

# 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/CS/CS/SB 1770

SPONSOR: Finance and Taxation Committee, Commerce, Economic Opportunities, and Consumer Services Committee, Agriculture Committee, Senator Argenziano, and others

SUBJECT: Beef Market Development Act

DATE: April 13, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
4.	<u>Blizzard</u>	<u>Coburn</u>	<u>AP</u>	<u>Favorable</u>
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill establishes the Florida Beef Council, Inc., and establishes procedures for the council to administer a beef check-off program under which there would be an assessment of up to \$1 on each head of cattle sold in the state if the program is approved by a simple majority vote of the beef producers. The referendum also includes a vote on whether the assessment is mandatory at the time of sale, but refundable later. 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 of the council. It establishes procedures for the refund of assessments on request. It provides that assessments under the beef check-off program will not be initiated prior either to a stay in a federal case regarding the national beef check-off program being vacated or to the elimination of the national beef check-off program.

This bill creates section 570.9135 of the Florida Statutes.

## II. Present Situation:

### Beef Check-off Programs

The 1985 Farm Bill established a national beef check-off program that became mandatory in 1988. The program is based on a \$1 per head assessment on the sale of cattle, 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. Last year, the U.S. Court of Appeals for the 8th Circuit affirmed a district court decision which held that the national beef check-off program was unconstitutional.<sup>1</sup> In reaching its decision, the court found that the beef check-off program was identical to a mushroom check-off program that the U.S. Supreme Court<sup>2</sup> held to be unconstitutional.<sup>3</sup> The court noted that the beef check-off program, like the mushroom program, required producers and importers to pay an assessment, which assessments were used by a federally established board or council to fund research. The court stated that at least 50 percent of the assessments collected and paid to the Beef Board were used for advertising and only 10-12 percent were used for research. The court found the principle object of the beef check-off program was the commercial speech itself.<sup>4</sup> The court concluded that the government's interest in protecting the welfare of the beef industry by compelling all beef producers to pay for generic beef advertising was not sufficiently substantial to justify the infringement on First Amendment free speech rights.<sup>5</sup> This decision has been appealed to the U.S. Supreme Court, but is in line with other circuits.<sup>6</sup>

## Examples of State Industry Marketing Structures

### *Citrus Industry*

The Department of Citrus (department) currently administers a single program responsible for citrus research, regulatory oversight, marketing, and public relations. Its statutory authority is under s. 20.29, F.S., and chapter 601, F.S., and the corresponding rules are found in chapter 20, F.A.C. The department regulates, conducts research for, and promotes Florida's citrus industry. The department seeks to protect and enhance the quality and reputation of Florida citrus fruit and processed citrus products in both the domestic and foreign markets. It also acts to protect the health and welfare and to stabilize and protect the citrus industry in the state, which in turn helps to promote the general welfare and social and political economy of the state.

Department of Citrus responsibilities include:

- preparing and disseminating information to citrus growers, handlers and shippers, producers, and industry-related persons and organizations;
- planning and conducting campaigns for commodity advertising, publicity, and sales promotion to increase the consumption of citrus fruits and processed citrus products; and
- conducting economic, marketing, and scientific research programs relating to citrus fruits, products, and byproducts.

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<sup>1</sup> *Livestock Marketing Ass'n v. U.S. Dep't of Agriculture*, 335 F.3d 711, (8th Cir. 2003).

<sup>2</sup> *United States v. United Foods, Inc.*, 533 U.S. 405 (2001) (holding that mandatory assessments imposed on mushroom producers for the purpose of funding generic mushroom advertising violated the First Amendment).

<sup>3</sup> *Livestock Marketing Ass'n*, 335 F.3d at 717.

<sup>4</sup> *Id.* at 717.

<sup>5</sup> *Id.* at 725-726.

<sup>6</sup> *See: Michigan Port Producers Association v. Veneman*, 348 F.3d 157, (6th Cir. 2003) (holding that mandatory assessments on porcine animals sold or slaughtered for sale for the purposes of promoting pork in the federal Pork Act violated the First Amendment); *Cochran v. Veneman*, 359 F.3d 263, (3rd Cir. 2004) (holding that compelled assessments for generic dairy advertising in the federal Dairy Act violated the First Amendment); *Pelts & Skins v. Landreneau*, 2004 U.S. App. LEXIS 6364 (5th Cir. April 2, 2004) (holding that the portion of Louisiana's fees on alligator hunters and farmers used to support generic marketing of alligator products violates the First Amendment).

The department is responsible for implementing policies of the Florida Citrus Commission (commission), which serves as the board of directors for the agency. The commission consists of 12 members appointed by the Governor for staggered three-year terms. The commission represents all facets of the industry (growers, processors, and handlers).

The department receives its funding from the Citrus Advertising Trust Fund. The trust collects money from excise taxes placed on each box of citrus moved through commercial channels in Florida. For fiscal year 2003-2004, the department's authorized operating budget will be \$73,535,004, while revenues from the excise taxes are estimated to be \$48 million. As a result of strategic planning sessions with the Florida Citrus Industry, the department decided to shift its marketing strategies from retail programs to consumer-oriented public relations and promotional programs during fiscal year 2002-2003.<sup>7</sup>

### ***Florida Commission on Tourism and Visit Florida***

The Florida Commission on Tourism (commission) oversees the state's efforts to increase the positive effects of tourism. The commission was created in 1991, and the Governor's Office of Tourism, Trade, and Economic Development (OTTED) contracts with the commission to perform tourism-related activities. OTTED is responsible for monitoring the commission's performance in achieving outcomes and objectives specified in the contract and can reduce the commission's quarterly funding by one percent if it is not satisfied with the commission's explanations for failure to attain performance standards. The commission contracts with the Florida Tourism Industry Marketing Corporation, which operates under the name Visit Florida, to carry out tourism promotions, programs, and activities identified in the commission's four-year marketing plan. Visit Florida operates as the umbrella organization under which the state's tourism marketing campaigns are coordinated.

Visit Florida's primary responsibilities include:

- administering domestic and international advertising campaigns designed to market the entire state as a tourism destination;
- conducting domestic and international marketing activities;
- managing the state's welcome centers; and
- conducting research on tourism and travel trends.

To fulfill these responsibilities, Visit Florida has established five departments: marketing, sales, partner development, new product development, and visitor services.

Visit Florida's activities are funded by the state and by private sector contributions. In fiscal year 2002-2003, the Legislature appropriated \$21.6 million for these activities from the Tourism Promotional Trust Fund. The trust fund receives 15.75 percent of proceeds from a \$2 per-day rental car surcharge. Estimated revenues from the rental car surcharge to the Tourism Promotional Trust Fund are \$18.5 million in fiscal year 2003-04 and \$18.9 million in fiscal year

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<sup>7</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA), Florida Government Accountability Report, Department of Citrus, *available* at, <http://www.oppaga.state.fl.us/profiles/4127/> (last visited March 17, 2004).

2004-05.<sup>8</sup> The legislative appropriation will be leveraged with additional funding from private sector businesses participating in Visit Florida cooperative advertising, trade shows and events, and partner and strategic alliances.<sup>9</sup>

### III. Effect of Proposed Changes:

This bill establishes a structure for developing the beef industry through a Florida Beef Council.

**Section 1.** The bill creates s. 570.9135, F.S., as follows:

#### *Short Title*

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

#### *Legislative Intent*

The Legislature intends to promote the growth of the beef cattle industry; assure the public an adequate and wholesome food supply; provide for the general economic welfare of producers and consumers of beef and the state; and provide the beef cattle production and feeding industry of this state with a self-financed, self-governed program to develop and expand markets for beef produced in this state.

#### *Definitions*

The bill defines the following terms used in the act:

- “Beef” or “beef products” means products of beef intended for human consumption which are derived from any bovine animal, regardless of age, including, but not limited to, veal.
- “Cattle” means animals so designated by federal law, which includes all bovine animals. A cow and nursing calf sold together are considered one unit.
- “Council” means the Florida Beef Council, Inc.
- “Department” means the Department of Agriculture and Consumer Services.
- “Collection agent” means a person who sells, offers for sale, markets, distributes, trades, or processes cattle that have been purchased or acquired from a producer or that are marketed on behalf of a producer and also includes meatpacking firms and their agents which purchase or consign to purchase cattle.
- “Person” means any natural person, partnership, corporation, company, association, society, trust, or other business unit or organization.
- “Producer” means a person that has owned or sold cattle in the previous calendar year or presently owns cattle.

#### *Florida Beef Council, Inc.*

The bill establishes a not-for-profit corporation organized to operate as a direct-service organization under the Department of Agriculture and Consumer Services. Activities are to be

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<sup>8</sup> Source: 2004 Florida Tax Handbook, Including Fiscal Impact of Potential Changes.

<sup>9</sup> OPPAGA, Report No. 03-07, *VISIT FLORIDA Performs Well and Its Funding Should Be Continued; Outcome Measures Should Be Improved*, pp. 1-2, January 2003, available at <http://www.oppaga.state.fl.us/reports/pdf/0307rpt.pdf> (last visited March 17, 2004).

financed by an assessment of not more than \$1 on each head of cattle sold in the state, if approved by a referendum.

The council must:

- Establish the amount of the assessment at not more than \$1 per head of cattle;
- Develop, implement, and monitor a collection system for the assessment.
- Coordinate the collection of the assessment with other states.
- Establish refund procedures.
- Conduct referendums on the assessment.
- Plan, implement, and conduct programs of promotion, research, and consumer information or industry information to strengthen the cattle industry in the state and in the nation and to maintain and expand domestic and foreign markets and expand uses for beef and beef products.
- Use the proceeds of the assessment for funding cattle production and beef research, education, promotion, and consumer and industry information in this state and in the nation.
- Plan and implement a cattle and beef industry feedback program in the state.
- Coordinate research, education, promotion, industry, and consumer information programs with any national programs or programs of other states.
- Develop new uses and markets for beef and beef products.
- Develop and improve methods of distributing beef and beef products to the consumer.
- Develop methods of improving the quality of beef and beef products for the benefit of consumers.
- Inform and educate the public concerning the nutritive and economic values of beef and beef products.
- Serve as liaison within the beef and other food industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both consumers and industry.
- Buy, sell, mortgage, rent, or improve, in any manner that the council considers expedient, real property or personal property, or both.
- 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.

The council may not:

- Participate in a political campaign;
- Use receipts to benefit directors, officers, or other private persons, except that the council may pay reasonable compensation for services rendered by staff employees and may make payments and distributions to further the purposes of the act;
- Participate in activities prohibited for non-profit corporations under federal tax law; or
- Pursue any activities that are not in furtherance of the council's specific and primary purposes.

***Governing Board***

The bill establishes the council's governance structure through a 13-member board of directors as follows:

- Eight representatives of the Florida Cattlemen's Association, of whom one must represent the Florida Association of Livestock Markets, and one must represent practicing order buyers;
- One representative of the Dairy Farmers, Inc.;
- One representative of Florida CattleWomen, Inc.;
- One representative of the Florida Farm Bureau Federation;
- One representative of an allied-industry; and
- One representative of the Institute of Food and Agricultural Sciences (IFAS).

The Commissioner of Agriculture may appoint an ex-officio, nonvoting member to the board.

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 of the council. 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 board shall adopt bylaws to establish the council's officers and to establish duties and responsibilities.

***Referendum on Assessments***

The bill provides for a referendum in which each beef producer is entitled to one 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. Such a referendum must be by secret ballot and conducted at the extension offices of Institute of Food and Agricultural Sciences of the University of Florida or the United States Department of Agriculture. The referendum must pose the question "Do you approve of an assessment program, up to \$1 per head of cattle pursuant to section 570.9135, Florida Statutes, to be funded through specific contributions that are mandatory and refundable upon request?". Any issue subject to referendum shall be determined by a simple majority of the votes cast. Notice of a referendum must be given at least once in trade publications, the public press, and statewide newspapers at least 30 days before the referendum is held.

Additional referenda may be held to authorize the council to increase the assessment to more than \$1 per head of cattle. The referendum must pose the question "Do you approve of granting the Florida Beef Council, Inc., authority to increase the per-head-of-cattle assessment pursuant to section 570.9135, Florida Statutes, from (present rate) to up to a maximum of (proposed rate) per head?" Referenda may not be held more often than once every three years.

***Powers and Duties of the Council***

The bill establishes the powers and duties of the council, including establishing an office in the state, the power to receive and disburse funds to be used in implementing the programs, the duty to keep books and records maintained in the ordinary course of business, and the duty to prepare

reports as required. In addition, the council may conduct or contract for research programs, disseminate information benefiting the consumer and the beef industry, and respond to requests from government bodies concerning beef. It may also sue and be sued as a council without individual members being liable for acts within the scope of the powers of the act. The council may borrow money and maintain emergency reserves in amounts not to exceed 50 percent of the anticipated annual income of the council. It can also appoint advisory groups, hire and administer a staff of employees, and cooperate with other entities having similar objectives. The council also has authority to send an authorized agent upon the premises of any market agency or agent, or collection agency or agent, to examine the accounts to ensure the payment of assessments due, and perform all other acts to further its objectives which are not prohibited by law.

#### ***Acceptance of Grants and Gifts***

The bill authorizes the council to receive grants and donations provided that there are no restrictions that it considers to be inconsistent with the objectives of the program.

#### ***Payments to Organizations***

The bill establishes procedures by which the council can fund other organizations for services rendered through a written agreement which is consistent with the objectives of the program. A collection agent is entitled to a collection allowance of 2.5 percent.

#### ***Collection of Moneys at Time of Marketing***

The bill sets forth procedures for the collection and remission of assessments at the time of sale by a collection agent. The council must maintain a separate accounting of all assessments. The council may cooperate with other beef councils to collect the assessment for cattle from other states sold in Florida or from Florida cattle sold in other states. If a person fails to pay the assessment, the council may bring a civil action against that person in the circuit court of any county and may add a penalty in the amount of 10 percent of the assessment owed, the cost of enforcing the collection of the assessment, court costs, and reasonable attorney's fees.

#### ***Refunds***

The bill establishes procedures for a producer of cattle to obtain a full refund upon request within 45 days after the sale transaction takes place and provides that any disputes will be settled in the same manner as collection disputes. The bill requires the council to take action on refund requests within 30 calendar days from the date of receipt of the request.

#### ***Vote on Continuing the Assessment***

The bill provides that a referendum to vote to continue the Beef Marketing Development Act can be held once in a three-year period if petitions are received from at least 1,800 producers or 10 percent of Florida's producers as determined by the department, whichever is less, stating: "Shall the assessment authorized by the Beef Market Development Act continue?". The signatures must be collected within a 12-month period. Within 90 days of receiving the petitions, the council must conduct a referendum to determine whether a majority of the producers voting support the continuation of the Beef Market Development Act.

#### ***Bylaws***

The bill directs the council to adopt bylaws to carry out the intent and purposes of this act within 90 days of the act becoming law. The bill also provides procedures for amending the bylaws.

**Section 2.** The bill provides that the act shall take effect upon becoming law, but assessments or a referendum relating to such assessments will be delayed until the date that the stay is vacated in a federal case before the U.S. District Court for South Dakota regarding the national beef check-off program, or until the Beef Promotion and Research Act, 7 U.S.C. s. 2901, et seq., and the Beef Order promulgated thereunder are repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law. The date shall be determined 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.

**D. Constitutional Issues:**

The national beef check-off program has been ruled unconstitutional and is on appeal to the U.S. Supreme Court.

The provisions regarding a referendum on the assessment appear to be designed to address some of the potential constitutional problems of other state and national beef check-off programs by providing producers the opportunity to vote on the assessment and whether it is to be a mandatory assessment. (See Present Situation discussion of litigation regarding the beef check-off program above.) The referendum provisions may be a method to respond to the argument that the assessment is compelled speech and a potential violation of First Amendment free speech rights. However, even though a referendum may be taken, if the assessment is approved and made mandatory, there may be a segment of producers who voted against the assessment who will still have to pay the assessment at the point of sale.

#### **V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

Since the assessment is dependent upon referendum and can be set at any amount up to \$1 per head of cattle, the fiscal impact of the bill is indeterminate. The bill has not been reviewed by the Revenue Estimating Conference. According to the Florida Department of



Agriculture and Consumer Services, the federal beef check-off assessment of \$1 per head of cattle generates approximately \$800,000 per year on Florida beef.

**B. Private Sector Impact:**

Florida beef producers may be required to pay up to \$1 per-head of cattle sold, either in Florida or in another state, if a referendum on an assessment is held and a simple majority votes in favor of the assessment and votes to make the assessment mandatory at the time of sale, but refundable later on request. To the extent this bill affects the market for beef, beef producers and beef consumers may realize a benefit from the marketing and research efforts of the Florida Beef Council established by this bill.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.