



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 635

**Assembly Substitute
Amendment 1 and Assembly
Amendment 1**

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Current law creates the Agriculture Producer Security Program. This program protects the producers of milk, grain, and vegetables in the event that a person who purchases the milk, grain, or vegetables defaults on the promise to pay the producers. The purchasers of these agricultural commodities are required to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP) and to make payments into a trust fund. In the event of a default by the purchaser on payments to producers, the trust fund is available to reimburse producers for approximately 90% of the amount in default.

Assembly Bill 635 authorizes certain vegetable purchasers who are licensed by DATCP and who purchase only potatoes for processing to withdraw from the Agriculture Producer Security Program. If the potato buyer opts out of the program and defaults on a contract with a farmer, the farmer is not eligible for reimbursement under the program.

In order to be able to withdraw from the Agriculture Producer Security Program, a potato buyer must be licensed by the federal government under the Perishable Agricultural Commodities Act (PACA). Under PACA, farmers have a first claim on assets in the event of a bankruptcy of a purchaser. Under the bill, a potato buyer must agree not to enter into any purchasing contracts in which payment is due more than 30 days after it receives potatoes and must provide notice to farmers that the potato buyer does not participate in the Agriculture Producer Security Program. A potato buyer who opts out of the program is exempt from most of the requirements of the program.

Assembly Substitute Amendment 1 makes a number of changes to Assembly Bill 635.

With respect to the fees paid by potato buyers who opt out of the Agriculture Producer Security Program, the bill imposes a fee of \$500 for that buyer in addition to the existing annual license fee, which is \$25 plus 5.75 cents per \$100 in total annual contract obligations of the buyer. The substitute amendment retains the \$500 fee for a buyer who opts out and exempts that buyer from the annual license fee.

Under the bill, a potato buyer must give DATCP a statement promising that the buyer will not enter an unwritten contract to take control of potatoes more than 20 days before payment and has no unpaid obligations under an unwritten contract to take control of potatoes more than 20 days before payment. This statement is one of the conditions in order for the potato buyer to opt out of the Agriculture Producer Security Program. The substitute amendment changes the 20-day limit for unwritten contracts under the bill to 10 days.

In order to resume participation in the Agriculture Producer Security Program, the potato buyer must obtain a security bond to cover potential default, and provide financial information to DATCP. The substitute amendment requires the potato buyer to give 30 days notice to DATCP that the buyer intends to resume participation in the Agriculture Producer Security Program. The buyer must file security with DATCP equal to 75% of the highest amount owed to Wisconsin producers at any time in the fiscal year. Under the substitute amendment, the security must be kept at least two years, or for a longer time period as required by DATCP. Under the substitute amendment, a buyer who resumes participation in the program must commence making annual license fee payments at the beginning of the second license year after resuming participation.

The bill specifies how DATCP must handle mergers of a participating and nonparticipating potato buyer. The substitute amendment deletes this provision and allows DATCP to deal with each merger based on the specific facts of the situation.

The bill does not have a specific effective date and thus takes effect the day after publication. The substitute amendment has an effective date of February 1, 2006, which coincides with the beginning of the license year under the Agriculture Producer Security Program.

Assembly Amendment 1 to Assembly Substitute Amendment 1 corrects an error in a cross-reference in the substitute amendment.

Legislative History

Assembly Substitute Amendment 1 was offered by Representative Ballweg on October 25, 2005 and Assembly Amendment 1 to Assembly Substitute Amendment 1 was offered to the Assembly Committee on Agriculture on October 27, 2005. The Assembly Committee on Agriculture recommended adoption of Assembly Substitute Amendment 1, as amended, on October 31, 2005 by a vote of Ayes, 14; Noes, 0. The Assembly Committee on Agriculture recommended passage of the bill, as amended, on October 31, 2005, on a vote of Ayes, 13; Noes, 1.

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