

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1067 Pugilistic Exhibitions
SPONSOR(S): Regulatory Affairs Committee; Hutson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1686

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Business & Professional Regulation Subcommittee | 12 Y, 0 N | Collins | Luczynski |
| 2) Government Operations Appropriations Subcommittee | 11 Y, 0 N | Topp | Topp |
| 3) Regulatory Affairs Committee | 14 Y, 0 N, As CS | Collins | Hamon |

SUMMARY ANALYSIS

The bill amends various provisions of ch. 548, F.S., to make the pugilistic environment safer for both professionals and amateurs. Specifically, the bill:

- Provides, modifies, and eliminates definitions relating to the Florida Boxing Commission (Commission);
- Amends and clarifies the duties and responsibilities to be performed by the executive director of the Commission;
- Eliminates the requirement that the Commission record all of its scheduled proceedings, as the requirement is duplicative;
- Clarifies that the Commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state;
- Creates new exemptions from ch. 548, F.S., and clarifies existing exemptions;
- Eliminates the requirement that concessionaires be licensed, and eliminates references to responsibilities related to concessionaries;
- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, results in the immediate suspension of the participant's license;
- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public;"
- Requires the Commission to hold purse forfeiture hearings pursuant to the Administrative Procedure Act;
- Redefines how the Commission is to determine "gross receipts;"
- Requires that the promoter keep a copy of certain records for a period of 1 year;
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and that the Commission has the right to audit a promoter's books and records, upon reasonable notice;
- Directs the Commission to adopt rules to establish a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit;
- Directs the Commission to establish rules for imposing late fees in the event of taxes owed;
- Provides an emergency license suspension procedure; and
- Provides that all hearings held under ch. 548, F.S., be held in accordance with the Administrative Procedure Act.
- Appropriates \$111,000 from the General Revenue Fund to implement provisions of the bill.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Generally

The Florida State Boxing Commission (hereinafter "Commission"), within the Department of Business and Professional Regulation (hereinafter "Department"), regulates professional boxing, kickboxing, and mixed martial arts.¹ The mission of the Commission is to provide "customer-focused services related to the boxing industry in Florida in order to protect the health and welfare of boxers and to maintain the integrity of the sport."² Specifically, the Commission approves and establishes safety standards for the approval of amateur sanctioning organizations.³

The Commission is appointed by the Governor, and consists of five members.⁴ It collects revenue via licenses, live event permit fees, and taxation on gross receipts associated with live events in the state.⁵

Definitions

Current Situation

Section 548.002, F.S., sets forth various definitions that apply to ch. 548, F.S. Of these definitions, several are either ambiguous or are outdated in that they do not reflect current industry standards.

Effect of Proposed Change

The bill amends provisions of s. 548.002, F.S., to define or redefine the terms: "boxing," "face value," "full contact," "kickboxing," "mixed martial arts," "physician," "promoter," and "second" or "cornerman."

- "Boxing" is defined as the practice of fighting with the fists as a sport.
- "Face value" is defined as the dollar value of a ticket which is equal to the dollar amount that a customer is required to pay or, for complimentary tickets, would have been required to pay to purchase a ticket with equivalent seating priority in order to view the event. If the ticket specifies the amount of admission charges attributable to state or federal taxes, such taxes shall not be included in the face value.
- "Full contact" is defined as the use of blows and strikes during a match or bout that: 1) are intended to break the plane of the receiving participant's body, 2) are delivered to the head, face, neck, or body of the receiving participant, and 3) cause the receiving participant to move in response to the blow or strike.
- "Kickboxing" is defined as the practice of fighting with the fists, hands, feet, legs, or any combination thereof as a sport.
- "Mixed martial arts" is defined as full contact, unarmed combat involving the use of a combination of two or more techniques, including, but not limited to, grappling, kicking, and striking, from different disciplines of the martial arts, including, but not limited to, boxing, kickboxing, muay Thai, and Thai boxing.
- "Physician" is defined as a person licensed under chs. 458 or 459, who must maintain an unencumbered license in good standing.

¹ Department of Business and Professional Regulation Internal Audit Report A-1213-BPR-009, dated November 29, 2012, page 1, on file with subcommittee.

² Id.

³ Department of Business and Professional Regulation Agency Analysis, page 2, dated March 7, 2013, on file with subcommittee.

⁴ Section 548.003(1), Florida Statutes.

⁵ Department of Business and Professional Regulation Internal Audit Report A-1213-BPR-009, dated November 29, 2012, page 2, on file with subcommittee.

- “Promoter” is defined as a person or entity, which includes any officer, director, trustee, partner, or owner of a corporate promoter or any promoter partnership, who produces, arranges, or stages any match involving a professional.
- “Second” or “cornerman” is defined as a person who assists the match participant in preparation for the matches, between rounds, and maintains the corner of the participant during the match.

In addition, the bill amends provisions of s. 548.002, F.S., to eliminate the terms “concessionaire” and “foreign copromoter” from the chapter.

Providing definitions or redefining definitions helps to clarify legislative intent, and to conform the chapter to current industry standards.

Duties of the Executive Director

Current Situation

Currently, s. 548.004(1), F.S., stipulates the duties and responsibilities required to be performed by the executive director of the Commission. Specifically, the executive director must:

- Keep a record of all proceedings of the Commission;
- Preserve all books, papers, and documents pertaining to the business of the Commission;
- Prepare any notices and papers required;
- Appoint judges, referees, and other officials as delegated by the Commission and pursuant to ch. 548, F.S., and the rules of the Commission; and
- Perform any other duties as the Department or Commission directs.

Effect of Proposed Changes

The bill amends s. 548.004(1), F.S., to amend the duties and responsibilities to be performed by the executive director of the Commission, as set forth by the Commission. Pursuant to the provisions of the bill, the executive director must:

- Conduct the functions of the commission office;
- Appoint event and commission officials;
- Approve licenses, permits, and matches; and
- Perform other duties as the Department or Commission deems necessary.

This language is meant to revise and clearly set forth the authority by which the executive director may act while conducting the business of the Commission.

Electronic Recording of Commission Proceedings

Current Situation

Currently, s. 548.004(2), F.S., requires that the Commission electronically record all of its scheduled proceedings. This requirement is duplicative, as s. 455.203(7), F.S., requires that all proceedings conducted by the Department be electronically recorded.

Effect of Proposed Changes

The bill amends s. 548.004(2), F.S., to eliminate the requirement that the Commission record all of its scheduled proceedings. As stated above, the requirement is already codified in ch. 455, F.S.

Mixed Martial Arts Matches

Current Situation

Section 548.006(3), F.S., provides the Commission with exclusive jurisdiction over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

In 2009, ch. 548, F.S., was amended to include amateur mixed martial arts within the Commission's exclusive jurisdiction; however, the reference to "mixed martial arts" was inadvertently omitted from s. 548.006(3), F.S., which defines the scope of the Commission's jurisdiction.

Effect of Proposed Changes

The bill amends 548.006(3), F.S., to clarify that the Commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state. As with boxing and kickboxing, this jurisdiction provides the Commission with oversight over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for mixed martial arts matches held in Florida.

Nothing in the bill affects the Commission's exclusive jurisdiction over amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

Exemptions from Ch. 548, F.S.

Current Situation

Presently, s. 548.007, F.S., provides that ch. 548, F.S., does not apply to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;
- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.

Effect of Proposed Changes

The bill amends ss. 548.007(2) and 548.007(3), F.S., to clarify that ch. 548, F.S., does not apply to amateurs in those matches.

In addition, the bill creates new exemptions from ch. 548, F.S. Such new exemptions include:

- A match that does not allow full contact, if the match is limited to amateurs;
- A match conducted by a public post-secondary education institution or school, if the match is limited to amateurs who 1) are students enrolled in the institution or school, and 2) are members of a school-sponsored club or team;
- A match conducted by or between companies or detachments of the U.S. Armed Forces, if the match is limited to amateurs who are members of the U.S. Armed Forces;
- A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics; or
- A professional or amateur "martial arts activity."

The bill defines “martial arts activity,” as it applies in s. 548.007(7), F.S., as one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination, including, but not limited to, karate, aikido, judo, and kung fu. The term does not include “mixed martial arts.”

The bill eliminates the exemption found in s. 548.007(1), F.S., which relates to a bona fide non-profit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing, if the match held, in conjunction with the instruction, is limited to amateur participants who are students of the school or instructional program. Instead, that exemption is replaced by s. 548.007(7), F.S., which encompasses a larger group of businesses and individuals.

Licensure of Concessionaires

Current Situation

Presently, s. 548.017, F.S., provides for the licensure of many individuals who are directly or indirectly acting in specific capacities in connection with any match involving a participant. Specifically, the chapter requires that the following be licensed:

- Participants;
- Managers;
- Trainers;
- Seconds;
- Timekeepers;
- Referees;
- Judges;
- Announcers;
- Physicians;
- Matchmakers;
- Concessionaires; and
- Booking agents.

Effect of Proposed Changes

The bill amends s. 548.017(1), F.S., to eliminate the requirement that concessionaires be licensed by the Department. As such, a concessionaire may directly or indirectly act in such capacity, in connection with any match involving a participant, without the need to be licensed by the Department.

Revocation & Suspension Procedures

Current Situation

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant’s license. There is no process for the aggrieved licensee to petition the Commission for a hearing to review the license revocation.

Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law...” Specifically, substantive due process protects a person’s property from unfair governmental interference, unwarranted encroachment or taking. The test to be applied in determining whether a statute violates due process is whether the statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare, and is not discriminatory, arbitrary or oppressive.⁶

⁶ Chicago Title Ins. Co. v. Butler, 770 So. 2d 1210, 1214-15 (Fla. 2000).

As stated above, this process of license revocation, which is generally considered a form of property, does not require a review or redress process. As a result, a court may find that the licensee is being deprived of his or her property without due process of law- a hearing prior to the revocation. Moreover, it is unclear whether a court would find that the revocation is rationally related to protecting the public's health, safety, or general welfare. As such, the revocation, without a prior hearing, may be a violation of the licensee's constitutional right to due process.

Effect of Proposed Changes

The bill amends 548.046(3)(c), F.S., to provide that the failure or refusal to provide a urine sample, immediately upon request, results in the immediate suspension of the participant's license, rather than a revocation of that license. Moreover, the failure or refusal constitutes grounds for additional disciplinary action. Finally, the failure or refusal constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public."

Moreover, the bill creates s. 548.046(3)(d), F.S., to provide that a licensee who tests positive for any of the prohibited substances designated by the Commission⁷ has committed an "immediate serious danger to the health, safety, and welfare of the participants and the generally public." As such, the positive test results in the immediate suspension of the participant's license, and constitutes grounds for additional disciplinary action.

The bill further amends s. 548.07, F.S., to set forth the procedure to be followed in the event of an immediate license suspension. Specifically, the Commission, any commissioner or his or her designee, or the executive director or his or her designee may issue an emergency suspension of license order to any person who is licensed under ch. 548, F.S., and who poses an "immediate serious danger to the health, safety, and welfare of the participants and the general public." The fact that the licensee poses an immediate, serious danger likely necessitates the suspension prior to a hearing, so long as a hearing is promptly provided after the suspension.

The bill provides that the Department's Office of General Counsel is required to review the grounds for each emergency suspension order issued, and must file an administrative complaint against the licensee within twenty-one days after the issuance of the emergency suspension order. Service of the administrative complaint must be pursuant to the procedures set forth in s. 455.275, F.S., which is the standard process used by the Department when processing disciplinary complaints.⁸ Following service, the disciplinary process must proceed in accordance with the Administrative Procedure Act.⁹

With this procedure, a court is more likely to find that the emergency suspension procedure is not violative of the licensees' due process right, as the emergency suspension is seemingly rationally related to safeguarding public health, safety, or general welfare, as the use of drugs in one of more of the participants is likely a danger to the health and/or safety of either the drug-using participant or his or her opponent. Moreover, within twenty-one days after the suspension, the licensee is provided a hearing process in order to petition the Commission.

Withholding of Purses

Current Situation

Section 548.054, F.S., provides the procedure to be followed in the event that a prize purse is withheld. Specifically, a member of the Commission, a Commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant if it appears that:

⁷ See, generally: 61K1-1.0043, Florida Administrative Code.

⁸ Department of Business and Professional Regulation Agency Analysis, page 3, dated March 7, 2013, on file with subcommittee.

⁹ See, generally: ch. 120, Florida Statutes

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated Ch. 548, F.S.¹⁰

In the event that a purse is withheld, the purse must be delivered to the Commission by the promoter.¹¹ Within ten days after the match, the person from whom the sum was withheld may apply to the Commission for a hearing, in writing.¹² Upon receipt of the application, the Commission must set the date for a hearing; within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the Commission is required to meet and determine the disposition to be made off the withheld purse.¹³

If the Commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.¹⁴ Conversely, if the Commission does not find the charges sufficient, it must distribute the withheld funds immediately.¹⁵

The Department has indicated that this current language is vague and does not provide appropriate procedure or rulemaking authority to create a procedure that provides appropriate due process rights.¹⁶

Effect of Proposed Changes

The bill amends s. 548.054, F.S., provide that within ten days after the match, a person who has had a purse withheld is entitled to submit a petition for a hearing to the Commission.

Additionally, the bill requires the Commission to hold the hearing pursuant to ss. 120.569 and 120.57, F.S., of the Administrative Procedure Act. This clarifies and ensures that the purse forfeiture hearing is held pursuant to the licensee's constitutionally-protected right of due process.

Calculation of "Gross Receipts"

Current Situation

Presently, within seventy-two hours after a match, the promoter of that match must file a written report with the Commission.¹⁷ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.¹⁸

The written report shall be accompanied by a tax payment in the amount of 5 percent of the total gross receipts, exclusive of any federal taxes; however, the tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.¹⁹

For the purposes of ch. 548, F.S., "gross receipts" is defined as:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

¹⁰ Section 548.054(1), Florida Statutes.

¹¹ Section 548.054(2), Florida Statutes.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Department of Business and Professional Regulation Agency Analysis, page 2, dated March 7, 2013, on file with subcommittee.

¹⁷ Section 548.06(1), Florida Statutes.

¹⁸ Id.

¹⁹ Section 548.06(5), F.S.

- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

In 2012 the legislature eliminated s. 548.061, F.S., which required each person or club that holds or shows any boxing match on a closed circuit telecast that is viewed within the state to file a written report with the Commission.²⁰ The provision applied to “pay-per-view”-type events, regardless of whether the match originated inside or outside of the state. Further, the eliminated section provided that, within 72 hours of the telecast, the person or club pay the Commission a tax of five percent of its total gross receipts from the sale of the tickets, similar to the promoter’s tax liability for gross receipts.

Effect of Proposed Changes

The bill amends s. 548.06(1)(a), F.S., to provide that gross receipts includes the gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. In effect, this provision reinstates a form of the “pay-per-view” tax for in-state matches, which was eliminated in 2012.

In addition, the bill eliminates s. 548.06(1)(b), F.S., which provides that receipts from concessions are to be included in the determination of gross receipts. As such, receipts from concessions are not included when determining the gross receipts of a match. Moreover, the bill eliminates s. 548.06(3), F.S., which requires concessionaires to provide a written report documenting the amount of gross receipts and other information within 72 hours of a match.

The bill also amends s. 548.06(1)(c), F.S., to provide a deduction from gross receipts for the face value of complimentary tickets issued, provided, or given, for up to 4 percent of the seating capacity of the premises where the match is held. There is no limit to the amount of complimentary tickets provided.

To the extent that the complimentary tickets issued, provided, or given exceed 4 percent of the seating capacity, the 4 percent deduction is to be calculated based on an equal distribution of the price categories for which the complimentary tickets were issued, provided, or given. Complimentary tickets issued, provided, or given above 4 percent of the seating capacity will be included in the calculation of gross receipts.

Promoter Records

Current Situation

As discussed above, within seventy-two hours after a match, the promoter of that match must file a written report with the Commission, which includes information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.²¹

Nothing in ch. 548, F.S., requires the promoter to retain any records in relation to the filing of that written report.

Effect of Proposed Changes

The bill creates s. 548.06(7), F.S., to require that the promoter keep a copy of certain records for a period of one year. Such records include:

²⁰ Chapter 2012-72, L.O.F.

²¹ Section 548.06(1), Florida Statutes.

- Records necessary to justify and support each report submitted to the Commission;
- A copy of each report filed with the Commission; and
- A copy of the independently-prepared ticket manifest.

The promoter must provide a copy of these records to the Commission, upon request.

Moreover, the bill creates s. 548.06(8), F.S., which provides that compliance with the above requirements, as well as all requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit. The bill gives the Commission the right to audit the promoter's books and records relating to the promoter's operations under ch. 548, F.S., provided that the Commission provides reasonable notice to the promoter of the inspection.

Finally, the bill creates s. 548.06(9), F.S., to direct the Commission to adopt rules establishing a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit. The Commission must also adopt rules imposing late fees in the event of taxes owed.

These changes are meant to help increase the level of oversight of the Commission over the financial interests of the promoters.

Commission Hearings

Current Situation

Presently, s. 548.073, F.S., provides that any member of the Commission may conduct a hearing. Additionally, before any adjudication is rendered, a majority of the Commission must examine the record and approve the adjudication and order. The Commission is not required to follow the Administrative Procedure Act in this regard.

Because the Commission is not required to follow the Administrative Procedure Act in all hearings, there is a potential for the licensee's right of due process to be violated.

Effect of Proposed Change

The bill amends s. 548.073, F.S., to provide that all hearings held under ch. 548, F.S., must be held in accordance with ch. 120, F.S., the Administrative Procedure Act. This helps to ensure that all hearings held by the Commission are conducted in an open manner, providing due process to licensees.

B. SECTION DIRECTORY:

Section 1: amends s. 548.002, F.S., to provide, modify, and eliminate definitions relating to the Florida State Boxing Commission.

Section 2: amends s. 548.004(1), F.S., to amend and clarify the duties and responsibilities to be performed by the executive director of the Commission; and amends s. 548.004(2), F.S., to eliminate the requirement that the Commission record all of its scheduled proceedings, as the requirement is duplicative.

Section 3: amends s. 548.006(3), F.S., to clarify that the Commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state.

Section 4: amends s. 548.007, F.S., to create new exemptions from ch. 548, F.S., and to clarify existing exemptions.

Section 5: repeals s. 548.015, F.S., to eliminate the requirement that a concessionaire file a surety bond or other form of security in certain circumstances.

Section 6: amends s. 548.017, F.S., to eliminate the requirement that concessionaires be licensed by the Department.

Section 7: amends s. 548.046(3)(c), F.S., and creates s. 548.046(3)(d), F.S., to provide that the failure or refusal to provide a urine sample, or the positive result of a urine test, results in the immediate suspension of the participant's license, and to provide that a violation constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public."

Section 8: amends s. 548.054, F.S., to change terminology from "application" to "petition;" and to require the Commission to hold purse forfeiture hearings pursuant to ss. 120.569 and 120.57, F.S., of the Administrative Procedure Act.

Section 9: amends s. 548.06(1), F.S., to redefine the calculation of gross receipts; eliminates s. 548.06(3), F.S., which requires that concessionaires provide reports to the Commission; creates s. 548.06(7), F.S., to require that the promoter keep a copy of certain records for a period of one year; creates s. 548.06(8), F.S., to provide that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and to provide that the Commission has the right to audit a promoter's books and records; and creates s. 548.06(9), F.S., to direct the Commission to adopt rules establishing a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit, and to establish rules for imposing late fees in the event of taxes owed.

Section 10: amends s. 548.07, F.S., to provide an emergency license suspension procedure.

Section 11: amends s. 548.073, F.S., to provide that all hearings held under ch. 548, F.S., must be held in accordance with the Administrative Procedure Act.

Section 12: provides for \$111,000 in recurring funds from the General Revenue Fund to be appropriated to the Department for implementation of the act by the Florida State Boxing Commission.

Section 13: provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Late Fees

The bill directs the Commission to adopt a rule imposing a late fee on taxes owed the Commission. Any revenue collections based on imposing a late fee on post event taxes are expected to be insignificant.

The Commission estimates that had a late fee been imposed in FY 2011-12, the fee revenues collected would have been approximately \$6,915. The fee revenue estimate is based on total post event taxes collected of \$115,258, a 10% penalty imposed, with 60% of estimated tax reports being filed late.²² The Commission indicates with the recent implementation of new accountability measures the amount of post event tax collections, which are filed late, will likely decline in future years, thereby reducing any late fee revenues from the estimated FY 2011-12 collection amount.

²² Department of Business and Professional Regulation, estimated post event tax penalties for late fees, correspondence with staff of the Government Operations Appropriations Subcommittee, March 14, 2013, on file with subcommittee.

Pay-Per-View Tax

The bill provides that gross receipts includes the gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. As discussed above, the bill effectively reinstates a form of the “pay-per-view tax” for in-state matches, which was eliminated in 2012.

The Commission has indicated that pay-per-view matches occurring within the state of Florida generated \$1,484 in FY 2009-10 and \$2,138 in FY 2010-11.²³ The expected fiscal impact of this tax reinstatement is positive, but indeterminate at this time.

Concessions and Complimentary Tickets

The bill eliminates receipts from concessions and receipts for complimentary tickets for up to 4 percent of the seating capacity of the premises where the match is held, from the calculation of gross receipts for the promoters’ tax liability purposes. The Department has indicated that the revenue generated from the concessions and complimentary tickets is projected to represent \$110,609.80 in the upcoming fiscal year, FY 2013-14.²⁴ As such, without these provisions included in the calculation of gross receipts, the Department is anticipating a loss in revenue of \$110,609.80 for the upcoming fiscal year. However, the bill appropriates \$111,000 in recurring funds from the General Revenue Fund to offset this expected revenue loss and to ensure the Commission’s budget is fully funded in the upcoming fiscal year.

This anticipated loss of revenue is based on Department staff projections, and has not been addressed by the Revenue Estimating Conference.

2. Expenditures:

The bill is not anticipated to have a fiscal impact on state expenditures.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

²³ Department of Business and Professional Regulation, pay-per-view match revenue, correspondence with staff of the Regulatory Affairs Committee, April 2, 2013, on file with subcommittee.

²⁴ Department of Business and Professional Regulation, projected annualized concession and complimentary tickets revenue, correspondence with staff of the Regulatory Affairs Committee, April 2, 2013, on file with subcommittee.

²⁵ Department of Business and Professional Regulation Agency Analysis, page 3, dated March 7, 2013, on file with subcommittee.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales tax shared with counties or municipalities.

2. Other:

As discussed above, Article I, Section 9 of the Florida Constitution protects a person's property from unfair governmental interference, unwarranted encroachment, or taking. Substantive due process protects a person's property from unfair governmental interference, unwarranted encroachment or taking- the test to be applied in determining whether a statute violates due process is whether the statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare, and is not discriminatory, arbitrary or oppressive.

Section 548.046(3)(c), F.S., currently provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participants license. This process of license revocation, which is generally considered a form of property, does not require a review or redress process- there is no process for the aggrieved licensee to petition the Commission for a hearing to review the license revocation. As a result, a court may find that the licensee is being deprived of his or her property without due process of law- a hearing prior to the revocation. Moreover, it is unclear whether a court would find that the revocation is rationally related to protecting the public's health, safety, or general welfare. As such, the revocation, without a prior hearing, may be a violation of the licensee's constitutional right to due process.

The bill amends s. 548.046(3)(c), F.S., to provide that the failure or refusal to provide a urine sample, or the failure of a drug test, results in the immediate suspension of the participant's license and constitutes an "immediate serious danger to the health, safety, and welfare of the participants and the public." Moreover, the fact that the licensee poses an immediate, serious danger likely necessitates the suspension prior to a hearing, so long as a hearing is promptly provided after the suspension.

The bill further amends s. 548.07, F.S., to set forth the procedure to be followed in the event of an immediate license suspension. Specifically, an emergency suspension order may be issued to any person who is licensed under ch. 548, F.S., and who poses an "immediate serious danger to the health, safety, and welfare of the participants and the general public." The suspension must be reviewed and an administrative complaint must be filed by the Department's Office of General Counsel within twenty-one days of the suspension. Following service of the administrative complaint, pursuant to s. 455.275, F.S., the disciplinary process must proceed in accordance with the Administrative Procedure Act.

Based on these new procedures, a court is more likely to find that the emergency suspension procedure is not violative of the licensees' due process right, as the emergency suspension may be rationally related to safeguarding public health, safety, or general welfare, as the use of drugs in one of more of the participants is likely a danger to the health of either the drug-using participant or his or her opponent. Moreover, within twenty-one days after the suspension, the licensee is provided a hearing process in order to petition the Commission.

B. RULE-MAKING AUTHORITY:

The bill creates s. 548.06(9), F.S., which directs the Commission to adopt rules establishing a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit.

Additionally, the Commission must also adopt rules imposing late fees in the event of taxes owed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Inspector General Audit

The Department's Office of Inspector General conducted an audit to evaluate the activities and controls of the Florida State Boxing Commission. On November 29, 2012, the Office of Inspector General issued its audit findings.²⁶ Specifically, the audit found:

- Commission revenue is under-reported by promoters and not appropriately reconciled by Commission staff, contributing to the Commission's current budget deficit;
- Inadequate controls exist regarding the licensure process of officials, resulting in unlicensed activity;
- Non-compliance with state regulations regarding the protection of personal and confidential information, putting the Department at risk; and
- Procedures are not properly designed or effectively implemented, yielding improper oversight of Commission activities.

Additionally, the audit report made several recommendations to the Department. Such recommendations include that the Commission ensure that:

- All revenue reported and received from live-event permit fees and post-event tax reports is appropriately collected, recorded and reconciled;
- All officials are properly licensed prior to working at Commission-sanctioned events;
- Risks presented by inadequately secured personal and confidential information are identified and remediation steps are taken; and
- Policies, procedures, and oversight practices are amended so that the Commission objectives are achieved and oversight of Commission activities is accomplished.

The bill addresses the financial and promoter oversight issues of the Florida State Boxing Commission, as highlighted by the audit.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 9, 2013, the Regulatory Affairs Committee considered and adopted on strike-all amendment, and reported the bill favorably as a committee substitute. Generally, the strike-all amendment:

- Eliminates a regulatory tax on concessions and makes conforming deletions and revisions to definitions, licensing, and reporting provisions;
- Exempts complimentary tickets up to 4 percent of the seating capacity from the regulatory tax on ticket sales;
- Revises and deletes certain definitions to reflect current practices;
- Revises proposed promoter reporting requirements and revises proposed records retention from 7 years to 1 year; and
- Provides \$111,000 in recurring funds to be appropriated from the General Revenue Fund to the Department for the implementation of the act by the Florida State Boxing Commission.

The analysis is drafted to the committee substitute.

²⁶ See, generally: Department of Business and Professional Regulation Internal Audit Report A-1213-BPR-009, dated November 29, 2012, on file with subcommittee.