

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 Rules

BILL: CS/CS/SB 578

INTRODUCER: Governmental Oversight and Accountability Committee, Regulated Industries Committee and Senator Hutson

SUBJECT: Public Records/Florida State Boxing Commission

DATE: January 26, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | <u>Fav/CS</u> |
| 2. | <u>Kim</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 3. | <u>Oxamendi</u> | <u>Phelps</u> | <u>RC</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 578 amends the current public records exemption in s. 548.062(2), F.S., related to propriety confidential business information maintained by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation. The bill provides that propriety confidential business information provided by a promoter to the commission or obtained through an audit is confidential and exempt from public inspection and disclosure. The bill expands the public records exemption to include all proprietary confidential business information provided by the promoter to the commission by deleting the provision that the exemption applies only to the promoter's written report required to be filed with the commission after a match.

This bill requires a two-thirds vote of each chamber to pass. The bill will go into effect on July 1, 2016.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.

In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

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 Florida Constitution, the Public Records Law,¹ which predates the constitutional provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency² records are available for public inspection. The term “public records” is defined in s. 119.011(12), F.S., to include:

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 the official business by any agency.

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.³

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 information may not be released by an agency to anyone other

¹Chapter 119, F.S.

²The term “agency” is defined in s. 119.011(2), F.S., as “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.”

³ *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

than to the persons or entities designated in the statute.⁴ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁵

Only the Legislature is authorized to create exemptions to open government requirements.⁶ 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.⁷ A bill enacting an exemption⁸ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (the act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature, reenacts the exemption prior to that time.¹¹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹² An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹³

The act also requires specified questions to be considered during the review process.¹⁴

⁴ Attorney General Opinion 85-62.

⁵ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).

⁶ FLA. CONST. art. I, s. 24(c).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records pursuant to s. 119.15(4)(b), F.S. The requirements of the act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ *Id.*

¹⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

If the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁵ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match pursuant to ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.¹⁶ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.¹⁷ This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Public Records Exemption – Proprietary Confidential Business Information

Section 548.062, F.S., provides that the proprietary confidential business information provided in the written report after a match or obtained by the commission in an audit of the promoter's books and records, is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Section 548.062, F.S., defines "proprietary confidential business information" as information that is owned and controlled by the promoter, which a promoter intends to be and treats as private, and the disclosure of the information would cause harm to the promoter or its business operations. If a promoter discloses information pursuant to a statutory provision or an order of a court or administrative body, the disclosed information is still considered proprietary confidential business information. In addition, a private agreement providing that information will not be released to the public will give it proprietary confidential business information status.

Proprietary confidential business information includes any of the following information:

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- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 - Is the record or meeting protected by another exemption?
 - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁵ FLA. CONTS. art. I, s. 24(c). An existing exemption may be treated as a new exemption (and subject to a new OGSR) if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

¹⁶ Section 548.006(3), F.S.

¹⁷ Section 548.002(2), F.S.

- (a) The number of ticket sales for a match.
- (b) The amount of gross receipts after a match.
- (c) Trade secrets as defined by s. 688.002, F.S.
- (d) Business plans.
- (e) Internal auditing controls and reports of internal auditors.
- (f) External auditors' reports.

Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

The public records exemption in s. 548.062, F.S., is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 548.062, F.S., was enacted in s. 1, ch. 2014-129, L.O.F., which expressed the required Statement of Public Necessity for the public records exemption.

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

Bill Proponent

Ultimate Fighting Championship (UFC),¹⁸ a promotion company for professional mixed martial arts, produces a reality television series called "The Ultimate Fighter" in which participants compete in a series of matches until the ultimate champion is determined. Although this program has been produced in Las Vegas, Nevada for its first 20 seasons (two seasons per year),¹⁹ in 2015 the 21st season of the series was filmed in Coconut Creek and Boca Raton, Florida. As professional mixed martial arts matches, these events are attended by representatives of the commission and a public record of the event is maintained by the commission. This record includes the identity of the match participants and results of the match. The matches for the program were filmed in January and February 2015, but the first match for the program did not air until April 2015, and subsequent matches were aired over the following weeks. According to a representative for UFC, the public records exemption for proprietary confidential business information is needed because of the delay between the actual matches and the airing of the matches. The UFC is concerned that a public records request for the information may harm promoter's financial interests by prematurely revealing the results of the matches.

¹⁸ See Ultimate Fighting Championship at: <http://www.ufc.com/discover/ufc> (last visited November 10, 2015).

¹⁹ See https://en.wikipedia.org/wiki/The_Ultimate_Fighter (last visited November 10, 2015).

Currently, there are no reality series being filmed in Florida by the UFC or any other organization.²⁰

III. Effect of Proposed Changes:

The bill amends s. 548.062(2), F.S., to provide that any propriety confidential business information provided by a promoter to the commission or obtained through an audit is confidential and exempt from public inspection and disclosure. The bill expands the public records exemption to include all proprietary confidential business information provided by the promoter to the commission and deletes the provision that the exemption applies only to the promoter's written report required to be filed with the commission after a match. The exemption is subject to Open Government Sunset Review Act and stands repealed on October 2, 2021.

Section 2 of the bill provides that it is a public necessity to protect proprietary confidential business information from public disclosure to protect the interests of the promoter. The public necessity statement provides that without this exemption, a promoter's competitors could gain insights into the promoter's financial status and business plans and put the promoter at a competitive disadvantage. In addition, this section of the bill provides that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from the disclosure of such information. Finally, the public necessity statement explains that all proprietary business information, regardless of the form of the information, should be protected so that the purpose of the exemption will not be undermined.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement - Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Because this bill expands a public records exemption, the bill will require a two-thirds vote of each house of the Legislature for passage.

Statement of Public Necessity - The bill broadens the exemption to include any proprietary business information provided by a promoter to the commission, regardless of

²⁰ Email from Paul Waters, Executive Director of Florida State Boxing Commission. On file with the Committee on Governmental Oversight and Accountability.

whether it is in a written report, or when it is provided to the commission. The public necessity statement supports the expanded exemption.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Since more records will be exempt, records custodians will have to make more redactions. The costs of more redactions will have to be absorbed within existing resources.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 548.062 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/CS by Governmental Oversight and Accountability on January 19, 2016:

The CS/CS revises the public necessity statement to clarify that the information is being provided by the promoter to the State Boxing Commission and expressly provides that extending the exemption to proprietary confidential business information, even if it is not in a report, ensures that the purpose of the exemption is not undermined. The CS/CS provides more comprehensive justification for the exemption.

CS by Regulated Industries on November 18, 2015:

The committee substitute (CS) revises the statement of public necessity in section 2 of the bill to delete the reference to proprietary confidential business information provided to the commission by a promoter after the match or obtained by the commission through an audit of the promoter's books and records. Instead the CS amends to the statement of public necessity to reference any proprietary confidential information provided by the promoter to the commission.

B. Amendments:

None.