

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 Regulated Industries

BILL: SB 808

INTRODUCER: Senator Galvano

SUBJECT: Public Records/Florida State Boxing Commission

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 808 creates a public-records exemption for proprietary confidential business information held by the Florida State Boxing Commission. The exemption relates to information provided by promoters when reporting the tax on gross receipts provided in s. 548.06, F.S.

The bill makes the legislative finding that the disclosure of proprietary confidential business information would injure a promoter in the marketplace and the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

Section 2 provides that this act shall take effect on the same date that SB ___ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. This bill is linked to SB 810 by Senator Galvano, relating to Pugilistic Exhibitions.

The Florida Constitution and the Florida Statutes ensures public access to documents received and maintained by government agencies as part of their official duties. However, the Legislature may exempt agency documents from public access. An exemption must be created by a general law specifically stating the public necessity justifying the exemption. Further, an exemption must be no broader than necessary to accomplish the stated purpose of the law.

SB 808 requires a two-thirds vote of the membership of each house of the Legislature for passage under s. 24(c), Art. I, Florida State Constitution.

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 there under; 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(11), 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 Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁴

¹Chapter 119, F.S.

²The term “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.”

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

⁴ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

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 than to the persons or entities designated in the statute.⁵ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁶

Only the Legislature is authorized to create exemptions to open government requirements.⁷ 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.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

Proprietary Confidential Business Information

The term “proprietary confidential business information” is defined in several provisions in the Florida Statutes relating to public records exemptions.

Section 119.0713(4), F.S., provides a public records exemption for proprietary confidential business information, regardless of form or characteristics, held by an electric utility that is subject to the public records requirements of ch. 119, F.S., a government-owned utility. It provides:

- (4)(a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and 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. Proprietary confidential business information includes, but is not limited to:
1. Trade secrets.
 2. Internal auditing controls and reports of internal auditors.
 3. Security measures, systems, or procedures.
 4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.
 5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

⁵ Attorney General Opinion 85-62.

⁶ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁷ Article I, s. 24(c), State Constitution.

⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ Art. I, s. 24(c), State Constitution.

(b) Proprietary confidential business information held by an electric utility that is subject to chapter 119 in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

Another example is s. 202.195, F.S., which provides a public records exemption for proprietary confidential business information obtained by local governments from a telecommunications company or franchised cable company for the purposes of imposing fees for occupying the public rights-of-way, assessing the local communications services tax pursuant to s. 202.19, F.S., or regulating the public rights-of-way, held by a local governmental entity. Section 202.195(2), F.S., provide the following definition for “proprietary confidential business information:”

For the purposes of this exemption, “proprietary confidential business information” includes maps, plans, billing and payment records, trade secrets, or other information relating to the provision of or facilities for communications service:

- (a) That is intended to be and is treated by the company as confidential;
- (b) The disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the company; and
- (c) That is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the local governmental entity.

Proprietary confidential business information does not include schematics indicating the location of facilities for a specific site that are provided in the normal course of the local governmental entity’s permitting process.

Another example of a comparable public records exemption for proprietary confidential business information includes s. 288.075(1), F.S., relating to economic development agencies such as the Department of Economic Opportunity, industrial development authorities created in accordance with part III of chapter 159 or by special law, and Space Florida created in part II of ch. 331, F.S.

Open Government Sunset Review Act

The Open Government Sunset Review Act (act), in s. 119.15, F.S., provides a process for the review, and repeal or reenactment of, public records exemptions.¹¹ Under Florida law, a new exemption or substantial amendment to an existing exemption shall be repealed on October 2nd of the 5th year after enactment, unless the Legislature acts to reenact the exemption.¹² By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives, the language and statutory citation of each exemption scheduled for repeal the following year.¹³

¹¹ This act applies to exemptions from s. 24, Art. I, of the State Constitution and s. 119.07(1), F.S., or s. 286.011, F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(5)(a), F.S.

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 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.¹⁴ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.¹⁵ This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Section 548.002(20), F.S., defines the term "promoter" to mean:

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.¹⁶ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.¹⁷ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

- 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; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.¹⁸

¹⁴ Section 548.006(3), F.S.

¹⁵ Section 548.002(2), F.S.

¹⁶ Section 548.06(1), F.S.

¹⁷ *Id.*

¹⁸ Section 548.06(1), F.S.

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁹

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.²⁰

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional 5 days allowed for mailing.²¹ According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.²²

III. Effect of Proposed Changes:

The bill creates s. 548.062, F.S., to provide a public records exemption for proprietary confidential business information held by the commission and provided by a promoter. The promoter must intend the information to be private in that the disclosure of the information would cause harm to the promoter or its business operations, and 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.

The bill provides that the term includes, but is not limited to:

- (a) The number of ticket sales for a match.
- (b) The amount of gross receipts after a match.
- (c) Trade secrets.
- (d) Business plans.
- (e) Internal auditing controls and reports of internal auditors.

¹⁹ Section 548.06(2), F.S.

²⁰ Section 548.06(3), F.S.

²¹ Section 548.06(4), F.S.

²² Section 548.06(5), F.S.

- (f) Security measures, systems, or procedures.
- (g) Information relating to competitive interests, the disclosure of which would impair the competitive business of the promoter providing the information.

Section 548.062(2), F.S., provides that the proprietary confidential business information provided in the written report required under s. 548.06, F.S., is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The bill provides that information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

Section 548.062(3), F.S., provides that these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 expresses the required Statement of Public Necessity for the public records exemptions sought for the proposed Resort Destination Commission.

A number of findings are expressed in this section about the public necessity that proprietary confidential business information be protected from disclosure. Briefly, the Legislature finds that the exemption is necessary to prevent disclosure of proprietary confidential business information that 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 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.

Section 2 provides that this act shall take effect on the same date that SB ___ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. This bill is linked to SB 810 by Senator Galvano, relating to Pugilistic Exhibitions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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. Since SB 808 creates a new public-records exemption, it will require a two-thirds vote of each house of the Legislature for passage.

Statement of Public Necessity

Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section 3 of

this bill provides a statement of public necessity for the new public record exemptions proposed therein.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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 Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.