

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 412  
 INTRODUCER: Senator Bennett  
 SUBJECT: Florida Concrete Masonry Council  
 DATE: January 28, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	<b>Favorable</b>
2.	McKay	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates the “Concrete Masonry Products Research, Education, and Promotion Act.” The bill creates the Florida Concrete Masonry Council, Inc., as a nonprofit corporation operating as a direct-support organization of the Florida Building Commission. This bill sets out the administrative powers and duties of the council, as well as what the council is prohibited from doing. The council created by this bill will be given the power to require that a manufacturer of concrete masonry products collect an assessment from a purchaser at the time of sale of a concrete masonry unit, under certain circumstances.

The bill provides for the appointment of the governing board of the council, and how the council should be maintained. Also, the council will be authorized by this bill to initiate legal action against a manufacturer that fails to remit the assessment. This bill provides a procedure for manufacturers to petition for a referendum to continue the assessment.

This bill creates unspecified sections of the Florida Statutes.

**II. Present Situation:**

**Check-off Programs**

Commodity check-off programs are cooperative efforts by groups of suppliers intended to enhance their individual and collective profitability. The term “check-off” refers to the collection of a fee and comes from the concept of checking off the appropriate box on a form to authorize a contribution for a specific purpose. These assessments are pooled together to finance programs to enhance producer welfare. As demonstrated in agriculture, lumber, and other industries, check-

off programs provide a mechanism by which every producer supports research, education, and promotion efforts intended to expand markets.

### **Examples of State Industry Marketing Structures**

#### ***Citrus Industry***

The Department of Citrus (Department) currently administers a single program responsible for citrus marketing, research, and regulation. Department responsibilities include adopting and enforcing rules and regulations related to minimum maturity and quality standards for citrus fruits, as well as their harvesting, packing, and processing. Also the Department conducts market and scientific research programs relating to citrus products. The Department is responsible for preparing and disseminating information to members of the citrus industry, including citrus growers, handlers, shippers, producers, and other industry-related persons and organizations. The Department promotes citrus products via advertising, public relations, and consumer/trade communications. The department is also responsible for implementing the policies of the Florida Citrus Commission, which serves as the board of directors for the agency.<sup>1</sup>

The Florida Department of Citrus has regulatory responsibility for all aspects of the citrus industry. The department is funded by the “box tax” and the equalizing excise tax. The box tax is an excise tax levied on each standard field box of fruit grown and placed into the primary channel of trade in Florida. The equalizing excise tax is assessed on processed citrus products imported into the state at a rate equal to the box tax. The majority of the proceeds of these taxes must be used by the department to advertise Florida citrus products.<sup>2</sup>

#### ***Florida Beef Council***

The Florida Beef Council is a wholly-owned corporation of the Florida Cattlemen’s Association. Created by the Beef Market Development Act, the Council functions as the promotional and educational arm of the beef industry in the state of Florida.<sup>3</sup>

Council activities are funded by beef producers through a federally mandated check-off program, paying one dollar per head on all cattle sold in the state. Half of those funds collected in Florida are designated for national promotion, research, consumer information, and industry information programs. The other half is used in Florida to disseminate nutritional and product information to the media, food service and retail industries, school educators, health professionals, consumers, and producers.<sup>4</sup>

The Florida Beef Council’s activities are governed by a board of directors comprised of representatives from all segments of the beef industry.<sup>5</sup>

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<sup>1</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 November 21, 2011).

<sup>2</sup> Section 601.15, F.S.

<sup>3</sup> Section 570.9135, F.S.

<sup>4</sup> Florida Cattlemen Association, Beef Council, available at <http://www.floridacattlemen.org/fbc.html> (last visited November 21, 2011).

<sup>5</sup> *Id.*

### ***Florida Building Commission***

The Florida Building Commission is established in Ch. 553, F.S., within the Department of Business and Professional Regulation (DBPR) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.<sup>6</sup> The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.<sup>7</sup> The Florida Building Code is required to be updated every three years by the Florida Building Commission.<sup>8</sup> Pursuant to s. 553.73, F.S., the Commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations, and use the rule adoption procedures listed under Ch. 120, F.S., to approve amendments to the building code.<sup>9</sup>

### **III. Effect of Proposed Changes:**

**Section 1** provides for an unspecified section of Florida Statutes as follows:

#### ***Short title***

May be cited as the “Concrete Masonry Products Research, Education, and Promotion Act.”

#### ***Definitions***

The bill defines the following terms used in the act:

- “Commission” means the Florida Building Commission.
- “Concrete masonry products” refers to a broad class of products, including, but not limited to, concrete masonry units and hardscape products such as concrete pavers and segmental retaining wall units that are manufactured on a block machine using dry-cast concrete.
- “Concrete masonry unit” means a concrete masonry product that is a man-made masonry unit having a nominal width of 3 inches or greater and manufactured by a block machine using dry-cast concrete. The term includes, but is not limited to, gray block, architectural block, concrete brick, concrete masonry units to be post-tensioned, concrete masonry units to be surface-bonded, sound wall block, and fence block. The term does not include concrete veneer units having a width of less than 3 inches, segmental retaining wall units, concrete pavers, clay brick, clay masonry units, precast panels, cast stone, adhered manufactured stone masonry veneer, calcium silicate units, lintels and sills, articulating concrete or revetment block, autoclave-aerated concrete, and dimension stone.
- “Council” means the Florida Concrete Masonry Council, Inc.
- “Machine cavity” means the open space in the mold of a block machine capable of forming a single masonry unit that has nominal plan dimensions of 8 inches by 16 inches.
- “Manufacturer” means a person engaged in the business of manufacturing concrete masonry units.
- “Masonry unit” means a noncombustible building product intended to be laid by hand or to be joined using mortar, grout, surface bonding, post-tensioning, or some combination of these methods.

<sup>6</sup> See s. 553.74(1)(a)-(w), F.S.

<sup>7</sup> Sections 553.73 and 553.74, F.S.

<sup>8</sup> Section 553.73(7)(a), F.S. See also Florida Department of Business & Professional Regulation, Florida Building Commission, [http://www.floridabuilding.org/fbc/information/building\\_commission.htm](http://www.floridabuilding.org/fbc/information/building_commission.htm) (last visited November 21, 2011).

<sup>9</sup> See ss. 553.76, 553.775, and 553.73(7), F.S., respectively.

***Florida Concrete Masonry Council, Inc.***

The bill creates a nonprofit corporation organized under the laws of this state and operating as a direct-support organization of the Florida Building Commission. The council may levy an assessment of 1 cent per concrete masonry unit that is produced and sold by a manufacturer in the state if the imposition of the assessment is approved by referendum of the state's concrete masonry manufacturers. The proceeds of the assessment shall be used to fund the activities of the council.

The council must:

- Plan, implement, and conduct programs of education, promotion, research, and consumer information and industry information which are designed to strengthen the market position of the concrete masonry industry in this state and in the nation, to maintain and expand domestic and foreign markets, and to expand the uses for concrete masonry products.
- Use the proceeds of the assessment for the purpose of funding research, education, promotion, and consumer and industry information of concrete masonry products in this state and in the nation.
- Coordinate research, education, promotion, industry, and consumer information programs with national programs or programs of other states.
- Develop new uses and markets for concrete masonry products.
- Develop and improve educational access to individuals seeking employment in the field of concrete masonry.
- Develop methods of improving the quality of concrete masonry products for the purpose of windstorm protection.
- Develop methods of improving the energy efficiency attributes of concrete masonry products.
- Inform and educate the public concerning the sustainability and economic benefits of concrete masonry products.
- Serve as a liaison within the concrete masonry and other construction industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both the consumer and the concrete masonry 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 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 the affairs and attainment of the purposes of the council.
- Approve an annual plan, budget, and audit for the council.

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.
- Pursue any activities that are not in furtherance of the council's specific and primary purposes.

***Governing Board***

The Florida Concrete Masonry Council, Inc., shall be governed by a board of directors composed of 15 members.

***Referendum on Assessments***

All concrete masonry manufacturers in this state may vote in a referendum to determine whether the council may levy an assessment of 1 cent per concrete masonry unit. The referendum shall pose the question: "Do you approve of authorizing the Florida Concrete Masonry Council, Inc., to levy an assessment, pursuant to Florida law, of \$0.01 per concrete masonry unit sold by a manufacturer in this state, to be used for the education of concrete masonry workers, research, and the promotion of concrete masonry products?" The duration of an authorization to levy the assessment may not exceed 5 years following the date of the approval of the levy unless reauthorized.

***Administrative 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 concrete masonry industry, and respond to requests from government bodies concerning concrete. 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.

***Collection of Moneys at Time of Sale***

Each manufacturer shall assess from the purchaser, at the time of sale by the manufacturer, the assessment levied by the council. The amount of the assessment must be separately stated on all receipts, invoices, or other evidence of sale as the "Florida Building Sustainability Fee."

***Vote On Continuing the Assessment***

Upon the delivery by certified mail to the council of petitions that represent at least 25 percent of all concrete masonry manufacturers that ask, "Shall the assessment authorized by the Concrete

Masonry Products Research, Education, and Promotion Act continue?” the council shall, within 90 days after the receipt of the petitions, conduct a referendum to determine whether a majority of the votes cast in the referendum support the continuation of the Concrete Masonry Products Research, Education, and Promotion Act. All signatures must be collected within a 12-month period.

### ***Bylaws***

The council shall, by September 30, 2012, adopt bylaws to carry out the intents and purposes of the bill. The bill also provides procedures for amending the bylaws.

**Section 2** provides an effective date of July 1, 2012.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

### D. Other Constitutional Issues:

Mandatory check-off programs have been challenged on First Amendment grounds for compelling producers to fund speech with which a producer may not agree. In *United States v. United Foods, Inc.*, a mushroom producer refused to pay an assessment used primarily to fund advertisements promoting mushroom sales. The Supreme Court struck down the check off, finding that the assessments were not permitted under the First Amendment.<sup>10</sup> In another case, *Johanns v. Livestock Marketing Ass’n*, associations and individuals brought action against the US Department of Agriculture, seeking relief with respect to communications made using mandatory contributions collected from beef producers pursuant to federal law. The Supreme Court held<sup>11</sup> that generic advertising funded by targeted assessment on beef producers was “government speech,” not susceptible to First Amendment compelled-subsidy challenge.

This bill contains a referendum process by which all producers must vote on the assessment, with the outcome determined by simple majority. This referendum process would presumably be something a court would consider in evaluating whether the assessment is mandatory. In determining whether any communications made by the council are in effect government speech, which is not subject to a First Amendment

<sup>10</sup> *United States v. United Foods, Inc.*, 121 S.Ct. 2334 (2001)

<sup>11</sup> *Johanns v. Livestock Marketing Ass’n*, 125 S.Ct. 2055 (2005)

compelled-subsidy challenge, a court would presumably look to the fact that the Legislature specified the types of information that council is authorized to disseminate.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The 1 cent charged per concrete masonry unit may be passed along to the consumer. This assessment would affect those who purchase large quantities of concrete blocks for construction. It is unknown how much revenue this will generate for the Florida Concrete Masonry Council. Concrete masonry manufacturers may experience an increase in the demand for concrete as a result of the masonry promotion programs and advertising.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.