

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 Committee on Fiscal Policy

BILL: CS/SB 1220

INTRODUCER: Fiscal Policy Committee and Senator Grimsley and others

SUBJECT: Cattle Market Development Act

DATE: April 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1220 revises the Beef Market Development Act by:

- Renaming the act as the Cattle Market Development Act, and the Florida Beef Council, Inc., as the Florida Cattle Enhancement Board, Inc.;
- Requiring the Commissioner of Agriculture to appoint all board members;
- Revising the powers and duties of the board;
- Repealing the provisions for referendum for a state assessment program; and
- Providing that the act sunsets on October 1, 2020, unless saved from repeal by the Legislature.

The bill has no fiscal impact.

II. Present Situation:

The Beef Research and Information Act, part of the 1985 Farm Bill, created a producer-funded beef promotion and research program called the national Beef Checkoff Program to build demand for beef and beef products domestically and internationally.¹ The checkoff is a \$1 per head assessment on the sale of live domestic and imported cattle and imported beef and beef

¹ The U.S. Department of Agriculture developed a Beef Promotion and Research Order, pursuant to the act, that directs the program's operation. 7 U.S.C. 2901-2911. See also Cattlemen's Beef Promotion and Research Board, *Beef Act and Order*, available at http://www.beefboard.org/library/beefact_order.asp (last visited 3/29/2015).

products that was approved by 79 percent of producers in 1988.² The checkoff assessment is collected by state beef councils, which retain 50 cents of each dollar and send the other 50 cents to the Cattlemen's Beef Promotion and Research Board. The funds are expended on advertising, marketing, education, and research – all aimed at stimulating beef sales.

In 2003 the U.S. Court of Appeals of the 8th Circuit affirmed a decision of the U.S. District Court in South Dakota, holding that the national Beef Checkoff Program was unconstitutional.³ The beef producers in Florida resolved that it was in their interest to have a state-level program on stand-by if the national program was ruled unconstitutional by the U.S. Supreme Court. In response, the 2004 Legislature established the Beef Market Development Act⁴ (act) to:

- Promote the growth of the cattle industry in this state;
- Assure the public an adequate and wholesome food supply;
- Provide for the general economic welfare of producers and consumers of beef and the state; and
- Provide the beef cattle production and feeding industry of this state with the authority to establish a self-financed, self-governed program to help develop, maintain, and expand the state, national, and foreign markets for beef and beef products that are produced, processed, or manufactured in this state.

The act established a not-for-profit corporation, the Florida Beef Council (council), organized to operate as a direct-support organization under the Florida Department of Agriculture and Consumer Services.⁵ The act also:

- Established the council's governance structure through a 13-member board of directors;
- Established the powers and duties of the council;
- Directed the council to adopt bylaws to carry out the intent and purposes of the act;
- Established procedures for a referendum on assessments up to \$1 per head of cattle;
- Set forth procedures for the collection and remission of assessments at the time of sale by a collection agent;
- Established procedures for a producer of cattle to obtain a full refund upon request within 45 days after the sale transaction takes place; and
- Provided that a referendum to vote to continue the act could be held once in a three-year period if certain criteria were met.

The act was effective upon becoming law, but the referendum and assessment could not be imposed until the national checkoff program was repealed, stayed, or enjoined by the U.S. Congress, by a court, or by other operation of law. In 2005, the U.S. Supreme Court ruled that the national checkoff program was constitutional, so the assessment provided for in the Florida act was never implemented.⁶ The council created in the act, though, does implement the national checkoff program.⁷

² Cattlemen's Beef Promotion and Research Board, *Who We Are*, available at <http://www.beefboard.org/about/howeare.asp> (last visited 3/29/2015).

³ *Livestock Marketing Ass'n v. U.S. Dept. of Agriculture*, 335 F.3d 711 (8th Cir. 2003).

⁴ Chapter 2004-65, L.O.F.

⁵ Section 570.83, F.S. The statute was renumbered as s. 570.83, F.S., from 570.8135, F.S., in 2014. ch. 2014-150, L.O.F.

⁶ *Johans v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005).

⁷ See Florida Beef Council, *About the Florida Beef Council*, available at <http://floridabeefcouncil.org/aboutfbc.aspx> (last visited 3/29/2015).

III. Effect of Proposed Changes:

This bill amends s. 570.83, F.S., to revise the Beef Market Development Act.

The bill renames the “Beef Market Development Act” as the “Cattle Market Development Act” and renames the Florida Beef Council, Inc., as the Florida Cattle Enhancement Board, Inc. The bill adds an additional member to the board, a representative from the Florida Department of Agriculture and Consumer Services, to make the total membership of the board 14 members.⁸ The bill provides for staggered terms for members for the initial appointments. All appointments will be made by the Commissioner of Agriculture.

The bill grants the board similar powers as the former Florida Beef Council, while removing duplicative powers and consolidating the governing language into one subsection. The bill repeals provisions that would allow the board to maintain a financial reserve for emergency use and to appoint advisory groups.

The bill repeals all provisions related to referendum for and administration of an assessment program of up to \$1 per head of cattle.

The bill revises the definition of “cattle” to eliminate the provision that a cow and nursing calf sold together are considered one unit.

The bill moves the sunset date of the act to October 1, 2020. This provision currently provides that the act is repealed on October 1, 2019, unless saved from repeal by the Legislature, and was added to the statute in 2014 pursuant to ch. 2014-96, L.O.F., which created new reporting and transparency requirements for each citizen support organization and direct support organization that is created, approved, or administered by a state agency.⁹

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not contain a mandate because it does not affect counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ Current law allows for the appointment of a representative of the department to serve ex officio. s. 570.83(5)(c), F.S.

⁹ Senate 2014 Bill Summaries, CS/SB 1194 – Citizen Support and Direct-support Organizations.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 570.83 of the Florida Statutes.

IX. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Fiscal Policy on April 2, 2015:**

The committee substitute differs from the bill in the following ways:

- Repeals all provisions related to referendum for and administration of an assessment program of up to \$1 per head of cattle.
- Requires all board members to be appointed by the Commissioner of Agriculture.
- Restores the ability of the board to maintain certain records, prepare an annual report for the industry and Department of Agriculture and Consumer Services, provide information to governmental bodies, accept grants and gifts, make payments to organizations for services performed, and to sue and be sued without individual liability of the members.
- Sunsets the statute on October 1, 2020.

B. Amendments:

None.