

HOUSE BILL NO. 82

INTRODUCED BY MANUEL, ELLERD

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE HOUSE

January 5, 1983	Introduced and referred to Committee on Business and Industry.
January 12, 1983	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
January 14, 1983	Motion pass consideration.
January 15, 1983	Second reading, do pass.
January 17, 1983	Considered correctly engrossed.
January 18, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 19, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
January 24, 1983	Committee recommend bill be concurred in as amended. Report adopted.
January 26, 1983	On motion taken from second reading and rereferred to Committee on Agriculture, Livestock and Irrigation.
January 29, 1983	Committee recommend bill be concurred in as amended. Report adopted.

February 1, 1983

Second reading, concurred in.

February 3, 1983

Third reading, concurred in.
Ayes, 45; Noes, 5.

IN THE HOUSE

February 3, 1983

Returned to House.

February 4, 1983

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *82*
2 INTRODUCED BY *Manuel - Callard*
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE
6 BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND
7 RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR
8 REVOCATION; CREATING A STATEWIDE MARKET AREA; DELETING RATE
9 OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING
10 REQUIREMENTS; AMENDING SECTIONS 2-8-103, 81-23-204, AND
11 81-23-302 THROUGH 81-23-304, MCA; REPEALING SECTIONS
12 81-23-205 AND 81-23-301, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."

14
15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
16 MCA, terminates the Board of Milk Control and requires a
17 performance evaluation of the board by the Legislative Audit
18 Committee; and

19 WHEREAS, as a result of the performance evaluation, the
20 Legislative Audit Committee recommends that the Board of
21 Milk Control be reestablished.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Reestablishment. The board of
25 milk control, created pursuant to 2-15-1802, is

1 reestablished for 6 years pursuant to 2-18-122, with its
2 existing statutory authority and rules.

3 Section 2. Section 2-8-103, MCA, is amended to read:
4 "2-8-103. Agencies to terminate. (1) The following
5 agencies shall terminate on July 1, 1979:

6 (a) board of abstracters, department of professional
7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional
9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and
11 air conditioning, department of professional and
12 occupational licensing, created by 2-15-1656;

13 (d) board of institutions, department of institutions,
14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1,
16 1981:

17 (a) board of athletics, department of professional and
18 occupational licensing, created by 2-15-1661;

19 (b) board of massage therapists, department of
20 professional and occupational licensing, created by
21 2-15-1627;

22 (c) board of osteopathic physicians, department of
23 professional and occupational licensing, created by
24 2-15-1607;

25 (d) board of podiatry examiners, department of

INTRODUCED BILL

1 professional and occupational licensing, created by
2 2-15-1608; ~~a~~

3 (3) The following units of state government shall
4 terminate on July 1, 1983:

5 (a) board of aeronautics, department of commerce,
6 created by 2-15-1812;

7 (b) state board of hail insurance, department of
8 agriculture, created by 2-15-3003;

9 (c) board of horseracing, department of commerce,
10 created by 2-15-1881;

11 (d) board of livestock, department of livestock,
12 created by 2-15-3102;

13 ~~(e) board of milk control, department of commerce,~~
14 ~~created by 2-15-1882;~~

15 ~~(f)(g)~~ board of oil and gas conservation, department
16 of natural resources and conservation, created by 2-15-3303;

17 ~~(g)(f)~~ Montana outfitters' council, department of
18 fish, wildlife, and parks, created by 2-15-3403;

19 ~~(h)(g)~~ public service commission, department of public
20 service regulation, created by 69-1-102;

21 ~~(i)(h)~~ board of water and wastewater operators,
22 department of health and environmental sciences, created by
23 2-15-2105;

24 ~~(j)(i)~~ board of water well contractors, department of
25 commerce, created by 2-15-1862.

1 (4) The following agencies terminate on July 1, 1985:

2 (a) the board of public accountants, department of
3 commerce, created by 2-15-1866;

4 (b) the board of architects, department of commerce,
5 created by 2-15-1871;

6 (c) state banking board, department of commerce,
7 created by 2-15-1803;

8 (d) the state electrical board, department of
9 commerce, created by 2-15-1874;

10 (e) the board of professional engineers and land
11 surveyors, department of commerce, created by 2-15-1873;

12 (f) office of commissioner of insurance and the
13 insurance department, state auditor's office, created by
14 2-15-1902 and 2-15-1903;

15 (g) office of the securities commissioner, state
16 auditor's office, created by 2-15-1901;

17 (h) the board of landscape architects, department of
18 commerce, created by 2-15-1872;

19 (i) the board of county printing, department of
20 commerce, created by 2-15-1811;

21 (j) the board of plumbers, department of commerce,
22 created by 2-15-1875;

23 (k) board of physical therapy examiners, department of
24 commerce, created by 2-15-1858.

25 (5) The following agencies terminate on July 1, 1987:

1 (a) commission for human rights, department of labor
 2 and industry, created by 2-15-1706;
 3 (b) Montana state board of medical examiners,
 4 department of commerce, created by 2-15-1841;
 5 (c) board of dentistry, department of commerce,
 6 created by 2-15-1842;
 7 (d) board of pharmacists, department of commerce,
 8 created by 2-15-1843;
 9 (e) board of nursing, department of commerce, created
 10 by 2-15-1844;
 11 (f) board of nursing home administrators, department
 12 of commerce, created by 2-15-1845;
 13 (g) board of optometrists, department of commerce,
 14 created by 2-15-1846;
 15 (h) board of chiropractors, department of commerce,
 16 created by 2-15-1847;
 17 (i) board of radiologic technologists, department of
 18 commerce, created by 2-15-1848;
 19 (j) board of speech pathologists and audiologists,
 20 department of commerce, created by 2-15-1849;
 21 (k) board of hearing aid dispensers, department of
 22 commerce, created by 2-15-1850;
 23 (l) board of psychologists, department of commerce,
 24 created by 2-15-1851;
 25 (m) board of veterinarians, department of commerce,

1 created by 2-15-1852;
 2 (n) board of morticians, department of commerce,
 3 created by 2-15-1853;
 4 (o) board of barbers, department of commerce, created
 5 by 2-15-1856;
 6 (p) board of cosmetologists, department of commerce,
 7 created by 2-15-1857;
 8 (q) board of sanitarians, department of commerce,
 9 created by 2-15-1861;
 10 (r) board of veterans' affairs, department of social
 11 and rehabilitation services, created by 2-15-2202.
 12 (6) The following agency terminates July 1, 1989:
 13 board of milk control, department of commerce, created by
 14 2-15-1802."
 15 Section 3. Section 81-23-204, MCA, is amended to read:
 16 "81-23-204. Declining, suspending, and revoking
 17 licenses — penalties in lieu of suspension or revocation.
 18 (1) The department may refuse to grant a license or may
 19 suspend or revoke a license already granted for due cause
 20 upon due notice and after hearing. The violation of any
 21 provisions of this chapter or of any lawful order or rule of
 22 the board or department, the failure or refusal to make
 23 required statements or reports, or failure to pay license or
 24 assessment fees are causes for which the department may, at
 25 ~~its discretion~~, suspend or revoke a license.

(2) In place of suspension or revocation of a license, the department may assess a civil penalty not to exceed \$500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the department or board. If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty shall be construed as civil and not criminal in nature. Any moneys received by the department as a result of collection of civil penalties shall be paid into the earmarked revenue fund as provided by 81-23-403."

Section 4. 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 ~~in all areas of the~~ state 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 be devised so that they bring about such automatic changes in all minimum prices as 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 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 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 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 considerations as a matter of record.

(5) Such specific factors may include but shall 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 include among other things per capita disposable income statistics, consumer price indexes, and

1 wholesale price indexes;

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

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

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

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

19 (g) the cost factors in jobbing milk, which shall
20 include among other things raw product and ingredient costs,
21 carton or other packaging cost, processing cost, and that
22 part of general administrative costs of the supplying
23 distributor which may properly be allocated to the handling
24 of milk to the point at which such milk is at the supplying
25 distributor's dock, equipment of all types required to

1 market milk, and prevailing wage rates in the state;

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

5 ~~{i}--a reasonable return on necessary investment to all~~
6 ~~ordinarily efficient and economical milk dealers;~~

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

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

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

23 (b) wholesale prices for milk in class I shall be
24 computed;

25 (c) jobber prices for milk in class I shall be

1 computed;

2 (d) retail prices for milk in class I shall be
3 computed.

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

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

18 ~~(10) The milk produced in one natural marketing area~~
19 ~~and sold in another natural marketing area shall be paid for~~
20 ~~by a distributor or dealer in accordance with the pricing~~
21 ~~order of the area where produced at the price therein~~
22 ~~specified of the class or use in which it is ultimately used~~
23 ~~or sold.~~

24 ~~(11)~~ (10) The board shall adopt rules after notice and
25 hearing in the manner prescribed by the Montana

1 Administrative Procedure Act to regulate transportation
2 rates which distributors, contract haulers, and others
3 charge producers for both farm-to-plant and interplant
4 transportation of milk. No allowance for transportation of
5 milk between plants may be permitted unless it is found by
6 the board to be necessary to permit the movement of milk in
7 the public interest.

8 ~~(12)~~ (11) All milk purchased within a natural marketing
9 area by a distributor shall be purchased on a uniform basis.
10 The basis to be used shall be established by the board after
11 the producers and the distributors of the area have been
12 consulted.

13 ~~(13)~~ (12) The board may amend any official rule in the
14 same manner provided herein for the original establishment
15 of milk pricing formulas. The board may in its discretion,
16 when it determines the need exists, give notice of and hold
17 statewide public hearings affecting establishment or
18 revision of milk pricing formulas in all market areas of the
19 state.

20 ~~(14)~~ (13) Upon petition of a distributor or a majority
21 of his producers, the board shall hold a hearing to receive
22 and consider evidence regarding the advisability and need
23 for a base or quota plan as a method of payment by that
24 distributor of producer prices; and if the board finds that
25 the evidence adduced at such hearing warrants the

1 establishment of a base or quota plan, the board shall
2 proceed by official order to establish the same.

3 ~~(15)(14)~~ Upon petition by any producer,
4 producer-distributor, or distributor ~~in any marketing area~~,
5 the board shall hold a hearing to receive and consider
6 evidence regarding the advisability and need for ~~an areawide~~
7 ~~or a statewide pooling arrangement as a method of payment of~~
8 producer prices, provided that at such hearing the board
9 shall among other things specifically receive and consider
10 evidence concerning production and marketing practices which
11 have historically prevailed ~~in the area concerned or~~
12 ~~statewide, as the case may be.~~ If the board finds that the
13 evidence adduced at such hearing warrants the establishment
14 of ~~such an areawide or a statewide pooling arrangement~~, the
15 board shall proceed by official order to establish the same;
16 but such official order shall be of no force or effect until
17 it is approved in a referendum conducted by the board among
18 affected producers, producer-distributors, and distributors.

19 ~~(16)(15)~~ The requirements hereinabove set forth
20 concerning notices of hearings for the establishment of milk
21 pricing formulas shall apply to any hearings regarding base
22 or quota plans ~~or areawide or statewide pooling arrangements~~
23 or abandonment thereof.

24 ~~(17)(16)~~ Rules adopted pursuant to this section shall
25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

2 Section 5. Section 81-23-303, MCA, is amended to read:

3 "81-23-303. Rules of fair trade practices. The
4 department may adopt reasonable rules governing fair trade
5 practices as they pertain to the transaction of business
6 among licensees under this chapter and among licensees and
7 the general public. Those rules shall contain but are not
8 limited to provisions prohibiting the following methods of
9 doing business which are unfair, unlawful, and not in the
10 public interest:

11 (1) the payment, allowance, or acceptance of secret
12 rebates, secret refunds, or unearned discounts by a person,
13 whether in the form of money or otherwise;

14 (2) the giving of milk, cream, dairy products,
15 services, or articles of any kind, except to bona fide
16 charities, for the purpose of securing or retaining the
17 fluid milk or fluid cream business of a customer;

18 (3) the extension to certain customers of special
19 prices or services not available to all customers who
20 purchase milk of like quantity under like terms and
21 conditions;

22 (4) the purchasing, processing, bottling, packaging,
23 transporting, delivering, or otherwise handling ~~in any~~
24 ~~marketing area~~ of milk which is to be or is sold or
25 otherwise disposed of at less than the minimum wholesale and

1 minimum retail prices established by the board;
 2 (5) the payment of a price lower than the applicable
 3 producer price, established by the board, by a distributor
 4 to a producer for milk which is distributed to any person,
 5 including agencies of the federal, state, or local
 6 government."

7 Section 6. Section 81-23-304, MCA, is amended to read:

8 "81-23-304. Limitation on extension of credit to
 9 retailers. A sale or delivery may not be made by a
 10 producer-distributor, distributor, or jobber to a retailer,
 11 except for cash or payment within 15 days after regular
 12 billings, and all producer-distributors, distributors, and
 13 jobbers shall bill retailers at least monthly. A
 14 producer-distributor, distributor, or jobber may not extend
 15 more than 15 days' credit after billing to a retailer. A
 16 retailer may not receive delivery of milk without agreement
 17 to pay for it in cash within 15 days after regular billing.
 18 A correctly dated check which is honored upon presentment is
 19 cash within the meaning of this section. An extension or
 20 acceptance of credit in violation of this section shall be
 21 construed as rendering or receiving financial assistance.
 22 The licenses of producer-distributors, distributors, or
 23 jobbers involved in violation of this section shall be
 24 suspended or revoked as determined by the department in its
 25 discretion after a hearing pursuant to the Administrative

1 Procedure Act."

2 NEW SECTION. Section 7. Repealer. Sections 81-23-205
 3 and 81-23-301, MCA, are repealed.

4 NEW SECTION. Section 8. Effective date. This act is
 5 effective on passage and approval.

-End-

Approved by Committee
on Business and Industry

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3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE
6 BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND
7 RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR
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9 OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING
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11 81-23-302 THROUGH 81-23-304, MCA; REPEALING SECTIONS
12 81-23-205 AND 81-23-301, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."
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15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
16 MCA, terminates the Board of Milk Control and requires a
17 performance evaluation of the board by the Legislative Audit
18 Committee; and
19 WHEREAS, as a result of the performance evaluation, the
20 Legislative Audit Committee recommends that the Board of
21 Milk Control be reestablished.
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23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
24 NEW SECTION. Section 1. Reestablishment. The board of
25 milk control, created pursuant to 2-15-1802, is

1 reestablished for 6 years pursuant to 2-18-122, with its
2 existing statutory authority and rules.
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SECOND READING
-2-

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1 professional and occupational licensings, created by
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3 (3) The following units of state government shall
4 terminate on July 1, 1983:

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8 agriculture, created by 2-15-3003;

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12 created by 2-15-3102;

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9 commerce, created by 2-15-1874;

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11 surveyors, department of commerce, created by 2-15-1873;

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13 insurance department, state auditor's office, created by
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16 auditor's office, created by 2-15-1901;

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Section 4. Section 81-23-302, MCA, is amended to read:

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(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 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 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 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 considerations as a matter of record.

(5) Such specific factors may include but shall 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 include among other things per capita disposable income statistics, consumer price indexes, and

1 wholesale price indexes;

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

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

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

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

19 (g) the cost factors in jobbing milk, which shall
20 include among other things raw product and ingredient costs,
21 carton or other packaging cost, processing cost, and that
22 part of general administrative costs of the supplying
23 distributor which may properly be allocated to the handling
24 of milk to the point at which such milk is at the supplying
25 distributor's dock, equipment of all types required to

1 market milk, and prevailing wage rates in the state;

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

5 ~~(i) a reasonable return on necessary investment to all~~
6 ~~ordinarily efficient and economical milk dealers;~~

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

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

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

23 (b) wholesale prices for milk in class I shall be
24 computed;

25 (c) jobber prices for milk in class I shall be

1 computed;

2 (d) retail prices for milk in class I shall be

3 computed.

4 (8) This section shall not be construed as requiring

5 the board to promulgate any specific number of formulas, but

6 shall be construed liberally so that the board may adopt any

7 reasonable method of expression to accomplish the objective

8 set forth in subsection (7). If the evidence presented to

9 the board at any public hearing for the establishment or

10 revision of milk pricing formulas is found by the board to

11 require the establishment of separate and varying wholesale

12 prices for any particular uses, the board shall designate

13 the reasons therefor and establish such separate formulas.

14 (9) Each rule establishing or revising any milk

15 pricing formulas shall classify milk by forms, classes,

16 grades, or uses as the board may deem advisable and shall

17 specify the minimum prices therefor.

18 ~~(10) The milk produced in one natural marketing area~~

19 ~~and sold in another natural marketing area shall be paid for~~

20 ~~by a distributor or dealer in accordance with the pricing~~

21 ~~order of the area where produced at the price therein~~

22 ~~specified of the class or use in which it is ultimately used~~

23 ~~or sold.~~

24 ~~(11) The board shall adopt rules after notice and~~

25 ~~hearing in the manner prescribed by the Montana~~

1 Administrative Procedure Act to regulate transportation

2 rates which distributors, contract haulers, and others

3 charge producers for both farm-to-plant and interplant

4 transportation of milk. No allowance for transportation of

5 milk between plants may be permitted unless it is found by

6 the board to be necessary to permit the movement of milk in

7 the public interest.

8 ~~(12)(11) All milk purchased within a natural marketing~~

9 ~~area by a distributor shall be purchased on a uniform basis.~~

10 ~~The basis to be used shall be established by the board after~~

11 ~~the producers and the distributors of the area have been~~

12 ~~consulted.~~

13 ~~(13)(12) The board may amend any official rule in the~~

14 ~~same manner provided herein for the original establishment~~

15 ~~of milk pricing formulas. The board may in its discretion,~~

16 ~~when it determines the need exists, give notice of and hold~~

17 ~~statewide public hearings affecting establishment or~~

18 ~~revision of milk pricing formulas in all market areas of the~~

19 ~~state.~~

20 ~~(14)(13) Upon petition of a distributor or a majority~~

21 ~~of his producers, the board shall hold a hearing to receive~~

22 ~~and consider evidence regarding the advisability and need~~

23 ~~for a base or quota plan as a method of payment by that~~

24 ~~distributor of producer prices; and if the board finds that~~

25 ~~the evidence adduced at such hearing warrants the~~

1 establishment of a base or quota plan, the board shall
2 proceed by official order to establish the same.

3 ~~(15)(14)~~ Upon petition by any producer,
4 producer-distributor, or distributor ~~in any marketing area~~,
5 the board shall hold a hearing to receive and consider
6 evidence regarding the advisability and need for ~~an areawide~~
7 ~~or a statewide pooling arrangement~~ as a method of payment of
8 producer prices, provided that at such hearing the board
9 shall among other things specifically receive and consider
10 evidence concerning production and marketing practices which
11 have historically prevailed ~~in the area concerned or~~
12 ~~statewide, as the case may be~~. If the board finds that the
13 evidence adduced at such hearing warrants the establishment
14 of ~~such an areawide or a statewide pooling arrangement~~, the
15 board shall proceed by official order to establish the same;
16 but such official order shall be of no force or effect until
17 it is approved in a referendum conducted by the board among
18 affected producers, producer-distributors, and distributors.

19 ~~(16)(15)~~ The requirements hereinabove set forth
20 concerning notices of hearings for the establishment of milk
21 pricing formulas shall apply to any hearings regarding base
22 or quota plans ~~or areawide or statewide pooling arrangements~~
23 or abandonment thereof.

24 ~~(17)(16)~~ Rules adopted pursuant to this section shall
25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

2 Section 5. Section 81-23-303, MCA, is amended to read:

3 "81-23-303. Rules of fair trade practices. The
4 department may adopt reasonable rules governing fair trade
5 practices as they pertain to the transaction of business
6 among licensees under this chapter and among licensees and
7 the general public. Those rules shall contain but are not
8 limited to provisions prohibiting the following methods of
9 doing business which are unfair, unlawful, and not in the
10 public interest:

11 (1) the payment, allowance, or acceptance of secret
12 rebates, secret refunds, or unearned discounts by a person,
13 whether in the form of money or otherwise;

14 (2) the giving of milk, cream, dairy products,
15 services, or articles of any kind, except to bona fide
16 charities, for the purpose of securing or retaining the
17 fluid milk or fluid cream business of a customer;

18 (3) the extension to certain customers of special
19 prices or services not available to all customers who
20 purchase milk of like quantity under like terms and
21 conditions;

22 (4) the purchasing, processing, bottling, packaging,
23 transporting, delivering, or otherwise handling ~~in any~~
24 ~~marketing area~~ of milk which is to be or is sold or
25 otherwise disposed of at less than the minimum wholesale and

1 minimum retail prices established by the board;

2 [5] the payment of a price lower than the applicable
3 producer price, established by the board, by a distributor
4 to a producer for milk which is distributed to any person,
5 including agencies of the federal, state, or local
6 government."

7 Section 6. Section 81-23-304, MCA, is amended to read:

8 "81-23-304. Limitation on extension of credit to
9 retailers. A sale or delivery may not be made by a
10 producer-distributor, distributor, or jobber to a retailer,
11 except for cash or payment within 15 days after regular
12 billings, and all producer-distributors, distributors, and
13 jobbers shall bill retailers at least monthly. A
14 producer-distributor, distributor, or jobber may not extend
15 more than 15 days' credit after billing to a retailer. A
16 retailer may not receive delivery of milk without agreement
17 to pay for it in cash within 15 days after regular billing.
18 A correctly dated check which is honored upon presentment is
19 cash within the meaning of this section. An extension or
20 acceptance of credit in violation of this section shall be
21 construed as rendering or receiving financial assistance.
22 The licenses of producer-distributors, distributors, or
23 jobbers involved in violation of this section shall be
24 suspended or revoked as determined by the department in its
25 discretion after a hearing pursuant to the Administrative

1 Procedure Act."

2 NEW SECTION. Section 7. Repealer. Sections 81-23-205
3 and 81-23-301, MCA, are repealed.

4 NEW SECTION. Section 8. Effective date. This act is
5 effective on passage and approval.

-End-

1 House BILL NO. 82
2 INTRODUCED BY Manuel - Callard
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE
6 BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND
7 RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR
8 REVOCATION; CREATING A STATEWIDE MARKET AREA; DELETING RATE
9 OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING
10 REQUIREMENTS; AMENDING SECTIONS 2-8-103, 81-23-204, AND
11 81-23-302 THROUGH 81-23-304, MCA; REPEALING SECTIONS
12 81-23-205 AND 81-23-301, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."

14
15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
16 MCA, terminates the Board of Milk Control and requires a
17 performance evaluation of the board by the Legislative Audit
18 Committee; and

19 WHEREAS, as a result of the performance evaluation, the
20 Legislative Audit Committee recommends that the Board of
21 Milk Control be reestablished.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Reestablishment. The board of
25 milk control, created pursuant to 2-15-1802, is

1 reestablished for 6 years pursuant to 2-18-122, with its
2 existing statutory authority and rules.

3 Section 2. Section 2-8-103, MCA, is amended to read:
4 "2-8-103. Agencies to terminate. (1) The following
5 agencies shall terminate on July 1, 1979:

6 (a) board of abstracters, department of professional
7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional
9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and
11 air conditioning, department of professional and
12 occupational licensing, created by 2-15-1656;

13 (d) board of institutions, department of institutions,
14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1,
16 1981:

17 (a) board of athletics, department of professional and
18 occupational licensing, created by 2-15-1661;

19 (b) board of massage therapists, department of
20 professional and occupational licensing, created by
21 2-15-1627;

22 (c) board of osteopathic physicians, department of
23 professional and occupational licensing, created by
24 2-15-1607;

25 (d) board of podiatry examiners, department of

THIRD READING

1 professional and occupational licensing, created by
2 2-15-1608;.

3 (3) The following units of state government shall
4 terminate on July 1, 1983:

5 (a) board of aeronautics, department of commerce,
6 created by 2-15-1812;

7 (b) state board of hail insurance, department of
8 agriculture, created by 2-15-3003;

9 (c) board of horseracing, department of commerce,
10 created by 2-15-1881;

11 (d) board of livestock, department of livestock,
12 created by 2-15-3102;

13 ~~(e) board of milk control, department of commerce,~~
14 ~~created by 2-15-1892;~~

15 ~~(f)(a)~~ board of oil and gas conservation, department
16 of natural resources and conservation, created by 2-15-3303;

17 ~~(g)(f)~~ Montana outfitters' council, department of
18 fish, wildlife, and parks, created by 2-15-3403;

19 ~~(h)(g)~~ public service commission, department of public
20 service regulation, created by 69-1-102;

21 ~~(i)(h)~~ board of water and wastewater operators,
22 department of health and environmental sciences, created by
23 2-15-2105;

24 ~~(j)(i)~~ board of water well contractors, department of
25 commerce, created by 2-15-1862.

1 (4) The following agencies terminate on July 1, 1985:

2 (a) the board of public accountants, department of
3 commerce, created by 2-15-1866;

4 (b) the board of architects, department of commerce,
5 created by 2-15-1871;

6 (c) state banking board, department of commerce,
7 created by 2-15-1803;

8 (d) the state electrical board, department of
9 commerce, created by 2-15-1874;

10 (e) the board of professional engineers and land
11 surveyors, department of commerce, created by 2-15-1873;

12 (f) office of commissioner of insurance and the
13 insurance department, state auditor's office, created by
14 2-15-1902 and 2-15-1903;

15 (g) office of the securities commissioner, state
16 auditor's office, created by 2-15-1901;

17 (h) the board of landscape architects, department of
18 commerce, created by 2-15-1872;

19 (i) the board of county printing, department of
20 commerce, created by 2-15-1811;

21 (j) the board of plumbers, department of commerce,
22 created by 2-15-1875;

23 (k) board of physical therapy examiners, department of
24 commerce, created by 2-15-1858.

25 (5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce,

created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates July 1, 1989: board of milk control, department of commerce, created by 2-15-1892.

Section 3. Section 81-23-204, MCA, is amended to read:

"81-23-204. Declining, suspending, and revoking licenses — penalties in lieu of suspension or revocation. (1) The department may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the department may, at its discretion, suspend or revoke a license.

1 (2) In place of suspension or revocation of a license,
2 the department may assess a civil penalty not to exceed \$500
3 per day for each daily failure to comply with or each daily
4 violation of the provisions of this chapter or of any lawful
5 order or rule of the department or board. If the person
6 against whom a civil penalty is assessed fails to pay the
7 civil penalty immediately, the department shall collect the
8 civil penalty by a civil proceeding in the district court of
9 the first judicial district. This penalty shall be construed
10 as civil and not criminal in nature. Any moneys received by
11 the department as a result of collection of civil penalties
12 shall be paid into the earmarked revenue fund as provided by
13 81-23-403."

14 Section 4. Section 81-23-302, MCA, is amended to read:

15 "81-23-302. Establishment of minimum prices. (1) The
16 board shall fix minimum producer, wholesaler, jobber, and
17 retail prices for class I milk and minimum producer prices
18 only for class II and class III milk ~~in all areas of the~~
19 state by adopting rules in a manner prescribed by the
20 Montana Administrative Procedure Act.

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

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

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

18 (5) Such specific factors may include but shall not be
19 limited to the following items:

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

23 (b) the ability and willingness of consumers to
24 purchase, which shall include among other things per capita
25 disposable income statistics, consumer price indexes, and

1 wholesale price indexes;

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

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

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

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

19 (g) the cost factors in jobbing milk, which shall
20 include among other things raw product and ingredient costs,
21 carton or other packaging cost, processing cost, and that
22 part of general administrative costs of the supplying
23 distributor which may properly be allocated to the handling
24 of milk to the point at which such milk is at the supplying
25 distributor's dock, equipment of all types required to

1 market milk, and prevailing wage rates in the state;

2 (h) the needs, if any, for freight or transportation
3 charges to be deducted by distributors from producer prices
4 for bulk milk;

5 ~~(i) a reasonable return on necessary investment to all~~
6 ~~ordinarily efficient and economical milk dealers;~~

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

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

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

23 (b) wholesale prices for milk in class I shall be
24 computed;

25 (c) jobber prices for milk in class I shall be

1 computed;

2 (d) retail prices for milk in class I shall be
3 computed.

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

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

18 ~~(10) The milk produced in one natural marketing area~~
19 ~~and sold in another natural marketing area shall be paid for~~
20 ~~by a distributor or dealer in accordance with the pricing~~
21 ~~order of the area where produced at the price therein~~
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23 ~~or sold.~~

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25 hearing in the manner prescribed by the Montana

1 Administrative Procedure Act to regulate transportation
2 rates which distributors, contract haulers, and others
3 charge producers for both farm-to-plant and interplant
4 transportation of milk. No allowance for transportation of
5 milk between plants may be permitted unless it is found by
6 the board to be necessary to permit the movement of milk in
7 the public interest.

8 ~~(12) (11)~~ All milk purchased within a natural marketing
9 area by a distributor shall be purchased on a uniform basis.
10 The basis to be used shall be established by the board after
11 the producers and the distributors of the area have been
12 consulted.

13 ~~(13) (12)~~ The board may amend any official rule in the
14 same manner provided herein for the original establishment
15 of milk pricing formulas. The board may in its discretion,
16 when it determines the need exists, give notice of and hold
17 statewide public hearings affecting establishment or
18 revision of milk pricing formulas in all market areas of the
19 state.

20 ~~(14) (13)~~ Upon petition of a distributor or a majority
21 of his producers, the board shall hold a hearing to receive
22 and consider evidence regarding the advisability and need
23 for a base or quota plan as a method of payment by that
24 distributor of producer prices; and if the board finds that
25 the evidence adduced at such hearing warrants the

1 establishment of a base or quota plan, the board shall
2 proceed by official order to establish the same.

3 ~~(15)~~(14) Upon petition by any producer,
4 producer-distributor, or distributor ~~in any marketing area,~~
5 the board shall hold a hearing to receive and consider
6 evidence regarding the advisability and need for ~~an areawide~~
7 ~~or a statewide pooling arrangement as a method of payment of~~
8 producer prices, provided that at such hearing the board
9 shall among other things specifically receive and consider
10 evidence concerning production and marketing practices which
11 have historically prevailed ~~in the area concerned or~~
12 ~~statewide as the case may be.~~ If the board finds that the
13 evidence adduced at such hearing warrants the establishment
14 of ~~such an areawide or a statewide pooling arrangement,~~ the
15 board shall proceed by official order to establish the same;
16 but such official order shall be of no force or effect until
17 it is approved in a referendum conducted by the board among
18 affected producers, producer-distributors, and distributors.

19 ~~(16)~~(15) The requirements hereinabove set forth
20 concerning notices of hearings for the establishment of milk
21 pricing formulas shall apply to any hearings regarding base
22 or quota plans ~~or areawide or statewide pooling arrangements~~
23 or abandonment thereof.

24 ~~(17)~~(16) Rules adopted pursuant to this section shall
25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

2 Section 5. Section 81-23-303, MCA, is amended to read:

3 "81-23-303. Rules of fair trade practices. The
4 department may adopt reasonable rules governing fair trade
5 practices as they pertain to the transaction of business
6 among licensees under this chapter and among licensees and
7 the general public. Those rules shall contain but are not
8 limited to provisions prohibiting the following methods of
9 doing business which are unfair, unlawful, and not in the
10 public interest:

11 (1) the payment, allowance, or acceptance of secret
12 rebates, secret refunds, or unearned discounts by a person,
13 whether in the form of money or otherwise;

14 (2) the giving of milk, cream, dairy products,
15 services, or articles of any kind, except to bona fide
16 charities, for the purpose of securing or retaining the
17 fluid milk or fluid cream business of a customer;

18 (3) the extension to certain customers of special
19 prices or services not available to all customers who
20 purchase milk of like quantity under like terms and
21 conditions;

22 (4) the purchasing, processing, bottling, packaging,
23 transporting, delivering, or otherwise handling ~~in any~~
24 ~~marketing area~~ of milk which is to be or is sold or
25 otherwise disposed of at less than the minimum wholesale and

1 minimum retail prices established by the board;
 2 (5) the payment of a price lower than the applicable
 3 producer price, established by the board, by a distributor
 4 to a producer for milk which is distributed to any person,
 5 including agencies of the federal, state, or local
 6 government."

7 Section 6. Section 81-23-304, MCA, is amended to read:
 8 "81-23-304. Limitation on extension of credit to
 9 retailers. A sale or delivery may not be made by a
 10 producer-distributor, distributor, or jobber to a retailer,
 11 except for cash or payment within 15 days after regular
 12 billings, and all producer-distributors, distributors, and
 13 jobbers shall bill retailers at least monthly. A
 14 producer-distributor, distributor, or jobber may not extend
 15 more than 15 days' credit after billing to a retailer. A
 16 retailer may not receive delivery of milk without agreement
 17 to pay for it in cash within 15 days after regular billing.
 18 A correctly dated check which is honored upon presentment is
 19 cash within the meaning of this section. An extension or
 20 acceptance of credit in violation of this section shall be
 21 construed as rendering or receiving financial assistance.
 22 The licenses of producer-distributors, distributors, or
 23 jobbers involved in violation of this section shall be
 24 suspended or revoked as determined by the department in its
 25 discretion after a hearing pursuant to the Administrative

1 Procedure Act."

2 NEW SECTION. Section 7. Repealer. Sections 81-23-205
 3 and 81-23-301, MCA, are repealed.

4 NEW SECTION. Section 8. Effective date. This act is
 5 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT
(Agriculture, Livestock & Irrigation)

That House Bill No. 82 be amended as follows:

1. Page 2, line 1.
Strike: "2-8-122"
Insert: "2-18-122"

1 HOUSE BILL NO. 82

2 INTRODUCED BY MANUEL, ELLERD

3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REESTABLISH THE
6 BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND
7 RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR
8 REVOCATION; CREATING A STATEWIDE MARKET AREA; DELETING RATE
9 OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING
10 REQUIREMENTS; AMENDING SECTIONS 2-8-103, 81-23-204, AND
11 81-23-302 THROUGH 81-23-304, MCA; REPEALING SECTIONS
12 81-23-205 AND 81-23-301, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."

14
15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
16 MCA, terminates the Board of Milk Control and requires a
17 performance evaluation of the board by the Legislative Audit
18 Committee; and

19 WHEREAS, as a result of the performance evaluation, the
20 Legislative Audit Committee recommends that the Board of
21 Milk Control be reestablished.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Reestablishment. The board of
25 milk control, created pursuant to 2-15-1802, is

1 reestablished for 6 years pursuant to ~~2-18-122~~ ~~2-8-122~~, with
2 its existing statutory authority and rules.

3 Section 2. Section 2-8-103, MCA, is amended to read:

4 "2-8-103. Agencies to terminate. (1) The following
5 agencies shall terminate on July 1, 1979:

6 (a) board of abstractors, department of professional
7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional
9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and
11 air conditioning, department of professional and
12 occupational licensing, created by 2-15-1656;

13 (d) board of institutions, department of institutions,
14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1,
16 1981:

17 (a) board of athletics, department of professional and
18 occupational licensing, created by 2-15-1661;

19 (b) board of massage therapists, department of
20 professional and occupational licensing, created by
21 2-15-1627;

22 (c) board of osteopathic physicians, department of
23 professional and occupational licensing, created by
24 2-15-1607;

25 (d) board of podiatry examiners, department of

1 professional and occupational licensing, created by
2 2-15-1608^{1/2}.

3 (3) The following units of state government shall
4 terminate on July 1, 1983:

5 (a) board of aeronautics, department of commerce,
6 created by 2-15-1812;

7 (b) state board of hail insurance, department of
8 agriculture, created by 2-15-3003;

9 (c) board of horseracing, department of commerce,
10 created by 2-15-1881;

11 (d) board of livestock, department of livestock,
12 created by 2-15-3102;

13 ~~(e) board of milk control, department of commerce,~~
14 ~~created by 2-15-1882;~~

15 ~~(f) board of oil and gas conservation, department~~
16 ~~of natural resources and conservation, created by 2-15-3303;~~

17 ~~(g) Montana outfitters' council, department of~~
18 ~~fish, wildlife, and parks, created by 2-15-3403;~~

19 ~~(h) public service commission, department of public~~
20 ~~service regulation, created by 69-1-102;~~

21 ~~(i) board of water and wastewater operators,~~
22 ~~department of health and environmental sciences, created by~~
23 ~~2-15-2105;~~

24 ~~(j) board of water well contractors, department of~~
25 ~~commerce, created by 2-15-1862.~~

1 (4) The following agencies terminate on July 1, 1985:

2 (a) the board of public accountants, department of
3 commerce, created by 2-15-1866;

4 (b) the board of architects, department of commerce,
5 created by 2-15-1871;

6 (c) state banking board, department of commerce,
7 created by 2-15-1803;

8 (d) the state electrical board, department of
9 commerce, created by 2-15-1874;

10 (e) the board of professional engineers and land
11 surveyors, department of commerce, created by 2-15-1873;

12 (f) office of commissioner of insurance and the
13 insurance department, state auditor's office, created by
14 2-15-1902 and 2-15-1903;

15 (g) office of the securities commissioner, state
16 auditor's office, created by 2-15-1901;

17 (h) the board of landscape architects, department of
18 commerce, created by 2-15-1872;

19 (i) the board of county printing, department of
20 commerce, created by 2-15-1811;

21 (j) the board of plumbers, department of commerce,
22 created by 2-15-1875;

23 (k) board of physical therapy examiners, department of
24 commerce, created by 2-15-1858.

25 (5) The following agencies terminate on July 1, 1987:

1 (a) commission for human rights, department of labor
 2 and industry, created by 2-15-1706;
 3 (b) Montana state board of medical examiners,
 4 department of commerce, created by 2-15-1841;
 5 (c) board of dentistry, department of commerce,
 6 created by 2-15-1842;
 7 (d) board of pharmacists, department of commerce,
 8 created by 2-15-1843;
 9 (e) board of nursing, department of commerce, created
 10 by 2-15-1844;
 11 (f) board of nursing home administrators, department
 12 of commerce, created by 2-15-1845;
 13 (g) board of optometrists, department of commerce,
 14 created by 2-15-1846;
 15 (h) board of chiropractors, department of commerce,
 16 created by 2-15-1847;
 17 (i) board of radiologic technologists, department of
 18 commerce, created by 2-15-1848;
 19 (j) board of speech pathologists and audiologists,
 20 department of commerce, created by 2-15-1849;
 21 (k) board of hearing aid dispensers, department of
 22 commerce, created by 2-15-1850;
 23 (l) board of psychologists, department of commerce,
 24 created by 2-15-1851;
 25 (m) board of veterinarians, department of commerce,

1 created by 2-15-1852;
 2 (n) board of morticians, department of commerce,
 3 created by 2-15-1853;
 4 (o) board of barbers, department of commerce, created
 5 by 2-15-1856;
 6 (p) board of cosmetologists, department of commerce,
 7 created by 2-15-1857;
 8 (q) board of sanitarians, department of commerce,
 9 created by 2-15-1861;
 10 (r) board of veterans' affairs, department of social
 11 and rehabilitation services, created by 2-15-2202.
 12 (6) The following agency terminates July 1, 1989:
 13 board of milk control, department of commerce, created by
 14 2-15-1802."
 15 Section 3. Section 81-23-204, MCA, is amended to read:
 16 "81-23-204. Declining, suspending, and revoking
 17 licenses -- penalties in lieu of suspension or revocation.
 18 (1) The department may refuse to grant a license or may
 19 suspend or revoke a license already granted for due cause
 20 upon due notice and after hearing. The violation of any
 21 provisions of this chapter or of any lawful order or rule of
 22 the board or department, the failure or refusal to make
 23 required statements or reports, or failure to pay license or
 24 assessment fees are causes for which the department may--et
 25 its-discretionary suspend or revoke a license.

1 (2) In place of suspension or revocation of a license,
 2 the department may assess a civil penalty not to exceed \$500
 3 per day for each daily failure to comply with or each daily
 4 violation of the provisions of this chapter or of any lawful
 5 order or rule of the department or board. If the person
 6 against whom a civil penalty is assessed fails to pay the
 7 civil penalty immediately, the department shall collect the
 8 civil penalty by a civil proceeding in the district court of
 9 the first judicial district. This penalty shall be construed
 10 as civil and not criminal in nature. Any moneys received by
 11 the department as a result of collection of civil penalties
 12 shall be paid into the earmarked revenue fund as provided by
 13 81-23-403."

14 Section 4. Section 81-23-302, MCA, is amended to read:

15 "81-23-302. Establishment of minimum prices. (1) The
 16 board shall fix minimum producer, wholesale, jobber, and
 17 retail prices for class I milk and minimum producer prices
 18 only for class II and class III milk ~~in--all--areas--of--the~~
 19 ~~state~~ by adopting rules in a manner prescribed by the
 20 Montana Administrative Procedure Act.

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

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

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

18 (5) Such specific factors may include but shall not be
 19 limited to the following items:

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

23 (b) the ability and willingness of consumers to
 24 purchase, which shall include among other things per capita
 25 disposable income statistics, consumer price indexes, and

1 wholesale price indexes;

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

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

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

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

19 (g) the cost factors in jobbing milk, which shall
20 include among other things raw product and ingredient costs,
21 carton or other packaging cost, processing cost, and that
22 part of general administrative costs of the supplying
23 distributor which may properly be allocated to the handling
24 of milk to the point at which such milk is at the supplying
25 distributor's dock, equipment of all types required to

1 market milk, and prevailing wage rates in the state;

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

5 ~~{i}--a-reasonable-return-on-necessary-investment-to-all~~
6 ~~ordinarily-efficient-and-economic-milk-dealers.~~

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

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

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

23 (b) wholesale prices for milk in class I shall be
24 computed;

25 (c) jobber prices for milk in class I shall be

1 computed;

2 (d) retail prices for milk in class I shall be
3 computed.

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

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

18 ~~(10) The milk produced in one natural marketing area~~
19 ~~and sold in another natural marketing area shall be paid for~~
20 ~~by a distributor or dealer in accordance with the pricing~~
21 ~~order of the area where produced at the price therein~~
22 ~~specified of the class or use in which it is ultimately used~~
23 ~~or sold.~~

24 ~~(11) The board shall adopt rules after notice and~~
25 hearing in the manner prescribed by the Montana

1 Administrative Procedure Act to regulate transportation
2 rates which distributors, contract haulers, and others
3 charge producers for both farm-to-plant and interplant
4 transportation of milk. No allowance for transportation of
5 milk between plants may be permitted unless it is found by
6 the board to be necessary to permit the movement of milk in
7 the public interest.

8 ~~(12) All milk purchased within a natural marketing~~
9 ~~area by a distributor shall be purchased on a uniform basis.~~
10 The basis to be used shall be established by the board after
11 the producers and the distributors of the area have been
12 consulted.

13 ~~(13) The board may amend any official rule in the~~
14 ~~same manner provided herein for the original establishment~~
15 ~~of milk pricing formulas. The board may in its discretion,~~
16 ~~when it determines the need exists, give notice of and hold~~
17 ~~statewide public hearings affecting establishment or~~
18 ~~revision of milk pricing formulas in all market areas of the~~
19 ~~state.~~

20 ~~(14) Upon petition of a distributor or a majority~~
21 ~~of his producers, the board shall hold a hearing to receive~~
22 ~~and consider evidence regarding the advisability and need~~
23 ~~for a base or quota plan as a method of payment by that~~
24 ~~distributor of producer prices; and if the board finds that~~
25 the evidence adduced at such hearing warrants the

1 establishment of a base or quota plan, the board shall
2 proceed by official order to establish the same.

3 ~~†15†114~~ Upon petition by any producer,
4 producer-distributor, or distributor ~~in-any-marketing-area~~
5 the board shall hold a hearing to receive and consider
6 evidence regarding the advisability and need for ~~an-area-wide~~
7 or a statewide pooling arrangement as a method of payment of
8 producer prices, provided that at such hearing the board
9 shall among other things specifically receive and consider
10 evidence concerning production and marketing practices which
11 have historically prevailed ~~in-the-area-concerned--or~~
12 ~~statewide--as-the-case-may-be~~. If the board finds that the
13 evidence adduced at such hearing warrants the establishment
14 of ~~such-an-area-wide-or~~ a statewide pooling arrangement, the
15 board shall proceed by official order to establish the same;
16 but such official order shall be of no force or effect until
17 it is approved in a referendum conducted by the board among
18 affected producers, producer-distributors, and distributors.

19 ~~†16†115~~ The requirements hereinabove set forth
20 concerning notices of hearings for the establishment of milk
21 pricing formulas shall apply to any hearings regarding base
22 or quota plans ~~or-area-wide~~ or statewide pooling arrangements
23 or abandonment thereof.

24 ~~†17†116~~ Rules adopted pursuant to this section shall
25 be enforced and audited for compliance by the milk control

1 division of the department of commerce."

2 Section 5. Section 81-23-303, MCA, is amended to read:
3 "81-23-303. Rules of fair trade practices. The
4 department may adopt reasonable rules governing fair trade
5 practices as they pertain to the transaction of business
6 among licensees under this chapter and among licensees and
7 the general public. Those rules shall contain but are not
8 limited to provisions prohibiting the following methods of
9 doing business which are unfair, unlawful, and not in the
10 public interest:

11 (1) the payment, allowance, or acceptance of secret
12 rebates, secret refunds, or unearned discounts by a person,
13 whether in the form of money or otherwise;

14 (2) the giving of milk, cream, dairy products,
15 services, or articles of any kind, except to bona fide
16 charities, for the purpose of securing or retaining the
17 fluid milk or fluid cream business of a customer;

18 (3) the extension to certain customers of special
19 prices or services not available to all customers who
20 purchase milk of like quantity under like terms and
21 conditions;

22 (4) the purchasing, processing, bottling, packaging,
23 transporting, delivering, or otherwise handling ~~in-any~~
24 ~~marketing-area~~ of milk which is to be or is sold or
25 otherwise disposed of at less than the minimum wholesale and

1 minimum retail prices established by the board;
 2 (5) the payment of a price lower than the applicable
 3 producer price, established by the board, by a distributor
 4 to a producer for milk which is distributed to any person,
 5 including agencies of the federal, state, or local
 6 government."

7 Section 6. Section 81-23-304, MCA, is amended to read:

8 "81-23-304. Limitation on extension of credit to
 9 retailers. A sale or delivery may not be made by a
 10 producer-distributor, distributor, or jobber to a retailer,
 11 except for cash or payment within 15 days after regular
 12 billings, and all producer-distributors, distributors, and
 13 jobbers shall bill retailers at least monthly. A
 14 producer-distributor, distributor, or jobber may not extend
 15 more than 15 days' credit after billing to a retailer. A
 16 retailer may not receive delivery of milk without agreement
 17 to pay for it in cash within 15 days after regular billing.
 18 A correctly dated check which is honored upon presentment is
 19 cash within the meaning of this section. An extension or
 20 acceptance of credit in violation of this section shall be
 21 construed as rendering or receiving financial assistance.
 22 The licenses of producer-distributors, distributors, or
 23 jobbers involved in violation of this section shall be
 24 suspended or revoked as determined by the department in--its
 25 discretion after a hearing pursuant to the Administrative

1 Procedure Act."

2 NEW SECTION. Section 7. Repealer. Sections 81-23-205
 3 and 81-23-301, MCA, are repealed.

4 NEW SECTION. Section 8. Effective date. This act is
 5 effective on passage and approval.

-End-

HOUSE OF REPRESENTATIVES

February 8
1983

Highways and Transportation Committee Amendments
to Senate Bill 82

1. Page 1, line 23.

Following: "plates"

Insert: "specially"

Following: "with the"

Strike: "words" on line 23 through "appropriate" on line 25.

Insert: "letters and character DV-"

2. Page 2, lines 15 and 16.

Following: line 14.

Strike: line 15 through "appropriate, " on line 16.

Insert: "bearing a representation of a wheelchair as the symbol
of a handicapped person"

AND AS AMENDED
BE CONCURRED IN