HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 775	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Regulatory Affairs Committee; Government Operations Subcommittee; Business & Professional Regulation Subcommittee; Hutson	105 **Y's**	12 **N's**
COMPANION BILLS:	CS/CS/SB 808; CS/CS/HB 773	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 775 passed the house on April 24, 2014, and subsequently passed the Senate on May 1, 2014.

The bill creates a public records exemption for proprietary confidential business information submitted by promoters in a post-match report to the Florida State Boxing Commission (Commission) or obtained by audit of the Commission. "Proprietary confidential business information" means information that is owned or controlled by the promoter; that is intended by the promoter to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public; and that concerns any of the following:

- The number of ticket sales for a match.
- The amount of gross receipts after a match.
- Trade secrets.
- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors.

The bill authorizes release of the proprietary confidential business information to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill was approved by the Governor on June 13, 2014, ch. 2014-129, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, section 24, of the Florida Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1)(a), F.S., provides that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such

[1] Sections 1390, 1391 F.S. (Rev. 1892).
[2] FLA. CONST. art. I, s. 24.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.
[5] Section 119.011(12), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[8] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9]

Only the Legislature is authorized to create exemptions to open government requirements.[10] Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[11] A bill enacting an exemption[12] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[14] provides for the systematic review, through a five-year cycle ending October 2nd of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[15] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.[17] The Legislature is only limited in its review process by constitutional requirements.

The Florida State Boxing Commission Generally

[8] 85-62 Fla. Op. Att'y Gen. (1985).
[9] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).
[10] *See supra* note 2.
[11] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).
[12] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[13] *See supra* note 2.
[14] Section 119.15, F.S.
[15] Section 119.15(6)(b), F.S.
[16] Id.
[17] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

The function of the Florida State Boxing Commission (Commission) is to license and regulate professional boxing, kickboxing, and mixed martial arts. The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.[18] The Commission regulates professional boxing, kickboxing, and mixed martial arts matches by designating employees to attend the matches, appointing match officials, and ensuring the matches are held in a safe and fair manner.

The Commission is appointed by the Governor, and consists of five members.[19] It collects revenue via license issuance, live event permit fees, and taxation on gross receipts associated with live events in the state.[20]

Licensure of Promoters

Section 548.002(20), F.S., defines promoter as any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional. Section 548.012, F.S., provides for the licensure of promoters.

Applicants for promoter licensure are required to submit a completed application along with a non-refundable application fee of $250[21] and must deposit with the Commission a surety bond, cash, or certified check in the amount of $15,000 prior to being issued a promoter license.[22]

Promoters are responsible for producing the events at which matches are held, and are responsible for ensuring the following requirements are met:

- Insurance is obtained for the event in the following amounts:
  - Minimum of $20,000 per participant for medical, surgical and hospital care for injuries sustained while engaged in a match.
  - Minimum of $20,000 per participant for life insurance covering death caused by injuries received while engaged in a bout.
  - Any deductible associated with these policies is entirely the responsibility of the promoter of record.[23]
- Live Event Permit is issued for the event from the Commission.[24]
- Location of the weigh-in and pre-match physical is scheduled, and the participants are notified of the location. Additionally, the promoter is responsible for ensuring the weigh-in location is appropriate for the weigh-in and pre-match physicals to be completed as well as ensure the required documentation is present from all the participants.[25]
- The correct number of all access credentials is provided for the Commission employees that will attend the event.
- The venue has the appropriate ring and apron, required equipment, and medical personnel and equipment present for the match.[26]
- Payment is made to the referees, judges, and ringside physicians assigned by the Commission for the event.[27]

[18] Florida State Boxing Commission Annual Report, Fiscal Year 2011-2012, p. 5, available at http://www.myfloridalicense.com/dbpr/os/annual-reports.html (last viewed March 4, 2014).
[19] Section 548.003(1), F.S.
[20] *See supra* note 2.
[21] Rule 61K1-1.003, F.A.C.
[22] Rule 61K1-1.005, F.A.C.
[23] Rule 61K1-1.0035, F.A.C.
[24] *See supra* note 21.
[25] Rule 61K1-1.004, F.A.C.
[26] Rule 61K1-1.0031, F.A.C.
[27] *See supra* note 22.

- Reporting requirements as set forth in s. 548.06, F.S., are complied with regarding gross receipts and the applicable taxes related to gross receipts are paid.

Promoter Records Requirements

Section 548.06, F.S., requires that, within 72 hours after a match, the promoter of a match file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.

The written report shall be accompanied by a tax payment in the amount of five 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. 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.
- 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.
- 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.

Chapter 548, F.S., does not require the promoter to retain records in relation to the filing of the written report. Currently, ch. 548, F.S., does not provide an exemption from the public records for any documents or information provided in the reports submitted to the commission pursuant to s. 548.06, F.S.

CS/CS/HB 773 (2014)

CS/CS/HB 773 amends s. 548.06, F.S., to include the following in gross receipts:

- 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.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house and not authorized by the Commission.
- The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promoter of an event.

CS/CS/HB 773 further amends s. 548.06, F.S., to permit promoters to issue, provide, or give complimentary tickets for up to five percent of the seats in the house without including the tickets in the gross receipts and without paying corresponding taxes on them. The promoter may request the Commission's authorization to issue, provide, or give more than five percent of the seats in the house as complimentary tickets if the tickets are provided to specific entities or individuals.

Effect of the Bill

The bill creates a public records exemption under newly created s. 548.062, F.S. The public records exemption is for certain documentation relating to reports submitted or obtained by audit of the promoter's records pursuant to s. 548.06, F.S.

Specifically, proprietary confidential business information provided with the written report required to be filed with the Commission or through an audit of the promoter's books and records pursuant to s.

548.06, F.S., is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution.

"Proprietary confidential business information" means information that is owned or controlled by the promoter; that is intended by the promoter to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public; and that concerns any of the following:

- The number of ticket sales for a match.
- The amount of gross receipts after a match.
- Trade secrets as defined in s. 688.022, F.S.
- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors.

The bill provides that the proprietary confidential business information may be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution. It provides that:

> The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The exclusion of certain business-related documents from public records will permit promoters to maintain privacy and protect their business from industry competitors.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may have a minimal fiscal impact on the Commission. Staff responsible for complying with public record requests could require training related to creation of the public record exemption, and the Commission may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the Commission.