

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN TOM BECK, on February 9, 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.}

Discussion:

SENATOR MIKE SPRAGUE told SENATOR REINY JABS that they had met and their goal was not to hurt the producer, but to help the consumer.

Dave Ashley said their preference would still be the passage of SB 116, which decontrols the producer, the wholesaler, and the retail price level of milk. It gets the state out of the business of price fixing the milk and it eliminates the quota. They felt that would be the most effective means of getting the savings to the Montana milk consumer. If they could not pass that bill, then they would like to work with LC 1321. He handed out a version of the bill, (EXHIBIT #1) and said they would use that bill as a basis to go further than proposed by the industry. In the bill they would deregulate the wholesale price, the jobber price, and the retail milk price. As a further fallback position they talked about two other amendments that would attempt to get the consumer the benefits of the competition currently occurring

at the wholesale level. He handed out the amendments, (**EXHIBIT #2, #3, #4**) On page four of the bill, item (7)(d), the proposal would be to strike the existing (d) which says "the board would set retail prices for the milk in class one according to the formula" and they would insert language that says "retail prices must be set at no more than 15% above the prevailing wholesale price". Presently the producer is guaranteed \$1.43 for the regular wholesale mark-up on milk, but they know that is not occurring because the industry is shipping the milk out-of-state and bringing it back. He they thought the industry could stay profitable at \$.61 rather than \$1.43. He said that would try to pass down those savings available at the wholesale level to the consumers in the store. The method the amendment uses is to require the Board to look at the prevailing wholesale price that is being charged in the market and to set the price at the retail level at no more than 15% above that amount. He said they had another amendment that would try to accomplish the same thing in a little bit different way. (**EXHIBIT #3**) would be inserted in place of the existing (7)(d) on page 4 of (**EXHIBIT #1**) that would say "Notwithstanding the formula, retail prices for milk in Class I must be computed by the Board in a manner so that any reductions in the cost of milk at the wholesale level are passed on to consumers at the retail level." The amendment ties back to page 5, subsection (10) which says "not withstanding the establishment of minimum wholesale prices as provided in this section a distributor", meaning Meadowgold or Dairygold, "may offer a customary price that is below the minimum wholesale price if the offer is made in good faith to meet an equally low price of a competitor". That language would effectively reduce the wholesale price to an economic price and that this language would require a reduction in price at the wholesale level to be passed down to the consumer at the grocery store level. They had one other amendment that they talked about. (**EXHIBIT #4**) The amendment would allow a study to be done to evaluate the impact of decontrolling wholesale and retail milk prices on Montana consumers, jobbers, processors, and producers.

CHAIRMAN BECK asked what they thought of the amendments?

Dennis Iverson replied they favored both of the last two amendments. (**EXHIBIT #3 & #4**) It accomplished the same thing as in the other amendment in a way that was more flexible. He was afraid they might have problems with the 15% language and some jobbers might be hurt.

CHAIRMAN BECK replied he agreed. The language in (**EXHIBIT #3**) does not put the real restrictive parameter on there. If they put in the amendment, including the study, how would they feel about the study?

Les Graham replied they thought it was a healthy thing that needs to be done because there are some problems in the system that **SEN. SPRAGUE** tried to address. The study will give them a basis of understanding. They agree with that as well.

Ward Shanahan replied he could not speak to the one with the formula, which was the one on page 4, (7)(d), but they do support the study. His main concern with the other amendments as they showed in the bill (LC 1321) they endorsed the bill as originally written because the producers came up with two points. They came up with the meeting competition bidding situation and with the preference for Montana milk. If you deregulate under (7)(b), (c), and (d), they force them to buy Montana milk and then put a cutthroat situation on the other three levels and that is unsatisfactory to Meadowgold. They support the original bill and they support the amendment for the study. He said he would have to check on the amendment to page 4, (7)(d). It was the producer's bill and their commitment was to the producer.

Les Graham said as far as the Montana Dairyman's Association they are ready to endorse LC 1321, as written with the two amendments.

SENATOR BOB PIPINICH asked if they did not want the 15%?

CHAIRMAN BECK replied not the 15%.

Les Graham said they were ready to settle it right now.

CHAIRMAN BECK said that on page 4, section (7)(d), they would leave (b), and (c) in and substitute part (d) with the amendment and put in the study amendment. He thought that was the way they would send the bill out. He asked **Doug Sternberg** if he understood the request of the subcommittee.

Doug Sternberg replied they would leave price controls in place for all four classes, but they will insert the new amendment inserted and also the study will be inserted, which will be a new section.

Ward Shanahan said he assumed what that would do with the bidding price situation would require the wholesaler to pass any savings on bidding to the retail level. He does not have the authority to endorse that.

CHAIRMAN BECK asked if that was their understanding?

Dave Ashley replied exactly. It would leave it up to the Board to flush out by rule how the savings would be passed down to the retail level.

Les Graham said they respect what **SEN. SPRAGUE** tried to do because there are some ongoing problems in the system. He said

they could get it looked into then they would not have to come back every year.

Ward Shanahan said there was a key word in there which he did not like, "any reductions in the cost of milk," which means there was really no point in bidding because any savings that were made would have to be passed on down the line, so there would not be a point to bidding on large orders. If they took the word "any" out, it would be more palatable. Then the Board would have some discretion as to the level.

CHAIRMAN BECK asked about the word "reductions". He wants to take out the word "any". He asked **Dave Ashley** if he would agree to that?

Dave Ashley replied he agreed.

SEN. SPRAGUE requested that they keep the consumer in mind because they do not want to lose focus.

Ward Shanahan said the person trying to get the low price, has to have some benefit. That would require the Board to make sure there were benefits passed on to the consumer.

CHAIRMAN BECK said if they could use the context of LC 1321 and make it a committee bill. On the first page they have deregulation of the wholesaler, jobber, and that would be out of the bill; on page 4 they would put in the amendment (**EXHIBIT #3**) and they would strike out part (d) and insert the amendment; then at the end of the bill the amendment of the study would be inserted into the bill.

Doug Sternberg replied it would be a new section. He said that LC 1321, in its present, form has been drafted and is ready for delivery.

SEN. PIPINICH asked if they could just amend it?

Doug Sternberg suggested instead of creating almost a duplicate bill, if it turned out to be a Senate bill, he could prepare the amendments and if it was a House bill he could work with the House sponsor to put it into that form so that when it gets to the Senate it would be in that form.

CHAIRMAN BECK said he would like to have **SEN. SPRAGUE** complete the bill and be the sponsor of the bill.

SEN. SPRAGUE replied that he would be happy to do it.

CHAIRMAN BECK said to get the bill downstairs and **REPRESENTATIVE SAM ROSE** will have to sign it out of council. **SEN. SPRAGUE** will carry the bill.

Doug Sternberg said to introduce it as a Senate bill and when it enters the Agriculture Committee they will insure the amendments get in.

CHAIRMAN BECK said they did not need a committee bill.

Dave Ashley said he would like to deal with an incidental item on page five--item number (12), has to do with the Board of Milk Control regulating transportation rates. He was not talking about the new added language, but about the existing language in item (12). Effective January 1, the federal government prohibited states from regulating intrastate trucking, which is trucking taking place within the state with the exception of transportation having to do with household moving, garbage, taxis, and buses. He would think that the language would now be superseded by federal statute.

Les Graham replied that would be **Doug Sternberg's** call.

CHAIRMAN BECK asked him to research that.

Doug Sternberg replied he would. It was suggested the regulation transportation rates may be precluded by a federal law dated January 1.

Ward Shanahan replied they could use the language "to the extent allowed by law" and that might take care of it so they did not have to have such a research project.

Doug Sternberg replied they would leave the Montana statute intact so that it is not in conflict with any subsequent federal law that has come down the line.

SEN. JABS asked what the change was on page 1?

CHAIRMAN BECK replied they were not going to do that. He said the main thing they wanted to get into was page 4, and was the price controls that were in there. They are leaving (a), (b), and (c) in and they are changing (d), and adding the study.

SEN. PIPINICH asked about the talk on page 5, on (10), (11), and (12). What was discussed on (11)?

Ward Shanahan said it would just be the straight (10), and (11).

Les Graham replied that was done when they had the wording on page one.

CHAIRMAN BECK replied he wanted to get something out of there and that was a good start on the concerns of the public. He said in 2 years if they need to they will look at it again.

EXECUTIVE ACTION TO HAVE LC 1321 DRAFTED AND SENATOR SPRAGUE
SPONSOR THE BILL

Motion: SEN. PIPINICH MOVED to draft LC 1321.

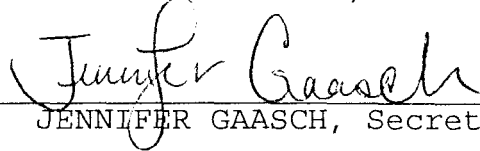
Vote: MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 12:00 p.m.



SENATOR TOM BECK, Chairman



JENNIFER GAASCH, Secretary

TB/jg

SUBCOMMITTEE MEETING

SB 116

2-9-95

11:30 A.M.

[illegible]

SEN:1995
wp.rollcall.man
CS-09

Rebo - includes preamble & revisions

Lawson/Stanberg OK'd

Fax Transmittal Memo		# of Pages 9
To: <u>Leg Council</u>	From: <u>Stanberg</u>	
Co.:	Co.: <u>Leg Council</u>	
Dept.:	Phone #	
Fax # <u>284-3131</u>	Fax # <u>444-3036</u>	

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No. _____

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LC1321.01

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-9-95

BILL NO. SB 116

A Bill for an Act entitled: "An Act revising Montana milk price control provisions by allowing a milk distributor to meet a competitor's price by offering in good faith a price below the minimum wholesale price set by the milk control board; ^{deregulating wholesale, jobber and} requiring ^{retail} milk distributors who have milk processing facilities in this state ^{milk} to make a first call or request for milk from Montana sources and, ^{pricing;} whenever possible, to purchase from Montana sources if milk is available from the Montana producer at the price set by the milk control board; excepting these provisions from the board's rules of fair trade practices; amending sections 81-23-302 and 81-23-303, MCA; and providing an immediate effective date."

WHEREAS, it is necessary for the Board of Milk Control to adopt additional procedures and fair trade practices to promote the sale of Montana milk at competitive prices; and

WHEREAS, the Legislature encourages the use of Montana milk by Montana processors and the elimination of practices that encourage the purchase of Montana milk out-of-state for subsequent resale in Montana at a price lower than that established by the Milk Control Board.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, ~~wholesale, jobber, and retail~~ prices for class I milk and minimum producer prices ~~only~~ for class II and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish ~~such~~ prices by means flexible formulas ~~which shall that must~~ be devised so that they bring about ~~such~~ automatic changes in all minimum prices as are justified on the basis of changes in production, ^{and} supply, ~~processing, distribution, and retailing costs.~~

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices ~~which that~~ are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors ~~which shall that must~~ be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution ~~which that~~ preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut ~~such~~ the considerations as a matter of record.

(5) ~~Such specific~~ Specific factors may include but ~~shall~~ are not be limited to the following items:

(a) current and prospective supplies of milk in relation to

current and prospective demands for such milk for all purposes;

(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

~~(f) the cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;~~

~~(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which that may properly be allocated to the handling of milk to the point at which such the milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;~~

~~(h) the need, if any, for freight or transportation charges~~

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~~to be deducted by distributors from producer prices for bulk milk.~~

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence ~~which~~ that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge ~~which~~ that it will consider, so that all interested parties will have opportunity to be heard and to question or rebut ~~such~~ the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula ~~whereby~~ under which minimum:

(a) producer prices for milk in classes I, II, and III, ~~shall~~ must be computed;

~~(b) wholesale prices for milk in class I shall~~ must be computed;

~~(c) jobber prices for milk in class I shall~~ must be computed;

~~(d) retail prices for milk in class I shall~~ must be computed.

(8) This section ~~shall~~ may not be construed as requiring the board to promulgate any specific number of formulas, but ~~shall~~ must be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in subsection (7). ~~If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the~~

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~~board shall designate the reasons therefor for the separate and~~
~~varying prices and establish each separate formulas.~~

(9) Each rule establishing or revising any milk pricing formulas ~~shall must~~ classify milk by forms, classes, grades, or uses as the board may ~~deem~~ ~~considers~~ advisable and ~~shall must~~ specify the minimum prices ~~therefor for the milk.~~

(10) Notwithstanding the establishment of minimum wholesale prices as provided in this section, a distributor may offer a customer a price that is below the minimum wholesale price if the offer is made in good faith to meet an equally low price of a competitor.

(10)(~~11~~) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state, provided that milk is available from Montana producers at the price set by the board.

~~(12) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates which that distributors, contract haulers, and others charge producers for both farm to plant and interplant transportation of milk. No An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding good faith offers to meet competition, as provided in subsection (10), and regarding the requirement for first call on Montana milk supplies, as provided in subsection (11). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.~~

(11) ~~(11)~~ ~~(13)~~ All milk purchased by a distributor ~~shall~~ must be purchased on a uniform basis. The basis to be used ~~shall~~ must be established by the board after the producers and the distributors have been consulted.

(12) ~~(12)~~ ~~(14)~~ The board may amend any official rule in the same manner provided herein in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(13) ~~(13)~~ ~~(15)~~ Upon petition of a distributor or a majority of ~~his~~ a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices, ~~and if~~. If the board finds that the evidence ~~adduced~~ provided at ~~each~~ the hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same base or quota plan.

(14) ~~(14)~~ ~~(16)~~ (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by any licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at ~~each~~ the hearing, the board shall among other things specifically receive and consider evidence concerning production and marketing practices ~~which~~ that have historically prevailed statewide. If the board finds that the evidence ~~adduced~~ provided at ~~each~~ the hearing warrants the establishment of a statewide pooling arrangement, the

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board shall proceed by official order to establish the same, but ~~each arrangement. An official order shall be of no force or effect~~ is not effective until it is approved in a referendum conducted by the board by mail and by secret ballot among affected producers, producer-distributors, and distributors. The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum. The official order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions as ~~that~~ the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection ~~(13)~~ ~~(15)~~ (13)

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but any withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection ~~(14)(a)~~ (16)(a). ~~Such~~ The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

~~(15)~~ (17) The requirements ~~hereinafter~~ set forth in this section concerning notices of hearings for the establishment of milk pricing formulas ~~shall~~ apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment ~~thereof of base or quota plans or statewide pooling arrangements.~~

~~(16)~~ (18) Rules adopted pursuant to this section ~~shall~~ must be enforced and audited for compliance by the milk control bureau of the department of commerce."

Section 2. Section 81-23-303, MCA, is amended to read:

"81-23-303. Rules of fair trade practices. The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. These Except for provisions regarding the right to meet a competitor's price, as provided in 81-23-302(10), and the requirement for first call on Montana milk supplies, as provided in 81-23-302(11), and rules adopted pursuant to 81-23-302(10) and (11), fair trade practice

rules shall ~~must~~ contain but are not limited to provisions prohibiting the following methods of doing business ~~which that~~ are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

(4) the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling of milk ~~which that~~ ^{cost.} is to be or is sold or otherwise disposed of at less than ~~the~~ ~~minimum wholesale and minimum retail prices established by the~~ board;

(5) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk ~~which that~~ is distributed to any person, including agencies of the federal, state, or local government."

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

-END-

EXHIBIT

DATE 2-9-95

5B 116

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 2-9-95

BILL NO. SB 116

Amendment

Page 4, (7) (d) strike existing (d) and insert, "(d) retail prices must be set at no more than 15% above the prevailing wholesale price."

SENATE AGRICULTURE

EXHIBIT NO. 3

DATE 2-9-95

BILL NO. SB 116

Amendment

Page 4, (7) (d) substitute language "(d) notwithstanding the formula, retail prices for milk in Class I must be computed by the Board in a manner so that ~~any~~ reductions in the cost of milk at the wholesale level are passed on to consumers at the retail level."

SENATE AGRICULTURE

EXHIBIT NO. 4

DATE 2-9-95

BILL NO. SB 1116

Amendment

The legislative auditor is instructed to complete an interim study and report to the 1997 legislature regarding the economic effects of the transition to a free market approach for processing, distributing and retailing Montana milk. Such study should evaluate the impact of decontrolling wholesale and retail milk prices on Montana consumers, jobbers, processors and producers.

DATE 2-9-95

SENATE COMMITTEE ON SENATE AGRICULTURE
SUBCOMMITTEE ON SB116

BILLS BEING HEARD TODAY: SB116

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
William E. Ross	SELF	116		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY