

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 905 w/CS Florida Beef Industry  
**SPONSOR(S):** Troutman  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1770

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	13 Y, 0 N	Kaiser	Reese
2) Finance & Taxation			
3) Agriculture & Environment Appropriations			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

The federal Beef Checkoff Program was established as part of the 1985 Farm Bill. The checkoff assesses \$1 per head on the sale of live domestic and imported cattle, in addition to a comparable assessment on imported beef and beef products. The checkoff became mandatory when the program was approved by 79 percent of producers in a 1988 national referendum vote.

In 2002, the constitutionality of the checkoff program was challenged in the United States District Court of South Dakota. The case has since been appealed to the Supreme Court of the United States and is pending a ruling.

The proposed legislation establishes a self-financed, self-governed program, which largely mirrors the federal program. The main exception between the federal and state programs is the state offers a referendum which will determine whether to have a program, and if so, should the assessment be mandatory with refunds available or completely voluntary through contributions at the point of sale.

HB 905 establishes the "Beef Market Development Act," which, among other things, promotes the growth of the cattle industry in the state. In addition, the bill creates the Florida Beef Council, Inc. to carry out the objectives of the act and establishes a governing board of directors. The bill sets forth the:

- purposes and objectives of the act;
- rules regarding establishing the governing board and criteria for serving; and
- powers and duties of the council.

Additionally, the proposed legislation sets forth the procedures for conducting a referendum on assessments in the state. The bill provides for collection of moneys at time of sale, a refund process, and procedures for voting on the continuance of the act.

Passage of the proposed legislation codifies this language in statute. However, neither an assessment, nor a referendum relating to such assessment, may be conducted until the Beef Promotion and Research Act of 1985 is dissolved. Once that has taken place, the Commissioner of Agriculture is authorized to schedule a date for the referendum. The referendum must pass by a majority of the cattle producers in the state in order for the act to be implemented and assessment to be levied.

This bill has no fiscal impact on state or local funds.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0905a.ag.doc  
**DATE:** March 4, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The federal Beef Checkoff Program was established as part of the 1985 Farm Bill. The checkoff assesses \$1 per head on the sale of live domestic and imported cattle, in addition to a comparable assessment on imported beef and beef products. The checkoff became mandatory when the program was approved by 79 percent of producers in a 1988 national referendum vote.

In 2002, the constitutionality of the checkoff program was challenged in the United States District Court of South Dakota. The case has since been appealed to the Supreme Court of the United States and is pending a ruling.

The proposed legislation establishes a self-financed, self-governed program, which largely mirrors the federal program. The main exception between the federal and state programs is the state offers a referendum which will determine whether to have a program, and if so, should the assessment be mandatory with refunds available or completely voluntary through contributions at the point of sale.

##### **Beef Market Development Act**

HB 905 establishes the “Beef Market Development Act,” which promotes the growth of the cattle industry in the state and assures the public of an adequate and wholesome food supply, among other things.

The bill creates the Florida Beef Council, Inc. (council) to operate as a direct-service organization of the Department of Agriculture and Consumer Services (department). The bill provides for the intents and purposes of the act to be financed through an assessment imposed on each head of cattle sold in the state, which assessment must be approved by a simple majority vote of beef producers in the state.

The purposes and objectives of the program are as follows:

- Plan, implement, and conduct programs of promotion, research, and consumer/industry information which are designed to strengthen the cattle industry’s market position in this state and the nation, as well as maintain and expand domestic and foreign markets and uses for beef and beef products.
- Administer and receive assessments from any cattle sold in the state for the purpose of funding cattle production and beef research, education, promotion, and consumer/industry information in the state, as well as the nation.
- Develop, implement, and monitor the assessment-collection system for the state.
- Plan and implement a cattle and beef industry feedback program in the state.

- Coordinate the assessment system for the state with any national program, as well as with other states, so as to coordinate research, education, promotion, industry, and consumer information programs.
- Develop new uses and markets for beef and beef products.
- Develop and improve methods of distributing beef and beef products for the benefit of 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 a 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.
- Establish the amount per head for an assessment to be collected for the state.
- Coordinate collection of assessments among neighboring states.
- Establish refund procedures and criteria for any producer from whom an assessment has been collected.
- Buy, sell, mortgage, rent, or improve, in any manner that the council considers expedient, real property or personal property, or both.
- Publish and distribute such papers or periodicals as the board of directors considers necessary to encourage and accomplish the purposes of the council.
- Do all other acts necessary or expedient for the administration of affairs and attainment of the purposes of the council.
- Approve an annual plan, budget, and audit for the council.

In addition, the council is forbidden from participating in or intervening in any political campaign. This includes a prohibition against publishing or distributing any statements.

The bill forbids any of the net receipts of the council to be distributed to its directors, officers, or other private persons. It allows the council to pay reasonable compensation for services rendered by staff.

The bill authorizes the council to establish a governing board. The board consists of 13 members, including eight representatives of the Florida Cattlemen's Association, who represent the:

- Florida Association of Livestock Markets
- Dairy Farmers, Inc.
- Florida CattleWomen, Inc.
- Florida Farm Bureau
- An allied-industry representative, and
- Institute of Food and Agricultural Sciences (IFAS).

In accordance with the bill, the initial board shall be appointed by the Commissioner of Agriculture for a term of one year. Subsequent vacancies shall be filled in accordance with the bylaws of the council. After the initial one year term, each board member shall be appointed to serve a three year term, with a limit of no more than two consecutive terms. Other requirements for serving on the board include:

- State residency, and
- Beef producer for at least the five years immediately preceding the first day of his/her service on board. (An exception to this requirement applies to the representatives from the Florida Farm Bureau, the allied-industry, and IFAS.)

All board positions are unsalaried, with the exception of reimbursement for travel and other expenses incurred in carrying out the purpose of the act. As provided in the bylaws, the board shall have the ability to set forth offices and responsibilities and form committees necessary to implement the act.

The Commissioner of Agriculture has the authority to designate an ex officio nonvoting member of the board of directors. A board position may be declared vacant if a member misses three consecutive, officially called meetings.

### **Referendum on Assessments**

The bill provides for all beef producers in the state to have an opportunity to vote in a referendum to determine the amount of assessments to be deducted from the gross receipts of the sale of cattle in state to be used to finance the act.

The bill provides the following requirements for the referendum:

- Must be held by secret ballot at extension offices of IFAS or at offices of the U.S. Department of Agriculture with the cooperation of the department.
- Notice must be given at least once in trade publications, the public press, and statewide newspapers at least 30 days prior to the referendum.
- Only one referendum for an increase in the amount of assessments may be conducted in a 3-year period.
- Each cattle producer is entitled to only one vote. Proof of identification and cattle ownership must be presented prior to voting.
- A simple majority of those casting ballots shall determine the referendum.

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

The powers and duties of the council include:

- Receive and disburse funds to be used in administering the act.
- Maintain a permanent record of its business proceedings.
- Maintain a permanent, detailed record of its financial dealings.
- Prepare periodic reports and an annual report of activities for the fiscal year, for review by the beef industry, and file its annual report with the department.
- Prepare periodic reports and an annual accounting for each fiscal year of all receipts and expenditures, for review by the beef industry in the state. The council shall retain a certified public accountant to assist in this function.
- Appoint a licensed banking institution to serve as the depository for program funds and to handle disbursement of said funds.
- Maintain frequent communication with officers and industry representatives at the state and national levels, including the department.
- Maintain an office in the state.

In addition, the council may:

- Conduct or contract for scientific research.
- Disseminate reliable information benefiting the consumer and the beef industry on subjects such as, purchase, identification, care, storage, handling, cookery, preparation, serving, and nutritive value of beef and beef products.
- Provide to government bodies, upon request, information relating to subjects of concern to the beef industry, and may act jointly or in cooperation with the state or federal government, and agencies thereof, in the development and administration of programs the council considers to be consistent with the objectives of the program.
- Sue and be sued as a council when acting within the scope of the powers of the act.
- Borrow from licensed lending institutions money in amounts that are not cumulatively greater than 50 percent of the council's anticipated annual income.
- Maintain a financial reserve for emergency use.
- Appoint advisory groups composed of representatives from organizations, institutions, governments, or business related to or interested in the welfare of the beef industry and the consuming public.

- Employ subordinate officers and employees of the council, prescribe their duties, and fix their compensation and terms of employment.
- Cooperate with any local, state, regional, or nationwide organization or agency engaged in work or activities consistent with the objectives of the program.
- Cause any duly authorized agent or representative to enter upon the premises of any market agency, market agent, collection agency, or collection agent and examine or cause to be examined by the authorized agent only books, papers, and records that deal with the payment of the assessment provided for in the act or with the enforcement of the act.
- Do all other things necessary to further the intent of the act which are not prohibited by law.

The bill authorizes the council to accept grants, donations, contributions, or gifts from any source if the use of such resources is not restricted in any manner that the council considers to be inconsistent with the objectives of the program. In addition, the council is authorized to pay funds to other organizations for work or services done in keeping with the objectives of the program. The council is given the authority to request proof of security bonding on funds paid out.

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

The bill authorizes each marketing agency licensed in the state to deduct from the gross receipts of a seller, at the time of sale, an assessment previously established by referendum on all cattle marketed in the state. The collecting agent will forward the funds to the council at least once a month. The bill provides that the council keep separate accounting records for assessments. In addition, the bill allows collection agents to retain 2.5 percent<sup>1</sup> of the amount collected as a reasonable collection allowance.

The bill further allows the council to bring a civil action against any person who fails to remit a properly due assessment. In the event a civil action is instituted, the council may add a penalty in the amount of 10 percent of the assessment due, the cost of enforcing the collection of the assessment, court costs, and reasonable attorney fees which are all due and payable to the council.

All moneys deducted towards the assessment are considered to be bona fide business expenses for the seller. The bill allows the council to adopt reciprocal agreements with other beef councils or similar organizations relating to moneys collected at Florida collecting agencies on cattle from other states and to Florida cattle sold at other state markets.

### **Refunds**

The bill provides for a seller who has paid assessments under the act to be entitled to a prompt and full refund upon request. The seller must submit a request for refund to the council within 45 days after the sale transaction takes place. The bill provides that only a producer may initiate a request for a refund. Furthermore, the bill provides for the council to withhold payment pending validation of a claim. The bill provides that any dispute be determined as specified in subsection (10(d)) of the act.

### **Vote on Continuing the Act**

The bill sets forth procedures for conducting a referendum to determine whether the Beef Market Development Act should continue. The bill further limits the referendum process to one time per each 3-year period.

### **Bylaws**

The bill provides for bylaws to be adopted within 90 days after the act becomes a law. The bylaws may be amended with a 30-day notice to board members at any regular or special meeting called for said purpose.

### **Implementation**

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<sup>1</sup> See section 212.12, F.S., which allows for anyone who collects sales tax for the state to retain a collection allowance of 2.5 percent.

Passage of the proposed legislation codifies this language in statute. However, neither an assessment nor a referendum relating to such assessment may be conducted until the Beef Promotion and Research Act of 1985 is dissolved. Once that has taken place, the Commissioner of Agriculture is authorized to schedule a date for the referendum. The referendum must pass by a majority of the cattle producers in the state in order for the act to be implemented and an assessment to be levied.

C. SECTION DIRECTORY:

**Section 1:** Creates s. 570.9135, F.S.; creating the "Beef Market Development Act"; providing legislative intent; providing definitions; creating the Florida Beef Council; establishing a governing board; providing for a referendum on assessments; establishing powers and duties of the Council; providing for acceptance of grants and gifts; providing for payments to organizations; providing for collection of assessments; providing for refunds of assessments; providing for continuance of the Act; and providing for establishment of bylaws.

**Section 2:** Providing an effective date and implementation contingent upon the dissolution of the Beef Promotion and Research Act of 1985.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 3, 2003, the committee on Agriculture adopted the following amendments to HB 905:

- **Amendment 1** broadened the referendum to two questions: whether the program should be approved, and if so, should the assessment be mandatory (with refunds available) or voluntary at the point of sale.
- **Amendment 2** allows the referendum every 3 years rather than every 5 years.
- **Amendment 3** removed language authorizing revocation of livestock market licenses for failure to comply with collection procedures.
- **Amendment 4** allows for recovery of reasonable attorney fees.
- **Amendment 5** allows collection agents to retain a 2.5 percent collection allowance.
- **Amendment 6** clarifies that disputes regarding refunds will be settled in the same manner as disputes regarding the collection of funds.