



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 630**

March 5, 1996 – Offered by Representatives OTT, KLUSMAN, BRANCEL, ALBERS,
SPRINGER, BALDUS, REYNOLDS and WILDER.

1 **AN ACT to repeal** 100.03 (1) (n), 100.03 (1) (zp), 100.03 (8) (b) 6. and 100.03 (8)
2 (bm); **to renumber and amend** 100.03 (1) (e); **to amend** 20.115 (1) (gm), 97.29
3 (4), 100.03 (title), 100.03 (1) (a) (intro.), 100.03 (1) (f), 100.03 (1) (v) to (wm),
4 100.03 (1) (zm), 100.03 (2) (a), 100.03 (3) (a) 2., 100.03 (3) (b), 100.03 (4) (a),
5 100.03 (4) (c), 100.03 (4) (f), 100.03 (5) (a) 2., 100.03 (5) (b), 100.03 (5) (c), 100.03
6 (5) (e), 100.03 (6) (a), 100.03 (6) (b) 1., 100.03 (6) (b) 3., 100.03 (6) (b) 4., 100.03
7 (7) (a) 1., 100.03 (7) (c) (intro.), 100.03 (7) (c) 1., 100.03 (15) (title), 100.03 (15)
8 (a) (intro.), 100.03 (15) (c), 100.03 (18) and 100.03 (19) (a) (intro.); **to repeal and**
9 **recreate** 100.03 (7) (a) 2.; and **to create** 100.03 (1) (ym), 100.03 (1) (zs), 100.03
10 (4m), 100.03 (5) (am), 100.03 (7) (a) 3., 100.03 (8) (cm) and 100.03 (8) (e) of the
11 statutes; **relating to:** fruit and vegetable producer security.

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

12 **SECTION 1.** 20.115 (1) (gm) of the statutes, as affected by 1995 Wisconsin Act 27,
13 is amended to read:

1 20.115 (1) (gm) (title) *Dairy trade regulation; dairy ~~and farm product and~~*
2 *vegetable producer security*. The amounts in the schedule for the regulation of farm
3 ~~product~~ vegetable procurement under s. 100.03, of dairy plant financial condition
4 under s. 100.06 and of dairy trade practices under s. 100.201. All moneys received
5 under ss. 100.03 (3) (a) 3., 100.06 (9) and 100.201 (6) shall be credited to this
6 appropriation.

7 **SECTION 2.** 97.29 (4) of the statutes is amended to read:

8 97.29 (4) (title) ~~FOOD PROCESSING PLANTS BUYING FARM PRODUCTS~~ VEGETABLES
9 FROM PRODUCERS. The department may not issue or renew a license to operate a food
10 processing plant to any applicant who is a contractor, as defined in s. 100.03 (1) (f),
11 unless the applicant has filed all financial information and any security that is
12 required under s. 100.03. If an applicant has not filed all financial information and
13 any security that is required under s. 100.03, the department may issue a conditional
14 license under s. 93.06 (8) that prohibits the licensed operator from procuring ~~farm~~
15 ~~products~~ vegetables from a producer or a producer's agent, but allows the operator
16 to procure ~~farm products~~ vegetables from other sources.

17 **SECTION 3.** 100.03 (title) of the statutes is amended to read:

18 **100.03** (title) ~~Farm product~~ Vegetable procurement; financial security;
19 grading and tare.

20 **SECTION 4.** 100.03 (1) (a) (intro.) of the statutes is amended to read:

21 100.03 (1) (a) (intro.) "Affiliate" means any of the following persons or business
22 entities that procures ~~farm products~~ vegetables for use by an operator:

23 **SECTION 5.** 100.03 (1) (e) of the statutes is renumbered 100.03 (1) (bm) and
24 amended to read:

1 100.03 (1) (bm) “Certified Audited financial statement” means a financial
2 statement that, in the accompanying opinion of an independent certified public
3 accountant or a public accountant holding a certificate of authority under ch. 442,
4 fairly and in all material respects represents the financial position of the contractor,
5 the results of the contractor’s operations and the contractor’s cash flows in
6 conformity with generally accepted accounting principles.

7 **SECTION 6.** 100.03 (1) (f) of the statutes is amended to read:

8 100.03 (1) (f) “Contractor” means a person who buys ~~farm products~~ vegetables
9 grown in this state from a producer, or who contracts with a producer to grow ~~farm~~
10 ~~products~~ vegetables in this state, regardless of whether the contractor is located in
11 this state or is engaged in food processing. “Contractor” does not include any of the
12 following:

13 1. A person who procures ~~fruits and~~ vegetables primarily for unprocessed fresh
14 market use and is licensed under the federal perishable agricultural commodities
15 act, 7 USC 499.

16 2. A restaurant or retail food establishment that procures ~~farm products~~
17 vegetables solely for retail sale at the restaurant or retail food establishment.

18 **SECTION 7.** 100.03 (1) (n) of the statutes is repealed.

19 **SECTION 8.** 100.03 (1) (v) to (wm) of the statutes are amended to read:

20 100.03 (1) (v) “Payment on delivery” means cash payment of the full agreed
21 price for a ~~farm product~~ vegetable when the ~~farm product~~ vegetable is tendered or
22 delivered to a contractor, or cash payment of the full agreed price within 72 hours
23 after delivery if the ~~farm product~~ vegetable is graded.

24 (vm) “Procurement contract” means an oral or written agreement between a
25 contractor and a producer, under which the contractor buys a ~~farm product~~ vegetable

1 grown in this state from the producer or contracts with the producer to grow a farm
2 ~~product~~ vegetable in this state.

3 (w) "Producer" means a person who produces and sells a ~~farm product~~
4 vegetable, or who grows a ~~farm product~~ vegetable under contract.

5 (wm) "Producer claim" means a claim held by a producer for his or her ~~farm~~
6 ~~products~~ vegetables.

7 **SECTION 9.** 100.03 (1) (ym) of the statutes is created to read:

8 100.03 (1) (ym) "Reviewed financial statement" means a financial statement,
9 other than an audited financial statement, that is all of the following:

- 10 1. Sworn and notarized by the contractor.
- 11 2. Reviewed according to generally accepted accounting principles by an
12 independent certified public accountant or a public accountant holding a certificate
13 of authority under ch. 442.

14 **SECTION 10.** 100.03 (1) (zm) of the statutes is amended to read:

15 100.03 (1) (zm) "Subsidiary" means a corporation or business entity that is
16 owned, controlled or operated by an operator, and that procures a ~~farm product~~
17 vegetable for use by the operator.

18 **SECTION 11.** 100.03 (1) (zp) of the statutes is repealed.

19 **SECTION 12.** 100.03 (1) (zs) of the statutes is created to read:

20 100.03 (1) (zs) "Vegetable" means any vegetable that is grown or sold for use
21 in food processing, whether or not that vegetable is actually processed as food.
22 "Vegetable" includes sweet corn, but does not include grain.

23 **SECTION 13.** 100.03 (2) (a) of the statutes is amended to read:

24 100.03 (2) (a) *Requirement.* No contractor may enter into a procurement
25 contract with a producer unless the contractor holds a registration certificate from

1 the department. A registration certificate expires on ~~March~~ January 31 annually
2 and is not transferable.

3 **SECTION 14.** 100.03 (3) (a) 2. of the statutes is amended to read:

4 100.03 (3) (a) 2. Unless the department by rule establishes a different fee, a fee
5 of one cent for each \$100 in the total contractual obligations reported under sub. (4)
6 (a). The fee under this subdivision is not required if all ~~farm product~~ vegetable
7 grading is performed or supervised by the department under contract with the
8 contractor.

9 **SECTION 15.** 100.03 (3) (b) of the statutes is amended to read:

10 100.03 (3) (b) *Surcharge for operating without a registration certificate.* A
11 contractor who applies for a registration certificate under sub. (2) shall pay a
12 surcharge of \$500 if the department determines that, within 365 days before
13 submitting the application, the contractor procured a ~~farm product~~ vegetable from
14 a producer without a registration certificate in violation of sub. (2). Payment of the
15 surcharge does not relieve the contractor of any other civil or criminal liability that
16 results from the procurement of the ~~farm product~~ vegetable, but it does not constitute
17 evidence of any law violation.

18 **SECTION 16.** 100.03 (4) (a) of the statutes is amended to read:

19 100.03 (4) (a) The contractor's total paid and unpaid contractual obligations to
20 producers, for ~~farm products~~ vegetables tendered or delivered, that have accrued
21 during the registration year immediately preceding the registration year for which
22 application is made.

23 **SECTION 17.** 100.03 (4) (c) of the statutes is amended to read:

24 100.03 (4) (c) The contractor's anticipated maximum liability to producers
25 during the registration year for which application is made. The application shall

1 state if the contractor anticipates a maximum liability of zero. If so, the application
2 also shall state whether the contractor anticipates a maximum liability of zero
3 because the contractor plans to make cash payment on delivery under every
4 procurement contract, or because the contractor plans to procure all ~~farm products~~
5 vegetables from another contractor. A contractor shall immediately notify the
6 department in writing if, at any time during the registration year, the contractor has
7 reason to believe that the contractor's maximum liability will exceed the maximum
8 liability previously anticipated and reported to the department.

9 **SECTION 18.** 100.03 (4) (f) of the statutes is amended to read:

10 100.03 (4) (f) Whether the contractor is a producer-owned cooperative or
11 organization doing business on a cooperative pooling basis with its producer owners,
12 and whether the producer-owned cooperative or organization procures any ~~farm~~
13 ~~products~~ vegetables from producers who are not its producer owners.

14 **SECTION 19.** 100.03 (4m) of the statutes is created to read:

15 100.03 (4m) RESIDUAL PAYMENT LIABILITY. As part of or in addition to the
16 statement required by sub. (4), the contractor or officer of the contractor shall submit
17 a sworn and notarized statement indicating whether the contractor has failed to pay
18 any liability to a producer that became due and payable during the registration year
19 ending January 31. The statement shall be submitted before February 5. The
20 statement may not be submitted before February 1, except that the statement may
21 be submitted at such earlier time as the contractor has paid all liabilities to
22 producers that are due and payable on or before January 31.

23 **SECTION 20.** 100.03 (5) (a) 2. of the statutes is amended to read:

24 100.03 (5) (a) 2. Except as provided under par. (c), a contractor shall file an
25 annual financial statement with the department as a condition to the renewal or

1 continuation of the contractor's registration certificate under sub. (2). An annual
2 financial statement shall be filed by the 15th day of the 4th month commencing after
3 the close of the contractor's fiscal year, except that the department may, for cause,
4 extend the deadline for filing the annual financial statement for up to 30 days.

5 **SECTION 21.** 100.03 (5) (am) of the statutes is created to read:

6 100.03 (5) (am) *Interim statement.* Except as provided in par. (c), a contractor
7 shall file an interim statement as of the quarter that ends closest to November 30
8 with each application for renewal.

9 **SECTION 22.** 100.03 (5) (b) of the statutes is amended to read:

10 100.03 (5) (b) (title) *Additional ~~or~~ interim financial statement.*
11 Notwithstanding par. (c), the department may require a contractor to file ~~a~~ an
12 annual financial statement or interim statement at any time. The department may
13 require that a financial statement required under this paragraph be an audited
14 financial statement or a reviewed financial statement.

15 **SECTION 23.** 100.03 (5) (c) of the statutes is amended to read:

16 100.03 (5) (c) *Exemptions.* ~~Paragraph (a) does~~ Paragraphs (a) and (am) do not
17 apply to any of the following:

18 1. A contractor who either plans to make payment on delivery for all farm
19 products vegetables tendered or delivered by producers, or to procure all farm
20 products vegetables from another contractor, and who submits a sworn and
21 notarized statement to that effect under sub. (4) (c).

22 2. A contractor who files security with the department under sub. (8), except
23 for a contractor who files security under sub. (8) (cm).

1 3. A producer-owned cooperative or organization that procures farm products
2 vegetables solely on a cooperative pooling basis from its producer owners, and that
3 submits under sub. (4) a sworn and notarized statement to that effect.

4 **SECTION 24.** 100.03 (5) (e) of the statutes is amended to read:

5 100.03 (5) (e) (title) ~~Certified or verified~~ Audited or reviewed financial
6 statement. A financial statement under ~~this subsection may~~ par. (a) shall be a
7 ~~certified or verified~~ an audited financial statement or a reviewed financial
8 statement, except that if during the year to which that financial statement pertains
9 a contractor incurred total contractual obligations to producers, as reported under
10 sub. (4) (a), of more than \$250,000, the financial statement under par. (a) shall be
11 certified an audited financial statement.

12 **SECTION 25.** 100.03 (6) (a) of the statutes is amended to read:

13 100.03 (6) (a) *Full payment required.* Except as provided under par. (c) or (d),
14 the department may not issue or renew a registration certificate under sub. (2)
15 unless the contractor has submitted a statement under sub. (4m) that shows that the
16 contractor has paid all liabilities to producers that are due and payable before ~~the~~
17 ~~date of application, as indicated by a sworn and notarized statement under sub. (4)~~
18 ~~(d)~~ January 31. Notwithstanding par. (b), a contractor shall make payment on
19 delivery unless the contractor meets the minimum financial standards under sub.
20 (7) or files security with the department under sub. (8).

21 **SECTION 26.** 100.03 (6) (b) 1. of the statutes is amended to read:

22 100.03 (6) (b) 1. If a procurement contract does not specify a payment date in
23 writing, the contractor shall pay a liability to a producer by the 15th day of the month
24 immediately following the month in which the producer tendered or delivered the

1 ~~farm products~~ vegetables under the contract, or by an earlier date agreed upon
2 between the parties.

3 **SECTION 27.** 100.03 (6) (b) 3. of the statutes is amended to read:

4 100.03 (6) (b) 3. By January 31 of each registration year, a contractor shall pay
5 for all ~~farm products~~ vegetables that were delivered by producers on or before
6 December 31 of that registration year. This requirement does not apply if a written
7 contract specifying a later payment date was approved by a vote of producers who
8 delivered ~~farm products~~ vegetables to the contractor during the preceding
9 registration year. To obtain the approval of producers, a contractor shall give
10 advance written notice to every eligible producer. The notice shall include a copy of
11 the proposed contract and shall announce a meeting at which producers will be asked
12 to vote on the proposed contract. The notice shall also include a mail ballot by which
13 a producer may cast his or her vote without attending the meeting. Voting shall be
14 by secret ballot. The proposed contract shall be approved by a majority of the
15 producers who vote on the proposed contract. The contractor shall file a sworn
16 statement with the department, on a form provided by the department, certifying the
17 results of the balloting.

18 **SECTION 28.** 100.03 (6) (b) 4. of the statutes is amended to read:

19 100.03 (6) (b) 4. If a producer tenders or delivers ~~farm products~~ vegetables to
20 a contractor after December 31 of any registration year, the contractor shall pay the
21 producer for the ~~farm products~~ vegetables by the 15th day of the month following the
22 month in which the ~~farm products~~ vegetables were tendered or delivered, or ~~within~~
23 30 days by the 30th day after tender or delivery, whichever is later.

24 **SECTION 29.** 100.03 (7) (a) 1. of the statutes is amended to read:

1 100.03 (7) (a) 1. ~~The contractor's~~ A minimum ratio of current assets to current
2 liabilities shall be at least ~~of 1.2 to 1~~ 1.0 on its annual financial statement.

3 **SECTION 30.** 100.03 (7) (a) 2. of the statutes is repealed and recreated to read:

4 100.03 (7) (a) 2. A minimum ratio of current assets to current liabilities of 1.0
5 to 1.0 at all times of the year other than the end of the contractor's fiscal year.

6 **SECTION 31.** 100.03 (7) (a) 3. of the statutes is created to read:

7 100.03 (7) (a) 3. Equity equal to at least 20% of total assets on its annual
8 financial statement and at least 10% at all other times.

9 **SECTION 32.** 100.03 (7) (c) (intro.) of the statutes is amended to read:

10 100.03 (7) (c) *Exemptions.* (intro.) ~~A Paragraph (a) does not apply to a~~
11 contractor is not required to meet the financial standards under par. (a) if any of the
12 following applies:

13 **SECTION 33.** 100.03 (7) (c) 1. of the statutes is amended to read:

14 100.03 (7) (c) 1. The contractor makes payment on delivery for all farm
15 products vegetables obtained from producers.

16 **SECTION 34.** 100.03 (8) (b) 6. of the statutes is repealed.

17 **SECTION 35.** 100.03 (8) (bm) of the statutes is repealed.

18 **SECTION 36.** 100.03 (8) (cm) of the statutes is created to read:

19 100.03 (8) (cm) *Transitional security amounts.* Notwithstanding par. (c), a
20 contractor who does not meet the financial standards under sub. (7) but who does
21 have a ratio of current assets to current liabilities of at least 1.2 to 1.0 on its annual
22 financial statement and whose total assets exceed total liabilities shall file security
23 in at least the following amounts for the license years indicated:

1 1. For the first license year beginning after the effective date of this subdivision
2 [revisor inserts date], 25% of the contractor's anticipated maximum liability to
3 growers of vegetables.

4 2. For the 2nd license year beginning after the effective date of this subdivision
5 [revisor inserts date], 50% of the contractor's anticipated maximum liability to
6 growers of vegetables.

7 **SECTION 37.** 100.03 (8) (e) of the statutes is created to read:

8 100.03 (8) (e) *Prohibition.* No contractor may assess a separate line item
9 deduction from the payment to the grower to recover the cost of security filed under
10 this section.

11 **SECTION 38.** 100.03 (15) (title) of the statutes is amended to read:

12 100.03 (15) (title) ~~FARM PRODUCT~~ VEGETABLE GRADING AND TARE.

13 **SECTION 39.** 100.03 (15) (a) (intro.) of the statutes is amended to read:

14 100.03 (15) (a) *Grading procedures and grade standards.* (intro.) If under a
15 procurement contract the amount received by the producer depends on the grade of
16 the ~~farm products~~ vegetables, the ~~farm products~~ vegetables shall be graded in
17 compliance with all of the following:

18 **SECTION 40.** 100.03 (15) (c) of the statutes is amended to read:

19 100.03 (15) (c) *Price-fixing not permitted.* This subsection does not fix or
20 regulate the price paid for any ~~farm product~~ vegetable.

21 **SECTION 41.** 100.03 (18) of the statutes is amended to read:

22 100.03 (18) **SUMMARY ORDER REQUIRING PAYMENT ON DELIVERY.** If the department
23 has reasonable grounds to believe that a contractor does not meet the minimum
24 financial standards under sub. (7), and does not have adequate security on file under
25 sub. (8), the department may issue a summary special order requiring the contractor

1 to make payment on delivery for all ~~farm products~~ vegetables. A summary special
2 order shall set forth the specific basis for the order. The order shall remain in effect
3 until the contractor meets the financial standards under sub. (7) or files adequate
4 security under sub. (8). A person adversely affected by a special order under this
5 section shall be given a prompt hearing before the department upon request, under
6 ch. 227.

7 **SECTION 42.** 100.03 (19) (a) (intro.) of the statutes is amended to read:

8 100.03 (19) (a) *Grounds.* (intro.) The department may summarily suspend the
9 contractor's registration certificate when necessary to prevent clear and imminent
10 harm to producers if the department has reasonable grounds to believe that a
11 contractor has failed to make payment on delivery for ~~farm products~~ vegetables,
12 procured from producers, contrary to any of the following:

13 **SECTION 43. Appropriation changes.**

14 (1) FARM PRODUCT PRODUCER SECURITY. In the schedule under section 20.005 (3)
15 of the statutes for the appropriation to the department of agriculture, trade and
16 consumer protection under section 20.115 (1) (gm) of the statutes, as affected by the
17 acts of 1995, the dollar amount is decreased by \$32,500 for fiscal year 1995-96 and
18 the dollar amount is decreased by \$32,500 for fiscal year 1996-97 to decrease funding
19 for the purposes for which the appropriation is made.

20 (END)