

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 598, L.D. 849, Bill, "An Act to Stabilize the Maine Dairy Industry"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the producer price of milk has dropped approximately 40% as a result of a milk surplusage west of the Mississippi River; and

Whereas, the magnitude of these price fluctuations jeopardizes the economic viability and stability of the Maine dairy industry and Maine agriculture as a whole; and

Whereas, the Maine dairy industry is essential to the viability of the State's rural communities and contributes to the general welfare of the State by generating business activity and employment and preserving open space and other benefits for the people of Maine; and

Whereas, helping to stabilize the Maine dairy industry during temporary periods of price fluctuations constitutes a public purpose and an appropriate expenditure of tax revenues; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately

necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 7 MRSA §2954, sub-§1 as repealed and replaced by PL 1987, c. 447, §1, is amended to read:

1. Commission empowered to establish prices; public hearing. The commission is vested with the power to establish and change, after investigation and public hearing, the minimum wholesale and retail prices to be paid to producers, dealers and stores for milk received, purchased, stored, manufactured, processed, distributed or otherwise handled within the State. The commission shall hold a public hearing prior to the establishing or changing of such minimum prices. The commission may proceed, however, under the emergency rule-making provisions of Title 5, section 8054 without making findings of emergency when the only changes to be made in the minimum prices are to conform with the orders of any federal or other agency duly authorized by law to establish or negotiate producer prices or are to respond to other conditions affecting prevailing Class I and Class II and Class III prices in southern New England, or reflect the Maine Dairy Farm Stabilization Tax as determined by Title 36, chapter 708-A. Title 5, section 8054, subsection 3, the second sentence, does not apply to minimum prices adopted under the previous sentence. Due notice of the public hearing shall must be given by publishing notice as provided in Title 5, chapter 375. The commission shall hold such a public hearing not less frequently than once every 12 months to determine whether the minimum wholesale and retail prices then established should be changed. In addition to the data received through the implementation of the information gathering procedures of its rules as a basis for its determinations, the commission shall solicit and seek to receive oral and written testimony at hearings to determine whether the minimum wholesale and retail prices then established should be changed and whether the proposed minimum wholesale and retail prices are just and reasonable.

Sec. 2. 7 MRSA §2954, sub-§2, ¶B, as repealed and replaced by PL 1975, c. 517, §3, is amended to read:

B. The minimum wholesale prices paid to dealers shall must be established to reflect the lowest prices at which milk purchased from Maine producers in this State at Maine minimum prices in the State can be received, processed, packaged and distributed within the State of Maine at a just and reasonable return, and in addition must include the amount of any tax determined by Title 36, chapter 708-A.

Sec. 3. 7 MRSA §2954, sub-§§13 and 14 are enacted to read:

2 13. Report to State Tax Assessor. The Maine Milk
3 Commission shall report before the first of each month to the
4 State Tax Assessor the basic price of milk established for that
5 month as defined in Title 36, chapter 708-A.

6 14. Effective date of certain prices: repeal. Any new
7 minimum wholesale prices paid to dealers and new minimum retail
8 prices established pursuant to this section are effective on the
9 first Sunday of the calendar month. This subsection is repealed
10 on November 7, 1993.

12 Sec. 4. 36 MRSA c. 708-A is enacted to read:

14 CHAPTER 708-A

16 MAINE DAIRY FARM STABILIZATION ACT

18 §4541. Short title

20 This chapter may be known and cited as the "Maine Dairy Farm
21 Stabilization Act."

22 §4542. Definitions

24 As used in this chapter, unless the context otherwise
26 indicates, the following terms have the following meanings.

28 1. Basic price. "Basic price" means the minimum Class I
29 price of milk established pursuant to Title 7, chapter 603
30 including that part of the Class I price that exceeds the
31 applicable Class I price established pursuant to the New England
32 Milk Marketing Order, except such part of the Class I price
33 established by the Maine Milk Commission to reflect the cost
34 factors provided in Title 7, section 2954, subsection 2 or the
35 increased costs of production pursuant to Title 7, section 2954,
36 subsection 2, paragraph A.

38 2. Handler. "Handler," with respect to a particular
39 container of packaged milk, means the wholesale handler or, if
40 none, the retail handler.

42 3. Milk. "Milk" has the same meaning as in Title 7,
43 section 2951, subsection 6.

44 4. Packaged milk. "Packaged milk" means milk that has been
46 processed and placed in containers for ultimate sale to consumers.

48 5. Person. "Person" means any individual, partnership,
49 firm, corporation, association or other unit and the State and
50 all political subdivisions or agencies of the State.

52 6. Retail handler. "Retail handler" means any person who

handles packaged milk in this State that is next sold in this State subject to the retail minimum prices established pursuant to Title 7, chapter 603.

7. Tax period. "Tax period" means the period beginning the first Sunday of the calendar month and continuing through the Saturday prior to the first Sunday of the following calendar month.

8. Wholesale handler. "Wholesale handler" means any person who handles packaged milk in this State that is next sold in this State subject to the minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603.

§4543. Maine Dairy Farm Stabilization Tax

1. Tax. An excise tax is levied and imposed at the rate established in subsection 2 on the handling in this State of packaged milk for sale in this State. With respect to the handling in this State of a particular container of packaged milk for sale in this State, the tax must be paid by the wholesale handler or, if there is no wholesale handler with respect to that container of packaged milk, by the retail handler. There is no tax on the handling in this State of packaged milk for sale that never becomes subject to minimum retail prices that have been established pursuant to Title 7, chapter 603.

2. Rate. The rate of the tax levied under this chapter is established for each tax period on the basis of the basic price of milk in effect on the first day of the tax period in accordance with the following chart:

<u>Basic Price</u>	<u>Rate of Maine Dairy Farm Stabilization Tax</u>
<u>\$16.00 per hundredweight and above</u>	<u>0¢ per quart</u>
<u>\$15.50 to \$15.99 per hundredweight</u>	<u>1¢ per quart</u>
<u>\$15.00 to \$15.49 per hundredweight</u>	<u>2¢ per quart</u>
<u>\$14.50 to \$14.99 per hundredweight</u>	<u>3¢ per quart</u>
<u>\$14.00 to \$14.49 per hundredweight</u>	<u>4¢ per quart</u>
<u>below \$14.00 per hundredweight</u>	<u>5¢ per quart</u>

For any container other than a quart, the tax is computed on a quart equivalent basis.

3. Calculation of tax. Handlers shall pay the tax for each tax period on all milk subject to the tax, sold during the tax period, and either:

A. Subject to the minimum wholesale prices paid to dealers established by the Maine Milk Commission pursuant to Title

2 7. chapter 603; or

4 B. Not subject to minimum wholesale prices paid to dealers
6 but subject to minimum retail prices established by the
8 Maine Milk Commission pursuant to Title 7, chapter 603.

10 In calculating the amount of packaged milk handled for sale in
12 this State each tax period, the handler shall deduct any packaged
14 milk returned to the handler during that tax period.

16 4. Report. By February 15th of each year, the Commissioner
18 of Agriculture, Food and Rural Resources shall submit a report to
20 the joint standing committee of the Legislature having
22 jurisdiction over agricultural matters describing the total
24 amount of tax collected and distributed under this chapter during
26 the 12 preceding tax periods, the prices for milk then prevailing
28 on the Maine and Boston markets, the supply and demand for milk
30 in this State and New England and the present condition and
32 future prospects of the State's dairy industry. The commissioner
34 shall include recommendations, if any, concerning changes in the
36 rates of the Maine Dairy Farm Stabilization Tax.

38 5. Tax as additional. Any tax imposed and collected under
40 this chapter is in addition to any other taxes imposed or
42 collected under any other law of the State.

44 6. Records, reports and administration. Every handler
46 subject to the tax imposed under subsection 1 shall register with
48 the State Tax Assessor within 5 business days of becoming subject
50 to the tax and annually thereafter on forms provided by the State
52 Tax Assessor. The list of handlers so registered is available to
 the public. By the 25th day of each calendar month, every
 handler subject to the tax imposed under subsection 1 shall
 report to the State Tax Assessor the quantity of packaged milk
 handled in this State for sale in this State during the preceding
 tax period, the quantity of packaged milk handled that was
 subject to the Maine Dairy Farm Stabilization Tax and any other
 information the State Tax Assessor determines necessary or useful
 in the administration of this chapter and enforcement of the
 Maine Dairy Farm Stabilization Tax.

7. Due dates. Handlers shall pay to the State Tax Assessor
 the tax due for the preceding tax period not later than the 25th
 day of each calendar month and submit any information required by
 the State Tax Assessor on the forms provided.

8. Presumption. In any proceeding against a retail handler
 for collection of the tax with respect to any particular
 container of packaged milk, there is a rebuttable presumption
 that that retail handler did not purchase that container in a
 transaction subject to the minimum wholesale prices paid to
 dealers established pursuant to Title 7, chapter 603. The burden

is on the retail handler to show that the retail handler purchased that container of packaged milk in a transaction subject to minimum wholesale prices paid to dealers established pursuant to Title 7, chapter 603.

§4544. Maine Dairy Farm Stabilization Fund

1. Fund created. The State Tax Assessor shall immediately pay all funds received from the Maine Dairy Farm Stabilization Tax to the Treasurer of State. The Treasurer of State shall keep these funds and all other funds appropriated by the Legislature for the purposes of this chapter in a separate account called the Maine Dairy Farm Stabilization Fund. The Treasurer of State shall invest all money credited to the fund in accordance with applicable provisions of law and all earnings must be credited to the fund. The funds must be invested in a manner that ensures that all deposits and earnings are available for withdrawal on a monthly basis without penalty. Revenue credited to the fund, including interest accrued by investment of the fund, must be used solely for the purposes of this chapter as provided in subsection 2. The funds credited to the fund do not lapse.

2. Distribution. All funds collected under this chapter and all other funds appropriated by the Legislature for the purposes of this chapter and interest earnings on these funds must be distributed by the Treasurer of State on a monthly basis as follows.

A. Ninety-four percent of the funds collected under this chapter and all other funds appropriated by the Legislature for the purposes of this chapter and any earnings on these funds must be paid each month to the Commissioner of Agriculture, Food and Rural Resources for distribution to Maine market producers and Boston market producers equally per hundredweight on the basis of their production during the prior month. Such payments to producers must be made by the 20th day of the month following the month that payment of the tax is due. A payment may not be allocated to that portion of a producer's milk production that is in excess of 400,000 pounds per month. Notwithstanding any other provisions of law, the funds distributed to producers under this paragraph are allotted for the purposes of this paragraph and the Commissioner of Agriculture, Food and Rural Resources or the Maine Milk Pool administrator pursuant to Title 7, section 3154, as the commissioner's designee, is authorized to prepare and sign warrants for the payment of the amounts due to producers from the Maine Dairy Farm Stabilization Fund under this chapter.

B. Four percent of the funds collected each month must be paid into a separate, nonlapsing account to be allocated by the Legislature on an annual basis to supplement the Women,

Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966 administered by the Department of Human Services.

C. Two percent of the fund must be paid into a separate, nonlapsing account to be allocated by the Legislature on an annual basis to cover the actual costs of the administration and enforcement of this chapter by the Treasurer of State, the State Tax Assessor, the Attorney General and the Commissioner of Agriculture, Food and Rural Resources. Any remaining balance of this account after these allocations must be redeposited in the Maine Dairy Farm Stabilization Fund for distribution to producers.

§4547. Penalties

Notwithstanding section 187, any person who fails to file a return required under this chapter, files a return that is materially incorrect or fails to pay the tax due under this chapter is liable for a penalty not to exceed \$25,000 or 25% of the tax due, whichever is greater. This penalty is applied separately for each month that the person fails to file a return required under this chapter, files a return under this chapter that is materially incorrect or fails to pay the tax due under this chapter. In any action to enforce this chapter, the person liable for the payment of the tax shall in addition pay all costs of enforcement, including attorney's fees.

§4548. Nonseverability

If a court of competent jurisdiction in a final judgment not subject to appeal determines that any handler handling packaged milk in this State for sale in this State is not subject to the Maine Dairy Farm Stabilization Tax, then the Maine Dairy Farm Stabilization Tax does not apply to the handling of packaged milk in this State for sale in this State by any other handler and all handlers are relieved of all obligations under this chapter.

§4549. Repeal

This chapter is repealed on November 7, 1993.

Sec. 5. Allocation. The following funds are allocated from Maine Dairy Farm Stabilization Fund to carry out the purposes of this Act.

1991-92 1992-93

**AGRICULTURE, FOOD AND RURAL
RESOURCES, DEPARTMENT OF**

Maine Dairy Farm Stabilization Fund

2	All Other	\$4,136,000	\$4,512,000
4	Provides funds for		
6	distribution to Maine market		
8	producers and Boston market		
	producers on the basis of		
	production.		
10	Maine Dairy Farm Stabilization -		
	Administration		
12	All Other	\$72,707	\$90,482
14	Provides funds for the		
16	administration and		
18	enforcement of the Maine		
	Dairy Farm Stabilization Act.		
20	DEPARTMENT OF AGRICULTURE, FOOD		
	AND RURAL RESOURCES		
22	TOTAL	<u>\$4,208,707</u>	<u>\$4,602,482</u>
24	FINANCE, DEPARTMENT OF		
26	Bureau of Taxation		
28	Personal Services	\$2,700	\$2,835
	All Other	4,513	2,683
30	Capital Expenditures	8,080	
32	Provides funds for 4 Tax		
34	Examiner positions for 5		
36	weeks per year and general		
	operating expenses to track		
	revenue, contact tax payers		
	and perform follow-up		
	assistance.		
40	DEPARTMENT OF FINANCE		
42	TOTAL	<u>\$15,293</u>	<u>\$5,518</u>
44	HUMAN SERVICES, DEPARTMENT OF		
46	Bureau of Health		
48	All Other	\$176,000	\$192,000
50	Provides funds for the Women,		
	Infants and Children Special		
52	Supplemental Food Program.		

2	DEPARTMENT OF HUMAN SERVICES		
4	TOTAL	<u>\$176,00</u>	<u>\$192,000</u>
6	TOTAL ALLOCATIONS	<u>\$4,400,000</u>	<u>\$4,800,000</u>

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect on August 1, 1991.

FISCAL NOTE

	1991-92	1992-93
APPROPRIATIONS/ALLOCATIONS		
Other Funds	\$4,400,000	\$4,800,000
REVENUES		
Other Funds	\$4,400,000	\$4,800,000

This bill establishes a Maine Dairy Farm Stabilization Fund financed by an excise tax on the handling of milk, which will increase dedicated revenue by and require allocations of \$4,400,000 in fiscal year 1991-92 and \$4,800,000 in fiscal year 1992-93. Ninety-four percent of the funds will be distributed to the State's dairy farmers, 4% to supplement the Women, Infants and Children Special Supplemental Food Program, WIC, and 2% may be used for administrating the fund.

The Bureau of Taxation will receive allocations of \$15,293 in fiscal year 1991-92 and \$5,518 in fiscal year 1992-93 for a Tax Examiner and general operating expenses to administer the excise tax. The Department of Agriculture, Food and Rural Resources will receive allocations of \$72,707 and \$90,482, the remainder of the 2% for administration. The Department of Human Services will receive allocations of \$176,000 and \$192,000 for the WIC program.

This bill also establishes a penalty for failure to comply with the reporting and tax requirements of the Maine Dairy Farm Stabilization Act. The additional work load and administrative costs associated with a minimal number of new cases filed in District Court as a result will be absorbed within the budgeted resources of the Judicial Department. The collection of penalties will increase General Fund revenue by an amount which can not be determined at this time.'

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STATEMENT OF FACT

4 This amendment replaces the original bill. The amendment
6 establishes a Maine Dairy Farm Stabilization Fund financed by an
8 excise tax on the handling in the State of packaged milk for sale
10 in the State. The rate of the Maine Dairy Farm Stabilization Tax
12 changes each month in relation to the Class I price of milk
14 established by the Maine Milk Commission and increases
16 proportionately as the producer price of milk falls. The tax is
18 levied when the basic price of milk, as defined in this Act,
20 falls below \$16 per hundredweight. When the basic price is
22 between \$15.50 and \$15.99 per hundredweight, the rate of tax is
24 1¢ per quart. The maximum tax allowed is 5¢ per quart levied if
26 the basic price of milk falls below \$14.00 per hundredweight.
28 The funds collected are redistributed so that 94% of the funds is
distributed to the State's dairy farmers on the basis of their
milk production. Milk producers do not receive payment from the
fund on milk production in excess of 400,000 pounds per month.
Four percent is set aside to supplement the Women, Infants and
Children Special Supplemental Food Program of the United States
Child Nutrition Act of 1966. No more than 2% of the funds may be
used for the purpose of administering the Maine Dairy Farm
Stabilization Act. The penalties section is strengthened and a
nonseverability clause is added in this amendment. This
amendment includes an effective date of August 1, 1991 and a
repeal date of November 1, 1993. This amendment also adds an
appropriation and a fiscal note to the bill.

Reported by the Committee on Agriculture
Reproduced and distributed under the direction of the Clerk of the
House
(6/5/91) (Filing No. H-555)