

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: SB 1220

INTRODUCER: Senator Grimsley and others

SUBJECT: Cattle Market Development Act

DATE: April 1, 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>	Pre-meeting

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.;
- Revising the powers and duties of the board; and
- Revising the provisions for referendum, including providing for a referendum to take place within 180 days after July 1, 2015, that will ask Florida producers if they approve of an assessment program of up to \$1 per head of cattle.

The bill may have an indeterminate, but negative impact on cattle producers. If approved by referendum, producers will pay an assessment of up to \$1 for each head of cattle sold in the state.

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 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.

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).

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

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

III. Effect of Proposed Changes:

This bill amends s. 570.83, F.S., to give effect to the current law by establishing a new Florida beef assessment program and includes various revisions to the act.

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).

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.

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 the ability of the board to accept grants and gifts or make payments to organizations for services performed. The bill also repeals provisions that would allow the board to provisions authorizing the board to sue and be sued without individual liability of the members,⁹ to maintain a financial reserve for emergency use, and to appoint advisory groups.

The bill revises the provisions for referendum and consolidates them into one subsection. The bill provides for a referendum to take place within 180 days after July 1, 2015, that will ask Florida producers if they approve of an assessment program of up to \$1 per head of cattle. This assessment would be in addition to the national checkoff program. The assessment may be increased through an additional referenda if the board receives petitions from the lesser or at least 1,800 producers or 10 percent of Florida’s producers or if 2/3 of the board approves an increase. Additionally, a referendum can be held to ask the state’s producers if they approve of continuing the assessment if the board receives petitions from the lesser or at least 1,800 producers or 10 percent of Florida’s producers. The Commissioner of Agriculture can also initiate a referendum. Each referendum may not be held more often than once every three years in a place designated by the Commissioner of Agriculture.

The bill specifies that the assessment will be collected at the time of sale and forwarded to the board by the 15th of each month. It establishes a procedure for the refund of the assessment. The bill repeals the provision allowing the collection agent to retain a collection allowance of 2.5 percent of the amount collected.

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 repeals the sunset provision for the act. 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.¹⁰ Under the bill, the act would not be subject to repeal or a sunset review.

The bill takes effect July 1, 2015.

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 Section 617.0834, F.S., provides officers and directors of nonprofit organizations immunity from personal liability under certain conditions.

¹⁰ Senate 2014 Bill Summaries, CS/SB 1194 – Citizen Support and Direct-support Organizations.

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.

D. Other Constitutional Issues:

The U.S. Supreme Court held that the national Beef Checkoff Program was constitutional, holding that the program did not violate the First Amendment because it compelled financial support of government speech. The degree of government control over the message funded by the checkoff assessment satisfied the court as to the speech being government speech.¹¹ The bill does not provide the same oversight mechanisms as the national beef assessment program. However, ss. 20.058 and 215.981, F.S., subjects direct support organizations, like the proposed Florida Cattle Enhancement Board, to governmental oversight and auditing. The board will be required to report to the Florida Department of Agriculture and Consumer Services every year, is subject to modification or termination every year, and must be audited on a regular basis by the department.¹² This oversight may be sufficient to demonstrate that the proposed Florida assessment program is government speech, and therefore, may be found constitutional.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. If the assessment authorized in the bill is approved, it would result in an additional cost to beef producers, of up to \$1 per head of cattle sold.

C. Government Sector Impact:

None.

¹¹ *Johanns*, at 559-561. The U.S. Supreme Court found the national beef assessment program was government speech because the U.S. Department of Agriculture controlled the message coming from the Cattlemen's Beef Promotion and Research Board by having the power to appoint and remove the board's operating committee, specifying what the message may be and its elements, and maintaining final approval authority over the message.

¹² Sections 20.058 and 215.981, F.S.

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 Changes:

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

None.

B. Amendments:

None.