

1           (2) EXEMPT CONTRACTORS. The following vegetable contractors are exempt from  
2           licensing under sub. (1):

3           (a) A vegetable contractor who procures vegetables primarily for unprocessed,  
4           fresh market use and is licensed under the federal Perishable Agricultural  
5           Commodities Act, 7 USC 499a to 499t.

6           (b) A restaurant or retail food establishment that procures processing  
7           vegetables solely for retail sale at the restaurant or retail food establishment.

8           (3) LICENSE APPLICATION. A vegetable contractor shall apply for a license under  
9           sub. (1) in writing, on a form provided by the department. The applicant shall  
10          provide all of the following:

11          (a) The applicant's legal name and any trade name under which the applicant  
12          proposes to operate as a vegetable contractor.

13          (b) A statement of whether the applicant is an individual, corporation,  
14          partnership, cooperative, limited liability company, trust, or other legal entity. If the  
15          applicant is a corporation or cooperative, the application shall identify each officer  
16          of the corporation or cooperative. If the applicant is a partnership, the application  
17          shall identify each partner.

18          (c) The mailing address of the applicant's principal business location and the  
19          name of a responsible individual who may be contacted at that address.

20          (d) The street address of each business location from which the applicant  
21          operates as a vegetable contractor in this state and the name of a responsible  
22          individual who may be contacted at each location that is staffed.

23          (e) All license fees and surcharges required under sub. (4).

24          (f) The sworn and notarized statement required under sub. (9).

25          (g) A financial statement if required under s. 126.58 (1) and not yet filed.

1 (h) Other relevant information required by the department.

2 (4) LICENSE FEES AND SURCHARGES. A vegetable contractor applying for a license  
3 under sub. (1) shall pay the following fees and surcharges, unless the department  
4 specifies a different fee or surcharge amount by rule:

5 (a) A nonrefundable license processing fee of \$25.

6 (b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations reported  
7 under sub. (9) (a), less any credit provided under sub. (6).

8 (c) A license surcharge of \$500 if the department determines that, within 365  
9 days before submitting the license application, the applicant operated as a vegetable  
10 contractor without a license in violation of sub. (1). The applicant shall also pay any  
11 license fees, license surcharges, and fund assessments that are still due for the  
12 license year in which the applicant violated sub. (1).

13 (d) A license surcharge of \$100 if during the preceding 12 months the applicant  
14 failed to file an annual financial statement required under s. 126.58 (1) (b) by the  
15 applicable deadline.

16 (e) A license surcharge of \$100 if a renewal applicant fails to renew a license  
17 by the license expiration date of January 31.

18 (4m) EFFECT OF PAYMENT OF SURCHARGE. Payment under sub. (3) (c) does not  
19 relieve the applicant of any other civil or criminal liability that results from the  
20 violation of sub. (1), but does not constitute evidence of any law violation.

21 (5) LICENSE FOR PART OF YEAR; FEES. A person who applies for an annual  
22 vegetable contractor license after the beginning of a license year shall pay the full  
23 annual fee amounts required under sub. (4).

24 (6) FEE CREDITS. (a) If the balance in the fund contributed by vegetable  
25 contractors exceeds \$1,000,000 on November 30 of any license year, the department

1 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to  
2 contributing vegetable contractors who file timely license renewal applications for  
3 the next license year. The department shall credit each contributing vegetable  
4 contractor on a prorated basis, in proportion to the total fees that the vegetable  
5 contractor has paid under sub. (4) (b) for the 4 preceding license years.

6 (b) The fee under sub. (4) (b) is reduced by one cent for each \$100 in contract  
7 obligations reported under sub. (9) (a) if the department, under a contract with the  
8 applicant, grades all of the graded vegetables that the applicant procures from  
9 vegetable producers or producer agents.

10 (7) FEE STATEMENT. The department shall provide, with each license application  
11 form, a written statement of all license fees and surcharges required under sub. (4).  
12 The department shall specify any fee credits for which the applicant may qualify  
13 under sub. (6).

14 (8) NO LICENSE WITHOUT FULL PAYMENT. The department may not issue a license  
15 under sub. (1) until the applicant pays all license fees and surcharges identified in  
16 the department's statement under sub. (7). The department shall refund a fee or  
17 surcharge paid under protest if upon review the department determines that the fee  
18 or surcharge is not applicable.

19 (9) SWORN AND NOTARIZED STATEMENT. As part of a license application under sub.  
20 (3), an applicant shall provide a sworn and notarized statement, signed by the  
21 applicant or an officer of the applicant, that reports all of the following:

22 (a) The total amount of contract obligations that the applicant incurred during  
23 the applicant's last completed fiscal year. If the applicant has not yet operated as a  
24 vegetable contractor, the applicant shall estimate the amount of contract obligations  
25 that the applicant will incur during the applicant's first complete fiscal year.

1           (b) The largest amount of unpaid contract obligations that the vegetable  
2 contractor had at any time during the vegetable contractor's last completed fiscal  
3 year.

4           (c) The amount of unpaid contract obligations that the vegetable contractor has  
5 at the time of application.

6           (d) The amount of unpaid contract obligations under par. (c) that are due for  
7 payment before the license year for which the applicant is applying.

8           (e) The amount of unpaid obligations under par. (c) that the contractor has  
9 under deferred payment contracts.

10           (f) Whether the applicant and the applicant's affiliates and subsidiaries will  
11 collectively grow more than 10% of the total acreage of any vegetable species grown  
12 or procured by the applicant during the license year for which the applicant is  
13 applying.

14           (g) Whether the applicant will pay cash on delivery under all vegetable  
15 procurement contracts during the license year for which the applicant is applying.

16           (h) Whether the applicant is a producer-owned cooperative or organization  
17 that procures vegetables solely from its producer owners on the basis of a cooperative  
18 marketing method under which the producer-owned cooperative or organization  
19 pays its producer owners a prorated share of sales proceeds for the marketing year  
20 after a final accounting and the deduction of marketing expenses.

21           **(10) ACTION GRANTING OR DENYING APPLICATION.** (a) The department shall grant  
22 or deny a license application under sub. (3) within 30 days after the department  
23 receives a complete application. If the department denies a license application, the  
24 department shall give the applicant a written notice stating the reasons for the  
25 denial.

1 (b) A license becomes invalid after February 5 of the license year for which it  
2 is issued unless the license holder has by February 5 paid all producer obligations  
3 that were due and payable during the preceding license year.

4 (11) LICENSE DISPLAYED. A vegetable contractor licensed under sub. (1) shall  
5 prominently display a copy of that license at each business location from which the  
6 vegetable contractor operates in this state.

7 (12) NOTICE REQUIRED. (a) A vegetable contractor who files security under s.  
8 126.61 shall immediately notify the department if, at any time, the vegetable  
9 contractor's unpaid contract obligations exceed the amount last reported under sub.  
10 (9) (b).

11 (b) A vegetable contractor shall immediately notify the department if the  
12 amount of unpaid obligations under deferred payment contracts exceeds the amount  
13 last reported under sub. (9) (e).

14 **126.57 Vegetable contractors; insurance.** (1) FIRE AND EXTENDED COVERAGE  
15 INSURANCE. (a) Except as provided in par. (b), a vegetable contractor who is required  
16 to be licensed under s. 126.56 (1) shall maintain fire and extended coverage  
17 insurance, issued by an insurance company authorized to do business in this state,  
18 that covers all vegetables in the custody of the vegetable contractor, whether owned  
19 by the vegetable contractor or held for others, at the full local market value of the  
20 vegetables.

21 (b) Paragraph (a) does not apply to a vegetable contractor if any of the following  
22 applies:

23 1. The vegetable contractor pays cash on delivery under all vegetable  
24 procurement contracts.

1           2. The vegetable contractor is a producer-owned cooperative or organization  
2 that procures processing vegetables only from its producer owners.

3           **(2) INSURANCE CANCELLATION; REPLACEMENT.** Whenever an insurance policy  
4 under sub. (1) is canceled, the vegetable contractor shall replace the policy so that  
5 there is no lapse in coverage.

6           **(3) INSURANCE COVERAGE; MISREPRESENTATION.** No vegetable contractor may  
7 misrepresent any of the following to the department or to any vegetable producer or  
8 producer agent:

9           (a) That the vegetable contractor is insured.

10           (b) The nature, coverage, or material terms of the vegetable contractor's  
11 insurance policy.

12           **126.58 Vegetable contractors; financial statements.** **(1) REQUIRED**  
13 **ANNUAL FINANCIAL STATEMENT.** (a) Except as provided in par. (c), a vegetable  
14 contractor shall file an annual financial statement with the department, before the  
15 department first licenses the vegetable contractor under s. 126.56 (1), if the  
16 vegetable contractor reports more than \$500,000 in contract obligations under s.  
17 126.56 (9) (a).

18           (b) Except as provided in par. (c), a vegetable contractor licensed under s.  
19 126.56 (1) shall file an annual financial statement with the department during each  
20 license year if the vegetable contractor's license application for that year reports  
21 more than \$500,000 in contract obligations under s. 126.56 (9) (a). The vegetable  
22 contractor shall file the annual financial statement by the 15th day of the 4th month  
23 following the close of the vegetable contractor's fiscal year, except that the  
24 department may extend the filing deadline for up to 30 days if the vegetable

1 contractor, or the accountant reviewing or auditing the financial statement, files a  
2 written extension request at least 10 days before the filing deadline.

3 (c) A vegetable contractor is not required to file a financial statement under par.  
4 (a) or (b) if any of the following applies:

5 1. The vegetable contractor pays cash on delivery under all vegetable  
6 procurement contracts.

7 2. The vegetable contractor is a producer-owned cooperative that procures  
8 processing vegetables only from its producer owners.

9 (2) VOLUNTARY FINANCIAL STATEMENT. A contributing vegetable contractor who  
10 is not required to file a financial statement under sub. (1) may file an annual  
11 financial statement with the department for any of the following reasons:

12 (a) To qualify for a lower fund assessment under s. 126.60.

13 (b) To avoid filing security under s. 126.61 (1) (b).

14 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. (a) A vegetable contractor filing  
15 an annual financial statement under sub. (1) or (2) shall file an audited financial  
16 statement if the vegetable contractor's latest annual license application reported  
17 more than \$4,000,000 in annual contract obligations under s. 126.56 (9) (a).

18 (b) If par. (a) does not apply, a vegetable contractor filing an annual financial  
19 statement under sub. (1) or (2) shall file either a reviewed financial statement or an  
20 audited financial statement.

21 (4) ACCOUNTING PERIOD. A vegetable contractor filing an annual financial  
22 statement under sub. (1) or (2) shall file a financial statement that covers the  
23 vegetable contractor's last completed fiscal year unless the vegetable contractor has  
24 been in business for less than one year.

1           **(4m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require  
2 a vegetable contractor licensed under s. 126.56 (1) to file an interim financial  
3 statement with the department. The vegetable contractor shall provide, with the  
4 interim financial statement, the vegetable contractor's sworn and notarized  
5 statement that the financial statement is correct. An interim financial statement  
6 need not be a reviewed or audited financial statement.

7           **(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** (a) Except as provided in par.  
8 (b), a vegetable contractor filing a financial statement under this section shall file a  
9 financial statement that is prepared according to generally accepted accounting  
10 principles.

11           (b) If a vegetable contractor is a sole proprietor and the vegetable contractor's  
12 financial statement is not audited, the vegetable contractor shall file a financial  
13 statement that is prepared on a historical cost basis.

14           **(6) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a  
15 vegetable contractor filing a financial statement under this section shall file a  
16 financial statement that consists of a balance sheet, income statement, equity  
17 statement, statement of cash flows, notes to those statements, and any other  
18 information required by the department. If the vegetable contractor is a sole  
19 proprietor, the vegetable contractor shall file his or her business and personal  
20 financial statements.

21           (b) If a vegetable contractor has been in business for less than one year, the  
22 vegetable contractor may file an annual financial statement under sub. (1) or (2)  
23 consisting of a balance sheet and notes.



1 (c) A vegetable contractor filing a financial statement under this section shall  
2 include in the financial statement, or in an attachment to the financial statement,  
3 calculations of all of the following:

4 1. The vegetable contractor's current ratio, excluding any assets required to be  
5 excluded under sub. (7).

6 2. The vegetable contractor's debt to equity ratio, excluding any assets  
7 required to be excluded under sub. (7).

8 (7) ASSETS EXCLUDED. A vegetable contractor may not include any of the  
9 following assets in the calculations under sub. (6) (c), unless the department  
10 specifically approves their inclusion:

11 (a) A nontrade note or account receivable from an officer, director, employee,  
12 partner, or stockholder, or from a member of the family of any of those individuals,  
13 unless the note or account receivable is secured by a first priority security interest  
14 in real or personal property.

15 (b) A note or account receivable from a parent organization, a subsidiary, or an  
16 affiliate other than an employee.

17 (c) A note or account that has been receivable for more than one year, unless  
18 the vegetable contractor has established an equal offsetting reserve for uncollectible  
19 notes and accounts receivable.

20 (9) ENTITY COVERED. A person filing a financial statement under this section  
21 may not file, in lieu of that person's financial statement, the financial statement of  
22 the person's parent organization, subsidiary, predecessor, or successor.

23 (10) DEPARTMENT REVIEW. The department may analyze a financial statement  
24 filed under this section and may reject a financial statement that fails to comply with  
25 this section.

**126.59 Contributing vegetable contractors; disqualification. (1)**

CONTRIBUTION REQUIRED. A vegetable contractor licensed under s. 126.56 (1) shall pay fund assessments under s. 126.60 unless one of the following applies:

(a) The vegetable contractor is disqualified under sub. (2).

(b) The vegetable contractor pays cash on delivery under all vegetable procurement contracts.

(c) The vegetable contractor is a producer-owned cooperative that procures processing vegetables only from its producer owners.

**(1m) VOLUNTARY CONTRIBUTION.** A vegetable contractor who is exempt under sub. (1) (b) or (c) may volunteer to pay fund assessments under s. 126.60.

**(2) DISQUALIFIED CONTRACTOR.** (a) A vegetable contractor who is required to file security under s. 126.61 (1) (a) is disqualified from the fund until the department determines that one of the conditions in s. 126.61 (7) (a) 1. or 2. is satisfied.

(b) A vegetable contractor is disqualified from the fund if the department denies, suspends, or revokes the vegetable contractor's license.

(c) A vegetable contractor is disqualified from the fund, and required to pay cash on delivery under vegetable procurement contracts, if the department issues a written notice disqualifying the vegetable contractor for cause. Cause may include any of the following:

1. Failure to pay fund assessments under s. 126.60 when due.

2. Failure to file a financial statement under s. 126.58 when due.

3. Failure to reimburse the department, within 60 days after the department issues a reimbursement demand under s. 126.73 (1), for the full amount that the department pays to claimants under s. 126.72 (1) because of that vegetable contractor's default.

1           4. Failure to reimburse a bond surety, within 60 days after the bond surety  
2 issues a reimbursement demand under s. 126.73 (2), for the full amount that the  
3 surety pays to the department under s. 126.72 (2) or (3) for the benefit of claimants  
4 affected by that vegetable contractor's default.

5           **(3) PAYMENTS BY DISQUALIFIED VEGETABLE CONTRACTOR.** (a) The department may  
6 not return, to a disqualified vegetable contractor, any fund assessments that the  
7 vegetable contractor paid as a contributing vegetable contractor.

8           (b) A disqualified vegetable contractor remains liable for any unpaid fund  
9 installment under s. 126.60 that became due while the vegetable contractor was a  
10 contributing vegetable contractor. A disqualified vegetable contractor is not liable  
11 for any fund installment that becomes due after the vegetable contractor is  
12 disqualified under sub. (2).

13           **126.60 Contributing vegetable contractors; fund assessments. (1)**

14           GENERAL. A contributing vegetable contractor shall pay an annual fund assessment  
15 for each license year. The assessment equals \$20 or the sum of the following,  
16 whichever is greater, unless the department by rule specifies a different assessment:

17           (a) The vegetable contractor's current ratio assessment. The current ratio  
18 assessment for a license year equals the vegetable contractor's current ratio  
19 assessment rate under sub. (2) multiplied by the amount reported under s. 126.56  
20 (9) (a) in the vegetable contractor's license application for that license year.

21           (b) The vegetable contractor's debt to equity ratio assessment. The debt to  
22 equity ratio assessment for a license year equals the vegetable contractor's debt to  
23 equity ratio assessment rate under sub. (4) multiplied by the amount reported under  
24 s. 126.56 (9) (a) in the vegetable contractor's license application for that license year.

1 (c) The vegetable contractor's deferred contract assessment. The deferred  
2 contract assessment for a license year equals the amount, if any, reported under s.  
3 126.56 (9) (e) in the vegetable contractor's license application for that license year,  
4 multiplied by a deferred vegetable contract assessment rate of 0.0025.

5 (2) CURRENT RATIO ASSESSMENT RATE. A vegetable contractor's current ratio  
6 assessment rate is calculated, at the beginning of the license year, as follows:

7 (a) If the vegetable contractor has filed an annual financial statement under  
8 s. 126.58 and that financial statement shows a current ratio of at least 1.25 to 1.0,  
9 the vegetable contractor's current ratio assessment rate equals the greater of zero  
10 or the current ratio assessment factor in sub. (3) (a) multiplied by the following  
11 amount:

- 12 1. Subtract 4 from the current ratio.
- 13 2. Divide the amount determined under subd. 1. by 2.
- 14 3. Multiply the amount determined under subd. 2. by negative one.
- 15 4. Raise the amount determined under subd. 3. to the 3rd power.
- 16 5. Subtract 0.65 from the current ratio.
- 17 6. Divide 0.60 by the amount determined under subd. 5.
- 18 7. Raise the amount determined under subd. 6. to the 5th power.
- 19 8. Add the amount determined under subd. 4. to the amount determined under  
20 subd. 7.
- 21 9. Add 0.25 to the amount determined under subd. 8.

22 (b) If the vegetable contractor has filed an annual financial statement under  
23 s. 126.58 and that financial statement shows a current ratio of less than 1.25 to 1.0,  
24 but greater than 1.1 to 1.0, the vegetable contractor's current ratio assessment rate

1 equals the current ratio assessment factor in sub. (3) (b) multiplied by the following  
2 amount:

- 3 1. Subtract 4 from the current ratio.
- 4 2. Divide the amount determined under subd. 1. by 2.
- 5 3. Multiply the amount determined under subd. 2. by negative one.
- 6 4. Raise the amount determined under subd. 3. to the 3rd power.
- 7 5. Subtract 0.65 from the current ratio.
- 8 6. Divide 0.60 by the amount determined under subd. 5.
- 9 7. Raise the amount determined under subd. 6. to the 5th power.
- 10 8. Add the amount determined under subd. 4. to the amount determined under  
11 subd. 7.
- 12 9. Add 0.25 to the amount determined under subd. 8.

13 (c) If the vegetable contractor has filed an annual financial statement under  
14 s. 126.58 and that financial statement shows a current ratio of less than or equal to  
15 1.1 to 1.0, the vegetable contractor's current ratio assessment rate equals the current  
16 ratio assessment factor in sub. (3) (b) multiplied by 7.512617.

17 (d) If the vegetable contractor has not filed an annual financial statement  
18 under s. 126.58, the vegetable contractor's current ratio assessment rate equals the  
19 current ratio assessment factor in sub. (3) (b) multiplied by 3.84961.

20 (3) CURRENT RATIO ASSESSMENT FACTOR. (a) A vegetable contractor's current  
21 ratio assessment factor under sub. (2) (a) is 0.00048, except as follows:

- 22 1. For the vegetable contractor's 4th and 5th consecutive full license years as  
23 a contributing vegetable contractor, the vegetable contractor's current ratio  
24 assessment factor is 0.00029.

1           2. For the vegetable contractor's 6th or higher consecutive full license year as  
2 a contributing vegetable contractor, the vegetable contractor's current ratio  
3 assessment factor is zero.

4           (b) A vegetable contractor's current ratio assessment factor under sub. (2) (b)  
5 to (d) is 0.00072, except as follows:

6           1. For the vegetable contractor's 4th and 5th consecutive full license years as  
7 a contributing vegetable contractor, the vegetable contractor's current ratio  
8 assessment factor is 0.00058.

9           2. For the vegetable contractor's 6th or higher consecutive full license year as  
10 a contributing vegetable contractor, the vegetable contractor's current ratio  
11 assessment factor is 0.00035.

12           (4) DEBT TO EQUITY RATIO ASSESSMENT RATE. A vegetable contractor's debt to  
13 equity ratio assessment rate for a license year is calculated, at the beginning of the  
14 license year, as follows:

15           (a) If the vegetable contractor has filed an annual financial statement under  
16 s. 126.58 and that financial statement shows a debt to equity ratio of not more than  
17 4.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate equals the  
18 greater of zero or the debt to equity ratio assessment factor in sub. (5) (a) multiplied  
19 by the following amount:

- 20           1. Subtract 4 from the debt to equity ratio.
- 21           2. Divide the amount determined under subd. 1. by 4.
- 22           3. Raise the amount determined under subd. 2. to the 3rd power.
- 23           4. Subtract 1.85 from the debt to equity ratio.
- 24           5. Divide the amount determined under subd. 4. by 2.5.
- 25           6. Raise the amount determined under subd. 5. to the 7th power.

1           7. Add the amount determined under subd. 3. to the amount determined under  
2 subd. 6.

3           8. Add one to the amount determined under subd. 7.

4           (b) If the vegetable contractor has filed an annual financial statement under  
5 s. 126.58 and that financial statement shows a debt to equity ratio of greater than  
6 4.0 to 1.0 but less than 6.0 to 1.0, the vegetable contractor's debt to equity ratio  
7 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)  
8 multiplied by the following amount:

9           1. Subtract 4 from the debt to equity ratio.

10          2. Divide the amount determined under subd. 1. by 4.

11          3. Raise the amount determined under subd. 2. to the 3rd power.

12          4. Subtract 1.85 from the debt to equity ratio.

13          5. Divide the amount determined under subd. 4. by 2.5.

14          6. Raise the amount determined under subd. 5. to the 7th power.

15          7. Add the amount determined under subd. 3. to the amount determined under  
16 subd. 6.

17          8. Add one to the amount determined under subd. 7.

18          (c) If the vegetable contractor has filed an annual financial statement under  
19 s. 126.58 and that financial statement shows a debt to equity ratio of at least 6.0 to  
20 1.0, the vegetable contractor's debt to equity ratio assessment rate equals the debt  
21 to equity ratio assessment factor in sub. (5) (b) multiplied by 35.859145.

22          (d) If the vegetable contractor has not filed an annual financial statement  
23 under s. 126.58, the vegetable contractor's debt to equity ratio assessment rate  
24 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 1.34793.

1           **(5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR.** (a) A vegetable contractor's debt  
2 to equity ratio assessment factor under sub. (4) (a) is 0.000135, except as follows:

3           1. For the vegetable contractor's 4th and 5th consecutive full license years as  
4 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio  
5 assessment factor is 0.00008.

6           2. For the vegetable contractor's 6th or higher consecutive full license year as  
7 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio  
8 assessment factor is zero.

9           (b) A vegetable contractor's debt to equity ratio assessment factor under sub.  
10 (4) (b) to (d) is 0.000203, except as follows:

11           1. For the vegetable contractor's 4th and 5th consecutive full license years as  
12 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio  
13 assessment factor is 0.00016.

14           2. For the vegetable contractor's 6th or higher consecutive full license year as  
15 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio  
16 assessment factor is 0.0001.

17           **(6) QUARTERLY INSTALLMENTS.** (a) A contributing vegetable contractor shall pay  
18 the vegetable contractor's annual fund assessment in equal quarterly installments  
19 that are due as follows:

20           1. The first installment is due on March 1 of the license year.

21           2. The 2nd installment is due on June 1 of the license year.

22           3. The 3rd installment is due on September 1 of the license year.

23           4. The 4th installment is due on December 1 of the license year.

24           (b) A contributing vegetable contractor may prepay any of the quarterly  
25 installments under par. (a).



1 (c) A contributing vegetable contractor who applies for an annual license after  
2 the beginning of a license year shall pay the full annual fund assessment required  
3 under this section. The vegetable contractor shall pay, with the first quarterly  
4 installment that becomes due after the day on which the department issues the  
5 license, all of that year's quarterly installments that were due before that day.

6 (d) A contributing vegetable contractor who fails to pay the full amount of any  
7 quarterly installment when due shall pay, in addition to that installment, a late  
8 payment penalty of \$50 or 10% of the overdue installment amount, whichever is  
9 greater.

10 (7) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS. When the  
11 department issues an annual license to a contributing vegetable contractor, the  
12 department shall notify the vegetable contractor of all of the following:

13 (a) The amount of the vegetable contractor's annual fund assessment under  
14 this section.

15 (b) The amount of each required quarterly installment under sub. (6) and the  
16 date by which the vegetable contractor must pay each installment.

17 (c) The penalty that applies under sub. (6) (d) if the vegetable contractor fails  
18 to pay any quarterly installment when due.

19 **126.61 Vegetable contractors; security. (1) SECURITY REQUIRED.** (a) Except  
20 as provided in par. (c), a vegetable contractor shall file security with the department,  
21 and maintain that security until the department releases it under sub. (7), if all of  
22 the following apply when the department first licenses the vegetable contractor  
23 under s. 126.56 (1):

24 1. The vegetable contractor reports more than \$1,000,000 in annual contract  
25 obligations under s. 126.56 (9) (a).



1           (4) FORM OF SECURITY. The department shall review, and determine whether  
2 to approve, security filed under this section. The department may approve only the  
3 following types of security:

4           (a) Currency.

5           (b) A commercial surety bond if all of the following apply:

6           1. The surety bond is made payable to the department for the benefit of  
7 vegetable producers and producer agents.

8           2. The surety bond is issued by a person authorized to operate a surety business  
9 in this state.

10          3. The surety bond is issued as a continuous term bond that may be canceled  
11 only with the department's written agreement, or upon 90 days' prior written notice  
12 served on the department in person or by certified mail.

13          4. The surety bond is issued in a form, and subject to any terms and conditions,  
14 that the department considers appropriate.

15          (c) A certificate of deposit or money market certificate, if all of the following  
16 apply:

17          1. The certificate is issued or endorsed to the department for the benefit of  
18 vegetable producers and producer agents.

19          2. The certificate may not be canceled or redeemed without the department's  
20 written permission.

21          3. No person may transfer or withdraw funds represented by the certificate  
22 without the department's written permission.

23          4. The certificate renews automatically without any action by the department.

24          5. The certificate is issued in a form, and subject to any terms and conditions,  
25 that the department considers appropriate.

1 (d) An irrevocable bank letter of credit if all of the following apply:

2 1. The letter of credit is payable to the department for the benefit of vegetable  
3 producers and producer agents.

4 2. The letter of credit is issued on bank letterhead.

5 3. The letter of credit is issued for an initial period of at least one year.

6 4. The letter of credit renews automatically unless, at least 90 days before the  
7 scheduled renewal date, the issuing bank gives the department written notice, in  
8 person or by certified mail, that the letter of credit will not be renewed.

9 5. The letter of credit is issued in a form, and subject to any terms and  
10 conditions, that the department considers appropriate.

11 (e) Security filed with the department under s. 100.03, 1999 stats., before  
12 February 1, 2002, except that on January 1, 2003, the department shall withdraw  
13 its approval of any security that is not approvable under pars. (a) to (d).

14 (5) DEPARTMENT CUSTODY OF SECURITY. The department shall hold, in its custody,  
15 all security filed and maintained under this section. The department shall hold the  
16 security for the benefit of vegetable producers and producer agents.

17 (6) ADDITIONAL SECURITY. (a) The department may, at any time, demand  
18 additional security from a vegetable contractor if any of the following applies:

19 1. The vegetable contractor's existing security falls below the amount required  
20 under sub. (3) for any reason, including a depreciation in the value of the security  
21 filed with the department, increased obligations to vegetable producers or producer  
22 agents, or the cancellation of any security filed with the department.

23 2. The vegetable contractor fails to provide required information that is  
24 relevant to a determination of security requirements.

1 (b) The department shall issue a demand under par. (a) in writing. The  
2 department shall indicate why additional security is required, the amount of  
3 security required, and the deadline date for filing security. The department may not  
4 specify a deadline for filing security that is more than 30 days after the date on which  
5 the department issues its demand for security.

6 (c) A vegetable contractor may request a hearing, under ch. 227, on a security  
7 demand under par. (b). A request for hearing does not automatically stay a security  
8 demand.

9 (d) If a vegetable contractor fails to comply with the department's security  
10 demand under this subsection, the vegetable contractor shall give written notice of  
11 that fact to all vegetable producers and producer agents from whom the vegetable  
12 contractor procures processing vegetables. If the vegetable contractor fails to give  
13 accurate notice under this paragraph within 5 days after the security filing deadline  
14 under par. (b) has passed, the department shall promptly notify vegetable producers  
15 and producer agents by publishing a class 3 notice under ch. 985. The department  
16 may also give individual notice to vegetable producers or producer agents of whom  
17 the department is aware.

18 (e) If a vegetable contractor fails to comply with the department's demand for  
19 security under this subsection, the department may do any of the following:

20 1. Issue a summary order under s. 126.85 (2) that prohibits the vegetable  
21 contractor from procuring processing vegetables from vegetable producers or  
22 producer agents, or requires the vegetable contractor to pay cash on delivery under  
23 all vegetable procurement contracts.

24 2. Suspend or revoke the vegetable contractor's license.

1 (7) RELEASING SECURITY. (a) The department may release security filed under  
2 sub. (1) (a), <sup>except for any amount of security that</sup> unless the vegetable contractor is required to file security <sup>because</sup> under sub. (1)  
3 <sup>applies to the vegetable contractor</sup> (b), if any of the following applies:

4 1. The vegetable contractor reports less than \$1,000,000 in annual contract  
5 obligations under s. 126.56 (9) (a) for at least 2 consecutive years and the vegetable  
6 contractor pays the quarterly fund assessment that would have been required of the  
7 vegetable contractor if the vegetable contractor had been a contributing vegetable  
8 contractor on the most recent quarterly installment date under s. 126.60 (6).

9 2. The vegetable contractor's annual financial statement under s. 126.58 shows  
10 positive equity for at least 2 consecutive years and the vegetable contractor pays the  
11 quarterly fund assessment that would have been required of the vegetable contractor  
12 if the vegetable contractor had been a contributing vegetable contractor on the most  
13 recent quarterly installment date under s. 126.60 (6).

14 (b) The department may release security filed under sub. (1) (b), <sup>except for any amount</sup> unless the <sup>of security that</sup>  
15 vegetable contractor is required to file <sup>because</sup> security <sup>applies to the vegetable</sup> under sub. (1) (a), <sup>contractor</sup> if any of the  
16 following applies:

17 1. The vegetable contractor has no unpaid obligations under deferred payment  
18 contracts, and will not use deferred payment contracts in the current license year.

19 2. The vegetable contractor files 2 consecutive annual financial statements  
20 under s. 126.58 that show a current ratio of at least 1.25 to 1.0 and a debt to equity  
21 ratio of not more than 4.0 to 1.0.

22 (c) On May 1, 2002, the department may release security maintained under  
23 sub. (2), unless the vegetable contractor is required to file security under sub. (1).

24 (d) The department may release security to the extent that the security exceeds  
25 the amount required under sub. (3).

1 (e) The department may release security if the vegetable contractor files  
2 alternative security, of equivalent value, that the department approves.

3 (f) The department shall release security if the vegetable contractor has gone  
4 out of business and paid all contract obligations in full.

5 **126.62 Vegetable contractors; records.** (1) RECORDS REQUIRED. A vegetable  
6 contractor shall keep all of the following:

7 (a) Copies of all written vegetable procurement contracts.

8 (b) A current record of all vegetable contract obligations, payments, and unpaid  
9 balances.

10 (2) RECORDS RETENTION. A vegetable contractor shall keep all of the following  
11 records for at least 6 years from the date of their creation:

12 1. Records required under sub. (1).

13 2. Records that the vegetable contractor was required to keep, under s. 100.03,  
14 1999 stats., and department rules, before February 1, 2002.

15 (3) RECORDS INSPECTION. A vegetable contractor shall make records required  
16 under this section available to the department for inspection and copying upon  
17 request.

18 **126.63 Vegetable contractors; business practices.** (1) VEGETABLE GRADING  
19 AND TARE. (a) A vegetable contractor shall grade vegetables according to the following  
20 standards if the vegetable grade may affect the amount received by the vegetable  
21 producer:

22 1. Standard grading procedures that the department establishes by rule.

23 2. Uniform grade standards that the department establishes by rule, unless the  
24 vegetable procurement contract clearly specifies alternative grade standards.

1 (b) If a vegetable contractor makes any deduction for tare, the vegetable  
2 contractor shall determine tare according to procedures that the department  
3 establishes by rule.

4 (c) The department shall establish grade standards for vegetables that conform  
5 to grade standards adopted by the federal department of agriculture under 7 USC  
6 1621 to 1632.

7 **(2) PROHIBITED DEDUCTIONS.** No vegetable purchaser may deduct, from the  
8 amount payable under a vegetable procurement contract, an amount designated for  
9 the payment of any vegetable contractor license fee, surcharge, or fund assessment  
10 under this subchapter.

11 **(3) TIMELY PAYMENT.** A vegetable contractor shall pay a vegetable producer or  
12 producer agent according to the vegetable procurement contract. The vegetable  
13 contractor shall make the following payments by the following dates, unless the  
14 contract specifies a different payment date in writing:

15 (a) The 15th day of the month immediately following the month in which the  
16 vegetable contractor harvests or accepts delivery of processing vegetables, the full  
17 amount owed under the contract for those vegetables.

18 (b) The 15th day of the month immediately following the month in which the  
19 vegetable contractor rejects or fails to harvest processing vegetables tendered under  
20 the vegetable procurement contract, the full amount owed under the contract for  
21 those vegetables.

22 **(4) ANNUAL PAYMENT DEADLINE.** (a) Except as provided in par. (b) or (c), a  
23 vegetable contractor shall pay all outstanding obligations to vegetable producers by  
24 January 31 of each license year.



1 (b) For processing vegetables tendered or delivered in January of any license  
2 year, a vegetable contractor shall pay the full amount owed under the vegetable  
3 procurement contract by February 15 or by the 30th day after the date of delivery,  
4 whichever date is later.

5 (c) A vegetable contractor may pay outstanding producer obligations in  
6 accordance with a deferred payment contract that complies with sub. (5) and  
7 specifies a payment date after January 31 for processing vegetables delivered on or  
8 before December 31.

9 (5) DEFERRED PAYMENT CONTRACT. (a) Before a vegetable contractor offers a  
10 deferred payment contract to any vegetable producer, the vegetable contractor shall  
11 put the deferred payment contract to a vote of vegetable producers, as provided in  
12 par. (b), obtain the approval of a majority of the voting vegetable producers, and  
13 comply with par. (c).

14 (b) To put a deferred payment contract to a vote of vegetable producers, the  
15 vegetable contractor shall give written notice to all vegetable producers in this state  
16 from whom the vegetable contractor procured the same type of processing vegetables  
17 during the preceding license year. In the notice, the vegetable contractor shall  
18 include a copy of the proposed contract, shall announce a meeting at which the  
19 vegetable producers will be asked to vote on the proposed contract, and shall include  
20 a mail ballot by which a vegetable producer may vote without attending the meeting.  
21 The vegetable contractor shall conduct the voting by secret ballot.

22 (c) To comply with this paragraph, a vegetable contractor shall file all of the  
23 following with the department:

24 1. A sworn statement certifying that the contract was approved in a vote of  
25 vegetable producers under this subsection.



1           **126.68 Definitions.** In this subchapter:

2           (1) “Contributing contractor” means any of the following:

3           (a) A contributing grain dealer, as defined in s. 126.10 (3).

4           (b) A contributing grain warehouse keeper, as defined in s. 126.25 (2).

5           (c) A contributing milk contractor, as defined in s. 126.40 (1).

6           (d) A contributing vegetable contractor, as defined in s. 126.55 (4).

7           (2) “Depositor” has the meaning given in s. 126.25 (5).

8           (3) “Grain dealer” has the meaning given in s. 126.10 (9).

9           (4) “Grain producer” has the meaning given in s. 126.10 (10).

10          (5) “Grain warehouse keeper” has the meaning given in s. 126.25 (9).

11          (6) “Milk contractor” has the meaning given in s. 126.40 (8).

12          (7) “Milk producer” has the meaning given in s. 126.40 (10).

13          (8) “Producer grain” has the meaning given in s. 126.10 (14).

14          (9) “Producer milk” has the meaning given s. 126.40 (14).

15          (10) “Vegetable contractor” has the meaning given in s. 126.55 (14).

16          (11) “Vegetable procurement contract” has the meaning given in s. 126.55 (15).

17          (12) “Vegetable producer” has the meaning given in s. 126.55 (16).

18          **126.70 Recovery proceedings.** (1) **DEFAULT CLAIMS.** Any of the following  
19 persons may file a default claim with the department against a contractor who is  
20 licensed, or required to be licensed, under this chapter:

21           (a) A grain producer or producer agent, as defined in s. 126.10 (13), who claims  
22 that a grain dealer has failed to pay, when due, for producer grain that the grain  
23 dealer procured in this state.

1 (b) A depositor who is either a grain producer or a producer agent, as defined  
2 in s. 126.10 (13), and who claims that a grain warehouse keeper has failed to return  
3 stored grain or its equivalent upon demand.

4 (c) A milk producer or producer agent, as defined in s. 126.40 (13), who claims  
5 that a milk contractor has failed to pay, when due, for producer milk procured in this  
6 state.

7 (d) A vegetable producer or producer agent, as defined in s. 126.55 (12), who  
8 claims that a vegetable contractor has failed to make payment when due under a  
9 vegetable procurement contract.

10 **(2) FILING DEFAULT CLAIMS.** A claimant shall file a default claim under sub. (1)  
11 within 30 days after the claimant first learns of the default, subject to sub. (3). The  
12 claimant shall specify the nature and amount of the default. The department may  
13 investigate the alleged default and may require the claimant to provide supporting  
14 documentation.

15 **(3) INITIATING A RECOVERY PROCEEDING.** (a) The department may initiate a  
16 recovery proceeding in response to one or more default claims under sub. (1). The  
17 department shall issue a written notice announcing the recovery proceeding. The  
18 department shall mail or deliver a copy of the notice to the contractor and each  
19 claimant in the proceeding.

20 (b) If the department has reason to believe that other persons may have default  
21 claims under sub. (1) against the same contractor, the department may invite those  
22 persons to file their claims in the recovery proceeding. The department may publish  
23 the invitation in any of the following ways:

- 24 1. By posting it at the contractor's place of business.
- 25 2. By publishing it as a class 3 notice under ch. 985.

1           3. By mailing or delivering it to prospective claimants known to the  
2 department.

3           4. By other means that the department considers appropriate.

4           (c) In its invitation under par. (b), the department may specify a deadline date  
5 and a procedure for filing default claims. An invitation may indicate the amount of  
6 a prospective claimant's apparent claim and may ask the prospective claimant to  
7 verify or correct that amount.

8           (d) The department may initiate separate recovery proceedings for default  
9 claims that comply with sub. (2) but are filed after the deadline date under par. (c).

10           (4) AUDITING CLAIMS. The department shall audit each claim included in a  
11 recovery proceeding. The department shall disallow a claim if the department finds  
12 any of the following:

13           (a) That the claim is false or not adequately documented.

14           (b) That the claimant filed the claim more than 30 days after the claimant first  
15 learned of the contractor's default, unless the department specifies a later  
16 claim-filing deadline under sub. (3) (c).

17           (c) That the claimant, without any contractual obligation to do so, continued  
18 to deliver grain, milk, or vegetables to the defaulting contractor more than 10 days  
19 after the claimant first learned of the contractor's default.

20           (d) That the claimant failed to comply with claim-filing deadlines or  
21 procedures specified under sub. (3) (c).

22           (e) That the person filing the claim is not an authorized claimant under sub.  
23 (1).

24           (5) ALLOWED CLAIM AMOUNTS. (a) The department shall determine the amount  
25 of an allowed claim based on the contract between the parties. If the contract terms

1 are unclear, the department may determine the allowed claim amount based on local  
2 market prices, applicable milk marketing order prices, customs in the trade, or other  
3 evidence that the department considers appropriate.

4 (b) Notwithstanding par. (a), if the default involves a grain warehouse keeper's  
5 failure to return stored grain to a depositor upon demand, the department shall  
6 calculate the value of the grain based on local market prices on the day on which the  
7 depositor made the demand.

8 (c) The department shall subtract from the allowed claim amount any  
9 offsetting payments made by the contractor and any obligations for which the  
10 claimant is liable to the contractor.

11 (6) PROPOSED DECISION. After the department completes its audit under sub. (4),  
12 the department shall issue a proposed decision. The department shall mail or deliver  
13 a copy of the proposed decision to the contractor and each claimant. The department  
14 shall do all of the following in the proposed decision:

15 (a) Specify proposed findings of fact, proposed conclusions of law, and a  
16 proposed order.

17 (b) Allow or disallow each default claim and specify the amount of each allowed  
18 claim. The department may disallow part of a claim.

19 (c) Specify, for each allowed claim, the amount that the department is  
20 authorized to pay under s. 126.71.

21 (d) Specify the method, under s. 126.71, by which the department will pay the  
22 authorized amounts under par. (c).

23 (e) Explain a claimant's right under s. 126.87 (4) to seek court recovery of that  
24 portion of an allowed claim that is not paid by the department.

1 (f) Specify a date by which the contractor or claimant may file written  
2 objections to the proposed decision.

3 (7) FINAL DECISION IF NO OBJECTIONS. If no contractor or claimant files a timely  
4 written objection to the proposed decision under sub. (6), the department may issue  
5 the proposed decision as the department's final decision in the recovery proceeding,  
6 without further notice or hearing. The department shall mail or deliver a copy of the  
7 final decision to the contractor and each claimant.

8 (8) OBJECTIONS TO PROPOSED DECISION; NOTICE, HEARING, AND FINAL DECISION. (a)  
9 If a contractor or claimant files a timely written objection to the proposed decision  
10 under sub. (6), the department shall hold a public hearing on the objection. The  
11 department shall follow applicable contested case procedures under ch. 227. The  
12 department may hear all objections in a single proceeding. At the conclusion of the  
13 contested case proceeding, the department shall issue a final decision affirming or  
14 modifying the proposed decision under sub. (6).

15 (b) The department may issue a final decision under sub. (7) related to default  
16 claims that are not affected by objections under par. (a), regardless of whether the  
17 department has completed the contested case proceeding under par. (a).

18 **126.71 Paying default claims. (1) CLAIMS AGAINST CONTRIBUTING**  
19 **CONTRACTOR.** Except as provided in sub. (2) or (3), the department shall pay from the  
20 appropriate sources under s. 126.72 the following default claim amounts:

21 (a) For each default claim allowed under s. 126.70 against a grain dealer or milk  
22 contractor who was a contributing contractor when the default occurred:

- 23 1. Ninety percent of the first \$20,000 allowed.
- 24 2. Eighty-five percent of the next \$20,000 allowed.
- 25 3. Eighty percent of the next \$20,000 allowed.

1           4. Seventy-five percent of any amount allowed in excess of \$60,000.

2           (b) For each default claim allowed under s. 126.70 against a grain warehouse  
3 keeper who was a contributing contractor when the default occurred, 100% of the  
4 first \$100,000 allowed.

5           (c) For each default claim allowed under s. 126.70 against a vegetable  
6 contractor who was a contributing contractor when the default occurred:

7           1. Ninety percent of the first \$40,000 allowed.

8           2. Eighty-five percent of the next \$40,000 allowed.

9           3. Eighty percent of the next \$40,000 allowed.

10          4. Seventy-five percent of any amount allowed in excess of \$120,000.

11          **(1m) WHEN DEFAULT OCCURS.** For the purposes of this chapter, a default occurs  
12 on the date on which payment or delivery becomes overdue.

13          **(2) CLAIMS AGAINST CONTRACTOR WHO HAS FILED SECURITY.** If the department  
14 allows default claims under s. 126.70 against a contractor who has security on file  
15 with the department, the department shall convert that security and use the  
16 proceeds as follows:

17          (a) If the contractor was not a contributing contractor when the default  
18 occurred, the department shall use the security proceeds to pay the full amount of  
19 the allowed claims, except that, if the security is not adequate to pay the full amount  
20 of the allowed claims, the department shall pay claimants on a prorated basis in  
21 proportion to their allowed claims.

22          (b) If the contractor was a contributing contractor when the default occurred,  
23 the department shall use the security proceeds to reimburse the sources under s.  
24 126.72 from which the department makes any claim payment under sub. (1). If the  
25 security amount exceeds the amount payable under sub. (1) from the sources under



1 s. 126.72, the department shall use the remaining security proceeds to pay the  
2 balance of the allowed claims. If the security amount is not adequate to pay the full  
3 remaining balance, the department shall pay claimants on a prorated basis in  
4 proportion to their allowed claims. ~~The department may, at its discretion, pay claims~~  
5 ~~directly from security proceeds rather than from a fund source under s. 126.72.~~

6 **(3) PAYMENT RESTRICTIONS.** (a) The department may not pay any portion of the  
7 following from any source identified in s. 126.72:

8 1. A default claim related to a default by a grain dealer or grain warehouse  
9 keeper that occurs before September 1, 2002.

10 2. A default claim related to a default by a milk contractor that occurs before  
11 May 1, 2002.

12 3. A default claim related to a default by a vegetable contractor that occurs  
13 before February 1, 2002.

14 4. A default claim allowed against a contractor who was not a contributing  
15 contractor when the default occurred.

16 (b) The department may not pay any default claim under this chapter, except  
17 as provided in sub. (1) or (2).

18 (c) If the total amount of default claims exceeds the amount available under s.  
19 126.72, the department shall prorate the available amount among the eligible  
20 claimants in proportion to the amount of their allowed claims.

21 **(4) EFFECT OF PAYMENT.** A claimant who accepts payment under sub. (1) or (2)  
22 releases his or her claim against the contractor to the extent of the payment. A  
23 payment under sub. (1) or (2) does not prevent a claimant from recovering the  
24 balance of an allowed claim directly from the contractor.

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1           **126.72 Claims against contributing contractor; payment sources. (1)**

2           PRODUCER SECURITY FUND. From the appropriation under s. 20.115 (1) (w), the  
3           department shall make payments authorized under s. 126.71 (1), up to the deductible  
4           amount in sub. (4).

5           **(2) INDUSTRY BOND PROCEEDS.** The department shall make a demand against the  
6           appropriate industry bond under s. 126.06 and shall use the proceeds of that bond  
7           to make payments authorized under s. 126.71 (1), to the extent that those payments  
8           exceed the deductible amount in sub. (4).

9           **(3) BLANKET BOND PROCEEDS.** The department shall make a demand against the  
10          blanket bond under s. 126.07 and shall use the bond proceeds to pay any remaining  
11          amounts authorized under s. 126.71 (1) after the department makes payments under  
12          subs. (1) and (2).

13          **(4) DEDUCTIBLE AMOUNT.** The deductible amount, for purposes of subs. (1) and  
14          (2), is as follows:

15          (a) For default claims against a grain dealer or grain warehouse keeper who  
16          was a contributing contractor when the default occurred:

17                1. If the department allows the claims on or after September 1, 2002, but before  
18                September 1, 2004, \$500,000.

19                2. If the department allows the claims on or after September 1, 2004, but before  
20                September 1, 2006, \$750,000.

21                3. If the department allows the claims on or after September 1, 2006,  
22                \$1,000,000.

23          (b) For default claims against a milk contractor who was a contributing  
24          contractor when the default occurred:



1           (4) “Grain warehouse keeper” has the meaning given in s. 126.25 (9).

2           (5) “Milk contractor” has the meaning given in s. 126.40 (8).

3           (6) “Producer agent” means a person who is a producer agent, as defined in s.  
4 126.10 (13), 126.40 (13), or 126.55 (12).

5           (7) “Vegetable contractor” has the meaning given in s. 126.55 (14).

6           (8) “Vegetable producer” has the meaning given in s. 126.55 (16).

7           **126.80 Department authority; general.** The department shall administer  
8 this chapter.

9           **126.81 Rule-making.** The department may promulgate rules to do any of the  
10 following:

11           (1) Interpret and implement this chapter.

12           (2) Modify the license fees and surcharges provided in s. 126.11 (4), 126.26 (3),  
13 126.41 (3), 126.42, or 126.56 (4).

14           (3) Modify the fund assessments provided under s. 126.15, 126.30, 126.46, or  
15 126.60, as provided in s. 126.88.

16           (4) Require a contractor to notify producers and producer agents of the  
17 contractor’s license, security, or fund contribution status under this chapter.

18           **126.82 Investigations.** The department may conduct investigations that it  
19 considers necessary for the administration of this chapter, including investigations  
20 to determine any of the following:

21           (1) Whether a contractor complies with this chapter.

22           (2) Whether a contractor is able to honor contract obligations when due.

23           (3) Whether a contractor has failed to honor contract obligations when due.

24           (4) Whether a grain warehouse keeper has sufficient grain on hand to meet the  
25 grain warehouse keeper’s obligations to depositors.

1           (5) The nature and amount of a contractor's storage obligations or other  
2 contract obligations.

3           **126.83 Information.** The department may require a contractor to provide  
4 information that is relevant to the administration and enforcement of this chapter.

5           **126.84 Records; confidentiality. (1) PUBLIC RECORDS EXEMPTION.** The  
6 following records obtained by the department under this chapter are not open to  
7 public inspection under s. 19.35:

8           (a) Contractor financial statements.

9           (b) A contractor's purchase, storage, or procurement records.

10           **(2) USE OF RECORDS IN COURT OR ADMINISTRATIVE PROCEEDINGS.** Notwithstanding  
11 sub. (1), the department may introduce any information obtained under this chapter  
12 in a court proceeding or administrative contested case, subject to any protective  
13 order that the court or administrative tribunal determines to be appropriate.

14           **126.85 Remedial orders. (1) GENERAL.** The department may, by special  
15 order, require a contractor to remedy a violation of this chapter or a rule promulgated  
16 under this chapter. The department may order the contractor to take specific  
17 remedial actions, including actions to remedy deficiencies or to prevent losses to  
18 persons protected under this chapter. Except as provided in sub. (2), the department  
19 shall give the contractor notice and an opportunity for hearing before the department  
20 issues an order.

21           **(2) SUMMARY ORDER.** The department may issue an order under sub. (1) without  
22 prior notice or hearing if the department finds that the order is necessary to prevent  
23 a clear and imminent threat of harm to persons protected under this chapter.  
24 Conditions indicating a clear and imminent threat of harm include the following:

1 (a) A contractor fails to pay producers according to this chapter or according  
2 to the contractor's contracts with producers.

3 (b) A contractor fails to file replacement insurance within the time required  
4 under this chapter.

5 (c) A contractor fails to file security according to this chapter, or in response to  
6 the department's demand under this chapter.

7 (d) A contractor fails to pay a fund assessment when due.

8 (e) A vegetable contractor fails to pay vegetable producers by January 31 for  
9 vegetables delivered by December 31 of the previous year, except as authorized in a  
10 deferred payment contract.

11 (f) A grain warehouse keeper fails to return grain to depositors upon demand,  
12 as required under s. 126.34 (4).

13 (g) A grain warehouse keeper fails to maintain adequate grain inventory as  
14 required under s. 126.34 (3), and at least one of the following applies:

15 1. The amount of the deficiency exceeds 10,000 bushels or 10% of the grain  
16 warehouse keeper's obligations to depositors, whichever amount is less.

17 2. The grain warehouse keeper fails to correct the deficiency within 15 days  
18 after receiving the department's written notice that a deficiency exists.

19 **(3) HEARING ON SUMMARY ORDER.** (a) A contractor named in a summary order  
20 under sub. (2) may, within 10 days after receiving the order, request a hearing on the  
21 order. The department shall hold an informal hearing as soon as possible after  
22 receiving a hearing request, but not later than 10 days after receiving the hearing  
23 request, unless the contractor waives the informal hearing or agrees to hold it at a  
24 later date. If the matter is not resolved at the informal hearing, the department shall  
25 hold a contested case hearing under ch. 227 as soon as reasonably possible.

1 (b) A hearing request under par. (a) does not automatically stay a summary  
2 order. The department may stay a summary order pending hearing.

3 **126.86 License actions. (1) GENERAL.** The department may for cause deny,  
4 suspend, revoke, or impose conditions on a contractor's license, as provided in s.  
5 93.06 (7) and (8). Cause may include any of the following:

6 (a) The contractor fails to comply with this chapter or a rule promulgated under  
7 this chapter.

8 (b) The contractor fails to comply with an order that the department issues  
9 under this chapter.

10 (c) The contractor fails to provide relevant information that the department  
11 requests under this chapter or falsifies information provided to the department.

12 (d) The contractor fails to file a financial statement, security, fees, or  
13 assessments required under this chapter, or fails to meet other requirements for  
14 licensing.

15 (e) The contractor fails to honor contract obligations to persons who are  
16 authorized to file default claims under s. 126.70 (1).

17 (f) The contractor fails to reimburse the department, within 60 days after the  
18 department issues a reimbursement demand under s. 126.73 (1), for the full amount  
19 that the department pays to claimants under s. 126.72 (1) because of the contractor's  
20 default.

21 (g) The contractor fails to reimburse a bond surety, within 60 days after the  
22 bond surety issues a reimbursement demand under s. 126.73 (2), for the full amount  
23 that the surety pays to the department under s. 126.72 (2) or (3) for the benefit of  
24 claimants affected by the contractor's default.

1           (2) HEARING ON LICENSE ACTION; GENERAL. Except as provided in sub. (3), the  
2 department shall give a contractor notice and an opportunity for hearing before the  
3 department suspends, revokes, or imposes conditions on a license held by the  
4 contractor.

5           (3) SUMMARY ACTION. (a) The department may, without prior notice or hearing,  
6 summarily suspend, revoke, or impose conditions on a license held by a contractor  
7 if the department finds that summary action is necessary to prevent a clear and  
8 imminent threat of harm to persons protected under this chapter. Conditions  
9 indicating a clear and imminent threat of harm include those identified in s. 126.85  
10 (2).

11           (b) A contractor who is the subject of a summary action under par. (a) may,  
12 within 10 days after receiving notice of that action, request a hearing on the action.  
13 The department shall hold an informal hearing as soon as possible after receiving a  
14 hearing request, but not later than 10 days after receiving the hearing request,  
15 unless the contractor waives the informal hearing or agrees to hold it at a later date.  
16 If the matter is not resolved at the informal hearing, the department shall hold a  
17 contested case hearing under ch. 227 as soon as reasonably possible.

18           (c) A request for hearing under par. (b) does not automatically stay a summary  
19 action under par. (a). The department may stay a summary action pending hearing.

20           **126.87 Court actions.** (1) INJUNCTION. The department may petition the  
21 circuit court for an ex parte temporary restraining order, a temporary injunction, or  
22 a permanent injunction to prevent, restrain, or enjoin any person from violating this  
23 chapter, any rule promulgated under this chapter, or any order issued under this  
24 chapter. The department may seek this remedy in addition to any other penalty or  
25 remedy provided under this chapter.



1           (2) PENALTIES. (a) A person who violates this chapter, a rule promulgated under  
2 this chapter, or an order issued under this chapter is subject to a forfeiture of not less  
3 than \$250 nor more than \$5,000 for each violation.

4           (b) A person who intentionally violates this chapter, a rule promulgated under  
5 this chapter, or an order issued under this chapter may be fined not more than  
6 \$10,000 or imprisoned for not more than one year in the county jail or both.

7           (4) PRIVATE REMEDY. (a) A person whose claim is allowed under s. 126.70 may  
8 bring an action against the contractor to recover the amount of the allowed claim, less  
9 any recovery amount that the department pays to the claimant under s. 126.71. In  
10 any court action under this subsection, the claimant may recover costs including all  
11 reasonable attorney fees, notwithstanding s. 814.04 (1). This subsection does not  
12 limit any other legal cause of action that the claimant may have against the  
13 contractor.

14           (b) A claim allowed under s. 126.70 has the same priority in an insolvency  
15 proceeding or creditor's action as a claim for wages, except as otherwise provided by  
16 federal law.

17           (5) COLLECTIONS. The department may bring an action in court to recover any  
18 unpaid amount that a contractor owes the department under this chapter, including  
19 any unpaid fund assessment or reimbursement.

20           **126.88 Modifying fund assessments.** The department may by rule modify  
21 the fund assessments provided under s. 126.15, 126.30, 126.46, or 126.60. The  
22 department shall modify fund assessments as necessary to do all of the following:

23           (1) Maintain an overall fund balance of at least \$5,000,000 after January 1,  
24 2006, but not more than \$22,000,000 at any time.

1           (2) Maintain a fund balance attributable to grain dealers of at least \$1,000,000  
2 after January 1, 2006, but not more than \$6,000,000 at any time.

3           (3) Maintain a fund balance attributable to grain warehouse keepers of at least  
4 \$200,000 after January 1, 2006, but not more than \$1,000,000 at any time.

5           (4) Maintain a fund balance attributable to milk contractors of at least  
6 \$3,000,000 after January 1, 2006, but not more than \$12,000,000 at any time.

7           (5) Maintain a fund balance attributable to vegetable contractors of at least  
8 \$800,000 after January 1, 2006, but not more than \$3,000,000 at any time.

9           **126.89 Calculations.** If a number used in or resulting from a calculation made  
10 to determine the amount of an assessment under s. 126.15, 126.30, 126.46, or 126.60,  
11 other than a number that appears in one of those sections, extends more than 6  
12 decimal places to the right of the decimal point, a person making the calculation shall  
13 round the number to the nearest whole digit in the 6th decimal place to the right of  
14 the decimal point. The amount of an assessment may be rounded to the nearest  
15 whole dollar.

16           **126.90 Agricultural producer security council.** The agricultural producer  
17 security council shall advise the department on the administration and enforcement  
18 of this chapter. The council shall meet as often as the department considers  
19 necessary, but at least once annually. The department shall inform the council of  
20 fund balances and payments, and shall consult with the council before modifying any  
21 license fee, license surcharge, or fund assessment under this chapter.

22           **SECTION 32.** Chapter 127 of the statutes is repealed.

23           **SECTION 33.** 165.25 (4) (ar) of the statutes is amended to read:

24           165.25 (4) (ar) The department of justice shall furnish all legal services  
25 required by the department of agriculture, trade and consumer protection relating

1 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,  
2 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.50 and 100.51 and  
3 chs. 126, 136, 344, 704, 707 and 779, together with any other services as are  
4 necessarily connected to the legal services.

5 **SECTION 34.** 221.0320 (2) (a) (intro.) of the statutes is amended to read:

6 221.0320 (2) (a) (intro.) A liability secured by warehouse receipts issued by  
7 warehouse keepers licensed and bonded in this state under ss. 99.02 and 99.03 or  
8 under the federal bonded warehouse act or holding a ~~registration certificate~~ license  
9 under ~~ch. 127 s. 126.26~~, if all of the following requirements are met:

10 **SECTION 35.** 348.27 (10) of the statutes is amended to read:

11 348.27 (10) TRANSPORTATION OF GRAIN OR COAL OR IRON. The department may  
12 issue annual or consecutive month permits for the transportation of loads of grain,  
13 as defined in s. ~~127.01 (18)~~ 126.01 (13), coal, iron ore concentrates or alloyed iron on  
14 a vehicle or a combination of 2 or more vehicles that exceeds statutory weight or  
15 length limitations and for the return of the empty vehicle or combination of vehicles  
16 over any class of highway for a distance not to exceed 5 miles from the Wisconsin state  
17 line. If the roads desired to be used by the applicant involve streets or highways other  
18 than those within the state trunk highway system, the application shall be  
19 accompanied by a written statement of route approval by the officer in charge of  
20 maintenance of the other highway. This subsection does not apply to highways  
21 designated as part of the national system of interstate and defense highways.

22 **SECTION 9104. Nonstatutory provisions; agriculture, trade and**  
23 **consumer protection.**

24 (1) AGRICULTURAL PRODUCER SECURITY COUNCIL. Notwithstanding the length of  
25 terms specified for the members of the agricultural producer security council under

1 section 15.137 (1) (a) of the statutes, as created by this act, the initial members shall  
2 be appointed for terms expiring on July 1, 2005.

3 (2) AGRICULTURAL PRODUCER SECURITY TRANSITION.

4 (a) *Vegetable contractors.* Notwithstanding SECTION 9404 (1) of this act, chapter  
5 126 of the statutes, as created by this act, does not apply with respect to vegetable  
6 contractors until February 1, 2002, except as follows:

7 1. All registration fees and surcharges paid under section 100.03 (3), 1999  
8 stats., after December 31, 2001, shall be deposited in the agricultural producer  
9 security fund.

10 2. A vegetable contractor applying for a license for the license year that begins  
11 on February 1, 2002, shall submit an application that complies with section 126.56  
12 of the statutes, as created by this act.

13 (b) *Milk contractors.* Notwithstanding SECTION 9404 (1) of this act, chapter 126  
14 of the statutes, as created by this act, does not apply with respect to milk contractors  
15 until May 1, 2002, except as follows:

16 1. All milk producer security fees paid under section 100.06 (9), 1999 stats.,  
17 after December 31, 2001, shall be deposited in the agricultural producer security  
18 fund.

19 2. A milk contractor applying for a license for the license year that begins on  
20 May 1, 2002, shall submit an application that complies with section 126.41 of the  
21 statutes, as created by this act.

22 (c) *Grain dealers and warehouse keepers.* Notwithstanding SECTION 9404 (1)  
23 of this act, chapter 126 of the statutes, as created by this act, does not apply with  
24 respect to grain dealers and grain warehouse keepers until September 1, 2002,  
25 except as follows:

1           1. All license fees and surcharges paid under chapter 127, 1999 stats., after  
2           December 31, 2001, shall be deposited in the agricultural producer security fund.

3           2. A grain dealer applying for a license for the license year that begins on  
4           September 1, 2002, shall submit an application that complies with section 126.11 of  
5           the statutes, as created by this act.

6           3. A grain warehouse keeper applying for a license for the license year that  
7           begins on September 1, 2002, shall submit an application that complies with section  
8           126.26 of the statutes, as created by this act.

9           **SECTION 9204. Appropriation changes; agriculture, trade and**  
10          **consumer protection.**

11          (1) **WAREHOUSE KEEPER AND GRAIN DEALER FEES.** The unencumbered balance in  
12          the appropriation account under section 20.115 (1) (jm), 1999 stats., is transferred  
13          to the agricultural producer security fund.

14          (2) **DAIRY AND VEGETABLE PRODUCER SECURITY.** From the unencumbered balance  
15          in the appropriation account under section 20.115 (1) (gm), 1999 stats., the secretary  
16          of administration shall transfer to the agricultural producer security fund the  
17          amount that the secretary determines is derived from moneys received under section  
18          100.03 (3) (a) 2., 1999 stats., section 100.03 (3) (a) 3., 1999 stats., and section 100.06  
19          (9), 1999 stats.

20          **SECTION 9404. Effective dates; agriculture, trade and consumer**  
21          **protection.**

22          (1) **AGRICULTURAL PRODUCER SECURITY.** The treatment of sections 15.137 (1),  
23          20.115 (1) (g), (gf), (gm), (jm), (q), (v), (w), and (wb), 25.17 (1) (ag), 25.463, 165.25 (4)  
24          (ar), 221.0320 (2) (a) (intro.), and 348.27 (10) and chapter 126 of the statutes and  
25          SECTIONS 9104 (1) and 9204 (1) and (2) of this act take effect on January 1, 2002.



Analysis insert

AGRICULTURE

AGRICULTURAL PRODUCER SECURITY

This bill changes the laws concerning milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (contractors). A milk contractor is a person who buys milk from milk producers or who markets milk on behalf of producers. A grain dealer is a person who buys grain from grain producers or who markets grain on behalf of producers. A grain warehouse keeper is a person who operates a warehouse in which the person stores grain that belongs to someone else. A vegetable contractor is a person who buys vegetables from vegetable producers for use in food processing or who markets processing vegetables on behalf of producers.

Under current law, this state requires certain contractors to post security with DATCP to provide payment in case the contractors default on payments to producers. This bill establishes a segregated fund, called the agricultural producer security fund (the fund), into which certain contractors must pay and out of which DATCP provides payment to producers in ~~certain cases in which~~ those contractors default on payments to producers. Under the bill, some contractors are still required to post security with DATCP. The statutory changes concerning agricultural producer security take effect during 2002, on February 1 for vegetable contractors, on May 1 for milk contractors, and on September 1 for grain dealers and warehouse keepers.

**Milk contractors**

Under current law, persons who operate dairy plants generally must be licensed by DATCP. There is no separate licensing requirement for milk contractors. Under current law, DATCP may not issue a license for a dairy plant unless the applicant satisfies DATCP that the applicant's financial condition is such as to reasonably ~~assure~~ prompt payment to milk producers. Dairy plant operators are required to submit quarterly financial statements to DATCP. If a dairy plant operator does not meet minimum financial standards, the operator must file a bond or other security with DATCP or must provide for a trustee who receives payment for all dairy products produced by the dairy plant and pays producers.

Under this bill, DATCP issues licenses to milk contractors. A milk contractor must obtain a license if the contractor receives milk in this state that is owned by producers, collects milk from a dairy farm in another state for direct shipment to a dairy plant that the contractor operates in this state, or acquires the right to market milk owned by producers that is produced in this state. A milk contractor may volunteer to be licensed if the milk contractor receives, outside of this state, direct shipments of milk from dairy farms in this state. As under current law, a milk contractor that operates a dairy plant must ~~also~~ obtain a dairy plant license.

Under this bill, a milk contractor must file an annual financial statement with DATCP before the milk contractor is first licensed, unless the milk contractor procured less than \$1,500,000 in milk from producers in its most recent fiscal year. A licensed milk contractor must file annual financial statements during each license

ensure

when

\*

year, unless the milk contractor contributes to the fund and either buys less than \$1,500,000 in milk from producers each year or does not buy milk from producers but only markets milk. A licensed milk contractor that does not contribute to the fund must file quarterly financial statements.

A licensed milk contractor that files financial statements which show that the milk contractor does not meet minimum financial standards, or that does not file annual and quarterly financial statements, must contribute to the fund, unless the contractor is disqualified from the fund. If a milk contractor that contributes to the fund defaults on payments to producers, DATCP may pay default claims from the fund.

A milk contractor that is required to file security <sup>when first license is issued</sup> (as explained below) ~~with~~ ~~DATCP~~ is disqualified from the fund until DATCP releases the security. A milk contractor is disqualified from the fund if DATCP denies, suspends, or revokes the contractor's license. DATCP may also disqualify a milk contract from the fund for failing to pay required fund assessments, failing to file required financial statements, or failure to provide reimbursement for payments made by DATCP to claimants because of the contractor's default. If DATCP disqualifies a milk contractor from the fund and the milk contractor files a financial statement that shows that the contractor does not meet minimum financial standards, the milk contractor may not act as a milk contractor in this state.

failing

contractor

The bill establishes the formula for determining the amount of the assessments <sup>which</sup> ~~that~~ must be paid by a milk contractor that contributes to the fund, except that DATCP may by rule provide for a different formula. The assessments are based on the ratio of the value of current assets to the value of current liabilities, the amount spent to procure milk from producers, the ratio of debt to equity, and the number of consecutive years that the contractor has contributed to the fund.

A milk contractor must file security with DATCP if, when DATCP first licenses the contractor, the contractor's financial statement shows negative equity and the contractor procured more than \$1,500,000 in milk from producers in its most recent fiscal year. The bill specifies the kinds of security that DATCP may accept. A dairy plant trusteeship may not be used after January 1, 2003. DATCP may release security filed by a milk contractor if the contractor procures no more than \$1,500,000 in milk from producers in two consecutive years or files annual financial statements that show positive equity for two consecutive years.

to provide security

This bill requires a milk contractor to maintain insurance that covers all milk and milk products in the possession of the milk contractor.

As under current law, the bill requires a milk contractor to pay a monthly fee to DATCP, based on the amount of milk that the milk contractor procures. Under the bill, if the balance in the fund contributed by milk contractors exceeds \$4,000,000 on any February 28, DATCP must credit 50% of the excess against these monthly fees, in proportion to the total amount of fees that each milk contractor has paid during the preceding four license years.

**Grain dealers**

Under current law, most grain dealers are required to be licensed <sup>✓</sup> and most grain dealers that are required to be licensed must file financial statements. If the



financial statements show that a grain dealer does not meet minimum financial standards, the grain dealer is required to file security with DATCP.

Under this bill, a grain dealer must obtain a license from DATCP unless the dealer pays cash on delivery for all producer-owned grain that the dealer procures or the dealer buys grain solely for the dealer's own use as feed or seed and spends less than \$400,000 per license year for that grain. The license fees vary based on the amount that the grain dealer pays for grain during a license year and the number of trucks used to haul grain. Under the bill, if the balance in the fund contributed by grain dealers exceeds \$2,000,000 on any June 30, DATCP must credit 50% of the excess against license fees, in proportion to the total amount of fees that each grain dealer has paid during the preceding four license years.

The bill requires a grain dealer to file an annual financial statement with DATCP before the dealer is first licensed under this bill if the grain dealer's license application shows more than \$500,000 in grain payments during the dealer's most recent fiscal year or shows any obligations under deferred payment contracts. A deferred payment contract is a contract under which a grain dealer takes custody of grain more than seven days before paying for the grain in full. A licensed grain dealer must file an annual financial statement during each license year if the grain dealer makes more than \$500,000 in grain payments during the dealer's most recent fiscal year, unless the dealer contributes to the fund and does not buy grain from producers but only markets grain, or if the dealer incurs any obligations under deferred payment contracts.

A grain dealer that is required to be licensed must contribute to the fund, unless the dealer is disqualified. If a grain dealer that contributes to the fund defaults on payments to producers, DATCP may pay default claims from the fund.

A grain dealer that is required to file security (as explained below) with DATCP when the grain dealer is first licensed under this bill is disqualified from the fund until DATCP releases the security. A grain dealer is disqualified from the fund, and required to pay cash on delivery for grain, if DATCP denies, suspends, or revokes the dealer's license, if DATCP disqualifies the dealer for cause, or if the dealer fails to provide reimbursement for payments made by DATCP to claimants because of the dealer's default.

*because the dealer has negative equity*

The bill establishes the formula for determining the amount of the assessments that must be paid by a grain dealer that contributes to the fund, except that DATCP may, by rule, provide for a different formula. The assessments are based on the ratio of the value of current assets to the value of current liabilities, the amount spent to procure grain from producers, the ratio of debt to equity, the amount incurred under deferred payment contracts, and the number of consecutive years that the dealer has contributed to the fund.

*which*

A grain dealer must file security with DATCP if, when DATCP first licenses the dealer under this bill, the grain dealer reports more than \$500,000 in grain payments during its most recent fiscal year and the dealer's annual financial statement shows negative equity. A grain dealer that incurs obligations under deferred payment contracts must also file security with DATCP, unless the dealer has a debt to equity ratio that satisfies requirements in the bill. The bill specifies the kinds of security

*equity*

*required*

that DATCP may accept. DATCP may release security ~~filed~~ because the grain dealer had negative ~~security~~ when first licensed if the dealer makes no more than \$500,000 in grain payments in two consecutive years or files annual financial statements that show positive equity for two consecutive years. DATCP may release security required because a grain dealer uses deferred payment contracts if the dealer stops using deferred payment contracts or satisfies ~~the~~ debt to equity ratio requirements for two consecutive years.

\*

This bill requires a grain dealer to maintain insurance to cover all grain in the custody of the grain dealer.

**Grain warehouse keepers**

Current law requires a grain warehouse keeper that holds 50,000 or more bushels of grain for others at any time to obtain a license from DATCP. A warehouse keeper that is required to be licensed must annually file a financial statement with DATCP. Under current law, a grain warehouse keeper that does not satisfy minimum financial standards must file security with DATCP.

*as is under current law*

Under this bill, a grain warehouse keeper that holds 50,000 or more bushels of grain for others at any time must ~~also~~ obtain a license from DATCP. A warehouse keeper that has grain warehouses with a combined capacity of more than 50,000 bushels must obtain a license, unless the warehouse keeper proves to DATCP that the warehouse keeper holds no more than 50,000 bushels of grain for others at any time. The bill specifies annual grain warehouse keeper fees that are based on combined warehouse capacity. Under the bill, if the balance in the fund contributed by grain warehouse keepers exceeds \$300,000 on any June 30, DATCP must credit 12.5% of the excess against license fees, in proportion to the total amount of fees that each warehouse keeper has paid during the preceding four license years.

The bill requires a grain warehouse keeper that operates warehouses with a combined capacity of more than 300,000 bushels to file a financial statement before the warehouse keeper is first licensed under this bill and during each license year.

A licensed grain warehouse keeper is required to contribute to the fund, unless the warehouse keeper is disqualified. If a grain warehouse keeper that contributes to the fund fails to deliver grain to depositors, DATCP may pay default claims from the fund.

\*

*upon demand*

A grain warehouse keeper that is required to file security (as explained below) with DATCP when the warehouse keeper is first licensed under this bill is disqualified from the fund until DATCP releases the security. A grain warehouse keeper is also disqualified from the fund if DATCP denies, suspends, or revokes the warehouse keeper's license.

*which*

The bill establishes the formula for determining the amount of the assessments ~~that~~ must be paid by a grain warehouse keeper that contributes to the fund, except that DATCP may, by rule, provide for a different formula. The assessments are based on the ratio of the value of current assets to the value of current liabilities, the capacity of the warehouses, the ratio of debt to equity, and the number of consecutive years that the warehouse keeper has contributed to the fund.

A grain warehouse keeper must file security with DATCP if, when DATCP first licenses the warehouse keeper under this bill, the warehouse keeper operates grain

*at*

warehouses with a combined capacity of more than 300,000 bushels and the warehouse keeper's annual financial statement shows negative equity. The bill specifies the kinds of security that DATCP may accept. DATCP may release security filed by a grain warehouse keeper if the warehouse keeper has a warehouse capacity of less than 300,000 bushels for least two consecutive years or files annual financial statements that show positive equity for two consecutive years.

**Vegetable contractors**

Current law requires a vegetable contractor to obtain a registration certificate from DATCP. A vegetable contractor that does not meet minimum financial standards must file security with DATCP unless the contractor makes payment on delivery for all vegetables obtained from producers or the contractor is a producer-owned cooperative doing business solely on a pooling basis with its producer-owners.

This bill requires a vegetable contractor to obtain a license from DATCP. The license fees are based on the amount that a vegetable contractor owed to vegetable producers over the course of the contractor's most recent fiscal year. Under the bill, if the balance in the fund contributed by vegetable contractors exceeds \$1,000,000 on any November 30, DATCP must credit 50% of the excess against license fees, in proportion to the total amount of fees that each vegetable contractor has paid during the preceding four license years.

The bill requires a vegetable contractor that annually incurs more than \$500,000 in obligations under contracts for the procurement of processing vegetables to file a financial statement before the contractor is first licensed under this bill and during each license year, unless the contractor makes payment on delivery for all vegetables obtained from producers or the contractor is a producer-owned cooperative that procures vegetables only from its producer owners.

A licensed vegetable contractor must contribute to the fund unless the contractor makes payment on delivery for all vegetables obtained from producers, the contractor is a producer-owned cooperative that procures vegetables only from its producer owners, or the contractor is disqualified. If a vegetable contractor that contributes to the fund defaults on payments to producers, DATCP may pay default claims from the fund.

A vegetable contractor that is required to file security (as explained below) with DATCP when the vegetable contractor is first licensed under this bill is disqualified from the fund until DATCP releases the security. A vegetable contractor is disqualified from the fund if DATCP denies, suspends, or revokes the contractor's license. A vegetable contractor is disqualified from the fund, and required to pay cash on delivery for all vegetables received from producers, if DATCP issues a written notice disqualifying the contractor for cause, including failure to pay fund assessments when due.

*because the contractor has negative equity*

*which* The bill establishes the formula for determining the amount of the assessments that must be paid by a vegetable contractor that contributes to the fund, except that DATCP may, by rule, provide for a different formula. The assessments are based on the ratio of the value of current assets to the value of current liabilities, the amount spent to procure vegetables from producers, the ratio of debt to equity, the amount

incurred under deferred payment contracts, and the number of consecutive years that the contractor has contributed to the fund.

A vegetable contractor must file security with DATCP if, when DATCP first licenses the contractor under this bill, the contractor reports more than \$1,000,000 in obligations under contracts for the procurement of processing vegetables during its most recent fiscal year and the contractor's annual financial statement shows negative equity. A vegetable contractor that incurs obligations under deferred payment contracts must also file security with DATCP, unless the contractor satisfies financial requirements in the bill, makes payment on delivery for all vegetables obtained from producers, or is a producer-owned cooperative that procures vegetables only from its producer owner. The bill specifies the kinds of security that DATCP may accept. DATCP may release security ~~filed~~ because the vegetable contractor had negative security when first licensed if the contractor makes no more than \$1,000,000 in vegetable procurement obligations in two consecutive years or files annual financial statements that show positive equity for two consecutive years. DATCP may release security required because a vegetable contractor uses deferred payment contracts if the contractor stops using deferred payment contracts or satisfies financial requirements for two consecutive years.

*equity*

*required*

This bill requires a vegetable contractor to maintain insurance to cover all vegetables in the custody of the contractor, unless the vegetable contractor pays cash on delivery for all vegetables or the contractor is a producer-owned cooperative that procures vegetables only from its producer owners.

***Recovery proceedings and administration***

Under this bill, when contractors who are licensed, or required to be licensed, fail to make payments when due or when grain warehouse keepers fail to return stored grain upon demand, producers or their agents may file default claims with DATCP. DATCP may conduct a recovery proceeding in response to default claims filed against a contractor and may invite others who may have default claims against the same contractor to file claims. After DATCP audits the claims and determines the amount of each claim to allow, DATCP issues a proposed decision. If a contractor or claimant objects to the proposed decision, DATCP must hold a public hearing and then issue a final decision affirming or modifying the proposed decision.

The bill specifies payment amounts for each claim against a contractor that was contributing to the fund when the default occurred. For a claim against a milk contractor or grain dealer, the payment amount is 90% of the first \$20,000 allowed, 85% of the next \$20,000 allowed, 80% of the next \$20,000 allowed, and 75% of any amount allowed in excess of \$60,000. For a claim against a grain warehouse keeper, the payment amount is 100% of the first \$100,000 allowed. For a claim against a vegetable contractor, the payment amount is 90% of the first \$40,000 allowed, 85% of the next \$40,000 allowed, 80% of the next \$40,000 allowed, and 75% of any amount allowed in excess of \$120,000. If a contractor was not a contributing contractor when the default occurred but had posted security with DATCP, DATCP uses the security proceeds to pay the full amount of the allowed claims, except that, as under current law, if the security is not adequate to pay the full amount of the allowed claims,

DATCP pays the claimants on a prorated basis. A claimant that does not receive full payment may sue the contractor for the balance of the allowed claim.

The bill requires DATCP to obtain three surety bonds, called industry bonds, one to secure payments of claims against contributing milk contractors, one to secure payments of claims against contributing grain dealers and warehouse keepers, and one to secure payment of claims against contributing vegetable contractors. In addition the bill requires DATCP to obtain a blanket surety bond. The bill requires DATCP to make a demand against the appropriate industry bond if payments of claims against contributing contractors in that industry exceed a threshold specified in the bill. The bill requires DATCP to make a demand against the blanket bond if ~~claims against contributing contractors exceed the amount available under~~ *the* industry bond. *in an industry*

The bill authorizes DATCP to demand that a defaulting contractor reimburse DATCP for any claim amounts that were paid from the fund because of the contractor's default. The bill also authorizes a person who issues an industry bond or the blanket bond to require a defaulting contractor to reimburse the amounts that the person paid out because of the contractor's default.

Under this bill, \$2,000,000 is transferred from the agrichemical management fund to the agricultural producer security fund on January 1, 2002, as a start-up loan. The bill requires DATCP to repay the loan, plus interest, and to complete the repayment no later than July 1, 2006.

The bill authorizes DATCP to promulgate rules that modify license fees and fund assessments after consulting with the agricultural producer security council, which is created in this bill. The bill requires DATCP to modify assessments to keep the balance in the fund within a specified range. The bill authorizes DATCP to issue orders to require a contractor to remedy a violation of the producer security laws and authorizes DATCP to deny, suspend, revoke, or impose conditions on a contractor's license for cause.

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

**Insert 133-5**

(c) Notwithstanding par. (b), if the contractor was a contributing contractor when the default occurred, the department may, at its discretion, pay claims directly from security proceeds rather than from a fund source under s. 12~~7~~<sup>6</sup>.72. If the department acts under this paragraph, the department shall first pay claims in the amounts provided in sub. (1). If the security amount exceeds the amount payable under sub. (1) from the sources under s. 12~~7~~<sup>6</sup>.72, the department shall use the remaining security proceeds to pay the balance of the allowed claims. If the security

amount is not adequate to pay the full remaining balance, the department shall pay claimants on a prorated basis in proportion to their allowed claims.

# 1. Agricultural Producer Security (DIN 5460)

## **Explanation:**

The department proposes major budget legislation to overhaul Wisconsin's agricultural producer security program. The proposed budget legislation would repeal and recreate current security programs that protect agricultural producers against catastrophic defaults by grain dealers, grain warehouse keepers, dairy plant operators and vegetable processors. The budget legislation would create an agricultural producer security fund, financed by industry fees. The legislation would substitute this "insurance pool" for the current program of individual security. The legislation is intended to improve security for producers, reduce security costs, and free approximately \$185 million in industry working capital for other uses.

## **Statutory Changes:**

See draft legislation in *Appendix B*.

4/26/01 Per Eric Hansen - must add ref. to positive  
or negative equity in 12 places.

RET