

Committee Substitute for Committee Substitute for  
Committee Substitute for Senate Bill No. 1770

An act relating to the Florida beef industry; creating s. 570.9135, F.S.; providing a popular name; providing legislative intent; defining terms; creating the Florida Beef Council, Inc.; providing purposes; providing powers and duties of the council and restrictions on actions of the council; providing for a board of directors of the council; providing for a referendum on assessments to be deducted from the sale of each head of cattle; allowing the council to accept grants and gifts; providing guidelines for payments to other organizations; providing for the collection of assessments at the time of marketing; providing duties of marketing agents and collecting agents; requiring the council to maintain a separate accounting of moneys received from assessments; providing for legal action to collect delinquent assessments; providing for the collection of penalties, enforcement costs, court costs, and reasonable attorney's fees; providing for a collection allowance; providing for refunds; providing for a referendum on continuing this act; providing for council bylaws; providing a contingent effective date.

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

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

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

(1) POPULAR NAME.—This act may be cited as the “Beef Market Development Act.”

(2) LEGISLATIVE INTENT.—The Legislature intends by this act to promote the growth of the cattle industry in this state; to assure the public an adequate and wholesome food supply; to provide for the general economic welfare of producers and consumers of beef and the state; and to 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.

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

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

(b) “Cattle” means such animals as are so designated by federal law, including any marketing, promotion, and research orders as are in effect.

Unless such federal law provides to the contrary, the term “cattle” includes all bovine animals, regardless of age, including, but not limited to, calves. A cow and nursing calf sold together are considered one unit.

(c) “Council” means the Florida Beef Council, Inc.

(d) “Department” means the Department of Agriculture and Consumer Services.

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

(f) “Person” means any natural person, partnership, corporation, company, association, society, trust, or other business unit or organization.

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

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

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

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

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

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

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

4. Establish refund procedures.

5. Conduct referendums under subsections (6) and (12).

(c) The council shall:

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

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

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

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

5. Develop new uses and markets for beef and beef products.

6. Develop and improve methods of distributing beef and beef products to the consumer.

7. Develop methods of improving the quality of beef and beef products for the benefit of consumers.

8. Inform and educate the public concerning the nutritive and economic values of beef and beef products.

9. Serve as a liaison within the beef and other food industries of the state and elsewhere in matters that would increase efficiencies that ultimately benefit both consumers and industry.

10. Buy, sell, mortgage, rent, or improve, in any manner that the council considers expedient, real property or personal property, or both.

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

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

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

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

2. No part of the net receipts of the council shall inure to the benefit of or be distributable to its directors, its 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 in furtherance of the purposes of this act.

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

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

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

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

(5) GOVERNING BOARD.—

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

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

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

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

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

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

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

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

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

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

(7) POWERS AND DUTIES OF THE COUNCIL.—

(a) The council shall:

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

2. Maintain a permanent record of its business proceedings.

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

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

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

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

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

8. Maintain an office in this state.

(b) The council may:

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

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

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

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

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

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

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

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

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

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

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

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

(9) PAYMENTS TO ORGANIZATIONS.—

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

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

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

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

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

(10) COLLECTION OF MONEYS AT TIME OF MARKETING.—

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

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

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

(d) The assessment is due and payable upon the sale of cattle in this state. The assessment constitutes a personal debt of the producer who is so assessed or who otherwise owes the assessment. If a producer fails to remit any properly due assessment, the council may bring a civil action against that person in the circuit court of any county for the collection thereof, and may add a penalty in the amount of 10 percent of the assessment owed, the cost of enforcing the collection of the assessment, court costs, and reasonable attorney's fees. The action shall be tried and judgment rendered as in any other cause of action for debts due and payable. All assessments, penalties, and enforcement costs are due and payable to the council.

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

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

(11) REFUNDS.—

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

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

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

(d) If the council has reasonable doubt that a refund claim is valid, it may withhold payment and take such action as it considers necessary to deter-

mine the validity of the claim. Any dispute arising under this subsection shall be determined as specified in paragraph (10)(d).

(e) The council shall take action on refund requests within 30 calendar days following the date of receipt of the request.

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

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

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

Section 2. This act shall take effect upon becoming a law; however, an assessment on a head of cattle sold may not be imposed under this act, nor may a referendum relating to such assessment be conducted, before the effective date that the stay is vacated for the injunction issued by the United States District Court of the District of South Dakota, Northern Division in *Livestock Marketing Association et al. v. USDA and Nebraska Cattlemen, Inc. et al.*, 207 F. Supp.2d 992, of collection of the assessment authorized by the Beef Promotion and Research Act, 7 U.S.C. s. 2901, et seq., and the Beef Order promulgated thereunder, or before the assessment authorized by the Beef Promotion and Research Act, 7 U.S.C. s. 2901, et seq., and the Beef Order promulgated thereunder, is otherwise repealed, stayed, or enjoined by the United States Congress, by a court, or by other operation of law. Such date shall be determined by the Florida Commissioner of Agriculture.

Approved by the Governor May 17, 2004.

Filed in Office Secretary of State May 17, 2004.