

## 2005 ASSEMBLY BILL 635

August 30, 2005 – Introduced by Representatives BALLWEG, MOLEPSKE, OTT, GRONEMUS, ALBERS, FRISKE, HINES, HUNDERTMARK, MCCORMICK, MUSSER, PETROWSKI, OWENS, STRACHOTA and VOS, cosponsored by Senators BROWN, LASSA, BRESKE and HANSEN. Referred to Committee on Agriculture.

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

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### *Analysis by the Legislative Reference Bureau*

#### ***Participation of certain vegetable contractors in the Agricultural Producer Security Program***

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

This bill authorizes certain licensed vegetable contractors who purchase only potatoes to choose not to make contributions under the program. If a potato buyer who opts out of the program defaults on a contract with a farmer, the farmer is not eligible for reimbursement under the program.

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To be eligible to opt out of the program, a potato buyer must be licensed by the federal government under the Perishable Agricultural Commodities Act (PACA) and must maintain documentation that farmers from whom the potato farmer purchases potatoes qualify for protection under PACA. PACA provides means of enforcing contracts, but it does not directly provide payment for any of a farmer's losses. To be eligible to opt out of the program, a potato buyer must also agree not to enter into contracts under which payment is due more than 30 days after it receives potatoes and must notify farmers that the potato buyer does not participate in the program. A potato buyer who opts out of the program is exempt from requirements to maintain fire and extended coverage insurance and from filing annual financial statements with DATCP. A potato buyer who opts out of the program must pay an annual fee of \$500 or another amount established by DATCP. The bill provides a procedure by which a potato buyer who has opted out of the program may resume participation in the program.

***Credit against fees charged to vegetable contractors***

Under current law, if the balance in the agricultural producer security fund contributed by vegetable contractors exceeds \$1,000,000 on any November 30, DATCP credits 50 percent of the excess amount against license fees charged to vegetable contractors for the next license year. This bill reduces the amount of the balance after which the credit against license fees applies from \$1,000,000 to \$825,000.

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

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

1           **SECTION 1.** 126.55 (4) of the statutes is amended to read:

2           126.55 (4) "Contributing vegetable contractor" means a vegetable contractor  
3 who is licensed under s. 126.56 (1), who either has paid one or more quarterly  
4 installments under s. 126.60 (6) or is required to contribute to the fund, but the first  
5 quarterly installment under s. 126.60 (6) is not yet due, who has not elected not to  
6 participate in the fund under s. 126.595 (1), and who is not disqualified under s.  
7 126.59 (2).

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

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1           126.55 **(10r)** “Processing potato buyer” means a vegetable contractor who  
2 purchases processing potatoes and no other processing vegetables.

3           **(10t)** “Processing potatoes” means potatoes grown or sold for use in food  
4 processing, regardless of whether those potatoes are actually harvested or processed  
5 as food.

6           **SECTION 3.** 126.56 (4) (f) of the statutes is created to read:

7           126.56 **(4)** (f) If the vegetable contractor is a processing potato buyer who has  
8 elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500  
9 or another amount established by the department by rule.

10          **SECTION 4.** 126.56 (6) (a) of the statutes is amended to read:

11          126.56 **(6)** (a) If the balance in the fund contributed by vegetable contractors  
12 exceeds ~~\$1,000,000~~ \$825,000 on November 30 of any license year, the department  
13 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to  
14 contributing vegetable contractors who file timely license renewal applications for  
15 the next license year. The department shall credit each contributing vegetable  
16 contractor on a prorated basis, in proportion to the total fees that the vegetable  
17 contractor has paid under sub. (4) (b) for the 4 preceding license years.

18          **SECTION 5.** 126.57 (1) (b) 3. of the statutes is created to read:

19          126.57 **(1)** (b) 3. The vegetable contractor is a processing potato buyer who has  
20 elected not to participate in the fund in accordance with s. 126.595 (1).

21          **SECTION 6.** 126.58 (1) (c) 3. of the statutes is created to read:

22          126.58 **(1)** (c) 3. The vegetable contractor is a processing potato buyer who has  
23 elected not to participate in the fund in accordance with s. 126.595 (1).

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

**ASSEMBLY BILL 635****SECTION 7**

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

3           **SECTION 8.** 126.595 of the statutes is created to read:

4           **126.595 Processing potato buyer optional nonparticipation. (1)**  
5 ELIGIBILITY. A processing potato buyer may elect not to participate in the fund by  
6 doing all of the following:

7           (a) Submitting a notification of nonparticipation to the department by January  
8 31 of each year or, for a new processing potato buyer, at the time of application for  
9 its first license.

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

12           1. An unwritten contract with a vegetable producer in this state under which  
13 the processing potato buyer takes custody or control of processing potatoes more than  
14 20 days before paying for the processing potatoes in full.

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

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

21           1. An unwritten contract with a vegetable producer in this state under which  
22 the processing potato buyer takes custody or control of processing potatoes more than  
23 20 days before paying for the processing potatoes in full.

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

4           (d) Providing evidence to the department that the processing potato buyer has  
5 a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to  
6 499t, that is in good standing.

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

19           (f) Maintaining documentation that every purchase of potatoes grown in this  
20 state for processing under contract with the processing potato buyer qualifies for  
21 trust protection under the federal Perishable Agricultural Commodities Act, 7 USC  
22 499a to 499t, and that the vegetable producers’ trust rights have been validly  
23 preserved.

24           **(2) RESUMING PARTICIPATION.** (a) A processing potato buyer that has elected not  
25 to participate in the fund may rescind its election and may participate in the fund

**ASSEMBLY BILL 635****SECTION 8**

1 in accordance with the applicable provisions of this chapter, if all of the following  
2 apply:

3 1. The processing potato buyer obtains a surety bond in an amount sufficient  
4 to cover any potential default on any contracts entered into after the processing  
5 potato buyer begins to participate in the fund until the processing potato buyer  
6 provides financial information as required by the department and the department  
7 informs the processing potato buyer that a surety bond is no longer necessary.

8 2. The processing potato buyer provides to the department verification of the  
9 surety bond required in subd. 1. before beginning participation in the fund.

10 (b) A processing potato buyer that elects to participate in the fund under par.  
11 (a) shall provide financial information to the department as required by the  
12 department.

13 (c) No later than the 60th day after the day on which the processing potato  
14 buyer provides the financial information required by the department under par. (b),  
15 the department shall inform the processing potato buyer of the amount of any  
16 assessments due and of whether the surety bond is still necessary.

17 (d) Any obligations under a contract for the purchase of processing potatoes  
18 that are outstanding when a processing potato buyer elects to participate in the fund  
19 under par. (a) are not covered by the fund.

20 **(3) MERGERS.** If a nonparticipating processing potato buyer merges with a  
21 processing potato buyer or other vegetable contractor who participates in the fund,  
22 the merged entity shall participate in the fund unless the merged entity complies  
23 with all of the conditions in sub. (1) (a) to (f).

24 **SECTION 9.** 126.61 (1) (c) 3. of the statutes is created to read:

