State of Wisconsin
2009 – 2010 LEGISLATURE

09-3286/1

LRB-3287/1
RCT:wlj:ph

Today

stays

rmnr

2009 BILL

No changes

Regen

AN ACT ~~*to repeal*~~ 126.06 (2) (intro.) (except 126.06 (2) (title)), 126.08, 126.11 (4) (b) 1. to 3., 126.14 (2) (b) 3. and 4., 126.16 (1) (b) 1., 126.16 (1) (c) 2. a. to c., 126.16 (2), 126.16 (3) (b) 1. and 2., 126.16 (4) (e), 126.16 (8) (c), 126.17 (3) (a) 1. and 2., 126.31 (1) (b) 2. a. to c., 126.31 (2), 126.31 (3) (b) 1. and 2., 126.31 (4) (e), 126.31 (8) (b), 126.32 (5) (a) 1. and 2., 126.45 (3) (c), 126.46 (1) (a) and (b), 126.46 (2) to (5), 126.47 (2), 126.47 (3) (a) 3., 126.47 (3) (b) 1. and 2., 126.47 (4) (e), 126.47 (7) (b), 126.59 (2) (c) 1. to 4., 126.60 (1) (c), 126.61 (1) (bm), 126.61 (2), 126.61 (3) (a) 2., 126.61 (3) (b) 1. and 2., 126.61 (4) (e), 126.61 (7) (b), 126.61 (7) (c), 126.62 (2) (a) and (b), 126.71 (1) (d) and (e), 126.71 (3) (a) 1. to 3., 126.81 (3) and 126.86 (1) (g); ***to renumber*** 126.81 (intro.) and (1) and 126.81 (4); ***to renumber and amend*** 126.11 (4) (b) (intro.), 126.16 (1) (c) 2. (intro.), 126.17 (3) (a) (intro.), 126.19 (4), 126.31 (1) (b) 2. (intro.), 126.32 (5) (a) (intro.), 126.40 (1), 126.41 (6) (b), 126.45 (3) (b), 126.46 (1) (intro.), 126.46 (5m) (a), 126.59 (2) (c) (intro.), 126.62 (2) (intro.), 126.70 (1), 126.81 (2) and 126.88; ***to consolidate, renumber***

1 ***and amend*** 126.16 (1) (b) (intro.) and 2., 126.16 (3) (b) (intro.) and 3., 126.31
2 (3) (b) (intro.) and 3., 126.47 (3) (b) (intro.) and 3., 126.61 (3) (a) (intro.) and 1.
3 and 126.61 (3) (b) (intro.) and 3.; ***to amend*** 126.05 (2), 126.06 (1) (intro.), 126.11
4 (4) (intro.) and (a), 126.11 (4) (c) to (g), 126.11 (6), 126.11 (9) (a), 126.13 (1) (a)
5 (intro.), 126.13 (1) (b) (intro.), 126.14 (2) (b) (intro.), 126.14 (2) (b) 2., 126.15 (1)
6 (c), 126.15 (6), 126.20 (4) (intro.) and (a), 126.26 (3) (intro.) and (a), 126.26 (3)
7 (c) to (f), 126.26 (3m), 126.26 (5), 126.34 (5) (intro.) and (a), 126.41 (3) (intro.)
8 and (a), 126.41 (6) (a), 126.42 (6), 126.44 (1) (a), 126.44 (1) (c) 1., 126.45 (3) (a),
9 126.45 (4) (a), 126.46 (5m) (intro.), 126.46 (5m) (b), 126.47 (1) (a) 1., 126.47 (3)
10 (a) (intro.), 126.47 (7) (a) 1. and 2., 126.50 (intro.), 126.56 (4), 126.56 (4m),
11 126.58 (1) (a) and (b), 126.60 (1) (a) and (b), 126.60 (5m) (intro.) and (a), 126.61
12 (1) (a) 1., 126.61 (7) (a) (intro.), 126.61 (7) (a) 1., 126.61 (7) (bm), 126.64 (intro.),
13 126.70 (4) (title), 126.71 (1) (a) (intro.), 126.72 (2), 126.73 (1), 126.85 (1) and
14 126.86 (3) (a); ***to repeal and recreate*** 126.06 (2) (a), 126.13 (1) (a) 1., 126.13
15 (1) (b) 1., 126.13 (3), 126.26 (3) (b), 126.28 (3), 126.41 (9), 126.44 (5), 126.47 (1)
16 (b), 126.47 (3) (a) 1. and 2., 126.56 (12), 126.58 (3), 126.61 (1) (b), 126.63 (4) (c)
17 and 126.86 (1) (f); and ***to create*** 126.06 (1) (c) and (d), 126.11 (9) (d) and (e),
18 126.14 (4) and (5), 126.19 (4) (b), 126.20 (4) (g), 126.34 (5) (g), 126.40 (1) (a) and
19 (b), 126.41 (6) (b) (intro.), 126.41 (6) (b) 2., 126.41 (6) (bg), 126.41 (6) (br), 126.45
20 (3) (b) 2., 126.45 (5), 126.46 (5m) (a) 1. and 2., 126.50 (6), 126.56 (9) (am), 126.56
21 (9) (i), 126.59 (4), 126.64 (7), 126.70 (1) (b) and (c), 126.70 (4) (f) to (k), 126.70
22 (6) (g), 126.73 (3), 126.81 (1) (c), 126.81 (2m), 126.85 (2) (h) and (i) and 126.88
23 (2) of the statutes; **relating to:** the agricultural producer security program,

1 providing an exemption from emergency rule procedures, and granting
2 rule–making authority.

Analysis by the Legislative Reference Bureau

This bill makes changes in the agricultural producer security program, which is administered by the Department of Agriculture, Trade and Consumer Protection (DATCP). The program is designed to minimize the risk that milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively referred to as contractors) will default on their financial obligations to dairy, grain, and vegetable farmers (producers) and to reimburse producers for a portion of the losses they incur when contractors do default. A milk contractor is a person who buys milk from producers. A grain dealer is a person who buys grain from producers. A grain warehouse keeper is a person who operates a warehouse for the storage of grain that belongs to others. A vegetable contractor is a person who buys vegetables from producers for use in food processing.

Contingent financial backing

Current law requires certain contractors to contribute to the agricultural producer security fund (fund). If a contributing contractor defaults on its financial obligations to producers, DATCP makes payments to producers from the fund, up to a maximum deductible amount per default. Current law requires DATCP to obtain "contingent financial backing" to supplement the fund in case of a large default. The contingent financial backing may be in the form of a surety bond or a contract to provide a cash loan to the fund whenever DATCP requests a loan.

Under this bill, DATCP may, but is not required to, obtain contingent financial backing for the fund. The bill also authorizes DATCP to obtain contingent financial backing in the form of trade credit insurance or in any other form that DATCP determines is appropriate.

Fund assessments

Current law specifies the amounts of contractor fund assessments, but authorizes DATCP to change the amounts by rule. DATCP has changed the amounts of fund assessments for milk contractors, and this bill eliminates the statutory amounts of those assessments.

Current law requires DATCP to modify the amounts of fund assessments as necessary to keep the overall balance in the fund, and the balance attributable to each type of contractor, within specified limits. This bill authorizes DATCP to use emergency rule–making procedures, without making the finding of emergency that is ordinarily required, to modify fund assessments when the amount in the fund falls below one of the specified minimums. Such a rule may remain in effect for up to 24 months.

Financial statements

Current law requires a contractor above a specified size threshold to file an annual financial statement with DATCP. The financial statement must be a reviewed statement or, for larger contractors, an audited statement.

This bill increases some of the thresholds above which contractors must file financial statements and above which contractors must file audited financial statements. This bill also changes the basis for determining whether a grain dealer or milk contractor must file an annual financial statement from the value of grain or milk procured to the volume of grain or milk procured.

License fees

Current law requires contractors to pay license fees in amounts specified in the statutes unless DATCP specifies a different amount by rule. DATCP has specified different amounts by rule for grain dealers, grain warehouse keepers, and vegetable contractors, and this bill eliminates the statutory amounts for those fees. Under current law, license fees for grain dealers are based on the value of grain procured. Under this bill, license fees for grain dealers are based on the volume of grain procured.

Disqualification from fund participation

Under current law, a contractor may be disqualified from participating in the fund in specified situations. If a contractor who is disqualified defaults on payments to producers, no payments may be made from the fund to compensate producers for the losses resulting from the default. Current law authorizes DATCP to issue an order requiring a contractor to remedy a violation of the agricultural producer security law.

This bill authorizes DATCP to disqualify a contractor from participation in the fund pending compliance with an order requiring the contractor to remedy a violation of the agricultural producer security law. The bill also requires a contractor who is disqualified from the fund to notify producers of the disqualification.

Related entities and default claims

Under this bill, a producer who owns a majority interest in a contractor or who is under common ownership with a contractor may waive eligibility to obtain payment from the fund if the contractor ever defaults. If a producer waives eligibility, the amount of the contractor's obligations to the producer is subtracted in determining the contractor's fund contribution and financial statement filing requirements.

The bill also requires DATCP to disallow a claim for payment from the fund, by a producer who did not waive eligibility, when a contractor defaults on payment to the producer if DATCP determines that allowing the claim would be unfair or unreasonable because the producer owns a majority interest in the contractor or is under common ownership with the contractor or because the producer had substantial management control over any of the defaulting contractor's operations involved in the default.

Other default claims disallowed

This bill disallows a default claim if a defaulting contractor paid a producer by check but the producer failed to cash the check within 30 days.

Current law authorizes grain dealers and vegetable contractors to enter into deferred payment contracts with producers under certain conditions. A deferred payment contract is a contract under which payment is delayed for some time after the producer delivers the grain or vegetables under the contract.

Under the bill, a producer who enters into a deferred payment contract with a grain dealer may not recover from the fund in case of a default by the grain dealer if the payment under the contract became due more than 120 days after the producer delivered the grain to the grain dealer. Also, under the bill, a producer who enters into a deferred payment contract with a vegetable contractor may not recover from the fund in case of a default by the vegetable contractor if payment became due after January 31 of the year after the year in which the producer delivered the vegetables.

Milk contractor security requirements

Current law requires certain milk contractors to file security with DATCP to secure payment of milk payroll obligations to producers. The determination of whether security must be filed is based in part on the milk contractor's highest amount of unpaid milk payroll obligations since the beginning of the contractor's last fiscal year.

Under this bill, a milk contractor may choose to have the determination of whether the contractor must file security based on the highest amount of the contractor's unpaid milk payroll obligations during the last 12 months or on the highest amount of milk payroll obligations incurred by the contractor in any month during the last 12 months. The bill makes related changes in the calculation of the amount of security that a milk contractor must file and in milk contractor reporting requirements.

Interfering with DATCP

This bill prohibits a contractor from assaulting, threatening, intimidating, or otherwise interfering with an officer, employee, or agent of DATCP in the performance of his or her duties.

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.** 126.05 (2) of the statutes is amended to read:

2 126.05 **(2)** The department shall deposit into the fund all fees, surcharges,

3 assessments, reimbursements, and proceeds of contingent financial backing that the

department collects under this chapter. The department shall keep a record by contractor and industry, of all deposits into the fund. The department shall keep a record by industry of all payments from the fund.

SECTION 2. 126.06 (1) (intro.) of the statutes is amended to read:

126.06 **(1)** DEPARTMENT ~~TO~~ MAY ACQUIRE. (intro.) Using moneys appropriated under s. 20.115 (1) (v), the department ~~shall~~ may acquire contingent financial backing to secure payment under s. 126.72 (2) of claims against contributing contractors, as defined in s. 126.68 (1). The contingent financial backing may be in one or more of the following forms:

SECTION 3. 126.06 (1) (c) and (d) of the statutes are created to read:

126.06 **(1)** (c) Trade credit insurance.

(d) Any other form that the department determines is appropriate.

SECTION 4. 126.06 (2) (intro.) (except 126.06 (2) (title)) of the statutes is repealed.

SECTION 5. 126.06 (2) (a) of the statutes is repealed and recreated to read:

126.06 **(2)** (a) Except as provided in par. (b), the department may determine the amount of any contingent financial backing that it obtains under sub. (1), up to the amount that, in the department's judgment, is sufficient to meet reasonably foreseeable needs under s. 126.72 (2). In making this determination, the department shall consider acquisition costs and repayment liabilities.

SECTION 6. 126.08 of the statutes is repealed.

SECTION 7. 126.11 (4) (intro.) and (a) of the statutes are amended to read:

126.11 **(4)** LICENSE FEES AND SURCHARGES. (intro.) A grain dealer applying for an annual license under this section shall pay the following fees and surcharges~~,~~

~~unless~~ in the amounts that the department specifies ~~a different fee or surcharge amount~~ by rule:

(a) A nonrefundable basic license ~~processing~~ fee ~~of $25~~.

SECTION 8. 126.11 (4) (b) (intro.) of the statutes is renumbered 126.11 (4) (b) and amended to read:

126.11 **(4)** (b) ~~The following license fees~~ A supplementary license fee based on the volume of grain ~~dealer's~~ reported ~~grain payments~~ by the grain dealer under sub. (9) ~~(a)~~ (d), less any credit provided under sub. (6)~~:~~.

SECTION 9. 126.11 (4) (b) 1. to 3. of the statutes are repealed.

SECTION 10. 126.11 (4) (c) to (g) of the statutes are amended to read:

126.11 **(4)** (c) A supplementary license fee ~~of $45~~ for each truck, in excess of one truck, that the grain dealer uses to haul grain in this state.

(d) A license surcharge ~~of $425~~ if the grain dealer files a financial statement under s. 126.13 (1) that is not an audited financial statement.

(e) A license surcharge ~~of $500~~ if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain dealer without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for any license year in which the applicant violated sub. (1).

(f) A license surcharge ~~of $100~~ if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.13 (1) (b) by the deadline specified in s. 126.13 (1) (c).

(g) A license surcharge ~~of $100~~ if a renewal applicant fails to renew a license by the license expiration date of August 31. This paragraph does not apply to a grain dealer who is exempt under sub. (2) and is voluntarily licensed.

1 **SECTION 11.** 126.11 (6) of the statutes is amended to read:

2 126.11 **(6)** FEE CREDITS. If the balance in the fund contributed by grain dealers
3 exceeds $2,000,000 on ~~June 30~~ May 31 of any license year, the department shall
4 credit 50% of the excess amount against license fees charged under sub. (4) (b) to
5 contributing grain dealers who file timely license renewal applications for the next
6 license year. The department shall credit each contributing grain dealer on a
7 prorated basis, in proportion to the total fees that the grain dealer paid under sub.
8 (4) (b) for the 4 preceding license years as a contributing grain dealer.

9 **SECTION 12.** 126.11 (9) (a) of the statutes is amended to read:

10 126.11 **(9)** (a) The total amount that the applicant paid, during the applicant's
11 last completed fiscal year, for producer grain procured in this state, less the total
12 amount reported under par. (e) 3., if any. If the applicant has not yet operated as a
13 grain dealer in this state, the applicant shall estimate the amount that the applicant
14 will pay during the applicant's first complete fiscal year for producer grain procured
15 in this state, less the total amount reported under par. (e) 3., if any.

16 **SECTION 13.** 126.11 (9) (d) and (e) of the statutes are created to read:

17 126.11 **(9)** (d) The total number of bushels of producer grain that the applicant
18 procured in this state during the applicant's last completed fiscal year. If the
19 applicant has not yet operated as a grain dealer in this state, the applicant shall
20 estimate the total number of bushels of producer grain that the applicant will
21 procure in this state during the applicant's first complete fiscal year.

22 (e) All of the following information related to each grain producer or producer
23 agent that under s. 126.70 (1) (b) has permanently waived eligibility to file a default
24 claim against the applicant:

1. A copy of the written waiver that the grain producer or producer agent filed under s. 126.70 (1) (c).

2. The total number of bushels of producer grain that the applicant procured in this state from that grain producer or producer agent during the applicant's last completed fiscal year. If the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the total number of bushels of producer grain that the applicant will procure in this state from that grain producer or producer agent during the applicant's first complete fiscal year.

3. The total amount that the applicant paid during the applicant's last completed fiscal year for producer grain that the applicant procured in this state from that grain producer or producer agent. If the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the total amount that the applicant will pay during the applicant's first complete fiscal year for producer grain that the applicant will procure in this state from that producer or producer agent.

4. The amount of payments under subd. 3. made under deferred payment contracts.

SECTION 14. 126.13 (1) (a) (intro.) of the statutes is amended to read:

126.13 **(1)** (a) (intro.) A grain dealer shall file an annual financial statement with the department, before the department first licenses the grain dealer under s. 126.11, if the grain dealer's license application ~~reports~~ shows any of the following:

SECTION 15. 126.13 (1) (a) 1. of the statutes is repealed and recreated to read:

126.13 **(1)** (a) 1. That the amount of grain reported under s. 126.11 (9) (d), less the total amount reported under s. 126.11 (9) (e) 2., if any, exceeds 200,000 bushels.

SECTION 16. 126.13 (1) (b) (intro.) of the statutes is amended to read:

126.13 **(1)** (b) (intro.) A grain dealer licensed under s. 126.11 shall file an annual financial statement with the department during each license year if the grain dealer's license application for that year ~~reports~~ shows any of the following:

SECTION 17. 126.13 (1) (b) 1. of the statutes is repealed and recreated to read:

126.13 **(1)** (b) 1. That the amount of grain reported under s. 126.11 (9) (d), less the total amount reported under s. 126.11 (9) (e) 2., if any, exceeds 200,000 bushels and the grain dealer is not a contributing grain dealer who procures grain in this state solely as a producer agent.

SECTION 18. 126.13 (3) of the statutes is repealed and recreated to read:

126.13 **(3)** REVIEWED OR AUDITED FINANCIAL STATEMENT. A grain dealer filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the volume of grain reported by the grain dealer under s. 126.11 (9) (d), less the total volume reported by the grain dealer under s. 126.11 (9) (e) 2., if any, exceeds 2,500,000 bushels, the grain dealer shall file an audited financial statement.

SECTION 19. 126.14 (2) (b) (intro.) of the statutes is amended to read:

126.14 **(2)** (b) (intro.) A grain dealer is disqualified from the fund~~, and required to pay cash on delivery for producer grain,~~ if any of the following occurs:

SECTION 20. 126.14 (2) (b) 2. of the statutes is amended to read:

126.14 **(2)** (b) 2. The department issues ~~a written notice~~ an order under s. 126.85 disqualifying the grain dealer ~~for cause, including failure to pay fund assessments under s. 126.15 when due or failure to file a financial statement under s. 126.13 when due~~ from the fund.

SECTION 21. 126.14 (2) (b) 3. and 4. of the statutes are repealed.

SECTION 22. 126.14 (4) and (5) of the statutes are created to read:

126.14 **(4)** NOTICE TO PRODUCERS. A grain dealer who is disqualified from the fund shall immediately give written notice of that disqualification to all grain producers and producer agents to whom the grain dealer has unpaid contract obligations for producer grain produced in this state. The department may by rule or order specify the form and content of the notice.

(5) DISQUALIFIED GRAIN DEALER TO PAY CASH ON DELIVERY. A grain dealer who is disqualified from the fund shall pay cash on delivery for all producer grain procured in this state.

SECTION 23. 126.15 (1) (c) of the statutes is amended to read:

126.15 **(1)** (c) The grain dealer's deferred payment assessment. The deferred payment assessment for a license year equals the ~~grain dealer's deferred payment assessment rate under sub. (6) multiplied by the~~ payment amount, if any, that the grain dealer reports under s. 126.11 (9) (b) in the grain dealer's license application for that license year, less any amount reported under s. 126.11 (9) (e) 4., multiplied by the grain dealer's deferred payment assessment rate under sub. (6).

SECTION 24. 126.15 (6) of the statutes is amended to read:

126.15 **(6)** DEFERRED PAYMENT ASSESSMENT RATE. A grain dealer's deferred payment assessment rate is 0.0035, ~~except that it is 0.002 for the grain dealer's 5th or higher consecutive full license year as a contributing grain dealer~~ unless the department specifies a different rate by rule.

SECTION 25. 126.16 (1) (b) (intro.) and 2. of the statutes are consolidated, renumbered 126.16 (1) (b) and amended to read:

126.16 **(1)** (b) A grain dealer who reports any deferred payment contract obligations under s. 126.11 (9) (c) or 126.13 (1) (d), other than deferred payment contract obligations to a grain producer or producer agent who permanently waived

eligibility to file a default claim under s. 126.70 (1) (b) and (c), shall file security with the department, and maintain that security until the department releases it under sub. (8) (b), unless the grain dealer has positive equity and ~~one of the following applies: 2. The~~ the grain dealer's annual financial statement under s. 126.13 ~~covers a fiscal year ending after January 1, 2006, and~~ (1) shows a debt to equity ratio of not more than 4.0 to 1.0.

SECTION 26. 126.16 (1) (b) 1. of the statutes is repealed.

SECTION 27. 126.16 (1) (c) 2. (intro.) of the statutes is renumbered 126.16 (1) (c) 2. and amended to read:

126.16 **(1)** (c) 2. A grain dealer shall file security with the department, and maintain that security until the department releases it under sub. (8) (bm), if the grain dealer files an annual financial statement under s. 126.13 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain dealer's estimated default exposure is greater than ~~the following amount:~~ $20,000,000.

SECTION 28. 126.16 (1) (c) 2. a. to c. of the statutes are repealed.

SECTION 29. 126.16 (2) of the statutes is repealed.

SECTION 30. 126.16 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.16 (3) (b) and amended to read:

126.16 **(3)** (b) A grain dealer who is ~~only~~ required to file or maintain security only under sub. (1) (c) shall at all times maintain security equal to the grain dealer's estimated default exposure, as defined in sub. (1) (c) 1., less ~~the following amount: 3. For a license year that begins on September 1, 2005, or later,~~ $20,000,000.

SECTION 31. 126.16 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 32. 126.16 (4) (e) of the statutes is repealed.

1 **SECTION 33.** 126.16 (8) (c) of the statutes is repealed.

2 **SECTION 34.** 126.17 (3) (a) (intro.) of the statutes is renumbered 126.17 (3) (a)
3 and amended to read:

4 126.17 **(3)** (a) A grain dealer shall keep copies of all ~~of the following~~ records
5 required under this section and s. 126.18 (2) for at least 6 years after the records are
6 created~~:~~.

7 **SECTION 35.** 126.17 (3) (a) 1. and 2. of the statutes are repealed.

8 **SECTION 36.** 126.19 (4) of the statutes is renumbered 126.19 (4) (a) and
9 amended to read:

10 126.19 **(4)** (a) A grain dealer may not enter into a deferred payment contract
11 with a grain producer or producer agent unless the deferred payment contract ~~clearly~~
12 ~~discloses that it is not a storage contract. Whenever a grain dealer buys grain from~~
13 ~~a grain producer under a deferred payment contract, the grain dealer shall include~~
14 includes the following statement in ~~capitalized, boldface~~ clear and conspicuous print
15 immediately above the contract signature line: "This is not a storage contract. The
16 grain dealer (buyer) becomes the owner of any grain that the producer or producer
17 agent (seller) delivers to the grain dealer under this contract. The producer or
18 producer agent relinquishes ownership and control of the grain, and ~~becomes~~ may
19 become an unsecured creditor pending payment."

20 **SECTION 37.** 126.19 (4) (b) of the statutes is created to read:

21 126.19 **(4)** (b) A grain dealer may not enter into a deferred payment contract
22 under which a grain producer or producer agent agrees to receive payment for grain
23 more than 120 days after delivering the grain to the grain dealer unless the deferred
24 payment contract clearly and conspicuously discloses that if the grain dealer
25 defaults on payment under the deferred payment contract, any claim filed by the

producer or producer agent with the department under s. 126.70 will be disallowed. The department may by rule or order specify the form and content of the disclosure.

SECTION 38. 126.20 (4) (intro.) and (a) of the statutes are amended to read:

126.20 **(4)** PROHIBITED PRACTICES. (intro.) No grain dealer, or officer, employee, or agent of a grain dealer, may do any of the following:

(a) Misrepresent the weight, grade, or quality of producer grain received from or delivered to any person.

SECTION 39. 126.20 (4) (g) of the statutes is created to read:

126.20 **(4)** (g) Assault, threaten, intimidate, or otherwise interfere with an officer, employee, or agent of the department in the performance of his or her duties.

SECTION 40. 126.26 (3) (intro.) and (a) of the statutes are amended to read:

126.26 **(3)** LICENSE FEES AND SURCHARGES. (intro.) A person applying for a grain warehouse keeper license shall pay the following fees and surcharges~~, unless~~ in the amounts that the department specifies ~~a different fee or surcharge amount~~ by rule:

(a) A nonrefundable basic license ~~processing fee of $25 plus $25 for each grain warehouse identified under sub. (2) (d). If a grain warehouse keeper operates 2 or more grain warehouses located within 0.5 mile of each other, the grain warehouse keeper may treat those grain warehouses as a single grain warehouse for purposes of this paragraph and par. (c)~~ fee, which may be based on the number of grain warehouses that the applicant operates.

SECTION 41. 126.26 (3) (b) of the statutes is repealed and recreated to read:

126.26 **(3)** (b) A grain warehouse inspection fee, which may be based on the number and sizes of the grain warehouses that the applicant operates.

SECTION 42. 126.26 (3) (c) to (f) of the statutes are amended to read:

1 126.26 **(3)** (c) A supplementary inspection fee ~~of $275~~ for each grain warehouse
2 that the applicant operates in excess of one grain warehouse.
3 (d) A license surcharge ~~of $500~~ if the department determines that, within 365
4 days before submitting the license application, the applicant operated as a grain
5 warehouse keeper without a license in violation of sub. (1). The applicant shall also
6 pay any license fees, license surcharges, and fund assessments that are still due for
7 the license year in which the applicant violated sub. (1).
8 (e) A license surcharge ~~of $100~~ if during the preceding 12 months the applicant
9 failed to file an annual financial statement required under s. 126.28 (1) (b) by the
10 applicable deadline.
11 (f) A license surcharge ~~of $100~~ if a renewal applicant fails to renew a license
12 by the license expiration date of August 31.
13 **SECTION 43.** 126.26 (3m) of the statutes is amended to read:
14 126.26 **(3m)** EFFECT OF PAYMENT OF SURCHARGE. Payment <u>of a license surcharge</u>
15 under sub. (3) (d) does not relieve the applicant of any other civil or criminal liability
16 that results from the violation of sub. (1), but does not constitute evidence of any law
17 violation.
18 **SECTION 44.** 126.26 (5) of the statutes is amended to read:
19 126.26 **(5)** FEE CREDIT. If the fund balance contributed by grain warehouse
20 keepers exceeds $300,000 on ~~June 30~~ <u>May 31</u> of any license year, the department
21 shall credit 12.5% of the excess amount against <u>grain warehouse inspection</u> fees
22 charged under sub. (3) (b) to contributing grain warehouse keepers who file timely
23 license renewal applications for the next license year. The department shall credit
24 each contributing grain warehouse keeper on a prorated basis, in proportion to the

total inspection fees that the warehouse keeper has paid under sub. (3) (b) for the 4 preceding license years.

SECTION 45. 126.28 (3) of the statutes is repealed and recreated to read:

126.28 **(3)** REVIEWED OR AUDITED FINANCIAL STATEMENT. A grain warehouse keeper filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the grain warehouse keeper operates grain warehouses with a combined capacity of more than 1,500,000 bushels, the grain warehouse keeper shall file an audited financial statement.

SECTION 46. 126.31 (1) (b) 2. (intro.) of the statutes is renumbered 126.31 (1) (b) 2. and amended to read:

126.31 **(1)** (b) 2. A grain warehouse keeper shall file security with the department, and maintain that security until the department releases it under sub. (8) (am), if the grain warehouse keeper files an annual financial statement under s. 126.28 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain warehouse keeper's estimated default exposure is greater than ~~the following amount:~~ $20,000,000.

SECTION 47. 126.31 (1) (b) 2. a. to c. of the statutes are repealed.

SECTION 48. 126.31 (2) of the statutes is repealed.

SECTION 49. 126.31 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.31 (3) (b) and amended to read:

126.31 **(3)** (b) A grain warehouse keeper who is ~~only~~ required to file or maintain security only under sub. (1) (b) shall at all times maintain security equal to the grain warehouse keeper's estimated default exposure, as defined in sub. (1) (b) 1., less ~~the~~

~~following amount: 3. For a license year that begins on September 1, 2005, or later,~~ $20,000,000.

SECTION 50. 126.31 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 51. 126.31 (4) (e) of the statutes is repealed.

SECTION 52. 126.31 (8) (b) of the statutes is repealed.

SECTION 53. 126.32 (5) (a) (intro.) of the statutes is renumbered 126.32 (5) (a) and amended to read:

126.32 **(5)** (a) A grain warehouse keeper shall retain all ~~of the following~~ records required under this section and s. 126.33 (3) for at least 6 years from the date of their creation~~:~~.

SECTION 54. 126.32 (5) (a) 1. and 2. of the statutes are repealed.

SECTION 55. 126.34 (5) (intro.) and (a) of the statutes are amended to read:

126.34 **(5)** PROHIBITED PRACTICES. (intro.) No grain warehouse keeper, or officer, employee, or agent of a grain warehouse keeper, may do any of the following:

(a) Misrepresent the weight, grade, or quality of depositor grain received from or delivered to any person.

SECTION 56. 126.34 (5) (g) of the statutes is created to read:

126.34 **(5)** (g) Assault, threaten, intimidate, or otherwise interfere with an officer, employee, or agent of the department in the performance of his or her duties.

SECTION 57. 126.40 (1) of the statutes is renumbered 126.40 (1) (intro.) and amended to read:

126.40 **(1)** (intro.) "Contributing milk contractor" means a milk contractor who is licensed under s. 126.41 (1), ~~who either has paid one or more quarterly installments under s. 126.46 or is required to contribute to the fund, but the first~~

1 ~~quarterly installment under s. 126.46 (6) is not yet due, and~~ who ~~is~~ has not been
2 disqualified from the fund under s. 126.45 (3)~~.~~, and who either:
3 **SECTION 58.** 126.40 (1) (a) and (b) of the statutes are created to read:
4 126.40 **(1)** (a) Has paid one or more fund assessments under s. 126.46.
5 (b) Is required to contribute to the fund but the first fund assessment under s.
6 126.46 (6) is not yet due.
7 **SECTION 59.** 126.41 (3) (intro.) and (a) of the statutes are amended to read:
8 126.41 **(3)** ANNUAL LICENSE FEES AND SURCHARGES. (intro.) A milk contractor
9 applying for ~~a~~ an annual license under sub. (1) shall include the following fees and
10 surcharges with the license application, unless the department specifies a different
11 fee or surcharge amount by rule:
12 (a) A nonrefundable basic license ~~processing~~ fee of $25~~, regardless of whether~~
13 ~~application is made after the beginning of a license year~~.
14 **SECTION 60.** 126.41 (6) (a) of the statutes is amended to read:
15 126.41 **(6)** (a) The total milk payroll obligations that the applicant incurred
16 during the applicant's last completed fiscal year, less the total amount reported
17 under par. (br) 3., if any. If the applicant has not yet operated as a milk contractor
18 in this state, the applicant shall estimate the total milk payroll obligations that the
19 applicant will incur during the applicant's first complete fiscal year, less the total
20 amount reported under par. (br) 3., if any.
21 **SECTION 61.** 126.41 (6) (b) (intro.) of the statutes is created to read:
22 126.41 **(6)** (b) (intro.) Either of the following amounts:
23 **SECTION 62.** 126.41 (6) (b) of the statutes is renumbered 126.41 (6) (b) 1. and
24 amended to read:

126.41 **(6)** (b) 1. The ~~largest~~ highest amount of unpaid milk payroll obligations that the ~~milk contractor~~ applicant had at any time during the ~~milk contractor's~~ applicant's last completed fiscal year.

SECTION 63. 126.41 (6) (b) 2. of the statutes is created to read:

126.41 **(6)** (b) 2. The highest amount of milk payroll obligations that the applicant incurred in any single month during the applicant's last completed fiscal year.

SECTION 64. 126.41 (6) (bg) of the statutes is created to read:

126.41 **(6)** (bg) The total amount in hundredweight of producer milk that the applicant procured in this state during the applicant's last completed fiscal year, less the total amount reported under par. (br) 2., if any. If the applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total amount in hundredweight of producer milk that the applicant will procure in this state during the applicant's first complete fiscal year, less the total amount reported under par. (br) 2., if any.

SECTION 65. 126.41 (6) (br) of the statutes is created to read:

126.41 **(6)** (br) All of the following information related to each milk producer or producer agent that under s. 126.70 (1) (b) has permanently waived eligibility to file a default claim against the applicant:

1. A copy of the written waiver that the milk producer or producer agent filed under s. 126.70 (1) (c).

2. The total amount in hundredweight of producer milk that the applicant procured in this state from that milk producer or producer agent during the applicant's last completed fiscal year. If the applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total amount in

hundredweight of producer milk that the applicant will procure in this state from that milk producer or producer agent during the applicant's first complete fiscal year.

3. The total milk payroll obligations that the applicant incurred during the applicant's last completed fiscal year for producer milk that the applicant procured from that milk producer or producer agent. If the applicant has not yet operated as a milk contractor in this state, the applicant shall estimate the total milk payroll obligations that the applicant will incur during the applicant's first complete fiscal year for producer milk that the applicant will procure from that milk producer or producer agent.

SECTION 66. 126.41 (9) of the statutes is repealed and recreated to read:

126.41 **(9)** A milk contractor who files and maintains security under s. 126.47 shall provide a monthly report to the department containing either of the following:

(a) The highest amount of the milk contractor's unpaid milk payroll obligations at any time during the preceding month.

(b) The total amount of milk payroll obligations that the milk contractor incurred during the preceding month.

SECTION 67. 126.42 (6) of the statutes is amended to read:

126.42 **(6)** FEE CHANGES. The department may modify the license fees under sub. (1) by rule~~, as provided under s. 126.81 (2)~~.

SECTION 68. 126.44 (1) (a) of the statutes is amended to read:

126.44 **(1)** (a) A milk contractor shall file an annual financial statement with the department before the department first licenses the milk contractor under s. 126.41 (1), unless the milk contractor reports no more than ~~$1,500,000 in annual milk payroll obligations~~ 150,000 hundredweight of milk under s. 126.41 (6) ~~(a)~~ (bg).

SECTION 69. 126.44 (1) (c) 1. of the statutes is amended to read:

126.44 **(1)** (c) 1. A contributing milk contractor who reports no more than ~~$1,500,000 in annual milk payroll obligations~~ 150,000 hundredweight of milk under s. 126.41 (6) ~~(a)~~ (bg).

SECTION 70. 126.44 (5) of the statutes is repealed and recreated to read:

126.44 **(5)** REVIEWED OR AUDITED FINANCIAL STATEMENT. A milk contractor filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the milk contractor reports more than 2,500,000 hundredweight of milk under s. 126.41 (6) (bg), the milk contractor shall file an audited financial statement.

SECTION 71. 126.45 (3) (a) of the statutes is amended to read:

126.45 **(3)** (a) A milk contractor who is required to file security under s. 126.47 (1) (a) is disqualified from the fund until the department releases that security under s. 126.47 (7) (a). ~~This paragraph does not apply, during the period beginning on May 1, 2002, and ending on April 30, 2007, to a qualified producer agent who files security under s. 126.47 (3) (a) 3.~~

SECTION 72. 126.45 (3) (b) of the statutes is renumbered 126.45 (3) (b) (intro.) and amended to read:

126.45 **(3)** (b) (intro.) A milk contractor is disqualified from the fund if the department ~~denies~~ does any of the following:

1. Denies, suspends, or revokes the milk contractor's license.

SECTION 73. 126.45 (3) (b) 2. of the statutes is created to read:

126.45 **(3)** (b) 2. Issues an order under s. 126.85 disqualifying the milk contractor from the fund.

SECTION 74. 126.45 (3) (c) of the statutes is repealed.

SECTION 75. 126.45 (4) (a) of the statutes is amended to read:

126.45 **(4)** (a) A milk contractor disqualified under sub. (3) ~~(c)~~ (b) 2. may not engage in any activities for which a license is required under s. 126.41 (1) (a) if the milk contractor files an annual, quarterly, or interim financial statement under s. 126.44 that shows a current ratio of less than 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity.

SECTION 76. 126.45 (5) of the statutes is created to read:

126.45 **(5)** NOTICE TO PRODUCERS. A milk contractor who is disqualified under sub. (3) shall immediately give written notice of the disqualification to all milk producers and producer agents to whom the milk contractor has unpaid milk payment obligations. The department may by rule or order specify the form and content of the notice.

SECTION 77. 126.46 (1) (intro.) of the statutes is renumbered 126.46 (1) and amended to read:

126.46 **(1)** GENERAL. A contributing milk contractor shall pay an annual fund assessment for each license year~~. Except as provided in sub. (5m), the assessment equals $20 or the sum of the following, whichever is greater, unless~~ in the amount specified by the department by rule ~~specifies a different assessment:~~.

SECTION 78. 126.46 (1) (a) and (b) of the statutes are repealed.

SECTION 79. 126.46 (2) to (5) of the statutes are repealed.

SECTION 80. 126.46 (5m) (intro.) of the statutes is amended to read:

126.46 **(5m)** REDUCED ASSESSMENT FOR CERTAIN MILK CONTRACTORS FILING SECURITY. (intro.) If a contributing milk contractor files security under s. 126.47 (1) (b), the contributing milk contractor's fund assessment is the amount ~~determined~~ specified under sub. (1) reduced by an amount determined as follows:

1 **SECTION 81.** 126.46 (5m) (a) of the statutes is renumbered 126.46 (5m) (a)
2 (intro.) and amended to read:

3 126.46 **(5m)** (a) (intro.) Divide the amount of security that the milk contractor
4 is required to file ~~as determined~~ under s. 126.47 (3) (b) by ~~the amount of the milk~~
5 ~~contractor's estimated default exposure, as defined in s. 126.47 (1) (b) 1.~~ 75 percent
6 of the following:

7 **SECTION 82.** 126.46 (5m) (a) 1. and 2. of the statutes are created to read:

8 126.46 **(5m)** (a) 1. If the milk contractor reports unpaid milk payroll obligations
9 under s. 126.41 (6) (b) 1. and (9) (a), the highest amount of unpaid milk payroll
10 obligations, reported under s. 126.41 (6) (b) 1. or (9) (a), that the milk contractor had
11 at any time during the last 12 months.

12 2. If the milk contractor reports monthly milk payroll obligations under s.
13 126.41 (6) (b) 2. and (9) (b), the highest amount of milk payroll obligations, reported
14 under s. 126.41 (6) (b) 2. or (9) (b), that the milk contractor incurred in any month
15 during the last 12 months.

16 **SECTION 83.** 126.46 (5m) (b) of the statutes is amended to read:

17 126.46 **(5m)** (b) Multiply the amount ~~of the assessment determined~~ specified
18 under sub. (1) by the amount determined under par. (a).

19 **SECTION 84.** 126.47 (1) (a) 1. of the statutes is amended to read:

20 126.47 **(1)** (a) 1. The milk contractor reports more than ~~$1,500,000 in annual~~
21 ~~milk payroll obligations~~ 150,000 hundredweight of milk under s. 126.41 (6) ~~(a)~~ (bg).

22 **SECTION 85.** 126.47 (1) (b) of the statutes is repealed and recreated to read:

23 126.47 **(1)** (b) 1. In this paragraph, "estimated default exposure" means 75
24 percent of the following:

a. If the milk contractor reports unpaid milk payroll obligations under s. 126.41 (6) (b) 1. and (9) (a), the highest amount of unpaid milk payroll obligations, reported under s. 126.41 (6) (b) 1. or (9) (a), that the milk contractor had at any time during the last 12 months.

b. If the milk contractor reports monthly milk payroll obligations under s. 126.41 (6) (b) 2. and (9) (b), the highest amount of milk payroll obligations, reported under s. 126.41 (6) (b) 2. or (9) (b), that the milk contractor incurred in any month during the last 12 months.

2. A milk contractor shall file security with the department, and shall maintain that security until the department releases it under sub. (7) (am), if all of the following apply:

a. The milk contractor's last annual financial statement under s. 126.44 (1) shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 2.0 to 1.0.

b. The milk contractor's estimated default exposure exceeds $20,000,000.

SECTION 86. 126.47 (2) of the statutes is repealed.

SECTION 87. 126.47 (3) (a) (intro.) of the statutes is amended to read:

126.47 **(3)** (a) (intro.) Except as provided in par. (b), a milk contractor who is required to file or maintain security under ~~this section~~ sub. (1) shall at all times maintain ~~the following amount of~~ security in an amount equal to at least 75 percent of the following:

SECTION 88. 126.47 (3) (a) 1. and 2. of the statutes are repealed and recreated to read:

126.47 **(3)** (a) 1. If the milk contractor reports unpaid milk payroll obligations under s. 126.41 (6) (b) 1. and (9) (a), the highest amount of unpaid milk payroll

obligations, reported under s. 126.41 (6) (b) 1. or (9) (b), that the milk contractor had at any time during the last 12 months.

2. If the milk contractor reports monthly milk payroll obligations under s. 126.41 (6) (b) 2. and (9) (b), the highest amount of milk payroll obligations, reported under s. 126.41 (6) (b) 1. or (9) (b), that the milk contractor incurred in any month during the last 12 months.

SECTION 89. 126.47 (3) (a) 3. of the statutes is repealed.

SECTION 90. 126.47 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.47 (3) (b) and amended to read:

126.47 **(3)** (b) A milk contractor who is ~~only~~ required to file or maintain security only under sub. (1) (b) shall at all times maintain security equal to the milk contractor's estimated default exposure, as defined in sub. (1) (b) 1., less ~~the following amount: 3. For a license year that begins on May 1, 2005, or later,~~ $20,000,000.

SECTION 91. 126.47 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 92. 126.47 (4) (e) of the statutes is repealed.

SECTION 93. 126.47 (7) (a) 1. and 2. of the statutes are amended to read:

126.47 **(7)** (a) 1. The milk contractor reports not more than ~~$1,500,000 in milk payroll obligations under s. 126.41 (6) (a)~~ 150,000 hundredweight of milk under s. 126.41 (6) (bg) for at least 2 consecutive years and the milk contractor pays the ~~quarterly~~ fund assessment installment amount that would have been required of the milk contractor if the milk contractor had been a contributing milk contractor on the date when the most recent ~~quarterly~~ installment ~~date~~ under s. 126.46 ~~(6)~~ was due.

2. The milk contractor's annual financial statement under s. 126.44 shows positive equity for at least 2 consecutive years~~, the financial statements are audited or, if the milk contractor reports $6,000,000 or less in annual milk payroll obligations~~

1 ~~under s. 126.41 (6) (a), reviewed,~~ and the milk contractor pays the ~~quarterly~~ fund
2 assessment installment amount that would have been required of the milk
3 contractor if the milk contractor had been a contributing milk contractor on the date
4 when the most recent ~~quarterly~~ installment ~~date~~ under s. 126.46 ~~(6)~~ was due.

5 **SECTION 94.** 126.47 (7) (b) of the statutes is repealed.

6 **SECTION 95.** 126.50 (intro.) of the statutes is amended to read:

7 **126.50 Milk contractors; prohibited practices.** (intro.) No milk
8 contractor, or officer, employee, or agent of a milk contractor, may do any of the
9 following:

10 **SECTION 96.** 126.50 (6) of the statutes is created to read:

11 126.50 **(6)** Assault, threaten, intimidate, or otherwise interfere with an officer,
12 employee, or agent of the department in the performance of his or her duties.

13 **SECTION 97.** 126.56 (4) of the statutes is amended to read:

14 126.56 **(4)** LICENSE FEES AND SURCHARGES. A vegetable contractor applying for
15 a license under sub. (1) shall pay the following fees and surcharges~~, unless~~ in
16 amounts that the department specifies ~~a different fee or surcharge amount~~ by rule:

17 (a) A nonrefundable basic license ~~processing~~ fee ~~of $25~~.

18 (b) A fee ~~of $25 plus 5.75 cents for each $100 in~~ based on the amount of contract
19 obligations reported under sub. (9) (a), less any credit provided under sub. (6), except
20 that this paragraph does not apply to a vegetable contractor to whom par. (f) applies.

21 (c) A license surcharge ~~of $500~~ if the department determines that, within 365
22 days before submitting the license application, the applicant operated as a vegetable
23 contractor without a license in violation of sub. (1). The applicant shall also pay any
24 license fees, license surcharges, and fund assessments that are still due for the
25 license year in which the applicant violated sub. (1).

(d) A license surcharge ~~of $100~~ if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.58 (1) (b) by the applicable deadline.

(e) A license surcharge ~~of $100~~ if a renewal applicant fails to renew a license by the license expiration date of January 31.

(f) ~~If~~ A fee 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~~.

SECTION 98. 126.56 (4m) of the statutes is amended to read:

126.56 **(4m)** EFFECT OF PAYMENT OF SURCHARGE. Payment of a license surcharge under sub. ~~(3)~~ (4) (c) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

SECTION 99. 126.56 (9) (am) of the statutes is created to read:

126.56 **(9)** (am) The amount of contract obligations under par. (a) less any amount under par. (i) 2.

SECTION 100. 126.56 (9) (i) of the statutes is created to read:

126.56 **(9)** (i) All of the following information related to each vegetable producer or producer agent that under s. 126.70 (1) (b) has permanently waived eligibility to file a default claim against the applicant:

1. A copy of the written waiver that the vegetable producer or producer agent filed under s. 126.70 (1) (c).

2. The total amount of contract obligations that the applicant incurred during the applicant's last completed fiscal year under vegetable procurement contracts with that vegetable producer or producer agent. If the applicant has not yet operated

as a vegetable contractor, the applicant shall estimate the total amount of contract obligations that the applicant will incur during the applicant's first complete fiscal year under vegetable procurement contracts with that vegetable producer or producer agent.

SECTION 101. 126.56 (12) of the statutes is repealed and recreated to read:

126.56 **(12)** MONTHLY REPORTS. A vegetable contractor who files security under s. 126.61 shall provide a monthly report to the department showing the highest amount of the vegetable contractor's unpaid contract obligations at any time during the preceding month and the total amount of unpaid contract obligations under deferred payment contracts.

SECTION 102. 126.58 (1) (a) and (b) of the statutes are amended to read:

126.58 **(1)** (a) Except as provided in par. (c), a vegetable contractor shall file an annual financial statement with the department, before the department first licenses the vegetable contractor under s. 126.56 (1), if the vegetable contractor reports more than $500,000 in contract obligations under s. 126.56 (9) ~~(a)~~ (am).

(b) Except as provided in par. (c), a vegetable contractor licensed under s. 126.56 (1) shall file an annual financial statement with the department during each license year if the vegetable contractor's license application for that year reports more than $500,000 in contract obligations under s. 126.56 (9) ~~(a)~~ (am). The vegetable contractor shall file the annual financial statement by the 15th day of the 4th month following the close of the vegetable contractor's fiscal year, except that the department may extend the filing deadline for up to 30 days if the vegetable contractor, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

SECTION 103. 126.58 (3) of the statutes is repealed and recreated to read:

126.58 **(3)** REVIEWED OR AUDITED FINANCIAL STATEMENT. A vegetable contractor filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the amount that the vegetable contractor last reported under s. 126.56 (9) (am) is more than $7,500,000, the vegetable contractor shall file an audited financial statement.

SECTION 104. 126.59 (2) (c) (intro.) of the statutes is renumbered 126.59 (2) (c) and amended to read:

126.59 **(2)** (c) A vegetable contractor is disqualified from the fund, and required to pay cash on delivery under vegetable procurement contracts, if the department issues ~~a written notice~~ an order under s. 126.85 disqualifying the vegetable contractor ~~for cause. Cause may include any of the following:~~ from the fund.

SECTION 105. 126.59 (2) (c) 1. to 4. of the statutes are repealed.

SECTION 106. 126.59 (4) of the statutes is created to read:

126.59 **(4)** NOTICE TO PRODUCERS. A vegetable contractor who is disqualified under sub. (2) (b) or (c) shall immediately give written notice of the disqualification to all vegetable producers and producer agents to whom the vegetable contractor has unpaid obligations under vegetable procurement contracts. The department may by rule or order specify the required form and content of the notice.

SECTION 107. 126.60 (1) (a) and (b) of the statutes are amended to read:

126.60 **(1)** (a) The vegetable contractor's current ratio assessment. The current ratio assessment for a license year equals the vegetable contractor's current ratio assessment rate under sub. (2) multiplied by the amount reported under s. 126.56 (9) ~~(a)~~ (am) in the vegetable contractor's license application for that license year.

126.60 **(1)** (b) The vegetable contractor's debt to equity ratio assessment. The debt to equity ratio assessment for a license year equals the vegetable contractor's

debt to equity ratio assessment rate under sub. (4) multiplied by the amount reported under s. 126.56 (9) ~~(a)~~ (am) in the vegetable contractor's license application for that license year.

SECTION 108. 126.60 (1) (c) of the statutes is repealed.

SECTION 109. 126.60 (5m) (intro.) and (a) of the statutes are amended to read:

126.60 **(5m)** REDUCED ASSESSMENT FOR CERTAIN VEGETABLE CONTRACTORS FILING SECURITY. (intro.) If a vegetable contractor files security under s. 126.61 (1) ~~(bm)~~ (b), the vegetable contractor's assessment is the amount determined under sub. (1) reduced by an amount determined as follows:

(a) Divide the amount of security that the vegetable contractor is required to file as determined under s. 126.61 (3) (b) by the amount of the vegetable contractor's estimated default exposure, as defined in s. 126.61 (1) ~~(bm)~~ (b) 1.

SECTION 110. 126.61 (1) (a) 1. of the statutes is amended to read:

126.61 **(1)** (a) 1. The vegetable contractor reports more than ~~$1,000,000~~ $500,000 in annual contract obligations under s. 126.56 (9) ~~(a)~~ (am).

SECTION 111. 126.61 (1) (b) of the statutes is repealed and recreated to read:

126.61 **(1)** (b) 1. In this paragraph, "estimated default exposure" means 75 percent of the highest amount of unpaid contract obligations, reported by a vegetable contractor under s. 126.56 (9) (b) or (12) that the vegetable contractor had at any time during the last 12 months.

2. Except as provided in par. (c), a vegetable contractor shall file security with the department, and shall maintain that security until the department releases it under sub. (7) (bm), if at any time all of the following apply:

a. The vegetable contractor's latest annual financial statement under s. 126.58 (1) shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

b. The vegetable contractor's estimated default exposure exceeds $20,000,000.

SECTION 112. 126.61 (1) (bm) of the statutes is repealed.

SECTION 113. 126.61 (2) of the statutes is repealed.

SECTION 114. 126.61 (3) (a) (intro.) and 1. of the statutes are consolidated, renumbered 126.61 (3) and amended to read:

126.61 **(3)** Except as provided in par. (b), a vegetable contractor who is required to file or maintain security under this section shall, at all times, maintain security that is at least equal to ~~the sum of the following: 1. Seventy–five~~ 75 percent of the amount of unpaid contract obligations last reported under s. 126.56 (9) (b) or (12) ~~(a)~~, except that this amount is not required of a contributing vegetable contractor.

SECTION 115. 126.61 (3) (a) 2. of the statutes is repealed.

SECTION 116. 126.61 (3) (b) (intro.) and 3. of the statutes are consolidated, renumbered 126.61 (3) (b) and amended to read:

126.61 **(3)** (b) A vegetable contractor who is ~~only~~ required to file or maintain security only under sub. (1) ~~(bm)~~ (b) shall at all times maintain security equal to the vegetable contractor's estimated default exposure, as defined in sub. (1) ~~(bm)~~ (b) 1., less ~~the following amount: 3. For a license year that begins on February 1, 2005, or later,~~ $20,000,000.

SECTION 117. 126.61 (3) (b) 1. and 2. of the statutes are repealed.

SECTION 118. 126.61 (4) (e) of the statutes is repealed.

SECTION 119. 126.61 (7) (a) (intro.) of the statutes is amended to read:

126.61 **(7)** (a) (intro.) The department may release security filed under sub. (1) (a), except for any amount of security that the vegetable contractor is required to file because sub. (1) (b) ~~or (bm)~~ applies to the vegetable contractor, if any of the following applies:

SECTION 120. 126.61 (7) (a) 1. of the statutes is amended to read:

126.61 **(7)** (a) 1. The vegetable contractor reports less than ~~$1,000,000~~ $500,000 in annual contract obligations under s. 126.56 (9) (a) for at least 2 consecutive years and the vegetable contractor pays the quarterly fund assessment that would have been required of the vegetable contractor if the vegetable contractor had been a contributing vegetable contractor on the most recent quarterly installment date under s. 126.60 (6).

SECTION 121. 126.61 (7) (b) of the statutes is repealed.

SECTION 122. 126.61 (7) (bm) of the statutes is amended to read:

126.61 **(7)** (bm) The department may release security filed under sub. (1) ~~(bm)~~ (b), except for any amount of security that the vegetable contractor is required to file because sub. (1) (a) ~~or (b)~~ applies to the vegetable contractor, if the vegetable contractor files 2 consecutive annual financial statements under s. 126.58 showing that the vegetable contractor no longer has negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

SECTION 123. 126.61 (7) (c) of the statutes is repealed.

SECTION 124. 126.62 (2) (intro.) of the statutes is renumbered 126.62 (2) and amended to read:

126.62 **(2)** RECORDS RETENTION. A vegetable contractor shall keep all ~~of the following~~ records required under sub. (1) for at least 6 years from the date of their creation~~:~~.

1 **SECTION 125.** 126.62 (2) (a) and (b) of the statutes are repealed.

2 **SECTION 126.** 126.63 (4) (c) of the statutes is repealed and recreated to read:

3 126.63 **(4)** (c) A vegetable contractor may pay after January 31 for processing
4 vegetables delivered on or before December 31, in accordance with a deferred
5 payment contract, if all of the following apply:

6 1. The vegetable contractor complies with sub. (5).

7 2. The deferred payment contract specifies a date by which full payment must
8 be paid.

9 3. The deferred payment contract clearly and conspicuously discloses that the
10 vegetable producer or producer agent is disqualified from filing a default claim under
11 s. 126.70 in the event that the vegetable contractor defaults on payment under the
12 deferred payment contract. The department may by rule or order specify the form
13 and content of the disclosure.

14 **SECTION 127.** 126.64 (intro.) of the statutes is amended to read:

15 **126.64 Vegetable contractors; prohibited practices.** (intro.) No vegetable
16 contractor, or officer, employee, or agent of a vegetable contractor, may do any of the
17 following:

18 **SECTION 128.** 126.64 (7) of the statutes is created to read:

19 126.64 **(7)** Assault, threaten, intimidate, or otherwise interfere with an officer,
20 employee, or agent of the department in the performance of his or her duties.

21 **SECTION 129.** 126.70 (1) of the statutes is renumbered 126.70 (1) (a), and 126.70
22 (1) (a) (intro.), as renumbered, is amended to read:

23 126.70 **(1)** (a) (intro.) ~~Any~~ A person who is one of the following ~~persons~~ may file
24 a default claim with the department against a contractor who is licensed, or required

1 to be licensed, under this chapter, unless the person has waived eligibility to file a
2 claim as provided in pars. (b) and (c):

3 **SECTION 130.** 126.70 (1) (b) and (c) of the statutes are created to read:

4 126.70 **(1)** (b) A producer or producer agent may permanently waive eligibility
5 to file a default claim against a grain dealer, milk contractor, or vegetable contractor
6 if, at the time of the waiver, any of the following applies:

7 1. The producer or producer agent has a greater than 50 percent ownership
8 interest in the grain dealer, milk contractor, or vegetable contractor.

9 2. Persons who collectively have a greater than 50 percent ownership interest
10 in the producer or producer agent also collectively have a greater than 50 percent
11 ownership interest in the grain dealer, milk contractor, or vegetable contractor.

12 (c) A producer or producer agent shall file a waiver under par. (b) with the
13 department in writing, on a form provided by the department. In the waiver, the
14 producer or producer agent shall include documentation to show that the
15 requirements in par. (b) are satisfied and that the individuals signing the waiver are
16 authorized to do so on behalf of the producer or producer agent.

17 **SECTION 131.** 126.70 (4) (title) of the statutes is amended to read:

18 126.70 **(4)** (title) AUDITING AND DISALLOWING CLAIMS.

19 **SECTION 132.** 126.70 (4) (f) to (k) of the statutes are created to read:

20 126.70 **(4)** (f) That the defaulting contractor paid the amount due by check, but
21 the claimant failed to present the check for payment within 30 days of receipt.

22 (g) That the claim relates to a payment that first became due, under a deferred
23 payment contract for grain, more than 120 days after the grain was delivered to the
24 defaulting grain dealer.

1 (h) That the claim relates to a payment that first became due, under a deferred
2 payment contract for processing vegetables, after January 31 of any year for
3 processing vegetables tendered or delivered to a vegetable contractor on or before
4 December 31 of the preceding year.

5 (i) That the claim relates to grain, milk, or vegetables that were never tendered
6 to or received and accepted by the defaulting grain dealer, milk contractor, or
7 vegetable contractor. This paragraph does not apply to unharvested acreage, as
8 defined in s. 126.55 (17).

9 (j) That the claimant has, under sub. (1) (b), permanently waived eligibility to
10 file the claim.

11 (k) That any of the following circumstances exists and causes the claim to be
12 an unfair or unreasonable claim against the fund, regardless of whether the claimant
13 has, under sub. (1) (b), waived the claim:

14 1. The claimant had a greater than 50 percent ownership interest in the
15 defaulting contractor at the time of the default or at relevant times before the default.

16 2. Persons who collectively had a greater than 50 percent ownership interest
17 in the claimant also had a greater than 50 percent ownership interest in the
18 defaulting contractor at the time of the default or at relevant times before the default.

19 3. The claimant, or any of the claimant's owners, officers, or managers, had
20 substantial management control, at the time of the default or at relevant times
21 before the default, over any of the defaulting contractor's operations involved in the
22 default.

23 4. The claimant, or any of the claimant's owners, officers, or managers,
24 conspired with the defaulting contractor, or any of the defaulting contractor's

owners, officers, or managers, to create a default and a resulting claim against the fund.

5. Other circumstances that the department specifies by rule.

SECTION 133. 126.70 (6) (g) of the statutes is created to read:

126.70 **(6)** (g) Specify any further actions required of a claimant, including any further actions required to obtain payment under a trade credit insurance policy or other contingent financial backing under s. 126.06.

SECTION 134. 126.71 (1) (a) (intro.) of the statutes is amended to read:

126.71 **(1)** (a) (intro.) ~~Except as provided in par. (d) or (e), for~~ For each default claim allowed under s. 126.70 against a grain dealer or milk contractor who was a contributing contractor when the default occurred:

SECTION 135. 126.71 (1) (d) and (e) of the statutes are repealed.

SECTION 136. 126.71 (3) (a) 1. to 3. of the statutes are repealed.

SECTION 137. 126.72 (2) of the statutes is amended to read:

126.72 **(2)** PROCEEDS OF CONTINGENT FINANCIAL BACKING. The department, at the direction of the secretary of agriculture, trade and consumer protection, shall draw on the contingent financial backing acquired under s. 126.06 to make payments authorized under s. 126.71 (1), to the extent that those payments exceed the deductible amount in sub. (3). If the contingent financial backing is in the form of a trade credit insurance policy that appears to cover the authorized payments, the department shall file a claim against the policy.

SECTION 138. 126.73 (1) of the statutes is amended to read:

126.73 **(1)** ~~PAYMENTS FROM THE FUND~~ GENERALLY. ~~The~~ Except as provided in sub. (2) or (3), the department may demand and collect~~,~~ from a contractor~~,~~ any claim amounts that the department pays under s. 126.72 (1) or under s. 126.72 (2) with the

proceeds of ~~a loan under s. 126.06 (1) (b)~~ contingent financial backing under s. 126.06 (1) because of the contractor's default.

SECTION 139. 126.73 (3) of the statutes is created to read:

126.73 **(3)** TRADE CREDIT INSURANCE PAYMENTS. If the department files a claim against a trade credit insurance policy under s. 126.72 (2) and obtains and uses proceeds from the insurance policy to make payments authorized under s. 126.72 (2), the trade credit insurer may demand and collect the amount of those payments from the defaulting contractor.

SECTION 140. 126.81 (intro.) and (1) of the statutes are renumbered 126.81 (1) (intro.) and (a).

SECTION 141. 126.81 (1) (c) of the statutes is created to read:

126.81 **(1)** (c) Specify additional circumstances for denying claims under s. 126.70 (4) (k).

SECTION 142. 126.81 (2) of the statutes is renumbered 126.81 (1) (b) and amended to read:

126.81 **(1)** (b) Modify the license fees and surcharges ~~provided in~~ under s. ~~126.11 (4), 126.26 (3),~~ 126.41 (3)~~, 126.42, or 126.56 (4)~~.

SECTION 143. 126.81 (2m) of the statutes is created to read:

126.81 **(2m)** The department shall promulgate rules to do all of the following:

(a) Specify license fees and surcharges under ss. 126.11 (4), 126.26 (3), and 126.56 (4).

(b) Specify fund assessments under s. 126.46 (1).

SECTION 144. 126.81 (3) of the statutes is repealed.

SECTION 145. 126.81 (4) of the statutes is renumbered 126.81 (d).

SECTION 146. 126.85 (1) of the statutes is amended to read:

1 126.85 **(1)** GENERAL. The department may, by special order, require a contractor
2 to remedy a violation of this chapter ~~or~~, a rule promulgated under this chapter, or a
3 condition imposed under s. 126.86 (1). The department may order the contractor to
4 take specific remedial actions, including actions to remedy deficiencies or to prevent
5 losses to persons protected under this chapter. In an order under this subsection, the
6 department may disqualify the contractor from the fund pending compliance with
7 the order. Except as provided in sub. (2), the department shall give the contractor
8 notice and an opportunity for hearing before the department issues an order.

9 **SECTION 147.** 126.85 (2) (h) and (i) of the statutes are created to read:

10 126.85 **(2)** (h) A contractor fails to file a financial statement with the
11 department by the time or in the form required under this chapter.

12 (i) A contractor fails to pay an amount owed under s. 126.73 within 60 days after
13 the contractor receives a written demand for payment from the department or other
14 person to whom payment is due under s. 126.73.

15 **SECTION 148.** 126.86 (1) (f) of the statutes is repealed and recreated to read:

16 126.86 **(1)** (f) The contractor fails to pay an amount owed under s. 126.73 within
17 60 days after the contractor receives a written demand for payment from the
18 department or other person to whom payment is due under s. 126.73.

19 **SECTION 149.** 126.86 (1) (g) of the statutes is repealed.

20 **SECTION 150.** 126.86 (3) (a) of the statutes is amended to read:

21 126.86 **(3)** (a) The department may, without prior notice or hearing, summarily
22 suspend, revoke, or impose conditions on a license held by a contractor if the
23 department finds that any of the conditions identified in s. 126.85 (2) exist or
24 otherwise finds that summary action is necessary to prevent a clear and imminent

threat of harm to persons protected under this chapter. ~~Conditions indicating a clear and imminent threat of harm include those identified in s. 126.85 (2).~~

SECTION 151. 126.88 of the statutes is renumbered 126.88 (1) and amended to read:

126.88 **(1)** The department may by rule modify the fund assessments provided under s. 126.15, 126.30, ~~126.46,~~ or 126.60. The department shall modify fund assessments under ss. 126.15, 126.30, 126.46, and 126.60 as necessary to do all of the following:

(a) Maintain an overall fund balance of at least $5,000,000 ~~after January 1, 2006~~, but not more than $22,000,000 ~~at any time~~.

(b) Maintain a fund balance attributable to grain dealers of at least $1,000,000 ~~after January 1, 2006~~, but not more than $6,000,000 ~~at any time~~.

(c) Maintain a fund balance attributable to grain warehouse keepers of at least $200,000 ~~after January 1, 2006~~, but not more than $1,000,000 ~~at any time~~.

(d) Maintain a fund balance attributable to milk contractors of at least $3,000,000 ~~after January 1, 2006~~, but not more than $12,000,000 ~~at any time~~.

(e) Maintain a fund balance attributable to vegetable contractors of at least $800,000 ~~after January 1, 2006~~, but not more than $3,000,000 ~~at any time~~.

SECTION 152. 126.88 (2) of the statutes is created to read:

126.88 **(2)** (a) If the fund balance for a portion of the fund under sub. (1) (b) to (e) falls below the minimum amount required for that portion of the fund, the department shall by rule modify the assessment rates for the type of contractor that contributes to that portion of the fund so that the assessment rates are adequate to reach and maintain the minimum balance within a reasonable time.

1 (b) The department may use the procedure under s. 227.24 to promulgate a rule
2 modifying an assessment under par. (a). In a rule promulgated under this
3 paragraph, the department may not provide that the modification of an assessment
4 takes effect before the beginning of the next license year. Notwithstanding s. 227.24
5 (1) (c) and (2), a rule promulgated under this paragraph may remain in effect for not
6 more than 24 months. Notwithstanding s. 227.24 (1) (a) and (3), the department is
7 not required to determine that promulgating a rule under this paragraph as an
8 emergency rule is necessary for the preservation of the public peace, health, safety,
9 or welfare and is not required to provide a finding of emergency for a rule
10 promulgated under this paragraph.

11 **(END)**

Duerst, Christina

From: Nilsestuen, Joel
Sent: Friday, February 05, 2010 12:06 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3286/1 Topic: Changes in agricultural producer security program

Please Jacket LRB 09-3286/1 for the SENATE.