



Legislative Fiscal Bureau

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October 14, 2003

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Substitute Amendments to SB 246 and AB 486

On October 15, the Joint Committee on Finance is scheduled to consider two bills (SB 246 and AB 486) which relate to time periods within which state agencies must act on certain applications for specific licenses, permits, or other approvals that the agencies issue.

On Thursday, October 9, papers prepared by this office on SB 246 and AB 486 were distributed to your offices. These papers are dated October 15, 2003. Yesterday, we distributed a paper which compared the major provisions of the two bills.

The offices of the Committee's Co-chairs have informed us that companion substitute amendments to the two bills will be offered at tomorrow's executive session of the Committee.

LRB 0211/1 has been drafted as an Assembly Substitute Amendment to SB 246 and its companion (LRB 0210/2) has been drafted as a Senate Substitute Amendment to AB 486.

The attached document compares the major provisions of the two bills and the substitute amendments.

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Attachment

Comparison of Provisions in SB 246, AB 486, and Substitute Amendments LRB 0210/2 and LRB 0211/1

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
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	Same agencies as AB 486 except: (a) deletes Corrections, Educational Approval Board and Ethics Board; and (b) makes a technical correction to include Administration - Division of Enterprise Technology instead of Department of Electronic Government under AB 486.
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.	LRB 0210/2 is a Senate Substitute Amendment to AB 486. LRB 0211/1 is an Assembly Substitute Amendment to SB 246.
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.	Same as SB 246.
Legislative Reference Bureau Bill Analysis	No provision.	Requires the Legislative Reference Bureau to place a statement in the analysis when a bill requires a person to obtain a license, permit, or similar approval from a state agency.	Same as AB 486.

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
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.	Same as SB 246.
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 as SB 246.	Same as SB 246 and 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.	Same as AB 486.

<p>Provision</p> <p>Automatic Approvals - Authorized Provisions in Rules</p>	<p>SB 246</p> <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>AB 486</p> <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 as SB 246; b. Same plus the applicant may make the material modification by electronic mail; c. Same as SB 246; 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. 	<p>Substitute Amendments LRB 0210/2 and LRB 0211/1</p> <p>Same as AB 486.</p>
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Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
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 	<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 as SB 246; 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 as SB 246.; d. Same as SB 246, except under item (3) the department could provide the written notice by electronic mail. 	<p>Same as AB 486.</p>

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
	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.		
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 as SB 246, plus the department could provide the applicant with the first written notice by electronic mail	Same as AB 486.
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 as SB 246.	Same as SB 246 and AB 486.

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
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 as SB 246, plus the department could provide the written notice by electronic mail.	Same as AB 486.
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.	Same as 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.	Same as SB 246, plus the department could provide the written notice by electronic mail.

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
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 as SB 246.	Same as SB 246 and AB 486.
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 as SB 246.	Same as AB 486.
DOA - Division of State Facilities	Not included.	Same as general requirements for AB 486. Approvals listed on page 6 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as AB 486, except moves approvals from the automatic approval category to fee refund category.
DOA - Division of Gaming	Not included.	Same as general requirements for AB 486. Approvals listed on pages 6-7 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as AB 486.
DOA - Division of Enterprise Technology	Not included.	[See Electronic Government]	General requirements for LRB 0210 and LRB 0211 apply to the same approvals as the AB 486 provisions applicable to the Department of Electronic Government.

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
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 for AB 486. Same approvals as SB 246. Approvals listed on pages 7-9 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as SB 246 and AB 486.
Commerce	Same as general requirements for SB 246. 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 for AB 486, 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.	LRB 0210 and LRB 0211 have the same difference from general requirements as in AB 486. Same approvals as SB 246 and AB 486.
Corrections	Not included.	Same as general requirements for AB 486. Approvals listed on page 13 of LFB October 15, 2003, memo on AB 486.	Not included.
Educational Approval Board	Not included.	Same as general requirements for AB 486. Approvals listed on pages 13-14 of LFB October 15, 2003, memo on AB 486.	Not included.
Elections Board	Not included.	Same as general requirements for AB 486. Approvals listed on page 14 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as AB 486, except subjects all approvals to fee refund provisions instead of to automatic approval.
Electronic Government	Not included.	Same as general requirements for AB 486. Approvals listed on pages 14-15 of LFB October 15, 2003, memo on AB 486. (A technical amendment is needed to reflect the 2003 Act 33 elimination of the Department and the transfer of DEG's functions to DOA.)	See DOA - Division of Enterprise Technology. As a result of the elimination of DEG in 2003 Act 33, and the transfer of DEG's functions to DOA, LRB 0210 and LRB 0211 apply the AB 486 requirements to the DOA Division of Enterprise Technology.

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
Ethics Board	Not included.	Same as general requirements for AB 486. Approvals listed on page 15 of LFB October 15, 2003, memo on AB 486.	Not included.
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.	AB 486 has the same differences 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.	LRB 0210 and LRB 0211 have the same differences from general requirements as in SB 246 and AB 486. Same approvals as SB 246 and AB 486.
Health and Family Services	Not included.	Same as general requirements for AB 486. Approvals listed on pages 17-19 of LFB October 15, 2003, memo on AB 486. (A technical amendment is needed to reflect the 2003 Act 33 transfer of the Grade A dairy certification program from DHFS to DATCP.)	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as AB 486, except technically corrected to list certifications for Grade A dairy operations under DATCP rather than under DHFS.
Office of the Commissioner of Insurance	Not included.	Same as general requirements for AB 486. Approvals listed on pages 20-21 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as 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 for AB 486. 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.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as SB 246, including listing air pollution control permits for construction or operation of a stationary source under fee refunds.

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
Public Instruction	Not included.	Same as general requirements for AB 486. Approvals listed on page 26 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as AB 486.
Public Service Commission	Not included.	The general requirements in AB 486 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.	Same as AB 486.
Regulation and Licensing	Not included.	Same as general requirements for AB 486. Approvals listed on page 28 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as 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 in AB 486 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	LRB 0210 and LRB 0211 have the same difference from general requirements as AB 486 for fee refunds related to the regulation of alcoholic beverages. Same approvals as SB 246 and AB 486.

Provision	SB 246	AB 486	Substitute Amendments LRB 0210/2 and LRB 0211/1
Transportation	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>	<p>Same approvals as SB 246 and AB 486, except that LRB 0210 and LRB 0211: (a) specify that an approval for an application for an overweight or oversize load permit would be subject to the fee refund provisions (SB 246 included it as a fee refund and AB 486 did not specify); and (b) approvals of quarterly or consecutive monthly registration and certificates of title would be subject to fee refunds rather than automatic approvals under SB 246 and AB 486.</p> <p>The DOT requirements differ from the general requirements in LRB 0210 and LRB 0211 in the same way as under AB 486.</p>
Workforce Development	Not included.	Same as general requirements for AB 486. Approvals listed on page 32 of LFB October 15, 2003, memo on AB 486.	Same as general requirements for LRB 0210 and LRB 0211. Same approvals as 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.	The two technical corrections are reflected under DOA - Division of Enterprise Technology, and Health and Family Services.