

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By VICE CHAIRMAN JOHN "SAM" ROSE, on February 9,
1995, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Joe Barnett, Chairman (R)
Rep. John "Sam" Rose, Vice Chairman (Majority) (R)
Rep. Don Larson, Vice Chairman (Minority) (D)
Rep. Jon Ellingson (D)
Rep. Dick Green (R)
Rep. Harriet Hayne (R)
Rep. Rick Jore (R)
Rep. Gay Ann Masolo (R)
Rep. Judy Murdock (R)
Rep. Karl Ohs (R)
Rep. George Heavy Runner (D)
Rep. Dore Schwinden (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Kenneth Wennemar (D)

Members Excused: Rep. Bill Ryan

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Jaelene Racicot, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 280
Executive Action: HB 280 DO PASS
SB 111 BE CONCURRED IN

HEARING ON HB 280

Opening Statement by Sponsor: CHAIRMAN JOE BARNETT, HD 32,
affirmed HB 280 was a simple bill. It transferred the milk
control board to the Department of Livestock. The reason for the
amendments was to transfer the authority along with the bill.
CHAIRMAN BARNETT asked Connie Erickson to explain the amendments.

Informational Testimony:

Connie Erickson, Montana Legislative Council, expressed that she was testifying not as a proponent or as an opponent to HB 280 but as the drafter of the bill. The bill, as currently drafted, transferred the milk control board from the Department of Commerce to the Department of Livestock. Due to the heavy load of bill draft requests the Legislative Council had experienced, **Ms. Erickson** did not do any further research than what was on the request. The bill draft was reviewed by numerous people and no one caught the mistake. The mistake was not transferring any of the milk control functions. As a result of this mistake, nine pages of amendments were needed to correct the problem.

Ms. Erickson affirmed she drafted a gray bill in order for the committee to understand what the bill would look like if the committee decided to pass it out of committee. **EXHIBIT 1** HB 280 was not the result of the sponsor or other groups coming in and amending the bill at the last moment. **Ms. Erickson** had to draft the amendments to make HB 280 do what it was intended to do.

Ms. Erickson reminded the committee to vote on the bill with the amendments. If the committee wished to pass the bill, do not vote on the gray bill.

Proponents' Testimony:

Les Graham, Montana Dairymen's Association, expressed the original concept of this bill had been discussed for some time. It was one of the issues the subcommittee of the Governor's Reorganization Committee discussed this summer in Livingston. This issue was widely accepted by the industry as well as the people in government. He affirmed there would be little change in either the Department of Commerce or the Department of Livestock because the Board of Milk Control will maintain their own office.

He conveyed one of the most appealing aspects of the bill was how the money which funds the Board of Milk Control, the Milk Inspection Program, and the Department of Livestock would be handled. At the present time, the money was divided between the two departments. Now, the money would go to the Department of Livestock.

Mr. Graham explained the status of SB 116 and how that would affect this bill and said it would remove the Board of Milk Control from state government and deregulate it. The bill has been placed in a subcommittee. He said **SEN. TOM BECK** advised himself and Meadow Gold to come up with a compromise. A committee bill had been drafted as a result of their compromise and **SEN. SPRAGUE** would be sponsoring the bill. In summary, the bill would be drafted to deregulate the industry and subsequently wipe out the Board of Milk Control. However, at

the present time, this was not going to happen. Therefore, he urged the committee to pass HB 280 out of committee.

Cork Mortensen, Executive Secretary to the Board of Livestock, urged the committee to pass HB 280. He reminded the committee the Department of Livestock's staff attorney was present to answer questions from the committee. **EXHIBIT 2**

Maureen Cleary-Schwinden, Women Involved in Farm Economics and dairy farmers within the organization, declared HB 280 would be good for the industry and agreed with the testimony from Les Graham.

Gary Leibrand, Leibrand Dairy Inc., proclaimed HB 280 was a good idea and that it should have taken place long ago. He urged the committee's passage of the bill.

Ed McHugh, former owner of Cloverleaf Dairy in Helena, commented that if Montana were to lose retail pricing on milk, 33% of the dairy industry within the state would be eliminated. He said the change from the Department of Commerce to the Department of Livestock was a sensible change and urged the committee to pass HB 280.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. DORE SCHWINDEN asked **Connie Erickson** about the statement of intent which encouraged pricing and use of milk and was this an addition to what the bill originally intended to do. **Ms. Erickson** said she was asked to include a statement of intent and asked **Les Graham** to address why the Dairyman's Associated requested it. **Mr. Graham** affirmed they tried to find a vehicle that was in place to put the statement of intent so the Board of Milk Control would get legislative intent. The compromise bill created in a Senate subcommittee has incorporated most of what was in this statement of intent. He asked the committee to leave the statement of intent in HB 280.

REP. CLIFF TREXLER asked **Les Graham** if the milk producers have agreed to reduce the wholesale price of milk. **Mr. Graham** described the three items that were the direct result of a meeting with the Montana Dairyman's Association.

REP. CLIFF TREXLER asked **Les Graham** if they agreed to it. **Mr. Graham** confirmed they had.

Mr. Graham further explained the three issues contained in the statement of intent. He said the Dairygold Corporation and the Meadow Gold Corporation were the only processors in the state to process raw products. What is currently taking place in the

state, chain stores like Buttreys and Albertsons want to get a better price on milk at the wholesale level. At the present time, they can't do this because of the structure of milk in the state. In order to get around this, the two corporations take the milk out of the state to Idaho and truck it back. As a result, it becomes interstate commerce and therefore would not be subjected to law. The Dairyman's Association was trying to encourage the Board of Milk Control to adjust the wholesale prices to allow these corporations to be more competitive.

The second thing they were trying to do was encourage the use of Montana milk by Montana processors. At the present time, Montana has the lowest rate of surplus milk in the country.

The third issue addressed by the association was to establish a pricing structure for public institutions, especially schools. Therefore, schools get milk for a price and still stay within the law. What he discovered through testimony in the Senate on SB 116, was some school districts were buying milk for 19 cents and increasing the retail price by 100%.

REP. LILA TAYLOR asked Cork Mortensen about the additional six FTE's and if they would come out of the Department of Commerce and go to the Department of Livestock. Mr. Mortensen alleged there were six FTE's currently at the Board of Milk Control and administratively would come under the Department of Livestock.

REP. LILA TAYLOR asked Cork Mortensen if HB 280 would not increase FTE's switching from one department to the other. Mr. Mortensen contended that was correct.

Closing by Sponsor:

CHAIRMAN BARNETT read a letter from Keith Nye. EXHIBIT 3 He thanked the committee for a good hearing and urged passage of HB 280.

EXECUTIVE ACTION ON HB 280

Motion: CHAIRMAN BARNETT MOVED HB 280 DO PASS.

Motion/Vote: CHAIRMAN BARNETT MOVED THE AMENDMENTS. The motion carried unanimously.

Motion/Vote: CHAIRMAN BARNETT MOVED HB 280 DO PASS AS AMENDED. The motion carried unanimously with a proxy vote from REP. RYAN.

EXECUTIVE ACTION ON SB 111

Motion: REP. STOVALL MOVED SB 111 BE CONCURRED IN.

Discussion: REP. CLIFF TREXLER explained he was concerned with the bookkeeping that may result with cattle coming in after the

assessment date. He said he discussed this concern with many individuals and came to the conclusion that counties will do as they please.

REP. RICK JORE explained he would not be voting for the bill and felt this should be on a voluntary basis within the community.

REP. DON LARSON asked if passage of this bill would preclude a rancher from maintaining predator control on his own ranch. The question would be if the rancher would want to buy into a joint effort and defer the cost or assume the costs himself or herself. He said supporters of the bill felt they needed political help in controlling predators and recommended a do concur.

REP. JAY STOVALL explained a rancher could kill predators on his or her own ranch but "the ranchers around your place that don't kill the predators, these predators will end up killing your stock." It's best to control this problem in a joint effort and he urged the committee to support SB 111.

REP. JUDY MURDOCK agreed with **REP. JORE** on the basis if an individual does not care to participate, this individual would have to because of the 51% majority. On the other hand, **REP. MURDOCK** declared SB 111 was a good bill and urged passage of it.

REP. LILA TAYLOR contended that ranchers pooling their money would be far more effective in controlling predators than each rancher trying individually to control predators.

{Tape: 1; Side: B:}

REP. DICK GREEN remarked that he would have to stand in opposition to SB 111. He did not agree with a majority of people forcing their will upon the entire group. Due to the 51% majority, every rancher, regardless of his/her stance, would be forced to help defray the costs.

Vote: A roll call vote was taken. The motion carried 14-4.

REP. SAM ROSE stated next Tuesday, February 14th would be busy. The committee would be hearing HB 445, HB 452, HB 453, & HB 459. The last day to take executive action would be February 16.

CHAIRMAN JOE BARNETT explained these four bills had been given to the committee at the last minute and he would like to take care of them on Tuesday, February 14.

REP. DORE SCHWINDEN asked if they were going to take executive action on HB 395. **CHAIRMAN BARNETT** explained no, the fiscal note has not been prepared yet.

ADJOURNMENT

Adjournment: 3:55 P.M.



JOE BARNETT, Chairman



JAELENE RACICOT, Secretary

JB/jr



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

Dore Schump.

Has power of proxy vote
For Wm Ryan Thurs. 9 Feb
House Agriculture

HOUSE OF REPRESENTATIVES

Agriculture

ROLL CALL

DATE 2/9/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Sam Rose Vice Chairman, Majority	✓		
Rep. Don Larson, Vice Chairman, Minority	✓		
Rep. Jon Ellingson	✓		
Rep. Dick Green	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Rick Jore	✓		
Rep. Gay Ann Masolo	✓		
Rep. Judy Rice Murdock	✓		
Rep. Karl Ohs	✓		
Rep. Jay Stovall	✓		
Rep. Bill Ryan			✓
Rep. Dore Schwinden	✓		
Rep. Robert Story	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Ken Wennemar	✓		
Rep. Joe Barnett, Chairman	✓		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Agriculture Committee

DATE 2/9/95 BILL NO. _____ NUMBER SB111

MOTION: Rep Stovall moved SB111 to be
concurred in

NAME	AYE	NO
Rep. Sam Rose, Vice Chairman, Majority	✓	
Rep. Don Larson, Vice Chairman, Minority	✓	
Rep. Jon Ellingson	✓	
Rep. Dick Green		✓
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner		✓
Rep. Rick Jore		✓
Rep. Gay Ann Masolo	✓	
Rep. Judy Rice Murdock	✓	
Rep. Karl Ohs	✓	
Rep. Jay Stovall	✓	
Rep. Bill Ryan	✓	
Rep. Dore Schwinden	✓	
Rep. Robert Story	✓	
Rep. Lila Taylor	✓	
Rep. Cliff Trexler	✓	
Rep. Ken Wennemar		✓
Rep. Joe Barnett, Chairman	✓	

EXHIBIT 1

DATE 2/9/95

HB 280

Amendments to House Bill No. 280
First Reading Copy

Requested by Representative Barnett
For the House Committee on Agriculture, Livestock, and Irrigation

Prepared by Connie Erickson
January 25, 1995

1. Title, line 4.

Following: "ACT"

Insert: "GENERALLY REVISING THE LAWS RELATING TO MILK CONTROL;"

2. Title, line 5.

Following: "LIVESTOCK;"

Insert: "TRANSFERRING THE RESPONSIBILITIES FOR MILK CONTROL FROM
THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK;"

3. Title, line 5.

Strike: "SECTION"

Insert: "SECTIONS"

Following: "2-15-1802,"

Insert: "81-23-101, 81-23-103, 81-23-105, 81-23-202, 81-23-203,
81-23-302, and 81-23-406,"

4. Page 1.

Following: line 6

Insert: "STATEMENT OF INTENT

It is the intent of the legislature that the rules promulgated by the department of commerce regarding the control of milk prices will be continued and enforced by the department of livestock. In addition to the current rules, the department of livestock is directed to look at the adoption of rules that would:

(1) lower the wholesale price of milk a sufficient amount to eliminate the need to sell Montana milk outside of Montana in order to be competitive;

(2) encourage the use of Montana milk by Montana processors; and

(3) establish a lower pricing structure for milk used in institutions, such as schools."

5. Page 1.

Following: line 20

Insert: "Section 2. Section 81-23-101, MCA, is amended to read:

"81-23-101. Definitions. (1) Unless the context requires

otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

~~(g) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.~~

~~(h)~~ "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

~~(i)~~(h) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

~~(j)~~(i) "Licensee" means a person who holds a license from the department.

~~(k)~~(j) "Market" means an area of the state designated by the department as a natural marketing area.

~~(l)~~(k) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

~~(m)~~(l) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections and human services at the Montana state prison.

~~(n)~~(m) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

~~(o)~~(n) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

~~(p)~~(o) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

~~(q)~~(p) "Retail prices" means those prices at which milk

owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.

~~(s)~~(q) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

~~(s)~~(r) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper."
{Internal References to 81-23-101: None.}

Section 3. Section 81-23-103, MCA, is amended to read:

"81-23-103. General powers of the department. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws ~~or the law under which the department of livestock is constituted together with the department of livestock rules,~~ county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of health and environmental sciences, ~~the board of livestock,~~ any a county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and conduct hearings upon any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

{Internal References to 81-23-103: None.}

Section 4. Section 81-23-105, MCA, is amended to read:

"81-23-105. Testing of milk. (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants ~~which~~ that receive raw milk directly from producers, the department ~~of commerce~~ may establish a program of testing ~~such~~ raw milk.

(2) The department of ~~commerce~~ may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program ~~shall~~ must be licensed by the animal health division of the department of ~~livestock~~.

(4) The department of ~~commerce~~ may conduct all types of sampling, grading, and testing techniques ~~which it~~ that the department considers necessary to carry out the intent of this section."

{Internal References to 81-23-105: None.}

Section 5. Section 81-23-202, MCA, is amended to read:

"81-23-202. Licenses -- disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department of ~~livestock~~, as provided in 81-22-202, or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is \$2 and is due before July 1 and must be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the

department of livestock. The board shall include this fee in its formulas for fixing by rule the minimum producer, wholesale, jobber, and retail prices for class I milk in 81-23-302.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment ~~which that~~ was due.

(7) ~~Except for the assessment provided for in subsection (4), all~~ All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) ~~The assessment provided for in subsection (4) must be deposited by the department in an account in the state special revenue fund. Money in the account must be used to carry out the purposes of Title 81, chapter 22.~~

(9) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

{Internal References to 81-23-202:

✓ 81-22-102 ✓ 81-23-105}

Section 6. Section 81-23-203, MCA, is amended to read:

"81-23-203. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of by the department, and an applicant shall state facts concerning his circumstances and the nature of the business to be conducted which in the opinion of the department are necessary for the administration of this chapter containing the information required by the department. The application shall must certify the applicant to be the holder of all licenses required by the department of livestock for the conduct of his the applicant's business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application shall must be accompanied by the license fee required to be paid."

{Internal References to 81-23-203: None.}

Section 7. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish ~~such~~ prices by means of flexible formulas ~~which shall that must~~ be devised so that they bring about ~~such~~ automatic changes in all minimum prices ~~as that~~ are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices ~~which that~~ are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors ~~which shall that must~~ be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution ~~which that~~ preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut ~~such the~~ considerations as a matter of record.

(5) ~~Such The~~ specific factors may include but ~~shall are~~ not be limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~ milk for all purposes;

(b) the ability and willingness of consumers to purchase, ~~which shall must~~ include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which ~~shall must~~ include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which ~~shall must~~ include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which ~~shall must~~ include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which ~~shall must~~ include among other things raw product and ingredient costs,

carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor ~~which that~~ may properly be allocated to the handling of milk to the point at which ~~such the~~ milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or any part of ~~any an~~ official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence ~~which that~~ may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, ~~cause notice to be given to~~ notify the consuming public and the milk industry of the specific facts within its own knowledge ~~which that~~ it will consider, so that all interested parties will have opportunity to be heard and to question or rebut ~~such the~~ facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula whereby minimum:

(a) producer prices for milk in classes I, II, and III ~~shall must~~ be computed;

(b) wholesale prices for milk in class I ~~shall must~~ be computed;

(c) jobber prices for milk in class I ~~shall must~~ be computed;

(d) retail prices for milk in class I ~~shall must~~ be computed.

(8) This section ~~shall may~~ not be construed as requiring the board to promulgate ~~any a~~ specific number of formulas, but ~~it shall must~~ be construed liberally so that the board may adopt ~~any a~~ reasonable method of expression to accomplish the objective set forth in subsection (7). If the evidence presented to the board at ~~any a~~ public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons ~~therefor for the separate and varying prices~~ and establish ~~such the~~ separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board ~~may deem~~ considers advisable and shall specify the minimum prices ~~therefor for the forms, classes, grades, and uses.~~

(10) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates ~~which that~~ distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. ~~No~~ An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.

(11) All milk purchased by a distributor ~~shall must~~ be

purchased on a uniform basis. The basis to be used ~~shall~~ must be established by the board after the producers and the distributors have been consulted.

(12) The board may amend ~~any an~~ an official rule in the same manner provided ~~herein in this section~~ for the original establishment of milk pricing formulas. The board may in its discretion, when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(13) Upon petition of a distributor or a majority of ~~his~~ the distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence ~~adduced~~ presented at ~~such the~~ the hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(14) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by ~~any~~ a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at ~~such the~~ the hearing the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices ~~which that~~ that have historically prevailed statewide. If the board finds that the evidence ~~adduced~~ presented at ~~such the~~ the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the same; but ~~such the~~ the official order ~~shall be~~ is of no force or effect until it is approved in a referendum conducted by the board by mail and by secret ballot among affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum. The official order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions as the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (13);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of

administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but any withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (14)(a). ~~Such~~ The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

(15) ~~The requirements hereinabove set forth of this section concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment thereof of base or quota plans or statewide pooling arrangements.~~

(16) Rules adopted pursuant to this section ~~shall~~ must be enforced and audited for compliance by ~~the milk control bureau of the department of commerce.~~

{Internal References to 81-23-302:
✓ 81-23-202}

Section 8. Section 81-23-406, MCA, is amended to read:

"81-23-406. Additional remedies. The department may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The department may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department of ~~commerce~~ livestock, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of ~~his~~ the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in any court."

{Internal References to 81-23-406: None.}

Renumber: subsequent sections

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LCGRAY.280

**** Bill No. ***

Introduced By *****

By Request of *****

THIS IS AN UNOFFICIAL BILL

A Bill for an Act entitled: "An Act generally revising the laws relating to milk control; reallocating the board of milk control from the department of commerce to the department of livestock; transferring the responsibilities for milk control from the department of commerce to the department of livestock; amending sections 2-15-1802, 81-23-101, 81-23-103, 81-23-105, 81-23-202, 81-23-203, 81-23-302, and 81-23-406, MCA; and providing an effective date."

STATEMENT OF INTENT

It is the intent of the legislature that the rules promulgated by the department of commerce regarding the control of milk prices will be continued and enforced by the department of livestock. In addition to the current rules, the department of livestock is directed to look at the adoption of rules that would:

(1) lower the wholesale price of milk a sufficient amount to eliminate the need to sell Montana milk outside of Montana in order to be competitive;

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(2) encourage the use of Montana milk by Montana processors;
and

(3) establish a lower pricing structure for milk used in
institutions, such as schools.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1802, MCA, is amended to read:

**"2-15-1802. Board of milk control -- membership --
allocation -- quasi-judicial.** (1) There is a board of milk
control.

(2) The board consists of five members. A member may not be
connected in any way with the production, processing,
distribution, or wholesale or retail sale of milk or dairy
products. A member may not have held an elective or appointive
public office during the 2 years immediately preceding
appointment, and a member may not hold a public office, either
elective or appointive, during a term on the board. Not more than
three members may be of the same political party.

(3) The board is allocated to the department of livestock
for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for
purposes of 2-15-124."

{Internal References to 2-15-1802:
81-23-101}

Section 2. Section 81-23-101, MCA, is amended to read:

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"81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) ~~"Department" means the department of commerce provided for in Title 2, chapter 15, part 18.~~

~~(h)~~ "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly

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known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

~~(i)~~(h) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

~~(j)~~(i) "Licensee" means a person who holds a license from the department.

~~(k)~~(j) "Market" means an area of the state designated by the department as a natural marketing area.

~~(l)~~(k) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

~~(m)~~(l) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections and human services at the Montana state prison.

~~(n)~~(m) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

~~(o)~~(n) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

~~(p)~~(o) "Producer-distributor" means a person both producing

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and distributing milk for consumption in this state.

~~(q)~~(p) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.

~~(r)~~(r) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

~~(s)~~(r) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper."

{Internal References to 81-23-101: None.}

Section 3. Section 81-23-103, MCA, is amended to read:

"81-23-103. General powers of the department. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws ~~or the law under which the department of livestock is~~

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~~constituted together with the department of livestock rules,~~
county board of health rules, or municipal ordinances for the
promotion or protection of the public health. The department may
cooperate with the department of health and environmental
sciences, ~~the board of livestock,~~ any a county or city board of
health, or the department of agriculture in enforcing this
chapter.

(2) The department shall investigate all matters pertaining
to the production, processing, storage, distribution, and sale of
milk in this state and conduct hearings upon any subject
pertinent to the administration of this chapter. The department
may subpoena milk dealers, their records, books, and accounts,
and any other person from whom information may be desired or
considered necessary to carry out the purposes and intent of this
chapter and may take depositions of witnesses who are sick or
absent from the state or who cannot otherwise appear in person
before the department at its offices. The department shall give
at least 10 days' notice to the proposed witness."

{Internal References to 81-23-103: None.}

Section 4. Section 81-23-105, MCA, is amended to read:

"81-23-105. **Testing of milk.** (1) For the purpose of
determining the value of milk supplied by producers during
routine audits of milk processing plants ~~which~~ that receive raw
milk directly from producers, the department ~~of commerce~~ may
establish a program of testing ~~such~~ the raw milk.

(2) The department ~~of commerce~~ may levy an assessment on

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licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program ~~shall~~ must be licensed by the animal health division of the department ~~of livestock~~.

(4) The department ~~of commerce~~ may conduct all types of sampling, grading, and testing techniques ~~which~~ that it considers necessary to carry out the intent of this section."

{Internal References to 81-23-105: None.}

Section 5. Section 81-23-202, MCA, is amended to read:

"81-23-202. Licenses -- disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department ~~of livestock~~ , as provided in 81-22-202, or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is \$2 and is due before July 1 and must be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

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(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department ~~of livestock~~. The board shall include this fee in its formulas for fixing by rule the minimum producer, wholesale, jobber, and retail prices for class I milk in 81-23-302.

(5) The assessments upon producer-distributors, producers,

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and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment ~~which~~ that was due.

(7) ~~Except for the assessment provided for in subsection (4), all~~ All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) ~~The assessment provided for in subsection (4) must be deposited by the department in an account in the state special revenue fund. Money in the account must be used to carry out the purposes of Title 81, chapter 22.~~

(9) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

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{Internal References to 81-23-202:
81-22-102 81-23-105}

Section 6. Section 81-23-203, MCA, is amended to read:

"81-23-203. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared ~~under authority of~~ by the department, and an ~~applicant shall state facts concerning his circumstances and the nature of the business to be conducted which in the opinion of the department are necessary for the administration of this chapter containing the information required by the department.~~ The application shall must certify the applicant to be the holder of all licenses required by the department ~~of livestock~~ for the conduct of ~~his~~ the applicant's business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application shall must be accompanied by the license fee required to be paid."

{Internal References to 81-23-203: None.}

Section 7. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

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(2) The board shall establish ~~such~~ prices by means of flexible formulas ~~which shall~~ that must be devised so that they bring about ~~such~~ automatic changes in all minimum prices ~~as~~ that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices ~~which~~ that are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors ~~which shall~~ that must be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution ~~which~~ that preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut ~~such~~ the considerations as a matter of record.

(5) ~~Such~~ The specific factors may include but ~~shall~~ are not be limited to the following items:

- (a) current and prospective supplies of milk in relation to current and prospective demands for ~~such~~ milk for all purposes;
- (b) the ability and willingness of consumers to purchase,

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which ~~shall~~ must include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which ~~shall~~ must include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which ~~shall~~ must include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which ~~shall~~ must include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which ~~shall~~ must include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor ~~which~~ that may properly be allocated to the handling of milk to the point at which ~~such~~ the milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

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(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or any part of any an official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence ~~which~~ that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, ~~cause notice to be given to~~ notify the consuming public and the milk industry of the specific facts within its own knowledge ~~which~~ that it will consider, so that all interested parties will have opportunity to be heard and to question or rebut ~~such~~ the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula whereby minimum:

(a) producer prices for milk in classes I, II, and III ~~shall~~ must be computed;

(b) wholesale prices for milk in class I ~~shall~~ must be computed;

(c) jobber prices for milk in class I ~~shall~~ must be computed;

(d) retail prices for milk in class I ~~shall~~ must be computed.

(8) This section ~~shall~~ may not be construed as requiring the board to promulgate any a specific number of formulas, but it

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~~shall~~ must be construed liberally so that the board may adopt any a reasonable method of expression to accomplish the objective set forth in subsection (7). If the evidence presented to the board at any a public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons ~~therefor~~ for the separate and varying prices and establish ~~such~~ separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board ~~may deem~~ considers advisable and shall specify the minimum prices ~~therefor~~ for the forms, classes, grades, and uses.

(10) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates ~~which~~ that distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. ~~No~~ An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.

(11) All milk purchased by a distributor ~~shall~~ must be purchased on a uniform basis. The basis to be used ~~shall~~ must be established by the board after the producers and the distributors have been consulted.

(12) The board may amend any an official rule in the same manner provided ~~herein~~ in this section for the original

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establishment of milk pricing formulas. The board may in its discretion, when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(13) Upon petition of a distributor or a majority of ~~his~~ the distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence ~~adduced~~ presented at ~~such~~ the hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(14) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by ~~any~~ a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at ~~such~~ the hearing the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices ~~which~~ that have historically prevailed statewide. If the board finds that the evidence ~~adduced~~ presented at ~~such~~ the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the same; but ~~such~~ the official order ~~shall be~~ is of no force or effect until it is approved in a referendum conducted by the board by mail and by secret ballot among affected producers,

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producer-distributors, and distributors. The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum. The official order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any an order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions as the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (13);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool

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settlement fund and a pool expense fund, but any withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (14)(a). ~~Such~~ The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

(15) The requirements ~~hereinabove set forth~~ of this section concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment ~~thereof~~ of base or quota plans or statewide pooling arrangements.

(16) Rules adopted pursuant to this section ~~shall~~ must be enforced and audited for compliance by the ~~milk control bureau of the department of commerce.~~

{Internal References to 81-23-302:
✓ 81-23-202}

Section 8. Section 81-23-406, MCA, is amended to read:

"81-23-406. **Additional remedies.** The department may begin any a proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of

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them. In addition to any other remedy, the department may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The department may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department of ~~commerce~~ livestock, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of ~~his~~ the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in any court."

{Internal References to 81-23-406: None.}

NEW SECTION. Section 9. Code commissioner instruction.

The code commissioner shall recodify 2-15-1802 in Title 2, chapter 15, part 31, and change affected references accordingly.

NEW SECTION. Section 10. {standard} Effective date. [This act] is effective July 1, 1995.

-END-

{Connie Erickson
Researcher
Montana Legislative Council

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(406) 444-3064}

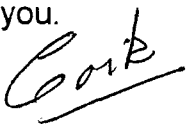
HOUSE BILL 280

Mr. Chairman and members of the committee, for the record my name is Cork Mortensen and I am Executive Secretary to the Board of Livestock. The Board and Department of Livestock supports this legislation.

We feel that since the department already regulates the licensing of dairies and manufactured dairy products it would be appropriate to place the Board of Milk Control under the authority of the Department of Livestock.

Thank you for your time and consideration in this matter. Once again, the Board and Department of Livestock urge you to support this legislation. If you have any questions or need more information, I should be happy to respond.

Thank you.

A handwritten signature in cursive script that reads "Cork". The signature is written in dark ink and is positioned below the "Thank you." text.

E.E. "Cork" Mortensen, Executive Secretary
To the Board of Livestock

4
 FOR EXHIBIT INFORMATION
☒ PLEASE HANDLE AS REQUIRED
☐ WHAT DATE 2/9/95
☐ NOTE & RETURN WITH COMMENTS
☐ PLEASE HB-280
☐ PER PHONE CONVERSATION
☐ FOR YOUR APPROVAL

TO Chairman Joe Barnett AT House Ag Committee
 FROM Keith Nye DATE 2/7/95
 SUBJECT HB-280 WHEN NEEDED _____

Dear Mr. Barnett:

Please be informed that DARIGOLD is supportive of moving the milk control bureau from the commerce department to the department of livestock. We are in agreement with all text represented in HB-280.

Thank you, Keith Nye

REPLY



AVOID ORAL INSTRUCTIONS
 USE FOR PENCIL MEMO-SAVE DICTATION AND
 TYPING TIME FOR SHORT RUSH NOTES TO
 CONFIRM ORAL INSTRUCTIONS

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Agriculture

COMMITTEE

DATE 2/9/95

BILL NO. HB 280 SPONSOR(S) _____

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
William E. Row	SELF	X	
Cook Mortensen	Brd. of Lincoln	X	
Les Groh	M D B	X	
Ray H. Albert	Pai gold	X	
Ray Leibbrand	Leibbrand Dairy Inc	X	
Ward Yanaka	Meadowgold Dairy	X	
Maureen Chury - Schwindt	WIFE	X	
Ed M. Hughes	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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