

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 773 Pugilistic Exhibitions

SPONSOR(S): Regulatory Affairs Committee; Business & Professional Regulation Subcommittee; Hutson

TIED BILLS: CS/CS/HB 775 **IDEN./SIM. BILLS:** CS/SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee	16 Y, 0 N, As CS	Brown-Blake	Hamon

SUMMARY ANALYSIS

The bill amends various provisions of ch. 548, F.S., to update language with industry standards and ensure licensees are provided with adequate due process. Specifically, the bill:

- Provides, modifies, and eliminates definitions relating to the Florida Boxing Commission (Commission).
- Amends and clarifies the duties of the Commission's executive director.
- Eliminates the requirement that the Commission record all of its scheduled proceedings.
- 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, foreign copromoters, and booking agents 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, constitutes an immediate serious danger to the health, safety, and welfare of the public and participants and results in the immediate suspension of the participant's license.
- Requires the Commission to hold purse forfeiture hearings pursuant to the Administrative Procedure Act.
- Redefines how the Commission is to determine "gross receipts."
- Permits promoter to apply to the Commission for authorization to issue more than five percent of seats in the house as complimentary tickets and not be included in gross receipts for post-event taxation purposes.
- Requires that the promoter keep a copy of certain records for a period of one year.
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department of Business of Professional Regulation (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.
- 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 is anticipated to have a significant reduction in revenues to the Florida Boxing Commission due to deregulation of concessionaires and booking agents, and lower post-event tax payments.

The bill has an effective date of July 1, 2014.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0773d.RAC

DATE: 4/14/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The function of the Florida State Boxing Commission is to license and regulate professional boxing, kickboxing and mixed martial arts. The Commission is also responsible for the approval of amateur boxing, kickboxing and mixed martial arts sanctioning organizations.¹ The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. Further, the Commission makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.² The Commission office 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.

Additionally, the Commission approves amateur sanctioning organizations to sanction amateur matches and establishes health and safety standards for the amateur sanctioning organizations to enforce. Approved amateur sanctioning organizations are required to sanction and supervise any amateur boxing, kickboxing, or mixed martial arts matches held in the state of Florida.³ The Commission does not attend or directly regulate the amateur matches.

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

Current Situation

Definitions

Section 548.002, F.S., sets forth various definitions that apply to ch. 548, F.S. Of these definitions, several are ambiguous, difficult to enforce or understand, or do not reflect current industry standards.

Duties of the Executive Director

Currently, s. 548.004(1), F.S., specifies 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.
- Perform any other duties as the Department or Commission directs.

The executive director may issue subpoenas and administer oaths pursuant to this section.

Rule 61K1-1.0025, F.A.C., provides the executive director's responsibilities when carrying out the duties of his or her office. Specifically, the executive director shall:

¹ Department of Business and Professional Regulation, Florida State Boxing Commission, *Boxing Commission FAQs*, available at http://www.myfloridalicense.com/dbpr/pro/sbc/documents/box_faq.pdf (last viewed March 4, 2014).

² Florida State Boxing Commission Annual Report, Fiscal Year 2011-2012, p. 5, available at https://www.google.com/url?q=http://www.myfloridalicense.com/dbpr/os/news/Boxing10_17_12.html&sa=U&ei=vfoVU-X3CsPW2AWps4D4Cw&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFQjCNF-2nwlF6jibOo9m4VuSq-Q1wUTHw (last viewed March 4, 2014).

³ Section 548.0065(1), F.S.

⁴ Section 548.003(1), F.S.

⁵ See *supra* note 2.

- Perform all administrative functions to ensure that the Commission operates and conducts its business in a lawful manner.
- Be the custodian of records for the Commission.
- Ensure that proper notice and recording is made of all meetings of the Commission.
- Attend all meetings of the Commission.
- Tentatively approve or deny licenses and permits according to the provisions of ch. 548, F.S., and the rules adopted by the Commission.
- Be present at all matches and act as the Commission representative in charge or, in the executive director's absence, appoint an assistant executive director or an employee or staff member of the Commission to be the Commission representative in charge.
- Ensure that all matches are conducted in accordance with the provisions of ch. 548, F.S., and the rules adopted by the Commission.
- Issue or cause to be issued administrative complaints and citations as set forth herein.
- Have the authority to affix the executive director's signature to documents which attest to or represent official Commission action.

Electronic Recording of Commission Proceedings

Currently, s. 548.004(2), F.S., requires that the Commission electronically record all of its scheduled proceedings. Rule 61K1-1.0025, F.A.C., requires that the executive director ensure that proper recording is made of all meetings of the Commission.

Pursuant to s. 120.54(4), F.S., the Administration Commission adopted the Uniform Rules regarding the procedures necessary for the implementation of the Administrative Procedures Act. Rule 28-106.214, F.A.C., of the Uniform Rules, applies to all hearings involving disputed issues of material fact. It requires that all such hearings shall be recorded by a certified court reporter or by recording instruments. Additionally, Rule 28-106.306, F.A.C., which applies to all hearings not involving disputed issues of material fact, provides that the same requirements be met for hearings not involving disputed issues of material fact.

Commission Jurisdiction

Section 548.006, F.S., is titled "Power of commission to control professional and amateur pugilistic contests and exhibitions." The term "pugilist" is not defined in Florida Statutes. A dictionary definition of "pugilist" is "a person who fights with the fists; a boxer, usually a professional."⁶

Section 548.006(1), F.S., provides that "[t]he commission has exclusive jurisdiction over every match held within the state which involves a professional." "Match" is defined as "any contest or exhibition."⁷ "Contest" is defined as "a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily limited to, strikes and blows to the head."⁸ "Exhibition" is defined as "a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head." Therefore, the Commission has jurisdiction over all boxing, kickboxing, and mixed martial arts matches involving a professional.

Additionally, s. 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 2008, s. 548.0065, F.S., was amended to include amateur mixed martial arts within the Commission's exclusive jurisdiction;⁹ however, the reference to "mixed martial arts" was inadvertently omitted from s.

⁶ Dictionary.com definition of pugilist, available at <http://dictionary.reference.com/browse/pugilistic?s=t> (last viewed March 3, 2014).

⁷ Section 548.002(14), F.S.

⁸ Section 548.002(6), F.S.

⁹ Chapter 2008-240, Laws of Fla.

548.006(3), F.S., which defines the scope of the Commission's jurisdiction related to professional and amateur contests and exhibitions.

Exemptions from Ch. 548, F.S.

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.
- 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.

Licensure of Foreign Copromoters and Promoters

Section 548.013, F.S., provides for the licensure of foreign copromoters. Section 548.002(10), F.S., defines foreign copromoters as "a promoter who has no place of business within this state."

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.

Chapter 548, F.S., does not require that promoters be located within the state of Florida. As a result, the Commission has licensed all individuals and entities that apply for licensure as a promoter as a promoter, regardless of whether they have a place of business in Florida. Therefore, the Commission does not have any licensed foreign copromoters.

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
- Booking agents

Promoters are not included in this section, although s. 548.012, F.S., requires licensure for promoters.

Licensure of Concessionaires

Section 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, including concessionaires. Florida is one of two states in the nation that license concessionaires.

Licensure of Booking Agents

Booking agents are required to be licensed pursuant to s. 548.017, F.S.; however, booking agents are not mentioned elsewhere in ch. 548, F.S.

Revocation and Suspension Procedures

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. The statute does not provide for a 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.¹⁰

Additionally, the 14th Amendment to the United States Constitution declares that no state “shall deprive any person of life, liberty, or property, without due process of law.” The essential elements of due process of law are notice, an opportunity to be heard, and to defend in an orderly proceeding before a tribunal having jurisdiction of the cause.¹¹

The Third District Court of Appeal of Florida has previously found that “[t]he Department of Professional Regulation, as well as the specific professional boards coming under its purview, must remember that the suspension of a license which is essential in the pursuit of livelihood involves state action. Such licenses may not be revoked or suspended without procedural due process.”¹²

As stated above, s. 548.046(3)(c), F.S., provides for summary revocation of a license without the opportunity to be heard and defend in a proceeding. Licenses are generally considered a form of property, and as such, licensees are to be afforded appropriate due process prior to depriving them of their licensure. A court may find that the licensee is being deprived of his or her property without due process of law under s. 548.046(3)(c), F.S. 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.

Withholding of Purses

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:

- 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.
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.

In the event that a purse is withheld, the purse must be delivered to the Commission by the promoter. Within ten days after the match, the person from whom the sum was withheld may apply to the Commission for a hearing, in writing. 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

¹⁰ Chicago Title Ins. Co. v. Butler, 770 So.2d 1210, 1214-15 (Fla. 2000).

¹¹ State ex. Rel. Munch v. Davis, 143 Fla. 236, 196 So. 491 (1940).

¹² Robinson v. Florida Bd. Of Dentistry, Dept. of Regulation, Div. of Professions, 447 So.2d 930 (1984).

a hearing is filed, the Commission is required to meet and determine the disposition to be made of the withheld purse.

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

The provisions for withholding and disposition of withheld purses provide licensees with an opportunity to be heard and thus provide for due process; however, it does not comply with the hearing processes provided for under ch. 120, F.S., referred to as the Administrative Procedures Act (APA). The APA provides the Department and all agencies and boards under it, including the Commission, with procedures governing Commission meetings, hearings, and other methods by which licensees may be afforded access to regulatory bodies.

Calculation of Gross Receipts

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 post-event tax payment in the amount of five percent of the total gross receipts, exclusive of any federal taxes; however, the post-event 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.

In 2012, the legislature repealed 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. The provision applied to “pay-per-view”-type events, regardless of whether the match originated inside or outside of the state. Further, s. 548.061, F.S., 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.

On occasion, promoters issue complimentary tickets to individuals or entities. Most of the time, these complimentary tickets are issued close to the time of the event when the seats are not sold out and the promoter has empty seats he or she wishes to fill. The promoter will issue the complimentary tickets in order to fill the seats and increase the concessions he or she sells to the individuals who receive the complimentary tickets. The Commission currently includes these complimentary tickets in gross receipts and receives a five percent tax on the value of the ticket for each complimentary ticket issued.

Promoter Records Requirements

Within 72 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.¹³

¹³ Section 548.06, F.S.
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Chapter 548, F.S., does not require the promoter to retain records in relation to the filing of the written report. Additionally, ch. 548, F.S., does not provide for an audit of promoters' records by the Commission.

Commission Hearings

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. This language also does not provide for a hearing process and does not require the Commission to comply with the requirements under the APA. Due to the lack of statutory direction relating to hearing requirements, there is a potential that the licensees' due process rights could be violated.

Effect of the Bill

Definitions

The bill amends s. 548.002, F.S., to provide definitions or redefine terms to clarify legislative intent, ensure the Department is able to enforce ch. 548, F.S., and to conform the chapter to current industry standards. The bill defines or redefines the terms:

- “Boxing” is defined as the unarmed combat sport of fighting by striking with the fists.
- “Contest” is defined as a boxing or kickboxing, or mixed martial arts engagement in which persons participating strive to win using strikes and blows to the head or other full-contact maneuvers.
- “Exhibition” is defined as a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using strikes and blows to the head or other full-contact maneuvers.
- “Face value” is defined as the dollar value of a ticket 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 are not included in the face value.
- “Full contact” is defined as the use of blows and strikes during a match which: 1) are intended to break the plane of the receiving participant or amateur’s body, 2) are delivered to the head, face, neck, or body of the receiving participant or amateur, and 3) cause the receiving participant or amateur to move in response to the strike or blow.
- “Judge” is defined as a person licensed by the Commission who evaluates and scores a match using a designated scoring system.
- “Kickboxing” is defined as the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination thereof. The term does not include any form of ground fighting techniques.
- “Mixed martial arts” is defined as the unarmed combat sport involving the use of a combination techniques, including, but not limited to, grappling, kicking, striking, and using techniques from different disciplines of the martial arts, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling.
- “Physician” is defined as a person who is approved by the Commission and licensed to practice medicine under ch. 458 or ch. 459, F.S., and whose license is unencumbered and in good standing.
- “Promoter” is defined as a 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.
- “Purse” is defined as the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional’s share of any payment received for radio broadcasting and television, including pay-per-view or closed circuit.

- “Second” or “cornerman” is defined as a person who assists a participant in preparing for a match and between rounds, and who maintains the corner of a participant during the match.
- “Unarmed combat” is defined as a form of competition in which a strike or blow is struck which may reasonably be expected to inflict injury.

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

Duties of the Executive Director

The bill amends s. 548.004(1), F.S., to modify 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.
- Perform other duties as the Department or Commission deems necessary to fulfill the duties of the position.

Furthermore, the executive director’s previous ability to issue subpoenas and administer oaths is narrowed to witnesses, permitholders, record custodians, and licensees. The bill language is meant to clarify the authority by which the executive director may act while conducting the business of the Commission.

Electronic Recording of Commission Proceedings

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. 120, F.S., and the Florida Administrative Code.

Commission Jurisdiction

The bill amends the title of s. 548.006, F.S., to clarify the Commission’s existing jurisdiction over professional and amateur boxing, kickboxing, and mixed martial arts matches as well as amateur mixed martial arts matches held in the state.

As with boxing and kickboxing, this jurisdiction clarifies that the Commission has 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.

The bill amends s. 548.007, F.S., to clarify existing exemptions to ch. 548, F.S., as well as create new exemptions from ch. 548, F.S. The exemptions include:

- A match that does not allow full contact, if the match is limited to amateurs.
- A match conducted or sponsored by a company or detachment of the Florida National Guard or the United States Armed Forces, if the match is limited to amateurs who are members of a company or detachment of the Florida National Guard or United States Armed Forces.
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs and is held in conjunction with a charitable event.
- A match conducted by or between a public postsecondary education institution or public K-12 school as defined in s. 1000.04, F.S., if the match is limited to amateurs who are members of a school-sponsored club or team.

- 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.
- A professional or amateur “martial arts activity.”

The bill defines “martial arts,” as it applies in s. 548.007(6), 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(6), F.S., which encompasses a larger group of businesses and individuals.

Licensure of Foreign Copromoters and Promoters

The bill repeals s. 548.013, F.S., to eliminate the requirement that foreign copromoters be licensed by the Commission. Foreign copromoters are promoters with their licenses located outside of the state of Florida. The Commission issues licenses to promoters, regardless of the location of their licensure, and therefore has no licensed foreign copromoters. The bill further removes references to foreign copromoters found in ss. 548.014 and 548.052, F.S.

Additionally, the bill adds promoters to the list of individuals or entities who directly or indirectly act in specific capacities in connection with any match involving a participant and who are required to obtain a license under s. 548.017, F.S.

Licensure of Concessionaires

The bill amends s. 548.017(1), F.S., to eliminate the requirement that concessionaires be licensed by the Commission. 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. Additionally, the bill repeals s. 548.015, F.S., requiring concessionaires meet bonding requirements.

Licensure of Booking Agents

The bill amends s. 548.017, F.S., to eliminate the requirement that booking agents be licensed by the Commission. Booking agents are not mentioned elsewhere in ch. 548, F.S.

Revocation and Suspension Procedures

The bill amends s. 548.046(3)(c), F.S., to provide that the failure or refusal to provide a urine sample immediately upon request, constitutes as an immediate serious danger to the health, safety, or welfare of the public and his or her opponent. This results in the immediate suspension of the participant’s license, rather than a revocation of that license.

Section 120.60(6), F.S., provides that if the [Commission] finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:

- The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;

- The [Commission] takes only that action necessary to protect the public interest under the emergency procedure; and
- The [Commission] states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The [Commission's] findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., shall also be promptly instituted and acted upon.

Therefore, the amendment provides due process to the participant by providing notice, an opportunity to be heard, and an opportunity to defend. The failure or refusal constitutes grounds for additional disciplinary action.

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 Commission is considered an immediate serious danger to the health, safety, and welfare of the public and his or her opponent. As such, the positive test results in the immediate suspension of the participant's license, and constitutes grounds for additional disciplinary action.

The bill 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, the executive director or his or her designee may issue an emergency suspension of license order pursuant to s. 120.60(6), F.S., 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 public or the participants in a match."

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 21 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. Following service, the disciplinary process must proceed in accordance with the Administrative Procedure Act.

With this procedure, a court is more likely to find that the emergency suspension procedure does not violate the licensees' due process rights, as the emergency suspension is 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 21 days after the suspension, the licensee is provided a hearing process in order to petition the Commission.

Withholding of Purses

The bill amends s. 548.054, F.S., to provide that within 10 days after the match, a person who has had a purse withheld is entitled to submit a petition for a hearing to the Commission pursuant to s. 120.569, F.S. Additionally, the bill requires the Commission to hold the hearing pursuant to ss. 120.569 and 120.57, F.S. 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

The bill amends s. 548.06(1), 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.
- 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.

The bill eliminates s. 548.06(1)(b), F.S., which removes receipts from concessions from gross receipts. As such, receipts from concessions are not included when determining the gross receipts of a match.

The bill removes the provision which provides that a person who owns, purchases, acquires, or holds the rights to telecast a match or matches held in Florida with the intent to sell or otherwise extend to another person, must become licensed as a promoter and submit corresponding reports and post-event taxes for the sale or extension of such rights. 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 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 post-event taxes on them. This does not limit the number of complimentary tickets that may be given. It merely permits promoters to avoid including the tickets in the gross receipts and paying the corresponding post-event taxes on the complimentary tickets it issues up to five percent of the seats in the house.

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 without including the tickets in the gross receipts and paying the corresponding post-event taxes under certain circumstances. If the Commission authorizes more than five percent be issued, provided, or given, the Commission may not consider the complimentary tickets it authorizes as part of the total gross receipts. The Commission, the executive director, or his or her designee may authorize more than five percent of the tickets be issued as complimentary tickets to the following:

- Reserve or active members of the U.S. Armed Forces or National Guard.
- A veteran as defined in s. 1.01(14), F.S.
- Not-for-profit organizations with tax-exempt status pursuant to 26.U.S.C. s. 501(c)(3), of the United States Internal Revenue Code.

The Commission, executive director, or his or her designee may deny or approve the request, and may approve all or a portion of the requested percentage above the five percent of seats in the house.

If the promoter does not obtain the Commission's authorization or wishes to issue more than the Commission authorizes, he or she may do so, but the promoter shall include any complimentary tickets issue, provided, or given above the authorized amount in the total gross receipts and the promoter must pay the corresponding post-event taxes.

The bill provides that a promoter seeking authorization to issue, provide, or give additional complimentary tickets in an amount greater than five percent of the seats in the house designated for use in the event shall submit an application on a form adopted by the Commission. The promoter is responsible for maintaining documenting that the complimentary tickets were issued, provided, or given to the individuals or entities listed on the application as the recipients. The Commission shall provide the response in writing, along with an explanation for the approval or denial.

Finally, the bill removes the reporting requirements for the sale or lease of broadcasting, television, and pay-per-view rights of any match held in Florida, if the promoter pays the maximum tax of \$40,000 for a single event.

Promoter Record Requirements

The bill creates s. 548.06(6), F.S., to require that the promoter keep a copy of certain records for a period of one year and provide the records to the Commission upon request. Such records include:

- Records necessary to justify and support each report submitted to the Commission.
- A copy of the independently-prepared ticket manifest.
- Documentation verifying the issuance of complimentary tickets approved by the Commission.

Moreover, the bill creates s. 548.06(7), 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, provided that the Commission provides reasonable notice to the promoter of the inspection.

Finally, the bill creates s. 548.06(8), 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

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 the Administrative Procedure Act. This helps to ensure that all hearings held by the Commission are conducted in an open manner, with due process to licensees.

B. SECTION DIRECTORY:

Section 1 amends s. 548.002, F.S., revising definitions.

Section 2 amends s. 548.004, F.S., revising the duties and responsibilities of the executive director of the Florida State Boxing Commission.

Section 3 amends s. 548.006, F.S., clarifying the Commission's jurisdiction.

Section 4 amends s. 548.007, F.S., providing exemptions to ch. 548, F.S.

Section 5 repeals s. 548.013, F.S., relating to foreign copromoter license requirements.

Section 6 amends s. 548.014, F.S., deleting references to foreign copromoters.

Section 7 repeals s. 548.015, F.S., relating to the authority of the Commission to require a concessionaire to file a form of security with the Commission.

Section 8 amends s. 548.017, F.S., deleting a requirement for the licensure of a concessionaire and booking agent.

Section 9 amends s. 548.046, F.S., providing for immediate license suspension and other disciplinary action for refusal or failure to provide a urine sample or testing positive for a prohibited drug.

Section 10 amends s. 548.052, F.S., deleting references to foreign copromoters.

Section 11 amends s. 548.054, F.S., revising procedures and requirements for requesting a hearing following the withholding of a purse.

Section 12 amends s. 548.06, F.S., modifying reporting and post-event taxation requirements and providing for complimentary tickets to be issued with authorization by the Commission without being included in gross receipts.

Section 13 amends s. 548.07, F.S., revising the procedure for suspension of licensure.

Section 14 amends s. 548.073, F.S., requiring that Commission hearings be held in accordance with ch. 120, F.S.

Section 15 provides an effective date of July 1, 2014.

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 estimated in 2013 that had a late fee been imposed in FY 2011-12, the fee revenues collected would have been approximately \$6,915.¹⁴ The fee revenue estimate is based on total post-event taxes collected of \$115,258, a 10 percent penalty imposed, with 60 percent of estimated tax reports being filed late. The Commission indicated with the implementation of accountability measures in 2013, 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.

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 part of the "pay-per-view tax" for in-state matches, which was eliminated in 2012. However, the bill only reinstates the tax on matches held within the state of Florida, rather than taxing pay-per-view for matches held outside of Florida.

The Commission indicated that pay-per-view matches occurring within the state of Florida generated \$1,484 in FY 2009-10 and \$2,138 in FY 2010-11.¹⁵ The expected fiscal impact of this tax reinstatement is positive, but indeterminate at this time.

Deregulation of Booking Agents:

The bill provides that booking agents and concessionaires would no longer need to obtain licensure from the Commission in order to practice in their field. The Department estimates a reduction in revenue from loss of licensure fee for booking agents to total approximately \$150 per year.¹⁶ This loss will be due to the lack of individuals paying licensure fees for licensure as booking agents.

Concessions

The bill removes concessions from gross receipts, providing that promoters do not have to pay five percent post-event tax for the sale of concessions. Additionally, the bill deregulates concessionaires. The Department estimated a reduction to post-event taxes related to concessions

¹⁴ 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 Business & Professional Regulation Subcommittee).

¹⁵ Department of Business and Professional Regulation, total revenue from pay-per-view matches occurring within the state of Florida, FY 2009-10 and 2010-11, correspondence with staff of the Business & Professional Regulation Subcommittee, March 7, 2014, (on file with Business & Professional Regulation Subcommittee).

¹⁶ Department of Business and Professional Regulation, total revenue from licensure of booking agents FY 2011-2012, correspondence with staff of the Business & Professional Regulation Subcommittee, March 6, 2014, (on file with Business & Professional Regulation Subcommittee).

of approximately \$60,000 per year.¹⁷ Furthermore, the Department estimates a reduction in revenue from loss of licensure fees for concessionaires to total approximately \$600 per year.¹⁸

Complimentary Tickets

The bill provides that complimentary tickets for up to five percent of the seating capacity of the house are not included in gross receipts or the corresponding post-event taxes. The Department estimates, based on a review of prior year data, the Commission would collect \$40,000 less in post-event taxes related to the issuance of complimentary tickets.¹⁹ The Department's estimation is based on the assumption that promoters would not issue complimentary tickets in excess of that percentage. The Department did not provide an estimate to cover any complimentary tickets granted over the five percent permitted by statute if the promoter obtains authorization from the Commission to issue more.

Promoters often issue complimentary tickets when the tickets have not sold prior to the event in order to recoup some cost through the sales of concessions to the individuals who receive the complimentary tickets. Often the complimentary tickets issued would never have sold prior to the event date. The Commission would not have included the unsold tickets in the gross receipts and would not have received the five percent post-event tax for the sale of the tickets.

Total Loss of Revenue

The Department anticipates a loss in taxation and licensure fee revenue of \$100,750.²⁰ In addition, as a result of the estimated \$100,750 reduction in taxes and license fees, there will be an \$8,060 annual reduction in the service charge to the General Revenue Fund.²¹

The current 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.

2. Expenditures:

The Department has not updated their analysis for the committee substitute. The committee substitute made significant changes that should reduce or eliminate the need for any new expenditures by the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁷ 2014 Department of Business and Professional Regulation, *Legislative Bill Analysis*, SB 810, Pugilistic Exhibitions, pg. 9, (on file with Business & Professional Regulation Subcommittee).

¹⁸ Department of Business and Professional Regulation, total revenue from licensure of concessionaires FY 2011-2012, correspondence with staff of the Business & Professional Regulation Subcommittee, March 6, 2014, (on file with Business & Professional Regulation Subcommittee).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The deregulation of concessionaires lowers the costs of holding events in the state of Florida for the private sector. The deregulation of concessionaires brings Florida in line with the majority of other states that do not license concessionaires.

Additionally, permitting five percent of seats in a house be issued as complimentary tickets without being included in gross receipts or paying post-event taxes on the tickets lowers the costs of holding events in the state of Florida. This provision is similar to other states which hold professional boxing, kickboxing, and mixed martial arts, including Nevada, which holds the largest number of events of any state in the nation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Yes.

The Commission must adopt rules establishing a procedure for auditing a promoter's records, establishing a late fee, and resolving any inconsistencies revealed in the audit.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2014, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Updated definitions to clarify terms and meet industry standards.
- Provided that the executive director may issue subpoenas and administer oaths to permit-holders and record keepers.
- Clarified jurisdiction of the Commission.
- Combined two similar exemptions to ch. 548, F.S., into one exemption.
- Removed the requirement that foreign copromoters be licensed by the Commission and removed references to foreign copromoters.
- Updated language regarding the emergency suspension of a license to ensure licensees are provided due process and the public is protected.
- Updated language to ensure hearings held to enforce ch. 548, F.S., comply with the Administrative Procedures Act.

- Permitted promoters to issue complimentary tickets for up to five percent of the seats of the house designated for use in the event without including those tickets in gross receipts and without paying required taxes.
- Provided that the Commission may authorize more than five percent of the complimentary tickets be removed from gross receipts if issued to active or reserve military, veterans, or tax-exempt charities.
- Provided the process promoters may use to apply for authorization.
- Provided that promoters that remit the maximum tax amount of \$40,000 for the sale or lease of broadcasting rights are only required to indicate that the amount of \$40,000 has been remitted on a form provided by the Commission.

On April 10, 2014, the Regulatory Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the requirement that promoters submit an application two days prior to an event when requesting the Commission's authorization to give away more than five percent of the seats without paying gross receipts tax. Permits promoters to submit the application after the event when the promoter submits the required report regarding post-event taxes.
- Removed the requirement that the Commission, its executive director or his or her designee provide a response to the complimentary ticket application no less than one business day prior to the event.

The staff analysis is drafted to reflect the committee substitute as adopted by the Regulatory Affairs Committee.