc: Members, Assembly Committee on Government Operations & Spending Limitations ✓
Senator Cathy Stepp