

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Horner offered the following:

Amendment (with title amendment)

Remove lines 467-765 and insert:

310.011 Board of Pilot Commissioners.-

(1) A board is established within the Division of Professions of the Department of Business and Professional Regulation to be known as the Board of Pilot Commissioners. The board shall be composed of 10 members, to be appointed by the Governor, as follows: five members ~~5 of whom~~ shall be licensed state pilots actively practicing their profession; two members shall be actively involved in a professional or business capacity in the maritime industry, marine shipping industry, or commercial passenger cruise industry; one member shall be a certified public accountant with at least 5 years of experience in financial management; and two members shall be citizens of

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17 the state. The latter three board members shall not be involved
18 in, or have any financial interest in, the piloting profession,
19 the maritime industry, the marine shipping industry, or the
20 commercial passenger cruise industry. The board shall perform
21 such duties and possess and exercise such powers relative to the
22 protection of the waters, harbors, and ports of this state as
23 are prescribed and conferred on it in this chapter.

24 ~~(2) In accordance with the requirements of subsection (1),~~
25 ~~the Governor shall appoint five licensed state pilots who are~~
26 ~~actively practicing their profession and five citizens of the~~
27 ~~state who are not pilots, one of whom shall be actively involved~~
28 ~~in a professional or business capacity in maritime or marine~~
29 ~~shipping, one of whom shall be a user of piloting services, and~~
30 ~~three of whom shall not be involved or monetarily interested in~~
31 ~~the piloting profession or in the maritime industry or marine~~
32 ~~shipping, to constitute the members of the board. For purposes~~
33 ~~of this subsection, a "user of piloting services" may include~~
34 ~~any person with an ownership interest in a business that~~
35 ~~regularly employs licensed state pilots or certificated deputy~~
36 ~~pilots for the purpose of delivering piloting services, or any~~
37 ~~person who is a direct employee of, and who is employed in a~~
38 ~~management position for, that business.~~ Each member shall be
39 appointed for a term of 4 years. The Governor shall have power
40 to remove members of the board from office for neglect of duty
41 required by this chapter, for incompetency, or for
42 unprofessional conduct. Any vacancy which may occur in the board
43 in consequence of death, resignation, removal from the state, or
44 other cause shall be filled for the unexpired term by the

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45 Governor in the same manner. A majority of those serving on the
46 board shall constitute a quorum.

47 (3) In appointing members to the board who are pilots, the
48 Governor shall appoint one member from the state at large; one
49 member from any of the following ports: Pensacola, Panama City,
50 or Port St. Joe; one member from any of the following ports:
51 Tampa Bay, Boca Grande, Punta Gorda, Charlotte Harbor, or Key
52 West; one member from any of the following ports: Fernandina,
53 Jacksonville, or Port Canaveral; and one member from any of the
54 following ports: Ft. Pierce, Miami, Port Everglades, or Palm
55 Beach.

56 Section 6. Section 310.151, Florida Statutes, is amended
57 to read:

58 310.151 Rates of pilotage; Pilotage Rate Review Committee
59 ~~Board~~.-

60 (1) (a) As used in ~~For the purposes of~~ this section, the
61 term:

62 1. "Committee" ~~"board"~~ means the Pilotage Rate Review
63 Committee established under this section as part of the Board of
64 Pilot Commissioners.

65 2. "Board" means the Board of Pilot Commissioners.

66 (b) ~~1.~~ To carry out the provisions of this section, the
67 Pilotage Rate Review Committee Board is established as part of
68 the Board of Pilot Commissioners ~~created~~ within the Department
69 of Business and Professional Regulation. ~~Members shall be~~
70 ~~appointed by the Governor, subject to confirmation by the~~
71 ~~Senate. Members shall be appointed for 4 year terms, except as~~
72 ~~otherwise specified in this paragraph. No member may serve more~~

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73 ~~than two consecutive 4-year terms or more than 11 years on the~~
74 ~~board.~~ The committee board shall consist of the following seven
75 members of the board: two board members who are licensed state
76 pilots actively practicing their profession, who shall be
77 appointed by majority vote of the licensed state pilots serving
78 on the board; two board members who are actively involved in a
79 professional or business capacity in the maritime industry,
80 marine shipping industry, or commercial passenger cruise
81 industry; one board member who is a certified public accountant
82 with at least 5 years of experience in financial management; and
83 two board members who are citizens of the state. ~~No member may~~
84 ~~have ever served as a state pilot or deputy pilot, and no member~~
85 ~~may currently serve or have served as a direct employee,~~
86 ~~contract employee, partner, corporate officer, sole proprietor,~~
87 ~~or representative of any vessel operator, shipping agent, or~~
88 ~~pilot association or organization, except that one member shall~~
89 ~~be or have been a person licensed by the United States Coast~~
90 ~~Guard as an unlimited master, without a first-class pilot's~~
91 ~~endorsement, initially appointed to a 2-year term. One member~~
92 ~~shall be a certified public accountant with at least 5 years'~~
93 ~~experience in financial management, initially appointed to a 3-~~
94 ~~year term. One member shall be a former hearing officer or~~
95 ~~administrative law judge of the Division of Administrative~~
96 ~~Hearings, as defined in s. 120.65, or a former judge who has~~
97 ~~served on the Supreme Court or any district court of appeal,~~
98 ~~circuit court, or county court, initially appointed to a 4-year~~
99 ~~term. Except as otherwise provided in subparagraph 2., the~~
100 ~~remaining members shall be appointed by the Governor from among~~

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101 ~~persons not prohibited pursuant to this paragraph. Members of~~
102 ~~the board shall be appointed so as to be geographically~~
103 ~~distributed, with the southern, central, northeastern, and~~
104 ~~northwestern regions of the state having at least one member~~
105 ~~each.~~

106 ~~2. Three members shall be the consumer members of the~~
107 ~~Board of Pilot Commissioners serving on that board as of January~~
108 ~~1, 1994. Of those members, one shall be appointed to a 1-year~~
109 ~~term, one shall be appointed to a 2-year term, and one shall be~~
110 ~~appointed to a 3-year term. Each of those members shall be~~
111 ~~eligible for reappointment in the same fashion as other members~~
112 ~~of the board, but, thereafter, no member of the board shall be a~~
113 ~~current or former member of the Board of Pilot Commissioners.~~
114 ~~The service of the consumer members of the Board of Pilot~~
115 ~~Commissioners on this board, while they are maintaining~~
116 ~~concurrent membership with the Board of Pilot Commissioners,~~
117 ~~shall be considered duties in addition to and related to their~~
118 ~~duties on the Board of Pilot Commissioners. In the event that~~
119 ~~any of the three board members stipulated according to this~~
120 ~~subparagraph are unable to serve, the Governor shall fill the~~
121 ~~position or positions by appointment from among persons not~~
122 ~~prohibited pursuant to this paragraph.~~

123 (c) Committee members shall comply with the disclosure
124 requirements of s. 112.3143(4) if participating in any matter
125 that would result in special private gain or loss as described
126 in that subsection.

127 (d)(e) The committee board has authority to adopt rules
128 pursuant to ss. 120.536(1) and 120.54 to implement provisions of
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129 this section conferring duties upon it. The department shall
130 provide the staff required by the committee board to carry out
131 its duties under this section.

132 ~~(e)~~ (d) All funds received pursuant to this section shall
133 be placed in the account of the Board of Pilot Commissioners,
134 and the Board of Pilot Commissioners shall pay for all expenses
135 incurred pursuant to this section.

136 (2) Any pilot, group of pilots, or other person or group
137 of persons whose substantial interests are directly affected by
138 the rates established by the committee board may apply to the
139 committee board for a change in rates. However, an application
140 for a change in rates shall not be considered for any port for
141 which rates have been changed by this committee board in the 18
142 months preceding the filing of the application. All applications
143 for changes in rates shall be made to the committee board, in
144 writing, pursuant to rules prescribed by the committee board. In
145 the case of an application for a rate change on behalf of a
146 pilot or group of pilots, the application shall be accompanied
147 by a consolidated financial statement, statement of profit or
148 loss, and balance sheet prepared by a certified public
149 accountant of the pilot or group of pilots and all relevant
150 information, fiscal and otherwise, on the piloting activities
151 within the affected port area, including financial information
152 on all entities owned or partially owned by the pilot or group
153 of pilots which provide pilot-related services in the affected
154 port area. In the case of an application for a rate change filed
155 on behalf of persons other than a pilot or group of pilots,
156 information regarding the financial state of interested parties

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157 other than pilots shall be required only to the extent that such
158 financial information is made relevant by the application or
159 subsequent argument before the committee board. The committee
160 ~~board~~ shall have the authority to set, by rule, a rate review
161 application fee of up to \$1,000, which must be submitted to the
162 committee board upon the filing of the application for a rate
163 change.

164 (3) The committee board shall investigate and determine
165 whether the requested rate change will result in fair, just, and
166 reasonable rates of pilotage pursuant to rules prescribed by the
167 committee board. In addition to publication as required by law,
168 notice of a hearing to determine rates shall be mailed to each
169 person who has formally requested notice of any rate change in
170 the affected port area. The notice shall advise all interested
171 parties that they may file an answer, an additional or
172 alternative petition, or any other applicable pleading or
173 response, within 30 days after the date of publication of the
174 notice, and the notice shall specify the last date by which any
175 such pleading must be filed. The committee board may, for good
176 cause, extend the period for responses to a petition. Multiple
177 petitions filed in this manner do not warrant separate hearings,
178 and these petitions shall be consolidated to the extent that it
179 shall not be necessary to hold a separate hearing on each
180 petition. The committee board shall conclude its investigation,
181 conduct a public hearing, and determine whether to modify the
182 existing rates of pilotage in that port within 60 days after the
183 filing of the completed application, except that the committee
184 ~~board~~ may not be required to complete a hearing for more than

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185 one port within any 60-day period. Hearings shall be held in the
186 affected port area, unless a different location is agreed upon
187 by all parties to the proceeding.

188 (4) (a) The applicant shall be given written notice, either
189 in person or by certified mail, that the committee board intends
190 to modify the pilotage rates in that port and that the applicant
191 may, within 21 days after receipt of the notice, request a
192 hearing pursuant to the Administrative Procedure Act. Notice of
193 the intent to modify the pilotage rates in that port shall also
194 be published in the Florida Administrative Weekly and in a
195 newspaper of general circulation in the affected port area and
196 shall be mailed to any person who has formally requested notice
197 of any rate change in the affected port area. Within 21 days
198 after receipt or publication of notice, any person whose
199 substantial interests will be affected by the intended committee
200 ~~board~~ action may request a hearing pursuant to the
201 Administrative Procedure Act. If the committee board concludes
202 that the petitioner has raised a disputed issue of material
203 fact, the committee board shall designate a hearing, which shall
204 be conducted by formal proceeding before an administrative law
205 judge assigned by the Division of Administrative Hearings
206 pursuant to ss. 120.569 and 120.57(1), unless waived by all
207 parties. If the committee board concludes that the petitioner
208 has not raised a disputed issue of material fact and does not
209 designate the petition for hearing, that decision shall be
210 considered final agency action for purposes of s. 120.68. The
211 failure to request a hearing within 21 days after receipt or
212 publication of notice shall constitute a waiver of any right to
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213 an administrative hearing and shall cause the order modifying
214 the pilotage rates in that port to be entered. If an
215 administrative hearing is requested pursuant to this subsection,
216 notice of the time, date, and location of the hearing shall be
217 published in the Florida Administrative Weekly and in a
218 newspaper of general circulation in the affected port area and
219 shall be mailed to the applicant and to any person who has
220 formally requested notice of any rate change for the affected
221 port area.

222 (b) In any administrative proceeding pursuant to this
223 section, the committee's ~~board's~~ proposed rate determination
224 shall be immediately effective and shall not be stayed during
225 the administrative proceeding, provided that, pending rendition
226 of the committee's ~~board's~~ final order, the pilot or pilots in
227 the subject port deposit in an interest-bearing account all
228 amounts received which represent the difference between the
229 previous rates and the proposed rates. The pilot or pilots in
230 the subject port shall keep an accurate accounting of all
231 amounts deposited, specifying by whom or on whose behalf such
232 amounts were paid, and shall produce such an accounting upon
233 request of the committee ~~board~~. Upon rendition of the
234 committee's ~~board's~~ final order:

235 1. Any amounts deposited in the interest-bearing account
236 which are sustained by the final order shall be paid over to the
237 pilot or pilots in the subject port, including all interest
238 accrued on such funds; and

239 2. Any amounts deposited which exceed the rates sustained
240 in the committee's ~~board's~~ final order shall be refunded, with
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241 the accrued interest, to those customers from whom the funds
242 were collected. Any funds that are not refunded after diligent
243 effort of the pilot or pilots to do so shall be disbursed by the
244 pilot or pilots as the committee ~~board~~ shall direct.

245 (5) (a) In determining whether the requested rate change
246 will result in fair, just, and reasonable rates, the committee
247 ~~board~~ shall give primary consideration to the public interest in
248 promoting and maintaining efficient, reliable, and safe piloting
249 services.

250 (b) The committee ~~board~~ shall also give consideration to
251 the following factors:

252 1. The public interest in having qualified pilots
253 available to respond promptly to vessels needing their service.

254 2. A determination of the average net income of pilots in
255 the port, including the value of all benefits derived from
256 service as a pilot. For the purposes of this subparagraph, "net
257 income of pilots" refers to total pilotage fees collected in the
258 port, minus reasonable operating expenses, divided by the number
259 of licensed and active state pilots within the ports.

260 3. Reasonable operating expenses of pilots.

261 4. Pilotage rates in other ports.

262 5. The amount of time each pilot spends on actual piloting
263 duty and the amount of time spent on other essential support
264 services.

265 6. The prevailing compensation available to individuals in
266 other maritime services of comparable professional skill and
267 standing as that sought in pilots, it being recognized that in
268 order to attract to the profession of piloting, and to hold the
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269 best and most qualified individuals as pilots, the overall
270 compensation accorded pilots should be equal to or greater than
271 that available to such individuals in comparable maritime
272 employment.

273 7. The impact rate change may have in individual pilot
274 compensation and whether such change will lead to a shortage of
275 licensed state pilots, certificated deputy pilots, or qualified
276 pilot applicants.

277 8. Projected changes in vessel traffic.

278 9. Cost of retirement and medical plans.

279 10. Physical risks inherent in piloting.

280 11. Special characteristics, dangers, and risks of the
281 particular port.

282 12. Any other factors the committee ~~board~~ deems relevant
283 in determining a just and reasonable rate.

284 (c) The committee ~~board~~ may take into consideration the
285 consumer price index or any other comparable economic indicator
286 when fixing rates of pilotage; however, because the consumer
287 price index or such other comparable economic indicator is
288 primarily related to net income rather than rates, the committee
289 ~~board~~ shall not use it as the sole factor in fixing rates of
290 pilotage.

291 (6) The committee ~~board~~ shall fix rates of pilotage
292 pursuant to this section based upon the following vessel
293 characteristics:

294 (a) Length.

295 (b) Beam.

296 (c) Net tonnage, gross tonnage, or dead weight tonnage.

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297 (d) Freeboard or height above the waterline.

298 (e) Draft or molded depth.

299 (f) Any combination of the vessel characteristics listed
300 in this subsection or any other relevant vessel characteristic
301 or characteristics.

302 (7) The decisions of the committee regarding rates are not
303 appealable to the board.

304 Section 7. By October 31, 2010, the Governor shall appoint
305 to the Board of Pilot Commissioners: two members actively
306 involved in a professional or business capacity in the maritime
307 industry, marine shipping industry, or commercial passenger
308 cruise industry; one member who is a certified public accountant
309 with at least 5 years of experience in financial management; and
310 two members who are citizens of the state. Notwithstanding any
311 other provision of this act, the nonpilot members of the board
312 as of the effective date of this act shall continue to serve
313 until the Governor makes the appointments required in this
314 section. The terms of the pilot members of the board shall not
315 be affected by this section. Any pending matters before the
316 Pilotage Rate Review Board as of the effective date of this act
317 shall be transferred for further action to the Pilotage Rate
318 Review Committee.

319
320 -----

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

321
322 Remove line 29 and insert:

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323 before a certain date; providing requirements for the
324 transfer of pending matters; repealing s. 315.03(12)(c),
325 F.S.,