



1995 ASSEMBLY BILL 630

October 26, 1995 - Introduced by Representatives OTT, OLSEN, OWENS, SERATTI, LEHMAN, HAHN, ZUKOWSKI, GOETSCH and WILDER, cosponsored by Senator A. LASEE, by request of Department of Agriculture, Trade and Consumer Protection. Referred to Committee on Agriculture.

1 **AN ACT to repeal** 100.03 (1) (n), 100.03 (1) (zp), 100.03 (8) (b) 6. and 100.03 (8)
2 (bm); **to renumber and amend** 100.03 (1) (e); **to amend** 20.115 (1) (gm), 97.29
3 (4), 100.03 (title), 100.03 (1) (a) (intro.), 100.03 (1) (f), 100.03 (1) (v) to (wm),
4 100.03 (1) (zm), 100.03 (2) (a), 100.03 (3) (a) 2., 100.03 (3) (b), 100.03 (4) (a),
5 100.03 (4) (c), 100.03 (4) (f), 100.03 (5) (a) 2., 100.03 (5) (b), 100.03 (5) (c), 100.03
6 (5) (e), 100.03 (6) (b) 1., 100.03 (6) (b) 3., 100.03 (6) (b) 4., 100.03 (7) (a) 1., 100.03
7 (7) (c) (intro.), 100.03 (7) (c) 1., 100.03 (15) (title), 100.03 (15) (a) (intro.), 100.03
8 (15) (c), 100.03 (18) and 100.03 (19) (a) (intro.); **to repeal and recreate** 100.03
9 (7) (a) 2.; and **to create** 100.03 (1) (ym), 100.03 (1) (zs), 100.03 (5) (am), 100.03
10 (7) (a) 3. and 100.03 (8) (cm) of the statutes; **relating to:** fruit and vegetable
11 producer security.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes in the laws regulating fruit and vegetable contractors, known as the fruit and vegetable producer security program. A fruit and vegetable contractor is a person who buys fruit or vegetables that are grown in this state for use in food processing or who contracts with a producer to grow fruit or vegetables in this state for use in food processing.

This bill eliminates persons who buy or contract to buy fruit from regulation under the current fruit and vegetable security program.

Under current law, a fruit and vegetable contractor is required to obtain an annual registration certificate from the department of agriculture, trade and

consumer protection (DATCP). The registration certificate expires on March 31. Under this bill, a vegetable contractor annual registration certificate expires on January 31.

Under current law, a contractor must file an annual financial statement with DATCP as a condition of renewal or continuation of the contractor's registration certificate. This bill requires that all annual financial statements be audited or reviewed by a public accountant. The bill also requires a vegetable contractor to file, with each application for renewal, an interim financial statement as of the quarter that ends closest to November 30.

Under current law, a contractor generally must either meet minimum financial requirements or file security with the DATCP. Under current law, the financial requirements are that the contractor's ratio of current assets to current liabilities be at least 1.2 to 1.0 and that the contractor's total assets exceed total liabilities. Under this bill, the financial requirements are:

1. The contractor's ratio of current assets to current liabilities must be at least 1.2 to 1.0 on its annual financial statement.
2. The contractor's ratio of current assets to current liabilities must be at least 1.0 to 1.0 at all times other than the end of the contractor's fiscal year.
3. The contractor must have equity equal to at least 25% of total assets at all times.

The bill phases in the amount of security that must be provided by a vegetable contractor who does not meet the financial standards as changed by this bill but who does meet the financial standards under current law.

This bill also eliminates the method of providing financial security under which processed farm products equivalent to not less than 30% of the raw farm products received from producers are set aside in trust for producers.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 20.115 (1) (gm) of the statutes is amended to read:
- 2 20.115 (1) (gm) (title) *Dairy trade regulation; dairy and farm product and*
- 3 *vegetable producer security.* The amounts in the schedule for the regulation of farm
- 4 ~~product~~ vegetable procurement under s. 100.03, of dairy plant financial condition
- 5 under s. 100.06 and of dairy trade practices under s. 100.201. All moneys received
- 6 under ss. 100.03 (3) (a) 3., 100.06 (9) and 100.201 (6) shall be credited to this
- 7 appropriation, but any balance at the close of a fiscal biennium that exceeds 20% of

1 the previous fiscal year's expenditures under this appropriation shall lapse to the
2 general fund.

3 **SECTION 2.** 97.29 (4) of the statutes is amended to read:

4 97.29 (4) (title) ~~FOOD PROCESSING PLANTS BUYING FARM PRODUCTS~~ VEGETABLES
5 FROM PRODUCERS. The department may not issue or renew a license to operate a food
6 processing plant to any applicant who is a contractor, as defined in s. 100.03 (1) (f),
7 unless the applicant has filed all financial information and any security that is
8 required under s. 100.03. If an applicant has not filed all financial information and
9 any security that is required under s. 100.03, the department may issue a conditional
10 license under s. 93.06 (8) that prohibits the licensed operator from procuring ~~farm~~
11 ~~products~~ vegetables from a producer or a producer's agent, but allows the operator
12 to procure ~~farm products~~ vegetables from other sources.

13 **SECTION 3.** 100.03 (title) of the statutes is amended to read:

14 **100.03** (title) ~~Farm product~~ Vegetable procurement; financial security;
15 grading and tare.

16 **SECTION 4.** 100.03 (1) (a) (intro.) of the statutes is amended to read:

17 100.03 (1) (a) (intro.) "Affiliate" means any of the following persons or business
18 entities that procures ~~farm products~~ vegetables for use by an operator:

19 **SECTION 5.** 100.03 (1) (e) of the statutes is renumbered 100.03 (1) (bm) and
20 amended to read:

21 100.03 (1) (bm) "Certified Audited financial statement" means a financial
22 statement that, in the accompanying opinion of an independent certified public
23 accountant or a public accountant holding a certificate of authority under ch. 442,
24 fairly and in all material respects represents the financial position of the contractor,

1 the results of the contractor's operations and the contractor's cash flows in
2 conformity with generally accepted accounting principles.

3 **SECTION 6.** 100.03 (1) (f) of the statutes is amended to read:

4 100.03 (1) (f) "Contractor" means a person who buys ~~farm products~~ vegetables
5 grown in this state from a producer, or who contracts with a producer to grow ~~farm~~
6 ~~products~~ vegetables in this state, regardless of whether the contractor is located in
7 this state or is engaged in food processing. "Contractor" does not include any of the
8 following:

9 1. A person who procures ~~fruits and~~ vegetables primarily for unprocessed fresh
10 market use and is licensed under the federal perishable agricultural commodities
11 act, 7 USC 499.

12 2. A restaurant or retail food establishment that procures ~~farm products~~
13 vegetables solely for retail sale at the restaurant or retail food establishment.

14 **SECTION 7.** 100.03 (1) (n) of the statutes is repealed.

15 **SECTION 8.** 100.03 (1) (v) to (wm) of the statutes are amended to read:

16 100.03 (1) (v) "Payment on delivery" means cash payment of the full agreed
17 price for a ~~farm product~~ vegetable when the ~~farm product~~ vegetable is tendered or
18 delivered to a contractor, or cash payment of the full agreed price within 72 hours
19 after delivery if the ~~farm product~~ vegetable is graded.

20 (vm) "Procurement contract" means an oral or written agreement between a
21 contractor and a producer, under which the contractor buys a ~~farm product~~ vegetable
22 grown in this state from the producer or contracts with the producer to grow a ~~farm~~
23 ~~product~~ vegetable in this state.

24 (w) "Producer" means a person who produces and sells a ~~farm product~~
25 vegetable, or who grows a ~~farm product~~ vegetable under contract.

1 (wm) "Producer claim" means a claim held by a producer for his or her farm
2 products vegetables.

3 **SECTION 9.** 100.03 (1) (ym) of the statutes is created to read:

4 100.03 (1) (ym) "Reviewed financial statement" means a financial statement,
5 other than an audited financial statement, that is all of the following:

- 6 1. Sworn and notarized by the contractor.
- 7 2. Reviewed according to generally accepted accounting principles by an
8 independent certified public accountant or a public accountant holding a certificate
9 of authority under ch. 442.

10 **SECTION 10.** 100.03 (1) (zm) of the statutes is amended to read:

11 100.03 (1) (zm) "Subsidiary" means a corporation or business entity that is
12 owned, controlled or operated by an operator, and that procures a ~~farm product~~
13 vegetable for use by the operator.

14 **SECTION 11.** 100.03 (1) (zp) of the statutes is repealed.

15 **SECTION 12.** 100.03 (1) (zs) of the statutes is created to read:

16 100.03 (1) (zs) "Vegetable" means any vegetable that is grown or sold for use
17 in food processing, whether or not that vegetable is actually processed as food.
18 "Vegetable" includes sweet corn, but does not include grain.

19 **SECTION 13.** 100.03 (2) (a) of the statutes is amended to read:

20 100.03 (2) (a) *Requirement.* No contractor may enter into a procurement
21 contract with a producer unless the contractor holds a registration certificate from
22 the department. A registration certificate expires on ~~March~~ January 31 annually
23 and is not transferable.

24 **SECTION 14.** 100.03 (3) (a) 2. of the statutes is amended to read:

1 100.03 (3) (a) 2. Unless the department by rule establishes a different fee, a fee
2 of one cent for each \$100 in the total contractual obligations reported under sub. (4)
3 (a). The fee under this subdivision is not required if all ~~farm product~~ vegetable
4 grading is performed or supervised by the department under contract with the
5 contractor.

6 **SECTION 15.** 100.03 (3) (b) of the statutes is amended to read:

7 100.03 (3) (b) *Surcharge for operating without a registration certificate.* A
8 contractor who applies for a registration certificate under sub. (2) shall pay a
9 surcharge of \$500 if the department determines that, within 365 days before
10 submitting the application, the contractor procured a ~~farm product~~ vegetable from
11 a producer without a registration certificate in violation of sub. (2). Payment of the
12 surcharge does not relieve the contractor of any other civil or criminal liability that
13 results from the procurement of the ~~farm product~~ vegetable, but it does not constitute
14 evidence of any law violation.

15 **SECTION 16.** 100.03 (4) (a) of the statutes is amended to read:

16 100.03 (4) (a) The contractor's total paid and unpaid contractual obligations to
17 producers, for ~~farm products~~ vegetables tendered or delivered, that have accrued
18 during the registration year immediately preceding the registration year for which
19 application is made.

20 **SECTION 17.** 100.03 (4) (c) of the statutes is amended to read:

21 100.03 (4) (c) The contractor's anticipated maximum liability to producers
22 during the registration year for which application is made. The application shall
23 state if the contractor anticipates a maximum liability of zero. If so, the application
24 also shall state whether the contractor anticipates a maximum liability of zero
25 because the contractor plans to make cash payment on delivery under every

1 procurement contract, or because the contractor plans to procure all farm products
2 vegetables from another contractor. A contractor shall immediately notify the
3 department in writing if, at any time during the registration year, the contractor has
4 reason to believe that the contractor's maximum liability will exceed the maximum
5 liability previously anticipated and reported to the department.

6 **SECTION 18.** 100.03 (4) (f) of the statutes is amended to read:

7 100.03 (4) (f) Whether the contractor is a producer-owned cooperative or
8 organization doing business on a cooperative pooling basis with its producer owners,
9 and whether the producer-owned cooperative or organization procures any farm
10 products vegetables from producers who are not its producer owners.

11 **SECTION 19.** 100.03 (5) (a) 2. of the statutes is amended to read:

12 100.03 (5) (a) 2. Except as provided under par. (c), a contractor shall file an
13 annual financial statement with the department as a condition to the renewal or
14 continuation of the contractor's registration certificate under sub. (2). An annual
15 financial statement shall be filed by the 15th day of the 4th month commencing after
16 the close of the contractor's fiscal year, except that the department may, for cause,
17 extend the deadline for filing the annual financial statement for up to 30 days.

18 **SECTION 20.** 100.03 (5) (am) of the statutes is created to read:

19 100.03 (5) (am) *Interim statement.* Except as provided in par. (c), a contractor
20 shall file a interim statement as of the quarter that ends closest to November 30 with
21 each application for renewal.

22 **SECTION 21.** 100.03 (5) (b) of the statutes is amended to read:

23 100.03 (5) (b) (title) *Additional ~~or~~ interim financial statement.*
24 Notwithstanding par. (c), the department may require a contractor to file ~~a~~ an
25 annual financial statement or interim statement at any time. The department may

1 require that a financial statement required under this paragraph be an audited
2 financial statement or a reviewed financial statement.

3 **SECTION 22.** 100.03 (5) (c) of the statutes is amended to read:

4 100.03 (5) (c) *Exemptions.* ~~Paragraph (a) does~~ Paragraphs (a) and (am) do not
5 apply to any of the following:

6 1. A contractor who either plans to make payment on delivery for all ~~farm~~
7 ~~products~~ vegetables tendered or delivered by producers, or to procure all ~~farm~~
8 ~~products~~ vegetables from another contractor, and who submits a sworn and
9 notarized statement to that effect under sub. (4) (c).

10 2. A contractor who files security with the department under sub. (8), except
11 for a contractor who files security under sub. (8) (cm).

12 3. A producer-owned cooperative or organization that procures ~~farm products~~
13 vegetables solely on a cooperative pooling basis from its producer owners, and that
14 submits under sub. (4) a sworn and notarized statement to that effect.

15 **SECTION 23.** 100.03 (5) (e) of the statutes is amended to read:

16 100.03 (5) (e) (title) ~~Certified or verified~~ Audited or reviewed financial
17 statement. A financial statement under ~~this subsection may~~ par. (a) shall be a
18 ~~certified or verified~~ an audited financial statement or a reviewed financial
19 statement, except that if during the year to which that financial statement pertains
20 a contractor incurred total contractual obligations to producers, as reported under
21 sub. (4) (a), of more than \$250,000, the financial statement under par. (a) shall be
22 ~~certified~~ an audited financial statement.

23 **SECTION 24.** 100.03 (6) (b) 1. of the statutes is amended to read:

24 100.03 (6) (b) 1. If a procurement contract does not specify a payment date in
25 writing, the contractor shall pay a liability to a producer by the 15th day of the month

1 immediately following the month in which the producer tendered or delivered the
2 farm products vegetables under the contract, or by an earlier date agreed upon
3 between the parties.

4 **SECTION 25.** 100.03 (6) (b) 3. of the statutes is amended to read:

5 100.03 (6) (b) 3. By January ~~31~~ 10 of each registration year, a contractor shall
6 pay for all farm products vegetables that were delivered by producers on or before
7 December 31 of that registration year. This requirement does not apply if a written
8 contract specifying a later payment date was approved by a vote of producers who
9 delivered farm products vegetables to the contractor during the preceding
10 registration year. To obtain the approval of producers, a contractor shall give
11 advance written notice to every eligible producer. The notice shall include a copy of
12 the proposed contract and shall announce a meeting at which producers will be asked
13 to vote on the proposed contract. The notice shall also include a mail ballot by which
14 a producer may cast his or her vote without attending the meeting. Voting shall be
15 by secret ballot. The proposed contract shall be approved by a majority of the
16 producers who vote on the proposed contract. The contractor shall file a sworn
17 statement with the department, on a form provided by the department, certifying the
18 results of the balloting.

19 **SECTION 26.** 100.03 (6) (b) 4. of the statutes is amended to read:

20 100.03 (6) (b) 4. If a producer tenders or delivers farm products vegetables to
21 a contractor after December 31 of any registration year, the contractor shall pay the
22 producer for the farm products vegetables by the 15th day of the month following the
23 month in which the farm products vegetables were tendered or delivered, or ~~within~~
24 30 days by the 30th day after tender or delivery, whichever is later.

25 **SECTION 27.** 100.03 (7) (a) 1. of the statutes is amended to read:

1 100.03 (7) (a) 1. ~~The contractor's~~ A minimum ratio of current assets to current
2 liabilities shall be at least ~~of 1.2 to 1~~ 1.0 on its annual financial statement.

3 **SECTION 28.** 100.03 (7) (a) 2. of the statutes is repealed and recreated to read:

4 100.03 (7) (a) 2. A minimum ratio of current assets to current liabilities of 1.0
5 to 1.0 at all times of the year other than the end of the contractor's fiscal year.

6 **SECTION 29.** 100.03 (7) (a) 3. of the statutes is created to read:

7 100.03 (7) (a) 3. Equity equal to at least 25% of total assets at all times.

8 **SECTION 30.** 100.03 (7) (c) (intro.) of the statutes is amended to read:

9 100.03 (7) (c) *Exemptions.* (intro.) ~~A Paragraph (a) does not apply to a~~
10 contractor is not required to meet the financial standards under par. (a) if any of the
11 following applies:

12 **SECTION 31.** 100.03 (7) (c) 1. of the statutes is amended to read:

13 100.03 (7) (c) 1. The contractor makes payment on delivery for all farm
14 products vegetables obtained from producers.

15 **SECTION 32.** 100.03 (8) (b) 6. of the statutes is repealed.

16 **SECTION 33.** 100.03 (8) (bm) of the statutes is repealed.

17 **SECTION 34.** 100.03 (8) (cm) of the statutes is created to read:

18 100.03 (8) (cm) *Transitional security amounts.* Notwithstanding par. (c), a
19 contractor who does not meet the financial standards under sub. (7) but who does
20 have a ratio of current assets to current liabilities of at least 1.2 to 1.0 on its annual
21 financial statement and whose total assets exceed total liabilities shall file security
22 in at least the following amounts for the license years indicated:

23 1. For the first license year beginning after the effective date of this subdivision
24 [revisor inserts date], 25% of the contractor's anticipated maximum liability to
25 growers of vegetables.

1 2. For the 2nd license year beginning after the effective date of this subdivision
2 ... [revisor inserts date], 50% of the contractor's anticipated maximum liability to
3 growers of vegetables.

4 **SECTION 35.** 100.03 (15) (title) of the statutes is amended to read:

5 100.03 (15) (title) ~~FARM PRODUCT~~ VEGETABLE GRADING AND TARE.

6 **SECTION 36.** 100.03 (15) (a) (intro.) of the statutes is amended to read:

7 100.03 (15) (a) *Grading procedures and grade standards.* (intro.) If under a
8 procurement contract the amount received by the producer depends on the grade of
9 the ~~farm products~~ vegetables, the ~~farm products~~ vegetables shall be graded in
10 compliance with all of the following:

11 **SECTION 37.** 100.03 (15) (c) of the statutes is amended to read:

12 100.03 (15) (c) *Price-fixing not permitted.* This subsection does not fix or
13 regulate the price paid for any ~~farm product~~ vegetable.

14 **SECTION 38.** 100.03 (18) of the statutes is amended to read:

15 100.03 (18) SUMMARY ORDER REQUIRING PAYMENT ON DELIVERY. If the department
16 has reasonable grounds to believe that a contractor does not meet the minimum
17 financial standards under sub. (7), and does not have adequate security on file under
18 sub. (8), the department may issue a summary special order requiring the contractor
19 to make payment on delivery for all ~~farm products~~ vegetables. A summary special
20 order shall set forth the specific basis for the order. The order shall remain in effect
21 until the contractor meets the financial standards under sub. (7) or files adequate
22 security under sub. (8). A person adversely affected by a special order under this
23 section shall be given a prompt hearing before the department upon request, under
24 ch. 227.

25 **SECTION 39.** 100.03 (19) (a) (intro.) of the statutes is amended to read:

