

1 Introduced by Committee on Agriculture and Forestry

2 Date:

3 Subject: Agriculture; pandemic response; financial assistance

4 Statement of purpose of bill as introduced: This bill proposes to establish

5 within the Agency of Agriculture, Food and Markets a Dairy Farmer

6 Assistance Program (Program) to provide financial assistance to milk

7 producers and dairy processors that have suffered economic harm caused by

8 the COVID-19 public health emergency.

9 An act relating to financial assistance to milk producers and dairy  
10 processors due to the COVID-19 public health emergency

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

12 Sec. 1. DAIRY ASSISTANCE; CORONAVIRUS RELIEF FUND;

13 APPROPRIATION

14 The sum of \$50,000,000.00 is appropriated from the Coronavirus Relief  
15 Fund to the Agency of Agriculture, Food and Markets in fiscal year 2021 to  
16 implement the Dairy Assistance Program established under Sec. 2 of this act at  
17 the maximum payment amounts set under the Program for milk producers and  
18 dairy processors, as those payment amounts may be adjusted according to the  
19 terms of the Program.

1       Sec. 2. DAIRY ASSISTANCE PROGRAM; PURPOSE; ESTABLISHMENT

2           (a) Findings. The General Assembly finds that:

3               (1) Vermont’s dairy sector, across all scales and production methods,  
4               has been negatively impacted because:

5                   (A) the price farmers have been paid for milk has been set under a  
6               federal milk market order that has been generating artificially low prices due to  
7               global market forces and commodity manipulation; and

8                   (B) costs of of milk production have far exceeded the price paid for  
9               milk.

10               (2) The U.S. Department of Agriculture and several agricultural policy  
11               institutions across the United States predicted that the prolonged downturn in  
12               dairy pricing would begin to end in February and March of 2020 with the  
13               estimated all milk price expected to rise to \$19.00 to \$20.00 a hundredweight.

14               (3) The predicted increase in milk prices never materialized as the  
15               COVID-19 public health emergency and the public health precautions it  
16               required resulted in the dairy industry losing two of its three major end markets  
17               in restaurants and institutions, driving milk prices from the estimated \$19.00 to  
18               \$20.00 per hundredweight to prices as low as \$10.00 to \$13.00 per  
19               hundredweight after cooperative fees and other assessments.

1           (4) The losses Vermont dairy farms incurred were immediate and  
2           debilitating, as farms struggled to pay feed, seed, labor, and other costs of  
3           production.

4           (5) Many dairy farms are at a threshold of survival, and it is possible  
5           that many more farms will join the 17 dairy farms that have shuttered since the  
6           declaration of the COVID-19 public health emergency;

7           (6) The federal CARES Act appropriated \$1.25 billion of funds to  
8           Vermont to address costs and expenses resulting from the COVID-19 public  
9           health emergency, including the costs of business interruption and lost markets  
10           such as those that dairy farming is suffering under.

11           (7) After detailed data collection and analysis by the Agency of  
12           Agriculture, Food and Markets, Governor Scott proposed \$50,000,000.00 of  
13           financial assistance to the dairy industry, an amount that would not cover all  
14           costs or expenses incurred by dairy farmers due to the COVID-19 public health  
15           emergency, but would contribute enough to help farmers cover costs of feed,  
16           seed, labor, and equipment during the season of greatest expense to farmers.

17           (8) However, the amount of assistance to dairy farmers has been  
18           proposed to be reduced from \$50,000,000.00 to \$20,000,000.00, or five  
19           percent of the total amount of the \$400,000,000.00 of CARES Act funds  
20           available for economic stimulus.

1           (9) Dairy farming has significant economic, ecological, and cultural  
2           impact on the State of Vermont, as evidenced by the fact that:

3                   (A) 65 to 70 percent of gross farm income in Vermont is derived  
4           from dairy farming;

5                   (B) Milk from dairy farms accounts for 65 percent of agricultural  
6           product sales in Vermont;

7                   (C) Vermont produces two-thirds of the milk sold in New England;

8                   (D) The Vermont dairy industry generates \$2.2 billion in economic  
9           activity in the State;

10                  (E) Cheesemakers in the State have suffered lost business of 50 to 70  
11           percent on average;

12                  (F) 72,000 Vermonters are employed in the farm and forest sector,  
13           which is 28 percent of Vermont’s private sector jobs;

14                  (G) 80 percent of all open land in Vermont is managed by dairy  
15           farmers; and

16                  (H) The open land created by dairy farmers is integral to the rural life  
17           that Vermonters enjoy and to the scenic beauty that is the base of the State  
18           tourism industry.

19                  (b) The purpose of this act is for the the General Assembly to strive to  
20           appropriate as close to \$50,000,000.00 in CARES Act funds as possible to  
21           dairy farming assistance in order to:

1           (1) provide dairy farming with an appropriate level of appropriations  
2           necessary to respond to declining prices, lost markets, and costs and expenses  
3           caused by the COVID-19 public health emergency;

4           (2) provide the dairy industry with support proportionate to its impact on  
5           the Vermont economy;

6           (3) allow for an economic multiplier effect across the rural economy as  
7           farms will use appropriated funds immediately to pay pending costs and  
8           expenses such as feed, seed, labor, and fuel; and

9           (4) continue to support and give back to the core of the working lands  
10           economy and culture of Vermont at a time of its greatest need.

11           (c) Definitions. As used in this section:

12           (1) “Animal feeding operation” (AFO) means a lot or facility where  
13           livestock have been, are, or will be stabled or confined and fed or maintained  
14           for a total of 45 days or more in any 12-month period and crops, vegetation, or  
15           forage growth are not sustained in the normal growing season over any portion  
16           of the lot or facility. Two or more individual farms qualifying as an AFO that  
17           are under common ownership and that adjoin each other or use a common area  
18           or system for the disposal of waste shall be considered to be a single AFO if  
19           the combined number of resulting livestock qualifies as a medium farm as  
20           defined in subdivision (7) of this subsection.

21           (2) “Certified small farm” means a small farm with at least 50 mature

1 dairy cows required to certify compliance with the Required Agricultural  
2 Practices under 6 V.S.A. § 4871 and so certified as of March 1, 2020.

3 (3) “Dairy processor” means a person, partnership, unincorporated  
4 association, or corporation that owns or controls any place, premises, or  
5 establishment where butter, cheese, cream, buttermilk, infant formula, ice  
6 cream, yogurt, or other dairy products identified by rule by the Secretary are  
7 processed for sale.

8 (4) “Economic harm” means a milk producer’s or a dairy processor’s  
9 expenses or lost revenue, or both, related to the 2020 COVID-19 public health  
10 emergency.

11 (5) “Goat or sheep dairy farm” means any place or premises where one  
12 or more dairy goats or dairy sheep, or both, are kept and where a part or all of  
13 the milk from the animals is sold or offered for sale.

14 (6) “Large farm” means an AFO that houses 700 or more mature dairy  
15 animals and where a part or all of the milk from the dairy animals is sold or  
16 offered for sale.

17 (7) “Medium farm” is an AFO that houses 200 to 699 mature dairy  
18 animals and where a part or all of the milk from the dairy animals is sold or  
19 offered for sale.

20 (8) “Milk producer” or “producer” is a person, partnership,  
21 unincorporated association, or corporation that owns or controls one or more

1 dairy cows, dairy goats, or dairy sheep and sells or offers for sale a part or all  
2 of the milk produced by the animals.

3 (9) “Secretary” means the Secretary of Agriculture, Food and Markets  
4 or designee.

5 (10) “Small farm” means:

6 (A) an AFO that houses not more than 199 mature dairy cows; or

7 (B) a goat or sheep dairy farm where a part or all of the milk from the  
8 animals is sold or offered for sale.

9 (d) Program establishment; eligibility.

10 (1) There is established within the Agency of Agriculture, Food and  
11 Markets a Dairy Farmer Assistance Program (Program) to provide financial  
12 assistance to milk producers and dairy processors that have suffered economic  
13 harm in Vermont caused by the COVID-19 public health emergency.

14 (2) In order to qualify for assistance under this section, a milk producer  
15 or dairy processor shall:

16 (A) be domiciled or have its primary place of business in Vermont;

17 (B) be currently producing milk or dairy products; and

18 (C) accurately demonstrate to the Secretary economic harm that  
19 occurred or accrued on or after March 1, 2020 and before December 1, 2020  
20 by providing evidence of losses or expenses related to the costs of business  
21 disruption caused by the COVID-19 public health emergency.

1           (3) A milk producer may elect to have its economic harm determined by  
2           calculating the difference between what the producer was paid for milk  
3           produced between March 1, 2020 and December 1, 2020 and the price that the  
4           producer would have been paid if the price for milk remained at the statistical  
5           uniform price of \$18.13 per hundredweight for the Middlebury location in  
6           January of 2020, or the milk producer may enter its own verifiable average  
7           price for March through December 2020 and calculate the difference to its own  
8           verifiable average price for January 2020 as well as added costs or expenses  
9           related to the COVID-19 public health emergency.

10           (4) Economic harm is not compensable under this section if the same  
11           economic harm has been or will be covered by insurance, another State or  
12           federal grant, or other compensation.

13           (e) Administration; implementation.

14           (1) The Program shall be administered by the Agency of Agriculture,  
15           Food and Markets, which shall award available funds to eligible applicants that  
16           demonstrate economic harm.

17           (2) The Secretary shall create an application form that milk producers  
18           and dairy processors shall utilize when applying for relief. Applicants shall  
19           certify that all information they provide is truthful and accurate to the best of  
20           their knowledge, information, and belief.

21           (3) The Secretary shall, based on the amount of economic harm incurred

1 by the milk producer or dairy processor on the date the application is received,  
2 provide awards up to the maximum award payment for each type of qualified  
3 farm or for each qualified dairy processor. Applications shall be processed in  
4 the order received, but an application shall not be ready for evaluation until the  
5 Secretary determines that the application is administratively complete and  
6 includes all required proof of economic harm.

7 (f) Payment; maximum award.

8 (1) Until all funds appropriated to the Program for milk producers are  
9 awarded, the Secretary shall award payments to reimburse qualified milk  
10 producers for demonstrated economic harm as follows:

11 (A) Small farms shall receive up to \$42,500.00.

12 (B) Certified small farms shall receive up to \$60,000.00.

13 (C) Medium farms shall receive up to \$90,000.00.

14 (D) Large farms shall receive up to \$110,000.00.

15 (2) Until all funds appropriated to the Program for dairy processors are  
16 awarded, the Secretary shall award payments to reimburse qualified dairy  
17 processors for demonstrated economic harm as follows:

18 (A) Dairy processors that process less than 500 pounds of milk per  
19 day shall receive up to \$56,500.00.

20 (B) Dairy processors that process from 500 to 9,999 pounds of milk  
21 per day shall receive up to \$70,000.00.

1           (C) Dairy processors that process from 10,000 to 49,999 pounds of  
2           milk per day shall receive up to \$97,000.00.

3           (D) Dairy processors that process from 50,000 pounds or more of  
4           milk per day shall receive up to \$127,000.00.

5           (3) To determine maximum grant eligibility, each milk producer shall be  
6           evaluated within the farm type known to the Secretary as of March 1, 2020,  
7           and each dairy processor shall be evaluated within the milk processing size  
8           known to the Secretary as of March 1, 2020.

9           (4) If the proposed total appropriation for this Program is reduced prior  
10           to enactment, the maximum payment amounts for milk producers and dairy  
11           processors under this section shall be reduced by the same percentage as the  
12           reduction of the total appropriation to the Program.

13           (g) Application; processing.

14           (1) Once a milk producer or dairy processor submits a complete  
15           application and demonstrates economic harm, the Secretary shall promptly  
16           issue a payment, provided that the appropriated funds have not been expended.  
17           The last payment may be a partial payment consisting of the remaining  
18           available funds.

19           (2) Whenever a milk producer or dairy processor has not demonstrated  
20           economic harm equal to or greater than the maximum allowed disbursement  
21           for its category, the application shall remain pending for a potential future

1 showing of additional economic harm. Qualified milk producers or dairy  
2 processors that incur additional economic harm after the date of their initial  
3 application may file with the Secretary an addendum to demonstrate  
4 subsequent economic harm. The Secretary shall create an addendum form that  
5 milk producers or dairy processors shall utilize when applying for additional  
6 relief. Milk producers and dairy processors shall certify that all information  
7 they provide is truthful and accurate to the best of their knowledge,  
8 information, and belief. Eligible milk producers or dairy processors may  
9 submit an addendum to their initial application on or before October 1, 2020 to  
10 show any additional economic harm eligible for compensatory payment. No  
11 milk producer or dairy processor shall receive total payments that exceed the  
12 maximum allowed payment.

13 (3) All initial applications shall be processed before considering  
14 addenda demonstrating additional economic harm, and each addendum shall be  
15 processed in the order received. An addendum shall not be ready for  
16 evaluation until the Secretary receives all required proof of economic harm and  
17 deems the application administratively complete. Once an eligible milk  
18 producer or dairy processor submits a complete addendum and demonstrates  
19 additional economic harm, the Secretary shall promptly issue a payment,  
20 provided the appropriated funds have not been expended. The last payment  
21 may be a partial payment consisting of the remaining available funds.

1           (4) Each assistance payment shall be a direct payment from the State of  
2           Vermont to an eligible milk producer or dairy processor. Milk producers or  
3           dairy processors shall not submit more than one application, provided that a  
4           person who is both a milk producer and a dairy processor may submit one  
5           application as a milk producer and one as a dairy processor when each business  
6           is organized as a separate business entity. A person that is both a milk  
7           producer and a dairy processor but is not organized as separate business  
8           entities shall submit one application for assistance under this section, but will  
9           be eligible for assistance as a milk producer and a dairy processor, provided  
10           that the total assistance awarded under this section shall not exceed the total  
11           economic harm incurred by the applicant. A milk producer or dairy processor  
12           that does not initially qualify for the maximum allowed payment may submit  
13           an addendum to demonstrate additional economic harm not later than October  
14           1, 2020.

15           (h) Program terms and limitations.

16           (1) The Secretary of Agriculture, Food and Markets shall issue grant  
17           payments under this section on a first-come, first-served basis until all funds  
18           are expended or December 20, 2020, whichever is sooner.

19           (2)(A) Except as provided for under subdivision (2)(B) of this  
20           subsection, the Attorney General is authorized to recover funds awarded under  
21           this section due to fraud, error, crime, or violation of this section, and the

1 Attorney General or the Secretary of Agriculture, Food and Markets may seek  
2 appropriate criminal or civil penalties as authorized by law.

3 (B) In the event the U.S. Department of the Treasury determines that  
4 an expenditure of funds made available from the CARES Act, P.L. 116-136,  
5 was not necessary or otherwise impermissible under the CARES Act, the  
6 Attorney General and the Secretary shall hold harmless any grant recipient that  
7 accepted grant funds in good faith reliance on the State concerning the milk  
8 producer or dairy processor’s eligibility for, or use of, the grant award.

9 (3) The name of a milk producer or dairy processor that receives an  
10 award under this section and the amount of the award are public records  
11 subject to inspection and copying under the Public Records Act.

12 (4) Any application documents of a milk producer or dairy processor  
13 containing federal identification numbers and sales amounts are subject to the  
14 confidentiality provisions of 32 V.S.A. § 3102 and are return information  
15 under that section.

16 (5) Data submitted to the Secretary by a milk producer or dairy  
17 processor under this section to demonstrate economic harm shall be a trade  
18 secret exempt from public inspection and copying under 1 V.S.A. § 317(c)(9),  
19 provided that the Secretary may use and disclose submitted information in  
20 summary or aggregated form that does not directly or indirectly identify an  
21 individual milk producer or dairy processor.

1       Sec. 3. REPORT

2           The Secretary of Agriculture, Food and Markets, beginning on July 1, 2020  
3           and ending on January 1, 2021, shall report to the Senate Committees on  
4           Agriculture and on Appropriations and the House Committees on Agriculture  
5           and Forestry and on Appropriations on the first day of each month regarding  
6           the status of the Dairy Assistance Program established under Sec. 2 of this act.

7           The report shall include:

8           (1) the number of applicants for assistance in each month and overall;

9           and

10          (2) the amount of grant funds awarded under the program.

11       Sec. 4. EFFECTIVE DATE

12          This act shall take effect on passage.