



## Legislative Fiscal Bureau

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TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 246: Time Periods in Which State Agencies Must Act on Certain Applications and Automatic Approval or Fee Refunds if Deadlines Are Not Met

Senate Bill 246 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 would 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. SB 246 was introduced on September 12, 2003. On September 17, 2003, the Senate Select Committee on Job Creation recommended passage of the bill by a vote of 3-2. SB 246, as amended by Senate Amendment 1, was passed by the Senate on September 23, 2003, by a vote of 20 ayes and 13 noes. On September 25, 2003, the bill was messaged to the Assembly and referred to the Joint Committee on Finance.

### **SUMMARY OF THE BILL**

Senate Amendment 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. Further, the amendment deletes a provision in the bill that would have shortened the general timeframe for deciding certain nonfederal wetlands permits from the current 120 days to 21 days. SA1 would also require that 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.

The bill, as passed by the Senate, would take effect on the first day of the 12<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 SB 246, as passed by the Senate.

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

SB 246, as passed by the Senate, would require certain state agencies to promulgate administrative rules establishing time periods within which the agencies intend to approve or disapprove applications for specified licenses, permits, and other approvals that the agencies issue.

Under the bill, the following Departments would be required to promulgate rules: (a) Agriculture, Trade and Consumer Protection; (b) Commerce; (c) Financial Institutions; (d) Natural Resources; (e) Revenue; and (f) Transportation.

### **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. 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 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) a longer time period for an application for which an environmental impact statement is required than for other applications; (b) extensions of the time period because 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; and (c) 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. The department would not be allowed to require an applicant to agree to a different time period as a condition of approving an application.

b. The department could extend the time period because the application is incomplete if, all of the following apply: (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 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 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 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. 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 the application.

If the department does not provide the applicant with written notice that the department has approved or disapproved the application before the expiration of the time period, including the specific facts upon which any disapproval is based, the department would be required to refund the application fees. 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 no later than 45 days after the expiration of the time period. 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 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; (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. For example, 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 14 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 14 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. It should be noted that, as amended, the bill eliminates the notice requirement for determinations made within 14 days. Unless the bill would be amended to provide additional resources, agencies would be required to absorb any new costs within existing base level funding or to seek additional resources in future legislation, after actual workload has been identified.

### **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. In addition, the bill includes 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.

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.* Commerce 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 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 in printing and postage costs, that would be associated with notifying approximately 117,500 applicants annually whose applications would be affected by the processing deadlines (the bill, as amended, eliminates some notice requirements). 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.

### **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.

### **Natural Resources**

*Automatic Approvals.* The general requirements for automatic approvals apply to an application to the Department of Natural Resources (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. An air pollution control permit for construction or operation of a stationary source.
7. A certification for a solid waste disposal facility operator.
8. A license for a hazardous waste transporter.
9. A license for a person who engages in metallic mining exploration, including persons who contract for the services of drillers for purposes of exploration.
10. A license for a person who engages in oil or gas exploration.
11. 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.
12. A license for a medical waste transporter.
13. 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.

The fee refund for air permits provisions is not expected to result in significant refunds due to untimely permit decisions. However, DNR officials have noted that: (a) it would be difficult to determine what fee is to be refunded for general permits since an annual tonnage fee is assessed on air emissions to fund the program (rather than an application fee for the permit); and (b) if refund amounts (unexpectedly) became substantial, there is some danger that the Department's overall fee structure could fall below the presumptive minimum level identified in federal law.

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. Unless additional funding were provided under the bill, the Department would be required to absorb any additional costs associated with the implementation of the bill.

## **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. DOR 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 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 could result in a minimal loss of revenues from fee refunds.

## **Transportation**

*Automatic Approvals.* The general requirements for automatic approvals apply to an application to the Department of Transportation (DOT) 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 general requirements for applications with fee refunds apply to DOT. DOT 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. 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.

17. A permit for transporting oversize or overweight loads on the highway.

*Fiscal Effect.* In DOT's fiscal estimate prepared on the bill, the Department notes that the largest cost would be associated with a provision that would require applicants to be notified within 14 days of an incomplete application in order to extend the deadline for acting on the application. Currently, the amount of time between when a title application is received and the time that the Department acts on the application is about 40 days. In order to meet the 14-day deadline, the Department would have to increase the resources currently applied to processing titles to reduce the backlog of applications to less than 14 days. The Department indicates that this would require the Department to incur one-time costs of \$92,300, mostly for overtime pay related to increasing the number of title processing-hours. In addition, the Department estimates that an ongoing increase of 2.5 positions and \$122,900 would be required to maintain a backlog of less than 14 days for title applications. Unless additional funding were provided under the bill, the Department would be required to absorb any additional costs associated with the implementation of 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.

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