

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1813/2

RCT:wlj:rs

Wanted Wed 5/4
Thurs. 5/5

RMV

2005 BILL

Note

regenerate

participation by certain persons who buy potatoes in the Agricultural Producer Security Program and granting rule-making authority

1 AN ACT to amend 126.56 (2) (a) of the statutes; relating to: an exemption from
2 the requirement that vegetable contractors be licensed by the Department of
3 Agriculture, Trade and Consumer Protection.

Analysis by the Legislative Reference Bureau

(the 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 is designed to reimburse farmers for a portion of the losses they incur when contractors, including vegetable contractors, default on their financial obligations. Under current law, a vegetable contractor who procures vegetables primarily for unprocessed, fresh market use and who is licensed by the federal government under the Perishable Agricultural Commodities Act is not required to be licensed by DATCP.

This bill makes all vegetable contractors that are licensed under the federal Perishable Agricultural Commodities Act, not just those that procure vegetables primarily for unprocessed, fresh market use, exempt from the requirement to be licensed by DATCP.

Analysis
Insert

BILL

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

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

Insert ✓
A →

1
2
3
4
5

SECTION 1. 126.56 (2) (a) of the statutes is amended to read:

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

(END)

✓
DNote

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1813/2ins
RCT:.....

Analysis insert

This bill authorizes certain licensed vegetable contractors who purchase only potatoes to choose not to make contributions under the ~~Agricultural Producer Security Program (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.

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 evidence that ~~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 a lesser amount established by DATCP. The bill provides a procedure by which a potato buyer who had opted out of the program may resume participation in the program.

Insert A

SECTION ~~11~~ 126.55 (10r) and (10t) of the statutes are created to read:

126.55 (10r) "Processing potato buyer" means a vegetable contractor who purchases processing potatoes and no other processing vegetables.

(10t) "Processing potatoes" means potatoes grown or sold for use in food processing, regardless of whether those potatoes are actually harvested or processed as food.

SECTION ~~2~~ 126.56 (4) (f) of the statutes is created to read:

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

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

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

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

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

~~SECTION 5~~ 126.59 (1) (d) of the statutes is created to read:

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

~~SECTION 6~~ 126.595 of the statutes is created to read:

126.595 Processing potato buyer optional nonparticipation. (1)

ELIGIBILITY. A processing potato buyer may elect not to participate in the fund by doing all of the following:

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

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

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

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

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

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

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

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

** Certifying that it will disclose*
** Disclosing*
(e) ** Disclosing* to all vegetable producers with whom the processing potato buyer contracts that the processing potato buyer does not participate in the fund by providing the following statement, in at least 10⁰ point bold type, in each written ** contract* for processed potatoes or, for unwritten contracts, in a signed written statement provided to the vegetable processor: "The undersigned processing potato buyer, as defined in s. 126.55 (10r),[✓] Wisconsin Statutes, does not participate in the Wisconsin agricultural producer security fund, established under s. 25.463,[✓] Wisconsin Statutes. As a result, you, the producer, do not have the security or other protections against nonpayment provided by that fund."

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

(2) RESUMING PARTICIPATION. (a) A processing potato buyer that has elected not to participate in the fund may rescind its election and may participate in the fund in accordance with the applicable provisions of this chapter, if all of the following apply:

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

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

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

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

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

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

SECTION ~~7~~ 126.61 (1) (c) 3[✓] of the statutes is created to read:

* 126.61 (1) (c) 3. The vegetable contractor is a processing potato buyer who has elected not to participate in the fund ^{in accordance with} ~~under~~ s. 126.595 (1)[✓].

SECTION ~~8~~ 126.71 (3) (a) 5[✓] of the statutes is created to read:

126.71 (3) (a) 5. A default claim allowed against a vegetable contractor who is a processing potato buyer, as defined in s. 126.55 (10r)[✓], if the default claim is related to a default on an obligation described in s. 126.595 (2) (d)[✓].

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1813/2dn
RCT:wlj:pg

May 4, 2005

Erin Napralla:

This redraft is based on the proposed language that you provided on April 29. I added ss. 126.59 (1) (d) and 126.71 (3) (a) 5. to eliminate conflict within ch. 126.

I used the term "processing potatoes" to be consistent with the term "processing vegetables" used in ch. 126.

The proposed definition for potato buyer included "producer agent." I deleted that because the definition of "vegetable contractor" in s. 126.55 (14) includes producer agents. More fundamentally, though, by definition producer agents do not purchase vegetables. Therefore, if the intent is to cover producer agents, the definition of "processing potato buyer" must be expanded to cover more than those who purchase potatoes. Also, I limited coverage of the draft to those who only buy potatoes, not potatoes and other processing vegetables.

The proposed language would require a buyer who opts out to pay a fee of "not more than \$500." The draft needs to indicate the specific amount of the fee or how the amount would be established. In s. 126.56 (4) (f), I provided that the fee is \$500 unless DATCP establishes a lower amount by rule. Please let me know if this should be changed.

The proposed language required a buyer who opts out to include a statement in each contract. Because the draft contemplates that some contracts are not in writing, I required that a signed copy of the statement be provided in case of an unwritten contract. See s. 126.595 (1) (e).

The proposed language required a buyer who wants to opt back into the program to obtain a bond. Please let me know if the draft should allow the buyer to use other forms of financial security. See current s. 126.61 (4).

I am not an expert on the Perishable Agricultural Commodities Act (PACA). Please ask someone from DATCP to verify that the brief description of PACA in the analysis is accurate.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Napralla, Erin
Sent: Tuesday, May 24, 2005 7:40 AM
To: Tradewell, Becky
Cc: Williams, Vincent
Subject: LRB 1813

Becky,

Representative Ballweg will be taking over as the author of LRB 1831. I will be sending the bill jacket to her office this morning.

It is my understanding that Representative Ballweg will be requesting additional changes to the draft.

Please let me know if you have any questions.

Thanks!

Erin

*Erin Napralla
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831
erin.napralla@legis.state.wi.us*

Tradewell, Becky

From: Williams, Vincent
Sent: Tuesday, May 24, 2005 3:17 PM
To: Tradewell, Becky
Subject: Revisions to LRB 1813/2

Becky,

I'm sending some drafting instructions for changes to be made to the slash 2 draft. They are attached as a word document.

If you have additional questions, please call me. 6-8077

Vince Williams
Legislative Assistant
Rep. Ballweg's Office



Changes to Potato
Growers draf...

Author's Questions Regarding LRB-1813/2

- ✓ 1. The analysis that proceeds the bill draft contains the following sentence:

“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 evidence that farmers from whom the potato farmer purchases potatoes qualify for protection under PACA.” (Emphasis added.)

The use of the word evidence in this sentence may give the impression that the Department is evaluating the information and deciding whether a particular transaction will qualify for PACA coverage. The Department should not be required to make any determination as to whether a transaction will be covered by PACA. Rather, the Department should simply collect and maintain the requested records. A determination of PACA coverage is complex and really is only finally determined by a trustee in bankruptcy after default. Can this sentence be revised?

OK

2. There is another sentence in the analysis that reads:

“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.”

Is this requirement current law that is also affected by the nonparticipation language? Does this need to be in the analysis?

Proposed Amendments to LRB-1813/2

Please make the following changes to the draft:

no
per
vince

1. **Fee (Amendment to LRB-1813/2 As Currently Drafted).** The Producer Security Council decided that the fee for those electing *not* to participate in the fund because they are purchasing processing potatoes should be set by DATCP rule, rather than by statute. Accordingly, please amend § 126.56 (4)(f) as follows:
126.56 (4) (f) If the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1), a fee of ~~\$500 or a lower amount~~ established by the department by rule sufficient to cover expenses.
2. **Fee Credits (Amendment of Current Law – Insert into Re-draft).** The Producer Security Council decided to lower the threshold at which contributors to the producer security fund are eligible to receive fee credits. Accordingly, please insert the following revision to Wis. Stat. § 126.56 (6) (a):
 - (a) If the balance in the fund contributed by vegetable contractors exceeds ~~\$1,000,000~~ \$825,000 on November 30 of any license year, the department shall credit 50% of the excess amount against fees charged under sub. (4) (b) to

contributing vegetable contractors who file timely license renewal applications for the next license year. The department shall credit each contributing vegetable contractor on a prorated basis, in proportion to the total fees that the vegetable contractor has paid under sub. (4) (b) for the 4 preceding license years.

3. **Liability (Addition of New Sections).** (a) Please add a new section to the draft that explicitly exempts the Department from any liability for losses that result from a default by a processing potato buyer who elects not to participate in the fund under § 126.595.

(b) In addition, please add to the contracting requirements that a contract between a vegetable producer and a nonparticipating processing potato buyer must contain an explicit statement that the parties to the contract understand and acknowledge that the neither the State of Wisconsin nor the Wisconsin Department of Agriculture, Trade and Consumer Protection cannot be held liable for any default under this contract. (Should we propose specific language in the statute that must be included in each contract?)

Tradewell, Becky

From: Tradewell, Becky
Sent: Wednesday, May 25, 2005 10:35 AM
To: Williams, Vincent
Subject: RE: Revisions to LRB 1813/2

Vince,

I have some questions and comments about the redraft instructions that you sent over:

1. The instructions ask whether the sentence in the analysis that refers to "evidence" concerning coverage about PACA can be revised. That sentence uses the word "evidence" because that is the word used in the draft (at page 4, line 16) and the word is used in the draft because that is language that was provided to me as drafting instructions for LRB-1813/2. I can change the word "evidence" in that sentence if I change it in the draft, but I am uncertain what it should be changed to. Perhaps "documentation" could be used.
2. The instructions ask about the sentence in the analysis that indicates that a potato buyer who opts out of the program is exempt from certain insurance requirements and from filing certain annual reports. That sentence is included in the analysis because the draft specifically exempts potato buyers who opt out of the program from those requirements (which exist under current law). See page 2, lines 11 to 16. The draft includes those exceptions because the drafting instructions for LRB-1813/2 included those exceptions. The analysis needs to refer to those exemptions, unless the desire is to delete the exemptions from the draft. Please let me know if they should be deleted.
3. The instructions indicate that DATCP should establish by rule the fees to be paid by potato buyers that elect not to participate in the program. It will take some time for DATCP to get such a rule in place, so there will need to be a delayed effective date for the draft. DATCP should be able to provide an idea of how long it will take to complete the rule-making. It is possible to authorize DATCP to initially establish the rule using the emergency rule-making process, but even that takes some time. If it is desired to include a provision allowing DATCP to initially use the emergency rule-making process, I will need to know how long the draft should allow the emergency rule to remain in effect, to ensure that it does not expire before the permanent rule takes effect.

Please feel free to contact me if you have any questions.

Becky Tradewell
Managing Attorney
Legislative Reference Bureau
266-7290

-----Original Message-----

From: Williams, Vincent
Sent: Tuesday, May 24, 2005 3:17 PM
To: Tradewell, Becky
Subject: Revisions to LRB 1813/2

Becky,

I'm sending some drafting instructions for changes to be made to the slash 2 draft. They are attached as a word document.

If you have additional questions, please call me. 6-8077

Vince Williams
Legislative Assistant
Rep. Ballweg's Office

<< File: Changes to Potato Growers draft.doc >>

Tradewell, Becky

From: Williams, Vincent
Sent: Tuesday, May 31, 2005 4:17 PM
To: Tradewell, Becky
Subject: RE: Revisions to LRB 1813/2

Becky,

On your question 1 below, would you use "documentation" instead of evidence.

Question 2, leave as it is currently.

Question 3, we want to avoid a delayed effective date. Please keep the language that you used in slash 2, \$500 unless DATCP establishes a lower amount by rule.

Thanks,

Vince

From: Tradewell, Becky
Sent: Wednesday, May 25, 2005 10:35 AM
To: Williams, Vincent
Subject: RE: Revisions to LRB 1813/2

Vince,

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2. The instructions ask about the sentence in the analysis that indicates that a potato buyer who opts out of the program is exempt from certain insurance requirements and from filing certain annual reports. That sentence is included in the analysis because the draft specifically exempts potato buyers who opt out of the program from those requirements (which exist under current law). See page 2, lines 11 to 16. The draft includes those exceptions because the drafting instructions for LRB-1813/2 included those exceptions. The analysis needs to refer to those exemptions, unless the desire is to delete the exemptions from the draft. Please let me know if they should be deleted.
3. The instructions indicate that DATCP should establish by rule the fees to be paid by potato buyers that elect not to participate in the program. It will take some time for DATCP to get such a rule in place, so there will need to be a delayed effective date for the draft. DATCP should be able to provide an idea of how long it will take to complete the rule-making. It is possible to authorize DATCP to initially establish the rule using the emergency rule-making process, but even that takes some time. If it is desired to include a provision allowing DATCP to initially use the emergency rule-making process, I will need to know how long the draft should allow the emergency rule to remain in effect, to ensure that it does not expire before the permanent rule takes effect.

Please feel free to contact me if you have any questions.

Becky Tradewell
Managing Attorney
Legislative Reference Bureau
266-7290

-----Original Message-----

From: Williams, Vincent

Sent: Tuesday, May 24, 2005 3:17 PM
To: Tradewell, Becky
Subject: Revisions to LRB 1813/2

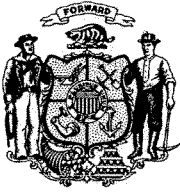
Becky,

I'm sending some drafting instructions for changes to be made to the slash 2 draft. They are attached as a word document.

If you have additional questions, please call me. 6-8077

Vince Williams
Legislative Assistant
Rep. Ballweg's Office

<< File: Changes to Potato Growers draft.doc >>



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1813/2 3

RCT:wlj:pg

SOON (in 6/1)

rmy

2005 ASSEMBLY BILL

Note ✓

regenerate

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

sub-sub
Participation of certain vegetable contractors in the Agricultural Producer Security Program
Analysis by the Legislative Reference Bureau

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.

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 evidence 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

documentation ✓

ASSEMBLY BILL

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 a lesser 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.

analysis
insert ✓

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

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

Insert ✓
2-1

1 SECTION 1. 126.55 (10r) and (10t) of the statutes are created to read:

2 126.55 (10r) "Processing potato buyer" means a vegetable contractor who
3 purchases processing potatoes and no other processing vegetables.

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

7 SECTION 2. 126.56 (4) (f) of the statutes is created to read:

8 126.56 (4) (f) If 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), a fee of \$500
10 or a lower amount established by the department by rule.

Insert ✓
2-10

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

12 126.57 (1) (b) 3. The vegetable contractor is a processing potato buyer who has
13 elected not to participate in the fund in accordance with s. 126.595 (1).

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

15 126.58 (1) (c) 3. 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).

ASSEMBLY BILL

1 **SECTION 5.** 126.59 (1) (d) of the statutes is created to read:

2 126.59 (1) (d) 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 6.** 126.595 of the statutes is created to read:

5 **126.595 Processing potato buyer optional nonparticipation. (1)**

6 **ELIGIBILITY.** A processing potato buyer may elect not to participate in the fund by
7 doing all of the following:

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

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

13 1. An unwritten contract with a vegetable producer in this state under which
14 the processing potato buyer takes custody or control of processing potatoes more than
15 20 days before paying for the processing potatoes in full.

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

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

22 1. An unwritten contract with a vegetable producer in this state under which
23 the processing potato buyer takes custody or control of processing potatoes more than
24 20 days before paying for the processing potatoes in full.

ASSEMBLY BILL

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

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

(e) Certifying that it will disclose to all vegetable producers with whom the processing potato buyer contracts that the processing potato buyer does not participate in the fund by providing the following statement, in at least 10-point bold type, in each written contract for processed potatoes or, for unwritten contracts, in a signed written statement provided to the vegetable processor: "The undersigned processing potato buyer, as defined in s. 126.55 (10r), Wisconsin Statutes, does not participate in the Wisconsin agricultural producer security fund, established under s. 25.463, Wisconsin Statutes. As a result, you, the producer, do not have the security or other protections against nonpayment provided by that fund."

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

(2) RESUMING PARTICIPATION. (a) A processing potato buyer that has elected not to participate in the fund may rescind its election and may participate in the fund in accordance with the applicable provisions of this chapter, if all of the following apply:

1. The processing potato buyer obtains a surety bond in an amount sufficient to cover any potential default on any contracts entered into after the processing

ASSEMBLY BILL

1 potato buyer begins to participate in the fund until the processing potato buyer
2 provides financial information as required by the department and the department
3 informs the processing potato buyer that a surety bond is no longer necessary.

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

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

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

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

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

20 **SECTION 7.** 126.61 (1) (c) 3. of the statutes is created to read:

21 126.61 (1) (c) 3. The vegetable contractor is a processing potato buyer who has
22 elected not to participate in the fund in accordance with s. 126.595 (1).

23 **SECTION 8.** 126.71 (3) (a) 5. of the statutes is created to read:

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1813/3ins
RCT:.....

Analysis insert

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% 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.

Insert 2-1

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

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

History: 2001 a. 16.

Insert 2-10

SECTION 2 126.56 (6) (a) of the statutes is amended to read:

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

History: 2001 a. 16.

NOFF

Insert 4-15

The parties to this contract acknowledge that the Wisconsin Department of Agriculture, Trade and Consumer Protection and the State of Wisconsin cannot be held liable for any default under the contract ^{between the parties} ~~between us.~~

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1813/3dn

RCT:.....

Wlj

Vince Williams:

This is the redraft of the vegetable contractor bill.

The redraft instructions indicated that a contract between a vegetable producer and a nonparticipating processing potato buyer must contain a statement acknowledging that the state is not liable in case of default under the contract. To make this addition, I modified the language in proposed s. 126.595 (1) (e). Please review that provision and let me know if it is not satisfactory.

The redraft instructions indicated that I should add a section to the draft that explicitly exempts DATCP from liability due to a default by a nonparticipating processing potato buyer. Current s. 126.71 (3) (a) 4. prohibits DATCP from paying any portion of a claim against a contractor that is not a contributing contractor. This is the way that DATCP is protected from liability due to a default by any of the contractors that do not participate in the fund. I modified the definition of "contributing vegetable contractor" in s. 126.55 (4) to ensure that nonparticipating processing potato contractors are not considered to be contributing contractors and that s. 126.71 (3) (a) 4. applies to those potato processors. Any additional language about a lack of liability would be redundant and raise the issue of whether DATCP might be liable in case of default by other contractors that do not participate in the fund.

Please let me know if you have any questions or any additional redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1813/3dn
RCT:wlj:rs

June 15, 2005

Vince Williams:

This is the redraft of the vegetable contractor bill.

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Please let me know if you have any questions or any additional redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
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Emery, Lynn

From: Emery, Lynn
Sent: Thursday, June 16, 2005 2:21 PM
To: Rep.Ballweg
Subject: LRB 05-1813/3 (attached as requested)

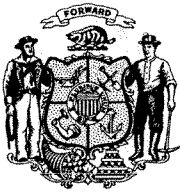


05-1813/3

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us

7/11/05 Per Vince - page 3, line 7 - delete limit DTRP
to lower fee. Change to "or another amount"

RIT



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1813/34

RCT:wljrs

Wanted Tues

Ymr

2005 ASSEMBLY BILL

See pp 243

Regen

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

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.

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

ASSEMBLY BILL

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 ~~a lesser~~ 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.

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:

9 126.55 (10r) "Processing potato buyer" means a vegetable contractor who
10 purchases processing potatoes and no other processing vegetables.

ASSEMBLY BILL

1 (10t) “Processing potatoes” means potatoes grown or sold for use in food
2 processing, regardless of whether those potatoes are actually harvested or processed
3 as food.

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

5 126.56 (4) (f) If 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), a fee of \$500
7 or a ~~lower~~^{another} amount established by the department by rule.

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

9 126.56 (6) (a) If the balance in the fund contributed by vegetable contractors
10 exceeds \$1,000,000 \$825,000 on November 30 of any license year, the department
11 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to
12 contributing vegetable contractors who file timely license renewal applications for
13 the next license year. The department shall credit each contributing vegetable
14 contractor on a prorated basis, in proportion to the total fees that the vegetable
15 contractor has paid under sub. (4) (b) for the 4 preceding license years.

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

17 126.57 (1) (b) 3. The vegetable contractor is a processing potato buyer who has
18 elected not to participate in the fund in accordance with s. 126.595 (1).

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

20 126.58 (1) (c) 3. The vegetable contractor is a processing potato buyer who has
21 elected not to participate in the fund in accordance with s. 126.595 (1).

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

23 126.59 (1) (d) The vegetable contractor is a processing potato buyer who has
24 elected not to participate in the fund in accordance with s. 126.595 (1).

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

ASSEMBLY BILL**SECTION 8****1 126.595 Processing potato buyer optional nonparticipation. (1)**

2 ELIGIBILITY. A processing potato buyer may elect not to participate in the fund by
3 doing all of the following:

4 (a) Submitting a notification of nonparticipation to the department by January
5 31 of each year or, for a new processing potato buyer, at the time of application for
6 its first license.

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

9 1. An unwritten contract with a vegetable producer in this state under which
10 the processing potato buyer takes custody or control of processing potatoes more than
11 20 days before paying for the processing potatoes in full.

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

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

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

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

ASSEMBLY BILL

1 (d) Providing evidence to the department that the processing potato buyer has
2 a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to
3 499t, that is in good standing.

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

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

21 **(2) RESUMING PARTICIPATION.** (a) A processing potato buyer that has elected not
22 to participate in the fund may rescind its election and may participate in the fund
23 in accordance with the applicable provisions of this chapter, if all of the following
24 apply:

ASSEMBLY BILL**SECTION 8**

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

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

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

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

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

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

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

23 126.61 (1) (c) 3. The vegetable contractor is a processing potato buyer who has
24 elected not to participate in the fund in accordance with s. 126.595 (1).

25 **SECTION 10.** 126.71 (3) (a) 5. of the statutes is created to read:

