

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7003 PCB GOS 21-02 OGSR/State Boxing Commission

SPONSOR(S): Government Operations Subcommittee; Rizo

TIED BILLS: **IDEN./SIM. BILLS:** SB 7026

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7003 passed the House on April 15, 2021, and subsequently passed the Senate on April 21, 2021.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida State Boxing Commission (Commission) licenses and regulates professional boxing, kickboxing, and mixed martial arts and approves amateur boxing, kickboxing, and mixed martial arts sanctioning organizations. Licensed promoters of professional matches are required to submit certain reports to the Commission after a match and are subject to audits of their books and records by the Commission.

Current law provides a public record exemption for proprietary confidential business information provided by a promoter to the Commission or obtained by the Commission during an audit of the promoter's books and records. This information is confidential and exempt from public record requirements and may only be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2021, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 4, 2021, ch. 2021-74, L.O.F., and will become effective on October 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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

The Florida State Boxing Commission (Commission) licenses and regulates professional boxing, kickboxing, and mixed martial arts and approves amateur boxing, kickboxing, and mixed martial arts sanctioning organizations.⁵ The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules.⁶ It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.⁷

The Commission is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability and consists of five members appointed by the Governor.⁸ It collects revenue via license fees, event permit fees, fines, and taxation on gross receipts associated with live events.⁹

Licensure of Promoters

Section 548.002(20), F.S., defines "promoter" as any person or entity, including an officer, director, trustee, partner, or owner of a corporate promoter or promoter partnership, who produces, arranges, or stages a match involving a professional. Section 548.012, F.S., prohibits a promoter from, directly or

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019, p. 5, available at http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited December 11, 2020).

⁶ *Id.*

⁷ *Id.*

⁸ Section 548.003(1), F.S.

⁹ Florida State Boxing Commission, *supra*, p. 6 at FN 5.

indirectly, promoting a match involving a professional, unless the promotor has been issued a license by the Commission.

Applicants for promoter licensure are required to submit a completed application¹⁰ along with a non-refundable license fee not to exceed \$500,¹¹ 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.¹²

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 match.¹³
- A permit is issued for the event from the Commission.¹⁴
- Location of the weigh-in is scheduled and the participants are notified of the location.¹⁵
- Payment is made to the referees, judges, and physicians assigned by the Commission for the event.¹⁶

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 must 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. 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 pay-per-view rights of any match occurring within the state of Florida.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above 5 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.¹⁷

Promoters are permitted to issue, provide, or give complimentary tickets for up to 5 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 5 percent of the seats in the house as complimentary tickets if the tickets are provided to specific entities or individuals.¹⁸

Public Record Exemption under Review

In 2016, the Legislature expanded a public record exemption for certain proprietary confidential business information required to be filed with the Commission after a match or obtained during an audit of the promoter's books and records. Specifically, the exemption was expanded to cover proprietary

¹⁰ Section 548.021(1), F.S.

¹¹ Section 548.025(1), F.S.

¹² Rule 61K1-3.002(1)(e)1., F.A.C., and s. 548.014(1)(a), F.S.

¹³ Section 548.049, F.S.

¹⁴ Section 548.032, F.S.

¹⁵ Rule 61K1-3.002(2)(l), F.A.C.

¹⁶ Rule 61K1-3.002(2)(n) and (o), F.A.C.

¹⁷ Section 548.06(1), F.S.

¹⁸ Section 548.06(2) and (3), F.S.

confidential business information provided by a promoter to the Commission.¹⁹ “Proprietary confidential business information” means information that:

- Is owned or controlled by the promoter;
- The promoter intends to be and treats as private;
- If disclosed, would cause harm to the promoter or its business operations;
- Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public; and
- Concerns any of the following:
 - The number of ticket sales for a match;
 - The amount of gross receipts after a match;
 - A trade secret;
 - Business plans;
 - Internal auditing controls and reports of internal auditors; or
 - Reports of external auditors.²⁰

The information is confidential and exempt²¹ from public record requirements and may only be disclosed to another governmental entity in the performance of its duties and responsibilities.

The 2016 public necessity statement²² for the exemption provides that:

The Legislature finds that the disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into the promoter's 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 the disclosure of such information. Therefore, extending the public records exemption to proprietary confidential business information provided by a promoter to the commission, no matter if the information is provided in a report or otherwise, ensures that the public records exemption is maintained and not undermined.²³

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2021, unless reenacted by the Legislature.²⁴

During the 2020 interim, House and Senate staff conducted interviews and sent the Commission a questionnaire as part of its review under the Open Government Sunset Review Act.²⁵ According to the responses, there are currently 49 promoters in Florida: 26 for boxing, three for kickboxing, and 20 for

¹⁹ Chapter 2016-21, L.O.F.; codified at s. 548.062(2), F.S.

²⁰ Section 548.062(1), F.S.

²¹ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, Aug. 1, 1985).

²² Article I, s. 24(c), FLA. CONST., requires each public record exemption “state with specificity the public necessity justifying the exemption.”

²³ Section 2, ch. 2016-21, L.O.F.

²⁴ Section 548.062(3), F.S.

²⁵ Open Government Sunset Review Questionnaire, Florida Boxing Commission Response, September 22, 2020, on file with the House Government Operations Subcommittee.

mixed martial arts.²⁶ The questionnaire response noted that it is common for reporters and competitors to request the confidential and exempt information, and the Commission has stated that the exemption protects the financial investments of private individuals in Florida, while providing governmental entities full access to the protected information.²⁷ The Commission recommends that the exemption be reenacted without changes.²⁸

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for proprietary confidential business information provided by a promoter to the Commission or obtained by the Commission during an audit of the promoter's books and records.

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:

None.

D. FISCAL COMMENTS:

None.

²⁶ Email from Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: Boxing Commission Open Government Sunset Review (June 12, 2020).

²⁷ Open Government Sunset Review Questionnaire, *supra*, at FN 25.

²⁸ *Id.*