

## 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		Overton	Diez-Arguelles
3) Agriculture & Environment Appropriations			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

This bill is modeled upon the Beef Promotion and Research Act of 1985, 7. U.S.C. s. 2901 et seq. ("The Beef Act"). The Beef Act requires beef producers and beef importers to pay a transaction-based assessment on cattle. The assessment program is commonly referred to as the Beef Checkoff Program. The checkoff assessment is \$1 per head on the sale of live domestic and imported cattle, in addition to a comparable assessment on imported beef and beef products.

On March 10, 2003, the United States Court of Appeal for the Eight Circuit upheld a lower court's determination that the Beef Checkoff Program is an unenforceable and unconstitutional infringement upon beef producers' First Amendment free speech right. *Livestock Marketing Association v. United States Department of Agriculture*, 335 F. 3d 771. The U. S. Department of Agriculture has petitioned the United States Supreme Court to review the case.

This bill establishes the "Beef Market Development Act," which creates a self-financed, self-governed program to promote the growth of the cattle industry, which largely mirrors the Beef Act. The Beef Market Development Act will only take effect if the Beef Checkoff Program is found unconstitutional after all appeals. A referendum must pass by a majority of the cattle producers in the state in order for the Florida assessment to be levied. The bill attempts to preserve the beef producers' First Amendment free speech rights by allowing the beef producers to chose an assessment program that has a refund provision or choosing a voluntary payment program.

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 cattle 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 assessment.

This bill has an indeterminate fiscal impact.

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

**STORAGE NAME:** h0905b.ft.doc  
**DATE:** March 9, 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 checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

The bill creates an assessment of up to \$1 per head of cattle sold in the state.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

This bill is modeled upon the Beef Promotion and Research Act of 1985, 7. U.S.C. s. 2901 et seq. (“The Beef Act”). The Beef Act requires beef producers and beef importers to pay a transaction-based assessment on cattle. The assessment program is commonly referred to as the Beef Checkoff Program. The checkoff assessment is \$1 per head on the sale of live domestic and imported cattle, in addition to a comparable assessment on imported beef and beef products.

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

HB 905 establishes the “Beet Market Development Act,” to promote the growth of the cattle industry in the state; to assure the public of an adequate and wholesome food supply; and to provide for the general economic welfare of producers and consumers of beef and the state.

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 council to be financed through an assessment imposed on each head of cattle sold in the state. The 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 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.

### **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**

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:

Please see fiscal comments below.

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:

Since the assessment is dependent upon referendum and can be set at any amount up to \$1, the fiscal impact of the bill is indeterminate. The bill has not been reviewed by the Revenue Estimating Conference so an estimate of the total potential revenue from the assessment is not available. According to the Florida Department of Agriculture and Consumer Services, the federal Beef Checkoff assessment of \$1 per head generates approximately \$800,000 per year.

## 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:

The Beef Promotion and Research Act of 1985, 7. U.S.C. s. 2901 et seq. ("The Beef Act") requires beef producers and beef importers to pay a transaction-based assessment on cattle. The assessment program is commonly referred to as the Beef Checkoff Program. The checkoff assessment is \$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 funds from the beef checkoff program are designated for the promotion and advertising of beef and beef products, research, consumer information, and industry information.

Beef producers filed suit challenging the Beef Checkoff Program alleging among other things that the program violated their First Amendment free speech right by compelling them to fund speech with which they did not agree. *Northern Division in Livestock Marketing Association et al. v. USDA and Nebraska Cattlemen, Inc. et al.*, 207 F.Supp.2d 992. For example, one producer objected to the checkoff funds being used to advertise beef in general rather than only American grown beef. The court ruled that the Beef Checkoff Program was unenforceable and unconstitutional. The USAD appealed.

On March 10, 2003, the United States Court of Appeal for the Eight Circuit upheld a lower court's determination that the Beef Checkoff Program is unenforceable and unconstitutional infringement upon beef producers' First Amendment free speech right. *Livestock Marketing Association v. United States Department of Agriculture*, 335 F. 3d 771. The court found that the producers were forced to join in speech (advertising) that they did not agree with and had no meaningful opportunity to avoid the assessments.

The bill attempts to avoid infringement upon the beef producers' First Amendment free speech right by allowing the producers to chose in a referendum to have a mandatory assessment with a right to refund or a voluntary assessment.

If the assessment is voluntary, then the bill will not infringe upon Free Speech rights. However, it is not clear whether requiring the producer to pay an assessment with a right to refund provides a "meaningful opportunity to avoid the assessment."

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 364 to 365 should be amended to clarify that the beef produces may vote to discontinue the assessment. The bill presently states that the produces must deliver to the Florida Beef Council Office petitions for a new referendum on the assessment which reads "Shall the Beef Market Development Act continue." The legislature cannot delegate to the beef producers the power to repeal a law. The petition should read "Shall the assessment authorized by the Beef Market Development Act continue."

Lines 379 to 385 should be amended to clarify the effective date. Federal laws do not "dissolve". Acts can be repealed, expire, or be held invalid.

The bill should be amended clearly state that the referendum is to determine whether or not to have an assessment, but is not determine the amount of the assessment. The bill should clearly state that the Council determines the amount of the assessment up to \$1 per head of cattle.

#### 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.