

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 635**

1     **AN ACT** *to amend* 126.55 (4), 126.56 (4) (b) and 126.56 (6) (a); and *to create*  
2     126.55 (10r) and (10t), 126.56 (4) (f), 126.57 (1) (b) 3., 126.58 (1) (c) 3., 126.59  
3     (1) (d), 126.595, 126.61 (1) (c) 3. and 126.71 (3) (a) 5. of the statutes; **relating**  
4     **to:** participation by certain persons who buy potatoes in the Agriculture  
5     Producer Security Program and granting rule-making authority.

---

***Analysis by the Legislative Reference Bureau***

---

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

6     **SECTION 1.** 126.55 (4) of the statutes is amended to read:  
7     126.55 (4) “Contributing vegetable contractor” means a vegetable contractor  
8     who is licensed under s. 126.56 (1), who either has paid one or more quarterly  
9     installments under s. 126.60 (6) or is required to contribute to the fund, but the first

1 quarterly installment under s. 126.60 (6) is not yet due, who has not elected not to  
2 participate in the fund under s. 126.595 (1), and who is not disqualified under s.  
3 126.59 (2).

4 **SECTION 2.** 126.55 (10r) and (10t) of the statutes are created to read:

5 126.55 **(10r)** “Processing potato buyer” means a vegetable contractor who  
6 purchases processing potatoes and no other processing vegetables.

7 **(10t)** “Processing potatoes” means potatoes grown or sold for use in food  
8 processing, regardless of whether those potatoes are actually harvested or processed  
9 as food.

10 **SECTION 3.** 126.56 (4) (b) of the statutes is amended to read:

11 126.56 **(4)** (b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations  
12 reported under sub. (9) (a), less any credit provided under sub. (6), except that this  
13 paragraph does not apply to a vegetable contractor to whom par. (f) applies.

14 **SECTION 4.** 126.56 (4) (f) of the statutes is created to read:

15 126.56 **(4)** (f) If the vegetable contractor is a processing potato buyer who has  
16 elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500  
17 or another amount established by the department by rule.

18 **SECTION 5.** 126.56 (6) (a) of the statutes is amended to read:

19 126.56 **(6)** (a) If the balance in the fund contributed by vegetable contractors  
20 exceeds \$1,000,000 \$825,000 on November 30 of any license year, the department  
21 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to  
22 contributing vegetable contractors who file timely license renewal applications for  
23 the next license year. The department shall credit each contributing vegetable  
24 contractor on a prorated basis, in proportion to the total fees that the vegetable  
25 contractor has paid under sub. (4) (b) for the 4 preceding license years.

1           **SECTION 6.** 126.57 (1) (b) 3. of the statutes is created to read:

2           126.57 (1) (b) 3. The vegetable contractor is a processing potato buyer who has  
3           elected not to participate in the fund in accordance with s. 126.595 (1).

4           **SECTION 7.** 126.58 (1) (c) 3. of the statutes is created to read:

5           126.58 (1) (c) 3. The vegetable contractor is a processing potato buyer who has  
6           elected not to participate in the fund in accordance with s. 126.595 (1).

7           **SECTION 8.** 126.59 (1) (d) of the statutes is created to read:

8           126.59 (1) (d) The vegetable contractor is a processing potato buyer who has  
9           elected not to participate in the fund in accordance with s. 126.595 (1).

10          **SECTION 9.** 126.595 of the statutes is created to read:

11          **126.595 Processing potato buyer optional nonparticipation. (1)**  
12          **ELIGIBILITY.** A processing potato buyer may elect not to participate in the fund by  
13          doing all of the following:

14           (a) Submitting a notification of nonparticipation to the department by January  
15          31 of each year or, for a new processing potato buyer, at the time of application for  
16          its first license.

17           (b) Certifying in a statement to the department that the processing potato  
18          buyer will not, in the next licensing year, enter into any of the following:

19           1. An unwritten contract with a vegetable producer in this state under which  
20          the processing potato buyer takes custody or control of processing potatoes more than  
21          10 days before paying for the processing potatoes in full.

22           2. A written contract with a vegetable producer in this state under which the  
23          processing potato buyer takes custody or control of processing potatoes more than 30  
24          days before paying for the processing potatoes in full.

1 (c) Certifying in a statement to the department that the processing potato  
2 buyer does not at the time of certification have any unpaid obligations to vegetable  
3 producers under any of the following:

4 1. An unwritten contract with a vegetable producer in this state under which  
5 the processing potato buyer takes custody or control of processing potatoes more than  
6 10 days before paying for the processing potatoes in full.

7 2. A written contract with a vegetable producer in this state under which the  
8 processing potato buyer takes custody or control of processing potatoes more than 30  
9 days before paying for the processing potatoes in full.

10 (d) Providing evidence to the department that the processing potato buyer has  
11 a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to  
12 499t, that is in good standing.

13 (e) Certifying that it will disclose to all vegetable producers with whom the  
14 processing potato buyer contracts that the processing potato buyer does not  
15 participate in the fund by providing the following statement, in at least 10–point bold  
16 type, in each written contract for processed potatoes or, for unwritten contracts, in  
17 a written statement signed by the vegetable processor and the vegetable producer:  
18 “The undersigned processing potato buyer, as defined in s. 126.55 (10r), Wisconsin  
19 Statutes, does not participate in the Wisconsin agricultural producer security fund,  
20 established under s. 25.463, Wisconsin Statutes. As a result the producer does not  
21 have the security or other protections against nonpayment provided by that fund.  
22 The parties to this contract acknowledge that the Wisconsin Department of  
23 Agriculture, Trade and Consumer Protection and the State of Wisconsin cannot be  
24 held liable for any default under the contract between the parties.”

1 (f) Maintaining documentation that every purchase of potatoes grown in this  
2 state for processing under contract with the processing potato buyer qualifies for  
3 trust protection under the federal Perishable Agricultural Commodities Act, 7 USC  
4 499a to 499t, and that the vegetable producers' trust rights have been validly  
5 preserved.

6 **(2) RESUMING PARTICIPATION.** (a) 1. A processing potato buyer that has elected  
7 not to participate in the fund may rescind its election and participate in the fund by  
8 notifying the department of its intention to participate and complying with par. (b).  
9 Participation is effective the 30th day after the day on which the department receives  
10 the notice or on the effective date of the security described in par. (b) 1., whichever  
11 is later.

12 2. A processing potato buyer that has elected not to participate in the fund shall  
13 participate in the fund if the processing potato buyer ceases to meet the requirements  
14 in sub. (1). Participation is effective on the day on which the department notifies the  
15 processing potato buyer that the potato buyer is no longer eligible under sub. (1) or  
16 on the effective date of the security described in par. (b) 1., whichever is later.

17 (b) 1. A processing potato buyer that decides or is required to participate in the  
18 fund under par. (a) shall file security with the department in a form that satisfies the  
19 requirements in s. 126.61 (4) and that is in an amount equal to at least 75 percent  
20 of the amount last reported under s. 126.56 (9) (b). The processing potato buyer shall  
21 maintain the security until the department releases it. The department may not  
22 release the security until the processing potato buyer has participated in the fund  
23 for 2 continuous complete license years.

24 2. A processing potato buyer that decides or is required to participate in the  
25 fund under par. (a) shall begin contributing to the fund at the beginning of its 2nd

1 complete license year of participation, except that this requirement does not apply  
2 to a processing potato buyer that is disqualified under s. 126.59 (2).

3 **SECTION 10.** 126.61 (1) (c) 3. of the statutes is created to read:

4 126.61 (1) (c) 3. The vegetable contractor is a processing potato buyer who has  
5 elected not to participate in the fund in accordance with s. 126.595 (1).

6 **SECTION 11.** 126.71 (3) (a) 5. of the statutes is created to read:

7 126.71 (3) (a) 5. A default claim allowed against a vegetable contractor who is  
8 a processing potato buyer, as defined in s. 126.55 (10r), if the default claim is related  
9 to a default on an obligation that was outstanding when the processing potato  
10 buyer's participation in the fund became effective under s. 126.595 (2).

11 **SECTION 12. Effective date.**

12 (1) This act takes effect on February 1, 2006.

13 (END)