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# **Business & Professional Regulation Subcommittee**

**Tuesday, March 11, 2014  
12:30 PM  
12 HOB**

**MEETING PACKET**

**Will Weatherford  
Speaker**

**Debbie Mayfield  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Business & Professional Regulation Subcommittee

**Start Date and Time:** Tuesday, March 11, 2014 12:30 pm  
**End Date and Time:** Tuesday, March 11, 2014 02:30 pm  
**Location:** 12 HOB  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 593 Building Construction by Eagle

HB 775 Pub. Rec./Florida State Boxing Commission by Hutson

**Consideration of the following bill(s) with proposed committee substitute(s):**

PCS for HB 773 -- Pugilistic Exhibitions

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, March 10, 2014.

By request of the Chair, all Business & Professional Regulation Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, March 10, 2014.

**NOTICE FINALIZED on 03/07/2014 16:12 by Ellinor.Martha**



# The Florida House of Representatives

Regulatory Affairs Committee

Business & Professional Regulation Subcommittee

Will Weatherford  
Speaker

Debbie Mayfield  
Chair

## AGENDA

March 11, 2014  
12 House Office Building  
12:30 PM – 2:30 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. HB 593 by *Rep. Eagle*  
Building Construction
- IV. PCS for HB 773 by *Business & Professional Regulation Subcommittee*  
Pugilistic Exhibitions
- V. HB 775 by *Rep. Hutson*  
Pub. Rec./Florida State Boxing Commission
- VI. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 593 Building Construction  
**SPONSOR(S):** Eagle  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Whittier <i>mw</i>	Luczynski <i>mz</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

HB 593 contains several provisions related to building construction, codes, and permitting. The bill does the following:

- Provides an additional method for local governments to provide notices to alleged code enforcement violators;
- Requires application to the Department of Health for an operating permit for a public swimming pool or bathing place before an application may be filed for a building permit, and provides additional requirements for obtaining an operating permit;
- Specifies inspection criteria for construction or modification of manufactured buildings or building modules;
- Revises the allocation of funds from building permit surcharges to include the Future Builders of America Program;
- Authorizes building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations; and
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program.

The bill allocates to the Future Builders of America Program \$250,000 from funds that are remitted to the Professional Regulation Trust Fund each year, beginning with FY 2014-2015. These funds are generated from an existing 1.5 percent surcharge on each building permit application fee.

The bill takes effect July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Local Government Codes and Ordinances (Section 1)**

###### Present Situation

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. There are four options cited in s. 162.12(1), F.S., for providing notices:

- By certified mail, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation;
- By hand delivery by the sheriff or other law enforcement officer, code inspector, or other designated person;
- By leaving the notice at the violator's usual place of residence with any person residing there above the age of 15; or
- For commercial premises, by leaving the notice with the manager or other person in charge.

In addition to those noticing provisions, the code enforcement board may serve notice through publication or posting methods.<sup>1</sup>

Some local governments have reported finding it costly to have to send notices by certified mail with return receipt requested.

###### Effect of Proposed Changes

The bill authorizes an additional method – first class mail – for local governments to provide notices to alleged code enforcement violators.

##### **Public Swimming Pools and Public Bathing Places (Sections 2, 3, and 7)**

###### Present Situation

In 2012, the Legislature determined that local building departments would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the Department of Health (department) would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.<sup>2</sup>

A "public swimming pool" or "public pool" is defined as:

A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which

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<sup>1</sup> Section 162.12(2), F.S.

<sup>2</sup> Chapter 2012-184, Laws of Fla.

admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.<sup>3</sup>

A "public bathing place" is defined as:

A body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.<sup>4</sup>

In order to operate or continue to operate a public swimming pool, a valid operating permit from the department must be obtained. Application for an operating permit must include the following:

- Description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- Method and manner of water purification, treatment, disinfection, and heating;
- Safety equipment and standards to be used; and
- Any other pertinent information deemed necessary by the department.<sup>5</sup>

If the department determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the department will issue a permit. However, if the department determines that the pool is not in compliance with state laws and departmental rules, the department will deny the application for a permit. The denial must be in writing and must list the circumstances for the denial. Upon correction of those circumstances, the applicant may reapply for a permit.<sup>6</sup> The operating permit must be renewed annually and posted in a conspicuous place.<sup>7</sup>

Currently, the order of the permitting process that is required to build a public swimming pool or public bathing place is unclear. Local governments have reported entire public swimming pools being completed before owners discovered issues or problems after applying for the operating permit.

#### Effect of Proposed Changes

The bill requires those desiring to construct, develop, or modify a public swimming pool or public bathing place to apply to the Department of Health for an operating permit before applying for a building permit. It prohibits the local enforcing agency from issuing a building permit to construct, develop, or modify a public swimming pool or public bathing place without proof of application for an operating permit and provides that final inspection may not be completed until the operating permit is issued.

The bill also adds the following to the list of information that is to accompany the operating permit application:

- A description of the structure, its appurtenances, and its operation.

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<sup>3</sup> Section 514.011(2), F.S.

<sup>4</sup> Section 514.011(4), F.S.

<sup>5</sup> Section 514.031(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 514.031(4), F.S.

## **Florida Building Code Requirements for Construction or Modification of Manufactured Buildings and Building Modules (Section 4)**

### Present Situation

The Florida Building Commission (commission), which is housed within the Department of Business and Professional Regulation (department), is a 26-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.<sup>8</sup>

Section 553.72, F.S., provides the following regarding the Florida Building Code:

The purpose and intent of this act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, to be called the Florida Building Code, which consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state and to the enforcement of such requirements and which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer.

Section 553.37(1), F.S., requires the commission to adopt, within the Florida Building Code, requirements for construction or modification of manufactured buildings and building modules, to address:

- Submittal to and approval by the department of manufacturers' drawings and specifications, including any amendments.
- Submittal to and approval by the department of manufacturers' internal quality control procedures and manuals, including any amendments.
- Minimum inspection criteria.

"Manufactured building" or "modular building" means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection as a finished building or as part of a finished building, which shall include, but not be limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part, but does not include a mobile home.<sup>9</sup>

"Module" means a separately transported three-dimensional component of a manufactured building which contains all or a portion of structural systems, electrical systems, plumbing systems, mechanical systems, fire systems, and thermal systems.<sup>10</sup>

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<sup>8</sup> Section 553.74, F.S.

<sup>9</sup> Section 553.36(13), F.S.

<sup>10</sup> Section 553.36(15), F.S.



## Effect of Proposed Changes

The bill details the “minimum inspection criteria” under s. 553.37(1), F.S., by requiring the approved inspection agency to do the following:

- Inspect the first building built, or the first unit assembled with components, after certification from the manufacturer.
- Continue observation of the manufacturing process until the agency determines that the manufacturer’s quality control program and the plans approved by the agency will result in a building and components that meet or exceed the applicable Florida Building Code requirements.
- With respect to manufactured buildings, inspect each module produced at least once during the manufacturing process, and inspect the entire production line during each plant inspection, to ensure that at least one electrical, plumbing, structural, mechanical, or thermal subsystem is exposed during inspection of at least 75 percent of the modules inspected.
- With respect to components, inspect at least 50 percent of the manufactured building components or 20 percent of storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

## **Florida Building Code Surcharge (Section 5)**

### Present Situation

The Florida Building Commission is authorized to adopt, modify, update, interpret, and maintain the Florida Building Code (code) and provide that code enforcement will be performed by authorized state and local government enforcement agencies.<sup>11</sup> In order for the Department of Business and Professional Regulation (department) to administer and carry out the code provisions, there is a surcharge that is assessed at 1.5 percent of the permit fees associated with enforcement of the code.<sup>12, 13</sup>

The funds that are collected from the surcharge and remitted to the department are deposited in the Professional Regulation Trust Fund and then allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program.<sup>14</sup> Funds allocated to the Florida Building Code Compliance and Mitigation Program are \$925,000 each fiscal year.<sup>15</sup>

### Effect of Proposed Changes

From the building permit fees remitted to the department, the bill allocates to the Future Builders of America Program \$250,000 per fiscal year, beginning in FY 2014-2015.

The Future Builders of America Program is a nonprofit workforce development and student leadership program of the Florida Home Builders Foundation. The program links students in school with local building communities and industries.<sup>16</sup> As of November 2013, there were 11 chapters in Florida, located in Charlotte, DeSoto, Manatee, Okaloosa, Polk, Sarasota, Volusia, and Walton Counties, and the Treasure Coast.<sup>17</sup>

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<sup>11</sup> Section 553.72(3), F.S.

<sup>12</sup> Section 553.721, F.S.

<sup>13</sup> The minimum amount collected on any permit issued is \$2.

<sup>14</sup> The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.

<sup>15</sup> Funds used by the department as well as funds to be transferred to the Department of Health shall be as prescribed in the annual General Appropriations Act.

<sup>16</sup> Future Builders of America website: <http://www.futurebuildersofamerica.org/>. Last viewed on 3/6/14.

<sup>17</sup> *Id.*

## **Florida Building Code Interpretation (Section 6)**

### Present Situation

Section 553.775, F.S., authorizes the Florida Building Code (code) to be interpreted by building officials, local enforcement agencies, and the Florida Building Commission (commission) and provides specific procedures to be used when interpreting the code.

The Florida Accessibility Code for Building Construction (accessibility code), an element of the code, is adopted by the commission and prescribes requirements related to ensuring access for the disabled for new construction activity, including things such as ramps, door widths, and particular plumbing fixtures. The accessibility code combines requirements imposed by the federal regulations that implement the Americans with Disabilities Act and Florida-specific requirements specified in Part I of Chapter 553, F.S.<sup>18</sup>

In accordance with s. 120.565, F.S., the commission may render declaratory statements relating to the provisions of the accessibility code not attributable to the Americans with Disabilities Act Accessibility Guidelines. However, the accessibility code may not be interpreted by building officials, local enforcement agencies, and the commission.

### Effect of Proposed Changes

The bill authorizes building officials, local enforcement agencies, and the commission to interpret the accessibility code and removes language restricting declaratory statements to Florida-specific requirements of the accessibility code.

## **Florida Building Code Compliance and Mitigation Program (Section 8)**

### Present Situation

The Department of Business and Professional Regulation (department) administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code (code) and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.<sup>19</sup> The program is geared toward persons *licensed* in the design and construction industries, but does not address those *employed* in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with the department.<sup>20</sup>

### Effect of Proposed Changes

The bill revises education and training requirements of the program to include, in addition to maintaining a thorough knowledge of the code, a thorough knowledge of code compliance and enforcement, duties related to consumers, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. It expands the program to include people employed in the design and construction industries.

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<sup>18</sup> Email correspondence with staff of the Department of Business and Professional Regulation (March 5, 2014) (on file with the Business & Professional Regulation Subcommittee).

<sup>19</sup> Section 553.841(2), F.S.

<sup>20</sup> Section 553.841(3), F.S.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 162.12, F.S., providing an additional method for local governments to provide notices to alleged code enforcement violators.

**Section 2.** Amends s. 514.03, F.S., requiring an application for an operating permit before filing an application for a building permit for a public swimming pool or bathing place.

**Section 3.** Amends s. 514.031, F.S., providing an additional requirement for obtaining a public swimming pool operating permit.

**Section 4.** Amends s. 553.37, F.S., specifying inspection criteria for construction or modification of manufactured buildings or modules.

**Section 5.** Amends s. 553.721, F.S., revising the allocation of funds from the building permit surcharge.

**Section 6.** Amends s. 553.775, F.S., authorizing building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and specifies procedures for such interpretations.

**Section 7.** Amends s. 553.79, F.S., prohibiting a local enforcing agency from issuing a building permit for a public swimming pool or bathing place without proof of application for an operating permit.

**Section 8.** Amends s. 553.841, F.S., revising education and training requirements of the Florida Building Code Compliance and Mitigation Program.

**Section 9.** Provides an effective date of July 1, 2014.

**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:**

Clarification on the order of permit applications for public swimming pools and public bathing places may result in cost savings due to issues and problems being identified prior to construction.

#### D. FISCAL COMMENTS:

The bill allocates to the Future Builders of America Program \$250,000 from funds that are remitted to the Professional Regulation Trust Fund. These funds are generated from an existing 1.5 percent surcharge on each building permit application fee. The bill does not specify which entity will disburse the funds nor is criteria provided on how the funds are to be utilized and monitored.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

According to the Department of Business and Professional Regulation, with regard to the provision allowing the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction, the U.S. Department of Justice confirmed that states that adopt the federal Americans with Disabilities Act guidelines as state law may interpret the provision, "provided that it is clear that it is an interpretation of STATE law and NOT of the federal guidelines."<sup>21</sup>

#### B. RULE-MAKING AUTHORITY:

N/A

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Business and Professional Regulation has identified the following drafting issues in Section 4 of the bill, which amends s. 553.37(1)(c), F.S.:

- Line 98, regarding inspection criteria of manufactured buildings and building modules, should read "after certification of the manufacturer" not "after certification *from* the manufacturer."
- Line 110, regarding inspection of modules, should read "at least 75 percent of the *subsystems* inspected" rather than "at least 75 percent of the *modules* inspected."

Section 5 of the bill, regarding allocation of the surcharge to the Future Builders of America Program, does not specify which entity will disburse the funds nor is any criteria provided on how the funds are to be utilized and monitored.

The Department of Business and Professional Regulation notes, that with regard to expanding the Florida Building Code Compliance and Mitigation Program to include persons employed in the design and construction industries, "The expansion of the program to include unlicensed employees in the construction industry may present significant challenges. The program will be required to devise some means to verify that recipients of services and materials of the program are employed within the construction industry and to determine the eligibility of all recipients to work in the United States."<sup>22</sup>

<sup>21</sup> Department of Business and Professional Regulation, Agency Analysis of HB 593 (February 20, 2014) (on file with the Business & Professional Regulation Subcommittee).

<sup>22</sup> *Id.*

Section 7 of the bill, regarding permitting for public swimming pools, needs to be amended to remove the requirement that an operating permit be issued before the final inspection. The Department of Health reports that they do not issue operating permits until the final inspection has been completed.<sup>23</sup>

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>23</sup> Telephone conversation on March 7, 2014, with staff from the Department of Health.  
**STORAGE NAME:** h0593.BPRS.DOCX  
**DATE:** 3/7/2014

1                                   A bill to be entitled  
 2           An act relating to building construction; amending s.  
 3           162.12, F.S.; providing an additional method for local  
 4           governments to provide notices to alleged code  
 5           enforcement violators; amending s. 514.03, F.S.;  
 6           requiring application for an operating permit before  
 7           filing an application for a building permit for a  
 8           public swimming pool or bathing place; amending s.  
 9           514.031, F.S.; providing an additional requirement for  
 10          obtaining a public swimming pool operating permit;  
 11          amending s. 553.37, F.S.; specifying inspection  
 12          criteria for construction or modification of  
 13          manufactured buildings or modules; amending s.  
 14          553.721, F.S.; revising the allocation of funds from  
 15          the building permit surcharge; amending s. 553.775,  
 16          F.S.; authorizing building officials, local  
 17          enforcement agencies, and the Florida Building  
 18          Commission to interpret the Florida Accessibility Code  
 19          for Building Construction; specifying procedures for  
 20          such interpretations; deleting provisions relating to  
 21          declaratory statements and interpretations of the  
 22          Florida Accessibility Code for Building Construction,  
 23          to conform; amending s. 553.79, F.S.; prohibiting a  
 24          local enforcing agency from issuing a building permit  
 25          for a public swimming pool or bathing place without  
 26          proof of application for an operating permit;

27 requiring issuance of an operating permit before final  
 28 inspection is completed; amending s. 553.841, F.S.;  
 29 revising education and training requirements of the  
 30 Florida Building Code Compliance and Mitigation  
 31 Program; providing an effective date.  
 32

33 Be It Enacted by the Legislature of the State of Florida:  
 34

35 Section 1. Paragraph (a) of subsection (1) of section  
 36 162.12, Florida Statutes, is amended to read:

37 162.12 Notices.—

38 (1) All notices required by this part must be provided to  
 39 the alleged violator by:

40 (a) First-class mail or, at the option of the local  
 41 government, certified mail, return receipt requested, to the  
 42 address listed in the tax collector's office for tax notices or  
 43 to the address listed in the county property appraiser's  
 44 database. The local government may also provide an additional  
 45 notice to any other address it may find for the property owner.  
 46 For property owned by a corporation, notices may be provided by  
 47 certified mail to the registered agent of the corporation. If  
 48 any notice sent by certified mail is not signed as received  
 49 within 30 days after the postmarked date of mailing, notice may  
 50 be provided by posting as described in subparagraphs (2)(b)1.  
 51 and 2.;

52 Section 2. Section 514.03, Florida Statutes, is amended to

53 read:

54 514.03 Approval necessary to construct, develop, or modify  
55 public swimming pools or public bathing places.—

56 (1) A person or public body desiring to construct,  
57 develop, or modify a public swimming pool or public bathing  
58 place must apply to the department for an operating permit  
59 before filing an application for a building permit under s.  
60 553.79.

61 (2) Local governments or local enforcement districts may  
62 determine compliance with the general construction standards of  
63 the Florida Building Code, pursuant to s. 553.80. Local  
64 governments or local enforcement districts may conduct plan  
65 reviews and inspections of public swimming pools and public  
66 bathing places for this purpose.

67 Section 3. Paragraph (a) of subsection (1) is amended to  
68 read:

69 514.031 Permit necessary to operate public swimming pool.—

70 (1) It is unlawful for any person or public body to  
71 operate or continue to operate any public swimming pool without  
72 a valid permit from the department, such permit to be obtained  
73 in the following manner:

74 (a) Any person or public body desiring to operate any  
75 public swimming pool shall file an application for a permit with  
76 the department, on application forms provided by the department,  
77 and shall accompany such application with:

78 1. A description of the structure, its appurtenances, and



79 | its operation.

80 |       ~~2.1.~~ A description of the source or sources of water  
 81 | supply, and the amount and quality of water available and  
 82 | intended to be used.

83 |       ~~3.2.~~ The method and manner of water purification,  
 84 | treatment, disinfection, and heating.

85 |       ~~4.3.~~ The safety equipment and standards to be used.

86 |       ~~5.4.~~ Any other pertinent information deemed necessary by  
 87 | the department.

88 |       Section 4. Paragraph (c) of subsection (1) of section  
 89 | 553.37, Florida Statutes, is amended to read:

90 |       553.37 Rules; inspections; and insignia.—

91 |       (1) The Florida Building Commission shall adopt within the  
 92 | Florida Building Code requirements for construction or  
 93 | modification of manufactured buildings and building modules, to  
 94 | address:

95 |       (c) ~~Minimum~~ Inspection criteria, which shall require the  
 96 | approved inspection agency to:

97 |       1. Inspect the first building built, or the first unit  
 98 | assembled with components, after certification from the  
 99 | manufacturer.

100 |       2. Continue observation of the manufacturing process until  
 101 | the agency determines that the manufacturer's quality control  
 102 | program and the plans approved by the agency will result in a  
 103 | building and components that meet or exceed the applicable  
 104 | Florida Building Code requirements.

105        3. With respect to manufactured buildings, inspect each  
 106 module produced at least once during the manufacturing process,  
 107 and inspect the entire production line during each plant  
 108 inspection, to ensure that at least one electrical, plumbing,  
 109 structural, mechanical, or thermal subsystem is exposed during  
 110 inspection of at least 75 percent of the modules inspected.

111        4. With respect to components, inspect at least 50 percent  
 112 of the manufactured building components or 20 percent of storage  
 113 sheds that are not designed for human habitation and that have a  
 114 floor area of 720 square feet or less.

115        Section 5. Section 553.721, Florida Statutes, is amended  
 116 to read:

117        553.721 Surcharge.—In order for the Department of Business  
 118 and Professional Regulation to administer and carry out the  
 119 purposes of this part and related activities, there is created a  
 120 surcharge, to be assessed at the rate of 1.5 percent of the  
 121 permit fees associated with enforcement of the Florida Building  
 122 Code as defined by the uniform account criteria and specifically  
 123 the uniform account code for building permits adopted for local  
 124 government financial reporting pursuant to s. 218.32. The  
 125 minimum amount collected on any permit issued shall be \$2. The  
 126 unit of government responsible for collecting a permit fee  
 127 pursuant to s. 125.56(4) or s. 166.201 shall collect the  
 128 surcharge and electronically remit the funds collected to the  
 129 department on a quarterly calendar basis for the preceding  
 130 quarter and continuing each third month thereafter. The unit of

131 government shall retain 10 percent of the surcharge collected to  
 132 fund the participation of building departments in the national  
 133 and state building code adoption processes and to provide  
 134 education related to enforcement of the Florida Building Code.  
 135 All funds remitted to the department pursuant to this section  
 136 shall be deposited in the Professional Regulation Trust Fund.  
 137 Funds collected from the surcharge shall be allocated to fund  
 138 the Florida Building Commission, ~~and~~ the Florida Building Code  
 139 Compliance and Mitigation Program under s. 553.841, and the  
 140 Future Builders of America Program. ~~Beginning in the 2013-2014~~  
 141 ~~fiscal year,~~ Funds allocated to the Florida Building Code  
 142 Compliance and Mitigation Program shall be \$925,000 each fiscal  
 143 year. Beginning in the 2014-2015 fiscal year, funds allocated to  
 144 the Future Builders of America Program shall be \$250,000 each  
 145 fiscal year. The funds collected from the surcharge may not be  
 146 used to fund research on techniques for mitigation of radon in  
 147 existing buildings. Funds used by the department as well as  
 148 funds to be transferred to the Department of Health shall be as  
 149 prescribed in the annual General Appropriations Act. The  
 150 department shall adopt rules governing the collection and  
 151 remittance of surcharges pursuant to chapter 120.

152 Section 6. Section 553.775, Florida Statutes, is amended  
 153 to read:

154 553.775 Interpretations.—

155 (1) It is the intent of the Legislature that the Florida  
 156 Building Code and the Florida Accessibility Code for Building

157 Construction be interpreted by building officials, local  
 158 enforcement agencies, and the commission in a manner that  
 159 protects the public safety, health, and welfare at the most  
 160 reasonable cost to the consumer by ensuring uniform  
 161 interpretations throughout the state and by providing processes  
 162 for resolving disputes regarding interpretations of the Florida  
 163 Building Code and the Florida Accessibility Code for Building  
 164 Construction which are just and expeditious.

165 (2) Local enforcement agencies, local building officials,  
 166 state agencies, and the commission shall interpret provisions of  
 167 the Florida Building Code and the Florida Accessibility Code for  
 168 Building Construction in a manner that is consistent with  
 169 declaratory statements and interpretations entered by the  
 170 commission, except that conflicts between the Florida Fire  
 171 Prevention Code and the Florida Building Code shall be resolved  
 172 in accordance with s. 553.73(11)(c) and (d).

173 (3) The following procedures may be invoked regarding  
 174 interpretations of the Florida Building Code or the Florida  
 175 Accessibility Code for Building Construction:

176 (a) Upon written application by any substantially affected  
 177 person or state agency or by a local enforcement agency, the  
 178 commission shall issue declaratory statements pursuant to s.  
 179 120.565 relating to the enforcement or administration by local  
 180 governments of the Florida Building Code or the Florida  
 181 Accessibility Code for Building Construction.

182 (b) When requested in writing by any substantially

183 affected person or state agency or by a local enforcement  
 184 agency, the commission shall issue a declaratory statement  
 185 pursuant to s. 120.565 relating to this part and ss. 515.25,  
 186 515.27, 515.29, and 515.37. Actions of the commission are  
 187 subject to judicial review under s. 120.68.

188 (c) The commission shall review decisions of local  
 189 building officials and local enforcement agencies regarding  
 190 interpretations of the Florida Building Code or the Florida  
 191 Accessibility Code for Building Construction after the local  
 192 board of appeals has considered the decision, if such board  
 193 exists, and if such appeals process is concluded within 25  
 194 business days.

195 1. The commission shall coordinate with the Building  
 196 Officials Association of Florida, Inc., to designate panels  
 197 composed of five members to hear requests to review decisions of  
 198 local building officials. The members must be licensed as  
 199 building code administrators under part XII of chapter 468 and  
 200 must have experience interpreting and enforcing provisions of  
 201 the Florida Building Code and the Florida Accessibility Code for  
 202 Building Construction.

203 2. Requests to review a decision of a local building  
 204 official interpreting provisions of the Florida Building Code or  
 205 the Florida Accessibility Code for Building Construction may be  
 206 initiated by any substantially affected person, including an  
 207 owner or builder subject to a decision of a local building  
 208 official or an association of owners or builders having members

209 | who are subject to a decision of a local building official. In  
 210 | order to initiate review, the substantially affected person must  
 211 | file a petition with the commission. The commission shall adopt  
 212 | a form for the petition, which shall be published on the  
 213 | Building Code Information System. The form shall, at a minimum,  
 214 | require the following:

215 |       a. The name and address of the county or municipality in  
 216 | which provisions of the Florida Building Code or the Florida  
 217 | Accessibility Code for Building Construction are being  
 218 | interpreted.

219 |       b. The name and address of the local building official who  
 220 | has made the interpretation being appealed.

221 |       c. The name, address, and telephone number of the  
 222 | petitioner; the name, address, and telephone number of the  
 223 | petitioner's representative, if any; and an explanation of how  
 224 | the petitioner's substantial interests are being affected by the  
 225 | local interpretation of the Florida Building Code or the Florida  
 226 | Accessibility Code for Building Construction.

227 |       d. A statement of the provisions of the Florida Building  
 228 | Code or the Florida Accessibility Code for Building Construction  
 229 | which are being interpreted by the local building official.

230 |       e. A statement of the interpretation given to provisions  
 231 | of the Florida Building Code or the Florida Accessibility Code  
 232 | for Building Construction by the local building official and the  
 233 | manner in which the interpretation was rendered.

234 |       f. A statement of the interpretation that the petitioner

235 contends should be given to the provisions of the Florida  
 236 Building Code or the Florida Accessibility Code for Building  
 237 Construction and a statement supporting the petitioner's  
 238 interpretation.

239 g. Space for the local building official to respond in  
 240 writing. The space shall, at a minimum, require the local  
 241 building official to respond by providing a statement admitting  
 242 or denying the statements contained in the petition and a  
 243 statement of the interpretation of the provisions of the Florida  
 244 Building Code or the Florida Accessibility Code for Building  
 245 Construction which the local jurisdiction or the local building  
 246 official contends is correct, including the basis for the  
 247 interpretation.

248 3. The petitioner shall submit the petition to the local  
 249 building official, who shall place the date of receipt on the  
 250 petition. The local building official shall respond to the  
 251 petition in accordance with the form and shall return the  
 252 petition along with his or her response to the petitioner within  
 253 5 days after receipt, exclusive of Saturdays, Sundays, and legal  
 254 holidays. The petitioner may file the petition with the  
 255 commission at any time after the local building official  
 256 provides a response. If no response is provided by the local  
 257 building official, the petitioner may file the petition with the  
 258 commission 10 days after submission of the petition to the local  
 259 building official and shall note that the local building  
 260 official did not respond.

261           4. Upon receipt of a petition that meets the requirements  
 262 of subparagraph 2., the commission shall immediately provide  
 263 copies of the petition to a panel, and the commission shall  
 264 publish the petition, including any response submitted by the  
 265 local building official, on the Building Code Information System  
 266 in a manner that allows interested persons to address the issues  
 267 by posting comments.

268           5. The panel shall conduct proceedings as necessary to  
 269 resolve the issues; shall give due regard to the petitions, the  
 270 response, and to comments posed on the Building Code Information  
 271 System; and shall issue an interpretation regarding the  
 272 provisions of the Florida Building Code or the Florida  
 273 Accessibility Code for Building Construction within 21 days  
 274 after the filing of the petition. The panel shall render a  
 275 determination based upon the Florida Building Code or the  
 276 Florida Accessibility Code for Building Construction or, if the  
 277 code is ambiguous, the intent of the code. The panel's  
 278 interpretation shall be provided to the commission, which shall  
 279 publish the interpretation on the Building Code Information  
 280 System and in the Florida Administrative Register. The  
 281 interpretation shall be considered an interpretation entered by  
 282 the commission, and shall be binding upon the parties and upon  
 283 all jurisdictions subject to the Florida Building Code or the  
 284 Florida Accessibility Code for Building Construction, unless it  
 285 is superseded by a declaratory statement issued by the Florida  
 286 Building Commission or by a final order entered after an appeal



287 proceeding conducted in accordance with subparagraph 7.

288 6. It is the intent of the Legislature that review  
 289 proceedings be completed within 21 days after the date that a  
 290 petition seeking review is filed with the commission, and the  
 291 time periods set forth in this paragraph may be waived only upon  
 292 consent of all parties.

293 7. Any substantially affected person may appeal an  
 294 interpretation rendered by a hearing officer panel by filing a  
 295 petition with the commission. Such appeals shall be initiated in  
 296 accordance with chapter 120 and the uniform rules of procedure  
 297 and must be filed within 30 days after publication of the  
 298 interpretation on the Building Code Information System or in the  
 299 Florida Administrative Register. Hearings shall be conducted  
 300 pursuant to chapter 120 and the uniform rules of procedure.  
 301 Decisions of the commission are subject to judicial review  
 302 pursuant to s. 120.68. The final order of the commission is  
 303 binding upon the parties and upon all jurisdictions subject to  
 304 the Florida Building Code or the Florida Accessibility Code for  
 305 Building Construction.

306 8. The burden of proof in any proceeding initiated in  
 307 accordance with subparagraph 7. is on the party who initiated  
 308 the appeal.

309 9. In any review proceeding initiated in accordance with  
 310 this paragraph, including any proceeding initiated in accordance  
 311 with subparagraph 7., the fact that an owner or builder has  
 312 proceeded with construction may not be grounds for determining

313 an issue to be moot if the issue is one that is likely to arise  
 314 in the future.

315

316 This paragraph provides the exclusive remedy for addressing  
 317 requests to review local interpretations of the Florida Building  
 318 Code or the Florida Accessibility Code for Building Construction  
 319 and appeals from review proceedings.

320 (d) Upon written application by any substantially affected  
 321 person, contractor, or designer, or a group representing a  
 322 substantially affected person, contractor, or designer, the  
 323 commission shall issue or cause to be issued a formal  
 324 interpretation of the Florida Building Code or the Florida  
 325 Accessibility Code for Building Construction as prescribed by  
 326 paragraph (c).

327 (e) Local decisions declaring structures to be unsafe and  
 328 subject to repair or demolition are not subject to review under  
 329 this subsection and may not be appealed to the commission if the  
 330 local governing body finds that there is an immediate danger to  
 331 the health and safety of the public.

332 (f) Upon written application by any substantially affected  
 333 person, the commission shall issue a declaratory statement  
 334 pursuant to s. 120.565 relating to an agency's interpretation  
 335 and enforcement of the specific provisions of the Florida  
 336 Building Code or the Florida Accessibility Code for Building  
 337 Construction which the agency is authorized to enforce. This  
 338 subsection does not provide any powers, other than advisory, to

339 the commission with respect to any decision of the State Fire  
 340 Marshal made pursuant to chapter 633.

341 (g) The commission may designate a commission member who  
 342 has demonstrated expertise in interpreting building plans to  
 343 attend each meeting of the advisory council created in s.  
 344 553.512. The commission member may vary from meeting to meeting,  
 345 shall serve on the council in a nonvoting capacity, and shall  
 346 receive per diem and expenses as provided in s. 553.74(3).

347 (h) The commission shall by rule establish an informal  
 348 process of rendering nonbinding interpretations of the Florida  
 349 Building Code and the Florida Accessibility Code for Building  
 350 Construction. The commission is specifically authorized to refer  
 351 interpretive issues to organizations that represent those  
 352 engaged in the construction industry. The commission shall  
 353 immediately implement the process before completing formal  
 354 rulemaking. It is the intent of the Legislature that the  
 355 commission create a process to refer questions to a small,  
 356 rotating group of individuals licensed under part XII of chapter  
 357 468, to which a party may pose questions regarding the  
 358 interpretation of code provisions. It is the intent of the  
 359 Legislature that the process provide for the expeditious  
 360 resolution of the issues presented and publication of the  
 361 resulting interpretation on the Building Code Information  
 362 System. Such interpretations shall be advisory only and  
 363 nonbinding on the parties and the commission.

364 (4) In order to administer this section, the commission

365 may adopt by rule and impose a fee for filing requests for  
 366 declaratory statements and binding and nonbinding  
 367 interpretations to recoup the cost of the proceedings which may  
 368 not exceed \$125 for each request for a nonbinding interpretation  
 369 and \$250 for each request for a binding review or  
 370 interpretation. For proceedings conducted by or in coordination  
 371 with a third party, the rule may provide that payment be made  
 372 directly to the third party, who shall remit to the department  
 373 that portion of the fee necessary to cover the costs of the  
 374 department.

375 ~~(5) The commission may render declaratory statements in~~  
 376 ~~accordance with s. 120.565 relating to the provisions of the~~  
 377 ~~Florida Accessibility Code for Building Construction not~~  
 378 ~~attributable to the Americans with Disabilities Act~~  
 379 ~~Accessibility Guidelines. Notwithstanding the other provisions~~  
 380 ~~of this section, the Florida Accessibility Code for Building~~  
 381 ~~Construction and chapter 11 of the Florida Building Code may not~~  
 382 ~~be interpreted by, and are not subject to review under, any of~~  
 383 ~~the procedures specified in this section. This subsection has no~~  
 384 ~~effect upon the commission's authority to waive the Florida~~  
 385 ~~Accessibility Code for Building Construction as provided by s.~~  
 386 ~~553.512.~~

387 Section 7. Subsections (11) through (18) of section  
 388 553.79, Florida Statutes, are renumbered as subsections (12)  
 389 through (19), respectively, and a new subsection (11) is added  
 390 to that section to read:

391 553.79 Permits; applications; issuance; inspections.-

392 (11) The local enforcing agency may not issue a building  
 393 permit to construct, develop, or modify a public swimming pool  
 394 or public bathing place without proof of application for an  
 395 operating permit under s. 514.031. Final inspection may not be  
 396 completed until such operating permit is issued.

397 Section 8. Subsections (1) and (2) of section 553.841,  
 398 Florida Statutes, are amended to read:

399 553.841 Building code compliance and mitigation program.-

400 (1) The Legislature finds that knowledge and understanding  
 401 by persons licensed or employed in the design and construction  
 402 industries of the importance and need for complying with the  
 403 Florida Building Code and related laws is vital to the public  
 404 health, safety, and welfare of this state, especially for  
 405 protecting consumers and mitigating damage caused by hurricanes  
 406 to residents and visitors to the state. The Legislature further  
 407 finds that the Florida Building Code can be effective only if  
 408 all participants in the design and construction industries  
 409 maintain a thorough knowledge of the code, code compliance and  
 410 enforcement, duties related to consumers, and changes that  
 411 ~~additions thereto which~~ improve construction standards, project  
 412 completion, and compliance of design and construction to protect  
 413 against consumer harm, storm damage, and other damage.

414 Consequently, the Legislature finds that there is a need for a  
 415 program to provide ongoing education and outreach activities  
 416 concerning compliance with the Florida Building Code, the

417 Florida Fire Prevention Code, construction plan and permitting  
 418 requirements, construction liens, and hurricane mitigation.

419 (2) The Department of Business and Professional Regulation  
 420 shall administer a program, designated as the Florida Building  
 421 Code Compliance and Mitigation Program, to develop, coordinate,  
 422 and maintain education and outreach to persons required to  
 423 comply with the Florida Building Code and related provisions as  
 424 specified in subsection (1) and ensure consistent education,  
 425 training, and communication of the code's requirements,  
 426 including, but not limited to, methods for design and  
 427 construction compliance and mitigation of storm-related damage.  
 428 The program shall also operate a clearinghouse through which  
 429 design, construction, and building code enforcement licensees,  
 430 suppliers, and consumers in this state may find others in order  
 431 to exchange information relating to mitigation and facilitate  
 432 repairs in the aftermath of a natural disaster.

433 Section 9. This act shall take effect July 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional  
 2 Regulation Subcommittee  
 3 Representative Eagle offered the following:

**Amendment (with title amendment)**

Remove lines 57-87 and insert:

7 develop, or modify a public swimming pool must apply to the  
 8 department for an operating permit before filing an application  
 9 for a building permit under s. 553.79.

10 (2) Local governments or local enforcement districts may  
 11 determine compliance with the general construction standards of  
 12 the Florida Building Code, pursuant to s. 553.80. Local  
 13 governments or local enforcement districts may conduct plan  
 14 reviews and inspections of public swimming pools and public  
 15 bathing places for this purpose.

16 Section 3. Paragraph (a) of subsection (1) is amended to  
 17 read:



Amendment No. 1

18 514.031 Permit necessary to operate public swimming pool.-

19 (1) It is unlawful for any person or public body to  
20 operate or continue to operate any public swimming pool without  
21 a valid permit from the department, such permit to be obtained  
22 in the following manner:

23 (a) Any person or public body desiring to operate any  
24 public swimming pool shall file an application for a permit with  
25 the department, on application forms provided by the department,  
26 and shall accompany such application with:

27 1. A description of the structure, its appurtenances, and  
28 its operation.

29 ~~2.1.~~ A description of the source or sources of water  
30 supply, and the amount and quality of water available and  
31 intended to be used.

32 ~~3.2.~~ The method and manner of water purification,  
33 treatment, disinfection, and heating.

34 ~~4.3.~~ The safety equipment and standards to be used.

35 5. A copy of the final approval from the local enforcing  
36 agency.

37 ~~6.4.~~ Any other pertinent information deemed necessary by  
38 the department.

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Amendment No. 1

44  
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T I T L E A M E N D M E N T

Remove lines 8-9 and insert:  
public swimming pool; amending s. 514.031, F.S.; providing  
additional requirements for





Amendment No. 2

18 agency will result in a building and components that meet or  
19 exceed the applicable Florida Building Code requirements;

20 3. Thereafter, the approved inspection agency shall inspect  
21 each module produced during at least one point of the  
22 manufacturing process and inspect a minimum of 75 percent of the  
23 subsystems of each module (electrical, plumbing, structural,  
24 mechanical or thermal); and

25 4. With respect to components, inspect a minimum of 75  
26 percent of the manufactured building components and a minimum of  
27 20 percent of storage sheds that are not designed for human  
28 habitation and that have a floor area of 720 square feet (67 m2)  
29 or less.

30



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional  
 2 Regulation Subcommittee  
 3 Representative Eagle offered the following:

**Amendment (with title amendment)**

Remove lines 394-396 and insert:

7 without proof of application for an operating permit under s.  
 8 514.031. A certificate of completion or occupancy shall not be  
 9 issued until such operating permit is issued.

13 -----  
 14 **T I T L E A M E N D M E N T**

Remove lines 25-28 and insert:

16 for a public swimming pool proof of application for an operating  
 17 permit; requiring issuance of an operating permit before



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 593 (2014)

Amendment No. 3

18 certificate of completion or occupancy is issued; amending s.  
19 553.841, F.S.;  
20



Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional  
 2 Regulation Subcommittee  
 3 Representative Eagle offered the following:

**Amendment (with title amendment)**

Between lines 432 and 433, insert:

7 Section 9. Section 553.883, Florida Statutes, is created  
8 to read:

9 553.883 One-and two-family dwellings and townhomes  
 10 undergoing a repair or an alteration level 1, as defined in the  
 11 Florida Existing Building Code, shall be permitted to use smoke  
 12 alarms powered by a 10-year non-removable, non-replaceable  
 13 battery in lieu of retrofitting such homes with smoke alarms  
 14 powered by the house electrical system. Effective January 1,  
 15 2015, any battery-powered smoke alarm that is newly-installed or  
 16 replaces an existing battery-powered alarm must be powered by a



Amendment No. 4

17 | non-removable, non-replaceable battery that powers the alarm for  
18 | a minimum of 10 years.

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T I T L E A M E N D M E N T

24

Remove line 31 and insert:

25

Program; creating s. 553.883, F.S.; authorizing smoke alarms

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powered by a 10-year non-removable, non-replaceable battery in

27

certain circumstances and effective January 1, 2015, requiring

28

such alarms in certain circumstances; providing an effective

29

date.

30



Amendment No 5.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee/Subcommittee hearing bill: Business & Professional  
2 Regulation Subcommittee  
3 Representative Eagle offered the following:

**Amendment (with title amendment)**

Between lines 432 and 433, insert:

7 Section 9. Subsection (3) of section 553.993, Florida  
8 Statutes, is amended to read:

9 553.993 Definitions.—For purposes of this part:

10 (3) "Building energy-efficiency rating system" means a  
11 whole building energy evaluation system that provides a reliable  
12 and scientifically-based analysis of a building's energy  
13 consumption or energy features and allows comparison to similar  
14 building types in similar climate zones where applicable.  
15 Specifically, the rating system shall use standard calculations,  
16 formulas, and scoring methods; be applicable nationally; compare  
17 a building to a clearly defined and researched baseline or





Amendment No 5.

18 benchmark; require qualified professionals to conduct the rating  
19 or assessment; and provide a labeling and recognition  
20 program with specific criteria or levels. For new  
21 construction, residential program benchmarks shall be consistent  
22 with national building standards. Existing residential building  
23 programs shall be consistent with national home energy  
24 rating standards. The program shall have at least one level of  
25 oversight performed by an organized and balanced group of  
26 professionals with subject matter expertise in energy  
27 efficiency, energy rating, and evaluation methods established by  
28 ~~the Residential Energy Services Network, the Commercial Energy~~  
29 ~~Services Network, the Building Performance Institute, or the~~  
30 ~~Florida Solar Energy Center.~~

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34

**T I T L E   A M E N D M E N T**

35

Remove line 31 and insert:

36

Program; amending s. 553.993, F.S.; revising the definition of

37

"building energy-efficiency rating system"; requiring

38

consistency with national building standards for new

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construction; requiring consistency with national home energy

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rating standards for existing residential building programs;

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providing for oversight; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 775 Pub. Rec./Florida State Boxing Commission

**SPONSOR(S):** Hutson

**TIED BILLS:** HB 773 **IDEN./SIM. BILLS:** SB 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee		Brown-Blake KB	Luczynski NJ
2) Government Operations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

HB 775 creates a public records exemption for certain proprietary confidential business information submitted by promoters in a post-match report to the Florida State Boxing Commission. The addition to the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the Florida Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

The bill shall take effect at the same time that HB 773 is adopted and becomes law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Public Records Laws**

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

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

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

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

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

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> FLA. CONST. art. I, s. 24.

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> *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.<sup>8</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>10</sup> 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.<sup>11</sup> A bill enacting an exemption<sup>12</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

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

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

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

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<sup>8</sup> 85-62 Fla. Op. Att'y Gen. (1985).

<sup>9</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

<sup>10</sup> *See supra* note 2.

<sup>11</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

<sup>12</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>13</sup> *See supra* note 2.

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(6)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

## The Florida State Boxing Commission Generally

The function of the Florida State Boxing Commission is to license and regulate professional boxing, kickboxing and mixed martial arts. The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.<sup>18</sup> 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.

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

### Licensure of Promoters

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

Applicants for promoter licensure are required to submit a completed application along with a non-refundable application fee of \$250.00<sup>21</sup> 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.<sup>22</sup>

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

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

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<sup>18</sup> 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](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).

<sup>19</sup> Section 548.003(1), F.S.

<sup>20</sup> See *supra* note 2.

<sup>21</sup> Rule 61K1-1.003, F.A.C.

<sup>22</sup> Rule 61K1-1.005, F.A.C.

<sup>23</sup> Rule 61K1-1.0035, F.A.C.

<sup>24</sup> See *supra* note 21.

<sup>25</sup> Rule 61K1-1.004, F.A.C.

<sup>26</sup> Rule 61K1-1.0031, F.A.C.

- Payment is made to the referees, judges, and ringside physicians assigned by the Commission for the event.<sup>27</sup>
- Reporting requirements as set forth in s. 548.06, F.S., are complied with regarding gross receipts and the applicable taxes related to gross receipts are paid.

### **Promoter Records Requirements**

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

The written report shall be accompanied by a tax payment in the amount of 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 motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges.
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.
- The face value of all tickets sold and complimentary tickets issued, provided, or given.
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

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

### **House Bill 773 is linked to House Bill 775**

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

- The gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. In effect, this provision reinstates a form of the "pay-per-view" tax for in-state matches, which was eliminated in 2012.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above 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.

Linked bill HB 773 further amends s. 548.06, F.S., to permit promoters 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.

### **Effect of the Bill**

The bill, which is linked to the passage of HB 773, creates a public records exemption under newly created s. 548.062, F.S. The public records exemption is for certain documentation relating to the reports submitted pursuant to s. 548.06, F.S. The bill provides that proprietary confidential business

<sup>27</sup> See *supra* note 22.

information provided with the written report required to be filed with the Commission pursuant to s. 548.06, F.S., is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution.

Proprietary confidential business information is defined to include, but is not limited to, the following:

- The number of ticket sales for a match.
- The amount of gross receipts after a match.
- Trade secrets.
- Business plans.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the promoter providing the information.

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

The Legislature declares, through the bill, that proprietary confidential business information needs to be made confidential and exempt from public records requirements. The bill includes a statement of public necessity, which finds that:

The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information. For these reasons, the Legislature declares that any proprietary confidential business information provided in the written report that is required to be filed with the commission after a match pursuant to s. 548.06, Florida Statutes, is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

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

#### B. SECTION DIRECTORY:

**Section 1** creates s. 548.062, F.S., providing an exemption from public records requirements for proprietary confidential business information held by the Commission pursuant to submission of reports by the promoters pursuant to s. 548.06, F.S.

**Section 2** provides the Legislative statement of public necessity for the public records exemption.

**Section 3** provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:



None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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

**D. FISCAL COMMENTS:**

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:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Line 25 of the bill indicates that the term "proprietary confidential business information" includes, but is not limited to, a number of documents. As the bill creates an exemption from the Florida Constitution as well as ch. 119, F.S., the language needs to be specific as to what is included in "proprietary confidential business information" and not leave the term open for interpretation. Therefore, the words "but is not limited to" should be removed.

Additionally, the bill provides an exemption from public records for proprietary confidential business information provided in the written report required to be filed with the Commission pursuant to s. 548.06, F.S. The term proprietary confidential business information includes trade secrets, business plans, internal auditing controls and reports of internal auditors, security measures, systems, or procedures, and information relating to competitive interest, the disclosure of which would impair the competitive business of the promoter providing the information. These documents typically are not provided with the written report required to be filed with the Commission pursuant to s. 548.06, F.S. However, these documents are subject to audit review by the Commission pursuant to s. 548.06, F.S. Therefore, it is appropriate to amend line 38 to include documents obtained by the Commission through audit pursuant to s. 548.06, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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A bill to be entitled  
 An act relating to public records; creating s.  
 548.062, F.S.; providing an exemption from public  
 records requirements for the information in the  
 reports required to be submitted to the Florida State  
 Boxing Commission by a promoter; providing for future  
 legislative review and repeal of the exemption;  
 providing a statement of public necessity; providing a  
 contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 548.062, Florida Statutes, is created  
 to read:

548.062 Public records exemption.-

(1) As used in this section, the term "proprietary  
 confidential business information" means information that is  
 held by the commission which is intended to be and is treated by  
 the promoter providing such information as 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 term includes, but is not limited to:

- (a) The number of ticket sales for a match.

27        (b) The amount of gross receipts after a match.  
 28        (c) Trade secrets.  
 29        (d) Business plans.  
 30        (e) Internal auditing controls and reports of internal  
 31 auditors.  
 32        (f) Security measures, systems, or procedures.  
 33        (g) Information relating to competitive interests, the  
 34 disclosure of which would impair the competitive business of the  
 35 promoter providing the information.  
 36        (2) Proprietary confidential business information provided  
 37 in the written report required to be filed with the commission  
 38 after a match pursuant to s. 548.06 is confidential and exempt  
 39 from s. 119.07(1) and s. 24(a), Art. I of the State  
 40 Constitution. Information made confidential and exempt by this  
 41 subsection may be disclosed to another governmental entity in  
 42 the performance of its duties and responsibilities.  
 43        (3) This section is subject to the Open Government Sunset  
 44 Review Act in accordance with s. 119.15 and shall stand repealed  
 45 on October 2, 2019, unless reviewed and saved from repeal  
 46 through reenactment by the Legislature.  
 47        Section 2. The Legislature finds that it is a public  
 48 necessity that proprietary confidential business information be  
 49 protected from disclosure. The disclosure of proprietary  
 50 confidential business information could injure a promoter in the  
 51 marketplace by giving the promoter's competitors insights into  
 52 its financial status and business plan, thereby putting the

HB 775

2014

53 promoter at a competitive disadvantage. The Legislature also  
54 finds that the harm to a promoter in disclosing proprietary  
55 confidential business information significantly outweighs any  
56 public benefit derived from disclosure of the information. For  
57 these reasons, the Legislature declares that any proprietary  
58 confidential business information provided in the written report  
59 that is required to be filed with the commission after a match  
60 pursuant to s. 548.06, Florida Statutes, is confidential and  
61 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
62 Article I of the State Constitution.

63       Section 3. This act shall take effect on the same date  
64 that HB 773 or similar legislation takes effect, if such  
65 legislation is adopted in the same legislative session or an  
66 extension thereof and becomes law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional  
2 Regulation Subcommittee  
3 Representative Hutson offered the following:

4  
5 **Amendment**

6 Remove line 25 and insert:  
7 public. The term includes:  
8



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Business & Professional  
 2 Regulation Subcommittee  
 3 Representative Hutson offered the following:

**Amendment (with title amendment)**

6 Remove line 38 and insert:  
 7 after a match or obtained by the commission through an audit of  
 8 the promoter's books and records pursuant to s. 548.06 is  
 9 confidential and exempt

13 -----  
 14 **T I T L E A M E N D M E N T**

15 Remove line 6 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 775 (2014)

Amendment No. 2

17 | Boxing Commission by a promoter or obtained by the Commission  
18 | through audit of the promoter's records; providing for future  
19 |





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 773 Pugilistic Exhibitions  
**SPONSOR(S):** Business & Professional Regulation Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professional Regulation Subcommittee		Brown-Blake <i>BB</i>	Luczynski <i>ML</i>

### 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 5 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 1 year.
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by 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.

This bill is not anticipated to have a fiscal impact on state expenditures. The bill is anticipated to have a significant reduction to state revenues due to deregulation of concessionaires and booking agents, and lower tax payments due to not including up to 5 percent of complimentary tickets in gross receipts for post-event taxation purposes.

The bill has an effective date of July 1, 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.<sup>1</sup> The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.<sup>2</sup> 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.<sup>3</sup> The Commission does not attend or directly regulate the amateur matches.

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

#### 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.

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<sup>1</sup> 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](http://www.myfloridalicense.com/dbpr/pro/sbc/documents/box_faq.pdf) (last viewed March 4, 2014).

<sup>2</sup> 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&ej=vfoVU-X3CsPW2AWps4D4Cw&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFOjCNF-2nwlff6jibOo9m4VuSq-Q1wUTHw](https://www.google.com/url?q=http://www.myfloridalicense.com/dbpr/os/news/Boxing10_17_12.html&sa=U&ej=vfoVU-X3CsPW2AWps4D4Cw&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFOjCNF-2nwlff6jibOo9m4VuSq-Q1wUTHw) (last viewed March 4, 2014).

<sup>3</sup> Section 548.0065(1), F.S.

<sup>4</sup> Section 548.003(1), F.S.

<sup>5</sup> See *supra* note 2.

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:

- 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."<sup>6</sup>

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."<sup>7</sup> "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."<sup>8</sup> "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.

Additional, 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,

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

<sup>7</sup> Section 548.002(14), F.S.

<sup>8</sup> Section 548.002(6), F.S.

F.S., was amended to include amateur mixed martial arts within the Commission's exclusive jurisdiction;<sup>9</sup> however, the reference to "mixed martial arts" was inadvertently omitted from s. 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**

As mentioned above, 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, 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.<sup>10</sup>

Additionally, the 14<sup>th</sup> 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.<sup>11</sup>

The Third District Court of Appeals 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."<sup>12</sup>

As stated above, s. 548.046(3)(c), F.S., provides for summary revocation of a license without a 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:

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

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

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

- 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 a hearing is filed, the Commission is required to meet and determine the disposition to be made off 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 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 5 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 5 percent tax on the value of the ticket for each complimentary ticket issued.

### **Promoter Records Requirements**

As discussed above, 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.<sup>13</sup>

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.

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<sup>13</sup> Section 548.06, F.S.

- “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 means a person who is approved by the Commission and licensed to practice medicine under ch. 458 or ch. 459, 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 Co-Promoters 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 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, 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. Moreover, 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, as discussed before, 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 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.

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 5 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 5 percent of the seats in the house.

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 without including the tickets in the gross receipts and paying the corresponding post-event taxes under certain circumstances. If the Commission authorizes more than 5 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 5 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 5 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 for application requirements and documentation retention requirements. The application must be submitted no less than two business days prior to the event, and 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 no less than one business day prior to the event, 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.<sup>14</sup> The fee revenue estimate is based on total post event taxes collected of \$115,258, a 10% penalty imposed, with 60% 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,

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<sup>14</sup> 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).

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 in 2013 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.<sup>15</sup> 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.<sup>16</sup> 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 5 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 of approximately \$60,000 per year.<sup>17</sup> Furthermore, the Department estimates a reduction in revenue from loss of licensure fees for concessionaires to total approximately \$600 per year.<sup>18</sup>

### **Complimentary Tickets**

The bill provides that complimentary tickets for up to 5 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.<sup>19</sup> 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 5 percent permitted by statute if the promoter obtains authorization from the Commission to issue more.

As mentioned previously, 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 5 percent post-event tax for the sale of the tickets.

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<sup>15</sup> 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).

<sup>16</sup> 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).

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

<sup>18</sup> 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).

<sup>19</sup> *Id.*

## **Total Loss of Revenue**

The Department anticipated a loss in taxation and licensure fee revenue of \$100,750.<sup>20</sup> In addition, as a result of the estimated \$100,750 reduction in taxes and license fees, there will be a \$8,060 annual reduction in transfers to General Revenue.<sup>21</sup> Thus the total loss in revenue for the Department would be \$108,810 annually.

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:**

In 2013, CS/HB 1067 presented similar language with regards to fiscal impact on state expenditures. The proposed committee substitute bill language more closely resembles CS/HB 1067 than the originally filed bill. Based on the 2013 Departmental Bill Analysis of HB 1067, the bill is not anticipated to have a fiscal impact on state expenditures. The 2014 Departmental Bill Analysis contemplates language not included in the committee substitute.

## **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

### **1. Revenues:**

None.

### **2. Expenditures:**

None.

## **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 5 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:**

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

None.

**B. RULE-MAKING AUTHORITY:**

Yes.

The Commission must 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.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2       An act relating to pugilistic exhibitions; amending s.  
 3       548.002, F.S.; revising definitions; amending s.  
 4       548.004, F.S.; revising the duties and  
 5       responsibilities of the executive director of the  
 6       Florida State Boxing Commission; deleting a provision  
 7       requiring the electronic recording of commission  
 8       proceedings; amending s. 548.006, F.S.; clarifying the  
 9       commission's exclusive jurisdiction over approval of  
 10      amateur mixed martial arts matches; amending s.  
 11      548.007, F.S.; revising applicability of ch. 548,  
 12      F.S.; repealing s. 548.013, F.S.; relating to foreign  
 13      copromoter license requirement; amending s. 548.014,  
 14      F.S.; deleting references to foreign copromoters;  
 15      repealing s. 548.015, F.S.; relating to the authority  
 16      of the commission to require a concessionaire to file  
 17      a form of security with the commission; amending s.  
 18      548.017, F.S.; deleting a requirement for the  
 19      licensure of concessionaires; amending s. 548.046,  
 20      F.S.; providing for immediate license suspension and  
 21      other disciplinary action if a participant fails or  
 22      refuses to provide a urine sample or tests positive  
 23      for specified prohibited substances; amending s.  
 24      548.052, F.S.; deleting reference to foreign  
 25      copromoters; amending s. 548.054, F.S.; revising  
 26      procedure and requirements for requesting a hearing

27 following the withholding of a purse; amending s.  
 28 548.06, F.S.; specifying a circumstance under which a  
 29 report is not required to be filed with the  
 30 commission; revising the calculation of gross receipts  
 31 that are required to be filed in a report to the  
 32 commission; requiring promoters to retain specified  
 33 documents and records; authorizing the commission and  
 34 the Department of Business and Professional Regulation  
 35 to audit specified records retained by a promoter;  
 36 requiring the commission to adopt rules; amending s.  
 37 548.07, F.S.; revising the procedure for suspension of  
 38 licensure; amending s. 548.073, F.S.; requiring that  
 39 commission hearings be held in accordance with ch.  
 40 120, F.S.; providing an appropriation; providing an  
 41 effective date.

42  
 43 Be It Enacted by the Legislature of the State of Florida:

44  
 45 Section 1. Section 548.002, Florida Statutes, is amended  
 46 to read:

47 548.002 Definitions.—As used in this chapter, the term:

48 (1) "Amateur" means a person who has never received nor  
 49 competed for any purse or other article of value, either for the  
 50 expenses of training or for participating in a match, other than  
 51 a prize of \$50 or less in value ~~or less~~.

52 (2) "Amateur sanctioning organization" means a ~~any~~

53 business entity organized for sanctioning and supervising  
 54 matches involving amateurs.

55 (3) "Boxing" means the unarmed combat sport of fighting by  
 56 striking with fists ~~to compete with the fists.~~

57 (4) "Commission" means the Florida State Boxing  
 58 Commission.

59 ~~(5) "Concessionaire" means any person or business entity~~  
 60 ~~not licensed as a promoter which receives revenues or other~~  
 61 ~~compensation from the sale of tickets or from the sale of~~  
 62 ~~souvenirs, programs, broadcast rights, or any other concessions~~  
 63 ~~in conjunction with the promotion of a match.~~

64 ~~(5)(6)~~ (6) "Contest" means a boxing, kickboxing, or mixed  
 65 martial arts engagement in which persons participating strive  
 66 ~~earnestly to win using, but not necessarily being limited to,~~  
 67 strikes and blows to the head or other full-contact maneuvers.

68 ~~(6)(7)~~ (7) "Department" means the Department of Business and  
 69 Professional Regulation.

70 ~~(7)(8)~~ (8) "Event" means one or more matches comprising a  
 71 show.

72 ~~(8)(9)~~ (9) "Exhibition" means a boxing, kickboxing, or mixed  
 73 martial arts engagement in which persons participating show or  
 74 display their skill without necessarily striving to win using,  
 75 ~~but not necessarily being limited to,~~ strikes and blows to the  
 76 head or other full-contact maneuvers.

77 (9) "Face value" means the dollar value of a ticket equal  
 78 to the dollar amount that a customer is required to pay or, for

79 complimentary tickets, would have been required to pay to  
 80 purchase a ticket with equivalent seating priority in order to  
 81 view the event. If the ticket specifies the amount of admission  
 82 charges attributable to state or federal taxes, such taxes are  
 83 not included in the face value.

84 (10) "Full contact" means the use of strikes and blows  
 85 during a match which:

86 (a) Are intended to break the plane of the receiving  
 87 participant or amateur's body;

88 (b) Are delivered to the head, face, neck, or body of the  
 89 receiving participant or amateur; and

90 (c) Cause the receiving participant or amateur to move in  
 91 response to the strike or blow.

92 ~~(10) "Foreign copromoter" means a promoter who has no~~  
 93 ~~place of business within this state.~~

94 (11) "Judge" means a person licensed by the commission who  
 95 evaluates and scores a match using a designated scoring system  
 96 ~~who has a vote in determining the winner of any contest.~~

97 (12) "Kickboxing" means the unarmed combat sport of  
 98 fighting by striking to compete with the fists, hands, feet,  
 99 legs, or any combination thereof, and includes "punchkick" and  
 100 other similar competitions. The term does not include any form  
 101 of ground fighting techniques.

102 (13) "Manager" means a ~~any~~ person who, directly or  
 103 indirectly, controls or administers the boxing, kickboxing, or  
 104 mixed martial arts affairs of a ~~any~~ participant.

105 (14) "Match" means a ~~any~~ contest or exhibition.

106 (15) "Matchmaker" means a person who brings together  
107 professionals or arranges matches for professionals.

108 (16) "Mixed martial arts" means the unarmed combat sport  
109 involving the use, ~~subject to any applicable limitations set~~  
110 ~~forth in this chapter,~~ of a combination of techniques,  
111 including, but not limited to, grappling, kicking, striking, and  
112 using techniques from different disciplines of the martial arts,  
113 including, but not limited to, boxing, kickboxing, Muay Thai,  
114 jujitsu, and wrestling ~~grappling, kicking, and striking.~~

115 (17) "Participant" means a professional competing in a  
116 boxing, kickboxing, or mixed martial arts match.

117 (18) "Physician" means a person who is approved by the  
118 commission, is an individual licensed to practice medicine under  
119 chapter 458 or chapter 459 and whose license is unencumbered and  
120 in good standing ~~to practice medicine and surgery in this state.~~

121 (19) "Professional" means a person who has received or  
122 competed for a ~~any~~ purse or other article of a value greater  
123 than \$50, either for the expenses of training or for  
124 participating in a ~~any~~ match.

125 (20) "Promoter" means a ~~any~~ person or entity, including an  
126 ~~and includes any~~ officer, director, trustee, partner ~~employee,~~  
127 or owner stockholder of a corporate promoter or promoter  
128 partnership, who produces, arranges, or stages a ~~any~~ match  
129 involving a professional.

130 (21) "Purse" means the financial guarantee or other

131 remuneration for which a professional is participating in a  
 132 match and includes the professional's share of any payment  
 133 received for radio broadcasting and, television, including pay-  
 134 per-view or closed circuit ~~and motion picture rights.~~

135 (22) "Second" or "cornerman" means a person who assists a  
 136 ~~the match~~ participant in preparing for a match and between  
 137 rounds, and who maintains the corner of a ~~the~~ participant during  
 138 a ~~the~~ match.

139 (23) "Secretary" means the Secretary of Business and  
 140 Professional Regulation.

141 (24) "Unarmed combat" means a form of competition in which  
 142 a strike or blow is struck which may reasonably be expected to  
 143 inflict injury.

144 Section 2. Section 548.004, Florida Statutes, is amended  
 145 to read:

146 548.004 Executive director; duties, compensation,  
 147 administrative support.-

148 (1) The department shall employ an executive director with  
 149 the approval of the commission. The executive director shall  
 150 serve at the pleasure of the secretary. The executive director  
 151 or his or her designee shall perform the duties specified by the  
 152 commission, including conducting the functions of the commission  
 153 office; appointing event and commission officials; approving  
 154 licenses, permits, and matches; and performing any ~~keep a record~~  
 155 ~~of all proceedings of the commission; shall preserve all books,~~  
 156 ~~papers, and documents pertaining to the business of the~~

157 ~~commission; shall prepare any notices and papers required; shall~~  
 158 ~~appoint judges, referees, and other officials as delegated by~~  
 159 ~~the commission and pursuant to this chapter and rules of the~~  
 160 ~~commission; and shall perform such other duties as the~~  
 161 department or commission deems necessary to fulfill the duties  
 162 of the position ~~directs~~. The executive director may issue  
 163 subpoenas and administer oaths to witnesses, permitholders,  
 164 record custodians, and licensees.

165 ~~(2) The commission shall require electronic recording of~~  
 166 ~~all scheduled proceedings of the commission.~~

167 ~~(2)(3)~~ The department shall provide assistance in budget  
 168 development and budget submission for state funding requests.  
 169 The department shall submit an annual balanced legislative  
 170 budget for the commission which is based upon anticipated  
 171 revenue. The department shall provide technical assistance and  
 172 administrative support, if requested or determined necessary  
 173 ~~needed~~, to the commission and its executive director on issues  
 174 relating to personnel, contracting, property management, or  
 175 other issues identified as important to performing the duties of  
 176 this chapter and to protecting the interests of the state.

177 Section 3. Section 548.006, Florida Statutes, is amended  
 178 to read:

179 548.006 Power of commission to control professional and  
 180 amateur boxing, kickboxing, and mixed martial arts matches  
 181 ~~pugilistic contests and exhibitions; certification of~~  
 182 competitiveness of professional mixed martial arts and

183 kickboxing matches.-

184 (1) The commission has exclusive jurisdiction over every  
 185 boxing, kickboxing, and mixed martial arts match held within the  
 186 state which involves a professional.

187 (2) As to professional mixed martial arts and kickboxing,  
 188 until a central repository of match records for each exists and  
 189 is approved by the commission, the matchmaker shall certify as  
 190 to the competitiveness of each match.

191 (3) The commission has exclusive jurisdiction over  
 192 approval, disapproval, suspension of approval, and revocation of  
 193 approval of all amateur sanctioning organizations for amateur  
 194 boxing, and kickboxing, and mixed martial arts matches held in  
 195 this state.

196 (4) Professional and amateur matches shall be held in  
 197 accordance with this chapter and the rules adopted by the  
 198 commission.

199 Section 4. Section 548.007, Florida Statutes, is amended  
 200 to read:

201 548.007 Exemptions.-~~This chapter does~~ Applicability of  
 202 ~~provisions to amateur matches and certain other matches or~~  
 203 ~~events. Sections 548.001-548.079 do not apply to~~ any of the  
 204 following:

205 (1) A match that does not allow full contact ~~conducted or~~  
 206 ~~sponsored by a bona fide nonprofit school or education program~~  
 207 ~~whose primary purpose is instruction in the martial arts,~~  
 208 ~~boxing, or kickboxing, if the match held in conjunction with the~~



209 ~~instruction~~ is limited to amateur participants, ~~who are students~~  
 210 ~~of the school or instructional program.~~

211 (2) A match conducted or sponsored by a any company or  
 212 detachment of the Florida National Guard or the United States  
 213 Armed Forces, if the match is limited to amateurs ~~participants~~  
 214 who are members of a ~~the~~ company or detachment of the Florida  
 215 National Guard or United States Armed Forces. ~~or~~

216 (3) A match conducted or sponsored by the Fraternal Order  
 217 of Police, if the match is limited to amateurs ~~amateur~~  
 218 ~~participants~~ and is held in conjunction with a charitable event.

219 (4) A match conducted by or between public postsecondary  
 220 educational institutions or public K-12 schools, as defined in  
 221 s. 1000.04, if the match is limited to amateurs who are members  
 222 of a school-sponsored club or team.

223 (5) A match conducted by the International Olympic  
 224 Committee, the International Paralympic Committee, the Special  
 225 Olympics, or the Junior Olympics, if the match is limited to  
 226 amateurs who are competing in or attempting to qualify for the  
 227 Olympics, Paralympics, Special Olympics, or Junior Olympics.

228 (6) A professional or amateur martial arts activity. As  
 229 used in this subsection, the term "martial arts" means one of  
 230 the traditional forms of self-defense or unarmed combat  
 231 involving the use of physical skill and coordination, including,  
 232 but not limited to, karate, aikido, judo, and kung fu. The term  
 233 does not include mixed martial arts.

234 Section 5. Section 548.013, Florida Statutes, is repealed.

235 Section 6. Subsections (1) and (2) of section 548.014,  
 236 Florida Statutes, are amended to read:

237 548.014 Promoters ~~and foreign copromoters~~; bonds or other  
 238 security.-

239 (1)(a) Before any license is issued or renewed to a  
 240 promoter ~~or foreign copromoter~~ and before any permit is issued  
 241 to a promoter ~~or foreign copromoter~~, she or he must file a  
 242 surety bond with the commission in such reasonable amount, but  
 243 not less than \$15,000, as the commission determines.

244 (b) All bonds must be upon forms approved and supplied by  
 245 the commission.

246 (c) The sufficiency of any surety is subject to approval  
 247 of the commission.

248 (d) The surety bond must be conditioned upon the faithful  
 249 performance by the promoter ~~or foreign copromoter~~ of her or his  
 250 obligations under this chapter and upon the fulfillment of her  
 251 or his contracts with any other licensees under this chapter.  
 252 However, the aggregate annual liability of the surety for all  
 253 obligations and fees may not exceed the amount of the bond.

254 (2) In lieu of a surety bond, the promoter ~~or foreign~~  
 255 ~~copromoter~~ may deposit with the commission cash or a certified  
 256 check, in an equivalent amount and subject to the same  
 257 conditions as the bond. Such security may not be returned to the  
 258 promoter until 1 year after the date on which it was deposited  
 259 with the commission unless a surety bond is substituted for it.  
 260 If no claim against the deposit is outstanding, it shall be

261 returned to the depositor 1 year after the date it was  
 262 deposited.

263 Section 7. Section 548.015, Florida Statutes, is repealed.

264 Section 8. Subsection (1) of section 548.017, Florida  
 265 Statutes, is amended to read:

266 548.017 Participants, managers, and other persons required  
 267 to have licenses.—

268 (1) A participant, manager, trainer, second, timekeeper,  
 269 referee, judge, announcer, physician, matchmaker,  
 270 ~~concessionaire, or promoter booking agent or representative of a~~  
 271 ~~booking agent shall~~ be licensed before directly or indirectly  
 272 acting in such capacity in connection with any match involving a  
 273 participant. A physician approved by the commission must be  
 274 licensed pursuant to chapter 458 or chapter 459, must maintain  
 275 an unencumbered license in good standing, and must demonstrate  
 276 satisfactory medical training or experience in boxing, or a  
 277 combination of both, to the executive director before ~~prior to~~  
 278 working as the ringside physician.

279 Section 9. Paragraph (c) of subsection (3) of section  
 280 548.046, Florida Statutes, is amended, and paragraph (d) is  
 281 added to that subsection, to read:

282 548.046 Physician's attendance at match; examinations;  
 283 cancellation of match.—

284 (3)

285 (c) A participant who fails or refuses ~~Failure or refusal~~  
 286 to provide a urine sample immediately upon request shall be

287 considered an immediate serious danger to the health, safety or  
 288 welfare of the public and his or her opponent. If a participant  
 289 fails or refuses to provide a urine sample, his or her license  
 290 shall be immediately suspended pursuant to s.120.60(6), and such  
 291 failure or refusal is grounds for additional disciplinary action  
 292 ~~result in the revocation of the participant's license. Any~~  
 293 ~~participant who has been adjudged the loser of a match and who~~  
 294 ~~subsequently refuses to or is unable to provide a urine sample~~  
 295 ~~shall forfeit his or her share of the purse to the commission. A~~  
 296 ~~Any participant who is adjudged the winner of a match and who~~  
 297 ~~subsequently refuses to or is unable to provide a urine sample~~  
 298 ~~forfeits shall forfeit the win and shall not be allowed to~~  
 299 ~~engage in any future match in the state. The decision shall be~~  
 300 ~~changed to a no-decision result and shall be entered into the~~  
 301 ~~official record as the result of the match. The purse shall be~~  
 302 ~~redistributed as though the participant found to be in violation~~  
 303 ~~of this subsection had lost the match. If redistribution of the~~  
 304 ~~purse is not necessary or after redistribution of the purse is~~  
 305 ~~completed, the participant found to be in violation of this~~  
 306 ~~subsection shall forfeit his or her share of the purse to the~~  
 307 ~~commission.~~

308 (d) If a participant tests positive for a prohibited  
 309 substance as specified by commission rule, the participant shall  
 310 be considered an immediate serious danger to the health, safety,  
 311 or welfare of the public and his or her opponent. The  
 312 participant's license shall be immediately suspended pursuant to

313 s.120.60(6), and subject to additional disciplinary action.

314 Section 10. Section 548.052, Florida Statutes, is amended  
315 to read:

316 548.052 Payment of advances by promoter ~~or foreign~~  
317 ~~copromoter~~ regulated.—A promoter ~~or foreign copromoter~~ may not  
318 pay, lend, or give a participant an advance against her or his  
319 purse before a contest, except with the prior written permission  
320 of the commission, the executive director or his or her designee  
321 ~~a commissioner~~; and, if permitted, such advance may be made only  
322 for expenses for transportation and maintenance in preparation  
323 for a contest.

324 Section 11. Subsection (2) of section 548.054, Florida  
325 Statutes, is amended to read:

326 548.054 Withholding of purses; hearing; disposition of  
327 withheld purse forfeiture.—

328 (2) Any purse so withheld shall be delivered by the  
329 promoter to the commission upon demand. Within 10 days after the  
330 match, the person from whom the sum was withheld may submit a  
331 petition for a hearing to the commission pursuant to s. 120.569  
332 ~~apply in writing to the commission for a hearing~~. Upon receipt  
333 of the petition application, the commission shall hold ~~shall fix~~  
334 ~~a date for~~ a hearing pursuant to ss. 120.569 and 120.57. ~~Within~~  
335 ~~10 days after the hearing or after 10 days following the match,~~  
336 If no petition application for a hearing is filed, the  
337 commission shall meet and determine the disposition ~~to be made~~  
338 of the withheld purse. If the commission finds the charges

339 sufficient, it may declare all or ~~any~~ part of the funds  
 340 forfeited. If the commission finds the charges insufficient ~~not~~  
 341 ~~sufficient upon which to base a withholding order~~, it shall  
 342 immediately distribute the withheld funds to the appropriate  
 343 persons entitled thereto.

344 Section 12. Section 548.06, Florida Statutes, is amended  
 345 to read:

346 548.06 Payments to state; exemptions; audit of records.-

347 (1) Except as provided in subsection (4), a promoter  
 348 holding a match shall, within 72 hours after the match, file  
 349 with the commission a written report that ~~which~~ includes the  
 350 number of tickets sold, the amount of gross receipts, and any  
 351 other facts the commission may require. For the purposes of this  
 352 chapter, ~~total~~ gross receipts include each of the following:

353 (a) The gross price charged for the sale or lease of  
 354 broadcasting, television, and pay-per-view ~~motion picture~~ rights  
 355 of any match occurring within the state without any deductions  
 356 for commissions, brokerage fees, distribution fees, advertising,  
 357 or other expenses or charges.†

358 ~~(b) The portion of the receipts from the sale of~~  
 359 ~~souvenirs, programs, and other concessions received by the~~  
 360 ~~promoter;~~

361 (b)(e) The face value of all tickets sold and  
 362 complimentary tickets issued, provided, or given above 5 percent  
 363 of the seats in the house designated for use in the event and  
 364 not authorized by the commission pursuant to subsection (2).†

365 and

366 (c)~~(d)~~ The face value of any seat or seating issued,  
 367 provided, or given in exchange for advertising, sponsorships, or  
 368 anything of value to the promotion of an event.

369 (2) A promoter may issue, provide, or give complimentary  
 370 tickets for up to 5 percent of the seats in the house designated  
 371 for use in the event, equally distributed between or among the  
 372 price categories for which complimentary tickets are issued,  
 373 without including the face value of such tickets issued,  
 374 provided, or given, in gross receipts, and without paying the  
 375 taxes required in subsection (4). If a promoter wishes to issue,  
 376 provide, or give complimentary tickets for more than 5 percent  
 377 of the seats in the house designated for use in the event  
 378 without including the face value of such tickets issued,  
 379 provided, or given, in gross receipts, the promoter must obtain  
 380 written authorization from the commission, the executive  
 381 director, or his or her designee. ~~Where the rights to telecast a~~  
 382 ~~match or matches held in this state under the supervision of the~~  
 383 ~~Florida State Boxing Commission are in whole owned by, sold to,~~  
 384 ~~acquired by, or held by any person who intends to or~~  
 385 ~~subsequently sells or, in some other manner, extends such rights~~  
 386 ~~in part to another, such person is deemed to be a promoter and~~  
 387 ~~must be licensed as such in this state. Such person shall,~~  
 388 ~~within 72 hours after the sale, transfer, or extension of such~~  
 389 ~~rights in whole or in part, file with the commission a written~~  
 390 ~~report that includes the number of tickets sold, the amount of~~

391 ~~gross receipts, and any other facts the commission may require.~~

392 (a) The commission may not consider complimentary tickets  
 393 that it authorizes under this subsection as part of the total  
 394 gross receipts from admission fees.

395 (b) The promoter may issue, provide, or give complimentary  
 396 tickets for more than 5 percent of the seats in the house  
 397 designated for use in the event without obtaining written  
 398 authorization from the commission, the executive director, or  
 399 his or her designee if the promoter includes the face value of  
 400 such tickets issued, provided, or given over 5 percent of the  
 401 seats in the house designated for use in the event in gross  
 402 receipts and pays the taxes as required in subsection (4).

403 (c) The commission, the executive director, or his or her  
 404 designee, may authorize more than 5 percent of the tickets to be  
 405 issued as complimentary tickets to the following:

406 1. Reserve or active members of the United States Armed  
 407 Forces or National Guard;

408 2. A veteran, as defined in s. 1.01(14). The veteran need  
 409 not have served during wartime periods of service as listed  
 410 under s. 1.01(14) or in a campaign or expedition for which a  
 411 campaign badge has been authorized; and

412 3. Not-for-profit organizations with tax-exempt status  
 413 pursuant to 26 U.S.C. § 501(c)(3), of the United States Internal  
 414 Revenue Code.

415 (d) The promoter who wishes to obtain authorization to  
 416 issue greater than 5 percent complimentary tickets shall:



417 1. Submit an application adopted by the commission no  
 418 later than 2 business days before the date of the professional  
 419 event. The application shall include at a minimum, the date,  
 420 time, and location of the event, how many complimentary tickets  
 421 are being requested, percentage of total tickets issued for the  
 422 seats in the house designated for use in the event being  
 423 requested as complimentary tickets, and what individuals or  
 424 entities will receive the complimentary tickets.

425 2. Maintain documentation evidencing that the tickets were  
 426 given to individuals or entities that fall into the categories  
 427 listed in paragraph (c). These documents are subject to auditing  
 428 requirements as set forth in subsection (7).

429 (e) The commission, executive director, or his or her  
 430 designee shall deny or approve the application. The commission,  
 431 executive director, or his or her designee may set limitations  
 432 on the approval and may approve all or a portion of the  
 433 requested percentage above 5 percent. The commission, executive  
 434 director, or his or her designee shall provide the decision in  
 435 writing to the promoter no later than one business day before  
 436 the start of the event, with an explanation for the denial or  
 437 approval and an explanation for any limitation on the approval.  
 438 The promoter remains responsible for complying with other  
 439 reporting and taxation requirements as set forth in this  
 440 chapter.

441 ~~(3) A concessionaire shall, within 72 hours after the~~  
 442 ~~match, file with the commission a written report that includes~~

443 ~~the number of tickets sold, the amount of gross receipts, and~~  
 444 ~~any other facts the commission may require.~~

445 ~~(3)(4)~~ A ~~Any~~ written report required to be filed with the  
 446 commission under this section must ~~shall~~ be postmarked within 72  
 447 hours after the conclusion of the match, and an additional 5  
 448 days is ~~shall be~~ allowed for mailing.

449 ~~(4)(5)~~ Each ~~the~~ written report must ~~shall~~ be accompanied  
 450 by a tax payment in the amount of 5 percent of the total gross  
 451 receipts exclusive of any federal taxes, except that the tax  
 452 payment derived from the gross price charged for the sale or  
 453 lease of broadcasting, television, and pay-per-view motion  
 454 picture rights of any match occurring within the state may ~~shall~~  
 455 not exceed \$40,000 for a ~~any~~ single event. If a promoter remits  
 456 the maximum tax amount of \$40,000 for the sale or lease of  
 457 broadcasting, television, or pay-per-view rights of any single  
 458 event pursuant to this subsection, the promoter is only required  
 459 to indicate the amount of \$40,000 has been remitted for such  
 460 taxes on a form provided by the commission. The promoter remains  
 461 responsible for complying with other reporting and taxation  
 462 requirements related to other gross receipts as set forth in  
 463 this chapter.

464 ~~(5)(6)~~ (a) A ~~Any~~ promoter who willfully makes a false and  
 465 fraudulent report under this section commits ~~is guilty of~~  
 466 perjury and, upon conviction, is subject to punishment as  
 467 provided by law. Such penalty is ~~shall be~~ in addition to any  
 468 other penalties imposed under ~~by~~ this chapter.

469 (b) A ~~Any~~ promoter who willfully fails, neglects, or  
 470 refuses to make a report or to pay the taxes as prescribed or  
 471 who refuses to allow the commission to examine the books,  
 472 papers, and records of a any promotion commits ~~is guilty of~~ a  
 473 misdemeanor of the second degree, punishable as provided in s.  
 474 775.082 or s. 775.083.

475 (6) A promoter shall retain a copy of the following  
 476 records for 1 year and provide a copy of the following records  
 477 to the commission upon request:

478 (a) Records necessary to support each report submitted to  
 479 the commission, including a copy of any report filed with the  
 480 commission.

481 (b) A copy of each independently prepared ticket manifest.

482 (c) Documentation verifying the issuance of complimentary  
 483 tickets approved by the commission pursuant to subsection (2)  
 484 to individuals or entities which meet the requirements as set  
 485 forth in paragraph (2)(c).

486 (7) Compliance with this section is subject to  
 487 verification by department or commission audit. The commission  
 488 may, upon reasonable notice to the promoter, audit a promoter's  
 489 books and records relating to the promoter's operations under  
 490 this chapter.

491 (8) The commission shall adopt rules establishing a  
 492 procedure for auditing a promoter's records and resolving any  
 493 inconsistencies revealed by an audit and shall adopt a rule  
 494 imposing a late fee in the event of taxes owed.

495 Section 13. Section 548.07, Florida Statutes, is amended  
 496 to read:

497 548.07 Suspension of license or permit by commissioner;  
 498 hearing.—

499 (1) The commission, the executive director or his or her  
 500 designee may issue an emergency suspension order pursuant to s.  
 501 120.60(6), suspending the license of any person or entity  
 502 licensed under this chapter who poses an immediate, serious  
 503 danger to the health, safety, and welfare of the public or the  
 504 participants in a match.

505 (2) The department's Office of General Counsel shall  
 506 review the grounds for each emergency suspension order issued  
 507 and, if sufficient, shall file an administrative complaint  
 508 against the licensee within 21 days after the issuance of the  
 509 emergency suspension order.

510 (3) After service of the administrative complaint pursuant  
 511 to the procedure of s. 455.275, the disciplinary process shall  
 512 proceed pursuant to chapter 120. ~~Notwithstanding any provision~~  
 513 of chapter 120, any member of the commission may, upon her or  
 514 his own motion or upon the verified written complaint of any  
 515 person charging a licensee or permittee with violating this  
 516 chapter, suspend any license or permit until final determination  
 517 by the commission if such action is necessary to protect the  
 518 public welfare and the best interests of the sport. The  
 519 commission shall hold a hearing within 10 days after the date on  
 520 which the license or permit is suspended.

521 Section 14. Section 548.073, Florida Statutes, is amended  
 522 to read:

523 548.073 Commission hearings.—All hearings held under this  
 524 chapter shall be held in accordance with chapter 120.

525 ~~Notwithstanding the provisions of chapter 120, any member of the~~  
 526 ~~commission may conduct a hearing. Before any adjudication is~~  
 527 ~~rendered, a majority of the members of the commission shall~~  
 528 ~~examine the record and approve the adjudication and order.~~

529 Section 15. The sum of \$111,000 in recurring funds is  
 530 appropriated from the General Revenue Fund to the Department of  
 531 Business and Professional Regulation for the implementation of  
 532 this act by the Florida State Boxing Commission during the 2014-  
 533 2015 fiscal year.

534 Section 16. This act shall take effect July 1, 2014.

