

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB635)

Received: 10/12/2005

Received By: btradewe

Wanted: Today

Identical to LRB:

For: Joan Ballweg (608) 266-8077

By/Representing: Vince

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Agriculture - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Ballweg@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Potato buyer participation in producer security program with DATCP changes, except do not delete fee

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 10/12/2005	wjackson 10/12/2005		_____			
/1			rschluet 10/12/2005	_____	lnorthro 10/12/2005	lnorthro 10/12/2005	

FE Sent For:

<END>

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB635)

Received: 10/12/2005

Received By: **btradewe**

Wanted: **Today**

Identical to LRB:

For: **Joan Ballweg (608) 266-8077**

By/Representing: **Vince**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ballweg@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Potato buyer participation in producer security program with DATCP changes, except do not delete fee

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	btradewe	1 WJ 10/12					
----	----------	------------	---	--	--	--	--

FE Sent For:

<END>

Tradewell, Becky

From: Williams, Vincent
Sent: Wednesday, October 12, 2005 11:35 AM
To: Tradewell, Becky
Subject: FW: List of suggested amendments to AB 635

Attachments: list of suggested ammendments.doc

From: LeRoy, Kevin J DATCP
Sent: Tuesday, October 11, 2005 12:40 PM
To: Williams, Vincent; Ballweg, Joan
Cc: Moll, Keeley A DATCP; McPherson, Jeremy S DATCP; Jenkins, Janet A DATCP
Subject: List of suggested amendments to AB 635



list of suggested
ammendments....

Representative Ballweg,

Thank you for meeting with us this morning. As promised, here is an electronic copy of the amendments document that we discussed.

See you Thursday,

Kevin LeRoy
Trade Practices Analyst
Division of Trade and Consumer Protection

AB 635

DATCP suggested Amendments

Issue 1 -- \$500 License Fee for processing potato buyer who has elected not to participate (Section 3 of AB 635).

DATCP objects to altering license fees based on the policy issue discussed below. Even though DATCP objects to this portion of the bill, we noted one technical drafting error.

Policy Issue Discussion

Limiting potato buyers' license fees drastically cuts DATCP revenues – but AB 635 does not represent a significant reduction in DATCP workload. The producer security program is designed to provide some assurance that producers will be paid for their products. The producer security program is administered using license fees collected from contractors (license fees are separate and distinct from assessments to the Fund). Even if potato buyers elect not to participate in the fund (as is possible only under AB 635), DATCP is still required to regulate this industry under the program. Limiting potato buyers' license fees drastically cuts DATCP revenues – but AB 635 does not represent any reduction in DATCP workload. This unfairly shifts the cost of operating the program away from the potato industry to other vegetable processors and (indirectly) milk contractors and grain dealers. Under current law; all contractors currently pay the same license fees whether or not they are contributing to the fund.

Do not delete fee - make technical change - Per Vince

✓ **Recommended Amendment:** Delete Section 3 (Page 3, lines 6 through 9) of AB 635.

Technical Issue Discussion

As drafted, AB 635 adds a \$500 fee for potato buyers who opt out participating in the fund without adjusting existing fees. DATCP does not have an issue with this portion of the bill as currently drafted; however, we believe proponents of the bill had intended to replace the existing license fee with a flat \$500 fee for potato buyers who elect not to participate in the fund. Current law lists required fees under 126.56(4) as follows (paraphrased and simplified for clarity – please see statute for specific language):

- (a) A processing fee of \$25
- (b) A license fee of \$25 plus 5.75¢ for each \$100 in contract obligations to Wisconsin vegetable growers.
- (c) A surcharge of \$500 if the applicant operating without a vegetable contractor license.

- (d) A surcharge of \$100 if the applicant failed to provide a financial statement as required by law.
- (e) A surcharge of \$100 for failing to submit renewal application by the annual license expiration date (January 31).

AB 635 simply adds a paragraph "(f)" to the existing list requiring a \$500 fee for potato buyers who elect not to participate in the fund. While this nullifies DATCP policy objections discussed above, we believe it is counter to the bill proponents' intention.

Technical Issue Amendment (Not Recommended): Insert the following into AB 635:

1 **Section X** 126.56(4)(b) is amended to read:
 2 Except as provided in par. (f), a fee of \$25 plus 5.75 cents for each \$100 in
 3 contract obligations reported under sub. (9)(a), less any credit provided under sub.
 4 (6).

Issue 2 -- Effective Date

Discussion

As currently drafted, AB 635 does not specify an effective date. This bill would be much easier for DATCP to implement if it specifically stated that the bill becomes effective on the first day of the new license year. For administrative tasks such as calculating license fee credits, etc., it is imperative to have a specific, common date on which all the eligible potato buyers either were or were not participating. It makes the most sense to have this common date be the first day of each new license year. For vegetable contractors, this date is February 1.

Recommended Amendment

Insert a non-statutory provision specifying either that the Act first takes effect on Feb. 1, 2007 or is retroactive (if necessary) to Feb. 1, 2006.

per Ulice

Issue 3 -- Requirements for resuming participation.

Discussion

126.595(2), as created in AB 635, spells out steps that a potato buyer who had previously elected not to participate in the fund must take before it can become a contributing contractor. By design, it is somewhat difficult for these potato buyers to resume participation. DATCP agrees that it would be detrimental to the fund and unfair to other contractors to allow potato buyers in this position easy access back into the fund. However, the bill, as drafted is rather vague on specifics such as filing deadlines and security amounts. Because situations where this provision would be used are likely to be very contentious, DATCP would prefer more specific treatment of this topic.

Recommended Amendment:

Replace 126.595(2) and (3), as created in AB 635, with the following:

- 1 **(2) RESUMING PARTICIPATION. (a)** A vegetable contractor who is a
2 nonparticipating processing potato buyer under sub. (1) shall become a participating
3 contractor if either of the following are true.
- 4 1. The processing potato buyer notifies the department of its intention to become
5 a participating contractor. Participation is effective 30 days after the processing potato
6 buyer provides notice to the department or the effective date of the security described
7 under par. (b), whichever is later.
- 8 2. The processing potato buyer fails to meet eligibility requirements for optional
9 nonparticipation as stated in sub. (1). Participation is immediate upon the department
10 providing notice to the processing potato buyer that they are no longer eligible for
11 optional nonparticipation, or the effective date of the security described under par. (b),
12 whichever is later.
- 13 **(b)** A nonparticipating processing potato buyer who is becoming a participating
14 vegetable contractor must meet the following conditions:

- 1 1. The vegetable contractor must post security.
- 2 i. The security must be in a form that meets the requirements described in
- 3 126.61(4)
- 4 ii. The amount of the security must be at least equal to 75% of the amount
- 5 reported in 126.56(9)(a).
- 6 iii. The vegetable contractor shall maintain the security until the department
- 7 releases it. The department may not release the security until the vegetable contractor has
- 8 been a participating vegetable contractor for two continuous complete license years.
- 9 2. The vegetable contractor must begin contributing to the fund at the beginning
- 10 of its second complete license year as a participating contractor. This subpar. does not
- 11 apply to disqualified vegetable contractors under s. 126.59(2).

(Note: There seems to be some inconsistency regarding the terms "contributing" vs. "participating" and "noncontributing" vs. "nonparticipating". Generally, existing law uses "contributing" and "noncontributing" and AB 635 uses "participating" and "nonparticipating". We believe the terms are synonymous.)

Issue 4 -- Cash Payment within 10 Days Instead of 20.

Discussion

As created by AB 635, 126.595(1)(a) through (f) lists certain items that processing potato buyers who wish to opt out of participating in the fund must certify or maintain evidence of before they are eligible to opt out. One of these items, [126.595(1)(b)1 and (c)1.], requires the potato buyer to certify in a statement to the department that it does not have any unpaid obligations to vegetable producers in unwritten contracts under which the potato buyer takes custody or control of the potatoes more than 20 days before paying for the potatoes in full. This provision (like all the provisions in this list) is designed to mimic requirements for coverage under the Federal PACA trust. However, PACA trust coverage (in many circumstances) actually hinges on payment within 10 days – not 20.

Recommended Amendment:

In AB 635 Section 8; replace “20 days” on page 4 – lines 14 and 23 with “10 days”.

8:30
Wanted by Warm. Thurs, 10/12

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

regenerate

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

Analysis
inset

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).

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

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.

Insert
3-5

6 **SECTION 3.** 126.56 (6) (a) of the statutes is amended to read:

7 126.56 (6) (a) If the balance in the fund contributed by vegetable contractors
8 exceeds ~~\$1,000,000~~ \$825,000 on November 30 of any license year, the department
9 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to
10 contributing vegetable contractors who file timely license renewal applications for
11 the next license year. The department shall credit each contributing vegetable
12 contractor on a prorated basis, in proportion to the total fees that the vegetable
13 contractor has paid under sub. (4) (b) for the 4 preceding license years.

14 **SECTION 4.** 126.57 (1) (b) 3. of the statutes is created to read:

15 126.57 (1) (b) 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).

17 **SECTION 5.** 126.58 (1) (c) 3. of the statutes is created to read:

18 126.58 (1) (c) 3. The vegetable contractor is a processing potato buyer who has
19 elected not to participate in the fund in accordance with s. 126.595 (1).

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

21 126.59 (1) (d) 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 7.** 126.595 of the statutes is created to read:

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 10 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 10 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.

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) 1. A processing potato buyer that has elected
22 not to participate in the fund may rescind its election and participate in the fund by
23 notifying the department of its intention to participate and complying with par. (b).
24 Participation is effective the 30th day after the day on which the department receives

1 the notice or on the effective date of the security described in par. (b) 1., whichever
2 is later.

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

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

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

19 **SECTION 8.** 126.61 (1) (c) 3. of the statutes is created to read:

20 126.61 (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 9.** 126.71 (3) (a) 5. of the statutes is created to read:

23 126.71 (3) (a) 5. A default claim allowed against a vegetable contractor who is
24 a processing potato buyer, as defined in s. 126.55 (10r), if the default claim is related

1 to a default on an obligation that was outstanding when the processing potato
2 buyer's participation in the fund became effective under s. 126.595 (2).

3 **SECTION 10. Effective date.**

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

5 (END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0253/lins
RCT:.....

Analysis insert

✓ 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.

Insert 3-5

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

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

History: 2001 a. 16.

~~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 another amount established by the department by rule.