

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 6, 1987

Representative Duane W. Compton, Chairman, called the meeting to order at 1:00 p.m. in room 317. Some members were a bit late at the beginning of the meeting, but came in. Otherwise, all members except Representatives Bachini and Cody who were excused were present.

Senate Bills 277 and 379 were to be heard.

SENATE BILL 277

SB 277 is an Act to generally revise the laws relating to the establishment and operation of a statewide pooling arrangement as a method of payment of producer milk prices, amends section 81-23-302, and provides an immediate effective date.

Senator Hofman, Senate District 38, sponsor of SB 277, said many dairy initiatives have been tried during the years and most of them have confused the public, especially the last one, a great deal. They haven't achieved what they would liked to have in one of these initiatives they have come up with. They were very badly fractured in the last election. There were two different lines of thought which compounded the problem and caused the public to be very insecure and didn't know who to really believe because they were hearing conflicting stories from both sides. The dairy industry is finding this all very, very expensive and they are feeling that they would like to do something different and approach their problem from a different perspective and part of that approach is reflected in this bill. What they are trying to do here is to refine the pooling arrangement that has already been in the law for a good many years. It has never been used, it may never be used, but if there are a certain group of people in the industry who would like to explore the idea where they see if they could do something about that pooling arrangement and put it into place, they need a few more lines of direction as to how this should be done. This bill addresses that problem. It spells out how this should be done. There are a few people here who would like to testify on this and I will just let them do so.

PROPOSERS

Ted Doney, representing the Montana Dairyman's Association, said this bill was introduced by Senator Hofman at the Dairyman's Association's request. He drafted the bill for the Association with our pooling committee in our group, and in consultation with representatives of the milk plants and the processors' industry in Montana. And you will hear from Mr. Ken Kelly in a minute, representing that group. As Senator Hofman said, the dairy industry has gone through a few years of internal strife over milk

pricing in Montana. We haven't yet resolved those problems, but we are discussing internally within our organization and the milk processors the idea of setting up a statewide milk pool. We do not have a milk pool in Montana right now. We never have had one in Montana. Most of the states in the nation do operate under a milk pool arrangement, usually through federal orders. We don't in Montana. A milk pool is really a paper transaction where all the milk on paper is pooled and the producers are all paid the same price across the whole state for their milk. Under current law the producers are paid a different price, depending on which distributor plant they sell their milk to. With a milk pool, that would be changed so that all producers would all receive the same price. There are some variations of this kind of a pooling idea but that is the general content. The purpose of a pool would be to stabilize the industry.

We are discussing the concept now. We have a pooling committee that is working with the processors to draft a petition that would be submitted to the Milk Control Board, and ask the Board to establish a statewide milk pool in Montana. We anticipate that petition may be filed in the next few months. I have looked at the law that is now on the statutes governing a milk pool, and it is very vague and general. Because it has never been used before, nobody has really bothered to worry about it. But it has been my opinion that if we do adopt a milk pool in Montana, we need to make sure the statute is clear on what is required.

If you look, starting on page 6 of this bill, that is the first amendment that we are proposing there. The current law says that any producer in the state or any distributor, which is a plant, can petition the Milk Control Board to set up a statewide pool. We think there ought to be more people required to petition the Board than one producer or one distributor, so we are proposing to change that to 10% or 20 of the licensed producers who would have to sign a petition or any producer-distributor.

The next amendment starts on page 7 of the bill and goes to page 8. The law now requires if the Board of Milk Control sets the statewide milk pool, it has to submit that pool to the producers in the state for referendum vote. It doesn't say in the law how the vote is conducted. We are suggesting making some changes here that would require that referendum to be conducted by mail and by secret ballot, that's on lines 6 and 7; and that the law be clarified to make it clear that it has to be approved by a majority of those producers voting on the referendum, and that those, that majority, has to represent at least 50% of the milk produced in the state. This is to ensure that a minority of producers can't vote in a milk pool over the objections of a majority.

Final amendments starting on line 19, page 7 and going on onto page 8 deal with what can be in the pool itself. What can this

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pool contain. One of the things we are discussing is setting up a base or quota plan as a part of the pool. It is not clear under current law whether that is even authorized in the law, so we are proposing on lines 24 and 25 there, that that be specifically authorized.

On page 8, lines 1 through 5, we are suggesting that the law be clarified to make it clear that the Board of Milk Control can set up a full settlement fund in the administration of the pool for the purpose of receiving the payments, the money from the pool distributors, the plants, and making those payments to the producers in full.

The next amendment, lines 6 through 9, authorizes a pool expense fund for offsetting the cost to the Department of Commerce milk control bureau in administering the pool.

The final amendment there on lines 10-13 authorizes the department to draw on its existing reserves for starting up the pool. As I understand it, the milk control bureau has \$100,000 in reserve funds that they maintain in almost continuously down there, and they can use part of that reserve to help them start up a pool, but it would have to be reimbursed from the pool expense fund.

These amendments, in his opinion, are generally just housekeeping to clear up the law and make it clear what is authorized, but it is their intent here to proceed with a milk pool in Montana, and would like to make sure the law is as clear as possible, so we don't have some legal problems down the road. We hope that if a pool is established, it will help stabilize the industry and maybe forestall any future attempts to do away with milk price control on the ballot. We can't guarantee to this committee that that will happen if a milk pool is put in place, but we think it will help the problem somewhat in the industry.

With that, Mr. Chairman, I would be glad to answer any questions, and Mr. Kelly from the milk plants will testify on the bill.

Ken Kelly, Mr. Chairman and members of the committee, for the record my name is Ken Kelly, and I am a registered lobbyist. I represent the dairy industry processors. I want you to know that we support this legislation and I also endorse Mr. Doney's testimony that a lot of our problems over the past years have been brought about by the fact that the producers were, some of the group of producers at least, were unable to get a statewide pool established. Now, when we talk about prices, the pool would not actually change the basic price as set by the Board, but a pool would spread the money out evenly among all of the producers instead of the way it is now where if a group of producers, for instance, sell to a plant here in Helena where they have almost all fluid milk requirements, 100% class one almost, they get a little higher price than the producers down in Bozeman would get

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selling to their plant because they only have maybe 60-75% class one. So it evens the price out and it spreads the cost of producing the standby milk among all of the producers rather than just a few of them, such as the Bozeman group, or the Missoula group, or any particular group. It spreads the cost. It doesn't change the basic formula price, but it does change the price that is received, the bottom line for individual producers. We think this is good. We think it will bring the producers together, heal the fractures, and have a viable Montana industry again. You know, this is a \$50 million industry, and we don't want anything to happen to it. So I want you to know that the processors, the people who buy the milk, they will pay the same price for the milk that they are paying now. The difference is what the dairy farmer gets and he shares equally with all the other dairy farmers. I urge a Do Pass on this bill.

OPPONENTS - None

QUESTIONS FROM THE COMMITTEE

Rep. Corne' asked Sen. Hofman, do you anticipate any reluctance on the part of the producers who get a better break now going into this kind of a pool? Sen. Hofman answered, well nobody is going to object to getting a better break. Rep. Corne' said no, but under the present situation, as Mr. Kelly pointed out, maybe the Helena producers get a better break than the Bozeman people do. Don't you think Helena people would be reluctant to join a pool like this? Sen. Hofman said, no, they are not. There are two groups also in Gallatin County, I might add. The way this is structured, some of these producers sell to Dairigold and some of them sell to Meadowgold, and there is a difference there in price, and I-104 was all about that difference in price. The bottom line on the whole thing is that this was not really brought out in all of the testimony that was presented or in all of the advertising that was done prior to the election. But in order for the whole industry to come together as Mr. Kelly said, the people who are getting the higher price are willing to go along with this kind of a settlement. This is kind of a compromise is what it really is. They did some compromising and you can see on the stricken out language on lines 8, 9, 10, 11 on page 7 that that had been incorporated into this bill at the insistence of part of the group. Later on then this was taken back out again because they felt that with a 50% of the bulk milk producers in the state they were adequately covered and did not have a problem with that.

Rep. Koehnke asked how many producers are there in the state? Sen. Hofman said he was told 242.

Rep. Ellison remarked - in other words you are saying, Senator, that those producers that have largely fluid milk now are willing to compromise in order to retain the Milk Control Board and the benefits they receive from that? They figure that is more benefit to them than if they back on the ballot and they would lose the whole thing. Sen. Hofman answered - let me preface that by saying

that there is not that much of a differential in price, as such. Part of it is the class one, class 2, 3 and 4 that they are talking about where the milk is going. Part of that is also included in that. The price per se will not change greatly and they are all willing to abide by that.

Rep. Ellison asked what the difference is between class one and class two. Sen. Hofman said he did know that, but maybe he should defer that to Mr. Kelly.

Mr. Kelly said present statutes, Mr. Chairman, Rep. Ellison, classifies milk in all of its forms, classes, grades, and uses, and it classifies class one milk as that fluid milk the people buy as fluid to drink, such as whole milk, low fat skim milk, buttermilk, and any of the products that pour, such as cream. The solid products are classified such as icecream, cottage cheese, sour cream, and so on are classified as class two, and they take a lower price on the market because there is less of it sold, and it is a product that is an impulse item, so farmers get a lesser price for that. The third classification is the milk that goes into inventory - there is a certain amount of milk always in inventory just like any other business - and it might be in packages, and until it is sold, it is classified as class three and takes the lowest - not only the lowest classification, but the lowest price. There is one, if I may, Mr. Chairman, to clarify this differential that we are talking about among the producers. That was the reason for including the base or quota program. We will soften the blow to any one group of producers by assigning them a base or quota that maintains their price somewhere near what it is now. It will phase that pool in gradually over a period of time so that nobody gets hurt badly all at one time. Does that answer your question? Rep. Ellison said yes, thank you.

Rep. Holliday - Mr. Chairman, Ted you mentioned that there are other states that have in place a pool like this. Ted answered un huh. Rep. Holliday asked if those states have a milk control board? Mr. Doney said no, Ken, I think can answer that better than I can. He is more familiar with what is happening in the country. Most states don't have state price controls, they have federal price controls. Federal orders. I think about 80% of the country is covered by some kind of a federal order. Maybe I'd better let Mr. Kelly tell you.

Mr. Kelly was to answer the same question from Rep. Holliday. He said, Mr. Chairman, Rep. Holliday, 95% of the milk sold in Montana and in this area today is controlled by one method or another, either federal or state. Some states control milk by preventing sales below cost. Other states do it the same as we do. North Dakota for instance, New Jersey, Maine, Pennsylvania - there are six states that have a law very similar to ours. The rest are federal orders. But even in the state orders, most of the milk is pooled as we contemplate under this legislation.

The very reason being that it spread the cost of maintaining an adequate supply of milk for the consumer over the entire industry rather than in various groups. And that makes it desirable. It does since all of the producers will receive the same price for the same class of milk, the base milk at least; it eliminates a lot of jealousy, bickering back and forth by one guy saying I got 13¢ for my milk, what did you get? Well, I only got \$12.95. It stops that kind of thing you know sometimes there is some jealousy. Some guy buys a new pickup and the other can't afford one. We are trying to eliminate those arguments and do it by spreading the cost of producing this adequate supply of milk over the entire industry.

Rep. Holliday further asked - Ken, there is not a state then that operates without either federal or state control? Mr. Kelly said that isn't quite true. Nevada, to name one, doesn't have any controls any more. Idaho for a long time, but they have parts of Idaho are now in two different federal orders. The panhandle of Idaho is now in the Pacific Northwest federal order, and so is Washington, Oregon, and the southern part of Idaho from Idaho Falls west to Boise is under the Great Basin order out of Salt Lake. North Dakota has both federal and state. Their 16 eastern counties are in a federal order. Wyoming has no control of any kind any more. They did have a state order. The Governor, by executive order, suspended all of their pricing several years ago, so to name two, and I am not sure that I am strictly up to date, but I know at least those two that have no kind of control at all.

Rep. Holliday asked then that is how you would opt out, by executive order of the governor? Mr. Kelly, Mr. Chairman, Rep. Holliday - there is no provision in the current law for the Board to opt out or to discontinue pricing or to suspend pricing except by declaring an emergency, and under Montana law to declare an emergency, you have to establish that the health and welfare of the consumers is gone. And up to now, the Board has been reluctant to try to declare that kind of an emergency, and so really, current legislation makes it mandatory for strict control of the industry. There is a couple of reasons for that - we have 148,000 square miles and less than 800,000 people. It works out to about 1½ persons to the square mile, and so there is a lot of cost involved, and a lot of people who wouldn't get service if the Milk Control Board didn't require service to be provided to these people, and so, I think that the legislature in its wisdom decided that we should make this mandatory and if somebody wants to get rid of it, they can do it either by legislative process or the initiative process.

Rep. Jenkins asked Mr. Doney - on page 7 where you stated it was to keep small producers from stopping the pool - on the reverse side of that, you could have a few producers with a large production pass it over the objections of a lot of small producers, couldn't you? Mr. Doney answered, you would have to have a majority

of those voting first of all as you notice from the wording there. 'Must be approved by a majority of the producers, producer-distributors, and distributors voting'. O.K. Rep. Jenkins asked him to read on a little further there. Mr. Doney read 'representing more than 50% of the milk produced in Montana', so you have to have at least half of the producers voting to approve it in the first place and that half has to represent at least half of the milk production. Rep. Jenkins thought that the way this is written, it doesn't have to be 50% of the ones voting. Mr. Doney advised that it does. Rep. Jenkins said only 50% of the milk produced in Montana? Mr. Doney answered no, it's no. It says 'official order must be approved by a majority of the producers, producer-distributors, and distributors voting'. Rep. Jenkins read further 'representing more than 50% of the milk'. Mr. Doney said there is two requirements there - the majority of those voting have to approve it, and that majority has to represent more than 50% of the milk. This wording was worked out very carefully with a lot of people here including the legislative council drafters and that is what it says, that is what it means. If there is a problem with the wording, we would be glad to try to change it, but that is the intent of both the requirements.

Rep. Jenkins asked how many times have you tried by ballot to change this milk board by initiative? Mr. Doney said he has been involved with the dairy industry for four years, and it is twice in his career that it has been on the ballot. Maybe more than that. I don't know. Mr. Kelly said twice.

Rep. Jenkins asked Senator Hofman - you mentioned I-104; wasn't part of I-104 caused because there were a large amount of dairies in your area (I don't say your district, but in that general area) that were exporting milk to Wyoming and they were bringing the milk back into Montana saying that that was part of their production, which is hard to follow? Sen. Hofman, Mr. Chairman, Rep. Jenkins - yes, that was being done. Milk was being shipped out to I think Powell, Wyoming and it was processed somewhat there, legally and hauled back into Montana. That did happen, yes. Rep. Jenkins then asked if this is an end run around that or does this address that problem? Sen. Hofman answered no, I don't think it really is. I don't think it really addresses that in any way. I think if they wanted to do that, they probably still would. What I-104 actually was was a battle amongst the dairy factions for a bigger share of the market. That is basically what we were looking at. And that was their way of trying to gain more of the market share in the state of Montana. Whether that was ethical or not, or right or not, is something that I don't know anything about. I am not an attorney and I don't have that kind of knowledge or expertise, but that was the idea behind it, I know that.

Rep. Jenkins asked Mr. Kelly - Mr. Kelly, Mr. Chairman, Rep. Jenkins, since I conducted both campaigns against both initiatives, I do feel qualified to talk about them. The original initiative in 1984 was brought by the Libertarian Party to do away with the Milk Control Board completely. Just repeal it, it was a one-line

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repealer. Sometime during 1985 a dairy made an arrangement with Associated Foods out of Billings and out of Salt Lake to sell milk at the jobber price. The Board held that they weren't entitled to the jobber price because they were a retail organization. It went to court and the court agreed with the Board, that they were not entitled to the jobber price. About that time Supervalu, which is another large out-of-state grocery firm, a wholesale grocery firm, decided they wanted a piece of the action, so they made a deal with this same dairy and the Milk Board took them to court which hasn't been settled yet. The Milk Board took the dairy to court and the court ruled in favor of the Board, the district court said that they could not sell at the jobber price and enjoined them from selling at anything below the Milk Board price. The next day after that court order, this dairy started hauling their milk to a facility they had in Powell Wyoming, off loading it onto Associated or Supervalu trucks and hauling it back to Montana to their Billings warehouse. The Board immediately filed an action against that, saying it was illegal to do that. That was circumvention of the Montana law. The dairy filed an action in the federal district court saying that the Board was interfering with interstate commerce, and that hasn't been ruled on yet. The briefs are all filed and we expect a decision out of the court next week, so that could settle a lot of things. But when it gets to your question about a few of the producers forcing a pool on a majority, as you know, when 50% and one producer, which is a majority of the producers, vote, then that means if a majority of them vote for the initiative, or vote for this plan that the Board puts out, that means that actually it would be possible for 26% to approve the Board's order. When I have worked many combinations and I find that it is almost impossible for 26% of the producers to have a majority of the milk assigned to the pool. As a matter of fact, I think it will take about 75% of the producers to be producing a majority of the milk in the pool, so I don't think there is any way that a minority group can force a pool on the majority. Does that answer your question?

Rep. Jenkins further remarked that if it takes 75% to produce 50% of the milk, you have 25% of the producers producing 50% also. Mr. Kelly said no because there is 242 producers. What I am saying is that 75% of the producers would probably have a majority of the milk in the pool. There might not be 50% left in that other half - let me see, 75% I think is 163 producers. 75% of 242. Rep. Jenkins said I hate to belabor this any longer, but dairy is plumb out of his area. You have done a fair job of explaining how class one, class two, and class three milk. Could you give us an explanation of how that was put in and what it was put in for so we can understand a little better? Mr. Kelly answered - some 200 years in the dairy business milk produced for human consumption in fluid form has been considered a much higher class of product than any other, the reason being that it has to be produced and processed and distributed under much more stringent health conditions than the product that goes into the solid products, such as icecream. Icecream, for instance, is pasteurized

at an ultra high temperature so if there is any bad bacteria in it, it is killed, and it is handled, actually it is handled somewhat similar to the fluid milk, but it is pasteurized at much higher temperatures. Fluid milk can't be processed at those high temperatures without affecting the flavor and palatability of the product. So when you get into hard cheese, or cottage cheese, much higher temperatures are used, and it is cooked for longer periods of time, so that there is absolutely, as a matter of fact some of those products are very close to being sterile when they come off the production line. So that's why the fluid class one milk is a much higher class product. It costs much more to produce it than and produce it under the aseptic conditions it must follow in order to qualify under the board of livestock and the board of health. Does that help? Rep. Jenkins said he was asking - the dairymen are allowed so much class one for their production, so much for class two, so much for class three, and it was explained that like Helena might have more class one milk in their pool or area than say Bozeman, why the different areas have different amounts of class one, class two, and class three?

Mr. Kelly - Mr. Chairman - first of all, locally here this plant doesn't have a great enough milk supply to have any manufacturing milk in its plant and he chooses to operate that way. He buys his manufactured products then he sells them. This not a great milk producing area. So we have very few producers here and a limited supply of milk. As a matter of fact, this plant here has to bring in milk from Bozeman. They bring in a tanker load from Bozeman almost every day. In Bozeman, which is a real high milk producing area they have that group of Dutchmen down there that are probably the best dairymen in the world. They have been brought up in the dairy business. A lot of them are right from Holland they were brought up in the dairy business from the time they were born, and so they produce a lot of milk. They produce much more than their plant has been able to sell as class one, and they have manufactured some. They used to make their own cheese, they now sell it to one of the cheese factories. And so it depends on how good a salesman the plant that a certain producer sells to as to how much class one he gets. In other words, he is limited in class one to that amount of milk that his particular plant sells because we have always operated up to this point on an individual handler basis. Each producer's payment was based on the amount of milk that individual handler sold at either class one, class two, class three. So the more milk that was in the Bozeman area, for instance, as a matter of fact, their usage at one time was only about 55% of class one in that particular plant so that is all the producers got of class one; the rest of it went to maybe 12-15% class two and the rest of it went as class three or hard cheese, butter, or something like that. But if we establish a pool, you take all of the milk produced in the state in a given month, and those reports would have to come in to the Board by the 6th day of the month. It would all be pooled together on paper. All the sales from the

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entire state would be pooled together in one pool. You would take the total sales of class one and divide by the total amount of milk to get the percentage of class one used in the entire pool. To give you an idea, that statewide usage right now on an individual handler basis is not even, but on a pool, it would be the same. Right now it's right around 76%. So you can see that some plants are above that usage, some are below. The pool will level it off, so that they all get the same usage. Now as I mentioned earlier, we would soften the blow to an individual producer by establishing a base or quota for that producer that gives him about the same share of the class one market that he has now. And that would soften the blow as we phase it in. In other words, so that ultimately for that class one milk, each producer would get exactly the same amount of money not only by the hundredweight but for his total amount assigned to class one. In other words, if the class one price is \$13.78, that is what it is now, he would get \$13.78, every other producer would get \$13.78 for the amount of milk that went to class one. Does that help?

Rep. Campbell asked how they graded, by fat content, or whatever? It appeared to him that the guys trying to make class one milk wouldn't have the incentive to produce class one milk. Mr. Kelly answered you might not understand it, but you sure hit a very important part. O.K. you are right. Or on the other hand, it could furnish the incentive for some low-cost producer to produce way more milk than it was necessary in order to, because he knew that cost would be spread around the pool. That is where the base and quota plan comes in. He will get his share of class one, but if he chooses to produce over that share, he will have to figure on getting the class three price for it. If he can produce it at the class three price, fine. His production is unlimited. We aren't limiting anybody in their business. If they can expand under these conditions, they are free to do that, but he can expand without watering down my market. See? If I choose to maintain that one-man family operation. Does that help?

Rep. Rapp-Svrcek wanted to follow up on one of Rep. Jenkins' questions with regard to this voting. It appears to me that it would be possible for a minority of the producers, if they were the large producers, to prevent this pooling program to be voted into place even though it had been voted in favor of by a majority of the producers by virtue of the fact that they don't produce the majority of the milk. Am I reading that correctly? Mr. Kelly answered no. In an election anything is possible, I suppose, but the kicker is the majority of the milk. Now, one more thing - I really spent a lot of time on this referendum thing, and the guidelines for it, and I think really it has moved because if we don't come up with a program that we can sell to 85-90% of the producers, I don't think we have got a very good program. So I think it has kind of moved, but it could happen, but it isn't likely to happen, and if the Board and the industry put out the right kind of information to all of the producers, and have some

meetings, and say here's the way it is going to work, this is what your bottom line is going to look like. We have been doing some calculating through the Milk Board's computer over there as to what would happen on a pool, on a statewide pool, and one of the companies is talking about a companywide pool, and this one plant had a breakdown here about two or three weeks ago and couldn't process any milk in the plant, so he had to get two or three other plants to process his milk. Well, those producers would have under ordinary circumstances had to eat that or take it at the lowest price because he had to get it processed at some place else. Under a pool arrangement, he would have lost \$2.29 for the entire month even though their plant was broke down for about two weeks. So it could save a producer as well as costing him a little money. Ultimately, it won't cost anything, but initially, until these prices are adjusted with the base and quota program, and to get back to your question - yes it would be possible for a minority of large producers, but they would have to be at least 26% of the majority that voted. See what I mean? If a majority - it says that a majority of the producers affected must vote in order for it to be a valid referendum, so if they do that is 50% or 121 plus 1 would be 122. Then it would be possible for 26% of those to, or 26% of the total amount, to put in a pool or to beat a pool, I suppose. But it isn't likely that that can happen.

Rep. Ellison asked Mr. Kelly - in addition to that if those large producers wanted to do that, those large producers would also have to be in an area that had above average fluid milk, or they wouldn't be for it in the first place. They would all have to come from an area with above average? Mr. Kelly interrupted - where they were getting a high price for their milk, yeah. We have got this worked out now to where, even without a base or quota program, the largest difference is about 40¢ a hundred. But over a period of year that is a lot of money for some producers who produce 150,000-200,000# of milk a month. So we are gonna soften that blow by phasing into this thing with a base and quota program.

There were no more questions from the committee, so Sen. Hofman closed wanting to touch on a couple of things. One was the class one question by Rep. Jenkins. Actually, what this is based on is demand - sales and demand. In the Gallatin area for instance, a lot more milk goes out in the summertime because of Yellowstone Park. There is a tremendous lot of milk that goes up there and is sold in Yellowstone Park. Now this changes, then the amount of milk that goes into class one, and whatever can go into class one goes into class one and the other classes just pick up what is left. When you start dropping back on demand and sales, that's when you get more of the other down the line. Under this bill everybody would be treated the same.

One thing that wasn't touched on at all in the questioning or testimony, was this mail - the voting, the referendum voting by

mail or by secret ballot on lines 6 and 7. That was put in there because there are some producers who fear that a certain amount of intimidation in the voting process if they had to be in a public meeting and raise their hand, or something like this, and they don't want their neighbors to know how they felt or whatever, and that was why that was put in, and then when this bill was first drafted there was nothing in there, like on line 14 about 50% of the milk produced in the state, and because of the concern of some of the people who were reflecting some of the questions about small percentage of producers, etc., that is why that was added into the language, and frankly, I'll just tell you, Sen. Lybeck was the person who was really quite concerned about that sort of thing and we have all of these different things - we tried to put together a bill that would work - and when I was first asked to carry the bill, I also had a real problem with what Rep. Jenkins was talking about - this 26%, because it didn't take me too long to figure that it would work that way. But then 50% of the milk production went in and that took care of that problem for everybody in the industry and nobody is worried about this at all right now. Because of those kind of things, I would ask you to recommend that this bill Do Pass. Thank you very much.

SENATE BILL 379

Sen. Bill Yellowtail, District 50, sponsor of SB 379, said this is an act intended to clarify irrigation districts authority to enter into contracts with the state for the purpose of securing loans for irrigation projects from the coal severance tax bonding program, for the purposes of securities loans for irrigation districts.

Section 1 establishes authority to enter into contracts with the state for loans for specific purposes, liquidation of bonding or any outstanding indebtedness, provision for construction, and improvements or repairs.

Sub (2) provides for creation and administration of sinking funds for the purposes of the contract.

Section 2 provides for a levy assessment for repayment of the contract.

Section 3 provides that the loan constitutes a lien on the district property.

Section 4 provides for the approval process for a contract and provides that a contract can be approved either by a majority vote of those voting in an election, or by the petition process, signed by at least 60% in the number of acres of the voters of title in the district.

Section 5 provides a further step of approval for district court approval.

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He thinks the bill has considerable extensive contracts approval provisions.

The Montana Water Development Association appeared in the Senate hearing in support of this bill, as well as irrigation district people.

PROPOSERS - None

OPPOSERS - None

QUESTIONS FROM THE COMMITTEE

Rep. Corne asked if there would be a need for coal severance tax money left for bonding. It remains to be seen, and Sen. Yellowtail said he was in no position to say.

Rep. Rapp-Svrcek asked if this coal tax money was added in committee what the reasoning is behind this. Sen. Yellowtail explained the committee felt strongly that this should be limited to this program. He doesn't agree that this is necessary. General provisions might be applicable to any programs the state might have available now or in the future.

His concern is that they would have to come back into the Legislature and broaden the language contained here. If some other loan authority does become available, if the committee sees fit, it should see that amended out. Rep. Rapp-Svrcek further asked what the rationale was behind requiring district court approval. Sen. Yellowtail thought the district people wanted an absolute approval authority independent of any politics within the district, in other words, third party approval.

Tom Gomez responded that the rationale was that the irrigation districts don't require approval of the Legislature in terms of what it does. There generally isn't a level to provide for approval of its actions. They have continuously, throughout Title 85, the letting of irrigation districts and there is court approval of all contracts that the irrigation district has, for entering into projects, and also sections providing for the receipt of a loan from the U.S. government for the same type of purposes as what SB 379 intended to do.

Rep. Holliday said when it was drafted it just said it was to come from the State of Montana and then it was changed to coal tax bonding. Under coal tax bonding development is water

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development bonding authority of the coal severance tax. Money is already appropriated for a certain designation, for a particular purpose. Irrigation districts are eligible. Sen. Yellowtail stated SB 379 would provide the machinery for this by which they would secure those loans. There may be some other provision or source for the money in the future that might be available to the districts, but he would like to see them be able to use this as machinery to tap into. Rep. Holliday asked if the 4% were based on a percentage that goes into the water development for bonding.

Tom Gomez responded that by statute there is a specific amount of money that is taken from the coal severance tax fund for water development purposes and the disbursement for various purposes is determined by a board that the authority given to that board for grant and issuance of that money is for various purposes. Rep. Holliday said because that has already been set aside for specific purposes, for water development and for various other purposes, does it take a vote for disbursement purposes? Tom Gomez replied if you are talking about the actual money itself in the form of either loans or grants, in this case a loan, that is a matter determined by the board that has statutory authority to make grants or loans.

Rep. Ellison asked as to tying that to the coal tax for this bonding program, he presumed that what they had in mind was not issuing bonds that were going to lower our bonding rating. Sen. Yellowtail said that could very well be. He thought it would only authorize the district to enter into contracts for whatever loan programs the state makes available, so it wouldn't mandate that the state create any new or additional bonding programs. Sen. Galt raised this issue. Sen. Yellowtail said he didn't have any great problems with that, but he could envision that in the future they would have to come back and amend this provision if some other program becomes available. He wished we didn't have to do that.

Rep. Giacometto asked if you could already do this without the bill through that program. Sen. Yellowtail said that was a good question, as someone else said this on the Senate floor. He doesn't understand it. His understanding is from the proponents of this bill that these processes need to be here. Even though that may be the case, these parameters for the assessment procedures and approval for contract aren't clearly spelled out in law and maybe this is to clarify those provisions.

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Tom Gomez explained under the statutes the purposes for which grants and loans may be issued from the coal tax fund is so broadly worded, it would allow for those loans to be issued at the present time. It was even discussed with regard to the language being so broad that it could be used to support financing of farm operations. It is really broad, but the board has more or less determined a more limited scope for use of that money for water projects. Under statutes relating to the authority of the irrigation districts there isn't anything like this in there--allowing the irrigation district to make the assessment to make repayment of these loans. There is for U.S. government loans, but not for state ones.

Rep. Giacometto repeated that what this bill does is really set up the proper way and legal parameters for the irrigation district so they have something to go by so they don't get into trouble. Was that your perception when it was drafted? Since this amendment was put on there, it seems to me that is more for the irrigation district and what this bill is doing is clarifying their way of obtaining money and setting their parameters at the local level.

Tom Gomez would concur with that, especially for providing imposition of the assessment and especially liens on property to get payment from individual owners of land for purposes of getting funds to make repayment of loans. There was no authority before.

Sen. Yellowtail closed saying he was perturbed because the people who were backing him were not present. He advised he hadn't arranged for someone to carry SB 379 if the committee concurs in this bill. He had faith in the committee to pick someone.

EXECUTIVE SESSION

SENATE BILL 379

Rep. Giacometto moved SB 379 BE CONCURRED IN. Rep. Campbell seconded the motion. The motion was ADOPTED unanimously. Rep. Bachini was excused. Rep. Giacometto will carry SB 379 on the House floor.

SENATE BILL 277

Rep. Ellison moved SB 277 BE CONCURRED IN. Rep. Giacometto seconded the motion. The motion CARRIED unanimously with Rep. Bachini excused. Rep. Campbell will carry SB 238 on the House floor.

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ADJOURNMENT

There being no further business to come before the committee,
the meeting was adjourned at 2:30 p.m.

Duane W. Compton
Rep. Duane W. Compton
Chairman

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

Date March 6, 1987

[illegible]

STANDING COMMITTEE REPORT

March 6 19 87

Mr. Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION

report SENATE BILL 379

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. DUANE W. COMPTON

Chairman


Third

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STANDING COMMITTEE REPORT

March 6

19 37

r. Speaker: We, the committee on AGRICULTURE, LIVESTOCK & IRRIGATION
report SB 277

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. DUANE W. COMPTON

Chairman

Third

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STANDING COMMITTEE REPORT

March 6

19 87

Mr. Speaker: We, the committee on **AGRICULTURE, LIVESTOCK & IRRIGATION**

report **SENATE BILL 238**

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. DUANE W. COMPTON

Chairman

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Third

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WITNESS STATEMENT

NAME K. M. Kelly BILL NO. 5B277
 ADDRESS 4605 Glass Drive DATE 3/1/37
 WHOM DO YOU REPRESENT? Montana Dairy Processors
 SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This legislation is desirable and necessary to solve current problems in the dairy industry. Current legislation does not provide guidelines to the Board of Milk Control in the establishment of a statewide marketing pool.

Most of our problems last year were brought about by failure of a group of dairy farmers to create a statewide milk marketing pool.

This bill will provide assistance to the farmers and the Board to create such a pool if the producers reach an agreement on other provisions.

K. M. Kelly

Ag. Livestock & Hinges COMMITTEE

DATE 5/6/87

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.