

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1770

SPONSOR: Committee on Agriculture, Senators Argenziano, Dockery, Crist, and others

SUBJECT: Beef Market Development Act

DATE: March 10, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill establishes a beef council and procedures for the beef council to administer a beef check-off program under which there would be an assessment on each head of cattle sold in the state if the program is approved by a majority vote of the beef producers. The check-off funds would be used to promote beef and beef products. The bill sets forth criteria to be a board member. Powers and duties of the council are set forth along with directions to adopt bylaws to govern the day to day operations. It establishes procedures for the refund of assessments on request. It provides that assessments pursuant to the beef check-off program will not be initiated prior to the elimination of the national beef check-off program.

This bill creates section 570.9135 of the Florida Statutes.

II. Present Situation:

The 1985 Farm Bill established a national beef check-off program which became mandatory in 1988. The program is based on a \$1 per head assessment, of which one-half is controlled by beef councils at the state level. The check-off funds are expended on advertising, marketing, education, and research programs all aimed at stimulating beef sales.

Legal challenges have caused the future of various check-off programs to be in question. Specifically, the U.S. Court of Appeals for the 8th Circuit, in Livestock Marketing Association v. United States Department of Agriculture, 335 F.3d 711, (8th Cir.2003), has affirmed a decision of the U.S. District Court in South Dakota which held that the national beef check-off program was unconstitutional. The Court of Appeals said that it must follow the precedent set in a United States Supreme Court case that held a similar check-off program imposed on mushroom producers was unconstitutional on the grounds that mandatory assessments could not be used to

fund generic advertising (United States v. United Foods, Inc., 533 U.S. 405 [2001]). That decision has been appealed to the U.S. Supreme Court.

The beef producers in the state have resolved that it is in their interest to have a state-level program on stand-by if the national check-off program is ruled unconstitutional by the U.S. Supreme Court.

III. Effect of Proposed Changes:

Section 1. Creates s. 570.9135, F.S., as follows:

1. Title

May be cited as the “Beef Marketing Development Act.”

2. Legislative Intent

Promote the growth of the beef cattle industry through a self-financed, self-governed program.

3. Definitions

Defines the following terms used in the act:

- Beef or beef products– products of beef intended for human consumption which are derived from any bovine animal.
- Cattle – animals so designated by federal law, which includes all bovine animals.
- Council – the Florida Beef Council, Inc.
- Department – the Department of Agriculture and Consumer Services.
- Market Agent – person who deals with cattle acquired from or marketed on behalf of a producer.
- Person – an all inclusive term that refers to natural persons or business entities.
- Producer – person who owns cattle now or owned or sold cattle in the previous calendar year.

4. Florida Beef Council, Inc.

Established as a non-profit, service organization under the Department of Agriculture and Consumer Services. Activities are to be financed by an assessment, if approved by a majority of producers in the state, on each head of cattle sold in the state.

The promotion of the cattle industry is the stated objective of the program, and to achieve this goal, the council is empowered and directed to:

- Develop an assessment program and administer and receive those assessments and coordinate with any other state or national assessment program.
- Develop a beef industry feedback program
- Develop new markets and methods to improve distribution and quality of beef and beef products.
- Educate the public concerning the nutritive and economic values of beef and beef products.
- Coordinate with counterparts within the state or elsewhere on matters that would increase efficiencies.

- Establish the assessment per head, manner of collecting assessments from neighboring states, and a refund procedure.
- Acquire or deal in personal and real property as the council considers expedient.
- Publish and distribute information as the board of directors deems appropriate.
- Do all other acts necessary or expedient to achieve the purposes of the council.
- Approve an annual plan, budget and audit, subject to the following limitations:
 1. No participation in a political campaign
 2. Receipts cannot be used to benefit directors, officers, or other private persons except for services rendered.
 3. Ban on activities prohibited for non-profit corporations under federal tax law.
 4. Can't pursue any activities that are not in furtherance of council's specific and primary purposes.

5. Governing Board

The council shall be governed by a 13 member board of directors as follows:

8 from the Florida Cattlemen's Association, of whom one represents the Florida Association of Livestock Markets.

1 from Dairy Farmers, Inc.

1 from Florida CattleWomen, Inc.

1 from Florida Farm Bureau Federation

1 from an allied industry

1 from the Institute of Food and Agricultural Sciences (IFAS)

Terms shall be for three years with a limit of two consecutive terms except that the first board shall be appointed to 1 year terms by the Commissioner of Agriculture with subsequent vacancies being filled in accordance with the bylaws. Members must be Florida residents who have been beef producers for the immediately preceding 5 years except for the last three representatives mentioned above. Members will be reimbursed for travel but will not be entitled to a salary. Missing three meetings will be grounds for removal from the board. The Commissioner of Agriculture may appoint an exofficio, nonvoting member to the board. The board shall adopt by-laws to govern the council's officers and establish duties and responsibilities.

6. Referendum on Assessments

Each beef producer shall be entitled to vote by secret ballot to determine whether the producers want an assessment program, and if so, whether it should be funded through mandatory contributions that are refundable on request or contributions voluntary at the point of sale. Such a referendum will be conducted at the offices of IFAS or the United States Department of Agriculture and it can be held only once in a three year period after the required notice. Any issue subject to referendum shall be determined by a majority of the votes cast.

7. Powers and Duties of the Council

The Council shall maintain an office in the state, keep books and records maintained in the ordinary course of business, and prepare reports as required. In addition, the council may conduct research programs, disseminate information, and respond to requests from government bodies concerning beef; it may be sued as a council without individual members being liable for acts within the scope of the powers of the act; it can borrow money and maintain emergency

reserves in amounts not to exceed 50 percent of the anticipated annual income. It can also appoint advisory groups, hire and administer a staff of employees, cooperate with other entities having similar objectives, provide a means to assure the payment of assessments due, and do all other acts to further its objectives which are not prohibited by law.

8. Acceptance of Grants and Gifts

Authorizes the council to receive donations provided that there are no restrictions that it considers to be inconsistent with the objectives of the program.

9. Payments to Organizations

Establishes procedures by which the council can fund other organizations for services rendered which are consistent with the objectives of the program. A collecting agent is entitled to a collection allowance of 2 1/2 percent.

10. Collection of Moneys at Time of Marketing

Sets forth procedures for the collection and remission of assessments. The council can recommend the amount of the assessment up to \$1 per head.

11. Refunds

Establishes procedures for a seller of cattle to obtain a full refund on request and provides that any disputes will be settled in the same manner as collection disputes.

12. Vote on Continuing the Act

Provides that a referendum to vote to continue the Beef Marketing Development Act can be held once in a five year period if specified petition requirements are met.

13. Bylaws

Directs the council to adopt bylaws to carry out the intents and purposes of this act within 90 days of the act becoming law. Also provides procedures for amending the bylaws.

Section 2. Provides that the act shall take effect upon becoming law but assessments or a referendum relating to such assessments will be delayed until the Beef Promotion and Research Act of 1985, Pub. L. No. 99-198, has been dissolved, which determination will be made by the Florida Commissioner of Agriculture.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
