



Legislative Fiscal Bureau

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October 13, 2003

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Comparison of the Provisions of Assembly Bill 486 and Senate Bill 246, Related to Time Periods Within Which State Agencies Must Act on Certain Applications

On October 15, the Joint Committee on Finance is scheduled to consider two bills which relate to time periods within which state agencies must act on certain applications for specific licenses, permits, or other approvals that agencies issue.

Those bills -- SB 246 and AB 486 -- have passed their respective houses and have been referred to the Joint Committee on Finance. On Thursday, October 9, papers prepared by this office on SB 246 and AB 486 (and all other bills on the October 15 agenda) were distributed to your offices. These papers are dated October 15, 2003. You will note that, beginning on page 6 of the attached comparison, references are made to this office's October 15, 2003, papers on SB 246 and AB 486.

Although the bills relate to the same subject, they differ in the number of agencies that would be affected and in the implementation of their provisions.

To assist the Committee, the attached comparison of the major provisions of the two bills has been prepared.

BL/sas
Attachment

**Comparison of Provisions in SB 246 and AB 486, as Passed by Their Respective Houses,
Related to Time Periods in Which State Agencies Must Act on Certain
Applications and Automatic Approval or Fee Refunds if Deadlines Are Not Met**

Provision	SB 246	AB 486
Impacted Agencies	Agriculture, Trade and Consumer Protection Commerce Financial Institutions Natural Resources Revenue Transportation	Same agencies as SB 246 plus: Administration - Division of State Facilities Administration - Division of Gaming Corrections Educational Approval Board Elections Board Electronic Government Ethics Board Health and Family Services Office of Commissioner of Insurance Public Instruction Public Service Commission Regulation and Licensing Workforce Development
Status of Bill	Passed Senate 9/23/03, by a vote of 20-13. Messaged to Assembly and referred to Joint Finance on 9/25/03.	Passed Assembly 10/2/03, by a vote of 67-32. Messaged to Senate and referred to Joint Finance on 10/8/03.
Effective Date	First day of the 12 th month beginning after publication, for applications received on or after the effective date of the bill.	First day of the 13 th month beginning after publication, for applications received on or after the effective date of the bill.
Administrative Rule Deadline	State agencies required to submit rules under the bill must submit proposed rules to the Legislative Council staff for review no later than the first day of the seventh month beginning after the effective date of the bill.	No provision.
Applications with Automatic Approvals - General Requirements	For certain approvals, if an agency fails to act within the time period established by rule or an authorized extension of the time period, the application would be automatically approved.	Same.

Provision	SB 246	AB 486
Automatic Approvals - Notification after Application	After an agency receives an application, the department would be required to notify the applicant of the time period established in administrative rule by which the agency must approve or disapprove the application, unless the agency intends to approve or disapprove the application within 14 days after receiving the application.	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 must specify the method that it determines is the most cost-effective 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.
Automatic Approvals - Authorized Provisions in Rules	<p>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:</p> <ul style="list-style-type: none"> a. A longer time period if an environmental impact statement is required; b. An extension of the time period if the applicant makes a material modification to the application if the department notifies the applicant in writing of the extension within 30 days after the applicant makes the modification; c. Deadlines for the department to complete intermediate steps in the process of completing review of application. 	<p>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:</p> <ul style="list-style-type: none"> a. Same; b. Same plus the applicant may make the material modification by electronic mail; c. Same; d. Methods for determining the commencement of the time period established in rule for action by the department and for determining when the application is complete; e. 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.

Provision	SB 246	AB 486
Automatic Approvals - Extensions Authorized	<p>Extensions of the time period established in administrative rule would be permitted under the following circumstances:</p> <ul style="list-style-type: none"> a. The department and the applicant agree to a different time period for acting on an application; b. The department would not be allowed to require an applicant to agree to a different time period as a condition of approving an application; c. The department could extend the time period if the application is incomplete if (1) within 14 days after receiving the application, the department provides written notice 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 approval; (3) the specified information is necessary to determine whether to approve the application or is necessary to determine the terms or conditions of approval; (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. d. The department could extend the time period for not more than 30 days if department finds (1) there is substantial likelihood that the activity proposed would result in substantial harm to human health or human safety, (2) that the department cannot adequately review the application within the time period, and (3) the department provides written notice to the applicant that states with particularity the facts on which those findings are based. 	<p>Extensions of the time period established in administrative rule would be permitted under the following circumstances:</p> <ul style="list-style-type: none"> a. Same; b. No provision; c. Under (1) the department would have to provide written notice within 15 days instead of 14 days, and the department could provide the written notice by electronic mail. Items (2), (3) and (4) are the same.; d. Same, except under item (3) the department may provide the written notice by electronic mail.

Provision	SB 246	AB 486
Automatic Approval - Deadline	If the department does not provide the applicant with written notice of approval or disapproval, including the specific facts upon which any disapproval is based, before the expiration of the time period, the permit would be approved. The department would not be allowed to make the approval subject to any term or condition that is not specified by statute or rule. Within 30 days after expiration of the time period, the department would be required to provide the applicant with a statement showing the approval is approved and specifying any terms or conditions.	Same, plus the department could provide the applicant with the first written notice by electronic mail
Automatic approval - terms and conditions	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 approval. The department would be authorized to suspend, limit, revoke, or withdraw the approval 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 solely because the department is unable to complete its review of the application within the time period.	Same.
Applications with Fee Refunds - General Requirements	For certain approvals, if an agency fails to provide the applicant with written notice that the department has approved or disapproved the application within the time period established by rule or an authorized extension of the time period, including the specific facts upon which any disapproval is based, the agency would be required to refund fees paid by applicant.	Same, plus the department could provide the written notice by electronic mail.
Fee Refunds - Notification after Application	After an agency receives an application, the department would be required to inform applicants of the time period established in administrative rule by which the agency must approve or disapprove the application, unless the agency intends to approve or disapprove the application within 14 days after receiving it.	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 must specify the method that it determines is the most cost-effective 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.

Provision	SB 246	AB 486
Fee Refunds - Expiration of Time Without Action	If the agency does not provide the applicant with written notice that the department has approved or disapproved the application before the expiration of the time period, the applicant could choose to proceed under ch. 227 (administrative procedure and review) as though the department had disapproved the application by providing the department with written notice of that choice not later than 45 days after the expiration of the time period.	No provision.
Fee Refunds - Disapproval	The department would not be allowed to disapprove an application solely because the department is unable to complete its review of the application within the time period established under rule.	Same.
Fee Refunds - Extension of Time Period	The department could extend the time period if the application is incomplete if: (1) within 14 days after receiving the application, the department provides written notice 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 approval; (3) the specified information is necessary to determine whether to approve the application or is necessary to determine the terms or conditions of approval; (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.	Under (1) the department would have to provide written notice within 15 days instead of 14 days, and the department could provide the written notice by electronic mail. Items (2), (3) and (4) are the same.
DOA - Division of State Facilities	Not included.	Same as general requirements. Approvals listed on page 6 of LFB October 15, 2003, memo on AB 486.
DOA - Division of Gaming	Not included.	Same as general requirements. Approvals listed on pages 6-7 of LFB October 15, 2003, memo on AB 486.
Agriculture, Trade and Consumer Protection	Same as general requirements. Approvals listed on pages 5-6 of LFB October 15, 2003, memo on SB 246.	Same as general requirements. Same approvals as SB 246. Approvals listed on pages 7-9 of LFB October 15, 2003, memo on AB 486.

Provision	SB 246	AB 486
Commerce	Same as general requirements. In addition, any time periods established by Commerce in administrative rule would have to be consistent with any applicable period specified by statute. Approvals listed on pages 8-10 of LFB October 15, 2003, memo on SB 246.	Same as general requirements, except that: (a) any time periods established by Commerce in administrative rule would have to be consistent with any applicable period specified by statute; and (b) Commerce 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. Same approvals as SB 246. Approvals listed on pages 10-12 of LFB October 15, 2003, memo on AB 486.
Corrections	Not included.	Same as general requirements. Approvals listed on page 13 of LFB October 15, 2003, memo on AB 486.
Educational Approval Board	Not included.	Same as general requirements. Approvals listed on pages 13-14 of LFB October 15, 2003, memo on AB 486.
Elections Board	Not included.	Same as general requirements. Approvals listed on page 14 of LFB October 15, 2003, memo on AB 486.
Electronic Government	Not included.	Same as general requirements. Approvals listed on pages 14-15 of LFB October 15, 2003, memo on AB 486.
Ethics Board	Not included.	Same as general requirements. Approvals listed on page 15 of LFB October 15, 2003, memo on AB 486.
Financial Institutions	Same as general requirements, except: (a) DFI 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; and (b) any time periods established would have to be consistent with applicable periods specified under current law. Approvals listed on pages 10-12 of LFB October 15, 2003, memo on SB 246.	Same difference from general requirements as in SB 246. Same approvals as SB 246. Approvals listed on pages 15-16 of LFB October 15, 2003, memo on AB 486.
Health and Family Services	Not included.	Same as general requirements. Approvals listed on pages 17-19 of LFB October 15, 2003, memo on AB 486.
Office of the Commissioner of Insurance	Not included.	Same as general requirements. Approvals listed on pages 20-21 of LFB October 15, 2003, memo on AB 486.

Provision	SB 246	AB 486
Natural Resources	Same as general requirements. Air pollution control permits for construction or operation of a stationary source are listed under fee refunds. Approvals listed on pages 12-14 of LFB October 15, 2003, memo on SB 246.	Same as general requirements. Same approvals as SB 246 except that air pollution permits are not included as either automatic approvals or fee refunds. (The original AB 486 included air pollution permits in automatic approvals, but as passed by the Assembly, the bill does not apply to the air pollution control permit program.) Approvals listed on pages 22-24 of LFB October 15, 2003, memo on AB 486.
Public Instruction	Not included.	Same as general requirements. Approvals listed on page 26 of LFB October 15, 2003, memo on AB 486.
Public Service Commission	Not included.	The general requirements for automatic approvals would apply to petitions for the partial deregulation of telecommunications services filed after the general effective date of the bill, except that 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 several factors. Approvals listed on pages 27-28 of LFB October 15, 2003, memo on AB 486.
Regulation and Licensing	Not included.	Same as general requirements. Approvals listed on page 28 of LFB October 15, 2003, memo on AB 486.
Revenue	Same as general requirements. Approvals listed on page 16 of LFB October 15, 2003, memo on SB 246.	Same as general requirements for fee refunds related to the regulation of cigarettes and tobacco products. Fee refunds differ from general requirements related to the regulation of alcoholic beverages, for which DOR would be provided specific authority to include in the rules: (a) methods for determining the beginning of the application period and determining when the application 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 DOR and the applicant jointly agree to a different period. Same approvals as SB 246. Approvals listed on pages 28-29 of LFB October 15, 2003, memo on AB 486.

Provision	SB 246	AB 486
DOT	Same as general requirements. Approvals listed on pages 16-18 of LFB October 15, 2003, memo on SB 246.	<p>Same approvals as SB 246, except that AB 486 does not specify the consequences (fee refund or automatic approval) for the failure to act upon an application for an overweight or oversize load permit.</p> <p>DOT requirements differ from the general requirements in the following ways: (a) provisions related to providing certain types of extensions, including the conditions that must be met to provide the extensions, are specified by statute for most agencies, but for DOT they are included in a list of items that may be included (but are not required to be included) in the Department's rules; and (b) DOT would not be allowed to establish a longer time period for an application for which an environmental impact statement is required. Approvals listed on pages 29-31 of LFB October 15, 2003, memo on AB 486.</p>
Workforce Development	Not included.	Same as general requirements. Approvals listed on page 32 of LFB October 15, 2003, memo on AB 486.
Technical Amendment	Not applicable.	Page 32 of LFB October 15, 2003, memo notes two technical corrections that would be needed to reflect 2003 Act 33 transfers of agency functions.