

By the Committees on Commerce, Economic Opportunities, and Consumer Services; Agriculture; and Senators Argenziano, Dockery, Crist, Hill, Bullard, Wasserman Schultz, Siplin, Pruitt, Aronberg, Posey, Smith, Peaden, Campbell, Alexander and Bennett

310-2273-04

1 A bill to be entitled
 2 An act relating to the Florida beef industry;
 3 creating s. 570.9135, F.S.; providing a popular
 4 name; providing legislative intent; defining
 5 terms; creating the Florida Beef Council, Inc.;
 6 providing purposes; providing powers and duties
 7 of the council and restrictions upon actions of
 8 the council; providing for a board of directors
 9 of the council; providing for a referendum on
 10 assessments to be deducted from the sale of
 11 each head of cattle; allowing the council to
 12 accept grants and gifts; providing guidelines
 13 for payments to other organizations; providing
 14 for the collection of assessments at the time
 15 of marketing; providing duties of marketing
 16 agents and collecting agents; requiring the
 17 council to maintain a separate accounting of
 18 moneys received from assessments; providing for
 19 legal action to collect delinquent assessments;
 20 providing for the collection of penalties,
 21 enforcement costs, court costs, and reasonable
 22 attorney's fees; providing for a collection
 23 allowance; providing for refunds; providing for
 24 a referendum on continuing this act; providing
 25 for council bylaws; providing a contingent
 26 effective date.

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 28 Be It Enacted by the Legislature of the State of Florida:

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 30 Section 1. Section 570.9135, Florida Statutes, is
 31 created to read:

1 570.9135 Beef Market Development Act; definitions;
2 Florida Beef Council, Inc., creation, purposes, governing
3 board, powers, and duties; referendum on assessments imposed
4 on gross receipts from cattle sales; payments to organizations
5 for services; collecting and refunding assessments; vote on
6 continuing the act; council bylaws.--

7 (1) POPULAR NAME.--This act may be cited as the "Beef
8 Market Development Act."

9 (2) LEGISLATIVE INTENT.--The Legislature intends by
10 this act to promote the growth of the cattle industry in this
11 state; to assure the public an adequate and wholesome food
12 supply; to provide for the general economic welfare of
13 producers and consumers of beef and the state; and to provide
14 the beef cattle production and feeding industry of this state
15 with the authority to establish a self-financed, self-governed
16 program to help develop, maintain, and expand the state,
17 national, and foreign markets for beef and beef products that
18 are produced, processed, or manufactured in this state.

19 (3) DEFINITIONS.--As used in this act, the term:

20 (a) "Beef" or "beef products" means the products of
21 beef intended for human consumption which are derived from any
22 bovine animal, regardless of age, including, but not limited
23 to, veal.

24 (b) "Cattle" means such animals as are so designated
25 by federal law, including any marketing, promotion, and
26 research orders as are in effect. Unless such federal law
27 provides to the contrary, the term "cattle" includes all
28 bovine animals, regardless of age, including, but not limited
29 to, calves. A cow and nursing calf sold together are
30 considered one unit.

31 (c) "Council" means the Florida Beef Council, Inc.

1 (d) "Department" means the Department of Agriculture
2 and Consumer Services.

3 (e) "Collection agent" means a person who sells,
4 offers for sale, markets, distributes, trades, or processes
5 cattle that have been purchased or acquired from a producer or
6 that are marketed on behalf of a producer. The term also
7 includes meatpacking firms and their agents that purchase or
8 consign to purchase cattle.

9 (f) "Person" means any natural person, partnership,
10 corporation, company, association, society, trust, or other
11 business unit or organization.

12 (g) "Producer" means a person that has owned or sold
13 cattle in the previous calendar year or presently owns cattle.

14 (4) FLORIDA BEEF COUNCIL, INC.; CREATION; PURPOSES.--

15 (a) There is created the Florida Beef Council, Inc., a
16 not-for-profit corporation organized under the laws of this
17 state and operating as a direct-service organization of the
18 department.

19 (b) The council is authorized to impose an assessment
20 of not more than \$1 on each head of cattle sold in the state
21 if the imposition of the assessment is approved by referendum
22 pursuant to subsection (6). The proceeds of the assessment
23 shall be used to fund the activities of the council. The
24 council shall:

25 1. Establish the amount of the assessment at not more
26 than \$1 per head of cattle.

27 2. Develop, implement, and monitor a collection system
28 for the assessment.

29 3. Coordinate the collection of the assessment with
30 other states.

31 4. Establish refund procedures.

- 1 5. Conduct referendums under subsections (6) and (12).
2 (c) The council shall:
3 1. Plan, implement, and conduct programs of promotion,
4 research, and consumer information or industry information
5 which are designed to strengthen the cattle industry's market
6 position in this state and in the nation and to maintain and
7 expand domestic and foreign markets and expand uses for beef
8 and beef products.
9 2. Use the proceeds of the assessment for the purpose
10 of funding cattle production and beef research, education,
11 promotion, and consumer and industry information in this state
12 and in the nation.
13 3. Plan and implement a cattle and beef industry
14 feedback program in this state.
15 4. Coordinate research, education, promotion,
16 industry, and consumer information programs with any national
17 programs or programs of other states.
18 5. Develop new uses and markets for beef and beef
19 products.
20 6. Develop and improve methods of distributing beef
21 and beef products to the consumer.
22 7. Develop methods of improving the quality of beef
23 and beef products for the benefit of consumers.
24 8. Inform and educate the public concerning the
25 nutritive and economic values of beef and beef products.
26 9. Serve as a liaison within the beef and other food
27 industries of the state and elsewhere in matters that would
28 increase efficiencies that ultimately benefit both consumers
29 and industry.
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1 10. Buy, sell, mortgage, rent, or improve, in any
2 manner that the council considers expedient, real property or
3 personal property, or both.

4 11. Publish and distribute such papers or periodicals
5 as the board of directors considers necessary to encourage and
6 accomplish the purposes of the council.

7 12. Do all other acts necessary or expedient for the
8 administration of the affairs and attainment of the purposes
9 of the council.

10 13. Approve an annual plan, budget, and audit for the
11 council.

12 (d)1. The council may not participate in or intervene
13 in any political campaign on behalf of or in opposition to any
14 candidate for public office. This restriction includes, but is
15 not limited to, a prohibition against publishing or
16 distributing any statements.

17 2. No part of the net receipts of the council shall
18 inure to the benefit of or be distributable to its directors,
19 its officers, or other private persons, except that the
20 council may pay reasonable compensation for services rendered
21 by staff employees and may make payments and distributions in
22 furtherance of the purposes of this act.

23 3. Notwithstanding any other provision of law, the
24 council may not carry on any other activities not permitted to
25 be carried on:

26 a. By a corporation exempt from federal income tax
27 under s. 501(c)(3) of the Internal Revenue Code of 1986, as
28 amended; or

29 b. By a corporation to which contributions are
30 deductible under s. 170(c)(2) of the Internal Revenue Code of
31 1986, as amended.

1 4. Notwithstanding any other statement of the purposes
2 and responsibilities of the council, the council may not
3 engage in any activities or exercise any powers that are not
4 in furtherance of its specific and primary purposes.

5 (5) GOVERNING BOARD.--

6 (a) The Florida Beef Council, Inc., shall be governed
7 by a board of directors composed of 13 members, including 8
8 representatives of the Florida Cattlemen's Association, of
9 whom one is a representative of the Florida Association of
10 Livestock Markets and one is a practicing order buyer; one a
11 representative of the Dairy Farmers, Inc.; one a
12 representative of the Florida CattleWomen, Inc.; one a
13 representative of the Florida Farm Bureau Federation; one an
14 allied-industry representative; and one an Institute of Food
15 and Agricultural Sciences representative.

16 (b) The initial board of directors shall be appointed
17 by the Commissioner of Agriculture for a term of 1 year. Each
18 subsequent vacancy shall be filled in accordance with the
19 bylaws of the council. Thereafter, each board member shall be
20 appointed to serve a 3-year term and may be reappointed to
21 serve an additional consecutive term. A member may not serve
22 more than two consecutive terms. A member must be a resident
23 of this state and must be a producer who has been a producer
24 for at least the 5 years immediately preceding the first day
25 of his or her service on the board, except that the
26 representative of the Florida Farm Bureau Federation, the
27 allied-industry representative, and the Institute of Food and
28 Agricultural Sciences representative need not be producers.
29 All beef council board positions shall be unsalaried; however,
30 the board members are entitled to reimbursement as provided in
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1 s. 112.061 for travel and other expenses incurred in carrying
2 out the intents and purposes of this act.

3 (c) The council shall provide for its officers through
4 its bylaws, including the ability to set forth offices and
5 responsibilities and form committees necessary for the
6 implementation of this act. The Commissioner of Agriculture
7 may designate an ex officio nonvoting member of the board of
8 directors.

9 (d) If a member of the board misses three consecutive,
10 officially called meetings, the board of directors may declare
11 that position vacant.

12 (6) REFERENDUM ON ASSESSMENTS.--All producers in this
13 state shall have the opportunity to vote in a referendum to
14 determine whether the council shall be authorized to impose an
15 assessment of not more than \$1 per head on cattle sold in the
16 state. The referendum shall pose the question: "Do you
17 approve of an assessment program, up to \$1 per head of cattle
18 pursuant to section 570.9135, Florida Statutes, to be funded
19 through specific contributions that are mandatory and
20 refundable upon request?"

21 (a) A referendum held under this section must be
22 conducted by secret ballot at extension offices of the
23 Institute of Food and Agricultural Sciences of the University
24 of Florida or at offices of the United States Department of
25 Agriculture with the cooperation of the department.

26 (b) Notice of a referendum to be held under this act
27 must be given at least once in trade publications, the public
28 press, and statewide newspapers at least 30 days before the
29 referendum is held.

30 (c) Additional referendums may be held to authorize
31 the council to increase the assessment to more than \$1 per

1 head of cattle. Such referendum shall pose the question: "Do
2 you approve of granting the Florida Beef Council, Inc.,
3 authority to increase the per-head-of-cattle assessment
4 pursuant to section 570.9135, Florida Statutes, from (present
5 rate) to up to a maximum of (proposed rate) per head?"
6 Referendums may not be held more often than once every 3
7 years.

8 (d) Each cattle producer is entitled to only one vote
9 in a referendum held under this act. Proof of identification
10 and cattle ownership must be presented before voting.

11 (e) A simple majority of those casting ballots shall
12 determine any issue that requires a referendum under this act.

13 (7) POWERS AND DUTIES OF THE COUNCIL.--

14 (a) The council shall:

15 1. Receive and disburse funds, as prescribed elsewhere
16 in this act, to be used in administering and implementing the
17 act.

18 2. Maintain a permanent record of its business
19 proceedings.

20 3. Maintain a permanent, detailed record of its
21 financial dealings.

22 4. Prepare periodic reports and an annual report of
23 its activities for the fiscal year, for review by the beef
24 industry in this state, and file its annual report with the
25 department.

26 5. Prepare, for review by the beef industry in this
27 state, periodic reports and an annual accounting for each
28 fiscal year of all receipts and expenditures, and shall retain
29 a certified public accountant for this purpose.

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1 6. Appoint a licensed banking institution to serve as
2 the depository for program funds and to handle disbursements
3 of those funds.

4 7. Maintain frequent communication with officers and
5 industry representatives at the state and national levels,
6 including the department.

7 8. Maintain an office in this state.

8 (b) The council may:

9 1. Conduct or contract for scientific research with
10 any accredited university, college, or similar institution,
11 and enter into other contracts or agreements that will aid in
12 carrying out the purposes of the program, including contracts
13 for the purchase or acquisition of facilities or equipment
14 necessary to carry out the purposes of the program.

15 2. Disseminate reliable information benefiting the
16 consumer and the beef industry on subjects such as, but not
17 limited to, the purchase, identification, care, storage,
18 handling, cookery, preparation, serving, and nutritive value
19 of beef and beef products.

20 3. Provide to government bodies, on request,
21 information relating to subjects of concern to the beef
22 industry, and may act jointly or in cooperation with the state
23 or Federal Government, and agencies thereof, in the
24 development or administration of programs that the council
25 considers to be consistent with the objectives of the program.

26 4. Sue and be sued as a council without individual
27 liability of the members for acts of the council when acting
28 within the scope of the powers of this act and in the manner
29 prescribed by the laws of this state.

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1 5. Borrow from licensed lending institutions money in
2 amounts that are not cumulatively greater than 50 percent of
3 the council's anticipated annual income.

4 6. Maintain a financial reserve for emergency use, the
5 total of which must not exceed 50 percent of the council's
6 anticipated annual income.

7 7. Appoint advisory groups composed of representatives
8 from organizations, institutions, governments, or businesses
9 related to or interested in the welfare of the beef industry
10 and the consuming public.

11 8. Employ subordinate officers and employees of the
12 council, prescribe their duties, and fix their compensation
13 and terms of employment.

14 9. Cooperate with any local, state, regional, or
15 nationwide organization or agency engaged in work or
16 activities consistent with the objectives of the program.

17 10. Cause any duly authorized agent or representative
18 to enter upon the premises of any market agency, market agent,
19 collection agency, or collection agent and examine or cause to
20 be examined by the authorized agent only books, papers, and
21 records that deal with the payment of the assessment provided
22 for in this act or with the enforcement of this act.

23 11. Do all other things necessary to further the
24 intent of this act which are not prohibited by law.

25 (8) ACCEPTANCE OF GRANTS AND GIFTS.--The council may
26 accept grants, donations, contributions, or gifts from any
27 source if the use of such resources is not restricted in any
28 manner that the council considers to be inconsistent with the
29 objectives of the program.

30 (9) PAYMENTS TO ORGANIZATIONS.--
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1 (a) The council may pay funds to other organizations
2 for work or services performed which are consistent with the
3 objectives of the program.

4 (b) Before making payments described in his
5 subsection, the council must secure a written agreement that
6 the organization receiving payment will:

7 1. Furnish at least annually, or more frequently on
8 request of the council, written or printed reports of program
9 activities and reports of financial data that are relative to
10 the council's funding of such activities; and

11 2. Agree to have appropriate representatives attend
12 business meetings of the council as reasonably requested by
13 the chairperson of the council.

14 (c) The council may require adequate proof of security
15 bonding on said funds to any individual, business, or other
16 organization.

17 (10) COLLECTION OF MONEYS AT TIME OF MARKETING.--

18 (a) Each collection agent may deduct from the gross
19 receipts of the producer, at the time of sale, the assessment
20 imposed by the council.

21 (b) The collection agent shall collect all such moneys
22 and forward them to the council periodically, at least once a
23 month, and the council shall provide appropriate business
24 forms for the convenience of the collecting agent in executing
25 this duty.

26 (c) The council shall maintain within its financial
27 records a separate accounting of all moneys received under
28 this subsection.

29 (d) The assessment is due and payable upon the sale of
30 cattle in this state. The assessment constitutes a personal
31 debt of the producer who is so assessed or who otherwise owes

1 the assessment. If a producer fails to remit any properly due
2 assessment, the council may bring a civil action against that
3 person in the circuit court of any county for the collection
4 thereof, and may add a penalty in the amount of 10 percent of
5 the assessment owed, the cost of enforcing the collection of
6 the assessment, court costs, and reasonable attorney's fees.
7 The action shall be tried and judgment rendered as in any
8 other cause of action for debts due and payable. All
9 assessments, penalties, and enforcement costs are due and
10 payable to the council.

11 (e) The council may adopt reciprocal agreements with
12 other beef councils or similar organizations relating to
13 moneys collected at Florida collection agents on cattle from
14 other states and to Florida cattle sold at other state
15 markets.

16 (f) The collection agents shall be entitled to deduct
17 2.5 percent of the amount collected to retain as a reasonable
18 collection allowance prior to remitting the funds to the
19 council.

20 (11) REFUNDS.--

21 (a) A producer who has had moneys deducted from his or
22 her gross sales receipts under this act is entitled to a
23 prompt and full refund on request.

24 (b) The council shall make available to all collection
25 agents business forms permitting request for refund, which
26 forms are to be submitted by the objecting producer within 45
27 days after the sale transaction takes place.

28 (c) A refund claim must include the claimant's
29 signature, date of sale, place of sale, number of cattle, and
30 amount of assessment deducted, and must have attached thereto
31 proof of the assessment deducted.

1 (d) If the council has reasonable doubt that a refund
2 claim is valid, it may withhold payment and take such action
3 as it considers necessary to determine the validity of the
4 claim. Any dispute arising under this subsection shall be
5 determined as specified in paragraph (10)(d).

6 (e) Only the producer may initiate a request for
7 refund.

8 (12) VOTE ON CONTINUING THE ASSESSMENT.--Upon the
9 delivery by certified mail to the Florida Beef Council office
10 of petitions from at least 1,800 producers or ten percent of
11 Florida's producers as determined by the department, whichever
12 is less, and stating "Shall the assessment authorized by the
13 Beef Market Development Act continue?" The council shall,
14 within 90 days, conduct a referendum to determine whether a
15 majority of the producers voting in the referendum support the
16 continuation of the Beef Market Development Act. All
17 signatures must be collected within a 12-month period. A
18 referendum held under this subsection may not be held more
19 than one time in a 3-year period. Qualifications for signature
20 and vote are the same as those required in subsection (6).

21 (13) BYLAWS.--The Florida Beef Council shall, within
22 90 days after this act becomes a law, adopt bylaws to carry
23 out the intents and purposes of this act. These bylaws may be
24 amended with a 30-day notice to board members at any regular
25 or special meeting called for this purpose. The bylaws must
26 conform to the requirements of this act, but may also address
27 any matter not in conflict with the general laws of this
28 state.

29 Section 2. This act shall take effect upon becoming a
30 law; however, an assessment on a head of cattle sold may not
31 be imposed under this act, nor may a referendum relating to

1 such assessment be conducted, before the effective date that
2 the stay is vacated for the injunction issued by the United
3 States District Court of the District of South Dakota,
4 Northern Division in Livestock Marketing Association et al. v.
5 USDA and Nebraska Cattlemen, Inc. et al., 207 F. Supp.2d 992,
6 of collection of the assessment authorized by the Beef
7 Promotion and Research Act, 7 U.S.C. s. 2901, et seq., and the
8 Beef Order promulgated thereunder, or before the assessment
9 authorized by the Beef Promotion and Research Act, 7 U.S.C. s.
10 2901, et seq., and the Beef Order promulgated thereunder, is
11 otherwise repealed, stayed, or enjoined by the United States
12 Congress, by a court, or by other operation of law. Such date
13 shall be determined by the Florida Commissioner of
14 Agriculture.

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16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 CS/SB 1770

19 The committee substitute differs from the original bill by:
20 (1) applying a definition only to the term "collection agent"
21 when previously the definition applied to the terms "market
22 agent," "market agency," "collection agent," and "collection
23 agency"; (2) directly referencing that up to \$1 on each head
24 of cattle may be assessed from cattle producers and by
25 directly referencing that the council must conduct referendums
26 on assessments in the section that creates the Florida Beef
27 Council, Inc.; (3) adding a practicing order buyer to the
28 governing board of the council; (4) providing the specific
29 questions to be asked cattle producers in the referendum
30 requesting approval of an assessment and in any subsequent
31 referendums requesting that the assessment be discontinued;
(5) removing a provision that stated that any assessment
deduction was considered to be a bona fide expense for the
seller as provided for under the tax laws of the state; (6)
reducing the interval, from five years to three years, of when
an assessment referendum vote to discontinue an assessment may
be held; and (7) revising the effective date to add an
additional contingency that the committee substitute's
provisions may not take effect until a stay is vacated in a
federal court case regarding the national beef checkoff
program.