

1 S.264

2 Introduced by Senator Kittell

3 Referred to Committee on Agriculture

4 Date: January 5, 2010

5 Subject: Agriculture; dairy industry stabilization and health (DISH) program

6 Statement of purpose: This bill proposes to ensure the viability of Vermont's  
7 dairy industry and working landscape through a Vermont dairy industry  
8 stabilization and health (DISH) program, which would annually generate  
9 \$13 million through a \$0.50 surcharge on the sale of milk at the farm-gate, to  
10 be paid by the buyer, collected by the farmer, and submitted monthly to the  
11 secretary of agriculture, food and markets, who would hold the DISH  
12 surcharge in a segregated DISH fund and make monthly payments to dairy  
13 farmers if the federal price of milk falls below \$18.00 per hundredweight. The  
14 bill further directs the secretary to partner with Efficiency Vermont and the  
15 department of environmental conservation to create a DISH energy program  
16 and a DISH environmental program, respectively, to improve alternative  
17 energy generation and efficiency and environmental health on Vermont farms.  
18 The bill requires the secretary to adopt rules governing supply and efficiency  
19 management and to submit a feasibility report addressing alternatives for DISH  
20 funds, including a state-owned processing facility, conservation and view-shed

1 payments for preserving the working landscape and aesthetic value of working  
2 farms, and support for land conservation, current use, and historic preservation.

*An act relating to stop and hauling charges*

3 ~~An act relating to the Vermont dairy industry stabilization and health~~  
4 ~~(DISH) program.~~

5 It is hereby enacted by the General Assembly of the State of Vermont:

6 ~~Sec. 1. TITLE~~

7 ~~This act may be referred to as the “Vermont Dairy Industry Stabilization~~  
8 ~~and Health (DISH) Act.”~~

9 Sec. 2. 6 V.S.A. chapter 170 is added to read:

10 ~~CHAPTER 170. VERMONT DAIRY INDUSTRY STABILIZATION AND~~  
11 ~~HEALTH (DISH) PROGRAM~~

12 ~~§ 3001. DEFINITIONS~~

13 ~~(a) Except as otherwise provided in this section, the definitions set forth in~~  
14 ~~section 2672 of this title shall apply to this chapter.~~

15 ~~(b) For purposes of this chapter:~~

16 ~~(1) “Dairy farm” is any place or premise located in Vermont where one~~  
17 ~~or more cows are kept for the production of milk to be sold or offered for sale.~~

18 ~~(2) “Milk” means “cows’ milk” as defined in subdivision 2672(7)(A) of~~  
19 ~~this title.~~

1 ~~(3) "Producer" means a person who sells milk produced by his or her~~  
2 ~~cows that are located on a dairy farm under his or her ownership or control.~~

3 § 3002. SURCHARGE IMPOSED

4 (a) There is imposed a surcharge at the rate of \$0.50 per hundredweight on  
5 the sale of milk sold by a producer to a handler or customer, including the  
6 direct sale of raw milk from a dairy farm pursuant to chapter 152 of this title.  
7 The surcharge imposed by this section shall be added to the price of the milk  
8 sold and shall be collected by the producer at the time of payment.

9 (b)(1) Notwithstanding the provisions of section 10 of this title, a producer  
10 shall hold the surcharge collected under this section in a segregated account  
11 and shall be responsible to the secretary for the collection and payment thereof.

12 (2) Each producer shall file with the secretary a monthly report in a form  
13 produced by the secretary for that purpose, along with full payment of the  
14 surcharge collected during the reporting period.

15 (3) The secretary shall establish a mechanism by which the monthly  
16 reports and payments may be submitted by producers to the secretary  
17 electronically.

18 (4) The secretary shall adopt by rule the format for the report required  
19 under subdivision (2) of this subsection, which shall at a minimum include:

20 (A) the name and address of the producer;

1 ~~(B) the Social Security number or federal employer identification~~  
2 ~~number of the producer; and~~

3 ~~(C) an itemized list of each sales transaction, including the name and~~  
4 ~~address of the buyer, the date of sale, the volume of milk sold, and the amount~~  
5 ~~of the surcharge assessed on the sale.~~

6 ~~(5) The secretary shall hold the collected surcharge in a separate account~~  
7 ~~as the “dairy industry stabilization and health (DISH) fund” pursuant to section~~  
8 ~~3005 of this title.~~

9 ~~(c)(1) The surcharge imposed by this section shall be paid by the handler or~~  
10 ~~the customer and shall not be passed through, directly or indirectly, to the~~  
11 ~~producer.~~

12 ~~(2) In addition to the annual report required under section 2674 of this~~  
13 ~~title, the secretary may require handlers to retain, produce, and make available~~  
14 ~~for inspection records the secretary determines to be necessary to ensure~~  
15 ~~compliance with the audit program under subsection 3003(d) of this title and~~  
16 ~~the requirements of this section.~~

17 ~~(d)(1) Any producer found to be in violation of subdivision (b)(2) of this~~  
18 ~~section and any handler found to be in violation of subdivision (c)(1) of this~~  
19 ~~section shall be fined not less than \$10,000.00 per occurrence.~~

1 ~~(2) For purposes of this section, each payment made by a handler to a~~  
2 ~~producer that is reduced to recover or pass through the cost of the surcharge~~  
3 ~~imposed by this section shall constitute a separate violation.~~

4 § 3003. VERMONT DAIRY INDUSTRY STABILIZATION AND HEALTH  
5 (DISH) PROGRAM CREATED

6 (a) The dairy industry stabilization and health (DISH) program is created  
7 and shall be administered by the secretary. The purpose of the program is to  
8 provide countercyclical support payments to eligible producers from the dairy  
9 income stabilization and health (DISH) fund established by section 3005 of  
10 this title.

11 (b) Participation in the program shall be open to each producer who has not  
12 been found in violation under subdivision 3002(b)(2) of this title within the  
13 previous three years.

14 (c) The secretary shall use the information from the monthly producer  
15 reports submitted pursuant to section 3002 of this title to create and maintain a  
16 program database of each producer, his or her total volume of milk sold, and a  
17 record of any violations of this chapter, which together shall serve as the basis  
18 for identifying eligible producers and the amount of support payments  
19 available under the program.

20 (d) The secretary may use not more than one percent of the funds annually  
21 collected under this chapter for administrative purposes, which shall include

1 ~~the creation and operation of an audit program, the purpose of which shall be~~  
2 ~~to monitor and investigate compliance with this chapter.~~

3 § 3004. PAYMENT FORMULA AND PROCEDURE

4 (a)(1) The secretary shall make an income support payment to each eligible  
5 producer, as identified by the secretary pursuant to subsection 3003(c) of this  
6 title, in each month that the federal market order number one blend price for  
7 zone 21 is set at or below \$16.94 per hundredweight of milk produced.

8 (2) The amount of each income support payment shall equal the total  
9 hundredweight volume sold by the producer in the previous month, as reported  
10 to the secretary in the producer's monthly report, multiplied by the lesser of:

11 (A) the difference between \$16.94 and the federal market order  
12 number one blend price for zone 21; and

13 (B) \$3.00.

14 (b) Notwithstanding subsection (a) of this section, the secretary shall not  
15 make income support payments in any month in which making payments for  
16 that month would cause the balance of the fund, including any fund monies  
17 invested pursuant to subsection 3005(d) of this title, to fall below  
18 \$6,500,000.00.

~~§ 3005. VERMONT DAIRY INDUSTRY STABILIZATION AND HEALTH~~

(DISH) FUND

(a) There is created a special fund identified as the “Vermont dairy industry stabilization and health (DISH) fund.”

(b) The fund shall consist of:

(1) amounts collected by the secretary from the surcharge imposed in section 3002 of this title;

(2) interest earned by the fund; and

(3) any other monies appropriated to or deposited into the fund.

(c)(1) Balances in the fund shall be expended solely for the purposes set forth in this chapter and shall not be used for the general obligations of government.

(2) All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund.

(3) Interest earned by the fund shall be deposited in the fund.

(d) The secretary shall allocate an amount of the fund principal, not to exceed \$6.5 million, to the treasurer, who shall invest and manage the funds pursuant to subchapter 2 of chapter 7 of Title 32.

~~§ 3006. SPECIAL PROGRAMS; SUPPLY AND EFFICIENCY~~

~~MANAGEMENT; DAIRY INDUSTRY STABILIZATION AND~~  
~~HEALTH (DISH) ENERGY AND ENVIRONMENTAL~~  
~~PROGRAMS~~

~~(a) The secretary shall adopt rules consistent with 3 V.S.A. chapter 25 to~~  
~~develop and implement a supply and efficiency management program, the~~  
~~purpose of which shall be to simultaneously increase production efficiency,~~  
~~decrease production costs, and reduce total farm debt in order to achieve the~~  
~~net result that Vermont producers increase per-cow yields and income while~~  
~~reducing the total supply of milk produced in the state.~~

~~(b) The secretary shall partner with the public service department, the clean~~  
~~energy development fund, and Efficiency Vermont to design and implement a~~  
~~dairy industry stabilization and health (DISH) energy program, the purpose of~~  
~~which shall be to utilize DISH funds and additional resources to educate~~  
~~producers about farm-based electric energy generation opportunities and state~~  
~~energy efficiency programs, conduct energy audits of dairy farms, and~~  
~~financially support electric energy generation opportunities and energy~~  
~~efficiency improvements on dairy farms.~~

~~(c) The secretary shall partner with the department of environmental~~  
~~conservation to design and implement a dairy industry stabilization and health~~  
~~(DISH) environmental program, the purpose of which shall be to utilize DISH~~

1 ~~funds and additional resources to educate producers about farm based~~  
2 ~~environmental health and conservation programs, conduct environmental~~  
3 ~~audits of dairy farms, and financially support environmental health and~~  
4 ~~conservation improvements on dairy farms.~~

5 \* \* \* Exemption from Special Funds Rules \* \* \*

6 Sec. 3. 32 V.S.A. § 586 is amended to read:

7 § 586. APPLICATION

8 The provisions of this subchapter shall not apply to funds established to  
9 account for proceeds from the sale of bonds, to the general fund, the  
10 transportation fund, the fish and wildlife fund, the tobacco litigation settlement  
11 fund, or to any federal revenue funds, trust funds, enterprise funds, internal  
12 service funds, or agency funds, or to public service enterprise funds established  
13 to implement provisions of sections 211 and 212a through 212f of Title 30; the  
14 budget stabilization reserves created by sections 308 and 308a of this title; the  
15 low-level radioactive waste fund created by section 7013 of Title 10; the  
16 Vermont campaign fund created by section 2856 of Title 17; the lands and  
17 facilities trust fund created by section 2807 of Title 3; the education fund  
18 created by section 4025 of Title 16; the Vermont dairy income stabilization  
19 and health (DISH) fund created by section 3005 of Title 6; or the Vermont  
20 housing and conservation trust fund created by section 312 of Title 10.

~~\*\*\* Feasibility Analysis of Alternative Dairy Support Mechanisms \*\*\*~~

Sec. 4. FEASIBILITY ANALYSIS

~~(a) The secretary of agriculture, food and markets shall conduct a feasibility analysis of income support mechanisms through which the funds generated under the Vermont dairy industry stabilization and health (DISH) program may provide support to Vermont dairy farmers in addition, or as an alternative, to the countercyclical payments authorized under 6 V.S.A. § 3004. The feasibility analysis shall at minimum include research and an economic cost-benefit analysis of the following:~~

~~(1) a state-owned or state-sponsored nonprofit-owned processing and balancing facility;~~

~~(2) a special fund for grants or loans to producers targeting:~~

~~(A) debt reduction and debt restructuring, low-interest loans, and loan forgiveness;~~

~~(B) equipment financing;~~

~~(C) efficiency improvements;~~

~~(D) expansion of the 2 + 2 program and other long-term farm viability programs;~~

~~(3) an increase to current use exemptions, including the feasibility of expanding eligibility and refundable credits;~~

1 ~~(4) conservation and view shed income support payments designed to~~  
2 acknowledge agriculture's contribution to economic development and tourism  
3 and to compensate farmers for preserving the aesthetic and economic value of  
4 the working landscape; and

5 (5) increasing funding, modifying eligibility requirements, and reducing  
6 restrictions to promote participation in historic and farm building preservation,  
7 renovation, and restoration.

8 (b) The secretary shall submit the feasibility analysis required by  
9 subsection (a) of this section in a report with recommendations to the house  
10 and senate committees on agriculture on or before January 15, 2011.

11 \* \* \* Transition Rules for Implementation of Program \* \* \*

12 Sec. 5. TRANSITION RULES

13 (a) The secretary of agriculture, food and markets shall adopt the format for  
14 the monthly producer reports required under 6 V.S.A. § 3002 and create the  
15 producer database required under 6 V.S.A. § 3002 not later than August 1,  
16 2010.

17 (b) The surcharge imposed under 6 V.S.A. § 3002 shall be imposed on all  
18 sales of milk as required under this act beginning September 1, 2010.

19 (c) The first producer monthly report shall be due to the secretary on  
20 October 1, 2010, after which eligible producers may receive income support  
21 payments, provided the requirements of 6 V.S.A. chapter 170 are met,

1 ~~specifically including the requirement that the dairy income stabilization and~~  
2 ~~health (DISH) fund have a minimum balance of \$6.5 million.~~

3 Sec. 6. EFFECTIVE DATE

4 ~~This act shall take effect upon passage.~~

*Sec. 1. PURPOSE*

*(a) Sec. 4 of No. 50 of the Acts of 2007 directed that the “Vermont milk commission shall establish by rule . . . a minimum producer price that is designed to achieve a price by which the cost of picking up the milk and hauling the milk from the farm to the purchaser will be paid by the purchaser.”*

*(b) Under Sec. 6(c) of Act 50 (2007), the milk commission was directed to “commence the rulemaking process necessary to implement the provisions of Sec. 4 . . . within 60 days of the effective date of the act,” which became effective on May 26, 2007. Also under Sec. 6(c), the rule itself “shall take effect when, by rule, legislation, or other agreement, New York and one other state in the Northeast Marketing Area, Federal Order 1, have accomplished the purpose of this act or on January 15, 2009, whichever comes first.”*

*(c) Sec. 4 of Act 50 (2007) was amended the following year by Sec. 1. of No. 157 of the Acts of the 2007 Adj. Sess. (2008), which split Sec. 4 into two subsections. Subsection (a) directed the Vermont milk commission to establish “by order . . . a minimum producer price that is designed to reflect the cost of production.” Subsection (b) mandated that “The cost of picking up the milk and hauling the milk from the farm to the purchaser will be paid by the purchaser.” Sec. 6(c) of Act 50 (2007) was also amended to change the date certain for the effective date of the milk commission’s order from January 15, 2009 to July 1, 2010.*

*(d) Despite the mandate to the Vermont milk commission to adopt an order governing the minimum producer price and stop and hauling charges, no order was ever adopted. Furthermore, legal opinions differ as to the force and effect of the amendments made by Act 157 (2007 Adj. Sess.), and consequently, it remains uncertain whether and when the buyer of cows’ milk, rather than the dairy producer, is responsible for paying dairy hauling costs.*

*(e) The purpose of this act is to express the general assembly’s intent that dairy hauling costs should be paid by the buyer of the cows’ milk, rather than the dairy farmer.*

*Sec. 2. 6 V.S.A. § 2676 is amended to read:*

§ 2676. TITLE TO MILK IN TANK TRUCK; COST OF HAULING

(a) When milk is sampled, measured, and transferred from a farm tank to a tank truck, the milk collector shall be deemed to be the agent of the buyer and title to the milk shall be deemed to pass to the buyer at the time of such transfer.

(b)(1) In this section, "hauling costs" means stop charges, hauling charges, fuel surcharges, and any other costs incurred to transport cows' milk from a farm to the buyer.

(2) Notwithstanding sub-section 2925(d) of this title, hauling costs shall be paid by the buyer and shall not be charged back to the selling producer, either directly or indirectly. No additional charges shall be made, and no costs may be shifted from other benefits the producer receives to contravene the purpose of this subsection. No funds shall be transferred away from the producer in paid producer differentials or premiums the producer would receive but for this subsection.

Sec. 3. REGIONAL COLLABORATION ON TRANSITION OF PAYMENT OF HAULING COSTS

(a) The secretary of the agency of agriculture, food and markets shall collaborate with his or her counterparts in states within the Northeast Marketing Area to advocate for a transition within each state, and within the Area, to a legally enforceable framework under which the purchaser pays stop and hauling charges.

(b) The secretary shall provide information and support as is practicable to aid other states in effecting this transition through legislative or administrative enactments at the state level to ensure the contemporaneous adoption of a statewide, mandatory framework, under which a purchaser of cows' milk shall be responsible for the payment of dairy hauling costs.

(c) The secretary shall further collaborate with other northeast states to implement a shift in responsibility for payment of dairy hauling costs through a milk marketing order petition or other means available at the federal level.

(d) Beginning in 2011, on or before January 15 of each year, the secretary shall submit a report to the house and senate committees on agriculture detailing progress made on accomplishing the transition at the state level within each state in the Northeast Marketing Area, and on progress made on a petition or other means to implement a cost shift in stop and hauling charges at the federal level.

Sec. 4. REPEAL

Sec. 1(b) of No. 157 of the Acts of the 2007 Adj. Sess. (2008) is repealed.

*Sec. 5. EFFECTIVE DATE*

*This bill shall take effect upon passage, except that Sec. 2. (amendment to 6 V.S.A. § 2676, mandating that cost of hauling to be paid by buyer) shall take effect when New York requires, by legislative or administrative enactment of statewide applicability and enforcement, that dairy hauling costs be paid by the purchaser of cows' milk rather than the producer of the milk.*