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AGRICULTURE

Southern Dairy Compact: Provide for Entry Into the Compact by the State of Georgia

CODE SECTIONS: O.C.G.A. §§ 2-20-1 to -5 (new), 45-7-21
(amended)

BILL NUMBER: SB 34

ACT NUMBER: 453

GEORGIA LAWS: 1999 Ga. Laws 1249

SUMMARY: The Act allows for Georgia's entry into the Southern Dairy Compact which will establish minimum prices paid to dairy farmers for Grade A whole milk. The Act establishes the method for selecting Georgia's delegation to the regional Compact and outlines the method by which delegates from all of the member states will establish a minimum price to be paid to dairy farmers.

EFFECTIVE DATE: July 1, 1999¹

History

Dairy farmers in Georgia and the Southeast are unable to compete with dairy farmers in other regions of the United States because of the

1. See Telephone Interview with Sen. Harold J. Ragan, Senate District No. 11 (May 21, 1999) [hereinafter Ragan Interview]. The Act is effective July 1, 1999, but it is only enabling legislation. Georgia's dairy farmers must approve entry into the Compact by referendum, and Congress must approve creation of the Compact. See *id.*

high heat and humidity during the summer months that cause cows to produce less milk.² Faced with the possibility that Georgia's dairy farmers may be forced out of the market, proponents of the Act feared Georgia would become dependent on milk from other regions of the country; as a result, the quality of fresh milk would suffer.³

The Act allows for Georgia's entry into the Southern Dairy Compact (Compact), which forms a Commission to set minimum prices paid to dairy farmers for Grade A milk in member states.⁴ Legislators hope such a minimum price would enable Georgia dairy farmers to remain in business.⁵

A Dairy Compact bill was first introduced in the 1998 General Assembly; however, then-Governor Zell Miller vetoed the bill because he feared it violated the Georgia Constitution and because it would raise the retail price of milk.⁶ Senator Harold Ragan re-introduced the legislation during the 1999 legislative session.⁷ Senator Ragan stated that it "was important to introduce [the bill] again with a new governor."⁸

In order to enter the Compact, a state must seek approval of the United States Congress.⁹ The United States Congress authorized the North East Dairy Compact, upon which the Southern Dairy Compact was based.¹⁰

The Act

The Act comes at a time when the federal government is phasing out some of its subsidy programs such as the Dairy Price Support

2. *See id.*; see also Susan Laccetti Meyers, Editorial, *Would You Pay More for Milk to Help Farmers?*, ATLANTA J. & CONST., Feb. 6, 1999, at A12 (noting that the trend in Georgia has been to lose approximately 10% of its dairy farms per year, with only 423 farms remaining in 1998).

3. *See* Ragan Interview, *supra* note 1.

4. *See* O.C.G.A. § 2-20-1 (Supp. 1999).

5. *See* Ragan Interview, *supra* note 1.

6. *See* Brian Robinson, *Barnes Won't Reveal Plans for Dairy Bill*, ATLANTA J. & CONST., Mar. 16, 1999, at C4; see also Ragan Interview, *supra* note 1. North Carolina, Louisiana, and Arkansas passed legislation allowing their entry into the Compact in 1997. *See id.*

7. *See* Ragan Interview, *supra* note 1. SB 34, as introduced during the 1999 session, is identical to the legislation introduced in the 1998 session. *See id.*

8. *Id.*; see also Kathey Pruitt et al., *Senate OKs Setting Base Price for Milk*, ATLANTA J. & CONST., Feb. 3, 1999, at B4 (noting that as a member of the House last year, Governor Roy Barnes voted for the Act).

9. *See* Ragan Interview, *supra* note 1.

10. *See id.*

Program.¹¹ The Act provides for Georgia's entry into the Compact and sets forth the text of the Compact.¹² The Compact forms an interstate Commission of southern states to establish a minimum price that dairy farmers will be paid for milk to ensure their continued viability.¹³ The stated purpose of the Compact is to "recognize the interstate character of the southern dairy industry," ensure the viability of the southern dairy industry, and ensure a local supply of milk.¹⁴ The Compact does not displace the federal order system, which regulates minimum prices paid to milk producers, but allows participating states to set a minimum price above the federal minimum.¹⁵ The Compact also explicitly states that it sets forth a "constitutional regulatory authority."¹⁶

The Compact creates the Southern Dairy Compact Commission (Commission), comprised of a delegation from each member state, to administer its provisions.¹⁷ Each state delegation will include three to five members with at least one dairy farmer and one consumer representative.¹⁸ A vote of two-thirds of the delegations present is required to set an "over-order price" or the minimum price paid to dairy farmers above the federally-set price.¹⁹ All other actions taken by the Commission require a majority vote of the delegations present.²⁰ The Commission is also empowered to make any additional rules and regulations to implement or effectuate the Compact.²¹

11. *See Meyers, supra* note 2.

12. *See* O.C.G.A. § 2-20-1 (Supp. 1999).

13. *See id.*

14. *Id.* One of the main goals of Georgia's entry into the Southern Dairy Compact is to ensure an adequate supply of locally produced milk. *See Ragan Interview, supra* note 1. However, opponents note that Georgia already imports "hundreds of thousands of pounds of milk every year." Telephone Interview with Sen. Bob Guhl, Senate District No. 45 (Apr. 23, 1999) [hereinafter Guhl Interview].

15. *See* O.C.G.A. § 2-20-1 (Supp. 1999).

16. *Id.* The Compact states "properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution." *Id.*

17. *See id.* The Compact provides for internal administration and management. *See id.*

18. *See id.*

19. *See id.* In the event that the federal milk marketing orders are terminated, the Compact provides that the Southern Dairy Commission will establish its own marketing orders, which affect all classes and uses of milk. *See id.*

20. *See id.*

21. *See id.*

To enforce the provisions of the Compact, the Commission is authorized to examine the books or records of any regulated dairy farmer.²² The Commission may also issue subpoenas and compel witnesses to give testimony.²³ Violation of the provisions of the Compact or regulations by the Commission committed by a "Handler" is a violation of state law, and the Compact provides for a civil penalty.²⁴ The Commission is empowered to finance itself by imposing an assessment on milk purchased by handlers from producers within the region.²⁵

The Act provides for the Georgia delegation to the Commission to consist of five members.²⁶ The Governor shall appoint one member to represent milk consumers.²⁷ The Speaker of the House shall appoint one member.²⁸ The President of the Senate shall appoint one member representing the school food service profession.²⁹ The Commissioner of Agriculture shall appoint two members, one of which is to be a dairy farmer, and the other a processor of milk.³⁰ All members of the Georgia delegation must be registered to vote in the state.³¹ Members of the Georgia delegation are to serve for four years and shall not serve more than three consecutive terms.³²

For administrative purposes, the delegation is assigned to the Department of Agriculture, and funds necessary to carry out Georgia's participation in the Southern Dairy Compact come from the Department of Agriculture.³³ Members of Georgia's delegation to the Commission will receive an equivalent per diem allowance as a member of the General Assembly for each day that the delegate

22. *See id.*

23. *See id.*

24. *See id.*

25. *See id.* (Article VII, Section 18(a)). The assessment shall not exceed \$.015 per hundred-weight of milk purchased. *See id.*

26. *See id.* § 2-20-2(a).

27. *See id.* § 2-20-2(a)(1).

28. *See id.* § 2-20-2(a)(2).

29. *See id.* § 2-20-2(a)(3). This appointment was added as a political compromise; school nutritionists initially opposed Georgia's entry into the Southern Dairy Compact until they were given representation among Georgia's delegation to the commission. *See Ragan Interview, supra* note 1.

30. *See* O.C.G.A. § 2-20-2(a)(4) (Supp. 1999).

31. *See id.* § 2-20-2(b).

32. *See id.* § 2-20-2(c).

33. *See id.* § 2-20-2(f)-(g).

attends a meeting of the Commission along with necessary transportation cost.³⁴

Opposition to the Act

Opponents of the Act voice several concerns. First, some question the constitutionality of the Act under the Georgia Constitution.³⁵ Second, many view the Act as price fixing and believe Georgia's dairy farmers should be left to compete in the marketplace without government interference.³⁶ Finally, many are concerned that the Act will force consumers to pay higher prices for milk at the retail level.³⁷

Then-Governor Zell Miller vetoed the Act in 1998, in part, because he was concerned the legislation may be unconstitutional under the Georgia Constitution.³⁸ Governor Miller's staff believed the legislation may violate the due process provision of the Georgia Constitution³⁹ as interpreted by the Georgia Supreme Court in previous pricing decisions.⁴⁰ Proponents respond that the court decisions that the Governor's staff relied upon only apply to price fixing at the retail level and do not apply to the Act, which sets the price that producers are to be paid.⁴¹

Opponents of the bill also think dairy farmers should compete in a free market. Senator Guhl stated that farmers should "sharpen up, modernize and [be] able to produce at a price where they can make a profit."⁴² Representative Don Balfour stated: "the situation was like Home Depot putting a local hardware store out of business—it's not

34. Compare *id.* § 45-7-21, with 1995 Ga. Laws 1041 § 1, at 1043 (formerly found at O.C.G.A. § 45-7-21 (Supp. 1998)).

35. See Guhl Interview, *supra* note 14. Senator Guhl voted against the Act because he had concerns about its constitutionality and because he thought it was price fixing. See *id.*

36. See *id.*

37. See Meyers, *supra* note 2. The Act may raise the price of milk for Georgia consumers as much as 59 cents per gallon over the next few years. See *id.*

38. See Telephone Interview with Sen. Don Balfour, Senate District No. 9 (Apr. 20, 1999) [hereinafter Balfour Interview]; Guhl Interview, *supra*, note 14; Ragan Interview, *supra* note 1.

39. See Peter Mantius, *Sides Split on Dairy Compact*, ATLANTA J. & CONST., Feb. 2, 1999, at B3.

40. See Ragan Interview, *supra* note 1.

41. See Mantius, *supra* note 39 (noting that Denmark Groover, a former legislator, tried to convince Governor Miller's staff that the cases were not applicable because they concerned retail prices); see also Ragan Interview, *supra* note 1 (noting that the Act is not "price fixing in the sense of setting retail prices for the consumer").

42. Guhl Interview, *supra* note 14.

necessarily a good thing for the store owners, but ninety-nine percent of everyone else gets cheaper hardware."⁴³

Proponents respond that if Georgia's dairy farmers are driven out of business, the quality of milk will suffer.⁴⁴ Senator Ragan said that consumers will get a better product if milk is produced within the state.⁴⁵ Opponents point out that Georgia already imports a large amount of milk.⁴⁶

An editorial in the *Atlanta Journal & Constitution* describes the Act as a "veiled attempt at raising milk prices by fixing prices for consumers."⁴⁷ Noting that Georgia's entry into the Southern Dairy Compact may increase prices fifty to sixty cents a gallon, Senator Guhl stated "[that's] not a whole lot to those with money . . . but if they have three or four kids . . . it does make a big difference."⁴⁸ Senator Ragan noted that retail milk prices have steadily risen over the years while the price paid to dairy farmers "has remained almost static."⁴⁹

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43. Balfour Interview, *supra* note 38.

44. *See* Mantius, *supra* note 39 (quoting State Agriculture Commissioner, Tommy Irving) ("[I]mported milk has a shorter shelf life than milk produced" domestically).

45. *See* Ragan Interview, *supra* note 1.

46. *See* Guhl Interview, *supra* note 14.

47. Editorial, *Barnes Should Veto Milk Price Fixing*, ATLANTA J. & CONST., Feb. 10, 1999, at A14.

48. Guhl Interview, *supra* note 14; *see also* Meyers, *supra* note 2 (noting that the International Dairy Foods Association predicts milk prices could rise from 13 cents a gallon to 59 cents a gallon as a result of Georgia's entry into the Southern Dairy Compact). *But see* Mantius, *supra* note 39 (indicating that Tom Thompson, president of the Georgia Milk Producers Association said that prices in the Northeast have only risen about one cent per gallon since their Compact was established).

49. Ragan Interview, *supra* note 1.