



Agriculture & Rural Affairs Committee

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SENATE BILL: 1480

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SUMMARY:

Senate Bill 1480 amends the Milk Marketing Law, Act 105 of 1937, to change the name of the Milk Marketing Board to the Milk Control Board. Further, this bill increases the membership of the board from the current three members to five members; three remain nominated by the Governor and the two additional members shall be appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Terms are reduced from the current six years to four years and at least three of the members of the board are required to be current or former Pennsylvania dairy producers.

The term "Milk dealer" or "handler" is amended to include retailers, to allow for the capture of information pertaining to the total amount of milk sold at retail in the Commonwealth and from where that milk is purchased. This would allow for the connection between the over-order premium collected on the retail sale of milk, to the producer at the beginning of the equation. A definition of "Qualified producer" is added:

"Qualified producer" means a Pennsylvania producer whose milk is purchased or processed as fluid or manufactured products. Notwithstanding any other provision of this act to the contrary, the term does not include a cooperative.

In Section 801 (Requisites of Orders Fixing Price of Milk), current law states that the board is to base price fixing on conditions affecting the milk industry and to ensure a supply of milk necessary to meet demand, plus a reserve. The law requires a reasonable return to the dairy producer (not less than the cost of production plus a profit), and a reasonable return for both the milk dealer and the retailer (set in the law at 2½% to 3½%). Through Senate Bill 1480, language also in this section under current law is removed which allows the board to establish producer prices at "prices designed to market the milk" (which may be less than the cost of production) if the board determines that the market for Pennsylvania produced milk is threatened.

In Section 803 (Prices to Producers), SB 1480 adds a subsection that directs any prices fixed by the board above the Federal Order Price to be paid by milk dealers into the Producer Settlement Fund, established under new Section 1104.1. Section 1104.1 mandates that the monies in the Producer Settlement Fund shall be distributed to qualified producers based on the volume of milk shipped by each. Up to 2% of the fund may be used for administration.

SB 1480 establishes Section 803.01 (Title to milk), mandating that the sale of milk occurs at the farm level, not at delivery to a dealer's plant. This language will establish all PA-produced milk as Pennsylvania milk, qualifying that milk for the over-order premium, regardless of whether it is shipped and/or processed out of state before being sold back into PA.

This act shall take effect in 60 days.

SUMMARY OF RELEVANT EXISTING LAW:

The Milk Marketing Law, Act 105 of 1937, regulates the sale, manufacture and distribution of milk in Pennsylvania.

SB

1480

AN ACT

1 Amending the act of April 28, 1937 (P.L.417, No.105), entitled,
2 as amended, "An act relating to milk and the products
3 thereof; creating a Milk Marketing Board; establishing its
4 jurisdiction, powers and duties; regulating the production,
5 transportation, manufacturing, processing, storage,
6 distribution, delivery and sale of milk and certain products
7 thereof; providing for the licensing of milk dealers and the
8 payment of fees therefor; requiring milk dealers to file
9 bonds to secure payment for milk to producers and certain
10 milk dealers; authorizing the holding of hearings and the
11 issuance of subpoenas by the board; conferring jurisdiction
12 upon courts to punish contempts and to prohibit violations of
13 this act and of rules, regulations and orders of the board;
14 authorizing the board to adopt rules, regulations and orders,
15 and to enter into interstate and Federal compacts; requiring
16 persons who weigh, measure, sample or test milk to procure
17 permits or certificates, to take examinations, to pay fees
18 therefor, to furnish certain notices, records and statements,
19 and to use certain methods of weighing, measuring, sampling
20 and testing; authorizing the board to examine the business,
21 papers and premises of milk dealers and producers, requiring
22 the keeping of records and the filing of reports by milk
23 dealers, and permitting, with limitations, the use of
24 information obtained thereby; authorizing the board to fix
25 prices for milk and certain milk products subject to the
26 approval of the Governor, and conferring certain powers upon
27 the Governor with respect thereto; providing for appeals to
28 the courts from decisions of the board, and for the burden of
29 proof upon such appeals; prescribing penalties, fines and
30 imprisonment for violations of this act and rules,
31 regulations and orders of the board; defining perjury;
32 defining remedies; repealing legislation supplied and
33 superseded by this act, and saving rights, duties and

1 proceedings thereunder; and making appropriations," further
2 providing for definitions, for appointment and terms of
3 members and quorum, for requisites of orders fixing price of
4 milk and for prices to producers; providing for title to
5 milk; further providing for price increases, for expenses and
6 for payment; establishing the Producer Settlement Fund; and
7 repealing provisions relating to the Joint Study Commission.

8 The General Assembly of the Commonwealth of Pennsylvania

9 hereby enacts as follows:

10 Section 1. The definitions of "board," "milk components" and
11 "milk dealer" or "handler" in section 103 of the act of April
12 28, 1937 (P.L.417, No.105), known as the Milk Marketing Law,
13 amended December 21, 1984 (P.L.1278, No.243), are amended and
14 the section is amended by adding a definition to read:

15 Section 103. Definitions; Construction.--The following terms
16 shall be construed in this act to have the following meanings,
17 except in those instances where the context clearly indicates
18 otherwise:

19 * * *

20 "Board" means the State agency created by this act, to be
21 known as the "Milk [Marketing] Control Board."

22 * * *

23 "Milk components" means the components of milk, including
24 butterfat and any other components, for which the prices of
25 handlers, producers or both are established by marketing
26 agreements or orders issued under the Agricultural Marketing
27 Agreement Act of 1937 (7 U.S.C. 601, et seq.) and which the Milk
28 [Marketing] Control Board determines by regulation are
29 applicable to the marketing areas established under this act.

30 "Milk dealer" or "handler" means any person, including any
31 store or subdealer or subhandler, who purchases or receives or
32 handles on consignment or otherwise milk within the
33 Commonwealth, for sale, shipment, storage, processing or

1 manufacture [and further sale], within or without the
2 Commonwealth, whether on behalf of himself or others, or both. A
3 producer who delivers milk to a milk dealer or handler only
4 shall not be deemed a milk dealer or handler. If a cooperative
5 distributes or makes available on consignment or otherwise milk
6 within this Commonwealth to stores, as defined in this act, or
7 to consumers, as defined in this act, or to other milk dealers
8 or handlers, as defined in this act, or acts as an agent for its
9 members, it shall be deemed to be a milk dealer or handler as to
10 that part of its business, and shall be governed by the
11 provisions of this act applicable thereto. Such cooperative
12 shall be governed by the applicable provisions of this act as to
13 the prices at which it sells, markets, or bargains to sell or
14 make available on consignment or otherwise milk within this
15 Commonwealth to milk dealers, handlers and others.

16 * * *

17 "Qualified producer" means a Pennsylvania producer whose milk
18 is purchased or processed as fluid or manufactured products.
19 Notwithstanding any other provision of this act to the contrary,
20 the term does not include a cooperative.

21 * * *

22 Section 2. Sections 201, 801 and 803 of the act, amended
23 December 21, 1984 (P.L.1278, No.243), are amended to read:

24 Section 201. Appointment and Terms of Members; Quorum.--
25 There is hereby created an independent administrative board to
26 be known as the Milk [Marketing] Control Board. The board shall
27 consist of [three] five members, three of whom shall be
28 nominated and appointed by the Governor, by and with the advice
29 and consent of [two-thirds] a majority of all the members of the
30 Senate, and two of whom shall be appointed, one each by the

1 President pro tempore of the Senate and the Speaker of the House
2 of Representatives. Members of the board shall serve for terms
3 of [six (6)] four (4) years each, and until their successors
4 shall have been appointed and qualified[; except that the terms
5 of the members first taking office shall expire May first, one
6 thousand nine hundred thirty-nine, May first, one thousand nine
7 hundred forty-one, and May first, one thousand nine hundred
8 forty-three, respectively, as designated by the Governor at the
9 time of appointment and until their successors shall have been
10 appointed and qualified]. Of the members appointed [after the
11 effective date of this amending act] by the Governor, one shall
12 be appointed to represent consumer interests and shall have the
13 responsibility under the direction of the board for directing
14 the executive secretary to coordinate and supervise the Bureau
15 of Consumer Affairs. A least three members of the board shall be
16 current or former Pennsylvania producers.

17 The Governor shall designate one of the members of the board
18 as chairman. The chairman shall, when present, preside at all
19 meetings and price hearings, and in his absence a member
20 designated by the chairman shall preside. When presiding at a
21 price hearing, the chairman or acting chairman shall have the
22 status of agency head for the purpose of conducting the hearing.

23 [Two] Three members of the board shall constitute a quorum,
24 and any action or order of the board shall require the approval
25 of at least [two] three members.

26 The Governor may remove any board member for inefficiency,
27 neglect of duty, loss of qualification as provided in section
28 202 or misconduct in office: Provided, That he is given a copy
29 of the charges against him and an opportunity to be publicly
30 heard in person or by counsel in his own defense upon not less

1 than ten days' notice, and that the Governor file with the
2 Department of State a complete statement of all charges made
3 against such board member, together with a complete record of
4 the proceedings and his findings thereon.

5 Section 801. Requisites of Orders Fixing Price of Milk.--The
6 board shall ascertain, after a hearing in which all interested
7 persons shall be given reasonable opportunity to be heard, the
8 logical and reasonable milk marketing areas within the
9 Commonwealth, shall describe the territorial extent thereof,
10 shall designate such areas by name or number, and shall
11 ascertain and maintain such prices paid to producers, to dealers
12 and to stores for milk in the respective milk marketing areas as
13 will be most beneficial to the public interest, best protect the
14 milk industry of the Commonwealth and insure a sufficient
15 quantity of pure and wholesome milk to inhabitants of the
16 Commonwealth, having special regard to the health and welfare of
17 children residing therein.

18 The board shall base all prices upon all conditions affecting
19 the milk industry in each milk marketing area, including the
20 amount necessary to yield a reasonable return to the producer,
21 which return shall not be less than the cost of production and a
22 reasonable profit to the producer, of the quantity of milk
23 necessary to supply the consumer demand for fluid milk plus a
24 reasonable reserve supply as determined by the board, and a
25 reasonable return on aggregate milk sales by milk dealers or
26 handlers and stores selling milk. A reasonable return shall mean
27 not less than a two and one-half percent (2 1/2%) nor more than
28 a three and one-half percent (3 1/2%) rate of return based on
29 net sales of price-controlled products determined in accordance
30 with generally accepted accounting principles. [However, where

1 the board determines that the market for Pennsylvania produced
2 milk is threatened it may establish producer prices designed to
3 market the milk.] In ascertaining such returns, the board shall
4 utilize available information concerning producers' cost of
5 production and a cross-section representative of producers,
6 dealers and stores in the area and shall consider unit costs of
7 various types of products and of various sizes of containers.

8 The board shall file at its office, with each order issued, a
9 general statement in writing of the findings of fact in support
10 of, and the reasons for such order.

11 The board may, upon its own motion or upon application in
12 writing, from time to time, alter, revise or amend an official
13 order defining milk marketing areas or fixing prices to be
14 charged or paid for milk. Before making, revising or amending
15 any order defining milk marketing areas or fixing prices to be
16 charged or paid for milk, the board shall hold a hearing, after
17 giving reasonable opportunity to be heard to interested persons,
18 of whom the board has notice, and, in the case of any order
19 affecting the public, after giving reasonable notice thereof to
20 the public in such newspaper or newspapers as, in the judgment
21 of the board, shall afford sufficient notice and publicity:
22 Provided, however, That after such hearing, there shall be a
23 further hearing or conference before the board on any proposed
24 order, and notice of such further hearing or conference shall be
25 given to the parties represented and heard at the previous
26 hearing. Upon application in writing from a person aggrieved by
27 an order of the board hereunder, filed within fifteen (15) days
28 after the issuance of the order complained of, or upon its own
29 motion, the board may, within twenty (20) days after the
30 effective date of such order, issue an order revising or

1 amending such order without a further hearing, if such revision
2 or amendment is based on the record of the hearing held prior to
3 the issuance of such order.

4 "Interested persons," as used in this section, means all
5 persons who may be affected by an order of the board fixing
6 prices, and who have signified to the board in writing their
7 desire to be notified of such hearings concerning a particular
8 milk market area or areas within the Commonwealth. "Reasonable
9 opportunity to be heard" may be afforded by written notice
10 addressed to the last known address of an interested party by
11 mail, postage prepaid, by deposit in a United States post office
12 or any receptacle thereof. Nothing contained in this section
13 shall be construed to limit or modify the provisions of section
14 three hundred eight of this act relating to the posting and
15 publicizing of orders of the board, including orders made under
16 this article and the force and effect thereof.

17 At any hearing provided for herein the testimony of an expert
18 statistician present at the hearing and any printed,
19 typewritten, duplicated, mimeographed or other written treatise,
20 report or statistical data by an expert not present as a
21 witness, if and to the extent it is endorsed as reliable to an
22 expert witness present at the hearing, shall be competent
23 evidence on any subject material to fixing any price under this
24 article. However, the testimony, treatise, report or data must
25 result from a study of facts and conditions in the milk
26 marketing area which is the subject of the hearing.

27 All provisions of all price-fixing orders of the board shall
28 be presumed to be valid, and the burden of proving any
29 invalidity of any provisions thereof shall be upon the person
30 asserting the same. Any determination by the board, or a court

1 to which an appeal has been taken, that the wholesale or retail
2 prices provided are invalid shall not prevent the enforcement of
3 prices to producers, but any determination that prices to
4 producers are unreasonable shall require the redetermination by
5 the board of wholesale and retail prices as well as prices to
6 producers.

7 Whenever an order of the board fixing prices is remitted to
8 the board with directions to reform the findings or order in
9 accordance with the opinion of the court, and no further appeal
10 is taken by the board, the board shall make such reformation
11 within thirty days from the entry of the order of the court
12 remitting the price-fixing order to the board.

13 Section 803. Prices to Producers.--(a) The board shall fix,
14 by official order, the minimum prices or a formula for the
15 setting of minimum prices to be paid by milk dealers or handlers
16 to producers for milk or milk components sold or delivered or
17 made available on consignment or otherwise by producers to
18 dealers or handlers: Provided, however, That the fixing of
19 prices to be paid by milk dealers or handlers to producers for
20 milk or milk components to be used solely in manufacturing shall
21 be discretionary with the board.

22 (b) Prices to producers fixed by the board under this
23 section in excess of the Federal order price shall be paid by
24 milk dealers or handlers into the Producer Settlement Fund.

25 Section 3. The act is amended by adding a section to read:

26 Section 803.1. Title to milk.--(a) The scope of this
27 section is as follows:

28 (1) This section shall apply only to the administration of
29 this act.

30 (2) This section shall not supersede an order of a Federal

1 administrative agency or of the board which requires the cost of
2 shipment of milk to be free on board the place of destination.

3 (b) Notwithstanding 13 Pa.C.S. § 2401(2)(ii) (relating to
4 passing of title; reservation for security; limited application
5 of section), title to milk shall be transferred from the
6 producer to the milk dealer at the point of shipment of the
7 milk.

8 Section 4. Section 805 of the act, amended July 31, 1968
9 (P.L.963, No.294), is amended to read:

10 Section 805. Price Increases.--It is hereby declared to be
11 the legislative intent that the benefits of any increase of
12 prices received by milk dealers, by virtue of the minimum price
13 provisions of this article, shall be given to producers[, except
14 in any case where the board deems a deviation from this policy
15 necessary in order lawfully to maintain proper milk markets and
16 outlets for producers and consumers]. The board shall, whenever
17 it deems such action necessary, issue orders, rules or
18 regulations to effectuate this intent.

19 Section 5. Sections 1102 and 1104 of the act, amended
20 December 20, 1991 (P.L.404, No.48), are amended to read:

21 Section 1102. Expenses.--(a) As much of the money in the
22 Milk Marketing Fund as may be necessary shall be annually
23 appropriated to the Milk [Marketing] Control Board to be used to
24 pay its expenses, including the following:

25 (1) Salaries of the board and of its employes.

26 (2) Rental and other expenses for offices, rooms, garage
27 space and other accommodations outside of the Capitol Buildings,
28 either in or outside of the capital city, occupied by the board.

29 (3) Premiums for workmen's compensation insurance covering
30 the officers and employes of the board.

1 (4) Premiums for surety bonds for such officers or employes
2 of the board as may be required by law to furnish such bonds.

3 (5) Purchase and operating costs of motor vehicles required
4 by the board for full-time use, including premiums for liability
5 insurance covering such motor vehicles and the members of the
6 board and employes operating them; also the amount payable to
7 the Department of General Services for the use of automobiles
8 supplied by it for temporary use by the board.

9 (6) Furniture, stationery, materials, supplies and all other
10 overhead expenses of the board.

11 (7) All other expenses of every kind and description
12 necessary for the performance by the board of its work.

13 (b) All such purchases and leases shall be made, and all
14 such contracts of insurance and surety bonds shall be placed,
15 through the Department of General Services as agent.

16 (c) Before November 1 of each year, the [Milk Marketing
17 Board] board shall estimate its total expenses for the fiscal
18 year beginning July 1 of the following year. This estimate shall
19 be submitted to the Governor in accordance with section 610 of
20 the act of April 9, 1929 (P.L.177, No.175), known as "The
21 Administrative Code of 1929." At the same time the board submits
22 its estimate to the Governor, the board shall also submit that
23 estimate to the General Assembly through the President pro
24 tempore of the Senate and the Speaker of the House of
25 Representatives. The board, or its designated representatives,
26 shall be afforded an opportunity to appear before the Governor
27 regarding its estimate.

28 Section 1104. Payment.--Moneys in the Milk Marketing Fund
29 appropriated to the Milk [Marketing] Control Board shall be paid
30 out upon warrant of the State Treasurer drawn after requisition

1 by the secretary of the Milk [Marketing] Control Board.

2 Section 6. The act is amended by adding a section to read:

3 Section 1104.1. Producer Settlement Fund.--The Producer
4 Settlement Fund is hereby established in the State Treasury as a
5 restricted account. The fund shall consist of moneys deposited
6 in accordance with section 803(b). All moneys in the fund and
7 the interest accruing thereon are hereby appropriated to the
8 Milk Control Board on a continuing basis to carry out the
9 provisions of this section. The board may use up to two percent
10 (2%) of the fund for administration. Moneys in the fund shall be
11 distributed by the board on a pro rata basis to qualified
12 producers based on the volume of milk produced and shipped by
13 each qualified producer.

14 Section 7. Section 1204 of the act, added December 21, 1984
15 (P.L.1278, No.243), is repealed:

16 [Section 1204. Joint Study Committee.--There is hereby
17 created a Joint Study Committee which shall study the
18 implementation and effect of resale pricing under this act. The
19 committee shall be in existence until its report hereunder is
20 delivered to the General Assembly not later than December 31,
21 1985. The committee shall consist of the following members:

22 (1) Four producers, one each appointed by the majority
23 leader and minority leader of each house.

24 (2) Four consumers, one each appointed by the majority and
25 minority leaders of each house.

26 (3) Four dealers, one each appointed by the majority and
27 minority leaders of each house.

28 (4) The chairman and the minority chairman of the
29 Agriculture and Rural Affairs Committees of each house, or their
30 designee.

1 (5) One at-large member appointed by the Secretary of
2 Agriculture.

3 At the first meeting of the committee which will be called by
4 the chairman of the Senate Agriculture and Rural Affairs
5 Committee, the committee shall elect a chairman who, with the
6 concurrence of a majority of the members of the committee, shall
7 determine a schedule of meetings for the conduct of committee
8 business. The chairman thus elected, or another member of the
9 committee as appointed by the chairman, shall preside at all
10 meetings of the committee.

11 There is also hereby created an advisory committee to provide
12 assistance and support for the Joint Study Committee and which
13 shall consist of:

14 (1) The chairman of the Pennsylvania Milk Marketing Board
15 and his staff.

16 (2) The Dean of the Pennsylvania State University College of
17 Agriculture and his staff.

18 (3) The Dean of the Wharton School of Business
19 Administration of the University of Pennsylvania and his staff.

20 The purpose of the committee shall be to study and report
21 upon the implementation and effect of the resale milk pricing
22 provisions of this act. The committee shall submit its final
23 report to the Agriculture and Rural Affairs Committee of each
24 house not later than December 1, 1985.]

25 Section 8. This act shall take effect in 60 days.