

CHAMBER ACTION

1 The Committee on Finance & Tax recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Florida beef industry; creating s.  
7 570.9135, F.S.; providing a popular name; providing  
8 legislative intent; defining terms; creating the Florida  
9 Beef Council, Inc.; authorizing the council to impose an  
10 assessment on each head of cattle sold in the state  
11 subject to approval by referendum; providing powers and  
12 duties of the council and restrictions upon actions of the  
13 council; providing for a board of directors of the  
14 council; providing requirements for a referendum on  
15 assessments; allowing the council to accept grants and  
16 gifts; providing guidelines for payments to other  
17 organizations; providing for the collection of assessments  
18 at the time of sale; requiring the council to maintain a  
19 separate accounting of assessments received; providing for  
20 legal action to collect delinquent assessments; providing  
21 for the collection of penalties, enforcement costs, court  
22 costs, and reasonable attorney fees; providing for a  
23 collection allowance; providing for refunds; providing for

24 | a referendum on continuing the assessment; providing for  
25 | council bylaws; providing a contingent effective date.

26 |

27 | Be It Enacted by the Legislature of the State of Florida:

28 |

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

31 | 570.9135 Beef Market Development Act; definitions; Florida  
32 | Beef Council, Inc., creation, governing board, powers and  
33 | duties; referendum on assessments; payments to organizations for  
34 | services; collecting and refunding assessments; vote on  
35 | continuing the assessment; council bylaws.--

36 | (1) POPULAR NAME.--This act shall be known by the popular  
37 | name the "Beef Market Development Act."

38 | (2) LEGISLATIVE INTENT.--The Legislature intends by this  
39 | act to promote the growth of the cattle industry in this state;  
40 | to assure the public of an adequate and wholesome food supply;  
41 | to provide for the general economic welfare of producers,  
42 | consumers of beef, and the state; and to provide the beef cattle  
43 | production and feeding industry of this state with the authority  
44 | to establish a self-financed, self-governed program to help  
45 | develop, maintain, and expand the state, national, and foreign  
46 | markets for beef and beef products that are produced, processed,  
47 | or manufactured in this state.

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

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

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

58        (c) "Collection agent" means a person who sells, offers  
 59 for sale, markets, distributes, trades, or processes cattle that  
 60 have been purchased or acquired from a producer or that are  
 61 marketed on behalf of a producer. The term also includes  
 62 meatpacking firms and their agents that purchase or consign to  
 63 purchase cattle.

64        (d) "Council" means the Florida Beef Council, Inc.

65        (e) "Department" means the Department of Agriculture and  
 66 Consumer Services.

67        (f) "Person" means any natural person, partnership,  
 68 corporation, company, association, society, trust, or other  
 69 business unit or organization.

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

73        (4) FLORIDA BEEF COUNCIL, INC.--

74        (a) There is created the Florida Beef Council, Inc., a  
 75 not-for-profit corporation organized under the laws of this  
 76 state and operating as a direct-service organization of the  
 77 department.

78        (b) The council is authorized to impose an assessment of  
 79 not more than \$1 on each head of cattle sold in the state if the

80 imposition of the assessment is approved by referendum pursuant  
 81 to subsection (6). The proceeds of the assessment shall be used  
 82 to fund the activities of the council. The council shall:

83 1. Establish the amount of the assessment at not more than  
 84 \$1 per head of cattle.

85 2. Develop, implement, and monitor a collection system for  
 86 the assessment.

87 3. Coordinate the collection of the assessment with other  
 88 states.

89 4. Establish refund procedures.

90 5. Conduct referenda under subsections (6) and (12).

91 (c) In addition, the council shall:

92 1. Plan, implement, and conduct programs of promotion,  
 93 research, and consumer information or industry information which  
 94 are designed to strengthen the cattle industry's market position  
 95 in this state and in the nation and to maintain and expand  
 96 domestic and foreign markets and expand uses for beef and beef  
 97 products.

98 2. Use the proceeds of the assessment for the purpose of  
 99 funding cattle production and beef research, education,  
 100 promotion, and consumer and industry information in this state  
 101 and in the nation.

102 3. Plan and implement a cattle and beef industry feedback  
 103 program in this state.

104 4. Coordinate research, education, promotion, and consumer  
 105 and industry information programs with any national programs or  
 106 programs of other states.

- 107        5. Develop new uses and markets for beef and beef  
 108 products.
- 109        6. Develop and improve methods of distributing beef and  
 110 beef products to the consumer.
- 111        7. Develop methods of improving the quality of beef and  
 112 beef products for the benefit of consumers.
- 113        8. Inform and educate the public concerning the nutritive  
 114 and economic values of beef and beef products.
- 115        9. Serve as a liaison within the beef and other food  
 116 industries of the state and elsewhere in matters that would  
 117 increase efficiencies that ultimately benefit both consumers and  
 118 industry.
- 119        10. Buy, sell, mortgage, rent, or improve, in any manner  
 120 that the council considers expedient, real property or personal  
 121 property, or both.
- 122        11. Publish and distribute such papers or periodicals as  
 123 the board of directors considers necessary to encourage and  
 124 accomplish the purposes of the council.
- 125        12. Do all other acts necessary or expedient for the  
 126 administration of the affairs and attainment of the purposes of  
 127 the council.
- 128        13. Approve an annual plan, budget, and audit for the  
 129 council.
- 130        (d)1. The council may not participate in or intervene in  
 131 any political campaign on behalf of or in opposition to any  
 132 candidate for public office. This restriction includes, but is  
 133 not limited to, a prohibition against publishing or distributing  
 134 any statements.

135       2. No part of the net receipts of the council shall inure  
 136 to the benefit of or be distributable to its directors, its  
 137 officers, or other private persons, except that the council may  
 138 pay reasonable compensation for services rendered by staff  
 139 employees and may make payments and distributions in furtherance  
 140 of the purposes of this act.

141       3. Notwithstanding any other provision of law, the council  
 142 may not carry on any other activities not permitted to be  
 143 carried on:

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

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

150       4. Notwithstanding any other statement of the purposes and  
 151 responsibilities of the council, the council may not engage in  
 152 any activities or exercise any powers that are not in  
 153 furtherance of its specific and primary purposes.

154       (5) GOVERNING BOARD.--

155           (a) The Florida Beef Council, Inc., shall be governed by a  
 156 board of directors composed of 13 members, including: eight  
 157 representatives of the Florida Cattlemen's Association, of whom  
 158 one shall be a representative of the Florida Association of  
 159 Livestock Markets and one shall be a practicing order buyer; one  
 160 representative of Dairy Farmers, Inc.; one representative of  
 161 Florida CattleWomen, Inc.; one representative of the Florida  
 162 Farm Bureau Federation; one representative of the allied

163 | industry; and one representative of the University of Florida  
 164 | Institute of Food and Agricultural Sciences.

165 | (b) The initial board of directors shall be appointed by  
 166 | the Commissioner of Agriculture for a 1-year term. Thereafter,  
 167 | each board member shall be appointed to serve a 3-year term and  
 168 | may be reappointed to serve an additional consecutive term. A  
 169 | member may not serve more than two consecutive terms. Each  
 170 | vacancy shall be filled in accordance with the bylaws of the  
 171 | council. A member must be a resident of this state and must be a  
 172 | producer who has been a producer for at least the 5 years  
 173 | immediately preceding the first day of his or her service on the  
 174 | board, except that the representatives of the Florida Farm  
 175 | Bureau Federation, the allied industry, and the Institute of  
 176 | Food and Agricultural Sciences need not be producers. All beef  
 177 | council board positions shall be unsalaried; however, the board  
 178 | members are entitled to reimbursement as provided in s. 112.061  
 179 | for travel and other expenses incurred in carrying out the  
 180 | intents and purposes of this act. The Commissioner of  
 181 | Agriculture may designate an ex officio nonvoting member of the  
 182 | board of directors.

183 | (c) The council shall provide for its officers through its  
 184 | bylaws, including the ability to set forth offices and  
 185 | responsibilities and form committees necessary for the  
 186 | implementation of this act.

187 | (d) If a member of the board misses three consecutive,  
 188 | officially called meetings, the board of directors may declare  
 189 | that position vacant.

190       (6) REFERENDUM ON ASSESSMENTS.--All producers in this  
 191 state shall have the opportunity to vote in a referendum to  
 192 determine whether the council shall be authorized to impose an  
 193 assessment of not more than \$1 per head on cattle sold in the  
 194 state. The referendum shall pose the question: "Do you approve  
 195 of an assessment program, up to \$1 per head of cattle pursuant  
 196 to s. 570.9135, Florida Statutes, to be funded through specific  
 197 contributions that are mandatory and refundable upon request?"

198       (a) A referendum held under this section must be conducted  
 199 by secret ballot at extension offices of the University of  
 200 Florida Institute of Food and Agricultural Sciences or at  
 201 offices of the United States Department of Agriculture, with the  
 202 cooperation of the department.

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

207       (c) Additional referenda may be held to authorize the  
 208 council to increase the assessment to more than \$1 per head of  
 209 cattle. Such referenda shall pose the question: "Do you approve  
 210 of granting the Florida Beef Council, Inc., authority to  
 211 increase the per-head-of-cattle assessment pursuant to s.  
 212 570.9135, Florida Statutes, from (present rate) up to a maximum  
 213 of (proposed rate) per head?" Referenda may not be held more  
 214 often than once every 3 years.

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



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

220 (7) ADDITIONAL POWERS AND DUTIES OF THE COUNCIL.--

221 (a) The council shall:

222 1. Receive and disburse funds, as prescribed in this act,  
 223 to be used in administering and implementing the act.

224 2. Maintain a permanent record of its business  
 225 proceedings.

226 3. Maintain a permanent, detailed record of its financial  
 227 dealings.

228 4. Prepare periodic reports and an annual report of its  
 229 activities for the fiscal year, for review by the beef industry  
 230 in this state, and file its annual report with the department.

231 5. Prepare, for review by the beef industry in this state,  
 232 periodic reports and an annual accounting for each fiscal year  
 233 of all receipts and expenditures, and retain a certified public  
 234 accountant for this purpose.

235 6. Appoint a licensed banking institution to serve as the  
 236 depository for program funds and to handle disbursements of  
 237 those funds.

238 7. Maintain frequent communication with officers and  
 239 industry representatives at the state and national levels,  
 240 including the department.

241 8. Maintain an office in this state.

242 (b) The council may:

243 1. Conduct or contract for scientific research with any  
 244 accredited university, college, or similar institution and enter  
 245 into other contracts or agreements that will aid in carrying out

246 | the purposes of the program, including contracts for the  
 247 | purchase or acquisition of facilities or equipment necessary to  
 248 | carry out the purposes of the program.

249 | 2. Disseminate reliable information benefiting the  
 250 | consumer and the beef industry on subjects such as, but not  
 251 | limited to, the purchase, identification, care, storage,  
 252 | handling, cookery, preparation, serving, and nutritive value of  
 253 | beef and beef products.

254 | 3. Provide to government bodies, on request, information  
 255 | relating to subjects of concern to the beef industry, and act  
 256 | jointly or in cooperation with the state or Federal Government,  
 257 | and agencies thereof, in the development or administration of  
 258 | programs that the council considers to be consistent with the  
 259 | objectives of the program.

260 | 4. Sue and be sued as a council without individual  
 261 | liability of the members for acts of the council when acting  
 262 | within the scope of the powers of this act and in the manner  
 263 | prescribed by the laws of this state.

264 | 5. Borrow from licensed lending institutions money in  
 265 | amounts that are not cumulatively greater than 50 percent of the  
 266 | council's anticipated annual income.

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

270 | 7. Appoint advisory groups composed of representatives  
 271 | from organizations, institutions, governments, or businesses  
 272 | related to or interested in the welfare of the beef industry and  
 273 | the consuming public.

274 8. Employ subordinate officers and employees of the  
 275 council, prescribe their duties, and fix their compensation and  
 276 terms of employment.

277 9. Cooperate with any local, state, regional, or  
 278 nationwide organization or agency engaged in work or activities  
 279 consistent with the objectives of the program.

280 10. Cause any duly authorized agent or representative to  
 281 enter upon the premises of any collection agent and examine or  
 282 cause to be examined by the authorized agent only books, papers,  
 283 and records that deal with the payment of the assessment  
 284 provided for in this act or with the enforcement of this act.

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

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

292 (9) PAYMENTS TO ORGANIZATIONS.--

293 (a) The council may pay funds to other organizations for  
 294 work or services performed which are consistent with the  
 295 objectives of the program.

296 (b) Before making payments described in this subsection,  
 297 the council must secure a written agreement that the  
 298 organization receiving payment will:

299 1. Furnish at least annually, or more frequently on  
 300 request of the council, written or printed reports of program

301 activities and reports of financial data that are relative to  
 302 the council's funding of such activities; and

303 2. Agree to have appropriate representatives attend  
 304 business meetings of the council as reasonably requested by the  
 305 chair of the council.

306 (c) The council may require adequate proof of security  
 307 bonding on funds paid to any individual, business, or other  
 308 organization.

309 (10) COLLECTION OF MONEYS AT TIME OF SALE.--

310 (a) Each collection agent may deduct from the gross  
 311 receipts of the producer, at the time of sale, the assessment  
 312 imposed by the council.

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

317 (c) The council shall maintain within its financial  
 318 records a separate accounting of all moneys received under this  
 319 subsection.

320 (d) The assessment is due and payable upon the sale of  
 321 cattle in this state. The assessment constitutes a personal debt  
 322 of the producer who is so assessed or who otherwise owes the  
 323 assessment. If a producer fails to remit any properly due  
 324 assessment, the council may bring a civil action against that  
 325 person in the circuit court of any county for the collection  
 326 thereof and may add a penalty in the amount of 10 percent of the  
 327 assessment owed, the cost of enforcing the collection of the  
 328 assessment, court costs, and reasonable attorney fees. The

329 action shall be tried and judgment rendered as in any other  
 330 cause of action for debts due and payable. All assessments,  
 331 penalties, and enforcement costs are due and payable to the  
 332 council.

333 (e) The council may adopt reciprocal agreements with other  
 334 beef councils or similar organizations relating to moneys  
 335 collected by Florida collection agents on cattle from other  
 336 states and to Florida cattle sold at other state markets.

337 (f) The collection agent shall be entitled to deduct 2.5  
 338 percent of the amount collected to retain as a reasonable  
 339 collection allowance prior to remitting the funds to the  
 340 council.

341 (11) REFUNDS.--

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

345 (b) The council shall make available to all collection  
 346 agents business forms permitting requests for refund, which  
 347 forms are to be submitted by the objecting producer within 45  
 348 days after the sale transaction takes place.

349 (c) A refund claim must include the claimant's signature,  
 350 date of sale, place of sale, number of cattle, and amount of  
 351 assessment deducted, and must have attached thereto proof of the  
 352 assessment deducted.

353 (d) If the council has reasonable doubt that a refund  
 354 claim is valid, it may withhold payment and take such action as  
 355 it considers necessary to determine the validity of the claim.

356 Any dispute arising under this subsection shall be determined as  
 357 specified in paragraph (10)(d).

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

359 (12) VOTE ON CONTINUING THE ASSESSMENT.--Upon the delivery  
 360 by certified mail to the Florida Beef Council, Inc., office of  
 361 petitions from at least 1,800 producers or 10 percent of  
 362 Florida's producers as determined by the department, whichever  
 363 is less, stating, "Shall the assessment authorized by the Beef  
 364 Market Development Act continue?" the council shall, within 90  
 365 days, conduct a referendum to determine whether a majority of  
 366 the producers voting in the referendum support the continuation  
 367 of the Beef Market Development Act. All signatures must be  
 368 collected within a 12-month period. A referendum held under this  
 369 subsection may not be held more than one time in a 3-year  
 370 period. Qualifications for identification and vote are the same  
 371 as those required in subsection (6).

372 (13) BYLAWS.--The Florida Beef Council, Inc., shall,  
 373 within 90 days after this section becomes a law, adopt bylaws to  
 374 carry out the intents and purposes of this act. These bylaws may  
 375 be amended with a 30-day notice to board members at any regular  
 376 or special meeting called for this purpose. The bylaws must  
 377 conform to the requirements of this act but may also address any  
 378 matter not in conflict with the general laws of this state.

379 Section 2. This act shall take effect upon becoming a law;  
 380 however, an assessment on a head of cattle sold may not be  
 381 imposed under this act, nor may a referendum relating to such  
 382 assessment be conducted, before the effective date that the stay  
 383 is vacated for the injunction issued by the United States

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384 | District Court of the District of South Dakota, Northern  
385 | Division in Livestock Marketing Association et al. v. USDA and  
386 | Nebraska Cattlemen, Inc. et al., 207 F. Supp. 2d 992, of  
387 | collection of the assessment authorized by the Beef Promotion  
388 | and Research Act, 7 U.S.C. s. 2901, et seq., and the Beef Order  
389 | promulgated thereunder, or before the assessment authorized by  
390 | the Beef Promotion and Research Act, 7 U.S.C. s. 2901, et seq.,  
391 | and the Beef Order promulgated thereunder, is otherwise  
392 | repealed, stayed, or enjoined by the United States Congress, by  
393 | a court, or by other operation of law. Such date shall be  
394 | determined by the Florida Commissioner of Agriculture.