

1973 Senate Bill 660

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CHAPTER 299, Laws of 1973

AN ACT to amend 15.07 (5) (intro.); and to create 15.07 (5m), 15.131 (2), 15.135 (2), 20.115 (3) (k) and (km) and 100.39 of the statutes, relating to creating a potato industry board and a potato industry act, granting rule-making authority, making an appropriation and providing for enforcement.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Legislative declaration. The legislature declares that the growing, producing and marketing of potatoes are important sources of revenue to a large number of citizens of this state and consequently are matters of public interest and that the potato industry board should be created to encourage the adequate production of potatoes within this state, to ensure that the consumer of potato products is furnished with the highest quality product at a reasonable price and to carry out programs and activities designed to foster the economic well-being of the Wisconsin potato industry and this state.

SECTION 2. 15.07 (5) (intro.) of the statutes is amended to read:

15.07 (5) (intro.) REIMBURSEMENT FOR EXPENSES; COMPENSATION. ~~The~~ Except as provided in sub. (5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employe of this state who represents his agency as a member of a board to be paid by the agency which pays his salary. The members shall receive no compensation for their services, except that the following members of boards, except full-time state officers or employes, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

SECTION 3. 15.07 (5m) of the statutes is created to read:

15.07 (5m) LIMITATIONS ON SALARY AND EXPENSES; POTATO INDUSTRY BOARD. Expenses incurred for attendance at potato industry board meetings held without this state or incurred in the performance of any other function not previously authorized by that board are not necessary expenses under sub. (5) and no citizen member of that board may receive compensation in any form for his services other than reimbursement for actual and necessary expenses under sub. (5).

SECTION 4. 15.131 (2) of the statutes is created to read:

15.131 (2) POTATO INDUSTRY BOARD. The potato industry board shall have the program responsibilities specified for the board under s. 100.39.

SECTION 5. 15.135 (2) of the statutes is created to read:

15.135 (2) POTATO INDUSTRY BOARD. There is created a potato industry board which is attached to the department of agriculture under s. 15.03. The board shall consist of 9 members. The secretary of agriculture and the dean of the university of Wisconsin-Madison college of agriculture, or their designees, shall serve as nonvoting members. The secretary of agriculture shall appoint 7 members from the potato industry for staggered 3-year terms in the manner prescribed in s. 100.39 (2). No voting member may serve more than 2 consecutive 3-year terms.

SECTION 6. 20.115 (3) (k) and (km) of the statutes are created to read:

20.115 (3) (k) *Potato board; assessments.* All moneys received under s. 100.39 for the execution of the potato industry board's programs, the reimbursement of the department of agriculture for expenses incurred and permitted under s. 100.39 and making refunds of assessments under s. 100.39.

(km) *Potato board; gifts and grants.* All moneys received from gifts, donations, grants, bequests and devises to carry out the purposes for which made.

SECTION 7. 100.39 of the statutes is created to read:

100.39 Potato industry act. (1) DEFINITIONS. In this section:

(a) "Board" means the potato industry board.

(b) "Handle" means to grade, pack, process, sell, transport, purchase or in any other way to place potatoes or cause potatoes to be placed in the current of commerce, except the transportation or delivery of field-run potatoes by the producer of such potatoes to a handler for grading, storage or processing.

(c) "Handler" means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes, including a producer who handles potatoes of his own production.

(d) "Hundredweight" means each 100 pounds of bulk, package or combination of packages making 100 pounds of any shipment of potatoes placed in the current of commerce and may be based on invoice, bill of lading manifest or both.

(e) "Potatoes" means all varieties of Irish potatoes grown by producers in this state.

(f) "Producer" means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

(2) BOARD; MEMBERSHIP AND DISTRICTS. (a) *Qualifications.* A board member shall be a potato grower who is actually engaged and who has been engaged in growing and producing potatoes within this state for at least 2 consecutive years immediately prior to his appointment, and have derived a substantial portion of his income from such activity. A member shall be a resident of the district he represents.

(b) *Nominations.* The board shall hold a meeting or meetings of producers prior to May 31 of each year to nominate members to fill vacancies on the board resulting from expiration of terms. The board shall give producers at least 10 days written notice of such a meeting. The board shall make nominations to fill other kinds of vacancies. The board chairman shall submit at least 2 nominations for any vacancy to the secretary in written form.

(c) *Secretary; appointments.* The secretary may appoint board members from those persons whose nominations are confirmed to him under par. (b). The appointees shall be from the districts defined in par. (d) as follows: one each from districts 1, 4 and 5 and 2 each from districts 2 and 3.

(d) *Appointive districts.* The appointive districts for board membership shall consist of the following counties, respectively:

1. "District 1": Kenosha, Racine, Milwaukee, Walworth, Lafayette, Waukesha, Ozaukee, Washington, Dodge, Grant, Jefferson, Rock, Green, Dane, Crawford, Columbia, Sauk, Richland and Iowa.

2. "District 2": Sheboygan, Fond du Lac, Manitowoc, Calumet, Winnebago, Outagamie, Waupaca, Waushara, Green Lake, Marquette, Adams, Juneau, Portage, Wood, Monroe, La Crosse, Trempealeau, Brown, Kewaunee, Jackson and Vernon.

3. "District 3": Door, Oconto, Shawano, Langlade, Marathon, Clark, Florence, Forest, Marinette and Menominee.

4. "District 4": Oneida, Vilas, Iron, Lincoln, Price and Taylor.

5. "District 5": Douglas, Bayfield, Burnett, Polk, Washburn, Barron, St. Croix, Pierce, Dunn, Rusk, Sawyer, Ashland, Buffalo, Chippewa, Eau Claire and Pepin.

(e) *Rules of order.* The board shall operate under the rules prescribed in the most recent edition of Robert's Rules of Order, except where otherwise provided by law.

(3) BOARD POWERS. The board may:

(a) Adopt, amend or repeal rules appropriate and necessary to effect the board's purposes, subject to ch. 227.

(b) Issue both general and special orders as provided under s. 93.18.

(c) Develop programs to stabilize and protect the potato industry and to safeguard the interest of potato consumers.

(d) Cooperate with any public or private organization or agency engaged in potato industry programs similar to those of the board.

(e) Accept gifts, donations, grants, bequests and devises to carry out the purposes for which made.

(f) Make, conduct or carry on studies and research with established institutions and agencies in connection with the raising, production and marketing of potatoes, including study and research dealing with industrial and other uses of potatoes and their by-products, and the extension and stabilization of markets for such commodities and disseminate information with respect to such study and research.

(g) Advertise or conduct publicity, sales promotions and contract for such services if necessary, to foster the growth of the potato industry.

(h) Aid, educate and inform the industry in production and marketing of potatoes.

(4) ADMINISTRATION AND ENFORCEMENT. (a) The department shall provide all necessary administrative and personnel support to the board in the execution of its functions under this section, collect, receive and disburse all moneys paid or payable to the board and enforce the board's rules and orders, all under the guidance and direction of the board.

(b) The board shall reimburse the department for all actual and necessary expenses incurred by the department which are wholly attributable to carrying out the department's responsibilities under this section. Reimbursement for any such expense shall be made within 2 years from the date the expense is incurred from the appropriation under s. 20.115 (3) (k).

(5) REPORTS; BOOKS AND RECORDS. (a) The secretary shall maintain accurate books, records and accounts of all board transactions, which books, records and accounts shall be subject to audit by the department auditor.

(b) Each handler shall maintain a separate record for each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the board pursuant to board rule or request. Such reports may include, but shall not be limited to, the following:

1. Total quantity of potatoes handled for each producer and for himself, including those exempt under this section.

2. Total quantity of potatoes handled for each producer and for himself subject to this section.

3. Name and address of each person from whom he collected an assessment and the respective amounts collected.

4. Date collection was made from each person listed.

(c) Each handler shall maintain and make available for inspection by the board, the secretary, or their authorized agents such books and records as are necessary to effect the purposes of this section. Such records shall be maintained for at least 2 years beyond the marketing year of their applicability.

(d) All information obtained from such books, records or reports shall be confidential and only the secretary may authorize disclosure, and then only in a suit or administrative hearing brought at the direction or request of the secretary or involving any officer of this state as a party, and involving this section.

(e) Nothing in this section shall prohibit:

1. The issuance of general statements based upon reports of a number of handlers, which statements shall not identify the person furnishing the information.

2. The publication, by direction of the secretary, of the name of any person violating this section, together with a statement of the nature of the charge and details of the violation.

(f) The secretary shall mail a financial report for the prior fiscal year, together with a summary of the proposed budget for the current fiscal year, to each grower no later than August 1 each year.

(6) ASSESSMENTS. (a) An assessment not to exceed the rate of one cent per hundredweight on all potatoes grown in this state and entered into the current of commerce shall be levied and imposed upon all growers and shippers within this state. The assessment shall not be imposed upon potatoes retained by a grower to be used for seed purposes or for home consumption.

(b) An assessment not to exceed the rate of one cent per hundredweight may be levied and imposed upon such class or classes of handlers as the board may prescribe by rule. Not more than one such assessment may be collected on any potatoes.

(c) Each handler designated by the board to pay assessments shall pay assessments on all potatoes handled by him, including potatoes he produced. Assessments shall be paid at such time and in such manner as the board prescribes by rules adopted under this section. The designated handler may collect the assessments from the producer, or deduct such assessments from the proceeds paid to the producer on whose potatoes the assessments are made.

(d) The board may exempt potatoes used for nonfood purposes from this section and shall establish adequate safeguards against improper use of such exemptions.

(7) **PRODUCER REFUNDS.** Any producer who has paid an assessment under this section and who is not in favor of supporting the program developed under this section shall have the right to demand and receive from the board a refund of such assessment upon submission of proof satisfactory to the board that he paid the assessment for which refund is sought. Any such demand shall be made personally by such producer on a form and within a time period prescribed by the board pursuant to regulations. Such time period shall give the producer at least 90 days from the date of collection to submit the refund request form to the board. The secretary, with the consent of the board, shall make such refund within 60 days after demand. No handler shall be eligible for a refund except on potatoes produced by him.

(8) **NONPAYMENT OF ASSESSMENTS.** If any handler, dealer or grower, fails, neglects or refuses to make collection, file a required report or pay any assessment within the time required by board order or rule, the department may, by appropriate proceedings, recover the amount of any assessments due under sub. (6), together with the costs, disbursements and attorney's fees in the action.

(9) **TERMINATION; REFERENDUM.** (a) Upon written petition of at least 10% of the potato producers participating in the assessment program under this section, the secretary shall hold a referendum to determine if potato producers favor termination of the board and its programs. If a majority of those voting in such referendum favor termination, the secretary shall prepare and submit to the legislature a request for legislation terminating the board and its programs. Pending legislative and executive approval or disapproval of such requested legislation, the secretary and board shall suspend all board operations.

(b) If the board and its programs are terminated by legislative action, the board shall, to the extent practicable, refund unencumbered assessments and other funds to those persons who paid such amounts to the board.

(10) **SUSPENSION.** The board, with the consent of the secretary, may suspend operations under this section when in the public interest because of national emergency or other reason deemed meritorious by the secretary. The secretary shall implement such suspension until directed otherwise by the board. This subsection shall not apply to sub. (2).

(11) **APPLICATION OF FUNDS.** All money collected or otherwise received pursuant to this section shall be used solely for administration of this section.

(12) **INJUNCTIONS.** The board, in addition to or in lieu of any other remedies provided under this section, may apply to a circuit court for a temporary or permanent injunction to prevent, restrain or enjoin any person from violating this section or any special order of the board issued under this section, without being compelled to allege or prove that an adequate remedy at law does not exist.

SECTION 8. Initial board provisions. The secretary of agriculture shall hold, or cause to be held, within 30 days of the effective date of this act, meetings of the producers of the potato industry districts to select nominees for membership on the potato industry board. Those persons receiving the largest number of votes and not less than 2 persons for each position to be filled in each district shall become the initial nominees from their respective districts. The secretary may appoint the initial board members from such nominees. The initial board members shall draw by lot for two

859

CHAPTER 299

one-year terms, two two-year terms and three three-year terms. The secretary of agriculture shall call the initial board meeting.
