

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1450

6
7 H.P. 1099

House of Representatives, April 12, 1983

8 Submitted by the Department of Agriculture, Food and Rural Resources
9 pursuant to Joint Rule 24.

10 Referred to the Committee on Agriculture. Sent up for concurrence and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Hall of Sangerville.

11 Cosponsors: Senator Bustin of Kennebec, Representative Dillenback of
Cumberland and Representative McGowan of Pittsfield.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Creating a Maine Milk Pool.
18

19 Be it enacted by the People of the State of Maine as
20 follows:

21 Sec. 1. 7 MRSA c. 611 is enacted to read:

22 CHAPTER 611

23 MILK POOLING

24 §3151. Legislative findings and intent

25 The Legislature finds that, among Maine's dairy
26 farmers, prices received for milk differ substan-
27 tially, and that these differences arise in part from
28 a dual marketing system, whereby approximately 1/2
29 the milk produced in Maine is marketed in Maine, sub-
30 ject to the price control authority of the Maine Milk
31 Commission, Maine market, while the other 1/2 is mar-
32 keted to handlers selling in southern New England,

1 commonly known as the Boston market, subject to the
2 price regulations of the New England Milk Marketing
3 Order, Federal Milk Order Number 1.

4 The Legislature further finds that under this
5 dual system, producers selling on the Maine market
6 receive a significantly higher price for their milk
7 than do their Boston market counterparts; that, in
8 terms of net income after operating costs, producers
9 on the Maine market receive, on the average, 50% more
10 than their Boston market counterparts of equal size;
11 that the lower net returns received by producers
12 selling on the Boston market seriously limit their
13 ability to withstand cost fluctuations caused by
14 unpredictable increases in costs of fuel, credit,
15 feed and other input costs or price fluctuations
16 resulting from changing milk price support policies,
17 all of which are largely controlled by national and
18 international policies and other events beyond their
19 control; that this relative vulnerability engenders
20 an instability in the present marketing system
21 resulting in a destructive competition for higher
22 priced markets; that this instability has recently
23 been aggravated by the introduction of store-brand
24 milk in Maine markets; that the result is a serious
25 threat not only to the viability of these Boston
26 market farms, but also to the Maine dairy industry as
27 a whole; and that the loss of these dairy farms would
28 seriously erode Maine's agricultural base.

29 The Legislature further finds that the higher
30 prices paid to Maine milk producers selling on the
31 Maine market result from the state and federal
32 regulatory framework of the milk industry, as well as
33 from actual cost differences which would exist inde-
34 pendent of any regulatory framework. Specifically,
35 higher prices on the Maine market are found to derive
36 from cost savings realized by the Maine market pro-
37 ducers in transporting milk to local markets and from
38 a comparatively higher fluid milk, Class I, utiliza-
39 tion rate. Whereas, this favorable utilization rate
40 is made possible by the presence of 2 independently
41 regulated markets which allow the sale of excess
42 Maine production on the Boston market, with the
43 result that the excess is excluded from the calcula-
44 tion of utilization rates on the Maine market, the
45 Legislature finds that the resulting price difference

1 is in the nature of an economic benefit which has
2 arbitrarily accrued to Maine market producers over
3 Boston market producers.

4 The Legislature further finds that it is in the
5 best interest of the Maine dairy industry and the
6 well-being of the State as a whole to adjust prices
7 paid to Maine milk producers to redistribute this
8 benefit among Maine milk producers in both markets.
9 In so doing, it is the intention of the Legislature
10 to eliminate those differences attributable to the
11 higher utilization rates which are a product of the 2
12 regulated markets.

13 §3152. Definitions

14 As used in this chapter, unless the context indi-
15 cates otherwise, the following words have the follow-
16 ing meanings.

17 1. Blend price. "Blend price" means the price
18 of milk per hundredweight computed as the sum of the
19 Class I price multiplied by the percentage of milk
20 sold as Class I milk and the Class II price multi-
21 plied by the percentage sold as Class II milk.

22 2. Boston market dealer. "Boston market dealer"
23 means any dealer as defined in subsection 4 who sells
24 milk on the Boston market.

25 3. Boston market producer. "Boston market pro-
26 ducer" means any Maine milk producer selling to a
27 dealer marketing milk to the New England Milk Market-
28 ing Order, or any agricultural cooperative that buys
29 milk from or handles milk for such a producer and
30 sells it to such a dealer.

31 4. Dealer. "Dealer" means any person or entity
32 who purchases or receives milk from a producer within
33 the State for processing and sale within or outside
34 of the State, and shall include an agricultural
35 cooperative that owns and operates a dairy plant
36 which receives or processes milk produced by its mem-
37 bers. A producer-dealer, as defined in section 2951,
38 subsection 9, shall be deemed a dealer only with
39 respect to milk purchased from other producers.

1 5. Maine market dealer. "Maine market dealer"
2 means any dealer, as defined in subsection 4, who
3 sells milk on the Maine market.

4 6. Maine market producer. "Maine market pro-
5 ducer" means any Maine milk producer selling to a
6 dealer marketing milk to the Maine market, or any
7 agricultural cooperative that buys milk or handles
8 milk for such a producer and sells it to such a
9 dealer.

10 7. Maine Milk Pool. "Maine Milk Pool" means the
11 sum of collections from Maine dealers as prescribed
12 by section 3153.

13 8. Utilization rate. "Utilization rate" means
14 the percentage of milk produced which is utilized as
15 Class I or fluid milk.

16 §3153. Maine Milk Pool

17 1. Establishment. Within 180 days after the
18 effective date of this chapter, the commissioner
19 shall establish and maintain a fund to be known as
20 the "Maine Milk Pool," to which all moneys collected
21 from Maine dealers pursuant to subsection 2 shall be
22 credited. These funds shall be redistributed to eli-
23 gible Maine market producers and eligible Boston
24 market producers according to procedures, as defined
25 in subsection 3.

26 2. Collections from dealers. Collections from
27 dealers shall be made as follows.

28 A. Upon the establishment of the Maine Milk
29 Pool, each Maine market dealer shall, on a
30 monthly basis, calculate the amount of payment
31 that would be payable to its Maine producers at
32 that dealer's utilization rate, and the amount of
33 payment that would be due its Maine producers at
34 the applicable utilization rate for the New
35 England Milk Marketing Order. Each Maine market
36 dealer shall make an initial payment to its Maine
37 producers according to the blend price calculated
38 using the Federal Milk Order utilization rate,
39 but shall comply in all other respects with chap-
40 ter 603. Any additional payment that would be

1 due its Maine producers pursuant to that dealer's
2 applicable utilization rate shall be made to the
3 Maine Milk Pool. The commissioner shall adopt by
4 rule such procedures as are necessary to imple-
5 ment this section.

6 B. For any month in which the amount of money
7 payable to producers at a dealer's utilization
8 rate would be less than the amount of money pay-
9 able to that dealer's producers based upon the
10 Boston market utilization rate, the dealer may
11 deduct the difference from his next month's ini-
12 tial payment to producers. Upon the termination
13 of their business relationship, producers shall
14 be liable to dealers for all sums advanced under
15 this paragraph which have not been recouped by
16 way of deduction.

17 3. Redistribution of pool. The commissioner
18 shall, by rule, adopt such procedures as are neces-
19 sary to redistribute the Maine Milk Pool on an equal
20 basis to all Maine market and Boston market pro-
21 ducers, except as otherwise provided in this subsec-
22 tion. If any Boston market producer receives a plant
23 price in an amount greater than the amount initially
24 payable to Maine market producers under subsection 2,
25 the commissioner shall credit that additional amount
26 against the redistribution from the Maine Milk Pool
27 to which that producer would otherwise be entitled in
28 order to avoid potential inequities arising from
29 equal redistribution.

30 §3154. Administration

31 1. Authority of commissioner. The commissioner
32 may enter into agreement with the Maine Milk Commis-
33 sion or other state agency for administering the
34 provisions of this chapter, and may employ such staff
35 and services as may be necessary.

36 2. Deductions. Prior to the distribution of the
37 pool, as provided in section 3153, the commissioner
38 shall deduct from the amounts otherwise payable to
39 Maine market and Boston market producers the follow-
40 ing:

1 A. An amount sufficient to cover the costs of
2 administering this chapter. That amount shall be
3 determined annually and shall be adopted by rule
4 by the commissioner; and

5 B. An amount paid to the Maine Dairy Promotion
6 Board, for the purposes authorized by Title 36,
7 section 4501, equal to .8 of 1% of the average
8 Class I price per hundredweight for milk of 3.5%
9 butterfat content, as established by the Maine
10 Milk Commission during the preceding calendar
11 year, rounded to the nearest 10th of 1¢, applied
12 to all milk produced, purchased or imported for
13 sale within the State, excluding milk consumed on
14 the farm where produced. Of the amount credited
15 to the Maine Dairy Promotion Board, 2¢ per hund-
16 redweight shall be paid by the board to the Maine
17 Dairy and Nutrition Council.

18 3. Records and information. The commissioner
19 may receive and utilize such reports and other infor-
20 mation from any dealer as furnished to the Maine Milk
21 Commission pursuant to section 2956 for the purpose
22 of administering this chapter. The commissioner may
23 also require any dealer purchasing milk from pro-
24 ducers who may be eligible for participation in the
25 Maine Milk Pool to furnish directly such reports and
26 other information as may be necessary to determine
27 the eligibility of these producers and the extent of
28 their participation.

29 In the event that information requested is not ade-
30 quately provided by any dealer, the commissioner may
31 require producers who may be eligible for participa-
32 tion in the Maine Milk Pool to furnish such reports
33 and other information as may be necessary to deter-
34 mine their eligibility and the extent of their parti-
35 cipation.

36 The cost of obtaining information required to deter-
37 mine eligibility and extent of participation shall be
38 shared by all producers, as provided in subsection 2,
39 except that added costs incurred in obtaining infor-
40 mation directly from a producer whose dealer does not
41 furnish that information shall be assessed to that
42 producer.

1 The commissioner shall prescribe by rule the form,
2 content and time for filing of any reports which may
3 be required under this section. All reports shall be
4 subject to audit.

5 §3155. Penalties

6 Any person who fails to timely furnish reports
7 required by the commissioner pursuant to section 3154
8 shall be subject to the following civil penalties, to
9 be collected by the commissioner in a civil action:

10 A. For the first violation, a civil penalty not
11 to exceed \$100.

12 B. For each subsequent violation within one year
13 of the first violation, a civil penalty not to
14 exceed \$500.

15 Persons who violate any other rules promulgated
16 under this chapter shall be subject to a civil pen-
17 alty not to exceed \$100 to be collected by the com-
18 missioner in a civil action. All penalties collected
19 by the commissioner shall be paid to the Treasurer of
20 State for deposit to the General Fund.

21 Sec. 2. 7 MRSA §2956, 3rd ¶ from the end, as
22 amended by PL 1981, c. 481, §1, is further amended to
23 read:

24 Each licensed dealer shall pay to the commission
25 an annual license fee of \$1 and the sum of 5¢ 6 1/2¢
26 per hundredweight as monthly payments, based on quan-
27 tity of milk purchased or produced in any market
28 area, or purchased or produced in an uncontrolled
29 area and sold in any market area. Two and one-half
30 cents per hundredweight may be deducted by dealers
31 from amounts paid by them to producers of such milk,
32 except that the milk farm-processed into cream for
33 the manufacture of butter shall not be subject to
34 such sums of 5¢ 6 1/2¢ per hundredweight. Of the
35 amount paid by each dealer, 1 1/2¢ per hundredweight
36 shall be paid by the commission to the Maine Dairy
37 and Nutrition Council for the purposes authorized by
38 Title 36, section 4521.

1 Sec. 3. 36 MRSA §4503, as repealed and replaced
2 by PL 1979, c. 452, §2, is repealed and the following
3 enacted in its place:

4 §4503. Maine Dairy Promotion Board

5 There is established the Maine Dairy Promotion
6 Board, consisting of the following 5 members: The
7 Commissioner of Agriculture, Food and Rural Resources
8 or his designee, who shall serve ex officio, and 4
9 producers.

10 The producer members shall be appointed by the
11 commissioner on recommendation of the various pro-
12 ducer associations, individuals or unorganized groups
13 of producers in the State. The 4 producer members
14 shall include 2 producers selling milk on the Maine
15 market and 2 producers selling milk on the Boston
16 market. Producer members selling in the same market
17 shall not belong to the same agricultural cooperative
18 or sell milk to the same dealer.

19 The first 4 members appointed to the board shall
20 serve one-year, 2-year, 3-year and 4-year terms,
21 respectively. The members appointed thereafter shall
22 serve 4-year terms. No person may be appointed to
23 consecutive 4-year terms. In case of a vacancy
24 caused by death, resignation or otherwise, the
25 vacancy shall be filled by the commissioner for the
26 unexpired period of the term.

27 The appointed members shall be allowed actual
28 traveling and other necessary expenses incurred in
29 the performance of their duties and each member shall
30 receive a per diem compensation for the time actually
31 spent in the performance of his duties. This compen-
32 sation shall be determined by the Governor.

33 The members of the board shall elect a chairman.
34 The commissioner may employ a director and such
35 clerks and assistants as he may deem necessary and
36 may prescribe their duties and fix their compensa-
37 tion, subject to the Personnel Law.

38 Sec. 4. 36 MRSA §4503-A is enacted to read:

39 §4503-A. Powers and duties

1 The board shall have the following powers and
2 duties:

3 1. Contracts. To make contracts or enter into
4 contracts with any local, state, federal or private
5 agency, department, firm, corporation or association
6 for the purposes defined in this chapter;

7 2. Cooperation with other agencies. To cooper-
8 ate with other state or regional agencies with like
9 purposes, including transferring to those agencies
10 any portion of the board's receipts that the board
11 deems appropriate and in the best interests of the
12 dairy industry in Maine. In determining these
13 amounts, the board shall consider the relative bene-
14 fits accruing to all Maine producers from increased
15 fluid milk consumption within the Maine market and
16 the New England market, the relative effectiveness
17 of the various programs intended to increase fluid
18 milk consumption for which funding is being consid-
19 ered; appropriate research needs; and other consider-
20 ations pertinent to the distribution of the board's
21 funds to other agencies for cooperative efforts;

22 3. Books and records. To keep books, records
23 and accounts of all the board's activities, which
24 shall be open to inspection and audit by the State at
25 all times;

26 4. Annual report. To prepare an annual report
27 which shall include a summary of all receipts and
28 expenditures, including expenditures for specific
29 promotional or research programs; a description of
30 the various promotional or research programs oper-
31 ated, contracted or sponsored by the board; and a
32 directory of current board members, including their
33 affiliation and term of office; and

34 5. Outside funding. To accept grants, donations
35 and gifts of funds for purposes defined in this chap-
36 ter.

37 Sec. 5. 36 MRSAs §4505, as repealed and replaced
38 by PL 1979, c. 452, §3, is repealed.

39 Sec. 6. 36 MRSAs §4506, as repealed and replaced
40 by PL 1979, c. 452, §4, is repealed.

1 Sec. 7. 36 MRSA §4507, as amended by PL 1979, c.
2 452, §5, is repealed.

3 Sec. 8. 36 MRSA §4509, as repealed and replaced
4 by PL 1981, c. 698, §185, is repealed.

5 Sec. 9. 36 MRSA §4510, as repealed and replaced
6 by PL 1981, c. 364, §52, is repealed.

7 Sec. 10. 36 MRSA §4512, as repealed and replaced
8 by PL 1981, c. 364, §53, is repealed.

9 Sec. 11. 36 MRSA §4523, as amended by PL 1977,
10 c. 564, §133, is repealed and the following enacted
11 in its place.

12 §4523. Organization

13 The Maine Dairy and Nutrition Council, as estab-
14 lished within the Department of Agriculture, Food and
15 Rural Resources, shall consist of the following 5
16 members: Four producers and one dealer, to be
17 appointed by the Commissioner of Agriculture, Food
18 and Rural Resources, on recommendation of the various
19 producer and dealer associations, individuals or
20 unorganized groups of producers and dealers in this
21 State.

22 The 4 producer members shall include 2 members
23 selling milk on the Maine market and 2 members
24 selling milk on the Boston market. Producer members
25 selling in the same market shall not belong to the
26 same agricultural cooperative or sell their milk to
27 the same dealer.

28 The first 4 members appointed to the council as
29 reconstituted in this section shall serve one-year,
30 2-year, 3-year and 4-year terms respectively. All
31 subsequent appointments to the council, as reconsti-
32 tuted in this section, shall be for a 4-year term.
33 No person may be appointed to consecutive 4-year
34 terms. In case of a vacancy caused by death, resig-
35 nation or otherwise, the vacancy shall be filled by
36 the commissioner for the unexpired period of the
37 term.

1 The members of the council shall elect a chair-
2 man. The commissioner may employ such personnel for
3 the council as he deems necessary, subject to the
4 Personnel Law.

5 Members of the council shall be allowed actual
6 traveling and other necessary expenses incurred in
7 the performance of their duties and each member shall
8 receive a per diem compensation for the time actually
9 spent in the performance of his duties, that compen-
10 sation to be determined by the Governor. The cost of
11 administration of the council, including expenses and
12 compensation of members, shall not exceed the moneys
13 collected under this chapter. The council shall be
14 furnished a suitable office in the State Capitol,
15 together with all necessary equipment and supplies
16 therefor.

17 Sec. 12. 36 MRSA §§4524 and 4525, as enacted by
18 PL 1975, c. 444, §6, are repealed.

19 Sec. 13. 36 MRSA §4526, as amended by PL 1977,
20 c. 694, §715, is repealed.

21 Sec. 14. 36 MRSA §4528, as amended by PL 1981,
22 c. 364, §54, is repealed.

23 Sec. 15. 36 MRSA §4529, as repealed and replaced
24 by PL 1981, c. 364, §55, is repealed.

25 Sec. 16. 36 MRSA §4530, as amended by PL 1979,
26 c. 541, Pt.A, §226, is repealed.

27 Sec. 17. 36 MRSA §4531, as repealed and replaced
28 by PL 1981, c. 364, §56, is repealed.

29 STATEMENT OF FACT

30 The present system for marketing Maine milk cre-
31 ates an artificial discrepancy in prices received by
32 Maine milk producers, whereby those selling to deal-
33 ers marketing within Maine, subject to the price con-
34 trol authority of the Maine Milk Commission, receive
35 higher prices than those selling to dealers marketing
36 milk outside the State and subject to the price regu-
37 lations of the New England Milk Marketing Order.

1 This dual marketing system also has contributed to
2 problems in the collection and use of milk promotion
3 moneys.

4 The purpose of this bill is to adjust prices paid
5 to Maine milk producers to eliminate the portion of
6 the higher price enjoyed by the Maine market due
7 solely to the favorable utilization rate of the Maine
8 market, a benefit made possible by the presence of
9 the Boston market. At the same time, the bill will
10 retain such price differences as may be enjoyed by
11 the Maine market producers due to their proximity to
12 market. The bill also provides for a more equitable
13 and efficient system to collect milk promotion funds
14 and allocate them between the 2 markets.

15 Section 1 of this bill creates a Maine Milk Pool
16 as a means of redistributing the higher returns
17 received by Maine market producers. It requires that
18 the portion of these higher returns generated by the
19 Maine market's higher Class I milk utilization rate
20 be deposited in the pool and be shared with producers
21 selling to out-of-state markets, according to rules
22 adopted by the Commissioner of Agriculture, Food and
23 Rural Resources. It further provides that adminis-
24 trative costs be deducted from the pool, authorizes
25 the commissioner to require by rule necessary records
26 and information from producers or dealers and pro-
27 vides for civil penalties for violations of rules and
28 procedures established pursuant to this bill.

29 Section 1, together with sections 2 through 9,
30 provides for an increase in milk promotion fees to be
31 deducted from the Maine Milk Pool and administered by
32 a redefined and redirected Maine Dairy Promotion
33 Board. The new board is to be composed of 4 milk
34 producers equally divided between Maine market and
35 New England market producers, with no 2 members in
36 the same market selling to the same agricultural
37 cooperative or dealer. The bill also provides for
38 similar changes in the membership of the Maine Dairy
39 and Nutrition Council.

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