

1 House BILL NO. 280
 2 INTRODUCED BY Barnett Stovall Tash DeBruyn Hargrove
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REALLOCATING THE BOARD OF MILK CONTROL FROM THE
 5 DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK; AMENDING SECTION 2-15-1802,
 6 MCA; AND PROVIDING AN EFFECTIVE DATE."
 7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 9

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

11 **"2-15-1802. Board of milk control -- membership -- allocation -- quasi-judicial.** (1) There is a board
 12 of milk control.

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

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

20 (4) The board is designated as a quasi-judicial board for purposes of 2-15-124."
 21

22 **NEW SECTION. Section 2. Code commissioner instruction.** The code commissioner shall recodify
 23 2-15-1802 in Title 2, chapter 15, part 31, and change affected references accordingly.
 24

25 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1995.
 26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0280, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act reallocating the Board of Milk Control from the Department of Commerce to the Department of Livestock effective July 1, 1995.

ASSUMPTIONS:

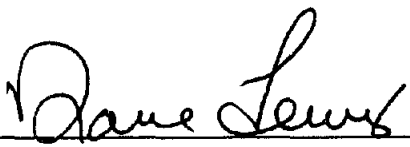
1. The legislation transfers the five member Board of Milk Control to the Department of Livestock.
2. Milk control functions covered by Title 81, Chapter 23, MCA, remain with the Department of Commerce.
3. State special revenue (milk control producer fees) collected by the Department of Commerce will be used to support the board's operating costs. The remaining producer fees and the milk license and permit fees, which total about \$221,500 each year, will remain with the Department of Commerce.
4. The board's budget as included in the Executive Budget recommendation provides each year \$3,000 for board member per diem and \$10,500 for member travel expenses.

FISCAL IMPACT:

Each year of the 1997 biennium, \$13,500 of state special revenue will be allocated to the Department of Livestock for board expenses.

TECHNICAL NOTES:

The legislation transfers the five member Board of Milk Control to the Department of Livestock. The legislation does not address the Milk Control Program functions covered by Title 81, Chapter 23, MCA, with the Department of Commerce.

 1-24-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOE BARNETT, PRIMARY SPONSOR DATE

Fiscal Note for HB0280, as introduced

HB 280

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0280, gray bill

DESCRIPTION OF PROPOSED LEGISLATION:

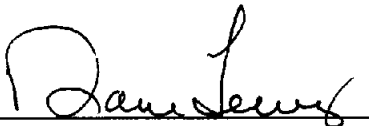
An act generally revising the laws relating to milk control; reallocating the Board of Milk Control from the Department of Commerce to the Department of Livestock; transferring the responsibilities for milk control from the Department of Commerce to the Department of Livestock; and providing an effective date.

ASSUMPTIONS:

1. The Board of Milk Control and its associated bureau would be transferred from the Department of Commerce to the Department of Livestock.
2. The Executive Budget recommendation for the Milk Control Bureau, which includes costs associated with the board, will be transferred in total to the Department of Livestock. The budget recommendation includes 5.00 FTE and personal service and operating expenses of \$235,452 in FY96 and \$236,576 in FY97. The budget is supported with milk licenses, permits, and producer fees.
3. The transferring of the Milk Control Bureau will impact the Department of Commerce's indirect supported services, specifically the Director's Office and Management Services Division. About \$13,355 in FY96 and \$13,413 in FY97 will have to be reallocated to remaining programs within the department.

FISCAL IMPACT:

The Executive Budget recommendation for the Milk Control Bureau including FTE, will transfer in total to the Department of Livestock from the Department of Commerce.

 2-15-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOE BARNETT, PRIMARY SPONSOR DATE

Fiscal Note for HB0280, gray bill

HB 280#2

APPROVED BY COM ON AGRICULTURE,
LIVESTOCK & IRRIGATION

1 HOUSE BILL NO. 280

2 INTRODUCED BY BARNETT, STOVALL, TASH, DEBRUYCKER, HARGROVE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO MILK
5 CONTROL; REALLOCATING THE BOARD OF MILK CONTROL FROM THE DEPARTMENT OF COMMERCE
6 TO THE DEPARTMENT OF LIVESTOCK; TRANSFERRING THE RESPONSIBILITIES FOR MILK CONTROL
7 FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK; AMENDING SECTION
8 SECTIONS 2-15-1802, 81-23-101, 81-23-103, 81-23-105, 81-23-202, 81-23-203, 81-23-302, AND
9 81-23-406, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
11 STATEMENT OF INTENT

12 IT IS THE INTENT OF THE LEGISLATURE THAT THE RULES PROMULGATED BY THE DEPARTMENT
13 OF COMMERCE REGARDING THE CONTROL OF MILK PRICES WILL BE CONTINUED AND ENFORCED BY
14 THE DEPARTMENT OF LIVESTOCK. IN ADDITION TO THE CURRENT RULES, THE DEPARTMENT OF
15 LIVESTOCK IS DIRECTED TO LOOK AT THE ADOPTION OF RULES THAT WOULD:

16 (1) LOWER THE WHOLESALE PRICE OF MILK A SUFFICIENT AMOUNT TO ELIMINATE THE NEED
17 TO SELL MONTANA MILK OUTSIDE OF MONTANA IN ORDER TO BE COMPETITIVE;

18 (2) ENCOURAGE THE USE OF MONTANA MILK BY MONTANA PROCESSORS; AND

19 (3) ESTABLISH A LOWER PRICING STRUCTURE FOR MILK USED IN INSTITUTIONS, SUCH AS
20 SCHOOLS.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 **Section 1.** Section 2-15-1802, MCA, is amended to read:

25 **"2-15-1802. Board of milk control -- membership -- allocation -- quasi-judicial.** (1) There is a board
26 of milk control.

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

1 more than three members may be of the same political party.

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

4 (4) The board is designated as a quasi-judicial board for purposes of 2-15-124."
5

6 **SECTION 2. SECTION 81-23-101, MCA, IS AMENDED TO READ:**

7 **"81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following
8 definitions apply:

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

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

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

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

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

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

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

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

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

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

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

1 area.

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

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

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

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

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

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

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

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

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

25

26 **SECTION 3. SECTION 81-23-103, MCA, IS AMENDED TO READ:**

27 **"81-23-103. General powers of the department.** (1) The department shall supervise, regulate, and
28 control the milk industry of this state, including the production, processing, storage, distribution, and sale
29 of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force,
30 or operation of any provision of public health laws ~~or the law under which the department of livestock is~~

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

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

12
 13 **SECTION 4. SECTION 81-23-105, MCA, IS AMENDED TO READ:**

14 "**81-23-105. Testing of milk.** (1) For the purpose of determining the value of milk supplied by
 15 producers during routine audits of milk processing plants ~~which~~ that receive raw milk directly from
 16 producers, the department ~~of commerce~~ may establish a program of testing ~~such~~ raw milk.

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

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

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

23
 24 **SECTION 5. SECTION 81-23-202, MCA, IS AMENDED TO READ:**

25 "**81-23-202. Licenses -- disposition of income.** (1) A producer, producer-distributor, distributor, or
 26 jobber may not engage in the business of producing or selling milk subject to this chapter in this state
 27 without first having obtained a license from the department ~~of livestock~~, as provided in 81-22-202, or, in
 28 the case of milk entering this state from another state or foreign nation, without complying with the
 29 requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter
 30 by the department. The annual fee for the license from the department is \$2 and is due before July 1 and

1 must be deposited by the department to the credit of the general fund. The license required by this chapter
2 is in addition to any other license required by state law or any municipality of this state. This chapter
3 applies to every part of the state of Montana.

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

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

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

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

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

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

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

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

29 (7) ~~Except for the assessment provided for in subsection (4), all~~ All assessments required by this
30 chapter must be deposited by the department in the state special revenue fund. All costs of administering

1 chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of
 2 board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this
 3 chapter, must be paid out of the board money in that fund.

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

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

9
 10 **SECTION 6. SECTION 81-23-203, MCA, IS AMENDED TO READ:**

11 "81-23-203. **Application for licenses.** An applicant for license to operate as a producer,
 12 producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared ~~under~~
 13 ~~authority of by~~ the department, and ~~an applicant shall state facts concerning his circumstances and the~~
 14 ~~nature of the business to be conducted which in the opinion of the department are necessary for the~~
 15 ~~administration of this chapter~~ containing the information required by the department. The application shall
 16 must certify the applicant to be the holder of all licenses required by the department of livestock for the
 17 conduct of ~~his~~ the applicant's business or, in the case of milk entering this state from another state or
 18 foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The
 19 application ~~shall~~ must be accompanied by the license fee required to be paid."

20
 21 **SECTION 7. SECTION 81-23-302, MCA, IS AMENDED TO READ:**

22 "81-23-302. **Establishment of minimum prices.** (1) The board shall fix minimum producer,
 23 wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class
 24 III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

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

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

1 result.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 consulted.

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

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

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

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

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

30 (ii) the establishment of a pool settlement fund to be administered by the department for the

1 purpose of receiving payments from pool distributors or making payments to them as necessary in order
2 to operate and administer the statewide pool; and

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

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

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

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

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

19
20 **SECTION 8. SECTION 81-23-406, MCA, IS AMENDED TO READ:**

21 **"81-23-406. Additional remedies.** The department may begin any proceeding at law or in equity
22 as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order
23 or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any
24 of them. In addition to any other remedy, the department may apply to the district court of the district
25 where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity
26 without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The
27 department may not be required to post bond in an action to which it is a party whether upon appeal or
28 otherwise. All legal actions may be brought by or against the board or department in the name of the
29 department of ~~commerce~~ livestock, and it is not necessary in an action to which the department is a party
30 that the action be brought by or against this state on relation of the department. The department may sue

1 by its own attorney, and it may also call upon a county attorney to represent it in the district court of ~~his~~
2 the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it
3 may associate its own attorney with either in ~~any~~ court."

4

5 NEW SECTION. Section 9. Code commissioner instruction. The code commissioner shall recodify
6 2-15-1802 in Title 2, chapter 15, part 31, and change affected references accordingly.

7

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

9

-END-

1 HOUSE BILL NO. 280

2 INTRODUCED BY BARNETT, STOVALL, TASH, DEBRUYCKER, HARGROVE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO MILK
5 CONTROL; REALLOCATING THE BOARD OF MILK CONTROL FROM THE DEPARTMENT OF COMMERCE
6 TO THE DEPARTMENT OF LIVESTOCK; TRANSFERRING THE RESPONSIBILITIES FOR MILK CONTROL
7 FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK; AMENDING SECTION
8 SECTIONS 2-15-1802, 81-23-101, 81-23-103, 81-23-105, 81-23-202, 81-23-203, 81-23-302, AND
9 81-23-406, MCA; AND PROVIDING AN EFFECTIVE DATE."

10

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 4, 1995

MR. PRESIDENT:

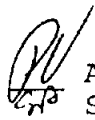
We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB 280 (third reading copy -- blue), respectfully report that HB 280 be amended as follows and as so amended be concurred in.

Signed: 
Senator Chuck Swysogood, Chair

That such amendments read:

1. Page 1, lines 14 through 20.
Following: "LIVESTOCK." on line 14
Strike: remainder of line 14 through "SCHOOLS." on line 20

-END-



Amd. Coord.
Sec. of Senate

SEN. HARGROVE
Senator Carrying Bill

HB 280

SENATE

1 HOUSE BILL NO. 280

2 INTRODUCED BY BARNETT, STOVALL, TASH, DEBRUYCKER, HARGROVE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO MILK
5 CONTROL; REALLOCATING THE BOARD OF MILK CONTROL FROM THE DEPARTMENT OF COMMERCE
6 TO THE DEPARTMENT OF LIVESTOCK; TRANSFERRING THE RESPONSIBILITIES FOR MILK CONTROL
7 FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF LIVESTOCK; AMENDING SECTION
8 SECTIONS 2-15-1802, 81-23-101, 81-23-103, 81-23-105, 81-23-202, 81-23-203, 81-23-302, AND
9 81-23-406, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
11 STATEMENT OF INTENT

12 IT IS THE INTENT OF THE LEGISLATURE THAT THE RULES PROMULGATED BY THE DEPARTMENT
13 OF COMMERCE REGARDING THE CONTROL OF MILK PRICES WILL BE CONTINUED AND ENFORCED BY
14 THE DEPARTMENT OF LIVESTOCK. IN ADDITION TO THE CURRENT RULES, THE DEPARTMENT OF
15 LIVESTOCK IS DIRECTED TO LOOK AT THE ADOPTION OF RULES THAT WOULD:

16 (1) LOWER THE WHOLESALE PRICE OF MILK A SUFFICIENT AMOUNT TO ELIMINATE THE NEED
17 TO SELL MONTANA MILK OUTSIDE OF MONTANA IN ORDER TO BE COMPETITIVE;

18 (2) ENCOURAGE THE USE OF MONTANA MILK BY MONTANA PROCESSORS; AND

19 (3) ESTABLISH A LOWER PRICING STRUCTURE FOR MILK USED IN INSTITUTIONS, SUCH AS
20 SCHOOLS.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 **Section 1.** Section 2-15-1802, MCA, is amended to read:

25 **"2-15-1802. Board of milk control -- membership -- allocation -- quasi-judicial.** (1) There is a board
26 of milk control.

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

1 more than three members may be of the same political party.

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

4 (4) The board is designated as a quasi-judicial board for purposes of 2-15-124."
5

6 **SECTION 2. SECTION 81-23-101, MCA, IS AMENDED TO READ:**

7 **"81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following
8 definitions apply:

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

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

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

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

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

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

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

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

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

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

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

1 area.

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

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

9 ~~{m}~~ "Producer" means a person who produces milk for consumption in this state, selling it to
10 a distributor.

11 ~~{n}~~ "Producer prices" means those prices at which milk owned by a producer is sold in bulk to
12 a distributor.

13 ~~{o}~~ "Producer-distributor" means a person both producing and distributing milk for consumption
14 in this state.

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

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

21 ~~{r}~~ "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk
22 or in packages, to a retailer.

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

25

26 **SECTION 3. SECTION 81-23-103, MCA, IS AMENDED TO READ:**

27 **"81-23-103. General powers of the department.** (1) The department shall supervise, regulate, and
28 control the milk industry of this state, including the production, processing, storage, distribution, and sale
29 of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force,
30 or operation of any provision of public health laws ~~or the law under which the department of livestock is~~

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

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

12
 13 **SECTION 4. SECTION 81-23-105, MCA, IS AMENDED TO READ:**

14 "81-23-105. **Testing of milk.** (1) For the purpose of determining the value of milk supplied by
 15 producers during routine audits of milk processing plants ~~which~~ that receive raw milk directly from
 16 producers, the department ~~of commerce~~ may establish a program of testing ~~such~~ raw milk.

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

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

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

23
 24 **SECTION 5. SECTION 81-23-202, MCA, IS AMENDED TO READ:**

25 "81-23-202. **Licenses -- disposition of income.** (1) A producer, producer-distributor, distributor,
 26 or jobber may not engage in the business of producing or selling milk subject to this chapter in this state
 27 without first having obtained a license from the department ~~of livestock~~, as provided in 81-22-202, or, in
 28 the case of milk entering this state from another state or foreign nation, without complying with the
 29 requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter
 30 by the department. The annual fee for the license from the department is \$2 and is due before July 1 and

1 must be deposited by the department to the credit of the general fund. The license required by this chapter
2 is in addition to any other license required by state law or any municipality of this state. This chapter
3 applies to every part of the state of Montana.

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

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

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

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

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

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

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

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

29 (7) ~~Except for the assessment provided for in subsection (4), all~~ All assessments required by this
30 chapter must be deposited by the department in the state special revenue fund. All costs of administering

1 chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of
 2 board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this
 3 chapter, must be paid out of the board money in that fund.

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

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

9

10 **SECTION 6. SECTION 81-23-203, MCA, IS AMENDED TO READ:**

11 **"81-23-203. Application for licenses.** An applicant for license to operate as a producer,
 12 producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared ~~under~~
 13 ~~authority of~~ by the department, and ~~an applicant shall state facts concerning his circumstances and the~~
 14 ~~nature of the business to be conducted which in the opinion of the department are necessary for the~~
 15 ~~administration of this chapter~~ containing the information required by the department. The application shall
 16 must certify the applicant to be the holder of all licenses required by the department ~~of livestock~~ for the
 17 conduct of ~~his~~ the applicant's business or, in the case of milk entering this state from another state or
 18 foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The
 19 application ~~shall~~ must be accompanied by the license fee required to be paid."

20

21 **SECTION 7. SECTION 81-23-302, MCA, IS AMENDED TO READ:**

22 **"81-23-302. Establishment of minimum prices.** (1) The board shall fix minimum producer,
 23 wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class
 24 III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

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

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

1 result.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (10) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana
 25 Administrative Procedure Act to regulate transportation rates ~~which that~~ distributors, contract haulers, and
 26 others charge producers for both farm-to-plant and interplant transportation of milk. ~~Ne~~ An allowance for
 27 transportation of milk between plants may not be permitted unless it is found by the board to be necessary
 28 to permit the movement of milk in the public interest.

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

1 consulted.

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

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

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

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

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

30 (ii) the establishment of a pool settlement fund to be administered by the department for the

1 purpose of receiving payments from pool distributors or making payments to them as necessary in order
2 to operate and administer the statewide pool; and

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

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

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

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

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

19

20 **SECTION 8. SECTION 81-23-406, MCA, IS AMENDED TO READ:**

21 **"81-23-406. Additional remedies.** The department may begin any proceeding at law or in equity
22 as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order
23 or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any
24 of them. In addition to any other remedy, the department may apply to the district court of the district
25 where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity
26 without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The
27 department may not be required to post bond in an action to which it is a party whether upon appeal or
28 otherwise. All legal actions may be brought by or against the board or department in the name of the
29 department of ~~commerce~~ livestock, and it is not necessary in an action to which the department is a party
30 that the action be brought by or against this state on relation of the department. The department may sue

1 by its own attorney, and it may also call upon a county attorney to represent it in the district court of ~~his~~
2 the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it
3 may associate its own attorney with either in ~~any~~ court."

4

5 NEW SECTION. Section 9. Code commissioner instruction. The code commissioner shall recodify
6 2-15-1802 in Title 2, chapter 15, part 31, and change affected references accordingly.

7

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

9

-END-