



963542

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/13/2010	.	
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The Committee on Transportation and Economic Development
Appropriations (Fasano) recommended the following:

Senate Amendment (with title amendment)

Between lines 1665 and 1666
insert:

Section 29. 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



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13 unlimited number of licensed pilots being allowed to market
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 Florida Pilotage Rate Review Board, in the
27 public interest, as set forth in s. 310.151.

28 Section 30. Subsections (3) and (7) of section 310.002,
29 Florida Statutes, are amended to read:

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

32 (3) "Board" means the Florida Pilotage Board ~~of Pilot~~
33 ~~Commissioners~~.

34 (7) "Pilotage" means the compensation fixed by the Florida
35 Pilotage Rate Review Board which is payable by a vessel, its
36 owners, agents, charterers, or consignees to one or more pilots
37 in the port where piloting is performed. The word "pilotage"
38 also means the compensation of all types and sources derived by
39 one or more pilots or deputy pilots for the performance of
40 piloting at that port by licensed pilots or by certificated
41 deputy pilots, whether such piloting is performed pursuant to



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42 this chapter or is performed by state-licensed pilots or state-
43 certificated deputy pilots when acting as a federal pilot for
44 vessels not required by this chapter to use a state-licensed
45 pilot or state-certificated deputy pilot.

46 Section 31. Section 310.011, Florida Statutes, is amended
47 to read:

48 310.011 Florida Pilotage Board of Pilot Commissioners.-

49 (1) A board is established within the Division of
50 Professions of the Department of Business and Professional
51 Regulation to be known as the Florida Pilotage Board of Pilot
52 ~~Commissioners~~. The board shall be composed of seven ~~10~~ members,
53 ~~to be appointed by the Governor, 5 of whom shall be licensed~~
54 ~~state pilots actively practicing their profession~~. The board
55 shall perform such duties and possess and exercise such powers
56 relative to the protection of the waters, harbors, and ports of
57 this state as are prescribed and conferred on it in this
58 chapter.

59 (2) In accordance with the requirements of subsection (1),
60 the Governor shall appoint seven ~~five~~ ~~licensed state pilots who~~
61 ~~are actively practicing their profession and five~~ citizens of
62 the state, two of whom shall be licensed state pilots who are
63 actively practicing their profession, two of whom shall be
64 actively involved in a professional or business capacity in
65 maritime or marine shipping or the commercial passenger cruise
66 industry, one of whom shall be a certified public accountant
67 with at least 5 years' experience in financial management, and
68 two citizens of the state who are not pilots, one of whom shall
69 ~~be actively involved in a professional or business capacity in~~
70 ~~maritime or marine shipping, one of whom shall be a user of~~



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71 ~~piloting services, and three of whom shall not be~~ involved or
72 monetarily interested in the piloting profession or in the
73 maritime industry or marine shipping, to constitute the members
74 of the board. ~~For purposes of this subsection, a "user of~~
75 ~~piloting services"~~ may include any person with an ownership
76 interest in a business that regularly employs licensed state
77 pilots or certificated deputy pilots for the purpose of
78 delivering piloting services, or any person who is a direct
79 employee of, and who is employed in a management position for,
80 that business. Each member shall be appointed for a term of 4
81 years. The Governor shall have power to remove members of the
82 board from office for neglect of duty required by this chapter,
83 for incompetency, or for unprofessional conduct. Any vacancy
84 which may occur in the board in consequence of death,
85 resignation, removal from the state, or other cause shall be
86 filled for the unexpired term by the Governor in the same
87 manner. A majority of those serving on the board shall
88 constitute a quorum and action by a majority of a quorum only
89 shall be lawful and enforceable.

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

99 Section 32. Present subsection (3) of section 310.042,



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100 Florida Statutes, is renumbered as subsection (4), and a new
101 subsection (3) is added to that section, to read:

102 310.042 Organization of board; meetings.—

103 (3) The business of the board shall be presented to the
104 board in the form of a written agenda. The agenda shall be set
105 by the chair and shall include items of business requested by
106 the board members. The written agenda shall be provided as part
107 of the notice required by subsection (2).

108 Section 33. Section 310.151, Florida Statutes, is amended
109 to read:

110 310.151 Rates of pilotage; ~~Pilotage Rate Review Board.~~—

111 ~~(1) (a) For the purposes of this section, "board" means the~~
112 ~~Pilotage Rate Review Board.~~

113 ~~(b) 1. To carry out the provisions of this section, the~~
114 ~~Pilotage Rate Review Board is created within the Department of~~
115 ~~Business and Professional Regulation. Members shall be appointed~~
116 ~~by the Governor, subject to confirmation by the Senate. Members~~
117 ~~shall be appointed for 4-year terms, except as otherwise~~
118 ~~specified in this paragraph. No member may serve more than two~~
119 ~~consecutive 4-year terms or more than 11 years on the board. The~~
120 ~~board shall consist of seven members. No member may have ever~~
121 ~~served as a state pilot or deputy pilot, and no member may~~
122 ~~currently serve or have served as a direct employee, contract~~
123 ~~employee, partner, corporate officer, sole proprietor, or~~
124 ~~representative of any vessel operator, shipping agent, or pilot~~
125 ~~association or organization, except that one member shall be or~~
126 ~~have been a person licensed by the United States Coast Guard as~~
127 ~~an unlimited master, without a first-class pilot's endorsement,~~
128 ~~initially appointed to a 2-year term. One member shall be a~~



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129 ~~certified public accountant with at least 5 years' experience in~~
130 ~~financial management, initially appointed to a 3-year term. One~~
131 ~~member shall be a former hearing officer or administrative law~~
132 ~~judge of the Division of Administrative Hearings, as defined in~~
133 ~~s. 120.65, or a former judge who has served on the Supreme Court~~
134 ~~or any district court of appeal, circuit court, or county court,~~
135 ~~initially appointed to a 4-year term. Except as otherwise~~
136 ~~provided in subparagraph 2., the remaining members shall be~~
137 ~~appointed by the Governor from among persons not prohibited~~
138 ~~pursuant to this paragraph. Members of the board shall be~~
139 ~~appointed so as to be geographically distributed, with the~~
140 ~~southern, central, northeastern, and northwestern regions of the~~
141 ~~state having at least one member each.~~

142 ~~2. Three members shall be the consumer members of the Board~~
143 ~~of Pilot Commissioners serving on that board as of January 1,~~
144 ~~1994. Of those members, one shall be appointed to a 1-year term,~~
145 ~~one shall be appointed to a 2-year term, and one shall be~~
146 ~~appointed to a 3-year term. Each of those members shall be~~
147 ~~eligible for reappointment in the same fashion as other members~~
148 ~~of the board, but, thereafter, no member of the board shall be a~~
149 ~~current or former member of the Board of Pilot Commissioners.~~
150 ~~The service of the consumer members of the Board of Pilot~~
151 ~~Commissioners on this board, while they are maintaining~~
152 ~~concurrent membership with the Board of Pilot Commissioners,~~
153 ~~shall be considered duties in addition to and related to their~~
154 ~~duties on the Board of Pilot Commissioners. In the event that~~
155 ~~any of the three board members stipulated according to this~~
156 ~~subparagraph are unable to serve, the Governor shall fill the~~
157 ~~position or positions by appointment from among persons not~~



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158 ~~prohibited pursuant to this paragraph.~~

159 (a) ~~(e)~~ The board may ~~has authority to~~ adopt rules pursuant
160 to ss. 120.536(1) and 120.54 to implement ~~provisions of this~~
161 section conferring duties upon it. The department shall provide
162 the staff required by the board to carry out its duties under
163 this section.

164 (b) ~~(d)~~ All funds received pursuant to this section shall be
165 placed in the account of the board ~~of Pilot Commissioners~~, and
166 the board ~~of Pilot Commissioners~~ shall pay for all expenses
167 incurred pursuant to this section.

168 (2) Any pilot, group of pilots, or other person or group of
169 persons whose substantial interests are directly affected by the
170 rates established by the board may apply to the board for a
171 change in rates. However, an application for a change in rates
172 shall not be considered for any port for which rates have been
173 changed by this board in the 18 months preceding the filing of
174 the application. All applications for changes in rates shall be
175 made to the board, in writing, pursuant to rules prescribed by
176 the board. In the case of an application for a rate change on
177 behalf of a pilot or group of pilots, the application shall be
178 accompanied by a consolidated financial statement, statement of
179 profit or loss, and balance sheet prepared by a certified public
180 accountant of the pilot or group of pilots and all relevant
181 information, fiscal and otherwise, on the piloting activities
182 within the affected port area, including financial information
183 on all entities owned or partially owned by the pilot or group
184 of pilots which provide pilot-related services in the affected
185 port area. In the case of an application for a rate change filed
186 on behalf of persons other than a pilot or group of pilots,



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187 information regarding the financial state of interested parties
188 other than pilots shall be required only to the extent that such
189 financial information is made relevant by the application or
190 subsequent argument before the board. The board shall have the
191 authority to set, by rule, a rate review application fee of up
192 to \$1,000, which must be submitted to the board upon the filing
193 of the application for a rate change.

194 (3) The board shall investigate and determine whether the
195 requested rate change will result in fair, just, and reasonable
196 rates of pilotage pursuant to rules prescribed by the board. In
197 addition to publication as required by law, notice of a hearing
198 to determine rates shall be mailed to each person who has
199 formally requested notice of any rate change in the affected
200 port area. The notice shall advise all interested parties that
201 they may file an answer, an additional or alternative petition,
202 or any other applicable pleading or response, within 30 days
203 after the date of publication of the notice, and the notice
204 shall specify the last date by which any such pleading must be
205 filed. The board may, for good cause, extend the period for
206 responses to a petition. Multiple petitions filed in this manner
207 do not warrant separate hearings, and these petitions shall be
208 consolidated to the extent that it shall not be necessary to
209 hold a separate hearing on each petition. The board shall
210 conclude its investigation, conduct a public hearing, and
211 determine whether to modify the existing rates of pilotage in
212 that port within 60 days after the filing of the completed
213 application, except that the board may not be required to
214 complete a hearing for more than one port within any 60-day
215 period. Hearings shall be held in the affected port area, unless



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216 a different location is agreed upon by all parties to the
217 proceeding.

218 (4) (a) The applicant shall be given written notice, either
219 in person or by certified mail, that the board intends to modify
220 the pilotage rates in that port and that the applicant may,
221 within 21 days after receipt of the notice, request a hearing
222 pursuant to the Administrative Procedure Act. Notice of the
223 intent to modify the pilotage rates in that port shall also be
224 published in the Florida Administrative Weekly and in a
225 newspaper of general circulation in the affected port area and
226 shall be mailed to any person who has formally requested notice
227 of any rate change in the affected port area. Within 21 days
228 after receipt or publication of notice, any person whose
229 substantial interests will be affected by the intended board
230 action may request a hearing pursuant to the Administrative
231 Procedure Act. If the board concludes that the petitioner has
232 raised a disputed issue of material fact, the board shall
233 designate a hearing, which shall be conducted by formal
234 proceeding before an administrative law judge assigned by the
235 Division of Administrative Hearings pursuant to ss. 120.569 and
236 120.57(1), unless waived by all parties. If the board concludes
237 that the petitioner has not raised a disputed issue of material
238 fact and does not designate the petition for hearing, that
239 decision shall be considered final agency action for purposes of
240 s. 120.68. The failure to request a hearing within 21 days after
241 receipt or publication of notice shall constitute a waiver of
242 any right to an administrative hearing and shall cause the order
243 modifying the pilotage rates in that port to be entered. If an
244 administrative hearing is requested pursuant to this subsection,



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245 notice of the time, date, and location of the hearing shall be
246 published in the Florida Administrative Weekly and in a
247 newspaper of general circulation in the affected port area and
248 shall be mailed to the applicant and to any person who has
249 formally requested notice of any rate change for the affected
250 port area.

251 (b) In any administrative proceeding pursuant to this
252 section, the board's proposed rate determination shall be
253 immediately effective and shall not be stayed during the
254 administrative proceeding, provided that, pending rendition of
255 the board's final order, the pilot or pilots in the subject port
256 deposit in an interest-bearing account all amounts received
257 which represent the difference between the previous rates and
258 the proposed rates. The pilot or pilots in the subject port
259 shall keep an accurate accounting of all amounts deposited,
260 specifying by whom or on whose behalf such amounts were paid,
261 and shall produce such an accounting upon request of the board.
262 Upon rendition of the board's final order:

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

267 2. Any amounts deposited which exceed the rates sustained
268 in the board's final order shall be refunded, with the accrued
269 interest, to those customers from whom the funds were collected.
270 Any funds that are not refunded after diligent effort of the
271 pilot or pilots to do so shall be disbursed by the pilot or
272 pilots as the board shall direct.

273 (5) (a) In determining whether the requested rate change



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274 will result in fair, just, and reasonable rates, the board shall
275 give primary consideration to the public interest in promoting
276 and maintaining efficient, reliable, and safe piloting services.

277 (b) The board shall also give consideration to the
278 following factors:

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

281 2. A determination of the average net income of pilots in
282 the port, including the value of all benefits derived from
283 service as a pilot. For the purposes of this subparagraph, "net
284 income of pilots" refers to total pilotage fees collected in the
285 port, minus reasonable operating expenses, divided by the number
286 of licensed and active state pilots within the ports.

287 3. Reasonable operating expenses of pilots.

288 4. Pilotage rates in other ports.

289 5. The amount of time each pilot spends on actual piloting
290 duty and the amount of time spent on other essential support
291 services.

292 6. The prevailing compensation available to individuals in
293 other maritime services of comparable professional skill and
294 standing as that sought in pilots, it being recognized that in
295 order to attract to the profession of piloting, and to hold the
296 best and most qualified individuals as pilots, the overall
297 compensation accorded pilots should be equal to or greater than
298 that available to such individuals in comparable maritime
299 employment.

300 7. The impact rate change may have in individual pilot
301 compensation and whether such change will lead to a shortage of
302 licensed state pilots, certificated deputy pilots, or qualified



- 303 pilot applicants.
- 304 8. Projected changes in vessel traffic.
- 305 9. Cost of retirement and medical plans.
- 306 10. Physical risks inherent in piloting.
- 307 11. Special characteristics, dangers, and risks of the
- 308 particular port.
- 309 12. Any other factors the board deems relevant in
- 310 determining a just and reasonable rate.
- 311 (c) The board may take into consideration the consumer
- 312 price index or any other comparable economic indicator when
- 313 fixing rates of pilotage; however, because the consumer price
- 314 index or such other comparable economic indicator is primarily
- 315 related to net income rather than rates, the board shall not use
- 316 it as the sole factor in fixing rates of pilotage.
- 317 (6) The board shall fix rates of pilotage pursuant to this
- 318 section based upon the following vessel characteristics:
- 319 (a) Length.
- 320 (b) Beam.
- 321 (c) Net tonnage, gross tonnage, or dead weight tonnage.
- 322 (d) Freeboard or height above the waterline.
- 323 (e) Draft or molded depth.
- 324 (f) Any combination of the vessel characteristics listed in
- 325 this subsection or any other relevant vessel characteristic or
- 326 characteristics.

327

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

329 And the title is amended as follows:

330 Delete line 206

331 and insert:



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332
333 amending s. 310.0015, F.S., relating to piloting
334 regulation; conforming provisions to changes made by
335 the act; amending s. 310.002, F.S.; changing the name
336 of the Board of Pilot Commissioners to the "Florida
337 Pilotage Board"; amending s. 310.011, F.S.; providing
338 for the membership of the board; amending s. 310.042,
339 F.S.; providing that the business of the board must be
340 presented to the board in the form of a written
341 agenda; amending s. 310.151, F.S.; eliminating the
342 Pilotage Rate Review Board and for its duties to be
343 assumed by the Florida Pilotage Board; authorizing the
344 Florida Pilotage Board to adopt rules;