

# **05hr\_ab0635\_AC-Ag\_pt01**



Details:

(FORM UPDATED: 07/12/2010)

## **WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS**

### **2005-06**

(session year)

### **Assembly**

(Assembly, Senate or Joint)

### **Committee on ... Agriculture (AC-Ag)**

### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

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

## Vote Record Committee on Agriculture

Date: 10/27/05

Moved by: Petrovski

Seconded by: Loeffelholz

AB 635 SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
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Be recommended for:  
 Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrence

Committee Member	Aye	No	Absent	Not Voting
<b>Representative Alvin Ott, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Lee Nerison</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative John Ainsworth</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Jerry Petrovski</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative J.A. Hines</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Scott Suder</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Mary Williams</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Gabe Loeffelholz</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Debra Towns</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Barbara Gronemus</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Amy Sue Vruwink</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<b>Representative Louis Molepske</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Joseph Parisi</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>13</u>	<u>1</u>	<u>1</u>	<u>    </u>

Motion Carried                       Motion Failed

## Vote Record Committee on Agriculture

Date: 10/27/05

Moved by: Petrowski

Seconded by: Towns

AB 1035      SB \_\_\_\_\_      Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_      SJR \_\_\_\_\_      Appointment \_\_\_\_\_  
 AR \_\_\_\_\_      SR \_\_\_\_\_      Other \_\_\_\_\_

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Be recommended for:  
 Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement  
 Introduction       Rejection       Tabling       Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Representative Alvin Ott, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Lee Nerison</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative John Ainsworth</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Jerry Petrowski</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative J.A. Hines</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Scott Suder</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Mary Williams</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Gabe Loeffelholz</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Debra Towns</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<b>Representative Robert Ziegelbauer</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<b>Representative Louis Molepske</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Joseph Parisi</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>14</u>	<u>—</u>	<u>1</u>	<u>  </u>

Motion Carried       Motion Failed

**Vote Record  
Committee on Agriculture**

Date: 10/27/05

Moved by: Ott      Seconded by: Nerison

AB 635      SB \_\_\_\_\_      Clearinghouse Rule \_\_\_\_\_  
AJR \_\_\_\_\_      SJR \_\_\_\_\_      Appointment \_\_\_\_\_  
AR \_\_\_\_\_      SR \_\_\_\_\_      Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
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Be recommended for:  
 Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement  
 Introduction       Rejection       Tabling       Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Alvin Ott, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative John Ainsworth	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jerry Petrowski	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative J.A. Hines	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Gabe Loeffelholz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Debra Towns	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Barbara Gronemus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Robert Ziegelbauer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Christine Sinicki	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joseph Parisi	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>14</u>	<u>—</u>	<u>1</u>	_____

Motion Carried       Motion Failed

## Vote Record Committee on Agriculture

Date: 10/27/05

Moved by: Ott

Seconded by: Nerison

AB 635

SB \_\_\_\_\_

Clearinghouse Rule \_\_\_\_\_

AJR \_\_\_\_\_

SJR \_\_\_\_\_

Appointment \_\_\_\_\_

AR \_\_\_\_\_

SR \_\_\_\_\_

Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt LRB 21267 to A/S Sub Amdt 1

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- Passage      Adoption      Confirmation      Concurrence      Indefinite Postponement  
 Introduction      Rejection      Tabling      Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Representative Alvin Ott, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Lee Nerison</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<b>Representative Joseph Parisi</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>14</u>	<u>1</u>	<u>1</u>	<u>    </u>

Motion Carried

Motion Failed





# JOAN BALLWEG

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Madison, Wisconsin 53708-8952  
(608) 266-8077  
Toll-free: (888) 534-0041  
Rep.Ballweg@legis.state.wi.us

WISCONSIN STATE REPRESENTATIVE

41<sup>st</sup> ASSEMBLY DISTRICT

**AB 635: Changes to Wisconsin Producer Security Act  
Testimony by State Representative Joan Ballweg  
Before the Assembly Committee on Agriculture  
October 12, 2005**

Thank you Chairman Ott and committee members for holding this hearing on AB 635 concerning the participation of certain vegetable contractors in the Agricultural Producer Security Program particularly potato growers for potato chips.

Agriculture is close to a \$6 billion dollar industry in Wisconsin, and of that, potatoes and vegetables constitutes a \$400 million segment. Wisconsin the third largest potato producer in the US. That market includes potatoes used for fresh, frozen and chips. About 25% of Wisconsin potatoes are used for chips.

Late last winter a concern was brought to me regarding the cost of doing business in Wisconsin for chip processors. That cost was threatening the market for our growers. Processors required to participate in the Wisconsin Producer Security Program were paying application fees and assessments that are substantially larger than those in competing potato growing states. My understanding is that one processor did not contract in Wisconsin this past growing season because of the application and assessment cost. There are several growers who intend to testify. I will leave it to them to explain to you the costs that their processors are incurring to do business in our state.

Further, these affected growers felt that the producer's participation in the Producer Security Program was actually a duplication of security, as provided by PACA, the federal Perishable Agricultural Commodities Act.

Over the past several months, I have asked all parties to come together, with the help and guidance of Rep. Ott. Along with potato growers, their Association, DATCP and PACA representatives, we have discussed the true level of security that PACA provides growers selling to chip processors. PACA coverage is valuable and available to Wisconsin producers and processors, although PACA protection may vary from one case to another.

To that end, every potato grower in the state has signed a statement of understanding as to what this bill will do and how PACA coverage differs from Wisconsin Producer Security coverage. All growers whether that grower currently sells their product for fresh, frozen or chip production have signed this letter of understanding. Mike Carter from WP&VG Association will testify later on this understanding.

In short, the Wisconsin Producer Security Act provides for payment to growers in case of a default by a processor. The federal Perishable Agricultural Commodities Act grants preferred trust fund protection to eligible unpaid sellers and suppliers when a purchaser is placed in bankruptcy court this favorable status means that PACA trust claims are paid before any secured or unsecured creditors'.

Now the bill we have written is intended to provide an option to processors to opt out of the Wisconsin Producer Security Program, if that processor is certified to be covered by PACA. We have worked with

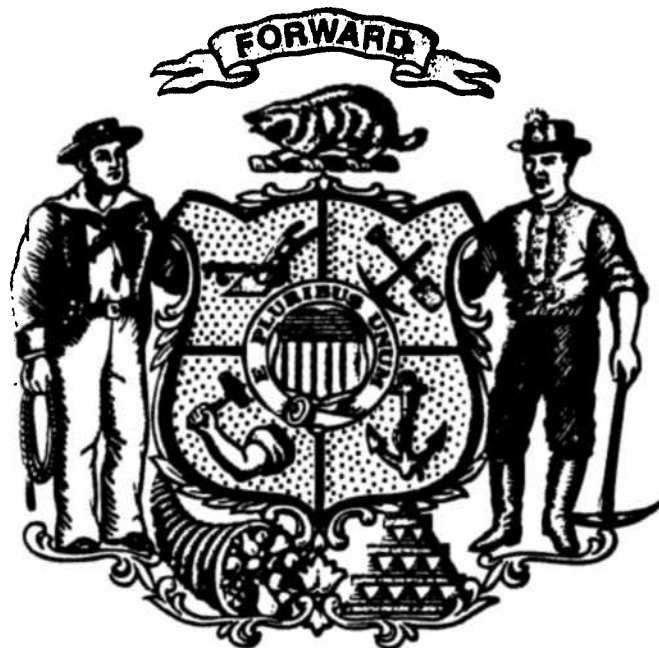


DATCAP and the Agricultural Producer Security Council to draft and re-draft the bill so that it provides the options the potato growers are asking for and the level of oversight both growers and DATCAP feel are necessary.

In a meeting of the Producer Security Council on March 29th of this year, we brought all parties together to look at any options that might resolve the market threat to the potato growers serving the chip industry. The council took the matter up a second time, and this final draft, with two items amended by the Council is what you see before you today. I believe it is the Producer Security Council's 9-1 vote of May 16, 2005, which indicates the level of comfort and acceptance for the changes put forth in this bill.

The Producer Security Council is charged with oversight of all segments of the PSA, dairy, grain and vegetable contracts. This vote shows me, they are confident in the viability of the program, with or without this segment of processors.

In conclusion, I request your consideration and an affirmative vote for AB 635. The growers providing potatoes for the chip market are dealing with a limited number of processors. The State of Wisconsin, through the Producer Security Program cannot continue to require fees and assessment that supersede the comparable market costs and expect that the market will not be adversely impacted. AB635 allows processors the option to opt out of coverage if they are PACA certified thus saving assessment fees and becoming cost comparable with other grower states. Thank you for your time and consideration.





October 12, 2005

Wisconsin Assembly Agriculture Committee  
417 North (GAR Hall)  
State Capitol  
Madison, WI

RE: **Opposition to A.B. 635**, relating to exempting certain potato buyers from the Agricultural Producer Security Program

Dear Assembly Agriculture Committee Members:

The Midwest Food Processors Association, Inc. (MWFPA), consists of many of the larger contributors to the vegetable portion of the Agricultural Producer Security Program (APSP) and we are opposed to the exemption of some potato buyers from the program for the following reasons:

- 1) It will impose additional costs on those vegetable processors remaining in the program because lost administrative revenue to DATCP will have to be absorbed by those remaining;
- 2) Reliance on the very complex provisions (and loopholes) of the Perishable Agricultural Commodity Act will not provide for the same type of coverage under the APSP and may expose growers to significant losses in the event of a default by an exempt potato processor;
- 3) The legislation undermines the very premise of why the APSP was created with grower and processor input, to provide predictability and security in relations for procuring farm products;
- 4) Growers and processors knew the program would put Wisconsin production at a competitive disadvantage with other states when agreeing to the concept less than five years ago and now the exemption of a portion of the program is imposing additional costs on only a portion of the industry;
- 5) The exempt potato purchasers may acquire an advantage in being able to attract growers with higher pricing than those vegetable processors that are left to face higher administrative costs from DATCP. The federal prohibition on growing fruits and vegetables on program acres, the influx of foreign competition, and the exempting of some potato buyers will further erode the vegetable processing capabilities in the State of Wisconsin.

The members of the MWFPA respectfully urge you to vote against AB 635. We also urge you to consider the comments of DATCP and the impact this bill will have on those remaining in the security program.

Thank you for the opportunity to speak before you today and I would be happy to address any of your concerns and questions.

Sincerely,



John D. Exner, CAE

MWFPA President/Legal Counsel

**EXPERTISE AND INFLUENCE TO POWER YOUR FOOD BUSINESS**





State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

October 13, 2005

The Honorable Al Ott, Chair  
Assembly Committee on Agriculture

**RE: AB 635, relating to participation by certain persons who buy potatoes in the Agricultural Producer Security Program.**

Dear Representative Ott:

Thank you for permitting the Department of Agriculture, Trade and Consumer Protection the opportunity to testify regarding AB 635. DATCP is opposed to the intent of the legislation, which except for a drafting error, would reduce license fees to \$500 per contractor. With regard to the remaining provisions of AB 635, DATCP presents this testimony for information.

#### **Historical Overview**

Before we discuss AB 635, I would like to provide a very quick general overview of the Agricultural Producer Security Program. This program – as it relates to vegetable contractors – was first created in the late 1980s. Beginning at that time, persons who purchased vegetables from Wisconsin producers for use in processing were required to provide either audited financial statements that met certain minimum standards for current ratio and debt to equity ratio, or post security, such as a bond or letter of credit, with DATCP. In addition to the Financial Statement and/or security requirement, the program also required vegetable contractors to obtain a license and regulated certain trade practices related to transactions between contractors and growers.

As you may recall, the vegetable contractor security program – along with similar programs for milk and grain producers – was overhauled in 2002. Beginning at that time, most individual security requirements were replaced by the Agricultural Producer Security Trust Fund. In the event a participating vegetable contractor defaults on payment to producers, the Trust Fund is available to provide partial (roughly 90%) payment to producers.

As an interesting coincidence, we'd like to digress from vegetable contractors and AB 635 for just a moment and report that the fund is actually being used for the first time today. In August of this year, a small cheese factory in Southwestern Wisconsin failed to pay its producers for milk delivered in July. The producers filed claims with DATCP and we are cutting checks from the fund and mailing them to the affected producers today. This is the first test of the new system and it has worked reasonably well.

Now, back to vegetables. Most vegetable contractors are required to contribute assessments to the producer security fund. Assessment amounts are based on the contractor's total purchases from Wisconsin producers and the contractor's financial statement ratios. Assessment calculations are contained in Chapter 126 of the Wisconsin Statutes. Essentially, the program

*Agriculture generates \$51.5 billion for Wisconsin*

“front-loads” the contractor’s cost for coverage by the fund. Assessment rates are highest in the contractor’s first 3 years of participation and are lowered in the 4<sup>th</sup> year and again in the 6<sup>th</sup> year of participation. Because this program first went into effect in 2002, most vegetable contractors saw their first decrease in fund assessments in 2005. Another decrease is expected in 2007.

### **Overlap with the Federal PACA (Perishable Agricultural Commodities Act) Trust**

Since the inception of the Wisconsin Vegetable Contractor Producer Security Program (late 1980’s) the program has applied to “vegetables for use in processing”. This definition was originally developed because vegetables sold for “fresh-market use” are regulated by the federal PACA program. However, in 1997, PACA definitions were expanded to include some potato products that Wisconsin law defines as “processing vegetables” and regulates under the Agricultural Producer Security program. This means that since 1997, there is some potential overlap between the protection for producers afforded by Wisconsin’s producer security program and the federal PACA program.

It should be noted, however, that the protections offered by the PACA trust program are far different than those offered by Wisconsin’s Producer Security Program. Whereas the Wisconsin Program has a Trust Fund available to pay producers in the event the contractor fails to do so, the PACA trust program simply grants producers a favorable position in bankruptcy court if the contractor files bankruptcy. As long as a variety of specific conditions are met, growers who are owed payment by contractors may be able to skip ahead of secured creditors in bankruptcy court actions. However, skipping ahead in bankruptcy court is only useful if the contractor has sufficient assets to pay the claims of producers as well as any other individuals or entities that the bankruptcy court determines have first priority.

### **DATCP is “Lukewarm” On The Overall Concept of AB 635.**

DATCP recognizes that the current agricultural producer security program is expensive for certain processing potato buyers. We also recognize that the cost of the program presents a real problem for some Wisconsin growers who are competing for markets with growers in other states. However, DATCP believes that this bill gives growers an unrealistic level of assurance that their transactions are covered by the PACA Trust and presents challenging enforcement issues for DATCP and the contractors it regulates.

This bill allows eligible processing potato buyers to “opt-out” of contributing to the security fund if they meet a list of very specific conditions. This level of detail is required in order to attempt to ensure that all a contractor’s transactions with Wisconsin producers meet the requirements for coverage under the PACA trust. This is a good idea – in theory, but only in theory.

In reality, however, PACA trust protection is far more nebulous and complicated than this list of requirements would lead one to believe. For example, DATCP staff has had several discussions with PACA regional staff in Chicago and headquarters staff in Washington D.C. regarding the scope of PACA coverage. On the specific question of whether PACA coverage applies to intrastate trade as well as interstate, for example, we received three different answers at three

different times. (The answers were; “yes”, “no”, and “it depends on what the final product is and where it is sold”.) In the end, the growers’ coverage under PACA is entirely dependent on the determination of the bankruptcy court.

It is axiomatic that in most bankruptcies, the bankrupt has insufficient assets to pay all debts. Creditors of the bankrupt vie for the limited assets available, which frequently entails attempting to defeat the claims of other creditors. The detailed list of requirements contained in AB 635 leaves producers with the impression that the state of Wisconsin has determined in advance that producers will be covered under PACA. However, because of the uncertainties of the PACA Trust program, the state is in no position to provide any such assurance.

Furthermore, DATCP is concerned about administration and enforcement under AB 635. If the bill becomes law, sooner or later DATCP will find instances of a contractor failing to comply with one or more requirements for opting out of the producer security program. For example, assume DATCP has evidence that a processed potato buyer made one payment to one grower in 40 days instead of the required 30 days. Under AB 635, this contractor no longer is eligible for opting out of the producer security program and must resume participation in the program. This could result in the contractor having to pay significant assessments simply because s/he made one late payment to one producer. Admittedly, this is an extreme example, but AB 635 requires walking a very tight line between coverage under the federal program or coverage under the state program, the intent of the bill being to ensure that coverage exists under one or the other program. If a contractor is 10 days late in making a payment to one contractor, coverage under PACA is non-existent, and if, as a matter of state policy, we want to make certain that coverage for the producer exists at all, DATCP will be required to strictly apply the requirements of AB 635.

### **DATCP Is Opposed to Reducing License Fees for Only Certain Contractors.**

Under current law, vegetable contractors must pay an annual license fee of \$50 plus 5.75¢ per \$100 in contract obligations. This license fee is separate and distinct from the Fund Assessments. As drafted, AB 635 adds an additional \$500 license fee for potato buyers who elect not to participate in the fund. DATCP believes that the proponents of this bill want the \$500 fee to *replace* the existing license fees, not be *added* to them.

Assuming that this technical error in the legislation is corrected, DATCP is opposed to a change in license fees for several reasons.

- Changing the license fee for affected potato buyers to \$500 reduces DATCP’s revenues to operate the producer security program, with little or no reduction in DATCP’s administrative and enforcement responsibilities.
- Granting this one fee change – without examining the entire program -- unfairly shifts costs from the potato industry to other vegetable contractors and (indirectly) to the milk and grain industries.
- Changing the license fee to \$500 would actually result in a license fee increase for most of the affected potato buyers. There are roughly a dozen vegetable contractors who could be affected by AB 635. Most of them currently pay far less than \$500.

The idea of a flat fee benefits only one very large company – at the expense of all other eligible potato contractors.

- There is more to the protections afforded by the Wisconsin Agricultural Producer Security Program than participation in the security fund. Producers who contract with potato buyers who opt out still have a level of protection relating to things like trade practices, contract requirements, and payment terms. DATCP still must administer and enforce these provisions whether or not AB 635 becomes law, and there is a cost associated with doing so.
- Changing the license fee to \$500 results in disparate treatment for other contractors. Under current law, not all vegetable contractors participate in the security fund. The most relevant example is vegetable contractors who pay producers cash on delivery. Despite their non-participation in the fund, these contractors nonetheless pay full license fees. DATCP knows of no reason why the potato contractors affected by AB 635 should receive more favorable treatment than contractors that pay cash on delivery.

For all these reasons, DATCP must **oppose** this bill if it contains a provision to reduce current license fees.

### **Technical Issues**

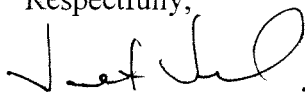
Earlier this week, DATCP staff met with Representative Ballweg and presented her with some suggestions for amendments to AB 635. Except for the license fee issue, these suggestions are technical in nature. A copy of these suggestions is attached to this letter.

### **Conclusion**

We appreciate the opportunity to provide testimony on AB 635. While DATCP understands the reasons for the legislation, we cannot give it our unqualified endorsement. The bill requires DATCP, contractors, and growers to walk a very precise line between the PACA Trust and the Producer Security Fund without overlapping or leaving gaps between the two different coverages. In the abstract, it's a good idea, but we are not optimistic that it can be done. In our opinion, AB 635 puts producers at greater risk of not recovering in the event of a contractor default. And, since the sole objective of the producer security program is to insure that producers get paid, the increased risk inherent in AB 635 is not something we can unreservedly support.

We thank the Committee for the opportunity to provide testimony on AB 635.

Respectfully,



Janet Jenkins  
Administrator  
Division of Trade and Consumer Protection



# AB 635

## DATCP suggested Amendments

### **Issue 1 -- \$500 License Fee for processing potato buyer who has elected not to participate (Section 3 of AB 635).**

DATCP objects to altering license fees based on the policy issue discussed below. Even though DATCP objects to this portion of the bill, we noted one technical drafting error.

#### **Policy Issue Discussion**

**Limiting potato buyers' license fees drastically cuts DATCP revenues – but AB 635 does not represent a significant reduction in DATCP workload.** The producer security program is designed to provide some assurance that producers will be paid for their products. The producer security program is administered using license fees collected from contractors (license fees are separate and distinct from assessments to the Fund). Even if potato buyers elect not to participate in the fund (as is possible only under AB 635), DATCP is still required to regulate this industry under the program. Limiting potato buyers' license fees drastically cuts DATCP revenues – but AB 635 does not represent any reduction in DATCP workload. This unfairly shifts the cost of operating the program away from the potato industry to other vegetable processors and (indirectly) milk contractors and grain dealers. Under current law; all contractors currently pay the same license fees whether or not they are contributing to the fund.

**Recommended Amendment:** Delete Section 3 (Page 3, lines 6 through 9) of AB 635.

#### **Technical Issue Discussion**

**As drafted, AB 635 adds a \$500 fee for potato buyers who opt out participating in the fund without adjusting existing fees.** DATCP does not have an issue with this portion of the bill as currently drafted; however, we believe proponents of the bill had intended to replace the existing license fee with a flat \$500 fee for potato buyers who elect not to participate in the fund. Current law lists required fees under 126.56(4) as follows (paraphrased and simplified for clarity – please see statute for specific language):

- (a) A processing fee of \$25
- (b) A license fee of \$25 plus 5.75¢ for each \$100 in contract obligations to Wisconsin vegetable growers.
- (c) A surcharge of \$500 if the applicant operating without a vegetable contractor license.

- (d) A surcharge of \$100 if the applicant failed to provide a financial statement as required by law.
- (e) A surcharge of \$100 for failing to submit renewal application by the annual license expiration date (January 31).

AB 635 simply adds a paragraph “(f)” to the existing list requiring a \$500 fee for potato buyers who elect not to participate in the fund. While this nullifies DATCP policy objections discussed above, we believe it is counter to the bill proponents’ intention.

**Technical Issue Amendment (Not Recommended):** Insert the following into AB 635:

1        **Section X 126.56(4)(b)** is amended to read:  
 2        Except as provided in par. (f), a fee of \$25 plus 5.75 cents for each \$100 in  
 3        contract obligations reported under sub. (9)(a), less any credit provided under sub.  
 4        (6).

## Issue 2 -- Effective Date

### Discussion

As currently drafted, AB 635 does not specify an effective date. This bill would be much easier for DATCP to implement if it specifically stated that the bill becomes effective on the first day of the new license year. For administrative tasks such as calculating license fee credits, etc., it is imperative to have a specific, common date on which all the eligible potato buyers either were or were not participating. It makes the most sense to have this common date be the first day of each new license year. For vegetable contractors, this date is February 1.

### Recommended Amendment

Insert a non-statutory provision specifying either that the Act first takes effect on Feb. 1, 2007 or is retroactive (if necessary) to Feb. 1, 2006.

## Issue 3 -- Requirements for resuming participation.

### Discussion

126.595(2), as created in AB 635, spells out steps that a potato buyer who had previously elected not to participate in the fund must take before it can become a contributing contractor. By design, it is somewhat difficult for these potato buyers to resume participation. DATCP agrees that it would be detrimental to the fund and unfair to other contractors to allow potato buyers in this position easy access back into the fund. However, the bill, as drafted is rather vague on specifics such as filing deadlines and security amounts. Because situations where this provision would be used are likely to be very contentious, DATCP would prefer more specific treatment of this topic.

### Recommended Amendment:

Replace 126.595(2) and (3), as created in AB 635, with the following:

- 1        **(2) RESUMING PARTICIPATION. (a)** A vegetable contractor who is a  
2 nonparticipating processing potato buyer under sub. (1) shall become a participating  
3 contractor if either of the following are true.
- 4            1. The processing potato buyer notifies the department of its intention to become  
5 a participating contractor. Participation is effective 30 days after the processing potato  
6 buyer provides notice to the department or the effective date of the security described  
7 under par. (b), whichever is later.
- 8            2. The processing potato buyer fails to meet eligibility requirements for optional  
9 nonparticipation as stated in sub. (1). Participation is immediate upon the department  
10 providing notice to the processing potato buyer that they are no longer eligible for  
11 optional nonparticipation, or the effective date of the security described under par. (b),  
12 whichever is later.
- 13        **(b)** A nonparticipating processing potato buyer who is becoming a participating  
14 vegetable contractor must meet the following conditions:

- 1           1. The vegetable contractor must post security.
- 2           i. The security must be in a form that meets the requirements described in
- 3 126.61(4)
- 4           ii. The amount of the security must be at least equal to 75% of the amount
- 5 reported in 126.56(9)(a).
- 6           iii. The vegetable contractor shall maintain the security until the department
- 7 releases it. The department may not release the security until the vegetable contractor has
- 8 been a participating vegetable contractor for two continuous complete license years.
- 9           2. The vegetable contractor must begin contributing to the fund at the beginning
- 10 of its second complete license year as a participating contractor. This subpar. does not
- 11 apply to disqualified vegetable contractors under s. 126.59(2).

*(Note: There seems to be some inconsistency regarding the terms "contributing" vs. "participating" and "noncontributing" vs. "nonparticipating". Generally, existing law uses "contributing" and "noncontributing" and AB 635 uses "participating" and "nonparticipating". We believe the terms are synonymous.)*

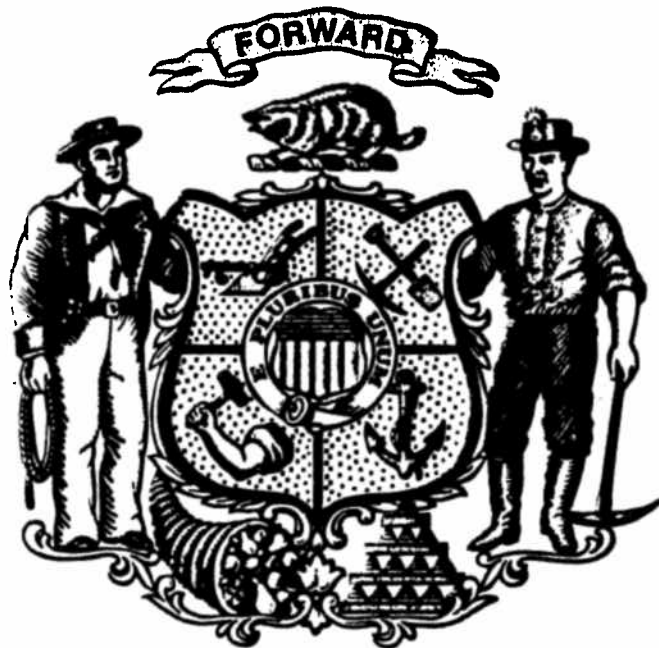
## **Issue 4 -- Cash Payment within 10 Days Instead of 20.**

### **Discussion**

As created by AB 635, 126.595(1)(a) through (f) lists certain items that processing potato buyers who wish to opt out of participating in the fund must certify or maintain evidence of before they are eligible to opt out. One of these items, [126.595(1)(b)1 and (c)1.], requires the potato buyer to certify in a statement to the department that it does not have any unpaid obligations to vegetable producers in unwritten contracts under which the potato buyer takes custody or control of the potatoes more than 20 days before paying for the potatoes in full. This provision (like all the provisions in this list) is designed to mimic requirements for coverage under the Federal PACA trust. However, PACA trust coverage (in many circumstances) actually hinges on payment within 10 days – not 20.

### **Recommended Amendment:**

In AB 635 Section 8; replace “20 days” on page 4 – lines 14 and 23 with “10 days”.



**Assembly Agriculture Committee**  
**October 13, 2005**  
**Assembly Bill 635**  
**Ag Producer Security Potato Exemption**

**Richard Pavelski (In Favor)**

- Farms 13,000 acres – 7,000 go to processed potatoes.
- He produces 55% of the Wisconsin potatoes purchased by the chip industry. Frito Lay is his biggest buyer. It costs Frito Lay about \$130,000 just to do business in the state.
- Feels Producer Security is duplicative with PACA.
- In the past, received 100% coverage under a PACA claim.
- The potential exists for him to lose 20% of his business to Michigan and/or Nebraska.
- The sale of “fresh” potatoes are currently not covered under Producer Security.

*Ott – Is Producer Security your only competitive disadvantage?*

- Property taxes used to be.
- Freight issues are a big problem.

**Mike Finnessey – Wisconsin Potato & Vegetable Growers Assoc. (In Favor)**

- 2 experiences with PACA. All money paid within 90 days.
- Producer Security protection does no good if growers are not in business.
- Companies do not have to buy their potatoes in Wisconsin – there are other places to buy.

**Bradley Faldet – Wisconsin Potato & Vegetable Growers Assoc. (In Favor)**

- Sells to small regional plants out east.
- Statewide in 2005, it is estimated that about 700 less acres of potatoes were contracted in Wisconsin because of Producer Security.
- This is projected to increase to 1400 acres in 2006.

**Paul Sowinski – Sowinski Farms Inc. (In Favor)**

- 2 experiences with PACA – paid in full.
- Lost 33% in contracted Wisconsin acres last year due to Producer Security
- Also owns acres in Missouri – No problems contracting there.

*Hines – Do you anticipate an increase in contracted acres in WI with passage of this bill?*

- Maybe, but it’s hard to regain acres you’ve lost. Would help maintain.

*Williams – How many potato growers are in Wisconsin?*

- 144 statewide. This bill would impact 9-10 growers – only those who sell to chip processors.

**Mike Carter & Ron Kuehn – Wisconsin Potato & Vegetable Growers Assoc. (In Favor)**

- AB 635 is only for chip growers.
- 60% of Wisconsin’s potato crop is not under Producer Security.
- Time is an issue with this bill as contracting generally begins in January.

- Feels the risk to producers is minimal and has a signed letter from all potentially affected members indicating an understanding of the risk of no Producer Security protection and their subsequent responsibilities.
- Between 1994 & 2001, contracted acres increased by 300%. When PSA was implemented (fees) this growth stopped.
- 3 of the 4 proposed amendments from DATCP are acceptable to industry.

**John Exner – Midwest Food Processors Association (Opposed)**

- Represents the “Green Vegetable” industry.
- The exemption offered under the bill will impose additional costs on the remaining producers required to participate in the program. They will have to absorb the slack left behind by those exiting the program.
- Not convinced PACA is really what it is portrayed to be. It’s a complex system.
- Undermines the agreement reached when the program was established.
- The rest of the industry will not get the assessment fee reduction they were promised as soon as was anticipated.
- Feels this bill rewards those who are not following the current laws by not being licensed, but who do business anyway.
- Argues the issues facing the potato industry are cyclical, and you can’t legislate to that.

*Ott – What are the other options exist to address this issue with minimum impact on the other participants?*

- Eliminate the whole program.
- The potato industry should cover the cost of administration to hold up their end of the bargain.

**Jeremy McPherson & Kevin LeRoy – DATCP (Opposed)**

- The bill contains a drafting error – as drafted, the bill would add \$500, to the cost of the license fee on top of what they pay already. Understands this is not the intent of the author.
- The department is “lukewarm” at best on the overall concept.
- License fees – under the provisions of the bill, DATCP will still have administrative responsibilities to these folks, but will not have sufficient license fees coming in to cover those costs.
- The \$500 fee under the bill doesn’t cover actual costs and would actually be a license fee increase for all licensed processors except one.
- DATCP would lose \$20,000 in license fees if all chip processors opted out.
- PACA is no more than a priority ranking in bankruptcy court. There must actually be assets available for payments to be made.







State of Wisconsin  
Jim Doyle, Governor

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Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

October 26, 2005

The Honorable Al Ott  
State Representative  
Chair, Assembly Committee on Agriculture

**Delivered via e-mail**

**Re: Substitute Amendment to AB 635 – Producer Security and Potatoes.**

Dear Representative Ott:

Thank you once again for permitting us to share our views with your committee regarding AB 635 and for working with all interested parties in an attempt to reach a solution that addresses every stakeholder's concerns. Given the positions of the various players, we know that a mutually acceptable resolution presents a difficult task.

We have received Rep. Ballweg's Substitute Amendment and we appreciate her efforts regarding this legislation. While the Substitute Amendment does improve the bill by clearing-up some technical issues, it does not change the overall concept from the original bill and does not address the license fee issue. Therefore, DATCP must remain opposed. We wanted to take one final opportunity to articulate our concerns.

We acknowledge the point made by WPVGA – that the Wisconsin Producer Security program, as it currently exists, is contributing to decreased marketing opportunities for potatoes grown in Wisconsin. Further, we agree that there is some overlap between the Federal PACA Trust program and the Wisconsin Producer Security program. While the Wisconsin program is far more complete and thorough in its coverage for growers, it can also (but not necessarily) be much more expensive.<sup>1</sup> It seems to us that all parties involved agree that there is a problem, but this legislation is, in our opinion, the worst possible way to solve it.

Throughout this process, we have considered three basic ways of reaching the WPVGA's goals. Of the three, DATCP's least favorite is AB 635. The other two ideas are summarized below:

- **Treat "chip potatoes" the same as "fresh market potatoes".** Under current law, vegetables purchased for "fresh market use" are excluded from coverage in the producer security program. This could be accomplished by editing the Producer Security Law (Ch. 126, Stats.) definition of "vegetable". Early in the discussions that eventually led to AB 635,

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<sup>1</sup> Producer Security Fund Assessments are calculated based on the contractor's total purchases and its balance sheet ratios. The program is relatively cheap for contractors who can show strong current ratios and debt to equity ratios.

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PVGA, DATCP and some interested legislators discussed this option at a meeting in the capitol. This appeared to be the best option at that time, but it was later rejected by WPVGA because some WPVGA members insist that DATCP be involved in making sure the transactions are covered under PACA. (This point is crucial to understanding why DATCP is opposed to AB 635.)

- **Modify the Formula to Address Inequities In How Producer Security Fund Assessments Are Calculated.** As you know, the current Producer Security Trust Fund or shared-risk pool is used to secure payments to producers. The Fund is funded by assessments paid by contractors. However, in the case of vegetable contractors who pay producers relatively quickly (i.e., not once a year like some contractors), the assessment formula has proven to be very unfair and resulted in very high cost for one particular potato buyer. It is possible for either the legislature or DATCP (by administrative rule) to amend the formula to lower assessment costs and remove this inequity.

As we stated in our testimony, we generally dislike AB 635 but could live with the Substitute Amendment to AB 635 if it were not for the license fee adjustments contained in Sections 3 and 4 of the bill. Either with or without the license fee adjustment, this bill puts the State of Wisconsin in the uncomfortable position of having some oversight over whether or not contractors are complying with PACA Trust requirements, and requires the state to do something about it if they are not. This is a very difficult regulatory function that we believe is nearly impossible to accomplish effectively.

However, if the potato industry insists that the State of Wisconsin take on this regulatory role, the least they can do is pay for it. The substitute amendment leaves DATCP in a position of responsibility for contractor's transactions but removes the funds needed to fulfill its obligations. We strongly suggest the Committee amend the bill to remove the license fee provisions found in Sections 3 & 4 of the Substitute Amendment. If this change is made, DATCP could change its position on the bill from "opposed" to "neutral". In the alternative, since potato producers believe that they do not need the protections that the Producer Security program affords, then remove all responsibility from DATCP for attempting to insure compliance with a program (PACA) that Wisconsin does not operate.

Again, thank you for allowing the opportunity to raise our concerns.

Respectfully,

Janet Jenkins,  
Administrator, Division of Trade and Consumer Protection

CC: Representative Joan Ballweg  
Members of the Assembly Committee on Agriculture  
Senator Dan Kapanke



# **Assembly Republican Majority**

## **Bill Summary**

**Contact:** Erin Ruby, Office of Rep. Al Ott

### **AB 635: Agricultural Producer Security Program Exemption for Potato Chip Processors**

Relating to: participation by certain persons who buy potatoes in the Agriculture Producer Security Program and granting rule-making authority.

By Representatives Ballweg, Molepske, Ott, Gronemus, Albers, Friske, Hines, Hundertmark, McCormick, Musser, Petrowski, Owens, Strachota and Vos; cosponsored by Senators Brown, Lassa, Breske and Hansen.

**Date:** November 8, 2005

### **BACKGROUND**

Current law generally requires vegetable contractors to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). A vegetable contractor is a person who buys vegetables from vegetable farmers for use in food processing or who markets vegetables for this purpose on behalf of farmers. Licensed vegetable contractors are, with some exceptions, required to make contributions under the Agricultural Producer Security Program. The program is designed to reimburse farmers for a portion of the losses they incur should a contractor, including vegetable contractors, default on their financial obligations. Buyers pay both annual license fess (administrative costs) and assessments (default payments) as participants in the program.

Under current law, if the balance in the agricultural producer security fund (funded by assessment payments) contributed by vegetable contractors exceeds \$1,000,000 on any November 30, DATCP credits 50 percent of the excess amount against license fees charged to vegetable contractors for the next license year.

### **SUMMARY OF AB 635 (AS AMENDED BY COMMITTEE)**

Assembly Bill 635 authorizes licensed vegetable contractors, who purchase only potatoes for processing, to choose opt out of the Agricultural Producer Security Program. If a potato buyer who opts out of the program defaults on a contract with a farmer, the farmer is not eligible for reimbursement under the program.

The bill requires a potato buyer who has opted out of the program to pay an annual license fee of \$500, or another amount established by DATCP by administrative rule, instead of the current annual license fee, which is based on the value of the potatoes purchased by a buyer. A buyer who has opted out is no longer required to pay an annual assessment.

To be eligible to opt out of the program, a potato buyer must be licensed by the federal government under the Perishable Agricultural Commodities Act (PACA) and must maintain documentation that farmers, from whom the buyer purchases potatoes, qualify for protection under PACA. In the event of a default, PACA gives the farmer a priority ranking in a buyer's bankruptcy proceedings, but it does not directly provide payment for any of a farmer's losses. To be eligible to opt out of the program, a potato buyer must also agree not to enter into contracts under which payment is due more than 30 days after it receives potatoes. The potato buyer must also notify farmers that they do not participate in the Agricultural Producer Security Program. A potato buyer who opts out of the program is exempt from requirements to maintain fire and extended coverage insurance and from filing annual financial statements with DATCP. The bill provides a procedure by which a potato buyer who has opted out of the program may resume participation and requires a potato buyer to resume participation if it ceases to be eligible to opt out of the program.

Finally, the bill reduces the amount of the balance after which the credit against license fees applies from \$1,000,000 to \$825,000.

### AMENDMENTS

**Assembly Amendment 1 to Assembly Substitute Amendment 1** to Assembly Bill 635 makes a technical correction to the substitute amendment relating to the requirements for re-entering the Agricultural Producer Security Program [adopted 14-0-1 (Rep. Sinicki was absent)].

**Assembly Substitute Amendment 1** to Assembly Bill 635 requires a potato buyer who has opted out of the program to pay an annual license fee of \$500, or another amount established by the Department through the administrative rule process. In order for a potato buyer to opt out, the substitute amendment reduces the amount of time – from 20 days to 10 days – that can pass between possession of the potatoes and payment under an unwritten contract. The substitute amendment also specifies that a potato buyer who no longer meets eligibility requirements to opt out of the program must resume participation. Guidelines to resume participation are outlined in the amendment as well. Finally, the substitute amendment modifies the effective date to coincide with the first day of the license year. Therefore, the amendment denotes an effective date of February 1, 2006 [adopted 14-0-1 (Rep. Sinicki was absent)].

### FISCAL EFFECT

A fiscal estimate prepared by the Department of Agriculture, Trade and Consumer Protection indicates a reduction of \$102,000 in fiscal year 2005-06 to the Agricultural Producer Security Fund indemnity sub-account (used to reimburse producers in the event of a default). This estimated loss of revenue assumes all of the eligible potato buyers (10) would opt out of the program.

The bill, as amended, also changes the current license fee structure for eligible potato buyers from one based on the contractor's total purchases to a flat \$500 annual license fee. It is estimated that this change will decrease revenue in the Agricultural Producer Security Fund administrative sub-account (pays costs of running the program) by \$19,000.

### PROS

1. Certain potato growers – particularly those who sell to chip processors – indicate the financial burden of the Agricultural Producer Security Program on their buyers puts them at a competitive disadvantage with growers in other states. AB 635 would eliminate the bulk of this burden and, in turn, level the playing field for growers.
2. Growers anticipate some level of coverage in the event of a default by a potato buyer under the Perishable Agricultural Commodities Act (PACA).
3. The scope of AB 635 is narrow in that in practical application only those buyers who process potatoes for chips (about 10 buyers statewide) would meet the requirements to opt out of the program. About 25% of Wisconsin grown potatoes are used to make chips.

### **CONS**

1. In the event of a default, the Perishable Agricultural Commodities Act (PACA) does not provide the same type of predictable coverage offered under the Agricultural Producer Security Program. PACA coverage provides growers with a favorable position in bankruptcy proceedings, whereas the Agricultural Producer Security Program provides direct payment to producers.
2. DATCP retains certain administrative and enforcement responsibilities for those potato buyers who opt out of the Agricultural Producer Security Program. However, under the bill's license fee structure, the Department will have less revenues to carryout these responsibilities.
3. Exempting this segment of Agricultural Producer Security Program participants may shift the administrative costs of the program to the remaining participants – particularly to the remaining vegetable contractors.

### **SUPPORTERS**

Rep. Joan Ballweg, author; Sen. Ron Brown, lead co-sponsor; Paul Sowinski, Sowinski Farms, Inc.; Mike Finnessy, Wisconsin Potato & Vegetable Growers Association; Bradley Faldet, Wisconsin Potato & Vegetable Growers Association; Ron Kuehn, Wisconsin Potato & Vegetable Growers Association; Mike Carter, Wisconsin Potato & Vegetable Growers Association; Richard Pavelski; Steve Diercks; Jeff Lyon, Wisconsin Farm Bureau Federation; John Manske, Wisconsin Federation of Cooperatives; Sen. Roger Breske 12th Senate District.

### **OPPOSITION**

Jeremy McPherson, Wisconsin Department of Agriculture, Trade & Consumer Protection; Eric Hanson, Wisconsin Department of Agriculture, Trade & Consumer Protection; Kevin LeRoy, Wisconsin Department of Agriculture, Trade & Consumer Protection; John Exner, Midwest Food Processors Association.

### **HISTORY**

Assembly Bill 635 was introduced on August 30, 2005, and referred to the Assembly Committee Agriculture. A public hearing was held on October 13, 2005. On October 27, 2005, the Committee voted 13-1-1 [Rep. Parisi voted no, Rep. Sinicki was absent] to recommend passage of AB 635 as amended.