MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

SUB COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN TOM BECK,** on February 8, 1995, at 11:30 a.m.

ROLL CALL

Members Present:
Sen. Thomas A. "Tom" Beck (R)
Sen. Reiny Jabs (R)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council
Jennifer Gaasch, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: This was a subcommittee meeting concerning SB 116.
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: ; Comments: .}

Discussion:

CHAIRMAN TOM BECK said the subcommittee would take SB 116, work on it and try to reach a compromise. One of the things they needed to discuss was the shipping of milk out of the state and bringing it back in to avoid some of the laws in Montana. He would like to hear some proposals that could possibly solve that problem but he did not want to hurt the milk producer and he did not want to have a takings problem.

SENATOR MIKE SPRAGUE asked why it would be a taking?

CHAIRMAN BECK agreed they paid a lot of money for some of the milk pool shares and he was concerned about taking that value away from them completely.

SEN. SPRAGUE said they paid for the quota.

CHAIRMAN BECK agreed they paid for the quota. He asked for a few ideas of where to go with the bill.

Les Graham replied there was another bill that was going to move the Milk Control Board to the Department of Livestock. He said that was not difficult to understand, they just move it over to the Department of Livestock. He put in a statement of intent which tried to meet the issues that **CHAIRMAN BECK** was referring to--to lower the wholesale price of milk to eliminate the need to have to go across the state line and bring the milk back in order to be competitive. The second item in the statement of intent was to encourage the use of Montana milk by the processors so it would lower the amount of class three or excess milk, which currently runs from 3% to 6%. The third item said the legislature intends that the department establish a lower pricing structure for milk used in institutions such as schools. He said there was another bill put in by **REPRESENTATIVE SAM ROSE** and there had been several rewrites, but it is trying to do the same thing with maybe not as clean a pattern as the other bill. **Les Graham** said he did not work for either one of the two processing corporations, but works for the Montana dairymen, who are the producers.

SEN. SPRAGUE said his intent in carrying the bill was to give the consumer the opportunity to buy the product at the most reasonable price available and he had no intention of hurting the producer. One proposal heard early on was the producer may have protection or the producers price to the distributor could be protected, but after that point the consumer is waiting at the end of the line for them to do whatever it is they would do to the price of milk. They stated they would set the $14 million and the $1.3 million for schools. He said **SENATOR BOB PIPINICH'S** concern was what the schools did with the price of milk after they paid for it. He was wondering why they did not pay $.13 instead of $.19 and why did they take the $.19 and double that? When they bootleg across the border to sell at the reduced rate, it says to him that the reduced rate was not the problem, it was how to circumvent to get the lower price. If they were selling to school district #2 through another side door, what do they have to do to let the consumer buy the product at the most reasonable, competitive price possible. He said the schools were raising the price primarily with the second half pint of milk.

SEN. PIPINICH said that when the student buys the lunch tray they would receive the first half-pint of milk at that price. The school charges more when the student wants another half-pint of milk.

SEN. SPRAGUE replied they understood profit and so do the distributors. The milk producer was not getting paid as much as they could in some cases. They invested in the quota system, and recently acquired their quota, and they did not have to buy the quota. He said it was those who came into the business in the last 5 to 10 years who had to buy their quota. That made more complications. They were tying the supply and demand in parameters. He did not have a problem with the supplier. He thought the distributors were telling the suppliers that there was no sense in being efficient or producing more than they can or to get a larger business because they have already got it as big as they want and there is no sense in it because they will basically determine how they would pay them from the distributors viewpoint. The distributor says he has excess and figures out how he can bypass the volume and circumvent the borders and bring it back in, call it something that it is not, and be competitive. He said that was free enterprise.

CHAIRMAN BECK asked if they thought the proposal by **Les Graham** would solve the problem?

SEN. SPRAGUE replied he thought it made the problem worse. The reason being it says they will pretend the problem was solved. These bills were presented a long time ago.

Les Graham replied there was a new bill. The statement of intent was new in the last 10 days. The transfer of the Milk Control Board to the Department of Livestock was in committee and they did not use it as an item.

Laurie Ekanger asked which one was the preference. She said that the unofficial bill handed out by **Les Graham** would transfer the Milk Control Board from the Department of Commerce to the Department of Livestock. It includes a statement of intent which really would not change anything in the statute at all. It said they would like the Department of Livestock to work at changing their rules and lowering the wholesale price and encourage use of Montana milk. She assumed that the Board of Milk Control would then have the authority to lower the pricing structure for schools because that would imply they did. She said it did not seem to fix anything.

CHAIRMAN BECK asked what their suggestion was?

Laurie Ekanger replied the other bill changes the law, but it acknowledges in statute what was currently happening by letting the wholesale price meet the market. That was the most straightforward--putting it right statute that they would let the wholesale price be competitive. The second part that was really important to them was to allow the consumer to benefit from that competition and allow the consumer price to be competitive as well. There was some margin in there between the processors and the retailer that the processor currently has to play with, but none of the savings get passed on to the consumer. She said they were going to state the obvious in the statute. They do not set the price at the wholesale level for the out-of-state milk. They ought to let those savings be passed on to the consumer.

SEN. SPRAGUE said they recognize that there is a consumer problem. It is called schools. No industry wants to pick on schools. The consumer is a part of the schools. They recognize the consumer, be it the schools, or the consumer, or the poor, or be the rich, it is still the consumer. The schools are the obvious one. If it is fair for the school to buy the product at a competitive rate, then why should everyone not benefit. They are asking the distributor and the consumer to catch the free market system. If they want to market it, advertise it, and be competitive with the price, that is what they are trying to accomplish only with the isolated situation of the schools. In that bill it says they will give them better consideration, but it does not say on what. The chairman of the board could determine what equations should be used for that.

Les Graham said when he said the one bill was the cleaner of the two he was only thinking in terms of enforceability. He said that bill had statements in it such as "good faith" and he tried to talk with the people who wanted those statements. He said it did need some more work before the bill went any further.

Laurie Ekanger agreed with that. The idea was along the same line. They should just say in the statute that the Board of Milk Control does not set prices at the wholesale level or the consumer level. They set prices at the producer level. They keep the quota system and the producer price, and the rest of it should be taken out of their authority. That would be their suggestion.

CHAIRMAN BECK asked if the Board should set prices at the producer level and let the free market take up the consumer level and the wholesale level?

Les Graham replied the bill did not do that. It dealt with the wholesale.

Laurie Ekanger replied that was correct. They would need something different and they did not draft language.

Les Graham replied they would support the bill 100% as written.

CHAIRMAN BECK asked if it still controlled milk at the wholesale market?

Les Graham replied that was correct.

CHAIRMAN BECK asked **Doug Sternberg** to give them a short explanation of what was in the bill.

Doug Sternberg replied they were looking at LC 1321. The changes were on page in new subsection (10) It would leave the basic wholesale pricing structure intact. Notwithstanding the establishment of minimum wholesale prices is provided in the rest of the section, a distributor may offer a customer a price that is below the minimum wholesale price if the offer was made in good faith at an equally low price of a competitor. The second part was a new subsection 11. It was a first call on Montana milk. It says that a distributor that has a processing facility in the state shall, whenever possible, purchase from Montana producers for the processing products to be sold in the state, provided the milk is available from Montana producers at the price set by the board. The next part was in subsection 12. That extends the Board of Milk Control authority to make rules to do what was suggested in subsection 10 and 11 and to coordinate those rules with the fair trade practice section, which is new in the bill. On the last page, the reference presently says that the department has to adopt reasonable rules governing the fair trade practices as they pertain to transactions of licensees and the public. There was a reference in the fair trade practices that says except for the provisions in the previous sections of subsection 10 and 11 any rules adopted by the board have to meet the criteria in 1 through 5. The new language of 10 and 11 from the general fair trade practices act was a case-by-case scenario. The other bill was going to transfer all of the present pricing functions that presently lie with the Department of Commerce to the Department of Livestock.

CHAIRMAN BECK said he did not know if that was what the problem was.

Laurie Ekanger said they would propose that anytime the bill mentioned setting the price, starting with the first section, they would strike wholesale, jobber, and retailer. When it came to the free trade practices, it would say it was illegal for them to sell below the minimum price, they would replace that with it being illegal for them to sell their product below cost. That would protect from the cutthroat business.

SEN. PIPINICH asked for her to further explain that proposal.

Laurie Ekanger replied that on page 4, under 7, it says "the board after consideration shall make written findings and conclusions and shall by fix by official rule the formula under which producer prices for milk in classes one, two, and three shall be computed" and then they would strike (b), (c), and (d). She said anytime it mentioned jobber, retailer, or wholesaler in the bill, they would strike those from the bill.

SEN. PIPINICH asked why they would strike (b), (c), and (d)?

Laurie Ekanger said at (b), the board was setting the prices for wholesale milk, but to elude that price, the wholesalers are taking the milk out-of-state and bringing it back. To fix that, you have to give them the ability to compete. Getting rid of (c), the jobber price, would be about the same concept. Getting rid of (d), the retail price, allows the savings that are accumulated by decontrolling at the wholesale price to pass on to the consumer.

SEN. PIPINICH asked with (b), (c), and (d) out of there, would that stop the milk from going out-of-state and back in again?

Laurie Ekanger replied exactly.

SEN. SPRAGUE replied the consumer would have some advantage of competition. They would also be protecting the producer as they could not sell below producer price.

Laurie Ekanger said if they wanted to leave the Montana preference in that would be great.

Dave Ashley said he would lead the subcommittee through a simple mathematical description. He referenced one gallon of 2% milk at the January price level. At the producer level, the dairyman was guaranteed $1.20 for that gallon of milk and at the wholesaler level, the regular wholesale markup is $1.43. They would be guaranteed $1.43 invested in that one gallon of milk. At the retail level, the consumer guarantees the store $2.90 for that gallon of milk. In Montana the industry has deregulated the milk by shipping it out-of-state. That level had been decontrolled. The question was what were Dairygold and Meadow Gold charging for that service? At Malmstrom Air Force Base they were buying a gallon of milk from Meadow Gold for $1.81. Now the producer was getting $1.20 for the gallon, which means that Meadow Gold rather than getting the regular wholesale, price was producing it for $.61 per gallon. He said the bottom line was they would like the benefits of competition that were occurring at that level to be passed through to the consumer. They were asking that rather than the retailers and the wholesalers splitting the benefits of competition, the benefit was to get down to the consumer level. He said an interesting discussion would be whether or not the producer would be hurt by that scenario. He said the 106 producers would not be hurt. First they were saying that the producer level would continue to be regulated and the dairyman would continue to be guaranteed his $1.20 per gallon. The individual dairyman would continue to have their quotas. They might argue that the processors would be inclined to go out-of-state for that milk. He said that would probably not occur. Dairygold and Meadow Gold can presently go out-of-state and buy milk. He said any milk produced out-of-state was produced under a federal pricing order which sets the price of milk at $14.00 per hundredweight, compared with Montana which would be a little higher. Say it was $14.50 per hundredweight. If they do want to go out-of-state then they would be purchasing milk produced under a federal order, which may be a little bit lower than what the Montana producer is guaranteed. But if you add in the cost of transportation, which may be about $.08 per gallon, Montana still has a competitive advantage over out-of-state milk. He said decontrolling milk at the retail level would not only allow $14 million benefits to the consumer, but he said he did not think it would hurt the 106 producers.

SEN. SPRAGUE replied at least with that bill they would be coming to an almost fix. They would guarantee that the producer would have a fixed price to protect his investment.

SEN. PIPINICH asked **Les Graham** to respond to what **SEN. SPRAGUE** was saying.

Les Graham explained the classification of milk. They have to understand the idea of surplus milk. Milk was classified in three ways. Class one milk was basically fluid milk you drink. Class two milk was generally used in yogurt, and ice cream, etc. Class three was basically cheese. Under Montana's system generally speaking they use about 76% of the milk for class one milk, and they use 9% for class two milk, and 15% for class three milk. He said that the states around Montana are lucky if they can get in the area of 20%, 15%, and the rest would go to class three milk. He said the classes of milk were paid to the producers at different levels. He said the class three milk that goes into cheese is a government surplus. He said that in the states without regulation there is no control on the producer on what amount of milk they can put out. The producer does not care if only 9% of his milk went here because there was supplement from the government on class three, which varies around the country. They do not produce very much of that in Montana. What they do produce in Montana is almost unavoidable because of fluctuations. What the Montana producer will do and the processor might do is go to Idaho and get the milk for $9 per hundred weight and sometimes lower. That would threaten the small producer. **Les Graham** said the other thing that bothered him was the larger producers in Montana would take over the little producers. The only thing holding them in line at this point is the quota system.

Ward Shanahan, representing Meadow Gold, said they keep getting lumped into the out-of-state transfer situation. They went into that last spring as a defensive mechanism because it was being done by their competition. They were trying to support the producers and comply with the law, which is the reason they came up with the bill. He said it was a step toward the free market, but it was also an attempt to protect the producers and their investment. They could not go directly into the free market. They could live with total deregulation or they could live with the milk regulation. Control was not going to solve the problem. There were two major processors in the state and they both have their own problems, but they tried to keep it under the umbrella of the board so that everyone else knows what the entire market was doing. If they took out one of the parts of the jobber, retailer, or the wholesaler, then there would be throat cutting going on in that. Their position was to do away with all regulation or come up with something that channels a solution to the interstate problem through the Board so they can meet competition and the Board would know what was going on. He said he would have to check with some people to see what their position was on the suggestion of the subcommittee.

SEN. PIPINICH asked if he was talking about taking (b), (c), and (d) out?

Ward Shanahan replied those things and more.

Les Graham asked if by making the suggestion to take out (b), (c), and (d), would that not be going right back to SB 116?

Laurie Ekanger replied it leaves the producer price and it leaves the quota system. She said SB 116 deregulates the quota and the producer price. It was quite a difference.

CHAIRMAN BECK replied he did listen to the explanation and he was a little fearful of what would happen to the producer if they took the other two off.

Dave Ashley replied that just as Dairygold and Meadow Gold were shipping their milk out of state to deregulate the wholesale level, there's nothing that prevents any of the 176 dairymen at that level from taking their milk out of state and bringing it back in and deregulating at that level. It could happen under the present situation, but it does not. When talking about the out of state milk, he does not understand the price could be at $9. If they look at the federal pricing orders, they are all about the same price as Montana's state level price for the producer.

Les Graham suggested asking **Bill Ross**.

Bill Ross replied the price they pay the producers under the federal order is the class three milk. There was an additional provision in the federal order that a producer does not have to subject his milk to the federal order. He can ship the milk directly to an out-of-state location. He said that was a concern.

Laurie Ekanger said there was nothing to prevent buying out of state milk at the present time. It was not hurting the producers now, so she does not understand keeping the price level at a quota system for the producers.

CHAIRMAN BECK asked how Lucerne, Safeway's milk, fit into this. He asked if it was retail price control that holds that up, and do they ship their milk in?

Les Graham replied they do not ship their milk in. He said that was followed by Dairygold.

CHAIRMAN BECK asked if it was followed by Dairygold in Montana?

Les Graham replied that it was. He said a lot of brand names are bottled by the companies in Montana. He said they were all Montana milk.

SEN. SPRAGUE said that was the milk they were talking about was crossing the boarder and coming back under a company label. It would seem logical if the producer had 60 or 100 or 200 cows and he was limited to the ability to circumvent the rule. He was suggesting that the market was changing out from under the producers currently and they might not be aware of it. Over 20% of the total production presently was produced by six Hutterite families with offspring that have six additional families. It is the geometric progression that is happening if one man had six sons and they each had shares. In the case of the Hutterites, if they ever challenge to pool their resources, they could take the system and operation in 30, 60, or 90 days. When they were talking about the small producer being consumed by the big producer, the big producer was already here. They are the people with the ready, willing, and able cash to buy up other shares if and when they are available.

CHAIRMAN BECK asked if there was any possibility that the people involved could sit down and see if they could come to a compromise? If they cannot, then we would write a committee bill and they would have to accept what they decide.

Ward Shanahan replied that they were willing to talk.

Les Graham said they were willing to talk and they were willing to support the unofficial bill at the present time.

CHAIRMAN BECK said if they were not willing to support the same bill, then they should try to work out a compromise, otherwise the subcommittee would make the decision and he would like to have that done by the same time tomorrow.

Ward Shanahan replied that the bill was drafted by the producers at the producers' request.

SEN. PIPINICH said they would have to work on the three bills together and come back in or the subcommittee would write the bill.

CHAIRMAN BECK replied he was not trying to table the bill unless they have to because they wanted to try and get a bill out of committee.

Doug Sternberg replied SB 116 was before the Agriculture committee; the unofficial bill was **REPRESENTATIVE BARNETT'S** bill which will be heard in the House Agriculture Committee tomorrow; and the LC 1321 was requested by **REPRESENTATIVE ROSE** and is ready for delivery but has not been introduced yet.

CHAIRMAN BECK asked if they could amend what they need into either one of the two bills to make one decent bill.

Doug Sternberg replied if either one of those bills make it through the House, they would be able to amend them.

CHAIRMAN BECK said there was also the possibility they could write a committee bill from the Senate Agriculture Committee. He asked if they were getting too far outside the bounds of SB 116 to amend it.

Doug Sternberg replied that in his opinion yes. He said that SB 116 was very specific in decontrolling the milk.

ADJOURNMENT

Adjournment: 12:25 p.m.

Sen Tom Beck

TOM BECK, Chairman

Jennifer Gaasch

JENNIFER GAASCH, Secretary

TB/jg

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE
SUBCOMMITTEE MEETING

ROLL CALL SB116 DATE 2-8-95
11:30 a.m

NAME	PRESENT	ABSENT	EXCUSED
GERRY DEVLIN, VICE CHAIRMAN			
TOM BECK* - CHAIRMAN - SUBCOMMITTEE	X		
DON HARGROVE			
RIC HOLDEN			
REINY JABS *			X
GREG JERGESON			
LINDA NELSON			
BOB PIPINICH *	X		
CHUCK SWYSGOOD, CHAIRMAN			
* MEMBERS OF SUBCOMMITTEE ON SB 116			

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DATE February 8, 1995

SENATE COMMITTEE ON Agriculture SubCommittee

BILLS BEING HEARD TODAY: SB 116

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Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Marlys Koontz	MCB	SB 116		X
Maria V. Largent	MCB	SB 116		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY