



## Legislative Fiscal Bureau

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October 15, 2003

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 486: Time Periods in Which State Agencies Must Act on Certain Applications and Automatic Approval or Fee Refunds if Deadlines Are Not Met

Assembly Bill 486 would require a number of state agencies to promulgate administrative rules establishing time periods within which the agencies would approve or disapprove applications for specified licenses, permits, and other approvals that the agencies issue. There would be two possible consequences if the agency does not act on the application within the time period established by rule. For some types of approvals, the application would be automatically approved if the agency does not act within the period of time established in rule or before the end of an authorized extension period. For some other types of approvals, an agency would be required to refund fees paid by an applicant if the agency does not act within the time period established by rule. AB 486 was introduced on August 26, 2003. On September 23, 2003, the Committee on Government Operations and Spending Limitations adopted Assembly Amendment 1 by a vote of 4-2, and recommended passage as amended by a vote of 4-2. AB 486, as amended by AA 1, AA 1 to AA 1, and Assembly Amendment 2, was passed by the Assembly on October 2, 2003, by a vote of ayes 67, noes 32. On October 8, 2003, the Senate referred the bill to the Joint Committee on Finance.

### **SUMMARY OF THE BILL**

Assembly Amendment 1 makes several changes to AB 486, including: (a) eliminates the provisions related to a few agencies and types of program approvals; (b) makes changes in the extension period for approval of applications; (c) makes changes in consideration of effects in authorizing the extension; (d) makes changes in the extension related to incomplete applications; (e) specifies that conditions on permits that are automatically granted must be limited to those in statutes and rules; (f) authorizes the use of electronic mail for notices that agencies must provide;

and (g) requires the Legislative Reference Bureau to place a statement in the analysis of bills that require a person to obtain a license, permit, or similar approval from a state agency.

Assembly Amendment 1 to AA 1 would provide that a state agency would not have to provide written notice to an applicant if the agency intends to approve or disapprove the application within 14 days after receiving the application. Assembly Amendment 2 would extend the provisions of the bill to the Public Service Commission.

The bill, as amended, would take effect on the first day of the 13<sup>th</sup> month beginning after publication. It would apply to applications that are received on or after the effective date of the bill.

The following sections summarize AB 486, as passed by the Assembly.

### **Rules Establishing Deadlines For Action**

AB 486, as passed by the Assembly, would require certain state agencies and boards to promulgate administrative rules establishing time periods within which the agencies or boards intend to approve or disapprove applications for specified licenses, permits, and other approvals that the agencies issue.

Under the amended bill, the following Departments would be required to promulgate rules: (a) Administration; (b) Agriculture, Trade and Consumer Protection; (c) Commerce; (d) Corrections; (e) Electronic Government; (f) Financial Institutions; (g) Health and Family Services; (h) Natural Resources; (i) Public Instruction; (j) Regulation and Licensing; (k) Revenue; (l) Transportation; and (m) Workforce Development. In addition, the provisions would apply to: (a) the Office of the Commissioner of Insurance; (b) the Educational Approval Board; (c) the Elections Board; (d) the Ethics Board; and (e) the Public Service Commission.

AA 1 removes the provisions in the original bill that would have required the following additional agencies to promulgate rules: (a) the Building Commission; (b), the Public Records Board; and (c) the State Capitol and Executive Residence Board. In addition, AA 1 removes the applicability of the original bill to worker's compensation, unemployment compensation, and air pollution control permits. AA 2 adds the Public Service Commission to the list of agencies that are subject to the provisions of the amended bill.

### **Applications With Automatic Approval if Deadlines Are Not Met**

The bill establishes that for certain types of approvals, if an agency fails to act within the time period established by rule or before an authorized extension of the time period, the application would be automatically approved. In the administrative rules promulgated by an agency, the department would be required to specify a method for informing applicants of the time period established in administrative rule by which the agency must approve or disapprove the application. The department would be required to specify the method that it determines is the most cost-

effective method available. A state agency would not have to provide written notice to an applicant if the agency intends to approve or disapprove the application within 14 days after receiving the application.

An agency would be authorized to include the following provisions in administrative rules it promulgates to establish a deadline for acting on a subject application: (a) methods for determining the commencement of the time period established under administrative rule for action by the department, and for determining when the application is complete; (b) a longer time period for an application for which an environmental impact statement is required than for other applications; (c) extensions of the time period because the applicant makes a material modification, which may be made by electronic mail, to the application if the department notifies the applicant in writing of the extension within 30 days after the applicant makes the modification; (d) extensions of the time period because information needed by the department to complete its review of an application is unknown or cannot be determined with certainty when the department receives the application if the department notifies the applicant in writing, or by electronic mail, of the need for an extension within 30 days after the applicant submits the application; and (e) deadlines for the department to complete intermediate steps in the process of completing its review of an application.

The bill would authorize extensions of the time period established in administrative rules under certain circumstances, including:

a. The department and applicant agree to a different time period for acting on an application.

b. The department could extend the time period because the application is incomplete if, all of the following apply: (1) within 15 days after receiving the application, the department provides written notice, which may be by electronic mail, to the applicant describing specifically the information that must be provided to complete the application; (2) the specified information is directly related to eligibility for the approval or to terms or conditions of the permit, approval, or determination; (3) the specified information is necessary to determine whether to approve the application or is necessary to determine the terms or conditions of the approval; and (4) the extension is not longer than the number of days from the day on which the department provides the notice to the day on which the department receives the information.

c. The department could extend the time period for not more than 30 days if, within the time period established under rule, the department finds that there is a substantial likelihood that the activity proposed to be conducted under the application would result in substantial harm to human health or human safety, that the department cannot adequately review the application within the time period established in rule, and the department provides written notice, which may be by electronic mail, to the applicant that states with particularity the facts on which those findings are based.

If the department does not provide the applicant for a specified permit, approval, or other determination with written notice, which may be by electronic mail, that the department has approved or disapproved the application, including the specific facts upon which any disapproval is based, before the expiration of the time period specified in the rule promulgated by the agency, the permit, approval, or other determination would be approved. The department would not be allowed to make the license, permit, or other approval subject to any term or condition that is not specified by statute or rule. Within 30 days after the expiration of the time period established in rule under the bill, the department would be required to provide the applicant with a statement showing that the permit, approval, or other determination is approved and specifying any terms and conditions that apply to that approval.

Any automatic approval made because the department does not act within the specified time frame would be subject to any terms or conditions specified by statute or rule for the permit, approval or determination. The department would be authorized to suspend, limit, revoke, or withdraw the permit, approval or determination for substantial failure to comply with the terms or conditions contained in statute or rule. The department would not be allowed to disapprove an application for a permit, approval, or determination solely because the department is unable to complete its review of the application within the time period established under rule.

The agencies and specific permits, approvals or determinations that would be subject to automatic approval if time periods established in rule would not be met are described under the "Fiscal Effect" section. Under each agency description, any differences from the general requirements described above are noted.

#### **Applications With Fee Refunds if Deadlines Are Not Met**

The bill establishes that for certain types of approvals, if an agency fails to act within the time period established by rule or before an authorized extension of the time period, the agency would be required to refund fees paid by the applicant to the department. In the administrative rules promulgated by an agency, the department would be required to specify a method for informing applicants of the time period established in administrative rule by which the agency must approve or disprove the application. The department would be required to specify the method that it determines is the most cost-effective method available. A state agency would not have to provide written notice to an applicant if the agency intends to approve or disapprove the application within 14 days after receiving the application.

If the department does not provide the applicant for a specified permit, approval, or other determination with written notice, which may be by electronic mail, that the department has approved or disapproved the application, including the specific facts upon which any disapproval is based, before the expiration of the time period specified in the rule promulgated by the agency, the department would be required to refund fees paid by the applicant for the permit, approval, or other determination. The department would not be allowed to disapprove an application for a permit,

approval, or determination solely because the department is unable to complete its review of the application within the time period established under rule.

The department would be authorized to extend the time period established in the rule because an application is incomplete if, all of the following apply: (a) within 15 days after receiving the application, the department provides written notice, which may be by electronic mail, to the applicant describing specifically the information that must be provided to complete the application; (b) the specified information is directly related to eligibility for the approval or to terms or conditions of the permit, approval, or determination; (c) the specified information is necessary to determine whether to approve the application or is necessary to determine the terms or conditions of the approval; and (d) the extension is not longer than the number of days from the day on which the department provides the notice to the day on which the department receives the information.

The agencies and specific permits, approvals or determinations that would be subject to a refund of fees if time periods established in rule would not be met are described in the "Fiscal Effect" section that follows. Under each agency description, any differences from the general requirements described above are noted.

## **FISCAL EFFECT**

In general, it appears most agencies have assumed that whatever administrative rules are developed will allow the agency to make virtually all of its permit decisions within the specified time periods given current resources. While some revenues could be lost due to application refunds when a time limit is not met, agencies generally expect that these occurrences would be rare. However, if timelines were established by rule that are shorter than can typically be accommodated with existing staff, one of the following agency actions could be anticipated: (a) agency resources would be shifted from activities not subject to the deadlines; (b) additional resources would need to be provided (such as from fee increases or from existing balances, if available) to complete reviews in a timely manner; (c) reviews would need to be truncated; or (d) either significant revenues (in the case of refunds) could be lost or permits would be issued without complete review (in the case of automatic approval). The precise impact on each agency will not be known until after the administrative rule process is completed. Further, a number of agencies have raised questions regarding the legal status of permits issued under an automatic approval process. It is argued by some that, although the bill specifies state laws apply to the recipient of the approval, it may not always be clear what restrictions or conditions apply to the permit. Therefore, there may be a greater potential for law violations or legal challenges to the permitted entity.

The bill would allow departments to extend the time period for approval if the agency provides written notice to the applicant within 15 days of receiving the application, that the application is incomplete, that the notice specifies the information needed to complete the application, and other conditions are met. Some agencies have indicated that it may be difficult for staff to determine the completeness of some applications for large-scale or particularly complex

permits, projects or facilities within 15 days after receiving the application. This may impact agency workload and resources needed for the initial review of applications.

The bill does not appropriate funds in any agency. Several agencies submitted fiscal estimates that identified departmental costs that may be associated with certain aspects of the bill, such as providing written notices. Unless the bill would be amended to provide resources to agencies, any agency with additional costs would need to absorb any costs with existing agency base level resources. It should be noted that the bill, as passed by the Assembly, specifies that agencies use the most cost-effective notice method available, authorizes use of electronic notices and does not require the agency to send notices if the decision will be made within 14 days of application. These provisions were not included in the original bill and should reduce costs from the levels identified in the agencies' original fiscal estimates.

### **Administration - Division of State Facilities**

*Automatic Approvals.* Under the bill, the general requirements for automatic approvals apply to the approval of certain construction-related subcontracts and contract revisions in the Department of Administration (DOA). DOA would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application the following actions:

1. Requests from prime contractors for the approval of named subcontractors for state building construction projects.
2. Contracts for engineering, architectural or construction services in excess of \$10,000 or limited trades work contracts in excess of \$30,000 that are reviewed and approved by the Secretary of DOA (or designee) or any engineering, architectural, construction services, or limited trades work contracts in excess of \$60,000 that are approved by the Governor.

*Fee Refunds.* The bill does not apply any fee refund provisions to applications approved by DOA's Division of State Facilities.

*Fiscal Effect.* In its fiscal estimate, DOA states that "Until rules are written and applied, it is not known whether they would increase or decrease costs to state agencies or applicants. There would be staff costs to the Department as a result of redirecting efforts to write rules to comply with this bill." Since the bill does not provide additional positions or funding to DOA, any such costs would have to be supported from agency base level resources.

### **Administration - Division of Gaming**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to DOA's Division of Gaming.

*Fee Refunds.* The general requirements related to fee refund provisions under the bill would apply to the following licenses issued by DOA's Division of Gaming:

1. The ownership and operation of a racetrack at which pari-mutuel wagering is conducted.
2. The sponsorship and management of any race on which pari-mutuel wagering is conducted and which is not located at a fair.
3. The sponsorship and management of any horse race on which pari-mutuel wagering is conducted and which is located at a fair.
4. Any racing-related occupation required to be licensed under statute or determined by the Department to require a license.
5. The conduct of intertrack wagering at a racetrack.
6. The conduct of bingo by charitable organizations.
7. The conduct of raffles by charitable organizations.

*Fiscal Effect.* A fiscal note prepared by DOA concludes that the fiscal effect of the bill is indeterminate. The fiscal note states, "Until rules are written and applied, it is not known whether they would increase or decrease costs to state agencies or applicants. There would be staff costs to the Department as a result of redirecting efforts to write rules to comply with this bill." Since the bill does not provide additional positions or funding to DOA, any such costs would have to be supported from agency base level resources.

The gaming-related license fees are credited to three program revenue appropriations for racing, bingo, and raffle program operations. In the case of racing and bingo revenue, any moneys not utilized for regulatory purposes is required by the Wisconsin Constitution to be deposited in the lottery fund and used for property tax relief. Under the bill, if a gaming-related license application is not processed in a timely manner, the license fee would be refunded. To the extent that license applications are not processed within the time periods set in administrative rules, program revenue would be lost. In the case of racing and bingo program revenue, the loss would reduce transfers to the lottery fund. However, it is likely that gaming administrators would minimize delays in processing license applications and any revenue losses would not be significant.

### **Agriculture, Trade and Consumer Protection**

*Automatic Approvals.* The general requirements for automatic approvals apply to the following approvals by the Department of Agriculture, Trade and Consumer Protection (DATCP):

1. A weather modification permit.
2. A nursery dealer license.
3. A nursery grower license.
4. A Christmas tree grower license.

5. A seed labeler's license.
6. A ginseng grower or dealer registration.
7. A fertilizer manufacturer or distributor license.
8. A nonagricultural or special-use fertilizer permit.
9. A soil or plant additive manufacturer or distributor license.
10. A soil or plant additive permit.
11. A license for the sale or distribution of liming material.
12. A pesticide manufacturer or labeler license.
13. A restricted-use pesticide dealer or distributor license.
14. A veterinary clinic pesticide use and repackaging permit.
15. A commercial pesticide application business license.
16. A commercial feed manufacturer or distributor license.
17. A farm-raised deer registration.
18. A fish farm registration.
19. An animal market license.
20. An animal dealer license.
21. An animal trucker license.
22. A license for collecting or processing dead animals.
23. A license for transporting dead animals.
24. A dairy plant license.
25. A bulk milk tanker license.
26. A milk distributorship license.
27. A food warehouse license.
28. A food processing plant license.
29. A retail food establishment license.
30. A meat or poultry commercial slaughtering or processing license or a meat or poultry custom slaughtering or processing registration certificate.
31. A vehicle scale license.
32. A weights and measures servicing license.
33. A liquid petroleum gas meter registration.
34. A public warehouse keeper license.
35. A mobile air conditioner servicing registration certificate.
36. A grain dealer license.
37. A grain warehouse keeper license.
38. A milk contractor license.
39. A vegetable contractor license.

*Fee Refunds.* The general requirements for applications with fee refunds apply to the following licenses, permits and certifications in DATCP. DATCP would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application for the following:

1. A food inspector license.



2. A professional weather modification license.
3. An individual commercial pesticide applicator license.
4. A pesticide applicator certification.
5. A buttermaker or cheesemaker license.
6. A butter grader or cheese grader license.
7. A milk producer license.
8. A grade A dairy farm permit.
  
9. A milk and cream tester license.
10. A milk weigher and sampler license.

*Fiscal Effect.* DATCP estimates that the provisions in the bill would entail a one-time workload of 0.5 FTE and ongoing costs of an additional \$116,500 and 1.0 FTE. The one-time costs consist of a half-time program and planning analyst, and corresponding expenditures of \$53,000 (\$43,000 salary and fringe benefits and \$10,000 for supplies and services). DATCP estimates that a half-time position would be required for the writing and related development of 15 new administrative rules that the Department would need to draft (and 34 other administrative rules that would need to be amended) in response to the requirements of the bill.

The ongoing costs that DATCP estimates would result from the bill (\$116,500 annually) include additional staff time of 1,000 hours annually and \$37,500 in related funding (\$30,000 for salary and fringe benefits, and \$7,500 for supplies and services) and \$79,000 to fund a half-time attorney (annual salary and fringe benefit costs of \$73,000 and \$6,000 for supplies and services).

DATCP argues that the more thorough initial review of applications and the applicant notifications required by the bill would require staff time of approximately 1,000 hours per year (about 0.5 FTE). This includes Department estimates of 6,900 applications that would need to be reviewed more thoroughly each year (mainly in the consumer protection and trade practices area), with an estimate of around eight or nine additional minutes spent on each application. DATCP states that at the present time, staff (most often program assistants) briefly review applications as they arrive before passing them on to a second level reviewer (such as an auditor or inspector) who thoroughly reviews the entire application. Thus, DATCP maintains that any additional work done by initial reviewers will not decrease the length of examination time of the application required of the second level inspector. Assuming the additional 1,000 hours of application review and notification is performed by an additional half-time program assistant, these costs may be revised to \$16,800 for starting level salary and fringe benefits costs (\$24,300 with supplies). If no additional resources are provided DATCP may have to reallocate staff to do the more thorough initial review, which the Department argues could lead to an increase in overall processing time.

The Department also estimates that a one-half-time attorney may be needed due to a potential increase in litigation related to the new rules. DATCP is particularly concerned that the bill would require automatic approval of 39 license, permit and other approval types should the Department fail to complete the application's review within the set time limit. As a result, DATCP fears this

would increase the incentive for applicants to appeal Departmental decisions that an application is not complete, since if the action deadline passes and an applicant convinces a judge the challenged application was complete, the applicant could be automatically awarded the license. DATCP states that for the 39 license and permit types that the bill would specify be automatically approved should DATCP fail to complete the application's review on time, the Department performs about 40,000 individual license transactions each year. Thus, even a small percentage increase in litigation could lead to significant additional work for Department attorneys. If the salary and fringe benefit costs for this position are revised to reflect current starting attorney salary and fringe benefits, costs may be re-estimated at \$29,100 annually, or \$35,100 annually when supplies and services are included. However, the bill provides no additional funding.

## **Commerce**

*Automatic Approvals.* The general requirements for automatic approvals apply to Commerce, with a few modifications, including: (a) inclusion of a requirement that any time periods established by the Department in administrative rule would have to be consistent with any applicable period specified by statute; and (b) the Department would not be authorized to promulgate a longer time period for an application for which an environmental impact statement is required than for other applications.

Commerce would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application for any form or other writing that is submitted to Commerce under chapters 101 (regulation of industry, buildings and safety), 145 (plumbing and fire protection systems and swimming pool plan review), or 168 (oil inspection) for the purpose of obtaining an approval from the Department that is required by law as a prerequisite to the applicant taking certain actions. However, specific approvals that are listed below under "Fee Refunds" would not be included in the automatic approval provision. Affected approvals, include, but are not limited to, private onsite wastewater treatment systems and plumbing plan reviews.

*Fee Refunds.* The general requirements for fee refunds apply to the following applications and approvals in Commerce:

1. A certification or registration for a person who installs, removes, cleans, lines, performs tightness testing on and inspects tanks that storage flammable, combustible and hazardous liquids and for a person who performs site assessments.
2. A certification for an inspector who inspects rental dwelling units subject to rental dwelling energy efficiency codes.
3. A certification or registration for a person who provides consulting services to owners and operators who file claims under the PECFA (petroleum environmental cleanup fund award) program.

4. An approval of a limit on the permissible level of blasting in a mine, tunnel, quarry or sand and gravel pit.
5. An approval of safety requirements for the installation and use of a machine, mechanical device, or steam boiler.
6. An approval of training or certification for persons who transfer ozone-depleting refrigerant from refrigeration equipment to storage containers or from storage containers to refrigeration equipment, or who use refrigerant reclaiming equipment or refrigerant recycling equipment.
7. A registration or a voluntary certification for a person who engages in the business of installing or servicing heating, ventilating or air conditioning equipment.
8. A certification for an inspector of building construction, electrical wiring, heating, ventilating, air conditioning and other systems, including plumbing, in one- and two-family dwellings.
9. A certification for the financial responsibility of contractors under the one- and two-family dwelling code.
10. An approval of the construction site erosion control program for one- and two-family dwellings of each city, village, town or county that enforces provisions of a related ordinance.
11. A certification for an on-site inspector of the installation of manufactured buildings for dwellings.
12. A certification for an independent inspection agency that conducts in-plant inspections of manufacturing facilities, processes, fabrication and assembly of manufactured homes.
13. The certification of electrical inspectors for the purpose of inspecting the electrical wiring of public buildings and places of employment.
14. The certification of master electricians, electrical contractors, journeymen electricians and beginning electricians.
15. A permit or license for the operation of a manufactured home park.
16. A license for the manufacture, distribution or selling of manufactured homes.
17. A license for a manufactured home dealer or a manufactured home salesperson.

18. A license for a master and journeyman plumber, restricted plumber or a utility contractor.
19. A registration of a plumbing apprentice, pipe layer, registered learner or cross-connection control tester.
20. A temporary revocable permit for a master and journeyman plumber.
21. A certification for a soil tester.
22. A license or registration for an automatic fire sprinkler installer.
23. A registration for an automatic fire sprinkler system apprentice.
24. A maintenance only registration certificate for an automatic fire sprinkler fitter.
25. A license for a journeyman automatic fire sprinkler system fitter.
26. A license for an automatic fire sprinkler contractor.
27. A temporary permit to a journeyman automatic fire sprinkler system fitter or an automatic fire sprinkler contractor pending examination of the applicant for a license.
28. A temporary permit to an applicant for an automatic fire sprinkler - maintenance only registration certificate.
29. A license to a manufacturer of fireworks.
30. An approval of forms, plans and other information submitted related to the construction of public buildings, public structures, and places of employment, including the following components: (a) heating, ventilation, air conditioning and fire detection, prevention or suppression systems; (b) industrial exhaust systems; (c) elevators, escalators, ski lift and towing devices and power dumbwaiters; (d) stadiums, grandstands and bleachers; (e) amusement and thrill rides equipment. This would generally include all commercial structures and multi-family dwellings.
31. An approval of the plans and specifications for the construction, alteration or reconstruction of public swimming pools or equipment or water recreation attractions.

*Fiscal Effect.* Commerce estimates that the workload associated with updating various Department rules could be absorbed within current resources. Commerce further estimated that it would need \$98,100 PR and 1.0 PR program assistant annually, including \$45,000 printing and postage costs, that would be associated with notifying approximately 117,500 applicants annually

whose applications would be affected by the time processing deadlines (the bill, as amended, eliminates some notice requirements and allows electronic mail to be used in certain circumstances). Program revenues in the Safety and Buildings Division general operations PR appropriation are generated from several plan review and inspection fees related to construction such as commercial buildings, multi-family and manufactured dwellings, one- and two-family dwellings, plumbing, private sewage systems, electrical and heating systems, and elevators. The Department has general statutory authority to promulgate fees in rules to cover its costs of providing the services. In its fiscal estimate, Commerce also indicates that the Department has established, in administrative rules, processing time deadlines and a policy of refunding 50% of fees paid if deadlines are not met for several of the activities affected by the bill. Since the bill does not provide additional positions or funding to Commerce, the Department would have to support any such costs from base level resources.

## **Corrections**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to the Department of Corrections (DOC).

*Fee Refunds.* The general requirements related to fee refund provisions under the bill would apply to licenses issued by DOC for the operation of secured child caring institutions. A secured child caring institution is a residential care center for children and youth operated by a child welfare agency that is licensed by DOC to hold in secure custody persons adjudged delinquent. Such facilities were intended to provide an alternative to state secured correctional care, particularly for younger juvenile offenders. As a practical manner, however, smaller secured settings may be too expensive to operate.

*Fiscal Effect.* A fiscal note prepared by DOC indicates that there would be no fiscal effect for the Department under the provisions of the bill. The Department has never received an application to license a secured child caring institution, and DOC does not anticipate any license applications in the foreseeable future.

## **Educational Approval Board**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to the Educational Approval Board (EAB).

*Fee Refunds.* Under the bill, the general fee refund provisions would apply to permits issued by the EAB. The Board would be required to establish, by rule, time periods within which it would intend to approve or disapprove an application for the following:

1. A certificate of operation for a proprietary school operating in this state, including programs of instruction, teaching locations and change of ownership or control of the school.

2. A permit to solicit students for enrollment at any Board-approved proprietary school.

*Fiscal Effect.* Since the Board already specifies the time period in which applications must be approved, the agency estimates that the only fiscal impact would be the cost of codifying these procedures in administrative rules. The Board indicates that these costs could be absorbed under its current budget authority.

### **Elections Board**

*Automatic Approvals.* Under the bill, the general requirements for automatic approvals apply to the applications approved by the Elections Board. The Board would be required to establish, by rule, time periods within which it would intend to approve or disapprove an application for the following:

1. Approval of ballots, voting devices, automatic tabulating equipment or related equipment, and materials to be used in an electronic voting system.
2. Certification of qualified individuals to serve as chief election inspectors.

*Fee Refunds.* The bill does not apply any fee refund provisions to applications approved by the Elections Board.

*Fiscal Effect.* Since the bill does not provide additional positions or funding to the Elections Board, any agency costs incurred as a result of the bill would have to be supported from agency base level resources. The Elections Board has indicated that if several voting equipment vendors seek approval at one time, the "Board may face a challenge completing the approval process."

### **Electronic Government**

*Automatic Approvals.* Under the bill, the general requirements for automatic approvals apply to the applications approved by the Department of Electronic Government (DEG). DEG would be required to establish, by rule, time periods within which it would intend to approve or disapprove an application for the following:

1. Licenses or authorization to executive branch agencies to license computer programs developed by executive branch agencies to the federal government, other states and municipalities.
2. Any proposed contract for the purchase of materials, supplies, equipment, or contractual services relating to information technology or telecommunications by an executive branch agency, other than the Board of Regents of the University of Wisconsin System.

3. Implementation of a new or revised information technology development project authorized under an executive branch agency strategic plan.

*Fee Refunds.* The bill does not apply any fee refund provisions to applications approved by DEG.

*Fiscal Effect.* The Department of Electronic Government has not submitted a fiscal estimate for AB 486 and the agency's functions have been transferred to DOA. In DOA's fiscal estimate for the bill, it is indicated that among other duties of DOA are "electronic technology for computer related items." In its fiscal estimate, DOA states that "Until rules are written and applied, it is not known whether they would increase or decrease costs to state agencies or applicants. There would be staff costs to the Department as a result of redirecting efforts to write rules to comply with this bill." Since the bill does not provide additional positions or funding to DOA, any such costs would have to be supported from agency base level resources.

### **Ethics Board**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to the Ethics Board.

*Fee Refunds.* Under the bill, the general requirements for fee refunds apply to licenses for lobbyists issued by the Ethics Board. The Board would be required to establish, by rule, time periods within which it would intend to approve or disapprove an application for a lobbying license.

*Fiscal Effect.* Since the bill authorizes notice by electronic mail, the Ethics Board indicates that the bill's provisions would have no fiscal effect on the agency.

### **Financial Institutions**

*Automatic Approvals.* With the exception of a rule-making provision related to longer time periods for applications requiring environmental impact statements, the general requirements for automatic approvals would apply to all applications submitted to the Department of Financial Institutions (DFI) and its subunits other than applications to which the bill's provisions on fee refunds would apply. For applications subject to the automatic approval provisions, DFI would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application. Any time-periods established under these provisions would have to be consistent with applicable periods specified under current law. The automatic approval requirements would apply to the following types of applications and filings:

1. In the case of banks, savings institutions, and credit unions, applications for new charters, conversions, acquisitions, consolidations, branch applications, and other similar filings.

2. In the case of corporations and other business entities, applications for charter documents, name changes, amendments, restatements, changes of address and registered agent, and other similar filings.

3. Filings related to the Uniform Commercial Code, which provides a record of all secured transactions in the state related to business collateral.

4. Filings related to securities offerings. (Under current law, securities filings are already subject to automatic approval requirements.)

*Fee Refunds.* The general requirements for applications with fee refunds would apply to DFI and all of its subunits. DFI would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application for the following licenses and registrations:

1. A lender's license.
2. An insurance premium finance company license.
3. A seller of checks license.
4. An adjustment service company license.
5. A collection agency license.
6. A community currency exchange license.
7. A nondepository small business lender license.
8. A broker-dealer, agent, investment adviser, or investment adviser representative license. (Under current law, such licenses are subject to automatic approval requirements.)
9. Registration as a mortgage banker, loan originator, or mortgage broker.

*Fiscal Effect.* During the 2002-03 fiscal year, DFI received \$7.8 million in program revenue from application fees of the kind that would be subject to the fee refund provisions of the bill. DFI has stated that the effect of the bill on future revenue from such sources is unknown.

In addition, while the bill would not provide funding authority for increased expenses associated with the bill, DFI has estimated that the additional notification requirements under the bill could increase the Department's costs by \$183,800 annually for the additional mailing costs it would incur (the bill, as amended, eliminates some notice requirements). DFI further estimates a one-time cost of \$132,500 in the first year to which the provisions apply for developing a system to



track the additional notices. As no additional funding is provided under the bill, the Department would be required to absorb any additional costs associated with its implementation within existing resources.

### **Health and Family Services**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to applications received by the Department of Health and Family Services (DHFS).

*Fee Refunds.* The general requirements for applications with fee refunds apply to DHFS. DHFS would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application for the following:

1. Certification for care management organizations under the Family Care program.
2. A license to operate a child welfare agency, group home, shelter care facility, or day care center.
3. Certification for providers under the medical assistance (MA) program.
4. A license for an institution for mental diseases.
5. A license for a nursing home.
6. A license for a community-based residential facility.
7. A certification or registration for a residential care apartment complex.
8. A certificate of approval for a hospital.
9. A license or a provisional license for a home health agency.
10. A license or a provisional license for a rural medical center.
11. A license or a provisional license for a hospice.
12. Certification for an outpatient mental health clinic.
13. Certification for a treatment facility.
14. Certification of community mental health programs.
15. Certification of providers of community support programs.
16. Approval for a treatment facility.

17. A registration for a sanitarian.
18. Certification for a public health dispensary.
19. Approval for the sale of tests or test kits to detect the presence of HIV, an antigen or nonantigenic products of HIV, or an antibody to HIV.
20. A license for a tattooist or a tattoo establishment.
21. A license for a body piercer or a body-piercing establishment.
22. Certification for performance or supervision of lead hazard reduction or a lead management activity.
23. Approval of an instructor of a lead training course.
24. Accreditation of a lead training course.
25. A certificate of lead-free status or a certificate of lead-safe status.
26. Certification for performance of asbestos abatement activity or asbestos management activity.
27. Renewal of a certification for performance of asbestos abatement activity or asbestos management activity.
28. Registration and licensing of a source of ionizing radiation.
29. Approval of plans and specifications for radiation sources.
30. A registration of a site with an ionizing radiation installation.
31. A license for radioactive material.
32. A permit to operate a campground, camping resort, recreational or educational camp, or public swimming pool.
33. A certification for a food sanitarian.
34. A permit to conduct, maintain, manage, or operate a hotel, restaurant, temporary restaurant, tourist rooming house, vending machine commissary, or vending machine.
35. A permit to maintain, manage, or operate a bed and breakfast establishment.

36. A certificate for food protection practices.
37. An approval of a training course for recertification of food protection practices.
38. A certification of Grade A dairy operations.
39. A permit to operate a tanning facility.
40. An approval of a laboratory for performing chemical analyses of blood or urine for alcohol, controlled substances, or controlled analogs.

*Fiscal Effect.* DHFS has not submitted a fiscal estimate for this bill. However, in a September 10, 2003, letter to members of the Assembly Committee on Government Operations and Spending Limitations, DHFS raised several issues regarding the bill's potential effect on the agency's program costs and revenues. Some of these issues have been raised by other agencies that would be affected by the bill, such as the potential loss of program revenue to support regulatory functions in cases where the agency is unable to review and issue an approval within the time specified by rule.

Other issues that DHFS raised have been addressed in Assembly Amendment 1. For example, under the original bill, upon receiving an application, each agency, including DHFS, would be required to inform the applicant of the period in which DHFS would be required to review the application. DHFS indicated that this provision appeared to be unnecessary and would increase administrative processing costs. However, AA 1 would authorize DHFS to specify a method for informing applicants of the period that it determines is the most cost-effective method available. With this change, DHFS could simply identify the period on the application form, which would eliminate the need to contact each applicant after the agency receives the application.

Similarly, DHFS' concerns regarding initial applications that do not include all information required by the agency appears to be addressed in AA 1. Under AA 1, after receiving an application, the agency would have 15 days to provide the applicant written notice that describes the information that must be provided to complete the application. The deadline for processing the application could be extended by the number of days from the day on which DHFS provided the applicant notice to the day on which DHFS receives the information.

DHFS raised several additional issues that the Committee may want to consider.

*Shielding Plans for Radiation Installations.* Second, under current law, DHFS staff review and approve shielding plans for new or remodeled radiation installations. Shielding ensures that a facility's operations do not expose any member of the public to radiation levels that exceed specified dose limits. Currently, the plans themselves are considered the application. No fee is charged for this review. DHFS staff review approximately 150 plans each year.

*Radioactive Material Licenses.* Under current rules, DHFS keeps an application fee for a license for radioactive material even if the license is not approved. The rationale for a

nonrefundable application fee is to reimburse DHFS for the significant time and expenses generally needed to review a license application and to minimize the potential for frivolous license applications.

*Certificate of Approval for Certain Health Care Facilities.* The DHFS Bureau of Quality Assurance (BQA) is required, under federal law, to perform certain regulatory activities on behalf of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a variety of different health care provider types, including hospitals, home health agencies, hospice agencies, and nursing homes. CMS currently establishes priorities for BQA regulatory activities. CMS considers the review and approval of initial certifications "third-tier" priorities. Under AB 486, DHFS could be required to make its review of initial certifications a greater priority in order to meet the time limits specified by rule, which would conflict with CMS' priorities. If BQA does not first meet the top CMS priorities before it meets other priorities, such as review and approval of initial certifications, CMS could find BQA to be out of compliance and subject DHFS to federal disallowances.

In addition, BQA must conduct a site visit before certain providers can receive state licensure and before federal certification can be approved. Currently, BQA tries to conduct site visits for state licensure and federal certification concurrently. Under the bill, if a facility applies for state licensure before seeking federal certification, BQA could be required to conduct two separate site visits to avoid refunding an application fee.

*Certificate of Approval for Hospitals.* By rule, DHFS is required to issue a certificate of approval (licensure) to hospitals within 90 days of receipt of a completed application. The bill would require DHFS to refund an application fee if it does not act on the application within this time period. However, there is no fee for licensure.

*Certification for MA Providers.* By rule, DHFS is required to approve or deny an application for certification to provide services under MA within 60 days of receipt of a completed application. The bill would require DHFS to refund an application fee if it does not act on the application within this time period. However, there is no fee to apply for certification as an MA provider.

## **Office of the Commissioner of Insurance**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to the Office of the Commissioner of Insurance (OCI).

*Fee Refunds.* The general requirements for applications with fee refunds apply to OCI. OCI would be required to establish, by rule, time periods within which OCI would be required to approve or disapprove an application for the following:

1. A certificate of authority to transact the business of insurance.
2. An insurance intermediary license, including a temporary license.
3. A viatical settlement provider license.

4. A viatical settlement broker license.
5. A benefit plan administrator license.

*Fiscal Effect.* In its fiscal note to the bill, OCI estimates that the provisions of AB 486, as introduced, could potentially result in: (a) one-time costs of \$101,000; (b) annual, ongoing costs of \$109,900, including funding to support 2.0 PR additional positions; and (c) an annual loss of \$33,200 in program revenue.

OCI estimates of one-time costs include: (a) \$36,600 in staff costs to promulgate three new administrative rules and to revise three existing administrative rules; (b) \$18,000 in staff costs to perform certain one-time activities to comply with AB 486; and (c) \$46,400 to support programming changes in COSMOS, OCI's proprietary computer information systems and database software. OCI indicates that \$109,900 annually would be needed to fund 2.0 PR additional positions (1.0 financial examiner position and 1.0 program assistant position) to meet the additional workload of expediting applications.

The cost estimate includes \$28,000 in one-time funding and \$1,200 annually for OCI's administrative and support services appropriation to reflect that these costs are assessed to OCI's PR general program operations budget on a charge-back basis and, therefore, "double-counted" in the agency's budget.

OCI also estimates a \$33,200 annual decrease in revenue from applications for certificates of authority and nonresident license applications. However, OCI indicates that this potential decrease in revenue could be mitigated if additional staff were provided to process applications.

The bill would provide no additional funding or staff for OCI to implement the new requirements. Consequently, OCI would be required to absorb any costs with existing staff and funding. However, in reviewing OCI's fiscal note to the bill, several points should be made.

First, OCI's estimates of one-time costs include \$36,600 for 100 hours of attorney staff time to promulgate the new rules. Staff costs of developing rules are routinely absorbed by agencies -- additional resources and staff are rarely provided to meet costs of creating or revising rules.

Second, OCI estimates that an additional 2.0 positions would be needed to compensate for a backlog of applications in order to avoid a financial penalty from the refund of fees. The estimated staff costs of meeting this workload is \$18,000 in one-time costs and \$109,900 annually. Since the bill would provide no additional funding or positions for OCI to support this activity, OCI may decide not to reallocate this amount of staff to avoid the potential loss of \$33,200 in annual revenue. However, if this occurred, the effect of the bill would be to potentially reduce program revenue to OCI (especially from applicants that warrant additional investigations by OCI prior to licensure) and not affect the agency's performance in processing applications.

Finally, the OCI estimate assumes one-time costs of \$46,400 (\$23,200 PR and \$23,200 PR-S) to modify the proprietary computer system, COSMOS, to comply with the requirement of notifying the applicants regarding the time limits (160 hours of programming changes x \$145 per

hour = \$23,200). Assembly Amendment 1 would require OCI to find the most cost-effective method to notify applicants of the time periods. The effect of Assembly Amendment 1 may reduce the number of programming hours required to modify COSMOS from this estimate.

The Committee may want to consider several issues OCI has raised regarding the bill's potential effect on the agency's program costs and revenue, some of which were included in a September 23, 2003 letter.

*Insurance Agent Licenses for Wisconsin Residents.* Wisconsin applicants for insurance agent licenses are required to satisfy educational requirements and take an examination before they receive their licenses. The testing vendor's computer generates the resident applications at the test site. No additional application fee is collected. All fees are paid to the vendor for their contractual services. Therefore, there would be no fee to reimburse to the Wisconsin resident applicant if the agency exceeded the application processing time limit.

*Insurance Agent Licenses for Nonresidents.* At least two potential problems exist with the refund penalty for nonresident applicants for insurance agent licenses. First, notifying applicants regarding the time limits could not be part of the application, which would be allowed under Assembly Amendment 1, because the application is a nationwide, standard application. It cannot be modified. Therefore, the administrative costs for the notification requirement increase for these applications, including the costs to modify COSMOS.

Second, because OCI currently has a six- to eight-week backlog of nonresident applications, it would be difficult to determine whether an application is complete or incomplete within the 15-day requirement of Assembly Amendment 1. OCI estimates the need for 1.0 additional PR program assistant position to make an initial review of approximately 800 nonresident applications OCI receives each month. If no additional resources are provided, OCI indicates that reallocating existing staff to do the initial review may lengthen the overall backlog.

*Certificates of Authority.* Each insurer must obtain a certificate of authority to conduct insurance business in the state of Wisconsin. To obtain this certificate, an insurer must meet certain financial and market conduct standards. The company's ability to provide consistent, stable insurance services in the state is reviewed. OCI may delay issuing a certificate to a company until their financial performance improves. This could delay the issuance of a certificate for more than a year. OCI believes that making a determination for a certificate prematurely due to a compressed time frame could bring instability to Wisconsin's insurance market.

## **Natural Resources**

*Automatic Approvals.* The general requirements for automatic approvals apply to an application to DNR for the following:

1. An approval of construction, installation or operation of a high-capacity well.

2. A water pollutant discharge elimination system (WPDES) permit for the discharge of any pollutant into any waters of the state (typically industries and municipal wastewater treatment plants), disposal of sludge from a wastewater treatment plant, or discharge of storm water associated with an industrial activity, including construction.

3. A determination of feasibility for a solid or hazardous waste facility.

4. A license for the operation of a solid waste facility, including commercial, industrial, municipal, state and federal establishments such as sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services and processing, treatment and recovery facilities.

5. A license for the operation of a hazardous waste facility, meaning a site or structure for the treatment, storage or disposal of hazardous waste for 90 days or more.

6. A permit for prospecting for metallic minerals, such as excavating, trenching, and constructing shafts, ramps and tunnels.

7. A license for oil or gas production.

8. Permits and other determinations relating to declarations of navigability; structures and deposits in navigable waters; bridge construction and maintenance; diversion of water from lakes and streams; enlargement and protection of waterways; and the removal of material from beds of navigable waters.

*Fee Refunds.* The general requirements for applications with fee refunds apply to DNR. DNR would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application for the following:

1. A registration for a well driller or pump installer.

2. A certification for a water system, wastewater treatment plan, or septage servicing vehicle operator.

3. A license for servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies.

4. A license for a solid waste incinerator operator.

5. An approval for salvaging or dismantling ozone-depleting refrigerant equipment, or transporting for the purposes of salvaging or dismantling such equipment.

6. A certification for a solid waste disposal facility operator.

7. A license for a hazardous waste transporter.
8. A license for a person who engages in metallic mining exploration, including persons who contract for the services of drillers for purposes of exploration.
9. A license for a person who engages in oil or gas exploration.
10. A certification or registration for a laboratory facility which performs tests in connection with certain water, groundwater, solid waste, hazardous waste, or mining programs regulated by the department.
11. A license for a medical waste transporter.
12. The following commercial fishing and resource licenses: (a) fur dealers; (b) wholesale fish dealers; (c) taxidermist; (d) bait dealer; (e) guide (such as for hunting, fishing or trapping); (f) sport trolling; (g) commercial fishing; (h) net license (for use on the Mississippi or St. Croix Rivers); (i) slat net license (for use on the Mississippi River); (j) trammel net license (for use on the Mississippi River); (k) set or bank pole license; (l) setline license; (m) clamming; (n) fish farm; (o) fish importation; (p) fish stocking; (q) wild rice dealer; and (r) wild ginseng dealer.

*Fiscal Effect.* DNR estimates that the provisions of the bill, as amended, could potentially result in the loss of \$7.1 million in federal revenue, and a corresponding reduction in state expenditures. DNR estimates that this could occur if the U.S. Environmental Protection Agency (EPA) determines that the bill conflicts with federal requirements for water pollution discharge permits, and solid and hazardous waste programs, to an extent that would result in an EPA decision to withdraw federal funding and approval for state administration of the programs. If EPA withdraws federal funding and delegation of state administration, it would provide federal administration of the programs in the state.

DNR anticipates that the automatic approval provisions related to water pollution discharge permits could be found by EPA to be inconsistent with federal requirements. DNR operates the water pollutant discharge elimination system (WPDES) permit program under delegated authority from EPA. DNR estimates that if EPA would determine that the program no longer complies with federal requirements, EPA might withdraw delegation of the program, including federal funds of approximately \$5 million annually and the associated 39.25 FTE in the watershed program and 6.0 FTE in the fisheries program. If this would happen, EPA would administer the program in Wisconsin. DNR officials indicate that if WPDES permits would be automatically approved if not decided by the deadline established in rule, it is not known how permit conditions would be determined relating to various requirements, such as specific information about what pollutants are authorized for discharge, what quantity could be discharged, and how frequently monitoring and reporting must be done. The Department also indicates that if EPA determined that an individual permit had been issued without complying with federal requirements, EPA could issue a federal permit to supersede the state permit. DNR further indicates that automatic approvals could,



potentially, reduce the public's opportunity to be notified of the issuance of draft permits as required under federal law, and to provide comments on them.

The WPDES permit program requires an initial issuance of a new wastewater discharge source with a five-year renewal period. Permits are subject to renewal every five years, and the existing permit remains in place until a new permit is issued. Any modifications or expansions of the permitted discharge system would be done during the renewal process. EPA officials recently indicated that EPA has not withdrawn the delegation of any state's program, and that EPA would need to review any automatic approval provisions to determine whether sufficient state review and public participation would be retained in the issuance of permits under the program. They further indicated that federal law does not allow a permit to be issued for a new, renewal, expansion or major modification of a wastewater discharge source without adequate review and opportunity for public participation.

DNR's fiscal estimate also anticipates that, under the bill, the waste management program could lose authorization from EPA to administer federal solid and hazardous waste programs. DNR estimates that if EPA would determine that the programs no longer comply with federal requirements, EPA might withdraw delegation of the program, including approximately \$2.1 million annually in federal hazardous waste funds and the associated 23 positions. If EPA would do this, it would then be responsible to administer the programs in Wisconsin. DNR officials indicate that the federal solid and hazardous waste programs require issuance of permits only after a prior review and approval by DNR, and after opportunities for public participation in the decision-making process.

Regional EPA officials recently indicated that EPA has not withdrawn the delegation of any state's solid waste or hazardous waste program, they are not aware of other states that have a similar provision, and that they would have concerns about the automatic approval provision of the bill. They further indicated that EPA would need to review any automatic approval provisions to determine whether sufficient state review would be retained in the issuance of permits under the solid waste program and whether permits issued under the automatic approval provision would meet federal requirements. They also indicated that an automatic approval of a hazardous waste permit might not be considered to be a permit under federal requirements, and federal officials would review whether the state program still maintained requirements that are as stringent as federal requirements. EPA officials would consider an existing hazardous waste permit to remain in effect until a renewal permit would be issued in accordance with federal requirements.

DNR also estimated that the drinking water and groundwater program would incur approximately \$1,900 annually in staff-related costs to provide about 315 notices to high capacity well applicants and well driller and pump installer registrants to notify them of the allowable review periods.

DNR anticipates that rule development for the automatic approval requirement for the various commercial hunting, fishing and resource-related commercial licenses (such as fur dealer,

wholesale fish dealer, taxidermist, bait dealer, commercial fishing and the guide, net, and line licenses) will cost approximately \$37,300 and require 0.80 FTE of staff effort over a two-year rule development and implementation process. Of this effort, 0.30 FTE would be devoted to rule development, including tasks such as querying data systems to establish accurate timeline estimates, conducting an analysis of alternative timeline requirements and developing instructions for applicants and DNR staff. The remaining 0.50 FTE of staff resources would be dedicated to improving and adjusting tracking and reporting systems over a two-year period, including completing necessary upgrades to existing document systems. As no additional funding is provided under the bill, the Department would be required to absorb any additional costs associated with its implementation within existing resources.

DNR's fiscal note also indicates that the provisions in the original AB 486 that would have applied the automatic approval provisions to air construction and operation permits if time periods established in rule would not be met would not be allowed under the federal air permitting requirements of the Clean Air Act. DNR's fiscal estimate indicates that the provision would result in EPA taking action to withdraw federal approval of the state's air construction and operation permit program, and providing direct federal administration of the program in the state. DNR originally estimated this would result in the annual loss of \$20.7 million in revenue and a corresponding reduction in expenditures of \$21 million and 153 positions. However, DNR officials recently recalculated the revenue and expenditure loss as \$18.8 million annually and 175.25 positions (\$3.9 million federal grant, \$2.9 million state matching funds, \$9.5 million air emission fees, and \$2.5 million construction permit fees). As passed by the Assembly, the bill does not apply to the air pollution control permit program.

### **Public Instruction**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to applications received by the Department of Public Instruction (DPI).

*Fee Refunds.* Under the bill, the general requirements for fee refund provisions apply to DPI. DPI would be required to promulgate rules and inform applicants for teacher and administrator licenses and permits of the period established for approving or disapproving the license or permit.

*Fiscal Effect.* DPI estimates that the provisions of the bill could potentially result in additional costs of \$6,300 annually. DPI receives approximately 30,000 applications for teaching licenses and permits annually. If DPI were to mail out an informational notice for each application, at \$0.21 per item, annual costs to the Department would be approximately \$6,300. The possible refunds of fees resulting from the bill's provisions could reduce departmental revenues, but that amount is unknown at this time. Any costs relating to developing administrative rules related to the bill are expected to be absorbed within the agency's operating budget.

## **Public Service Commission**

*Automatic Approvals.* Under Assembly Amendment 2, the general requirements for automatic approvals would apply to petitions for the partial deregulation of telecommunications services by the Public Service Commission (PSC). The PSC would be required to establish, by rule, a deadline for the completion of proceedings on such petitions involving a determination that a lesser degree of regulation would serve the public interest, based on the following factors:

1. The number and size of the telecommunications utilities or other persons providing the same, equivalent or substitutable service.
2. The extent to which the same, equivalent or substitutable service are available in the relevant market.
3. The ability of customers in the market area to obtain such services at comparable rates, terms and conditions.
4. The ability of the telecommunications utilities or other persons to make such services readily available in the market area at comparable rates, terms and conditions.
5. The relevant market power of each service provider and any apparent trends in how that market power may change.
6. The affiliation of any service provider in the market area that might affect competition.
7. The existence of any significant barrier to the entry or exit of a service provider in the market area.

Under current law, the PSC must issue findings of fact on each of the foregoing factors when making a determination as to whether effective competition exists in a market such that a lesser degree of regulation could be authorized. If the PSC determines that a lesser degree of regulation is warranted, it may suspend only those regulatory provisions enumerated in statute. The PSC may also place conditions upon the deregulation and may at any time revoke this deregulation, if necessary, to protect the public interest.

Under Assembly Amendment 2, the PSC would have to establish, by rule, a deadline for completing its review of petitions for the partial deregulation of telecommunications services. The Commission could extend this deadline if it determines that the petition was incomplete and provided written notice to the petitioner describing what additional information was necessary. In the event that the Commission would fail to complete its review before the deadline, the petition for partial deregulation would be granted. Under such an approval, the current law authority of the PSC to revoke its order and suspend any aspect of the partial deregulation would no longer apply.

This provision would first apply to petitions for partial deregulation of telecommunications services filed with the PSC after the general effective date of the legislation.

*Fee Refunds.* The bill does not apply any fee refund provisions to applications approved by the PSC.

*Fiscal Effect.* The PSC would be required to establish, by rule, the new time periods by which Commission determinations on petitions for partial deregulation of telecommunications services in a market area must be made. The PSC estimates that these costs could be absorbed under its current budget authority.

## **Regulation and Licensing**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to applications received by the Department of Regulation and Licensing (R&L).

*Fee Refunds.* Under the bill, the general fee refund provisions would apply to the following credentials issued by R&L, its examining boards or affiliated examining boards. The agency would be required to establish, by rule, time periods within which R&L or the appropriate examining boards would intend to approve or disapprove an application for the following:

1. An initial license, permit, certification, or registration.
2. A reciprocal credential to an applicant who holds a credential issued by a government authority outside of this state.
3. A temporary credential.
4. A renewal license, permit, certification, or registration.

*Fiscal Effect.* The Department has already established procedures for the review of applicants for initial, reciprocal and temporary licenses. Further, the renewal dates for all credentials are set in statute. Consequently, R&L estimates that the only additional costs arising under the provisions of the bill would be the codification of these refund procedures in the administrative rule governing each regulated profession and in the notices sent to applicants. The agency indicates that these costs could be absorbed under its current budget authority.

## **Revenue**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to applications received by the Department of Revenue (DOR).

*Fee Refunds.* The general requirements for application fee refunds would apply to certain permits relating to the regulation of cigarettes and tobacco products issued by DOR. The general requirements for application fee refunds would also apply to permits relating to the regulation of

alcoholic beverages, except that specific authority would be provided to include in the rules: (a) methods for determining the beginning of the application period and determining when the application for a permit is complete; (b) extensions of the application period because the applicant makes a material modification to the application if DOR notifies the applicant in writing of the extension within 30 days after the applicant makes the modification; and (c) extensions of the application period if the Department and applicant jointly agree to a different period.

These provisions would apply to the following alcohol and tobacco permits issued by DOR:

1. A cigarette manufacturer or distributor permit.
2. A cigarette salesperson permit.
3. A tobacco product salesperson permit.
4. An alcohol beverage permit.
5. A retail alcohol beverage permit.
6. A Wisconsin liquor wholesaler permit.
7. A Wisconsin liquor manufacturer permit.
8. A Wisconsin liquor rectifier permit.
9. An out-of-state liquor shipper permit.
10. A Wisconsin winery permit.
11. A sports club permit.
12. An airport public facility permit.
13. A vessels permit.

*Fiscal Effect.* The Department estimates that the provisions of the bill would result in a minimal loss of revenues from fee refunds.

## **Transportation**

*Automatic Approvals.* The general requirements for automatic approvals that are outlined above apply to DOT approvals. However, provisions related to extensions of established deadlines, including the conditions that must be met in order to approve an extension, are different. As with the general requirements, DOT would be authorized to include in its rules provisions that allow for extensions of the time period because the applicant makes a material modification and provisions that allow for extensions if information needed by the Department to complete its review of an application is unknown or cannot be determined with certainty. However, while the general requirements authorize other types of extensions by statute, including the conditions that must be met in order to allow these extensions, the DOT provisions, instead, include these same types of extensions in a list of items that may be included (but are not required to be included) in the Department's rules. This difference applies to the following types of extensions: (a) extensions for cases in which an application is incomplete, provided that certain conditions are met; (b) extensions in cases where the Department and the applicant jointly agree to a different period for acting on the application; and (c) extensions in cases where the Department finds that there is a substantial likelihood that the activity proposed to be conducted would result in substantial harm to human health or human safety and that the Department can not adequately review the application within

the original deadline. In addition, the provisions related to DOT's approval of permits do not allow a longer time period to be established for an application for which an environmental impact statement is required.

DOT would be required to establish, by rule, time periods within which the Department would intend to approve or disapprove an application (or the application is automatically approved) for the following:

1. An approval to plant, cultivate, and maintain trees, shrubs, or hedges on the side of the highway by a person whose property is adjacent to the highway.
2. An approval of quarterly or consecutive monthly vehicle registration.
3. A registration of a dealer, distributor, manufacturer, or transporter (authorizes holder to operate vehicles with these plates).
4. A registration of a finance company or financial institution (authorizes holder to operate vehicles with these plates, related to the repossession of vehicles).
5. A certificate of vehicle title.

*Fee Refunds.* The requirements for the applications with fee refunds in DOT are the same as those outlined above under the automatic approval section. Under these provisions, the Department would be required to establish deadlines for the following:

1. An approval related to a utility facilities work plan.
2. An approval or permit related to making a connection to a controlled-access highway or allowing a crossing of such a highway at a designated location by a landowner whose land is severed by the highway.
3. An approval of any grant of a franchise or permit by any town, village, or city to any corporation to use any state trunk highway.
4. An outdoor advertising business license.
5. An outdoor advertising sign permit.
6. A permit related to excavating, filling, altering, or disturbing a highway or bridge.
7. A permit for the erection and maintenance of a specific information sign or a business sign (the blue signs indicating the presence of businesses offering gas, food, lodging, or camping).

8. A permit for the erection and maintenance of a tourist-oriented directional sign.
9. An unairworthy aircraft certificate (in lieu of aircraft registration).
10. A recreational vehicle dealer's license or salesperson's license.
11. A motor vehicle salvage dealer's license.
12. A motor vehicle auction dealer's license.
13. A moped dealer's license.
14. A buyer identification card (for the purchase of motor vehicles from a motor vehicle salvage pool).
15. A permit for performing chemical analysis of breath (for OWI enforcement).
16. A license to conduct a driver school or to act as a driving instructor.

The bill, as amended, includes a requirement that the Department establish a deadline for action on applications for permits related to the transport of oversize or overweight loads, but it does not specify whether the failure to meet this deadline would result in a refund of the permit fee or the automatic approval of the permit.

*Fiscal Effect.* In DOT's fiscal estimate prepared on the bill, the Department indicates that providing notification of the deadlines would likely be done on the application forms. In the case of applications for vehicle titles and monthly and quarterly registration, which are the largest volume of the affected applications, the delayed effective date will allow these deadlines to be incorporated into new application forms as part of the normal form ordering cycle. The fiscal estimate notes that some other forms may need to be modified outside the normal cycle, or that notification may have to be made by other means, but these costs were not estimated.

The Department indicates that it is not known what percentage of applications would result in the refund of applicable fees due to the failure to act on the application prior to the deadline. For illustrative purposes, the Department estimated the refund amounts assuming that 20% of applications are not acted upon prior to the deadline, which would produce a total transportation fund revenue loss of \$1,043,100. Of this amount, however, \$880,000 is from refunds of oversize/overweight permit fees. As noted above, the bill does not specify that these permit fees would be subject to refunds.

## **Workforce Development**

*Automatic Approvals.* The bill does not apply any automatic approval provisions to applications received by the Department of Workforce Development.

*Fee Refunds.* The general requirements for applications with fee refunds would apply to the following permits issued by DWD:

1. A house-to-house and street trades employer permit.
2. A migrant labor contractor permit.
3. A migrant labor camp operator permit.
4. A special minimum wage employer license.
5. A sheltered workshop employer license.
6. A private employment agent license.

*Fiscal Effect.* The Department submitted a fiscal note that indicated that the provisions of the original bill would have no fiscal effect on the Unemployment Compensation (UC) Division. As noted, Assembly Amendment 1 deleted provisions that applied to UC. The fiscal note did not identify a fiscal effect for the six permits and licenses still included in the bill.

## **Technical Amendment**

Under 2003 Wisconsin Act 33 (the 2003-05 biennial budget), the Department of Electronic Government (DEG) was eliminated, and the functions and duties of DEG were transferred to DOA. Further, under Act 33, the Grade A dairy certification program was transferred from the Department of Health and Family Services (DHFS) to the Department of Agriculture, Trade and Consumer Protection (DATCP). In order to appropriately reflect the transfer of these functions as a result of Act 33, an amendment to the bill is necessary.

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