

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

October 25, 2005 – Offered by Representative BALLWEG.

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

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 substitute amendment 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 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. The substitute amendment provides a procedure by which a potato buyer who has opted out of the program may resume participation in the program and requires a potato buyer to resume participation if it ceases to be eligible to opt out of the program.

The substitute amendment requires a potato buyer who has opted out of the program to pay an annual fee of \$500, or another amount established by DATCP, instead of the annual license fee, which is based on the value of the potatoes purchased by a buyer.

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 substitute amendment reduces the amount of the balance after which the credit against license fees applies from \$1,000,000 to \$825,000.

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).

1 **SECTION 2.** 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 3.** 126.56 (4) (b) of the statutes is amended to read:

8 126.56 **(4)** (b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations
9 reported under sub. (9) (a), less any credit provided under sub. (6), except that this
10 paragraph does not apply to a vegetable contractor to whom par. (f) applies.

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

12 126.56 **(4)** (f) If 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), a fee of \$500
14 or another amount established by the department by rule.

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

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

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

24 126.57 **(1)** (b) 3. The vegetable contractor is a processing potato buyer who has
25 elected not to participate in the fund in accordance with s. 126.595 (1).

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

2 126.58 (1) (c) 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 8.** 126.59 (1) (d) of the statutes is created to read:

5 126.59 (1) (d) 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 9.** 126.595 of the statutes is created to read:

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

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

11 (a) Submitting a notification of nonparticipation to the department by January
12 31 of each year or, for a new processing potato buyer, at the time of application for
13 its first license.

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

16 1. An unwritten contract with a vegetable producer in this state under which
17 the processing potato buyer takes custody or control of processing potatoes more than
18 10 days before paying for the processing potatoes in full.

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

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

1 1. An unwritten contract with a vegetable producer in this state under which
2 the processing potato buyer takes custody or control of processing potatoes more than
3 10 days before paying for the processing potatoes in full.

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

7 (d) Providing evidence to the department that the processing potato buyer has
8 a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to
9 499t, that is in good standing.

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

22 (f) Maintaining documentation that every purchase of potatoes grown in this
23 state for processing under contract with the processing potato buyer qualifies for
24 trust protection under the federal Perishable Agricultural Commodities Act, 7 USC

1 499a to 499t, and that the vegetable producers' trust rights have been validly
2 preserved.

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

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

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

21 2. A processing potato buyer that decides or is required to participate in the
22 fund under par. (a) shall begin contributing to the fund at the beginning of its 2nd
23 complete license year of participation, except that this requirement does not apply
24 to a processing potato buyer that is disqualified under s. 126.59 (2).

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

1 126.61 (1) (c) 3. 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 11.** 126.71 (3) (a) 5. of the statutes is created to read:

4 126.71 (3) (a) 5. A default claim allowed against a vegetable contractor who is
5 a processing potato buyer, as defined in s. 126.55 (10r), if the default claim is related
6 to a default on an obligation that was outstanding when the processing potato
7 buyer's participation in the fund became effective under s. 126.595 (2).

8 **SECTION 12. Effective date.**

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

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(END)