

HOUSE BILL NO. 592

INTRODUCED BY R. FITZGERALD

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCESS FOR THE CREATION OF MILK POOLING ARRANGEMENTS; REVISING THE PROCESS FOR RESCINDING A MILK POOLING ARRANGEMENT; REVISING THE AUTHORITY OF THE BOARD OF MILK CONTROL OVER POOLING ARRANGEMENTS; AND AMENDING SECTION 81-23-302, MCA."

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

Section 1. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall, by adopting rules, fix minimum producer prices for classes of utilization of milk as defined by the board.

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

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

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

(5) Specific factors may include but are not limited to the following items:

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

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers



1 for dairy feed in particular, and farm wage rates in this state;

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

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

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

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

15 (7) The board, after consideration of the evidence produced, shall make written findings and conclusions
16 and shall fix by official rule the formula under which minimum producer prices for milk must be computed.

17 (8) This section may not be construed as requiring the board to promulgate a specific number of
18 formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to
19 accomplish the objective set forth in subsection (7).

20 (9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades,
21 or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades,
22 and uses.

23 (10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from
24 Montana producers for the processing of products to be sold in this state if milk is available from Montana
25 producers at the price set by the board.

26 (11) The board shall adopt rules to regulate transportation rates that distributors, contract haulers, and
27 others charge producers for interplant transportation of milk. An allowance for transportation of milk between
28 plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the
29 public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies
30 as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices

1 under 81-23-303.

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

4 (13) The board may amend a rule in the same manner provided in this section for the original
5 establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists,
6 give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

7 (14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing
8 to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of
9 payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing
10 warrants the establishment of a base or quota plan, the board shall proceed by order to establish the base or
11 quota plan.

12 (15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon
13 petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider
14 evidence regarding the advisability and need for a ~~statewide~~ pooling arrangement consisting of producers,
15 producer-distributors, distributors, and one or more distributor plants. The pooling arrangement may be used as
16 a method of payment of producer prices, provided that at the hearing, the board shall, among other things,
17 specifically receive and consider evidence concerning current and historical production and marketing practices
18 ~~that have historically prevailed statewide~~ and distinctions between those.

19 (b) ~~If the board finds that the evidence presented at the hearing warrants the establishment of a statewide~~
20 ~~pooling arrangement, the board shall proceed by order to establish the arrangement~~ Based on evidence provided,
21 the board shall proceed to issue an order establishing the pooling arrangement.

22 (c) ~~An~~ A board pooling order is not effective until it is approved in a referendum conducted by the board
23 by mail among ~~affected~~ the producers, producer-distributors, and distributors that will be included in the proposed
24 pool.

25 (d) ~~The~~ A board pooling order must be approved by a majority of the producers, producer-distributors,
26 and distributors that will be included in the proposed pool. ~~voting, representing~~ The majority approving must
27 include:

28 (i) more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on
29 each producer's average monthly production for the 12 months immediately preceding the referendum; and

30 (ii) at least 50% of the Montana producers to be included in the proposed pool.

1 (e) If the board finds it necessary, the board may conduct more than one referendum on any pooling
2 order.

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

6 (i) a ~~statewide~~ base or quota plan contemplated in subsection (14);

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

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

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

15 ~~(d)(h)~~ (i) An order of the board establishing a ~~statewide~~ pool or pooling arrangement that has been
16 approved in a referendum may be rescinded ~~in the same manner as provided for approval of the order under~~
17 subsection (15)(a) by a referendum conducted by the board by mail among the producers, producer-distributors,
18 and distributors that are included in the pool. Upon petition of 10% or 20 of the licensed producers included in
19 a pool, whichever is less, the board shall conduct a referendum among all members of the pool to rescind the
20 pool.

21 (ii) The order to rescind must be approved by:

22 (A) more than 50% of the milk produced in Montana that is included in the pool or pooling arrangement,
23 based on each producer's average monthly production for the 12 months immediately preceding the referendum;
24 or

25 (B) at least 50% of the Montana producers that are included in the pool or pooling arrangement.

26 (iii) The order to rescind may be amended without a referendum if, prior to amending the order, the board
27 gives written notice of its intended action and holds a public hearing.

28 (16) The requirements of this section concerning notices of hearings for the establishment of milk pricing
29 formulas apply to any hearings regarding base or quota plans or ~~statewide~~ pooling arrangements or abandonment
30 of base or quota plans or ~~statewide~~ pooling arrangements.

1 (17) Rules adopted pursuant to this section must be audited for compliance by the department and
2 enforced by the board. An enforcement action is subject to the provisions of 81-23-407."

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