



327358

LEGISLATIVE ACTION

Senate

.

House

.

.

Floor: 1/AD/2R

.

04/28/2010 05:00 PM

.

.

Senator Gardiner moved the following:

Senate Amendment (with title amendment)

Delete lines 337 - 658

and insert:

Section 2. Paragraph (b) of subsection (3) of section 310.0015, Florida Statutes, is amended to read:

310.0015 Piloting regulation; general provisions.—

(3) The rate-setting process, the issuance of licenses only in numbers deemed necessary or prudent by the board, and other aspects of the economic regulation of piloting established in this chapter are intended to protect the public from the adverse effects of unrestricted competition which would result from an unlimited number of licensed pilots being allowed to market



327358

14 their services on the basis of lower prices rather than safety
15 concerns. This system of regulation benefits and protects the
16 public interest by maximizing safety, avoiding uneconomic
17 duplication of capital expenses and facilities, and enhancing
18 state regulatory oversight. The system seeks to provide pilots
19 with reasonable revenues, taking into consideration the normal
20 uncertainties of vessel traffic and port usage, sufficient to
21 maintain reliable, stable piloting operations. Pilots have
22 certain restrictions and obligations under this system,
23 including, but not limited to, the following:

24 (b) Pilots may not unilaterally determine the pilotage
25 rates they charge. Such pilotage rates shall instead be
26 determined by the Pilotage Rate Review Committee ~~Board~~, in the
27 public interest, as set forth in s. 310.151.

28 Section 3. Subsection (7) of section 310.002, Florida
29 Statutes, is amended to read:

30 310.002 Definitions.—As used in this chapter, except where
31 the context clearly indicates otherwise:

32 (7) "Pilotage" means the compensation fixed by the Pilotage
33 Rate Review Committee ~~Board~~ which is payable by a vessel, its
34 owners, agents, charterers, or consignees to one or more pilots
35 in the port where piloting is performed. The word "pilotage"
36 also means the compensation of all types and sources derived by
37 one or more pilots or deputy pilots for the performance of
38 piloting at that port by licensed pilots or by certificated
39 deputy pilots, whether such piloting is performed pursuant to
40 this chapter or is performed by state-licensed pilots or state-
41 certificated deputy pilots when acting as a federal pilot for
42 vessels not required by this chapter to use a state-licensed



327358

43 pilot or state-certificated deputy pilot.

44 Section 4. Section 310.011, Florida Statutes, is amended to
45 read:

46 310.011 Board of Pilot Commissioners.-

47 (1) A board is established within the Division of
48 Professions of the Department of Business and Professional
49 Regulation to be known as the Board of Pilot Commissioners. The
50 board shall be composed of 10 members, to be appointed by the
51 Governor, as follows: five members ~~5 of whom~~ shall be licensed
52 state pilots actively practicing their profession; two members
53 shall be actively involved in a professional or business
54 capacity in the maritime industry, marine shipping industry, or
55 commercial passenger cruise industry; one member shall be a
56 certified public accountant with at least 5 years of experience
57 in financial management; and two members shall be citizens of
58 the state. The latter three board members shall not be involved
59 in, or have any financial interest in, the piloting profession,
60 the maritime industry, the marine shipping industry, or the
61 commercial passenger cruise industry. The board shall perform
62 such duties and possess and exercise such powers relative to the
63 protection of the waters, harbors, and ports of this state as
64 are prescribed and conferred on it in this chapter.

65 ~~(2) In accordance with the requirements of subsection (1),~~
66 ~~the Governor shall appoint five licensed state pilots who are~~
67 ~~actively practicing their profession and five citizens of the~~
68 ~~state who are not pilots, one of whom shall be actively involved~~
69 ~~in a professional or business capacity in maritime or marine~~
70 ~~shipping, one of whom shall be a user of piloting services, and~~
71 ~~three of whom shall not be involved or monetarily interested in~~



327358

72 ~~the piloting profession or in the maritime industry or marine~~
73 ~~shipping, to constitute the members of the board. For purposes~~
74 ~~of this subsection, a "user of piloting services" may include~~
75 ~~any person with an ownership interest in a business that~~
76 ~~regularly employs licensed state pilots or certificated deputy~~
77 ~~pilots for the purpose of delivering piloting services, or any~~
78 ~~person who is a direct employee of, and who is employed in a~~
79 ~~management position for, that business. Each member shall be~~
80 appointed for a term of 4 years. The Governor shall have power
81 to remove members of the board from office for neglect of duty
82 required by this chapter, for incompetency, or for
83 unprofessional conduct. Any vacancy which may occur in the board
84 in consequence of death, resignation, removal from the state, or
85 other cause shall be filled for the unexpired term by the
86 Governor in the same manner. A majority of those serving on the
87 board shall constitute a quorum.

88 (3) In appointing members to the board who are pilots, the
89 Governor shall appoint one member from the state at large; one
90 member from any of the following ports: Pensacola, Panama City,
91 or Port St. Joe; one member from any of the following ports:
92 Tampa Bay, Boca Grande, Punta Gorda, Charlotte Harbor, or Key
93 West; one member from any of the following ports: Fernandina,
94 Jacksonville, or Port Canaveral; and one member from any of the
95 following ports: Ft. Pierce, Miami, Port Everglades, or Palm
96 Beach.

97 Section 5. Section 310.151, Florida Statutes, is amended to
98 read:

99 310.151 Rates of pilotage; Pilotage Rate Review Committee
100 ~~Board~~.-



327358

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

103 1. "Committee" ~~"board"~~ means the Pilotage Rate Review
104 Committee established under this section as part of the Board of
105 Pilot Commissioners.

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

107 (b) ~~1.~~ To carry out the provisions of this section, the
108 Pilotage Rate Review Committee ~~Board~~ is established as part of
109 the Board of Pilot Commissioners ~~created~~ within the Department
110 of Business and Professional Regulation. ~~Members shall be~~
111 ~~appointed by the Governor, subject to confirmation by the~~
112 ~~Senate. Members shall be appointed for 4-year terms, except as~~
113 ~~otherwise specified in this paragraph. No member may serve more~~
114 ~~than two consecutive 4-year terms or more than 11 years on the~~
115 ~~board.~~ The committee ~~board~~ shall consist of the following seven
116 members of the board: two board members who are licensed state
117 pilots actively practicing their profession, who shall be
118 appointed by majority vote of the licensed state pilots serving
119 on the board; two board members who are actively involved in a
120 professional or business capacity in the maritime industry,
121 marine shipping industry, or commercial passenger cruise
122 industry; one board member who is a certified public accountant
123 with at least 5 years of experience in financial management; and
124 two board members who are citizens of the state. ~~No member may~~
125 ~~have ever served as a state pilot or deputy pilot, and no member~~
126 ~~may currently serve or have served as a direct employee,~~
127 ~~contract employee, partner, corporate officer, sole proprietor,~~
128 ~~or representative of any vessel operator, shipping agent, or~~
129 ~~pilot association or organization, except that one member shall~~



327358

130 ~~be or have been a person licensed by the United States Coast~~
131 ~~Guard as an unlimited master, without a first-class pilot's~~
132 ~~endorsement, initially appointed to a 2-year term. One member~~
133 ~~shall be a certified public accountant with at least 5 years'~~
134 ~~experience in financial management, initially appointed to a 3-~~
135 ~~year term. One member shall be a former hearing officer or~~
136 ~~administrative law judge of the Division of Administrative~~
137 ~~Hearings, as defined in s. 120.65, or a former judge who has~~
138 ~~served on the Supreme Court or any district court of appeal,~~
139 ~~circuit court, or county court, initially appointed to a 4-year~~
140 ~~term. Except as otherwise provided in subparagraph 2., the~~
141 ~~remaining members shall be appointed by the Governor from among~~
142 ~~persons not prohibited pursuant to this paragraph. Members of~~
143 ~~the board shall be appointed so as to be geographically~~
144 ~~distributed, with the southern, central, northeastern, and~~
145 ~~northwestern regions of the state having at least one member~~
146 ~~each.~~

147 ~~2. Three members shall be the consumer members of the Board~~
148 ~~of Pilot Commissioners serving on that board as of January 1,~~
149 ~~1994. Of those members, one shall be appointed to a 1-year term,~~
150 ~~one shall be appointed to a 2-year term, and one shall be~~
151 ~~appointed to a 3-year term. Each of those members shall be~~
152 ~~eligible for reappointment in the same fashion as other members~~
153 ~~of the board, but, thereafter, no member of the board shall be a~~
154 ~~current or former member of the Board of Pilot Commissioners.~~
155 ~~The service of the consumer members of the Board of Pilot~~
156 ~~Commissioners on this board, while they are maintaining~~
157 ~~concurrent membership with the Board of Pilot Commissioners,~~
158 ~~shall be considered duties in addition to and related to their~~



327358

159 ~~duties on the Board of Pilot Commissioners. In the event that~~
160 ~~any of the three board members stipulated according to this~~
161 ~~subparagraph are unable to serve, the Governor shall fill the~~
162 ~~position or positions by appointment from among persons not~~
163 ~~prohibited pursuant to this paragraph.~~

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

168 (d)~~(e)~~ The committee board has authority to adopt rules
169 pursuant to ss. 120.536(1) and 120.54 to implement provisions of
170 this section conferring duties upon it. The department shall
171 provide the staff required by the committee board to carry out
172 its duties under this section.

173 (e)~~(d)~~ All funds received pursuant to this section shall be
174 placed in the account of the Board of Pilot Commissioners, and
175 the Board of Pilot Commissioners shall pay for all expenses
176 incurred pursuant to this section.

177 (2) Any pilot, group of pilots, or other person or group of
178 persons whose substantial interests are directly affected by the
179 rates established by the committee board may apply to the
180 committee board for a change in rates. However, an application
181 for a change in rates shall not be considered for any port for
182 which rates have been changed by this committee board in the 18
183 months preceding the filing of the application. All applications
184 for changes in rates shall be made to the committee board, in
185 writing, pursuant to rules prescribed by the committee board. In
186 the case of an application for a rate change on behalf of a
187 pilot or group of pilots, the application shall be accompanied



327358

188 by a consolidated financial statement, statement of profit or
189 loss, and balance sheet prepared by a certified public
190 accountant of the pilot or group of pilots and all relevant
191 information, fiscal and otherwise, on the piloting activities
192 within the affected port area, including financial information
193 on all entities owned or partially owned by the pilot or group
194 of pilots which provide pilot-related services in the affected
195 port area. In the case of an application for a rate change filed
196 on behalf of persons other than a pilot or group of pilots,
197 information regarding the financial state of interested parties
198 other than pilots shall be required only to the extent that such
199 financial information is made relevant by the application or
200 subsequent argument before the committee board. The committee
201 ~~board~~ shall have the authority to set, by rule, a rate review
202 application fee of up to \$1,000, which must be submitted to the
203 committee board upon the filing of the application for a rate
204 change.

205 (3) The committee board shall investigate and determine
206 whether the requested rate change will result in fair, just, and
207 reasonable rates of pilotage pursuant to rules prescribed by the
208 committee board. In addition to publication as required by law,
209 notice of a hearing to determine rates shall be mailed to each
210 person who has formally requested notice of any rate change in
211 the affected port area. The notice shall advise all interested
212 parties that they may file an answer, an additional or
213 alternative petition, or any other applicable pleading or
214 response, within 30 days after the date of publication of the
215 notice, and the notice shall specify the last date by which any
216 such pleading must be filed. The committee board may, for good



327358

217 cause, extend the period for responses to a petition. Multiple
218 petitions filed in this manner do not warrant separate hearings,
219 and these petitions shall be consolidated to the extent that it
220 shall not be necessary to hold a separate hearing on each
221 petition. The committee ~~board~~ shall conclude its investigation,
222 conduct a public hearing, and determine whether to modify the
223 existing rates of pilotage in that port within 60 days after the
224 filing of the completed application, except that the committee
225 ~~board~~ may not be required to complete a hearing for more than
226 one port within any 60-day period. Hearings shall be held in the
227 affected port area, unless a different location is agreed upon
228 by all parties to the proceeding.

229 (4) (a) The applicant shall be given written notice, either
230 in person or by certified mail, that the committee ~~board~~ intends
231 to modify the pilotage rates in that port and that the applicant
232 may, within 21 days after receipt of the notice, request a
233 hearing pursuant to the Administrative Procedure Act. Notice of
234 the intent to modify the pilotage rates in that port shall also
235 be published in the Florida Administrative Weekly and in a
236 newspaper of general circulation in the affected port area and
237 shall be mailed to any person who has formally requested notice
238 of any rate change in the affected port area. Within 21 days
239 after receipt or publication of notice, any person whose
240 substantial interests will be affected by the intended committee
241 ~~board~~ action may request a hearing pursuant to the
242 Administrative Procedure Act. If the committee ~~board~~ concludes
243 that the petitioner has raised a disputed issue of material
244 fact, the committee ~~board~~ shall designate a hearing, which shall
245 be conducted by formal proceeding before an administrative law



327358

246 judge assigned by the Division of Administrative Hearings
247 pursuant to ss. 120.569 and 120.57(1), unless waived by all
248 parties. If the committee ~~board~~ concludes that the petitioner
249 has not raised a disputed issue of material fact and does not
250 designate the petition for hearing, that decision shall be
251 considered final agency action for purposes of s. 120.68. The
252 failure to request a hearing within 21 days after receipt or
253 publication of notice shall constitute a waiver of any right to
254 an administrative hearing and shall cause the order modifying
255 the pilotage rates in that port to be entered. If an
256 administrative hearing is requested pursuant to this subsection,
257 notice of the time, date, and location of the hearing shall be
258 published in the Florida Administrative Weekly and in a
259 newspaper of general circulation in the affected port area and
260 shall be mailed to the applicant and to any person who has
261 formally requested notice of any rate change for the affected
262 port area.

263 (b) In any administrative proceeding pursuant to this
264 section, the committee's ~~board's~~ proposed rate determination
265 shall be immediately effective and shall not be stayed during
266 the administrative proceeding, provided that, pending rendition
267 of the committee's ~~board's~~ final order, the pilot or pilots in
268 the subject port deposit in an interest-bearing account all
269 amounts received which represent the difference between the
270 previous rates and the proposed rates. The pilot or pilots in
271 the subject port shall keep an accurate accounting of all
272 amounts deposited, specifying by whom or on whose behalf such
273 amounts were paid, and shall produce such an accounting upon
274 request of the committee ~~board~~. Upon rendition of the



327358

275 committee's ~~board's~~ final order:

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

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

286 (5) (a) In determining whether the requested rate change
287 will result in fair, just, and reasonable rates, the committee
288 ~~board~~ shall give primary consideration to the public interest in
289 promoting and maintaining efficient, reliable, and safe piloting
290 services.

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

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

295 2. A determination of the average net income of pilots in
296 the port, including the value of all benefits derived from
297 service as a pilot. For the purposes of this subparagraph, "net
298 income of pilots" refers to total pilotage fees collected in the
299 port, minus reasonable operating expenses, divided by the number
300 of licensed and active state pilots within the ports.

301 3. Reasonable operating expenses of pilots.

302 4. Pilotage rates in other ports.

303 5. The amount of time each pilot spends on actual piloting



327358

304 duty and the amount of time spent on other essential support
305 services.

306 6. The prevailing compensation available to individuals in
307 other maritime services of comparable professional skill and
308 standing as that sought in pilots, it being recognized that in
309 order to attract to the profession of piloting, and to hold the
310 best and most qualified individuals as pilots, the overall
311 compensation accorded pilots should be equal to or greater than
312 that available to such individuals in comparable maritime
313 employment.

314 7. The impact rate change may have in individual pilot
315 compensation and whether such change will lead to a shortage of
316 licensed state pilots, certificated deputy pilots, or qualified
317 pilot applicants.

318 8. Projected changes in vessel traffic.

319 9. Cost of retirement and medical plans.

320 10. Physical risks inherent in piloting.

321 11. Special characteristics, dangers, and risks of the
322 particular port.

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

325 (c) The committee ~~board~~ may take into consideration the
326 consumer price index or any other comparable economic indicator
327 when fixing rates of pilotage; however, because the consumer
328 price index or such other comparable economic indicator is
329 primarily related to net income rather than rates, the committee
330 ~~board~~ shall not use it as the sole factor in fixing rates of
331 pilotage.

332 (6) The committee ~~board~~ shall fix rates of pilotage



327358

333 pursuant to this section based upon the following vessel
334 characteristics:
335 (a) Length.
336 (b) Beam.
337 (c) Net tonnage, gross tonnage, or dead weight tonnage.
338 (d) Freeboard or height above the waterline.
339 (e) Draft or molded depth.
340 (f) Any combination of the vessel characteristics listed in
341 this subsection or any other relevant vessel characteristic or
342 characteristics.

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

345 Section 6. By October 31, 2010, the Governor shall appoint
346 to the Board of Pilot Commissioners: two members actively
347 involved in a professional or business capacity in the maritime
348 industry, marine shipping industry, or commercial passenger
349 cruise industry; one member who is a certified public accountant
350 with at least 5 years of experience in financial management; and
351 two members who are citizens of the state. Notwithstanding any
352 other provision of this act, the nonpilot members of the board
353 as of the effective date of this act shall continue to serve
354 until the Governor makes the appointments required in this
355 section. The terms of the pilot members of the board shall not
356 be affected by this section. Any pending matters before the
357 Pilotage Rate Review Board as of the effective date of this act
358 shall be transferred for further action to the Pilotage Rate
359 Review Committee.

360 Section 7. Paragraph (c) of subsection (12) of section
361 315.03, Florida Statutes, is repealed.



327358

362 Section 8. Paragraph (c) of subsection (8) of section
363 316.515, Florida Statutes, is amended to read:

364 316.515 Maximum width, height, length.—

365 (8) WRECKERS.—The limitations imposed by this section do
366 not apply to a combination of motor vehicles consisting of a
367 wrecker licensed in accordance with s. 320.08(5)(d) or (e) and a
368 disabled motor vehicle, trailer, semitrailer, or tractor-trailer
369 combination, or a replacement motor vehicle, which is under tow
370 by the wrecker, if the size and weight of the towed vehicle is
371 consistent with statutory requirements and the requirements of
372 this subsection.

373 (c) Where the combined weight of the wrecker and the towed
374 vehicle exceeds the maximum weight limits as established by s.
375 316.535, the wrecker must be operating under a current wrecker
376 special use permit or permits as provided in s. 316.550(5)~~(4)~~ or
377 in accordance with paragraph (b).

378
379 ===== T I T L E A M E N D M E N T =====

380 And the title is amended as follows:

381 Delete lines 11 - 22

382 and insert:

383 services; amending s. 310.0015, F.S., relating to pilotage
384 rates; providing for such rates to be set by the Pilotage Rate
385 Review Committee to conform to changes made by the act; amending
386 s. 310.002, F.S.; revising the definition of the term "pilotage"
387 to conform to changes made by the act; amending s. 310.011,
388 F.S.; revising the membership of the Board of Pilot
389 Commissioners; amending s. 310.151, F.S.; redesignating the
390 "Pilotage Rate Review Board" as the "Pilotage Rate Review



327358

391 Committee"; providing that the committee is part of the Board of
392 Pilot Commissioners; revising membership and providing for
393 appointment of members from among the commissioners; requiring
394 members to comply with specified disclosure requirements;
395 providing that decisions of the committee regarding rates are
396 not appealable to the board; directing the Governor to make
397 certain appointments to the Board of Pilot Commissioners before
398 a certain date; providing requirements for the transfer of
399 pending matters; repealing s. 315.03(12)(c), F.S., relating to
400 legislative review of a loan program of the Florida Seaport
401 Transportation and Economic Development Council; amending s.
402 316.515, F.S.; conforming a cross-reference; amending s.