

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 86/2

8967 SENATE RESOURCES

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the indigent; [,] or

(ii) has an annual family gross income of less than \$8,200 for the year preceding application;

(B) a person paying \$5 for a resident hunting, trapping, and sport fishing license must provide proof of eligibility under this paragraph when requested by the departments.

• Sec. 4. AS 16.05.340(a)(7) is amended to read:

(7) Nonresident [SPECIAL] sport fishing license - valid for the period inscribed on the license

- (A) For 14-day license ~~\$40~~ [S 30]
- (B) For three-day license ~~20~~ [15]
- (C) For one-day license 10

• Sec. 5. AS 16.05.340(a)(9) is amended to read:

(9) Nonresident hunting license - valid for the 30-day period inscribed on the license ~~100~~ [85]

A nonresident may not take a big game animal without previously purchasing a numbered, nontransferable, appropriate tag, issued under (15) of this subsection. The tag must be affixed to the animal immediately upon capture and must remain affixed until the animal is prepared for storage, consumed, or exported. A tag issued but not used for an animal may be used to satisfy the tagging requirement for an animal of any other species for which the tag fee is of equal or less value.

• Sec. 6. AS 16.05.340(a)(11) is amended to read:

(11) Nonresident [HUNTING AND] trapping license - valid for the 30-day period inscribed on the license ~~\$500~~ [S250]

• Sec. 7. AS 16.05.340(a)(15) is amended to read:

(15) Nonresident big game tags

- (A) Bear, black, each ~~250~~ [225]
- (B) Bear, brown or grizzly, each ~~1,000~~ [500]
- (C) Bison, each ~~750~~ [450]
- (D) Caribou, each ~~500~~ [325]
- (E) Deer, each ~~200~~ [150]

1	(F) Elk, each	500 [300]
2	(G) Goat, each	500 [300]
3	(H) Moose, each	750 [400]
4	(I) Sheep, each	1,000 [425]
5	(J) Wolf, each	250 [175]
6	(K) Wolverine, each	250 [175]
7	(L) Musk oxen, each	1,500 [1,100]

8 • Sec. 8. AS 16.05.340(a)(19) is amended to read:

9	(19) Nonresident small game hunting license - <u>valid for the 30-day</u>	
10	<u>period inscribed on the license</u>	25 [20]

11 • Sec. 9. AS 16.05.340(a)(20) is amended to read:

12	(20) Nonresident alien hunting license - <u>valid for the 30-day period</u>	
13	<u>inscribed on the license</u>	500 [300]

14 A nonresident alien may not take a big game animal without previously purchasing a
 15 numbered, nontransferable, appropriate tag, issued under (21) of this subsection. The
 16 tag must be affixed to the animal immediately upon capture and must remain affixed
 17 until the animal is prepared for storage, consumed, or exported. A tag issued but not
 18 used for an animal may be used to satisfy the tagging requirement for an animal of any
 19 other species for which the tag fee is of equal or less value.

20 • Sec. 19. AS 16.05.340(a)(21) is amended to read:

21	(21) Nonresident alien big game tags	
22	(A) Bear, black, each	500 [500]
23	(B) Bear, brown or grizzly, each	1,500 [650]
24	(C) Bison, each	1,000 [650]
25	(D) Caribou, each	750 [425]
26	(E) Deer, each	300 [200]
27	(F) Elk, each	750 [400]
28	(G) Goat, each	750 [400]
29	(H) Moose, each	750 [500]
30	(I) Musk oxen, each	2,000 [1,500]
31	(J) Sheep, each	1,500 [550]

- 1 (K) Wolf, each 500 [250]
- 2 (L) Wolverine, each 500 [250]

3 * Sec. 11. AS 16.05.340(a)(24) is amended to read:

- 4 (24) Nonresident anadromous king salmon tag - valid for the period
- 5 inscribed on the tag
- 6 (A) for a one-day tag \$10
- 7 (B) for a three-day tag 20 [15]
- 8 (C) for a 14-day [OR ANNUAL] tag 40 [35].

9 A nonresident may not engage in sport fishing for anadromous king salmon without
10 having a valid anadromous king salmon tag in the person's actual possession, unless
11 that person is under the age of 16. However, members of the military service on
12 active duty who are permanently stationed in the state, and their dependents, who do
13 not qualify as residents under AS 16.05.940, may obtain an annual nonresident military
14 anadromous king salmon tag for \$20.

15 * Sec. 12. AS 16.05.350 is amended to read:

16 Sec. 16.05.350. EXPIRATION OF LICENSES AND TAGS. (a) Licenses and
17 tags required under AS 16.05.330 - 16.05.430, except biennial licenses, the nonresident
18 [SPECIAL] sport fishing license, the nonresident hunting license, the nonresident
19 alien hunting license, the nonresident trapping license, the nonresident small game
20 hunting license, the resident trapping license, the one, three, or 14-day nonresident
21 anadromous king salmon tag, and the waterfowl conservation tag, expire at the close
22 of December 31 following issuance.

23 (b) Biennial licenses expire after December 31 of the year following the year
24 of issuance.

25 (c) The resident trapping license expires at the close of September 30 of the
26 year following the year in which the license is issued.

27 (d) The waterfowl conservation tag expires at the close of January 31 of the
28 year following the year of issue of the tag.

29 * Sec. 13. AS 16.05.340(a)(8) and 16.05.340(a)(10) are repealed.

30 * Sec. 14. This Act takes effect January 1, 1996.



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Senate Resource
 COMMITTEE NAME

COMMITTEE ON SB 128 DATED February 26, 1996
 BILLSUBJECT

In its previous form I could not support SB128, because this bill appeared to be a anti-trapping and hunting measure designed to reduce non-resident and alien hunting and trapping. Dropping the big game tag fee increases has somewhat tempered my objections to this bill. However, I find it difficult to understand the reasoning behind changes in Section 6, AS 16.05.340(a)(11).

Alaskan trapping regulations permit over 7 months of open seasons for various fur bearers. The changes to the former non-resident hunting and trapping license fees drop the hunting privilege and reduce trapping to 30 days, plus adding \$250. to the license fee (\$500. total). This means that a non-resident trapper or military trapper could conceivably pay up to \$3500. for a full season of trapping. In these days of low fur prices and few trappers it seems foolish to attempt a revenue generating bill that would only discourage applicants.

Moreover, a trapper should have hunting privileges along with the ability to trap a full season, especially if the state requires \$500. for this license! I further suggest this particular change is unreasonable and would eliminate the few non-resident trappers and military personnel who trap off base from participation in recreational trapping. I also suspect this change was designed to eliminate the limited number of non-residents who participate in legal day airborne trapping.

This change would only be acceptable to me if the hunting privilege is restored and the license is valid for at least 6 months.

SIGNED Peter E. K. Shepherd
 TESTIFIER

Guide J. Trapper
 REPRESENTING (OPTIONAL)

1012 Galena St., E 5th AK 99709
 ADDRESS/PHONE NUMBER



KUSKOKWIM GUIDE SERVICE

PETE SHEPHERD REG. GUIDE
1012 GALENA STREET FAIRBANKS, ALASKA 99709
PHONE/FAX (907) 474-4685 RADIO (907) 345-1160

Senate Resources SB 128

January 24, 1993

I do not support Senate Bill 128 for the following reasons.

This bill is an obvious anti-hunting measure designed to eliminate or drastically reduce non-resident and alien hunting. If fees are increased to the extent called for in this bill Alaskan guides and outfitters could not be competitive with hunting services offered by Canada, other foreign nations, and continental states. The prevailing costs of non-resident and unguided hunts are at a point where increases in big game tag fees would eliminate thousands of participants. The last increase in hunting licenses and big game tag fees led to a 15-20 per cent decrease in resident and non-resident hunters.

The Division of Wildlife Conservation is funded 100 per cent by matching 5 million of license and tag fees with Federal Aid to Wildlife Restoration (Pittman-Robertson) funds. Non-resident fees contribute approximately 2.25 million (45 per cent) of these matching monies. Even with a five dollar decrease in resident hunting license fees the decline in numbers of non-resident hunters resulting from fee increases could cause a significant shortfall in matching funds.

In Alaska non-resident and alien hunters must purchase big game tags prior to hunting. These funds are not refundable even if the hunter is not successful. In many nations hunters pay a minimal fee for each species hunted, and if an animal is taken pays a trophy fee to the agency regulating hunter licensing. This fact alone deters many sportsmen from hunting in Alaska. Increasing big game tag fees would only exacerbate this situation.

Out of state hunters spend over 100 million each year on hunts. Approximately 85 per cent of this revenue stays in Alaska. Unfortunately, management trends have led to promulgation of regulations which unnecessarily restrict non-resident hunting. For instance, the state is willing to require these hunters to pay non-refundable fees, but chooses to close Game Management Units and Sub-units to some species, offers only shorter seasons in some areas, and enforces a statewide minimum moose antler requirement of 50 inches for all non-residents and alien hunters. Under these conditions the added burden of increased big game tags could only lead to significant declines in hunters.

If implemented this bill could easily contribute to the demise of a biologically sound and traditional Alaskan industry. Instead of legislating a valuable industry out of existence it would benefit all Alaskans if the legislature insisted on responsible and active management of the wildlife resources common to all. There is a tremendous potential in Alaska to manage wildlife populations to benefit subsistence needs, other resident hunters, and increase many times the income from out of state hunters.

Peter Shepherd



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

Memorandum

Date: February 13, 1996

To: Senator Loren Leman
Chairman, Senate Resources Committee

From: Senator Dave Donley *LD*

Re: **Committee Hearing on SS SB128** - reducing fees for resident combination license fees, increasing license fees for non-resident sport fishing, hunting and trapping licenses, and allowing nonresidents who have lived in Alaska for the preceding 6 consecutive months to receive a sport fishing license and king salmon tag valid for 6 months, or until the end of the calendar year, whichever is less, for \$60

I request SB 128 be scheduled for a second committee hearing. I have a draft CS SS SB 128() prepared in response to concerns brought up during the last Senate Resources committee hearing. In the draft CS SS SB 128() (9-LS0843\G 2/9/96), I removed those sections which would have increased the non-resident and non-resident alien big game tag fees.

Senate Bill 128 proposes the following increments and decrements to fish and game fees. Those items **highlighted** below indicate additions made to the SS SB 128 which are reflected in the draft CS SS SB 128() (9-LS0843\G 2/9/96).

1. reducing combination resident hunting and trapping, hunting and sport fishing, and hunting, trapping and sport fishing license fees by \$5,
2. increasing non-resident 14 and 3 day sport fishing license fees to \$60 and \$20, respectively; and adding a seven day nonresident sport fish license for \$40,
3. allowing nonresidents who have lived in Alaska for the preceding 6 consecutive months and who have maintained a voting residence to receive a sport fishing license valid for 6 months, or until the end of a calendar year, whichever is less for \$60,
4. increasing the nonresident hunting license fee from \$85 to \$100 and validating that license for a 30 day period.
5. increasing the license fee for nonresident trapping licenses from \$250 to \$500 and validating that license for the 30 day period inscribed on the license,
6. increasing the non-resident small game license fee by \$5 and nonresident alien hunting license fee from \$300 to \$500 and validating each for the 30 day period inscribed on the license.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER, Senate Finance Committee • Senate State Affairs Committee

Produced in House

Senator Loren Leman
February 13, 1996
Page Two

7. increasing 3 and 14 day tag fees for nonresident anadromous king salmon by \$5, to \$20 and \$40, respectively; and adding a seven day nonresident anadromous king salmon tag for \$40

8. allowing nonresidents who have lived in Alaska for the preceding 6 consecutive months and who have maintained a voting residence to receive a king salmon tag valid for 6 months, or until the end of a calendar year, whichever is less for \$60, and

9. adding the nonresident hunting license, the nonresident alien hunting license, the nonresident trapping license, and the nonresident small game hunting license to the list of those licenses which expire at the close of December 31 following issuance.

If you have further questions, please contact Karen Brand of my staff at 3892.

DD/lb



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

SPONSOR STATEMENT
SS SB 128

**Reducing Fees for Resident Combination Licenses and Increasing Fees
for Non-Resident Sport Fishing, Hunting and Trapping Licenses**

SS SB128 reduces the cost of the three types of resident combination licenses. Hunting and trapping, hunting and sport fishing, and hunting, trapping and sport fishing licenses will each be reduced by \$5. Currently, the cost for combination licenses for residents are exactly the same, whether each license is purchased individually, or as a combination.

SS SB128 increases non-resident 14 and 3 day sport fishing license fees to \$40 and \$20, respectively; increases the nonresident hunting license fee from \$85 to \$100 and limits that license to a 30 day period. Additionally, SB 128 increases the fee for nonresident trapping licenses from \$250 to \$500 and limits that license to a 30 day period. Nonresident big game tags are increased by the amounts shown on page 2 of the bill.

Nonresident small game license fees are increased by \$5 and nonresident alien hunting licenses are increased from \$300 to \$500. Nonresident alien big game tags are increased by amounts shown on page three of SS SB128. Three and 14 day tag fees for nonresident anadromous king salmon are increased by \$5, to \$20 and \$40, respectively. Lastly, SS SB128 adds all nonresident licenses to the list of those which expire at the close of December 31st following issuance.

Alaska's nonresident sporting license fees are currently lower than many other states. SS SB128 will raise those fees to a level more consistent with similar license and tag fees in other states.

If you have further questions, please contact Karen Brand of my staff at 3892.

DD/ab 1/14/96

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MEMBER: Senate Finance Committee • Senate State Affairs Committee

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Some Outsiders pay for vacations by canning salmon, sending it home

Daily News staff and wire reports

KENAI — Ever heard the one about the tourists from Outside who drive their motor homes to the Kenai Peninsula and pay for their vacations by canning salmon to sell back home?

It's no myth, according to some state Fish and Wildlife Protection officers.

"You can go to the post office during the summer and see case after case of canned salmon leaving for the Lower 48. You can go to flea markets in Arizona and find canned Kenai reds with homemade

labels," said Sgt. Jim Cockrell of the Alaska Division of Fish and Wildlife Protection in Soldotna. "A lot of out-of-staters purchase resident licenses and pay for their vacations that way."

Cockrell said the state has no idea how big the problem is because enforcement officers can't measure it.

Kevin Delaney, director of the state Division of Sport Fisheries, doubts the problem is as big as Cockrell makes it out to be, however.

All Alaska anglers combined — both

resident and nonresident — annually account for only a half of 1 percent of the salmon caught in the state, Delaney said. Even if it were assumed that all of those fish were caught by nonresidents, he added, their catch would amount to an average of fewer than five salmon per licensed nonresident angler each year.

Localized problems with nonresidents setting up fish processing operations and sending canned or frozen fish back to the states of Europe have arisen on occasion,

Delaney said, but they do not appear widespread.

They also are illegal. He noted that it is against the law to use sportfishing gear to catch salmon for sale, and it is against the law to sell Alaska sport-caught salmon.

State fish and wildlife enforcement officers are overworked because of budget cuts, Delaney said, but if they know of sport-caught salmon showing up for sale, they should prosecute the offenders.

Please see Page B-3, TOURISTS

01/24/96 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150
16:38:57 PARTICIPANT LIST (ALL PARTICIPANTS) BY:KTH
TCN:60205 SCHEDULED FOR:01/24/96 16:00 TO 17:00 FOR:KTH
PUBLIC HEARING SENATE RESOURCES
LOCATION:KETCHIKAN
SB 128 MR. DON WESTLUND TESTIF.

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15:57:28 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC
TCN:60205 SCHEDULED FOR:01/24/96 16:00 TO 17:00 FOR:ANC
PUBLIC HEARING SENATE RESOURCES
LOCATION:ANCHORAGE
→ SB 190 MR. RON SWANSON DNR TESTIFY
SB 128 MR. NEIL WEBSTER AK HUNTERS ASSOCTESTIFY

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PUBLIC HEARING SENATE RESOURCES
LOCATION:MATSU
SB 128 MR WAYNE KURAT TESTIFY
SB 128 MR ROD ARNO TESTIFY

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PUBLIC HEARING SENATE RESOURCES
LOCATION:FAIRBANKS
SB 124 MR PETER SHEPHERD TESTIFY

FAIRBANKS PARTICIPANT HAD TO
LEAVE - FAXING TESTIMONY

CORRECTION

THE FOLLOWING DOCUMENT(S)
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Rev. 6/98

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State of Alaska

Some Outsiders pay for vacations by canning salmon, sending it home

Daily News staff and wire reports

KENAI — Ever heard the one about the tourists from Outside who drive their motor homes to the Kenai Peninsula and pay for their vacations by canning salmon to sell back home?

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Localized problems with nonresidents setting up fish-processing operations and sending canned or frozen fish back to the states of Europe have arisen on occasion,

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They also are illegal. He noted that it is against the law to use sportfishing gear to catch salmon for sale, and it is against the law to sell Alaska sport-caught salmon.

State fish and wildlife enforcement officers are overworked because of budget cuts, Delaney said, but if they know of sport-caught salmon showing up for sale, they should prosecute the offenders.

Please see Page B-3, TOURISTS

TOURISTS: Salmon pays for trip

Continued from Page B-1

"We know it's happening," Cockrell said. "We just can't prove it. The only information we get is from people in the campgrounds or people out of state."

Ed Krohn, chairman of the Kenai/Soldotna Fish and Game Advisory Committee, thinks the problem is serious.

"If people want to steal a fish, they'll find a way," Krohn said. "Some guy will come in with a big canner mounted on the back of his motor home and say, 'Give me your fish and I'll give you half of it back canned.' Once it is processed, it no longer counts against the possession limit."

Some European visitors have been known to freeze their fish for shipment home, where they are reportedly getting \$35 to \$50 a pound for smoked wild salmon, Cockrell said.

The big worry, Cockrell said, is that home-canners may process fish improperly and accidentally poison customers. He said that could amount to a public relations problem, justified or not, for the Alaska commercial salmon industry.

Some have called for restrictions on nonresidents shipping fish out of the state.

"Unless the state of Alaska puts limits on the amount of fish that can be transported out of state, there's not much we can do," Cockrell said. "The Board of

Power was restored once the engines cooled off and a tugboat escorted the ship to Homer, where the Coast Guard investigated the incident before allowing the Crystal River to continue its voyage.

Fisheries looked at limiting the amount of fish that can be exported in the past, but the tourism industry doesn't like that idea."

But, Delaney said, federal laws govern interstate commerce.

"We don't get to do it just to nonresidents," he said.

Any new laws restricting out-of-state shipment of sport-caught salmon must apply to Alaskans as well as non-Alaskans, he said, and that idea doesn't sit well with residents wishing to ship fish to friends or family out of state.

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SB 128 MR. ROD ARNO TESTIFY

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PUBLIC HEARING SENATE RESOURCES
LOCATION:FAIRBANKS
SB 128 MR. PETER SHEPHERD TESTIFY

FAIRBANKS PARTICIPANT HAD TO
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SB

130

LAW OFFICES OF
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PLEASE REPLY TO JUNEAU OFFICE

BRUCE D. WEYHRAUCH

April 7, 1995

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SEATTLE OFFICE

FIRST INTERSTATE CENTER
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Senator Druc Pearce, President
Alaska State Senate
Juneau, Alaska 99810-1182

Re: Senate Bill 130/House Bill 260 - Marine Pilotage Act Amendments

Dear Senator Pearce:

There has been much discussion about mechanisms for dealing with marine pilotage tariffs. There are three alternatives. 1) Re institute "fixed" tariffs set by a State agency. (The Marine Pilot Board was authorized to fix pilotage tariffs until the Legislature amended the Act in 1991.)¹ 2) Re institute a State-set maximum tariff, which was implemented in 1991 and sunset in 1994. (Under this scheme, the Board set the maximum tariff, but had no oversight over the actual amounts charged between pilots and vessels under private contracts.) 3) Do nothing and let the marketplace decide the price of pilotage services.

The Southeastern Alaska Pilots' Association supports a State-fixed tariff. If the legislature does not provide a fixed tariff, then there should not be a maximum tariff. Either actively regulate pilotage or let pilots compete. A maximum tariff does neither and has serious repercussions.

In general, when there is competition, the marketplace decides the price, and the law enforces competition and punishes those who conspire to restrain trade.² When there is active state supervision of a private party, there is immunity from the antitrust laws. However, under a maximum tariff, true market forces are thwarted by establishing an artificial price ceiling. And, pilotage associations cannot enjoy antitrust immunity under a maximum tariff provision because there is not active supervision of pilotage prices actually charged.

The United States Supreme Court describes a two part test that must be met in order for groups to obtain "state action" immunity from the antitrust laws. There must be

¹ In 1990, the Alaska Department of Law failed to enforce the fixed tariff against marine pilots who charged less. It may behoove the Legislature to consider authorizing a "citizen suit" provision to allow citizen enforcement of the Marine Pilot Act if the State fails to enforce the Act in the future.

² Section 1 of the federal Sherman Antitrust Act prohibits contracts, combinations, and conspiracies in restraint of trade. 15 U.S.C. § 1.

Senator Drue Pearce, President
Alaska State Senate
April 7, 1995
Page 2

- 1) state legislation that clearly articulates and affirmatively expresses anticompetitive action, and
- 2) active state supervision.¹

The State's supervision must exert control, it must be exercised deliberately and independently of private actors, and "not simply by agreement among private parties."²

By fixing pilotage tariffs, the State fulfills the active supervision prong of the state action test over a key component of pilotage (price). However, additional measures must be taken by the legislature before pilots begin to gain state action immunity from antitrust liability.

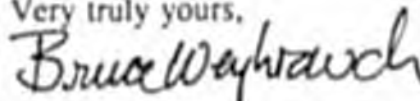
First, the Legislature must clearly articulate and affirmatively express anticompetitive action; in other words, the state must indicate that it intends regulation to displace competition in the Marine Pilotage Act. We commend Florida's Marine Pilot Act for your review as a possible example of such a clearly articulated policy. (See enclosed Fla. Stat. 310.0015.)

Second, the State's supervision of pilotage must be active and pervasive. While antitrust lawsuits against pilots have been filed that have included price fixing claims, the key areas of litigation have involved training, entry, licensing, and discipline. Consequently, the State's supervision of pilotage must be independent of private associations, and must independently and deliberately control and supervise, entry, training, licensing, sanctions, pay, and all other areas of pilotage.

SEAPA supports an actively supervised State system of pilotage. SEAPA believes that this is the only system that will meet the State's interests of safety and a clean environment. Pilots act as agents of the State for the State's interests. This is an ideal situation to implement policies that lead to state action immunity for pilots.

But either allow pilots to compete in the marketplace, or actively supervise and control pilots. Until the Legislature makes a clear policy choice, the Legislature will continue to see litigation, uncertainty, and a never ending stream of pilots, industry representatives, lawyers, and lobbyists at your door.

Very truly yours,



Bruce B. Weyhrauch

¹ California Retail Luxury Dealers Ass'n v. Medical Aluminum, Inc., 445 U.S. 97, 105 (1980).

² FTC v. Toner Title Ins. Co., 119 L. Ed. 2d 410, 423 (1992).

**1994 SUPPLEMENT
TO
FLORIDA STATUTES 1993**

Regular Session February 8 - April 15, 1994,
and Special Session
November 1-10, 1993



Prepared by
DIVISION OF STATUTORY REVISION
of the
JOINT LEGISLATIVE MANAGEMENT COMMITTEE

Published by the
STATE OF FLORIDA
TALLAHASSEE

Bay and Tampa Bay and in the Manatee River, certain materials, as recommended by the Division of Marine Resources of the Department of Environmental Protection, to increase the number of fish available for persons fishing in the above areas

(4) This section shall not prohibit Pinellas County from placing in Tampa Bay certain materials as recommended by the Division of Marine Resources of the Department of Environmental Protection, to increase the number of fish available for persons fishing in the bay

History.—Ch. 279, 1981, § 5, 306 s. 1, ch. 437, 1975, § 5, 170, §§ 5, 240, CGL 2000 s. 1, ch. 61-11 s. 1, ch. 63-423 s. 1, ch. 65-29, §§ 23, 30, 31, ch. 69-106 s. 184, ch. 81-259 s. 31, ch. 94-218 s. 134, ch. 94-226

CHAPTER 310

PILOTS, PILOTING, AND PILOTAGE

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310.0015 Piloting regulation: general provisions. —

(1) Piloting is an essential service of such paramount importance that its continued existence must be secured by the state and may not be left open to market forces.

(2) Because safety is the primary objective in the regulation of piloting by the state and because of the significant economies of scale in delivering the service, the requirement of a large capital investment in order to provide required service, and the fact that pilots are supplying services that are considered to be essential to the economy and the public welfare, it is determined that economic regulation, rather than competition in the marketplace, will better serve to protect the public health, safety, and welfare.

(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 unlim-

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

(a) Pilots may not refuse to provide piloting services to any person or entity that may lawfully request such services, except for justifiable concerns relating to safety, or, in the case of a vessel planning a departure for nonpayment of pilotage.

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

(c) Pilots shall maintain or secure adequate pilot boats, office facilities and equipment, dispatch systems, communication equipment and other facilities, and equipment and support services necessary for a modern, dependable piloting operation.

(d) The pilot or pilots in a port shall train and compensate all member deputy pilots in that port. Failure to train or compensate such deputy pilots shall constitute a ground for disciplinary action under s. 310.101. Nothing in this subsection shall be deemed to create an agency or employment relationship between a pilot or deputy pilot and the pilot or pilots in a port.

(e) In any instance of a payment or transfer of funds, a request for the payment or transfer of funds, or a contractual obligation assumed in respect to the payment or transfer of funds from a licensee payor to a pilot or group of pilots, or to any legal entity or fund administered or controlled by or under common control with such pilot or group of pilots, the pilot or group of pilots shall provide to the licensee payor, at the time the payment or transfer or request for the payment or transfer is made or the obligation is assumed in respect to the payment or transfer, a detailed accounting of the specific assets, tangible or intangible, in which an interest is being directly or indirectly purchased or for which the licensee payor is being granted an interest in return for such payment or transfer of funds or such contractual obligation. This paragraph does not apply to either payments or transfers of funds if their aggregate amounts are less than \$1,000. As used in this paragraph, "licensee payor" means any current or prospective state pilot or deputy pilot.

History.—s. 228, ch. 94-119

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

- (1) "Vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.
- (2) "Pilot" means a licensed state pilot or a certificated deputy pilot.
- (3) "Board" means the Board of Pilot Commissioners.

(4) "Port" means any place in the state into which vessels enter or depart and includes, without limitation, Fernandina, Nassau Inlet, Jacksonville, St. Augustine, Canaveral, Ft. Pierce, Palm Beach, Port Everglades, Miami, Key West, Boca Grande, Charlotte Harbor, Punta Gorda, Tampa, Port Tampa, Port Manatee, St. Petersburg, Clearwater, Apalachicola, Carrabelle, Panama City, Port St. Joe, and Pensacola.

(5) "Pilotage waters of the state" means the navigable waters within the boundaries of the state.

(6) "Piloting" means the acts of pilots in conducting vessels through the pilotage waters of the state.

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

(8) "License" or "certificate" means the document issued by the board under seal of the department to pilots.

(9) "Department" means the Department of Business and Professional Regulation.

History — s. 2, ch. 75-201; s. 2, ch. 76-168; s. 1, ch. 77-457; ss. 1, 16, ch. 78-163; s. 185, ch. 81-255; s. 2, ch. 81-318; ss. 2, 3, ch. 84-185; ss. 1, 10, 11, ch. 84-260; s. 2, ch. 89-242; s. 4, ch. 91-429; s. 232, ch. 94-119; s. 22, ch. 94-218.

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, 5 of whom shall be licensed state pilots actively practicing their profession. The board shall perform such duties and possess and exercise such powers relative to the protection of the waters, harbors, and ports of this state as are prescribed and conferred on it in this chapter.

(2) In accordance with the requirements of subsection (1), the Governor shall appoint five licensed state pilots who are actively practicing their profession and five citizens of the state who are not pilots, one of whom shall be actively involved in a professional or business capacity in maritime or marine shipping, one of whom shall be a user of piloting services, and three of whom shall not be involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping, to constitute the members of the board. For purposes of this subsection, a "user of piloting services" may include any person with an ownership interest in a business that regularly employs licensed state pilots or certificated deputy pilots for the purpose of delivering piloting services, or any person who is a direct employee of, and who is employed in a management position for, that business. Each member shall be appointed for a term of 4 years. The Governor shall have power to remove members of the board from office for neglect of

duty required by this chapter, for incompetency, or for unprofessional conduct. Any vacancy which may occur in the board in consequence of death, resignation, removal from the state, or other cause shall be filled for the unexpired term by the Governor in the same manner. A majority of those serving on the board shall constitute a quorum.

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

History — s. 2, ch. 75-201; s. 2, ch. 76-168; ss. 1, 2, ch. 76-217; s. 1, ch. 77-457; ss. 2, 3, 16, ch. 78-163; ss. 185, 187, ch. 81-255; s. 2, ch. 81-318; ss. 2, 4, ch. 83-329; ss. 2, 3, ch. 84-185; ss. 10, 11, ch. 84-260; s. 2, ch. 89-262; s. 4, ch. 91-429; s. 262, ch. 94-119; s. 23, ch. 94-218.

Note — Sections 121 and 122, former s. 310.021.

310.021 How board constituted.— [Amended and transferred to s. 310.011(2), (3) by s. 340, ch. 94-119.]

310.071 Deputy pilot certification.—

(1) In addition to meeting other requirements specified in this chapter, each applicant for certification as a deputy pilot must:

(a) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(b) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(c) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician and that controlled substance was prescribed by that physician. To maintain eligibility as a certificated deputy pilot, each certificated deputy pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder satisfactorily meets the standards. The standards for certificateholders shall include a drug test.

(d) Have had maritime experience satisfactory to the board prior to taking the examination required under s. 310.081(2), as evidenced by documentation of the following service while holding a United States Coast Guard license:

1. At least 2 years of service at sea during the 5-year period immediately preceding the examination, 1 year of which must have been in at least the capacity of an unlimited second mate.

2. At least 2 years of service during the 5-year period immediately preceding the examination in a deepwater United States port as an active first-class unlimited pilot; serving on at least an unlimited second mate's license or a license as master of freight and towing vessel of at least 1,600 gross registered tons upon oceans, and acting under authority of a duly constituted governmental regulatory entity.

3. At least 2 years of service during the 5-year period immediately preceding the examination as an active first-class unlimited pilot serving on a Great Lakes unlimited master's license.

4. At least 2 years of towing experience during the 5-year period immediately preceding the examination, 1 year of which must have been in the capacity of master of a tugboat/barge combination of at least 5,000 gross registered tons, combined tonnage, while holding a license as master of freight and towing vessel of at least 1,600 gross registered tons upon oceans, or

5. At least 3 years of experience as a deck watch officer during the 10-year period immediately preceding the examination, 1 year of which in the 5-year period immediately preceding the exam must have been as the commanding officer, executive officer, or operations officer of a United States Navy vessel or a United States Coast Guard vessel of at least 1,600 gross tons, and must currently hold a United States Coast Guard license of at least an unlimited second mate.

(e) Submit full documentation of sea time through discharges, continuous discharge books, or other official documents.

(1) Submit proof of sufficient maritime background and experience, except for required trips, to enable the applicant, if not already so licensed, to be eligible to obtain a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which service as a deputy pilot is intended within 90 days of the appointment as a deputy pilot.

(2) The board may adopt rules authorizing equivalent combinations of service from two or more of the areas specified in subparagraphs (1)(d)1, 2, 3, 4, and 5. However, the board may waive the maritime experience requirements prescribed in paragraph (1)(d) when necessary to fill an opening, provided an applicant meeting such requirements has not applied for the opening and the opening has been advertised more than once.

(3) The initial certificate issued to a deputy pilot shall be valid for a period of 12 months, and at the end of this period, the certificate shall automatically expire and shall not be renewed. During this period, the board shall thoroughly evaluate the deputy pilot's performance for suitability to continue training and shall make appropriate recommendations to the department. Upon receipt of a favorable recommendation by the board, the department shall issue a certificate to the deputy pilot, which shall be valid for a period of 2 years. This certificate may be renewed only two times, except in the case of a fully licensed pilot who is cross-licensed as a deputy pilot in another port, and provided the deputy pilot meets the requirements specified for pilots in paragraph (1)(c).

History—s. 2, ch. 79-201, § 2, ch. 79-144, § 1, ch. 77-057, § 1, ch. 76-142, § 2, ch. 81-218, § 1, § 2, ch. 84-183, § 2, § 3, ch. 85-282, § 2, ch. 89-262, § 4, ch. 93-34, § 1, ch. 93-144, § 10, ch. 91-221, § 4, ch. 91-479, § 342, ch. 92-119.

310.073 State pilot licensing.—In addition to meeting other requirements specified in this chapter, each applicant for license as a state pilot must

(1) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(2) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(3) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician and that controlled substance was prescribed by that physician. To maintain eligibility as a licensed state pilot, each licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the licensee satisfactorily meets the standards. The standards for licensees shall include a drug test.

(4) Have had at least 2 years of service as a deputy pilot in the port in which license as a licensed state pilot is desired, which service must have been attained during the period immediately preceding the examination required under s. 310.081(1). Further, at the time of application, each applicant must have a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which license as a state pilot is desired and must have successfully completed the board-approved deputy pilot training program in the port in which license as a state pilot is desired.

History—s. 2, ch. 85-282, § 2, ch. 89-262, § 4, ch. 91-479, § 342, ch. 92-119.

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(1) The department shall examine persons who file application as state pilot in all matters pertaining to the management of vessels and in regard to their knowledge of the channels, waters, harbors, and port where they wish to serve, and, if upon examination to determine proficiency the department finds them qualified to pilot all classes of vessels liable to enter that port and thoroughly familiar with the waters, the channels, the harbor, and the port, the department shall appoint and license as state pilots such number of pilots as in the discretion of the board are required to act in the ports of the state. However, the number of pilots appointed and licensed by the department shall not exceed the number provided for in s. 310.061.

(2) The department shall similarly examine persons who file applications for certificate as deputy pilot, and, upon examination to determine proficiency, the depart-

ment finds them qualified, the department shall certify as qualified all applicants who pass the examination, provided that not more than five persons who passed the examination are certified for each declared opening. If more than five applicants per opening pass the examination, the persons having the highest scores shall be certified as qualified up to the number of openings times five. The department shall give consideration to the minority and female status of applicants when qualifying deputy pilots in the interest of ensuring diversification within the state piloting profession. The department shall appoint and certificate such number of deputy pilots from those applicants deemed qualified as in the discretion of the board are required in the respective ports of the state. A deputy pilot shall be authorized by the department to pilot vessels within the limits and specifications established by the licensed state pilots at the port where the deputy is appointed to serve.

(3) Pilots shall hold their licenses or certificates pursuant to the requirements of this chapter so long as they

- (a) Possess the qualifications set out in this chapter.
- (b) Are in good physical and mental health as evidenced by documentary proof of having satisfactorily passed a physical examination administered by a licensed physician or physician assistant within each calendar year. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot or a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician and that controlled substance was prescribed by that physician. To maintain eligibility as a certificated deputy pilot or licensed state pilot, each certificated deputy pilot or licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder or licensee satisfactorily meets the standards. The standards for certificateholders and for licensees shall include a drug test.
- (c) Are subject to a substance abuse program that has been approved by the board, which includes provisions for drug testing.
- (d) Attend a board-approved seminar for continuing education which includes radar certification.
- (e) Remain in active service in the ports for which they are appointed.

Upon resignation or in the case of disability permanently affecting a pilot's ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

History.—s. 2, ch. 75-201, § 2, ch. 76-140, § 1, ch. 77-457, §§ 6, 10, ch. 78-140, § 11, ch. 81-222, § 2, ch. 81-230, §§ 2, 3, ch. 84-104, §§ 27, 31, ch. 85-702, § 2, ch. 89-262, § 2, ch. 90-144, § 4, ch. 91-429, § 3, ch. 92-110.

310.101 Grounds for disciplinary action by the board.—

(1) Any act of misconduct, inattention to duty, negligence, or incompetence, any willful violation of any law or rule, including the rules of the road, applicable to a licensed state pilot or certificated deputy pilot, or any failure to exercise that care which a reasonable and prudent licensed state pilot or certificated deputy pilot would exercise under the same or similar circumstances may result in disciplinary action. Examples of acts by a licensed state pilot or certificated deputy pilot which constitute grounds for disciplinary action include, but are not limited to:

- (a) Failure to make allowances for the foreseeable effects of wind, current, and tide.
- (b) Failure to obtain or properly use information available to the pilot.
- (c) Failure to navigate with caution in restricted visibility.

(d) Navigating in channels where the depth of water under the keel is less than the prescribed bottom clearance as recommended by the licensed state pilots of that port and approved by the board.

- (e) Excessive speed.
- (f) Having a license or certificate to practice piloting revoked, suspended, restricted, placed on probation, or in any way acted against, including, but not limited to, the relinquishing or depositing of the license or certificate in lieu of further disciplinary action, in anticipation of the filing of charges, or in lieu of prosecution, by the regulatory authority of another state, the Federal Government, a territory, or another country for an act which would constitute a ground for discipline if the act had occurred while piloting under authority of the Florida state pilot's license or deputy pilot's certificate.

(g) Making or filing, or inducing another person to make or file, a report which the pilot knows to be false or intentionally or negligently failing to file, or willfully impeding or obstructing the filing of, a report or record required by state law or by rule of the board or the department. Such reports or records include only those which are signed by the pilot in his capacity as a licensed state pilot or certificated deputy pilot.

(h) Being unable to perform the duties of a pilot with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition such as, but not limited to, poor eyesight or hearing, heart disease, or diabetes. In enforcing this paragraph, the department shall have authority, upon recommendation of the probable cause panel of the board, to compel a licensed state pilot or certificated deputy pilot to submit to a mental or physical examination by physicians designated by the department. The failure of a pilot to submit to such an examination when so directed constitutes an admission of the allegations against him, unless the failure is due to circumstances beyond his control, consequent upon which an emergency suspension order may be entered by the department suspending the pilot's license until he complies with the order for a compulsory mental or physical examination. A licensed state pilot or certificated deputy pilot affected under this paragraph must be afforded, at reasonable intervals, an opportunity to demonstrate that he can resume the competent practice of piloting with reasonable skill and safety.

(i) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the pilot knows or has reason to know he is not competent to perform

(j) Delegating professional responsibilities to a person when the pilot delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or license to perform them

(k) Engaging in any practice which does not meet acceptable standards of safe piloting.

(l) Failure to maintain a valid United States Coast Guard first class unlimited pilot's license covering the waters of the port in which the state pilot's license was issued

(m) Having a license to operate a motor vehicle revoked, suspended, or otherwise acted against by any jurisdiction including its agencies or subdivisions, for operating the vehicle under the influence of alcohol or drugs. The jurisdiction's acceptance of a relinquishment of license, stipulation, consent order, plea of nolo contendere, penalty in any form, or other settlement offered in response to or in anticipation of the filing of charges related to the license to operate a motor vehicle shall be construed as action against the license

(n) Being unable to perform piloting with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, or chemicals

(2) When the board finds any person has committed any act set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusing to certify to the department an application for license or certification

(b) Revoking or suspending the license or certificate

(c) Restricting the practice of the violator

(d) Imposing an administrative fine not to exceed \$5,000 for each count or separate offense

(e) Issuing a reprimand

(f) Placing the licensed state pilot or certificated deputy pilot on probation for such period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the pilot to submit to treatment, submit to additional or remedial training, submit to reexamination, or undergo a complete physical examination

(3) The board shall not reinstate the license or certificate of a state pilot or deputy pilot or cause a license or certificate to be issued to a person whom it has determined to be unqualified until the board is satisfied that such person has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of piloting.

(4) In any foreign vessel or foreign trading vessel movement that an individual holding a state pilot license or deputy pilot certificate is engaged in directing, whether movement of the vessel in or out of the port or movement in close proximity to a dock or any other movement undertaken in furtherance of his piloting duties, such individual is operating under the authority of his state license or certificate and is accountable to the board for his actions.

History.—s. 2, ch. 75-201, § 3; ch. 76-160, § 1; ch. 77-457, §§ 10, 16, ch. 78-140, § 2; ch. 81-318, §§ 2, 3; ch. 84-185, §§ 6, 10, 11; ch. 86-280, § 2; ch. 89-262, § 5; ch. 90-54, § 3; ch. 90-144, § 4; ch. 91-472, § 344; ch. 94-119.

Note.—As amended by s. 5, ch. 90-54, Section 2, ch. 90-144 added the language "certificated deputy pilot license" instead of "deputy pilot certificate."

310.102 Treatment programs for impaired pilots and deputy pilots.—

(1) The department shall, by rule, designate approved treatment programs for pilots and deputy pilots under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers based on the policies and guidelines established by the Impaired Practitioners Committee.

(2) The department shall retain one or more impaired practitioner consultants as recommended by the committee. A consultant shall be a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department, and at least one consultant must be a practitioner licensed under chapter 458, chapter 459, or chapter 464. The consultant shall assist the probable cause panel and department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a pilot or deputy pilot is, in fact, impaired.

(3)(a) Whenever the department receives a written or oral legally sufficient complaint alleging that a pilot or deputy pilot licensed or certificated by the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the pilot's or deputy pilot's ability to practice with skill and safety, and no complaint against the pilot or deputy pilot other than impairment exists, the reporting of such information shall not constitute a complaint within the meaning of s. 455.255 if the probable cause panel finds:

1. The pilot or deputy pilot has acknowledged the impairment problem.

2. The pilot or deputy pilot has voluntarily enrolled in an appropriate approved treatment program.

3. The pilot or deputy pilot has voluntarily withdrawn from piloting or limited the scope of piloting as determined by the panel, in each case, until such time as the panel is satisfied the pilot or deputy pilot has successfully completed an approved treatment program.

4. The pilot or deputy pilot has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the pilot or deputy pilot, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the pilot's or deputy pilot's impairment and his or her participation in a treatment program.

(b) If, however, the pilot or deputy pilot agrees to withdraw from piloting until such time as the consultant determines the pilot or deputy pilot has satisfactorily completed an approved treatment program or evaluation, the probable cause panel shall not become involved in the pilot's or deputy pilot's case.

(c) Inquiries related to impairment treatment programs designed to provide information to the pilot or deputy pilot and others and which do not indicate that

the pilot or deputy pilot presents a danger to the public shall not constitute a complaint within the meaning of s. 455.255 and shall be exempt from the provisions of this subsection.

(d) Whenever the department receives a legally sufficient complaint alleging that a pilot or deputy pilot is impaired as described in paragraph (a) and no complaint against the pilot or deputy pilot other than impairment exists, the department shall forward all information in its possession regarding the impaired pilot or deputy pilot to the consultant.

(e) The probable cause panel shall work directly with the consultant, and all information concerning a licensee obtained by the panel from the consultant shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, subject to the provisions of subsections (5) and (6). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(f) A finding of probable cause shall not be made as long as the panel is satisfied, based upon information it receives from the consultant and the department, that the pilot or deputy pilot is progressing satisfactorily in an approved treatment program.

(4) In any disciplinary action for a violation other than impairment if a pilot or deputy pilot establishes that the violation for which the pilot or deputy pilot is being prosecuted was due to or connected with impairment and further establishes that the pilot or deputy pilot is satisfactorily progressing through or has successfully completed an approved treatment program pursuant to this section, such information may be considered by the board as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(5)(a) An approved treatment provider shall, upon request, disclose to the consultant all information in its possession regarding the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, subject to the provisions of this subsection and subsection (6). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Failure to provide such information to the consultant is grounds for withdrawal of approval of such program or provider.

(b) If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program, all information regarding the issue of a licensee's impairment and participation in a treatment program in the consultant's possession shall be disclosed to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 455.225. Whenever the consultant concludes that impairment affects a licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the secretary of the department.

(6) A consultant, licensee, or approved treatment provider who makes a disclosure pursuant to this sec-

tion is not subject to civil liability for such disclosure or its consequences. The provisions of s. 766.101 apply to any officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section.

History — s. 345 ch. 94-119 s. 1 ch. 94-343
*Note — section 455.255 does not exist.

310.112 Motor vehicle reports.—Each licensed state pilot or certificated deputy pilot shall have a duty to report within 48 hours any jurisdiction's revocation or suspension of, or any action against, that pilot's or deputy pilot's license to operate a motor vehicle under circumstances involving alcohol or drugs. The jurisdiction's acceptance of a relinquishment of license, stipulation, consent order, plea of nolo contendere, or other settlement offered in response to or in anticipation of the filing of charges related to the license to operate a motor vehicle shall be construed as action against the license.

History — s. 346 ch. 94-119.

310.121 Application, examination, and biennial fees.—

(1) The department shall, in accordance with rules set by the board, assess and collect the following fees:

(a) A fee not to exceed \$300 for each application for licensure as a state pilot or certification as a deputy pilot. This fee shall be nonrefundable.

(b) A fee not to exceed \$300 for each examination for licensure as a state pilot or certification as a deputy pilot.

(c) A fee not to exceed \$300 for each examination review.

(2) The department shall assess and collect biennially from each licensed state pilot and each certificated deputy pilot a fee, not to exceed \$200 in the case of a licensed state pilot or \$100 in the case of a certificated deputy pilot, such fees to be set by the board.

History — s. 2 ch. 75-201 s. 3 ch. 76-168 s. 1 ch. 77-457 ss. 12, 16 ch. 78-140 s. 2 ch. 81-218 ss. 2, 3 ch. 84-185 ss. 10, 11 ch. 86-280 s. 2 ch. 89-282 s. 4 ch. 91-429 s. 247 ch. 94-119.

310.131 Assessment of percentage of gross pilotage.—The department shall assess the licensed state pilots in the respective ports of the state a percentage of the gross amount of pilotage earned by such pilots during each year, which percentage will be established by the board not to exceed 2 percent, to be paid into the Professional Regulation Trust Fund by such pilots at such time and in such manner as the board prescribes or as is set forth in the General Appropriations Act. The financial records of all pilots and deputy pilots relating to pilotage are subject to audit by the department and the Auditor General. The department shall by rule set a procedure for verifying the amount of pilotage at each port and may charge costs to the appropriate port if the port does not comply with such procedure.

History — s. 2 ch. 75-201 s. 3 ch. 76-168 s. 1 ch. 77-457 ss. 12, 16 ch. 78-140 s. 188 ch. 81-218 s. 2 ch. 81-318 s. 5 ch. 83-279 ss. 2, 3 ch. 84-185 ss. 10, 11 ch. 86-280 s. 2 ch. 89-282 s. 4 ch. 91-429 s. 248 ch. 94-119.

310.141 Vessels subject to pilotage.—

(1) All vessels shall have a licensed state pilot or certificated deputy pilot on board to direct the movements

of the vessel when entering or leaving ports of this state or when underway upon the navigable waters of the bays, rivers, harbors, and ports of this state, except:

(a) Vessels exempted by the laws of the United States;

(b) Mono-hulled vessels drawing less than 7 feet of water;

(c) Multi-hulled, swath, or nondisplacement vessels for which the product of the length overall and extreme beam is less than 6,000 square feet, and which draw less than 7 feet of water;

(d) Any vessel, when docking or undocking, or

(e) Any vessel, when moving about within a shipyard or moving between a shipyard and a berth or slip directly adjacent to the shipyard.

(2) A vessel is docking or undocking when a tug or tugs are assisting the vessel, or the vessel is making use of a bow thruster or other lateral thrust devices incorporated into the vessel itself, in close proximity to the dock, with the vessel under the direction or control of the master, docking master, licensed state pilot, or certificated deputy pilot; if the vessel that is docking or undocking is under the direction or control of the master or docking master, such direction or control must have been delivered from the licensed state pilot or be in the process of being delivered to the licensed state pilot.

(3) Nothing in this section shall be construed to deny the services of a licensed state pilot to a vessel otherwise exempt who applies for such service.

History.—s. 2 ch. 75-201 s. 1 ch. 75-230 s. 3 ch. 76-160 s. 1 ch. 77-457 s. 16 ch. 78-140 s. 2 ch. 81-218 ss. 2, 3 ch. 84-165 ss. 10, 11 ch. 86-280 s. 2 ch. 89-262 s. 7 ch. 90-54 s. 3 ch. 90-144 s. 4 ch. 91-429 s. 349 ch. 94-119

310.146 Exemptions from pilotage.—

(1) United States vessels are exempted from the provisions of this chapter while transiting a private channel built, marked, maintained, and controlled for one-way traffic by a public utility for the sole purpose of servicing that facility and while under the control of a validly licensed federal pilot.

(2) Any vessel is exempted from the provisions of this chapter while transiting the Miami River as a dead ship under the control of tugboats operated by federally licensed personnel.

History.—ss. 9, 11 ch. 86-280 s. 2 ch. 89-262 s. 4 ch. 91-429 s. 350 ch. 94-119

310.151 Rates of pilotage; Pilotage Rate Review Board.—

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

(b)1. To carry out the provisions of this section, the Pilotage Rate Review Board is created within the Department of Business and Professional Regulation. Members shall be appointed by the Governor, subject to confirmation by the Senate. Members shall be appointed for 4-year terms, except as otherwise specified in this paragraph. No member may serve more than two consecutive 4-year terms or more than 11 years on the board. The board shall consist of seven members. No member may have ever served as a state pilot or deputy pilot, and no member may currently serve or have served as a direct employee, contract employee, partner, corporate officer, sole proprietor, or representa-

tive of any vessel operator, shipping agent, or pilot association or organization, except that one member shall be or have been a person licensed by the United States Coast Guard as an unlimited master, without a first-class pilot's endorsement, initially appointed to a 2-year term. One member shall be a certified public accountant with at least 5 years' experience in financial management, initially appointed to a 3-year term. One member shall be a former hearing officer, as defined in s. 120.65, or a former judge who has served on the Supreme Court or any district court of appeal, circuit court, or county court, initially appointed to a 4-year term. Except as otherwise provided in subparagraph 2, the remaining members shall be appointed by the Governor from among persons not prohibited pursuant to this paragraph. Members of the board shall be appointed so as to be geographically distributed, with the southern, central, northeastern, and northwestern regions of the state having at least one member each.

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

(c) The board is authorized to adopt such rules as are consistent with law and necessary to carry out the duties and authority conferred on it by this section. The department shall provide the staff required by the board to carry out its duties under this section.

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

(2) Any pilot, group of pilots, or other person or group of persons whose substantial interests are directly affected by the rates established by the board may apply to the board for a change in rates. However, an application for a change in rates shall not be considered for any port for which rates have been changed by this board in the 18 months preceding the filing of the application. All applications for changes in rates shall be made to the board, in writing, pursuant to rules prescribed by the board. In the case of an application for a rate change on behalf of a pilot or group of pilots, the application shall be accompanied by a consolidated financial statement, statement of profit or loss, and balance sheet prepared by a certified public accountant of the pilot or group of pilots and all relevant information.

fiscal and otherwise, on the piloting activities within the affected port area, including financial information on all entities owned or partially owned by the pilot or group of pilots which provide pilot-related services in the affected port area. In the case of an application for a rate change filed on behalf of persons other than a pilot or group of pilots, information regarding the financial state of interested parties other than pilots shall be required only to the extent that such financial information is made relevant by the application or subsequent argument before the board. The board shall have the authority to set, by rule, a rate review application fee of up to \$1,000, which must be submitted to the board at the filing of the application for a rate change.

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

(4) The applicant shall be given written notice, either in person or by certified mail, that the board intends to modify the pilotage rates in that port and that the applicant may, within 21 days after receipt of the notice, request a hearing pursuant to the Administrative Procedure Act. Notice of the intent to modify the pilotage rates in that port shall also be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to any person who has formally requested notice of any rate change in the affected port area. Within 21 days after receipt or publication of notice, any person whose substantial interests will be affected by the intended board action may request a hearing pursuant to the Administrative Procedure Act. If the board concludes that the petitioner has raised a disputed issue of material fact, the board shall designate a hearing, which shall be conducted by formal proceeding before a hearing officer assigned by the Division of Administrative Hearings pursuant to s. 120.57(1), unless waived by all parties. The failure to request a hearing within 21 days after receipt or publication of notice shall constitute a waiver of any right to an administrative hearing and shall cause the

order modifying the pilotage rates in that port to be entered. If an administrative hearing is requested pursuant to this subsection, notice of the time, date, and location of the hearing shall be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to the applicant and to any person who has formally requested notice of any rate change for the affected port area.

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

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

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

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

3. Reasonable operating expenses of pilots.

4. Pilotage rates in other ports.

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

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

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

8. Projected changes in vessel traffic.

9. Cost of retirement and medical plans.

10. Physical risks inherent in piloting.

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

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

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

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

(a) Length.

(b) Beam.

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

- (d) Freeboard or height above the waterline.
- (e) Draft or molded depth.
- (1) Any combination of the vessel characteristics listed in this subsection or any other relevant vessel characteristic or characteristics.

History.—s. 2, ch. 75-261; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 14, 16, ch. 78-140; s. 2, ch. 81-318; s. 6, ch. 83-329; ss. 2, 3, ch. 84-185; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-429; s. 351, ch. 94-119.

Note.—Section 352, ch. 94-119, provides that "the rates of portage in effect on July 1, 1994 shall be collectible and enforceable until the Marine Rate Review Board shall be different rates of portage as provided in section 310.151, Florida Statutes, except that, as of July 1, 1994, all rates set by the Board of Port Commissioners after January 1, 1994, are void and shall return to the previously established rates."

310.183 Immediate inactivation of license or certificate for certain violations; rules.—

(1) The department shall issue an emergency order placing on inactive status, for a period not to exceed 15 days, the license of any pilot or certificate of any deputy pilot who, while providing piloting services, is involved in a marine incident that results in the death of a human or, as determined by rule of the board, substantial physical injury to a human or significant property or environmental damage, unless the department determines that the incident is clearly not the result of the actions of the pilot or deputy pilot.

(2) No later than January 1, 1995, the board shall adopt rules to administer the provisions of this section and shall have continuing authority to amend any such rules it has adopted by that deadline. However, if the board fails to adopt such rules by that deadline, the department shall have exclusive authority to adopt such rules.

History.—s. 253, ch. 94-119.

310.185 Rulemaking.—

(1) The board shall have the power to adopt rules necessary to the provisions of this chapter.

(2) The secretary of the department is deemed to be a person substantially affected by a rule or proposed rule for the purpose of seeking an administrative determination of the invalidity of such rule or proposed rule. The secretary may seek such administrative determination of the invalidity of any rule or proposed rule on the ground that it is an invalid exercise of delegated legislative authority or an undue restriction of competition, pursuant to chapter 120.

History.—s. 12, ch. 81-302; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-429; s. 354, ch. 94-119.

CHAPTER 311

FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT

- 311.07 Florida seaport transportation and economic development funding.
- 311.09 Florida Seaport Transportation and Economic Development Council.

311.07 Florida seaport transportation and economic development funding.—

(1) There is created the Florida Seaport Transportation and Economic Development Program within the Department of Transportation to finance port transporta-

tion or port facilities projects that will improve the movement and intermodal transportation of cargo or passengers in commerce and trade and that will support the interests, purposes, and requirements of ports located in this state.

(2) A minimum of \$8 million per year shall be made available from the State Transportation Trust Fund to fund the Florida Seaport Transportation and Economic Development Program.

(3)(a) Program funds shall be used to fund approved projects on a 50-50 matching basis with any of the deepwater ports, as listed in s. 403.021(9)(b), which is governed by a public body or any other deepwater port which is governed by a public body and which complies with the water quality provisions of s. 403.061, the comprehensive master plan requirements of s. 163.3178(2)(k), the local financial management and reporting provisions of part III of chapter 218, and the auditing provisions of s. 11.45(3)(a)4. Moneys in the trust fund may also be used for the acquisition of economic benefit and trade data information.

(b) Projects eligible for funding by grants under the program are limited to the following port facilities or port transportation projects:

1. Transportation facilities within the jurisdiction of the port.
2. The dredging or deepening of channels, turning basins, or harbors.
3. The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with any of the foregoing.
4. The acquisition of container cranes or other mechanized equipment used in the movement of cargo or passengers in international commerce.
5. The acquisition of land to be used for port purposes.
6. The acquisition, improvement, enlargement, or extension of existing port facilities.
7. Environmental protection projects which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval, which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit, which are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites, or which result from the funding of eligible projects listed herein.
8. Transportation facilities as defined in s. 334.03(31) which are not otherwise part of the Department of Transportation's adopted work program.

(c) To be eligible for consideration by the council pursuant to this section, a project must be consistent with the port comprehensive master plan which is incorporated as part of the approved local government comprehensive plan as required by s. 163.3178(2)(k) or other provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, part II of chapter 163.

(4) A port eligible for matching funds under the program may receive a distribution of not more than \$7 million during any 1 calendar year and a distribution of not

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CHAPTER 310

PILOTS, PILOTING, AND PILOTAGE

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310.001 Purpose.—The Legislature recognizes that the waters, harbors, and ports of the state are important resources, and it is deemed necessary in the interest of public health, safety, and welfare to provide laws regulating the piloting of vessels utilizing the navigable waters of the state in order that such resources, the environment, life, and property may be protected to the fullest extent possible. To that end, it is the legislative intent to regulate pilots, piloting, and pilotage to the full extent of any congressional grant of authority, except as limited in this chapter.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 s 18 ch 78-140 s 2 ch 81-218 ss 2 3 ch 84-185 ss 1 10 11 ch 86-290 s 2 ch 89-262 s 4 ch 91-479

310.002 Definitions.—As used in this act:

(1) The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(2) The term "pilot" means a licensed state pilot or a certificated deputy pilot.

(3) The term "board" means the Board of Pilot Commissioners.

(4) The word "port" means any place in the state into which vessels enter or depart and includes, without limitation, Fernandina, Nassau Inlet, Jacksonville, St. Augustine, Canaveral, Ft. Pierce, West Palm Beach, Port Everglades, Miami, Key West, Boca Grande, Charlotte Harbor, Punta Gorda, Tampa, Port Tampa, Port Manatee, St. Petersburg, Clearwater, Apalachicola, Carrabelle, Panama City, Port St. Joe, and Pensacola.

(5) The term "pilotage waters of the state" means the navigable waters within the boundaries of the state.

(6) The term "piloting" means the acts of pilots in conducting vessels through the pilotage waters of the state.

(7) The word "pilotage" means the compensation fixed by the board which is payable by a vessel, its owners, agents, charterers, or consignees to one or more pilots.

(8) The term "license" or "certificate" means the document issued by the board under seal of the department to pilots.

(9) The term "department" means the "Department of Professional Regulation."

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 1 18 ch 78-140 s 185 ch 81-218 s 2 ch 81-218 ss 2 3 ch 84-185 ss 1 10 11 ch 86-290 s 2 ch 89-262 s 4 ch 91-479

*Note.—*Abolished and duties transferred to the Department of Business and Professional Regulation by s 3 ch 93-220

310.011 Board of Pilot Commissioners; qualifications.—A board is established within the Division of Professions of the "Department of Professional Regulation" to be known as the Board of Pilot Commissioners. Except as provided in s. 310.151(1), the board shall be composed of 10 members, 5 of whom shall be licensed state pilots actively practicing their profession. The board shall perform such duties and possess and exercise such powers relative to the protection of the waters, harbors, and ports of this state as are prescribed and conferred on it in this chapter.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 76-217 s 1 ch 77-457 ss 2 18 ch 78-140 s 186 ch 81-218 s 2 ch 81-218 s 3 ch 83-329 ss 2 3 ch 84-185 ss 10 11 ch 86-290 s 2 ch 89-262 s 4 ch 91-479

*Note.—*Abolished and duties transferred to the Department of Business and Professional Regulation by s 3 ch 93-220

310.021 How board constituted.—

(1) The Governor shall appoint five active licensed state pilots who shall possess the qualifications specified in s. 310.011 and five citizens of the state who are not pilots, two of whom shall be actively involved in their professional or business capacity in maritime or marine shipping and three of whom shall not be involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping, to constitute the members of the board. Each member shall be appointed for a term of 4 years. The Governor shall have power to remove members of the board from office for neglect of duty required by this law, for incompetency, or for unprofessional conduct. Any vacancy which may occur in the board in consequence of death, resignation, removal from the state, or other cause shall be filled for the unexpired term by the Governor in the same manner. Except as provided in s. 310.151(1), a majority of those serving on the board shall constitute a quorum.

(2) In appointing members to the board who are pilots, the Governor shall appoint one member from the state at large, one member from any of the following ports: Pensacola, Panama City, or Port St. Joe; one member from any of the following ports: Tampa Bay, Boca Grande, Punta Gorda, Charlotte Harbor, or Key

West; one member from any of the following ports: Fernandina, Jacksonville, or Port Canaveral; and one member from any of the following ports: Ft. Pierce, Miami, Port Everglades, or Palm Beach.

History.— s 2 ch 75-201 s 3 ch 76-168 s 2 ch 76-217 s 1 ch 77-457 ss 3 16 ch 78-140 s 167 ch 81-259 s 2 ch 81-318 s 4 ch 83-329 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.032 Oath of members of the board.—Immediately, and before entering upon the duties of said office, the members of the board shall take the constitutional oath of office and shall file the same with the Department of State; there shall thereupon issue to said member a certificate of his appointment.

History.— s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 s 16 ch 78-140 s 2 ch 81-318 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.042 Organization of board; meetings.—

(1) Immediately after the appointment and qualification of its members, the board shall meet and organize. Said board shall annually elect a chairman and a vice chairman from its membership. Members, while attending official board meetings, shall receive per diem and mileage, as specified in s. 112.061, from their place of residence to the place of meeting and return.

(2) Said board shall hold one or more regular meetings each year at some convenient place in the state on such date or dates as the board may select. Special meetings may be called by a majority of the board. The secretary of the board shall give written notice of all regular and special meetings to all pilots in addition to any other persons required by law to be notified.

(3) Within 14 days from any meeting of the board, the board shall forward a written report to each pilot outlining any actions of the board taken at the meeting which would affect any pilots.

History.— s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 2 16 ch 78-140 ss 13 15 25 30 34 59 62 ch 80-406 s 2 ch 81-318 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.051 Personnel; employment.—

(1) The department may appoint or employ such personnel as may be necessary to assist the department and the board in doing and performing any and all of the powers, duties, and obligations set forth in this chapter. Such personnel need not be licensed state pilots or members of the board. Such personnel shall be authorized to do and perform such duties and work as may be assigned by the department. Except as otherwise provided in this chapter, the department shall provide all legal services necessary in carrying out the provisions of this chapter.

(2) The department shall hire a person knowledgeable and experienced in matters related to piloting. Such person shall act for the department on matters of examination and investigation and, when he deems it necessary, in the selection of legal counsel qualified in admiralty law. On an annual basis, the board shall recommend to the department a person knowledgeable and experienced in matters related to piloting to fill this post, and the department may accept or reject the recommendation. If the department rejects the board's recommendation, the board shall continue to submit recommendations until one is accepted by the department. Unless there is affirmative action by both the board and

the department, at the end of each year, the position shall be declared vacant and the board shall submit a new recommendation for a person to fill such position.

History.— s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 5 16 ch 78-140 s 2 ch 81-318 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.061 State pilots; number; cross licensing.—

The board shall determine the number of pilots based on the supply and demand for piloting services and the public interest in maintaining efficient and safe piloting services. Based on the economic conditions of the port, the board may adopt rules authorizing cross licensing between ports, if this will best serve the public interest.

History.— s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 5 16 ch 78-140 s 13 ch 81-302 s 2 ch 81-318 ss 2 3 ch 84-185 ss 2 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.071 Deputy pilot certification.—

(1) In addition to meeting other requirements specified in this chapter, each applicant for certification as a deputy pilot must:

(a) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(b) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(c) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months.

(d) Have had maritime experience satisfactory to the board prior to taking the examination required under s. 310.081(2), as evidenced by documentation of the following service while holding a United States Coast Guard license:

1. At least 2 years of service at sea during the 5-year period immediately preceding the examination, 1 year of which must have been in at least the capacity of an unlimited second mate.

2. At least 2 years of service during the 5-year period immediately preceding the examination in a deepwater United States port as an active first-class unlimited pilot serving on at least an unlimited second mate's license or a license as master of freight and towing vessel of not less than 1,000 gross registered tons upon oceans, and acting under authority of a duly constituted governmental regulatory entity.

3. At least 2 years of service during the 5-year period immediately preceding the examination as an active first-class unlimited pilot serving on a Great Lakes unlimited master's license; or

4. At least 2 years of towing experience during the 5-year period immediately preceding the examination, 1 year of which must have been in the capacity of master of a tugboat/barge combination of at least 5,000 gross registered tons, combined tonnage, while holding a license as master of freight and towing vessel of at least 1,000 gross registered tons upon oceans.

However, except as provided in paragraph (f), the applicant may not be qualified for certification by the board unless he holds a valid license issued by the United States Coast Guard of an equal or higher grade than the

lowest grade of license issued by the United States Coast Guard held by any licensed state pilot in the port in which he seeks certification, notwithstanding subparagraphs 1, 2, 3, and 4.

(e) Submit full documentation of sea time through discharges, continuous discharge books, or other official documents.

(f) Submit proof of sufficient maritime background and experience, except for required trips, to enable the applicant, if not already so licensed, to be eligible to obtain a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which service as a deputy pilot is intended within 90 days of the appointment as a deputy pilot.

(2) The board may adopt rules authorizing equivalent combinations of service from two or more of the areas specified in subparagraphs (1)(d)1, 2, 3, and 4. However, the board may waive the maritime experience requirements prescribed in paragraph (1)(d) when necessary to fill an opening, provided an applicant meeting such requirements has not applied for the opening and the opening has been advertised more than once.

(3) The initial certificate issued to a deputy pilot shall be valid for a period of 9 months, and at the end of this period, the certificate shall automatically expire and shall not be renewed. During this period, the board shall thoroughly evaluate the deputy pilot's performance for suitability to continue training and shall make appropriate recommendations to the department. Upon receipt of a favorable recommendation by the board, the department shall issue a certificate to the deputy pilot, which shall be valid for a period of 2 years. The certificate may be renewed as necessary, provided the deputy pilot meets the requirements specified for pilots in paragraph (1)(c).

History.—s. 2, ch. 75-271; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 78-160; s. 2, ch. 81-378; ss. 1, 2, ch. 84-100; ss. 2, 10, 11, ch. 86-270; s. 2, ch. 87-267; s. 6, ch. 90-54; s. 1, ch. 90-144; s. 73, ch. 91-221; s. 4, ch. 91-479.

310.073 State pilot licensing.—In addition to meeting other requirements specified in this chapter, each applicant for license as a state pilot must:

(1) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(2) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(3) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months.

(4) Have had at least 2 years of service as a deputy pilot in the port in which license as a licensed state pilot is desired, which service must have been attained during the period immediately preceding the examination required under s. 310.081(1). Further, at the time of application, each applicant must have a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which license as a state pilot is desired and must have successfully completed the board-approved deputy pilot training pro-

gram in the port in which license as a state pilot is desired.

History.—ss. 4, 11, ch. 85-270; s. 2, ch. 86-270; s. 4, ch. 91-479.

Note.—The word "meeting" was inserted by the editors.

310.075 Deputy pilot training program.—The licensed state pilots in each port shall submit to the board for its approval a deputy pilot training program of not less than 2 years' duration, applicable to all deputy pilots appointed to serve at such port. The following requirements constitute the parameters within which deputy pilot training programs are to be established and carried out by the licensed state pilots at all ports in this state:

(1) Upon receiving his appointment, a deputy pilot must report to the licensed state pilots at the port he is appointed to serve and must serve a period of not less than 90 days as an observer trainee. During such period:

(a) The observer trainee must accompany licensed state pilots, becoming thoroughly familiar with all of the waters, channels, the harbor, and the port under varied conditions.

(b) The observer trainee must obtain a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port before the board may authorize him to pilot vessels within the limits and specifications established by the licensed state pilots of the port.

(2) Upon completion of the observer-trainee period, the deputy pilot must submit to the board a deputy pilot vessel handling form for each vessel upon which he has accompanied a licensed state pilot. Each such form must be signed by the pilot in charge who accompanied the deputy pilot and must accurately recite:

(a) The vessel's registry, length, gross tonnage, and draft.

(b) The name of the berth from which or to which the vessel was piloted.

(c) The weather and sea conditions encountered.

(d) The time of day.

(e) Any marine incidents required to be reported under s. 310.111 and

(f) The comments of the pilot in charge, including whether, under his supervision, the pilot in charge turned the navigation of the vessel over to the deputy pilot.

(3) Each request to increase the limits and specifications under which a deputy pilot is authorized to pilot must be submitted to the board and must be accompanied by a deputy pilot vessel handling form as provided in subsection (2) for each vessel the deputy pilot has piloted since his limits and specifications were last increased by the board.

(4) For successful completion of the deputy pilot training program, a deputy pilot must have gradually been increased in his authorized limits and specifications until he has been authorized by the board to pilot vessels with a maximum draft of not more than 3 feet less than the normal maximum draft allowable in the port in which he is authorized to pilot, as proposed by the licensed state pilots in that port and approved by the board.

History.—ss. 5, 11, ch. 86-270; s. 2, ch. 88-270; s. 4, ch. 91-479.

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(1) The department shall examine persons who file application as state pilot in all matters pertaining to the management of vessels and in regard to their knowledge of the channels, waters, harbors, and port where they wish to serve, and, if upon examination to determine proficiency the department finds them qualified to pilot all classes of vessels liable to enter that port and thoroughly familiar with the waters, the channels, the harbor, and the port, the department shall appoint and license as state pilots such number of pilots as in the discretion of the board are required to act in the ports of the state. However, the number of pilots appointed and licensed by the department shall not exceed the number provided for in § 310.061.

(2) The department shall similarly examine persons who file applications for certificate as deputy pilot, and, if upon examination to determine proficiency the department finds them qualified, the department shall appoint and certificate such number of deputy pilots as in the discretion of the board are required in the respective ports of the state. A deputy pilot shall be authorized by the department to pilot vessels within the limits and specifications established by the licensed state pilots at the port where the deputy is appointed to serve.

(3) Pilots shall hold their licenses or certificates pursuant to the requirements of this chapter so long as they

- (a) Possess the qualifications set out in this chapter.
- (b) Are in good physical and mental health as evidenced by documentary proof of having satisfactorily passed a physical examination administered by a licensed physician or physician assistant within each calendar year.
- (c) Are subject to a substance abuse program that has been approved by the board, which includes provisions for drug testing.
- (d) Attend a board-approved seminar for continuing education which includes radar certification.
- (e) Remain in active service in the ports for which they are appointed.

Upon resignation or in the case of disability permanently affecting a pilot's ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

History.—s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 9 16 ch 79-140 s 11 ch 81-322 s 2 ch 81-318 ss 2 3 ch 84-183 ss 10 11 ch 86-280 s 2 ch 89-262 s 2 ch 90-144 s 4 ch 91-429

310.091 Powers of the department.—In addition to all other powers conferred by this chapter, the department shall have the following powers:

- (1) To issue a license as a state pilot or a certificate as a deputy pilot to a qualified applicant who passes the examination conducted by the department.
- (2) In the course of any investigation, to issue and serve witness subpoenas and subpoenas duces tecum and administer oaths and take testimony.
- (3) To require holders of licenses or certificates and applicants for licenses or certificates to submit pertinent information under oath necessary to determine their qualifications or to enforce the provisions of this chapter.

(4) When any violation of this chapter or rule promulgated thereunder has occurred or is threatened by any person, to institute proceedings in the appropriate courts in this state to restrain and enjoin such actions.

(5) To require an applicant for vacancy, a licensed state pilot, or a certificated deputy pilot to submit proof of his mental or physical capability to serve, or to continue to serve, as a pilot or deputy pilot.

History.—s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 9 16 ch 79-140 s 2 ch 81-318 ss 2 3 ch 84-183 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.101 Grounds for disciplinary action by the board.—

(1) Any act of misconduct, inattention to duty, negligence, or incompetence; any willful violation of any law or rule, including the rules of the road, applicable to a licensed state pilot or certificated deputy pilot; or any failure to exercise that care which a reasonable and prudent licensed state pilot or certificated deputy pilot would exercise under the same or similar circumstances may result in disciplinary action. Examples of acts by a licensed state pilot or certificated deputy pilot which constitute grounds for disciplinary action include, but are not limited to:

- (a) Failure to make allowances for the foreseeable effects of wind, current, and tide.
- (b) Failure to obtain or properly use information available to the pilot.
- (c) Failure to navigate with caution in restricted visibility.
- (d) Navigating in channels where the depth of water under the keel is less than the prescribed bottom clearance as recommended by the licensed state pilots of that port and approved by the board.
- (e) Excessive speed.
- (f) Having a license or certificate to practice piloting revoked or suspended by the regulatory authority of another state, the Federal Government, a territory, or another country for an act which would constitute a ground for discipline if the act had occurred while piloting under authority of the Florida state pilot's license or deputy pilot's certificate.
- (g) Making or filing, or inducing another person to make or file, a report which the pilot knows to be false or intentionally or negligently failing to file, or willfully impeding or obstructing the filing of, a report or record required by state law or by rule of the board or the department. Such reports or records include only those which are signed by the pilot in his capacity as a licensed state pilot or certificated deputy pilot.
- (h) Being unable to perform the duties of a pilot with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition such as, but not limited to, poor eyesight or hearing, heart disease, or diabetes. In enforcing this paragraph, the department shall have authority, upon recommendation of the probable cause panel of the board, to compel a licensed state pilot or certificated deputy pilot to submit to a mental or physical examination by physicians designated by the department. The failure of a pilot to submit to such an examination when so directed constitutes an admission of the allegations against him, unless

the failure is due to circumstances beyond his control consequent upon which an emergency suspension order may be entered by the department suspending the pilot's license until he complies with the order for a compulsory mental or physical examination. A licensed state pilot or certificated deputy pilot affected under this paragraph must be afforded, at reasonable intervals, an opportunity to demonstrate that he can resume the competent practice of piloting with reasonable skill and safety.

(i) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the pilot knows or has reason to know he is not competent to perform.

(j) Delegating professional responsibilities to a person when the pilot delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or license to perform them.

(k) Engaging in any practice which does not meet acceptable standards of safe piloting.

(l) Failure to maintain a valid United States Coast Guard first class unlimited pilot's license covering the waters of the port in which the state pilot's license was issued.

(2) When the board finds any person has committed any act set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusing to certify to the department an application for license or certification.

(b) Revoking or suspending the license or certificate.

(c) Restricting the practice of the violator.

(d) Imposing an administrative fine not to exceed \$1,000 for each count or separate offense.

(e) Issuing a reprimand.

(f) Placing the licensed state pilot or certificated deputy pilot on probation for such period of time and subject to such conditions as the board may specify, including but not limited to requiring the pilot to submit to treatment, submit to reexamination, or undergo a complete physical examination.

(3) The board shall not restate the license or certificate of a state pilot or deputy pilot or cause a license or certificate to be issued to a person whom it has determined to be unqualified until the board is satisfied that such person has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of piloting.

(4) In any foreign vessel or foreign trading vessel movement that an individual holding a state pilot's license or deputy pilot's certificate is engaged in directing, whether movement of the vessel in or out of the port or movement in close proximity to a dock or any other movement undertaken in furtherance of his piloting duties, such individual is operating under the authority of his state license or certificate and is accountable to the board for his actions.

History - 1977 - 20 - 15-201; 1978 - 20 - 15-140; 1979 - 20 - 17-457; 1980 - 20 - 15-140; 1981 - 20 - 15-23; 1982 - 20 - 15-23; 1983 - 20 - 15-23; 1984 - 20 - 15-23; 1985 - 20 - 15-23; 1986 - 20 - 15-23; 1987 - 20 - 15-23; 1988 - 20 - 15-23; 1989 - 20 - 15-23; 1990 - 20 - 15-23; 1991 - 20 - 15-23; 1992 - 20 - 15-23; 1993 - 20 - 15-23.

310.111 Marine incident reports.—Each collision, grounding, stranding, or other marine peril sustained or caused by a vessel on which there was employed a licensed state pilot or certificated deputy pilot shall be reported to the office of the board or the piloting consultant within 48 hours of the occurrence. In addition, a written report shall be submitted to the department on forms and in the manner prescribed by the department within 7 days of the occurrence. However, any marine incident involving oil spillage, pollution, physical injury, or death shall be reported to the board or the piloting consultant by telephone or telegram within 24 hours of the occurrence in addition to submission of the required written report.

History - 1977 - 20 - 15-201; 1978 - 20 - 15-140; 1979 - 20 - 17-457; 1980 - 20 - 15-140; 1981 - 20 - 15-23; 1982 - 20 - 15-23; 1983 - 20 - 15-23; 1984 - 20 - 15-23; 1985 - 20 - 15-23; 1986 - 20 - 15-23; 1987 - 20 - 15-23; 1988 - 20 - 15-23; 1989 - 20 - 15-23; 1990 - 20 - 15-23; 1991 - 20 - 15-23; 1992 - 20 - 15-23; 1993 - 20 - 15-23.

310.1115 Bridge electronic navigation protection equipment: duty of pilot.—

(1) When a piloted vessel passes under a bridge located in a harbor, in the approaches to a harbor, or in a river, and when electronic navigation protection equipment is available, it is the duty of the pilot or certificated deputy pilot on board to use the electronic navigation protection equipment. If the electronic navigation protection equipment can be utilized only in conjunction with a portable device or devices located on board the piloted vessel, it is the responsibility of the pilot to bring such device or devices on board the piloted vessel and to remove such device or devices upon completion of his duties aboard the piloted vessel.

(2) In the event that any electronic navigation protection equipment or portable device associated with such equipment malfunctions during the approach of a piloted vessel to a bridge and the bridge is not visible from a distance of at least 2 miles from the piloted vessel, the pilot shall not transit the bridge and shall take any prudent action available to avoid such transit.

History - 1977 - 20 - 15-201; 1978 - 20 - 15-140; 1979 - 20 - 17-457; 1980 - 20 - 15-140; 1981 - 20 - 15-23; 1982 - 20 - 15-23; 1983 - 20 - 15-23; 1984 - 20 - 15-23; 1985 - 20 - 15-23; 1986 - 20 - 15-23; 1987 - 20 - 15-23; 1988 - 20 - 15-23; 1989 - 20 - 15-23; 1990 - 20 - 15-23; 1991 - 20 - 15-23; 1992 - 20 - 15-23; 1993 - 20 - 15-23.

310.121 Biennial fees for licenses and certificates. The department shall assess and collect biennially from each licensed state pilot and each certificated deputy pilot a fee not to exceed \$200 in the case of a licensed state pilot or \$100 in the case of a certificated deputy pilot, such fees to be set by the board.

History - 1977 - 20 - 15-201; 1978 - 20 - 15-140; 1979 - 20 - 17-457; 1980 - 20 - 15-140; 1981 - 20 - 15-23; 1982 - 20 - 15-23; 1983 - 20 - 15-23; 1984 - 20 - 15-23; 1985 - 20 - 15-23; 1986 - 20 - 15-23; 1987 - 20 - 15-23; 1988 - 20 - 15-23; 1989 - 20 - 15-23; 1990 - 20 - 15-23; 1991 - 20 - 15-23; 1992 - 20 - 15-23; 1993 - 20 - 15-23.

310.131 Assessment of percentage of gross pilotage.—The department shall assess the licensed state pilots in the respective ports of the state a percentage of the gross amount of pilotage earned by such pilots during each year, which percentage will be established by the board not to exceed 2 percent, to be paid into the Professional Regulation Trust Fund by such pilots at such time and in such manner as the board prescribes or as is set forth in the Appropriations Act. The financial records of all pilots and deputy pilots relating to pilotage are subject to audit by the Auditor General. The department shall by rule set a procedure for verifying the amount of pilotage at each port and may charge costs to the appropriate port if the port does not comply with such procedure.

History - s. 2, ch. 79-27, § 2, 1979; s. 2, ch. 77-457, § 1, ch. 77-470, § 1, 1978; ch. 78-140, § 1, 1978; s. 2, ch. 81-218, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, 1984; s. 2, ch. 85-280, § 2, 1985; s. 2, ch. 91-479, § 1, 1991.

310.141 Vessels subject to pilotage.—

(1) All vessels, except vessels exempted by the laws of the United States or vessels drawing less than 7 feet of water, shall have a licensed state pilot or certificated deputy pilot on board to direct the movements of the vessel when entering or leaving ports of this state or when underway upon the navigable waters of the bays, rivers, harbors, and ports of this state, except:

- (a) When docking or undocking, or
- (b) When moving about within a shipyard or moving between a shipyard and a berth or slip directly adjacent to the shipyard.

(2) A vessel's docking or undocking when tugs are assisting the vessel in close proximity to the dock, with the vessel under the direction or control of the master, docking master, licensed state pilot, or certificated deputy pilot if the vessel that is docking or undocking is under the direction or control of the master or docking master, such direction or control must have been derived from the licensed state pilot or be in the process of being delivered to the licensed state pilot.

(3) Nothing contained in this section shall be construed to deny the services of a licensed state pilot to a vessel otherwise exempt who applies for such service.

History - s. 2, ch. 79-27, § 2, 1979; s. 2, ch. 78-140, § 1, ch. 77-457, § 1, ch. 77-470, § 1, 1978; ch. 78-140, § 1, 1978; s. 2, ch. 81-218, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, 1984; s. 2, ch. 85-280, § 2, 1985; s. 2, ch. 91-479, § 1, 1991.

310.142 Pilotage at St. Marys Entrance.—

The board is authorized to enter into an agreement with the Board of Pilotage Commissioners for the corporate authority of St. Marys, Georgia, for reciprocal pilotage of vessels in the boundary waters and tributaries of St. Marys Entrance. The board shall have the authority to promulgate rules to implement the provisions of this section.

History - s. 2, ch. 79-27, § 2, 1979.

310.144 Exemption from pilotage.—

United States vessels are exempted from the provisions of this chapter while transiting a private channel built, marked, maintained, and controlled for one-way traffic by a public utility for the sole purpose of servicing that facility and while under the control of a validly licensed federal pilot.

History - s. 1, ch. 85-280, § 2, ch. 85-281, § 1, ch. 91-479, § 1.

310.151 Rates of pilotage.—

(1) For the purposes of this section, the board shall consist of one of the pilot members of the board to be designated by the chairman of the board, one of the board members actively involved in his professional or business capacity in maritime or marine shipping to be designated by the chairman of the board, and the three board members not involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping.

(2) The board is granted the power under this chapter to fix the rates of pilotage to be charged to licensed state pilots and certificated deputy pilots after a hearing held pursuant to the Administrative Procedure Act. Such hearing shall be held at the port area affected

by a proposed rate change unless all parties to the proposed change consent to the hearing being held at another location. The rates of pilotage in effect in the ports in the state on the effective date of this act shall be collectible and enforceable until the board fixes different rates of pilotage as provided in this chapter. In addition to any other notice requirements imposed by law, the board shall provide notice of a hearing to consider changes in rates of pilotage for a particular port by publishing such notice in a newspaper of general circulation in the affected port area and making such notice to each person or organization which has requested advance notice of the proceedings of the board. Such publication and making of notice shall occur at least 14 days prior to the hearing.

(3) The board shall not consider an application for a change in rates unless such application is accompanied by a financial statement, including a statement of profit or loss and a balance sheet prepared by a certified public accountant, prepared at the expense of the pilot or pilots submitting the application.

(4) In fixing rates of pilotage pursuant to subsection (2), the board shall give due regard to the following factors:

- (a) Length, net tonnage, gross tonnage, deadweight tonnage, freeboard or height above the waterline, and any other dimensions of the vessels to be piloted.
- (b) The draft of the vessels to be piloted.
- (c) The supply of, and demand for, pilotage services.
- (d) The public interest in maintaining efficient, reliable, and safe pilotage service.
- (e) Other factors relevant to the determination of reasonable and just rates, including any combination of two or more of the foregoing factors.

History - s. 2, ch. 79-27, § 2, ch. 78-140, § 1, ch. 77-457, § 1, ch. 77-470, § 1, 1978; ch. 78-140, § 1, 1978; s. 2, ch. 81-218, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, 1984; s. 2, ch. 85-280, § 2, 1985; s. 2, ch. 91-479, § 1, 1991.

History - s. 2, ch. 79-27, § 2, 1979; s. 2, ch. 78-140, § 1, ch. 77-457, § 1, ch. 77-470, § 1, 1978; ch. 78-140, § 1, 1978; s. 2, ch. 81-218, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, 1984; s. 2, ch. 85-280, § 2, 1985; s. 2, ch. 91-479, § 1, 1991.

310.161 Piloting without a license: penalties.—

(1) Any individual who is not a licensed state pilot or a certificated deputy pilot, and who directs the movement of a vessel on which a licensed state pilot or certificated deputy pilot is required is guilty of piloting without a license. Any person piloting without a license is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In addition to, or in lieu of, the penalty provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court. The civil penalty shall be not less than \$500 and not more than \$5,000 for each offense. The court shall also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3) The vessel and its owner shall be obligated to pay to the licensed state pilots at the port where the violation of subsection (1) occurred, the pilotage rate which would otherwise have been applicable, and, if the pilots in said port must resort to legal action to obtain a judgment therefor, the court shall also award to the prevailing party court costs and reasonable attorney fees.

History - s. 2, ch. 79-27, § 2, ch. 78-140, § 1, ch. 77-457, § 1, ch. 77-470, § 1, 1978; ch. 78-140, § 1, 1978; s. 2, ch. 81-218, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, 1984; s. 2, ch. 85-280, § 2, 1985; s. 2, ch. 91-479, § 1, 1991.

310.171 Pilots may incorporate themselves.— Any one or more licensed state pilots may incorporate in the manner provided under chapter 607 or chapter 621

History.— s. 2, ch. 75-201; s. 3, ch. 76-166; s. 1, ch. 77-457; s. 10, ch. 78-140; s. 2, ch. 79-9; s. 2, ch. 81-318; ss. 2, 3, ch. 84-183; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-479

310.181 Corporate powers.— All the rights, powers, and liabilities conferred or imposed by the laws of Florida relating to corporations for profit organized under chapter 607 or under chapter 608 before January 1, 1976, or to corporations organized under chapter 621 shall apply to corporations organized pursuant to s. 310.171

History.— s. 2, ch. 75-201; s. 3, ch. 76-166; s. 1, ch. 77-457; s. 10, ch. 78-140; s. 2, ch. 81-318; s. 23, ch. 82-218; ss. 2, 3, ch. 84-183; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-479

310.185 Rulemaking.—

(1) The board shall have the power to adopt rules necessary to the provisions of this act, in conformance with the provisions of chapter 120

(2) The secretary of the department is deemed to be a person substantially affected by a rule or proposed rule for the purpose of seeking an administrative determination of the invalidity of such rule or proposed rule. The secretary may seek such administrative determination of the invalidity of any rule or proposed rule on the ground that it is an invalid exercise of delegated legislative authority or an undue restriction of competition, pursuant to chapter 120

History.— s. 12, ch. 81-202; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-479

Facsimile Transmission Cover Sheet

From: Alaska Coastwise Pilots
fax #(907) 247-4568
tel: #(907) 225-7245



TRANSMITTED BY: Michael Spence
DATE: 4.12.95
TO: Senator Lemmon
Senate Resource Committee
FAX # SENT TO: 465-3810
OF PAGES INCLUDING THIS PAGE: []

NOTES/COMMENTS: Re Marine Pilotage Hearing

of SB 130

Call (907) 225-7245 if difficulty with transmission or the legibility of this FAX. Thank you.

**Captain Michael C. Spence
3736 Justice Court
PO Box 7981
Ketchikan,
Alaska 99901**

**Senator Loren Leman
Chairman,
Senate Resources Committee
Alaska Legislature
Juneau,
Alaska 99811**

April 12, 1995

BY TELEFAX

Dear Senator Leman,

As you are aware, the legislative committees hearing Marine Pilotage bills this session have heard much regarding the issue of competition in pilotage. Adding to this debate, an anticompetitive paper written by Mr. Brad Pierce of the OMB has been widely circulated to members of this legislature.

I believe the attached three letters from pilots in the states of Hawaii, Oregon, and New York, written in response to the Pierce paper, should be admitted into the record also, since they shed some light on the issue of competitive pilotage as it occurs in other states.

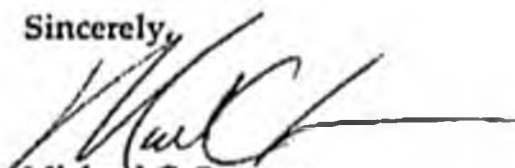
While the Pierce paper offers little in the way of explaining its methodology, my inquiries reveal that it is grossly inaccurate on the facts that are offered. Neither the U.S. Coast Guard, nor the National Transportation Safety Board, nor the State of Alaska, have issued any findings that the grounding of the Nieuw Amsterdam was in any way affected by competitive pilotage. The NTSB is not planning any hearings, as Mr Pierce contends, on the "pilotage situation in Alaska". Neither Hawaii, Oregon or any other maritime state have issued a finding that competition is harmful to safe pilotage. Competition in other maritime states in this nation and worldwide is increasing, not decreasing, as regulatory bodies discover that there is no adverse safety impact from this competition. The few regulatory bodies which have enacted tighter schemes of economic regulation, such as in Florida, have done so not because of a safety factors, but because the pilots had already formed themselves into monopolistic structures, and the legislature would be hard pressed to force them into competition, as had been suggested by the Florida Auditor. Mr. Pierce's analogy of Marine Pilotage with public utilities, which require economic regulation as monopolies, is ironic, since in

recent years public utilities nationwide either have been or are being deregulated in response to findings that those monopolies offer little benefit to the public. In the case of transportation industries, it has been well established by most scientific analyses that safety has *improved* with economic deregulation. The few nations which still maintain state-sanctioned monopolies in aviation are now noted for having the worst safety records on the planet.

Contrary to Mr. Pierce's assertion, training requirements in Southeastern Alaska are many times more stringent than they were during the period of monopoly in the late seventies and early eighties. They are now more stringent than most pilotage areas in the country. Accidents have been reduced, and most importantly, accountability is being increased. The reforms which have occurred in marine pilotage in Alaska during the past five years are largely due to the increased competition which has occurred.

As you ponder the merits of this pilotage legislation, please consider whether it is wise to use a nineteenth century model to set regulatory policy for the twentyfirst. The economic regulation of pilotage is burdensome, costly, and inefficient. Economic or legal protectionism for the dominant pilot groups in the state does not serve the public safety or commerce.

Sincerely,



Michael C. Spence

attachments (3):

letters Capt, Bettinelli, New York
Capt. LePendu, Hawaii
Capt. Nichols, Oregon



February 16, 1995

Representative Gail Phillips
 Speaker of the House
 Alaska House of Representatives
 Alaska State Capitol
 Juneau, Alaska 99810-1182

Re: Document, "Alaska Marine Pilotage System Revisited" (Pierce 1994)

Dear Representative Phillips;

I wish to comment on a recent paper entitled "Alaska Marine Pilotage System Revisited" prepared by the former Commissioner of Commerce and Economic Development.

I am a Hawaii State Pilot licensed by the State of Hawaii and the Federal Government to pilot vessels in all seven commercial harbors in the State of Hawaii. I have been a State pilot for 11 years and Federal licensed pilot for 20 years.

There are inaccuracies in the paper particularly on the issue of regulation of pilotage in Hawaii. Multiple pilot groups have existed in Hawaii and competed since 1984 without any adverse effects on safety. I can assure you that competition in Hawaii is alive and healthy.

HISTORY:

1985... Board of Pilot Commissioners was decommissioned by the legislature on grounds that, "The Board Actions Furthered the Financial Interests of the Licensed Pilots and Not Those of the State." (Legislative Audit 1985)

1989... Director of the Department of Commerce and Consumer Affairs changed the Rules of Pilotage to make the word "association" plural to "associations" to recognize the existence of dual pilot associations working within the State.

1990... Legislature again refused to establish a Pilot Commission based on its findings that, "the Department of Commerce and Consumer Affairs has improved the regulation of pilotage." (Legislative Audit 1990)

1991... Failed... proposed legislation by a pilot association to establish by law only one pilot association, a monopoly. The Bill received no support from industry and died.

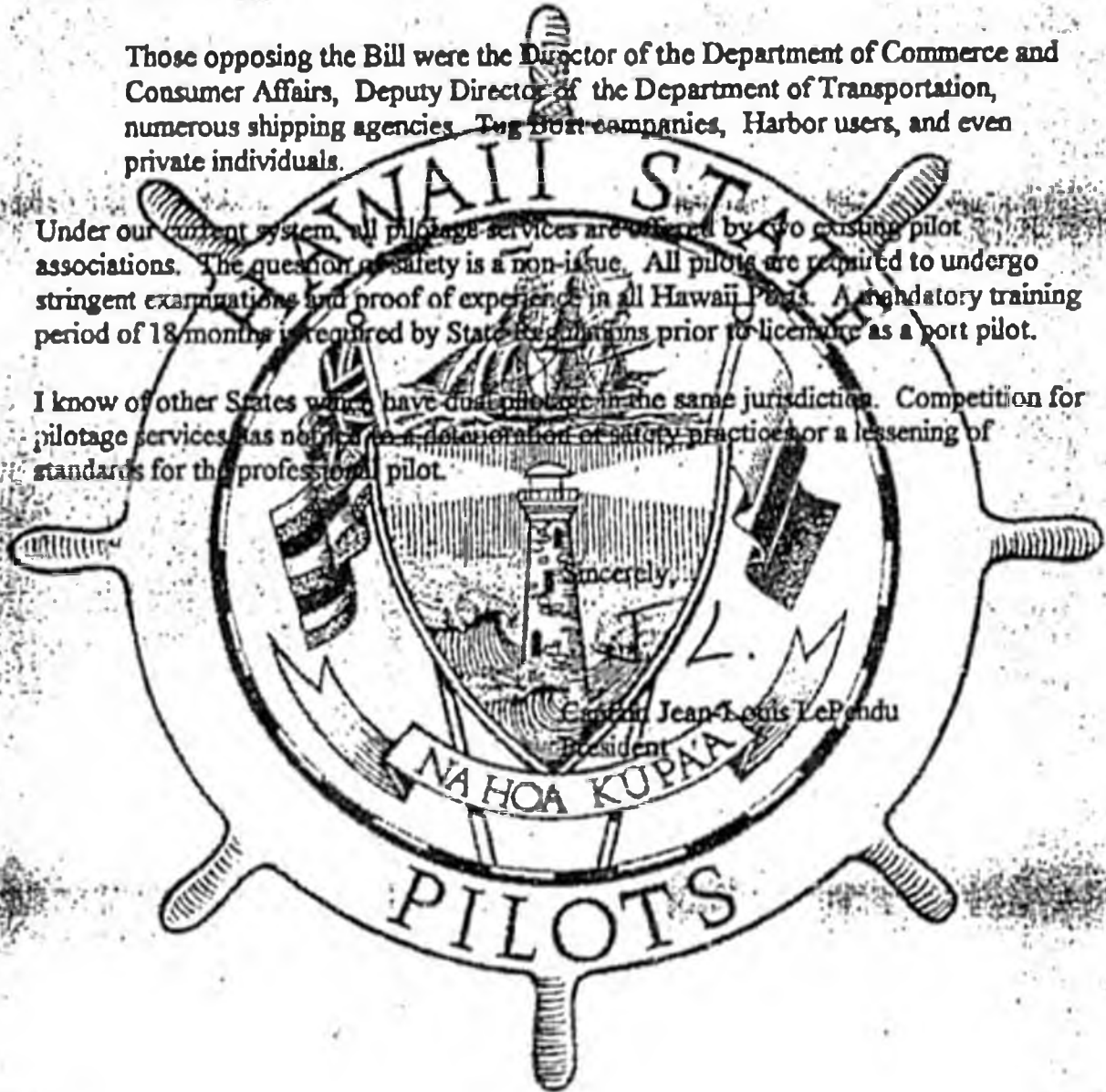
Representative Gail Phillips
February 16, 1995
Page 2

1991... Continued...

Those opposing the Bill were the Director of the Department of Commerce and Consumer Affairs, Deputy Director of the Department of Transportation, numerous shipping agencies, ~~Tug Boat companies~~, Harbor users, and even private individuals.

Under our current system, all pilotage services are offered by two existing pilot associations. The question of safety is a non-issue. All pilots are required to undergo stringent examinations and proof of experience in all Hawaii Ports. A mandatory training period of 18 months is required by State Regulations prior to licensure as a port pilot.

I know of other States which have dual pilotage in the same jurisdiction. Competition for pilotage services has not led to a deterioration of safety practices or a lessening of standards for the professional pilot.



INTERPORT PILOTS AGENCY, INC.

ROSET MONMOUTH, NJ 07788-0016
 (908) 787-2554 (800) 346-4877
 YAX (908) 787-8538

April 5, 1995

Board of Marine Pilots
 Division of Occupational Licensing
 Dept. of Commerce and
 Economic Development
 P.O. Box 110806
 Juneau, Alaska 99811-0806

DIVISION OF
 OCCUPATIONAL LICENSING
 RECEIVED
 APR 11 1995
 PM 1:30

Dear Sirs:

A colleague of mine, Capt. Michael Spence, has requested that I write to inform the Board of Marine Pilots about the competitive state pilotage scheme which presently exists in Long Island Sound.

There are presently four groups which compete in Long Island Sound for state work. Interport is one of these four groups. Our pilots, as well as the pilots in two other smaller groups, are licensed solely by the state of Connecticut. The fourth group, Sound Pilots, is comprised of pilots from Northeast Marine Pilots and Sandy Hook Pilots. The pilots working in the Sound Pilots group are licensed by both Connecticut and New York. Presently, all four groups operate independently of each other. Pilot work is solicited from ship owners or agents. Each group does its own billing and dispatching, and operates its own equipment. The states fix the rates that are charged by the pilots. This is done in legislation by New York. The rates are set in regulation by Connecticut. The rates are the same regardless of which state pilot is taken. In addition, both Connecticut and New York regulate safety and licensing standards for the pilots.

Throughout most of its history, Long Island Sound has had competitive piloting. New York's history of regulating pilotage in the sound is relatively young. New York did not begin regulating these waters until 1973. Connecticut's history of regulating pilotage in Long Island Sound is even younger. Until recently Connecticut was only concerned with pilots in the ports of Bridgeport, New Haven and New London, leaving regulation of the sound to New York. It was not until the late 1980's that Connecticut began to exercise concurrent jurisdiction over the sound. As such, the state, and the pilots it licenses, had some catching up to do on the regulatory front. This challenge has been met so as to provide for strict regulation by both states. Recent pilot boat regulations proposed in Connecticut are even more strict than New York. In addition, the pilot commissions of each state have begun to meet regularly in order to provide for consistent regulation of these waters.

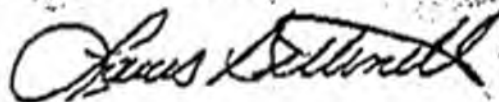
Long Island Sound pilotage cont'

-2-

Piloting is a business which needs to be carefully regulated due to its impact on public safety, the environment, and the economy. Connecticut is quickly approaching the ideal pilot regulatory scheme by allowing competition within a highly regulated environment. When a regulatory body sets high licensing and safety standards, and also sets the rates, the only thing left for which the pilots can compete is quality of service. In this scheme the pilots become far more strict with themselves than the state. Since the customer is paying the same rate regardless of the group he uses that customer will insist on using the best pilots available. The customer wants the most for his money. The individual pilot groups must respond and provide the best pilots they can or risk losing the business to a competitor. If all the groups maintain the same high quality pilots a customer will generally split the work in order to maintain competition and his ability to have a choice. Other regulatory problems, such as too many pilots for an area and the incessant rate increases which characterize the monopolistic schema, are absent in Long Island Sound. The quality of the pilotage is evidenced by the lack of incidents in the area.

The monopolistic system of regulating pilots is an anachronism that should be abandoned. Its only benefactors are the pilots who enjoy the exclusivity provided by such a system. The state and the public are the losers. Safety, environmental, and economic concerns are better met through regulated competition.

Very truly yours,



Capt. Louis Betinelli

From :

PHONE No. :

Dec. 02 1993 7:11PM P01

LEWIS & CLARK PILOTAGE, INC.
P.O. BOX 957
KALAMA, WASHINGTON 98625
PHONE: (206) 673-2277

FEBRUARY 3, 1995

Representative Gail Phillips
Speaker of House
Alaska House of Representatives
Alaska State Capitol
Juneau, Alaska 99810

Dear Representative Phillips,


I have been asked by one of my fellow colleagues in the Alaska State Pilotage system to comment on a recent paper released to the Alaska Governors office and the Alaska legislature by the former Commissioner of Commerce. This paper is entitled "ALASKA'S MARINE PILOTAGE SYSTEM REVISITED" (Pierce 1994)

I am an active Oregon State Pilot licensed by the State of Oregon and the Federal Government to Pilot Vessels on the Columbia River. My state license has been in effect for 21 years and my federal license for 31 years.

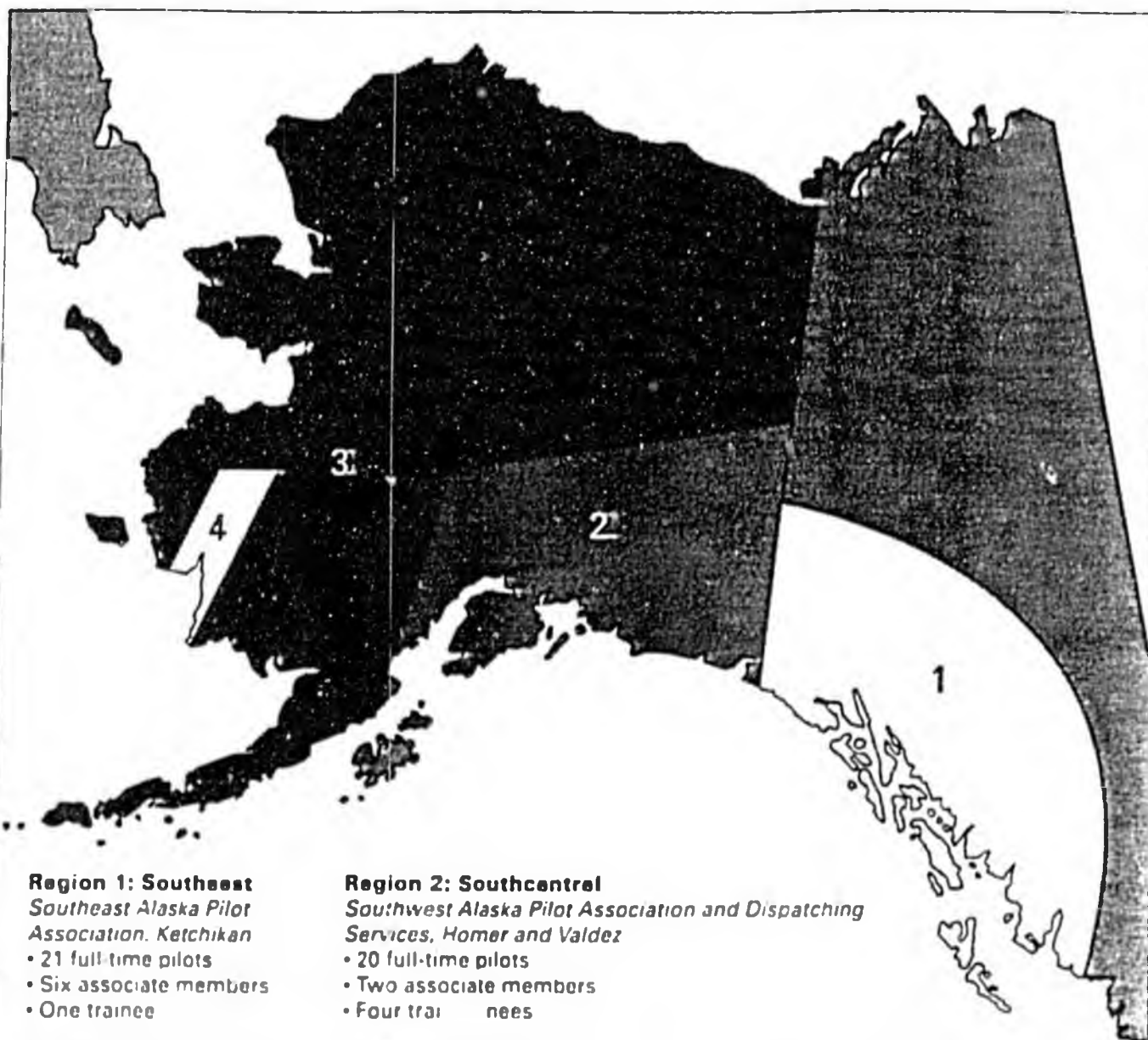
Although I sailed Alaska waters for several years I cannot comment on the opinions of the author regarding Alaska Pilotage, I can however tell you that his information is inaccurate as to some of the other States regulation of pilotage on their grounds.

In 1989, LEWIS & CLARKS PILOTAGE INC, was formed to pilot Vessels on the Columbia River in direct competition with the existing pilotage group on the grounds, the results to date have not had any adverse safety consequences. I am familiar with some of the other states that have dual pilotage on the same grounds and am not aware of any evidence that a competitive system has led to lower the standards of safety in any of the other states.

Sincerely,



CAPTAIN MARK D. NICHOLS
PRESIDENT



Region 1: Southeast
Southeast Alaska Pilot Association, Ketchikan
 • 21 full-time pilots
 • Six associate members
 • One trainee

Alaska Coastwise Pilot Association, Ketchikan
 • 11 full-time pilots
 • Six associate members
 • Three trainees

Region 2: Southcentral
Southwest Alaska Pilot Association and Dispatching Services, Homer and Valdez
 • 20 full-time pilots
 • Two associate members
 • Four trainees

Region 3: Western
Western Alaska Pilots Association, Dutch Harbor
 • Four full-time pilots
 • One trainee
Alaska Marine Pilots, Dutch Harbor
 • 11 full-time pilots

Region 4:
Kuskokwim River
Kuskokwim Pilots Association, Bethel
 • Two full-time pilots

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

From :

PHONE No. :

Dec. 02 1993 7:11PM P01

LEWIS & CLARK PILOTAGE, INC.
P.O. BOX 957
KALAMA, WASHINGTON 98625
PHONE: (206) 673-2277

FEBRUARY 3, 1995

Representative Gail Phillips
Speaker of House
Alaska House of Representatives
Alaska State Capitol
Juneau, Alaska 99810

Dear Representative Phillips,

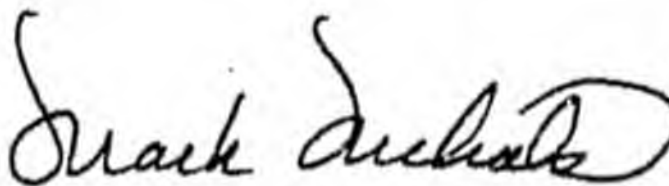
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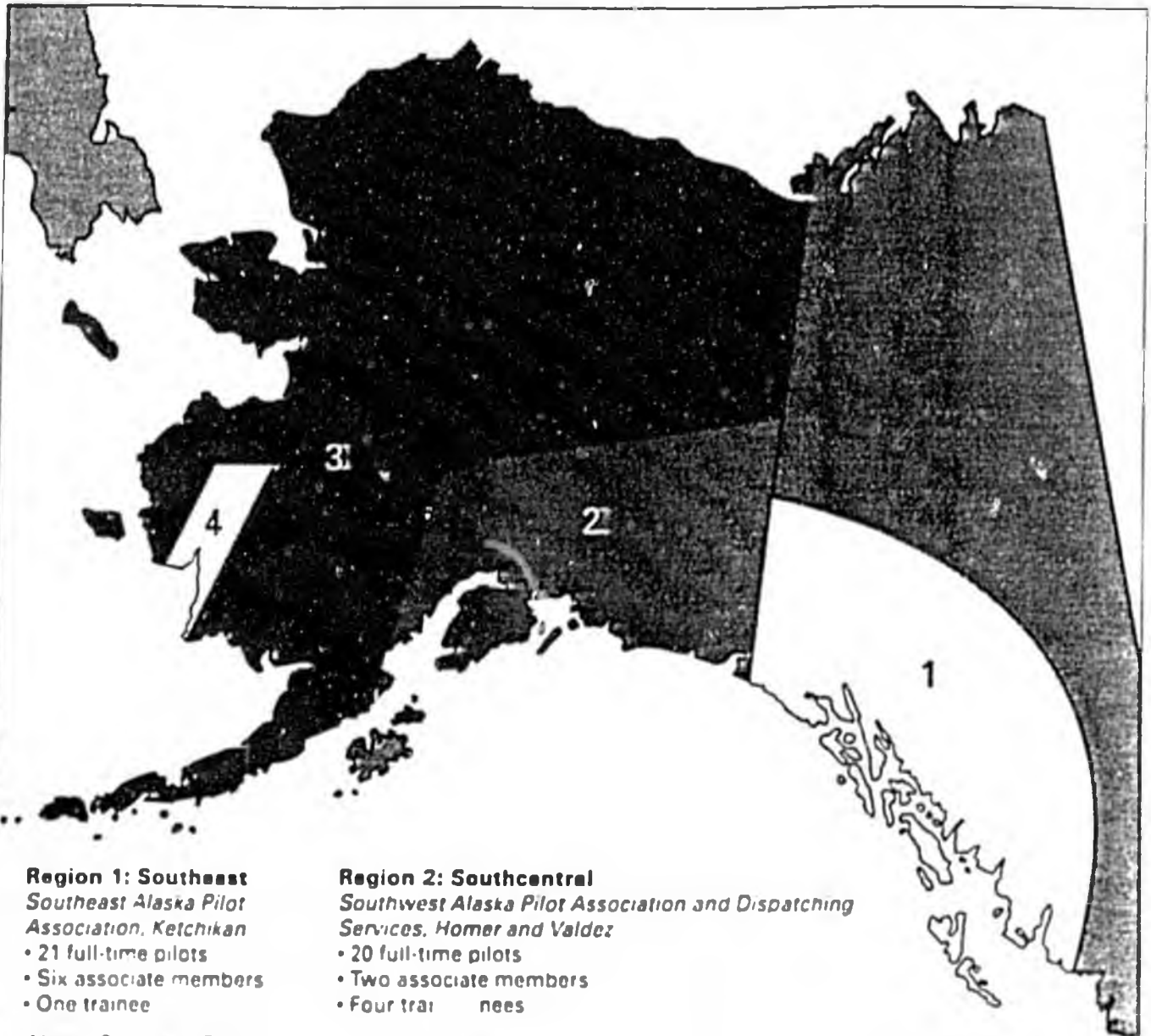
Sincerely,



CAPTAIN MARK D. NICHOLS
PRESIDENT

Apply only to cases where

there is: NO competition
when only one pilot group exists?



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Southeast Alaska Pilot Association, Ketchikan
 • 21 full-time pilots
 • Six associate members
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Kuskokwim River
Kuskokwim Pilots Association, Bethel
 • Two full-time pilots

From Senate President
Druie Pearce

TO: ALL LEGISLATORS

FROM: ALASKA STATE PILOTS ALLIANCE
ALASKA STEAMSHIP ASSOCIATION

RE: MARINE PILOTAGE LEGISLATION
DATE: May 1, 1995

We are writing this letter to indicate our mutual support of the Rules Committee CS for SB130. This legislation is the result of extensive negotiations between pilot associations, the shipping industry, and the Department of Commerce and Economic Development.

The bill was also improved in the legislative committee process including language to establish an apprenticeship program which will assist Alaskans wishing to enter the marine pilotage profession without compromising high training and experience requirements.

We urge you to adopt this legislation in its current form.


The Alaska State Pilots Alliance includes the following organizations:

Alaska Coastwise Pilots
Southeast Pilots Association
Southwest Alaska Pilots Association
Alaska Marine Pilots


The Alaska Steamship Association includes the cruise ship industry, cargo shippers, and petroleum and chemical shippers.

Two pilot associations which are not members of the Pilots Association, the Western Alaska Pilots Association and the Kuskokwim Pilots have also endorsed this bill. The Department of Commerce has also indicated its strong support of this legislation. We are not aware of anyone in the private sector who opposes this bill in its present form.

We would appreciate your support of the Rules CS for SB130



Joe Kyle, Representative
Alaska Steamship Association



Eric Eliassen, President
Alaska State Pilots Alliance

SOUTHWEST ALASKA PILOTS ASSOCIATION

TO: ALASKA STATE LEGISLATURE
FROM: SOUTHWEST ALASKA PILOTS ASSOCIATION
RE: TARIFF SETTING IN MARINE PILOTS LEGISLATION

April 18, 1995

This letter is to clarify the position of of SWAPA regarding the setting of tariffs in pending marine pilotage legislation.

SWAPA supports binding arbitration on tariffs for pilotage regions in the state which have only one pilot association, if the parties are unable to reach an agreement through negotiations. This would allow us to conduct our business without the government getting involved in the setting of tariffs.

The board process is well suited to manage licensing issues, as is the case with other occupational licensing boards. But it is somewhat cumbersome when it comes to tariff issues and has raised conflict of interest issues and potential litigation.

If the legislature does charge the board with setting tariffs, we would prefer a maximum tariff rather than a fixed tariff in those regions where there is one pilot association.

Our lobbyist, Paul Fuhs, will be available to provide you with further information and you can reach him at 790-3030 or find him at the Capital.

Western Alaska Pilots Association P.O. Box 702 Unalaska, Alaska

Requested Changes to Senate Bill 130 and House Bill 260 - "An act relating to marine pilots.."

Sec 2. AS 08.62.010 to be changed as follows:

"It consists of three [two] pilots licensed under this chapter who have been actively engaged in piloting vessels subject to this chapter, three [two] industry representatives, one [two] public members in accordance with AS 08.01.025. [and the commissioner or the commissioner's designee.]

Rationale: a. increases the pilot expertise on the board and provides better representation of pilots across the state.
b. maintains parity between pilots and industry
c. relieves the Commissioner of responsibility of sitting on this Board.

Sec 6. AS 08.62.080 (a) to be changed as follows:

(a) A person may not pilot a vessel subject to this chapter unless the person is licensed under this chapter. [and is a member of a pilot organization recognized by the board.]

Rationale: a. Sec. 08.62.175 of this chapter states that pilots "may" form organizations that ask to be recognized by the board. Sec. 08.62.080 (a) requires such membership. We ask for clarity in the language.
b. requiring a pilot to belong to a board approved organization prior to providing pilotage services effectively reduces the right of a pilot to compete and is a restraint of free trade.

Sec. 6. AS 08.62.080 (b) to be changed as follows:

(b) A pilot may [not] be licensed in more than one pilotage region at a time. [Delete remainder of section.]

Rationale: a. allowing cross-regional licensing decreases the anti-competitive language in the act.
b. it will eliminate the onus on the Commissioner to determine if and when a shortage of pilots exists and the attached liability.
c. it will improve safety and access to pilots.

Final note: These changes may precipitate the need for other small changes to the bill. It is our hope that by identifying some substantive changes to the Act that will alleviate some of the discrepancies in its language that a more effective piece of legislation will be enacted.

Senate Bill 130

My name is Peter Lie-Nielsen. I'm a Juneau, Alaska resident. I hold an unlimited pilots' license for the waters of Southeast Alaska and Yakutat. I have been piloting in Southeast Alaska for 8 years, initially working for Southeast Alaska Pilots Association, and as a member of Alaska Coastwise Pilots Association since 1991. I am representing myself only and am not speaking for anyone else. Because I have worked for SEAPA and ACPA, I feel I am qualified to address parts OF Senate Bill 130 from a unique perspective.

In 1991 when the Legislature of Alaska provided for competition in marine piloting, I thought this was good for Alaska and for marine piloting. Having observed firsthand the management dynamics of both SEAPA as a guild and ACPA as an aggressive competitor, I believe there may be certain advantages to both methods. However, competition has:

1. Sharply devided and alienated Southeast pilots as a peer group.
2. Resulted in litigious actions costing individuals and Alaska (Board of Marine Pilots) considerable effort, time and expense.
3. Increased Alaska (BMP), and pilot license fees.
4. Raised serious concerns and questions about pilot training, pilot qualifications and marine safety issues.

In summary I believe the guild system of pilotage provides for stability, better trained pilots, more qualified pilots, and keeps safety of lives, vessels, our shorelines and wildlife foremost. It is in the best interest of Alaska, her peoples and marine pilots to encourage the guild system of pilotage. The true guild system of pilotage cannot exist in a competitive marketplace.

Competition drives tariffs. A maximum tariff pushes competing pilot associations into difficult and at time last-minute tariff negotiations with their principals in order for them to stay in business and insure employment for their members. Its' common knowledge that the low bidder in tariff and contract negotiations usually gets the business. Therefore, industry is in a favorable position. Alaska's public interest should be paramount as regards their water borne trade and manne pilotage. A state-fixed tariff, periodically revisited by an appointed rate review commission would bring structure and stability to a chaotic situation.

Thank You.

Peter D. Lie-Nielsen

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442

April 12, 1995

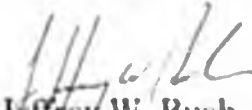
The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Madame President:

Marine pilotage continues to be a controversial subject. Senate Bill (SB) 130 is a bill which extends the Board of Marine Pilots, and contains numerous housekeeping changes to the Marine Pilotage Act of 1991. These changes should reduce the litigation surrounding the administration and enforcement of the marine pilotage system. Therefore, SB 130 will further the state's interest in preventing the loss of lives and property, and the protection of the marine environment.

The Department of Commerce and Economic Development fully supports SB 130.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

JWB/DT/t624.01
041295a

cc: Pat Pourchot, Legislative Director
Office of the Governor

The Honorable Gary L. Davis
House of Representatives

SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977
Homer, Alaska 99603

Tel: (907) 235-8763
Fax: (907) 235-8119

Honorable Drue Pearce
Senate President
Alaska State Legislature

March 21, 1995

Dear Madame President,

Thank you for your strong interest in Alaska's marine pilotage system. I am writing this letter to clarify SWAPA's position with regard to legislative proposals.

First, SWAPA supports all the provisions adopted by ASPA and which are attached to this letter.

In addition, we support the revisions put forward by the Knowles administration with the exception of changes to the minimum requirements for Deputy Marine Pilots which we oppose. We should not be weakening these requirements.

On the matter of compulsory arbitration, we support such a system for those regions where there is only one pilot association.

We do not support changing the membership of the Board of Marine Pilots and would like to see membership determined by pilot region and not by judicial district. We support the requirement that industry representatives on the Board must be actively working in the trade.

We see the proposal for ending the regional system as proposed by WAPA as unworkable and against the State's interest in safe and efficient marine pilotage in Alaska. I have provided a more detailed analysis on the importance and practicality of Alaska's regional pilotage system in the attached Status Report.

Tele: 010-28-358 SWAPLOTS HOMER
Radio Call Sign: KCE-203

— Ltr from SWAPA —

We support the core legislation put forward by ASPA and the housekeeping measures proposed by the administration. We will make ourselves available to testify during the legislative process and our lobbyist, Paul Fuhs will stay in close touch with you to make sure you have any information you need from us concerning this legislation.

Again, thanks for your commitment to safe and efficient marine pilotage in Alaska.

Sincerely,



Eric Eliassen

MARINE PILOTING

Southeastern Alaska Pilots' Association

Telephone: (907) 225-0000
(907) 225-0097

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901.

March 21, 1995

Senator Drue Pearce
Alaska State Senate
Juneau, Alaska 99801-1182

Dear Senator Pearce:

We write to provide you with our concerns about the potential contents of marine pilot legislation that will be introduced this session. We also write to express our pledge to work with you to meet the needs of pilots, the shipping industry, to ensure that the health, safety, and welfare of the Alaska people are met through the State's regulation and oversight of marine pilots.

Below we set forth several areas of concern to us.

BOARD OF MARINE PILOTS

The Board of Marine Pilots (established at AS 08.62.010) is scheduled to sunset this year. We support a renewal of the Board and the State of Alaska's regulation and oversight of Alaska marine pilots by the Board. We also support maintaining the composition of the Board of Marine Pilots to reflect the interests of pilots, industry, and the public.

It is particularly important the voice and interests of the public, as reflected by public membership on the Board, not be diluted by increasing the number of members from other interest groups. The very reason for requiring pilots on vessels is to protect the health, safety, and welfare of the public and protect the marine environment owned by the public. Maintenance of the status quo of Board membership furthers this policy.

LIMITATION OF LIABILITY

The liability of marine pilots is presently limited under AS 08.62.165. However, there are two instances recognized in which there is no limitation on liability. One is where the pilot is grossly negligent or guilty of wilful misconduct. The second is

Senator Drue Pearce
March 21, 1995
Page 2

where a pilot's error, omission, fault, or neglect constitutes an act for which the Board of Marine Pilots imposes a disciplinary sanction for six reasons set forth in statute. We support amending AS 08.62.165(a)(2) to delete references to AS 08.62.150(a)(1), (5), (6), and (7). We support unlimited liability in those instances in which a pilot is found chemically impaired or illegally uses, possess, or sells drugs. However, the Board may impose a very small sanction in cases involving minor pilot error. In those cases, the pilot is subject to unlimited liability. Consequently, punishment could far exceed the error. Cases of gross negligence, wilful misconduct, and drug and alcohol use should not be shield from unlimited liability. Other instances should.

PROSPECTIVE PROHIBITION ON LICENSING IN MORE THAN ONE PILOTAGE REGION

Alaska is divided into five pilotage regions. Alaska law presently has a vague provision placing limitations on the number of regions in which a pilot may be licensed. AS 08.62.080(b) presently reads: "A pilot may not be licensed in more than one pilotage region at one time, unless the board determines that it is in the best interests of the state to license pilots for parts of more than one pilotage region." This language has led to unproductive tussles on the Board and within the marine pilot industry over what constitutes the "best interests" of the state.

A solution that is in the best interests of the state is to flatly prohibit licensure in more than one pilotage region unless there is an emergency. We support amending AS 08.62.080(b) to read:

- (b) A pilot shall not be licensed in more than one pilotage region.
2. The Board may issue temporary licenses to pilots in more than one region if it makes a finding of an emergency shortage in the number of pilots licensed in a region.
3. The Board shall establish criteria for issuing temporary licenses under 2 of this section by regulation.

Since emergencies are rarely found to exist (AS 44.62.270), the Board will rarely have to deal with this issue, but will not be prohibited from dealing with it if necessary.

Senator Drue Pearce
March 21, 1995
Page 3

PRICE MAINTENANCE AND ARBITRATION

Before 1991, the Board had always set the tariffs that pilots could charge, and regulated the income of pilots by regulating the tariff. In 1991, the Legislature amended the Marine Pilot Act, in part, to promote competition in the marine pilot industry. As part of the State's deregulation of marine pilotage, the Legislature sunset the authority of the Marine Pilot Board to regulate tariffs. AS 08.62.045, which gave the Board the authority to set maximum tariffs, sunset in 1994.

Regional pilot associations now compete for contracts with vessels to provide pilotage services. While some pilots believe that competition is harmful and some do not, the system that the Legislature has given pilots is a competitive one and until that changes, pilot groups that do compete must not be prevented from doing so.

Language that would require binding arbitration of pilotage fees would be a serious infringement on pilot's ability to compete for work. No other industry in the state has such a state mandated arbitration requirement. Apparently, the thinking of those promoting binding arbitration is that pilots are 'gouging' vessels that are required to use pilots. However, now that there is no economic regulation of pilotage tariffs, those that would promote, or indicate, that pilots overcharge for pilotage, have the burden of proving that price gouging exists. In the Southeast Alaska pilotage region, where there is competition between pilot associations, there is no evidence of price gouging, the price for pilotage has not approached the maximum tariff that was formally set by the Board (if that can be used as a benchmark), and an adequate supply of pilots has been available. There has been no artificial shortage of pilots because the vessels were not paying enough.

Our Association presently has contracts with vessels companies to provide pilotage services. These contracts contain procedures for resolving price disputes. These procedures have been worked out between fully informed parties in an arm's length transaction. Thus, there is a mechanism within the scope of the contracts that our pilot association has with vessel companies to deal with situations with overcharging if the vessel company thinks that what is happening. Moreover, the companies and our association forged these agreements in the context of competitive pilotage. If the company did not like our contract terms, they could go to another association.

Senator Drue Pearce
March 21, 1995
Page 4

Shipping companies should not worry about price gouging because with competition, if a vessel does not like the price quoted by the association, the vessel can go to another association. If that association charges the same price, then that price is the market price for pilotage. The antitrust laws prevent collusion between competitors so if the vessel pays the amount and believes there has been collusion between pilot organizations on price, the vessel's owner can sue in antitrust court, prove its case, and get treble damages and its attorneys fees to prevent that collusion and be compensated for the antitrust behavior.

There is an additional reason for not legislatively imposing binding arbitration or a maximum on the tariffs that a pilot organization can charge in those regions that have competition. Those promoting further economic regulation of pilots would require the Board of Marine Pilots to deal with economic matters. The logical agency to deal with disputes arising under any economic regulation provision would be the Board of Marine Pilots. Clearly it is not a function of the Board to deal with the economic matters such as binding arbitration. The increased oversight and the increased disputes that will inevitably arise because of that oversight will increase the Board's activities, its functions, and litigation involving the Board. This is not in the State's or pilots' interests.

It is indeed curious that shipping companies seek to impose a mechanism to prevent high prices in the absence of any information that the price of pilotage is too high. It is all the more curious that those interests promoting economic regulation of pilots are not subject to any economic regulation by the State whatsoever. No arbitration mechanism or "price cap" suggested by the shipping industry exists to force shipping companies to pay higher prices for pilotage, or forces them into binding arbitration if the price pilots want them to pay for services is too low, or if the public does not like the price of a ticket on a cruise ship, or the amount charges to ship goods. Nor is this pilot association suggesting one.

Legislation that would force binding arbitration over the price charged by pilots will lead to supervision of pilot associations by the State and remove pilot organizations from the competitive market. If the goal of Alaska's Marine Pilot Act is competition, then binding arbitration over tariffs thwarts that goal.

Senator Druce Pearce
March 21, 1995
Page 5

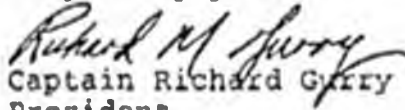
If economic regulation of pilotage is a legislative objective, then the State Legislature must not go half way down the regulatory path. It must either allow pilots to compete in the competitive world that the Marine Pilot Act requires, or the State must actively and thoroughly regulate pilots. That regulation must be active, clear and comprehensive and regulate tariff, income, licensing, discipline, sanctions, and all pilotage disputes.

CONCLUSION

Southeastern Alaska Pilots' Association supports the Alaska State Pilots Alliance position set forth in its letter dated February 22, 1995. In addition, there are other matters that we look forward to talking with you about such as our association's private, long-standing efforts to promote local young peoples interest in becoming pilots by sponsoring a scholarship program in local high schools and promoting ties between the University of Alaska Southeast and several Maritime Academics. Also we are concerned about policing our own pilots and the tremendous liability involved as it concerns "probable cause" drug and alcohol testing. These and other matters should be aired at appropriate committee hearings.

It is inevitable that any legislation dealing with pilotage will need careful consideration by all those affected. Again, we look forward to working with you on legislation relating to marine pilots.

Very truly yours,


Captain Richard Gerry
President



March 22, 1995

From: ALASKA MARINE PILOTS ASSOCIATION

Subject: Position paper regarding S.B. 130

The Membership of Alaska Marine Pilots has reviewed Senate bill No. 130 and submits the following position:

We support the bill in it's entirety with the following exceptions:

Sec. 6 AS 08.62.080 (b):

We feel that the intent is good but would like the following wording added as a safeguard to the associations in the affected region:

The temporarily licensed pilot will join an association in the affected region and abide by it's Articles of Association and it's Bylaws.

Sec. 15 AS 08.62.175 (c)

(3) If the State intends to continue with a competitive environment, agreements and contracts should not be mandated by the legislature but should be dictated by market forces. Additionally, the provision does not compel the master, owner, operator, or agent of a master, owner or operator of a vessel to enter into an agreement. Therefore, pilot organizations are at a serious negotiating disadvantage.

AMP feels that a regulated monopoly is still in the State's best interests.

Respectfully submitted,

Captain David Sanders, Vice President
Alaska Marine Pilots



Alaska Coastwise Pilots Association
P.O. Box 6337
1621 Tongass Avenue
Suite 100
Ketchikan, Alaska 99901

Marine Pilotage
Dispatch Service
Telephone: (907) 225-7245
Fax: (907) 247-4568

March 22, 1995

Senator Loren Loman, Chairman
Senate Resources Committee

Dear Senator Loman:

We are writing this in support of most of the provisions of S. B. 130 regarding Marine Pilotage. The amendments suggested by the Department of Commerce are generally acceptable to us.

Under the current law, pilot members of the Board of Marine Pilots are selected from two judicial districts and SB 130 would amend that process to select pilot members from pilotage regions. The problem is, there are now three major pilotage regions in the state but with only two pilot members on the Board one of these regions would always be excluded from representation.

We agree with the above amendment, but in keeping with an agreement between ourselves, industry and ASPA in February of this year, we would like to see the board composition increased by one more pilot member, and accordingly one more industry member. This would ensure that all of the three major regions in the state are represented by both industry and pilots. We are sure it was not anyone's intention to exclude Southeast Alaska (which has the most vessel movements of any pilotage region) from having a pilot or industry representative on the Board.

We question whether or not the amendment in Section 13 is well advised, especially in a region where there is only one pilot organization operating. If such an organization was suspended or revoked there would be no lawful pilotage service in that region. In a region where there was more than one pilot organization there would be a major disruption of service and a compromise of safety.

We understand that there may be other legislation coming from the House suggesting that pilots and industry engage in binding arbitration over pricing of services. We are neutral on that issue.

Sincerely,

Douglas A. MacPherson
President

— Ltr from ACPA —

WESTERN ALASKA PILOTS ASSOCIATION

P.O. BOX 792

UNALASKA, ALASKA 99685

Post Box
PO Box 180040
Colorado, CA 92178

B. G. ...
Bradley
(907) 272-3365
2-7-95

January 10, 1995

OPEN LETTER TO ALL LEGISLATORS

Marine Pilots don't fly float planes. They offer a valuable service to ships entering and moving about in Alaskan waters. Their value stems from two factors:

1. Pilots have extensive knowledge of local waters and the unique dangers to safe navigation;
2. They are skilled in ship handling under Alaskan conditions

In order for ships coming to Alaska to have confidence in the quality of the pilots they engage, the legislature has seen fit to license pilots. In order for the State to be confident that ships entering Alaskan waters utilize the services of pilots, the legislature has made the use of pilots compulsory. All aspects of pilotage are controlled by AS 08.62 and its detailed articles.

The details of regulating marine pilotage are given to the Board of Marine Pilots. The Board was sunsetted by the previous legislature and expires on June 30, 1995.

During the past legislative session a bill was proposed (HB 237) which would have extended the Board's life to June 30, 1997. HB 237 made no other changes in the Statute. The legislature acted wisely in taking no final action on the bill.

The current statute has gross flaws in it. The manner in which the Board has administered the statute has led to ill feelings among pilots and huge legal bills for pilots and the state. The cost of a pilot's license has jumped from \$200. to \$3,200. under the statute's provisions.

In short, the flawed current statute needs major modifications if its designers' goals are to be achieved.

The problems inherent in the current statute stem from several sources. They are:

1. The make-up of the Board. Out of the seven members of the board only two are pilots. It is not a board of marine pilots. The two pilot members are not representative of the six current pilot organizations in

the state. In fact, no pilot member is currently even licensed in the western region of the state and yet is responsible for writing and grading the examination a candidate for a license in the western region is required to take.

2. The current law is a schizophrenic combination of favoring monopolistic organizations and yet requiring the board to act in no way that is anti-competitive. This split personality coupled with the non-representative make-up of the board creates what can only be described as a mess.
3. The current law places on pilots the responsibility to have ships utilize their services. It is the cart before the horse. Ships should rightly have the responsibility to utilize the skills of pilots and make whatever arrangements are necessary. Pilots should not have the responsibility to be on call if and when a ship happens by. The current law is a carry-over of the days before radio and shipping agents.

The flaws of the current law can be corrected with minimal effort and disruptive effect on the industry. Most importantly, the changes will:

- (a) increase the quality of piloting;
- (b) reduce the cost of regulating the profession, and;
- (c) reinstate the concepts of free enterprise and competition and all of their attendant benefits.

The general features of each change in the current law is followed by the specific language and section of the affected part of the law.

1. Reconstitute the make-up of the Board and limit its powers to those necessary for licensing activities. Of the seven members of the board five (5) should be licensed pilots. Each pilot region should be represented and no more than one representative should be from any one pilot organization.

There are currently four regions and six pilot organizations in the state.

The other two members of the board should consist of a public member and the Commissioner of Commerce and Economic Development (who oversees all professional licensing in the state).

The powers of the Board should be limited to its

membership expertise. Namely, the power to set licensing standards and the activities involved therewith.

The board should have no powers over the way pilots conduct their business activities. Nor should it have the power to decide pilotage waters in which their service is compulsory. This power should remain with the legislature.

The board should have no power over the rates (tariff) the pilots charge for their service. Prices should be the result of a competitive market place and demand and supply.

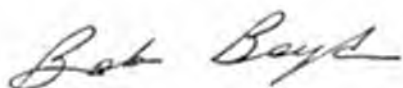
2. Allow pilots the same rights other professions enjoy. These are the rights to practice their trade wherever they are qualified to do so and the right of free association as with to whom they chose to work.

Currently, pilots are allowed to work in only one region. Additionally, they must join an existing pilot organization. Both of these restrictions are uniquely imposed upon professional pilots. Both restrictions create additional costs of pilot services and reduce the quality of their work - i.e. safety.

The above changes to the current law can be done in either of two ways. One, change the most offensive clauses. Two, adopt a new bill which eliminates all of the restrictive language in both statute and the regulations pertaining thereto. The first option is most simple and leaves the newly constituted board the work of rewriting the affected regulations.

It is time to move marine pilotage out of the middle ground which has created such turmoil and expense. I encourage you to support the attached changes which will augment the safety of Alaskan waters while governing pilotage in a sane manner.

Sincerely,



Bob Boyd, President
Western Alaska Pilot Association

For more information contact:
Bence Bredin
(907) 272-3365

Note - The underlined words within parenthesis are to be deleted from the current act.

An Act to Amend
AS 08.62.
(Marine Pilots)
and extend the date
of termination of
the Board of Marine Pilots

INTRODUCTION

Section 1.

(b)(2) It is necessary to give the Board of Marine Pilots (broad) statutory authority (including the authority to establish pilotage regions and maximum tariffs and the authority) to establish criteria for the training and licensing of marine pilots.

Sec. 08.62.010. Creation and membership of board.

There is created the Board of Marine Pilots. It consists of five (two) pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, (two agents or managers of vessels subject to this chapter.) one (two) public member in accordance with AS

08.01.025, and, the commissioner or the commissioner's designee. Not more than one pilot (and one agent or manager shall be from any one judicial district) shall be a member of any one pilot organization and each pilotage geographical area shall have at least one representative on the board.

Sec. 08.62.040.

- (4)(c)(A) (pilotage regions in the state)
- (b) (review and approve the articles, bylaws, and rules of pilot organizations;)
- (7) (audit a pilot organization or an individual pilot as necessary to implement and enforce this chapter;)
- (9)(B)(4) (standards under which a pilot may receive a license or endorsement to a license to pilot vessels in more than one pilotage region.)
- (e) The board shall conduct its business in a manner which is in compliance with the Alaska Ethics Act.
- (f) All examinations which the board uses in licensing shall be objective and written.
- (h)(2) A mandatory (random) drug and alcohol testing program for pilots licensed under this chapter.

Sec. 08.62.045 - Pilotage tariffs. DELETE THIS ENTIRE SECTION

- (a) The board shall adopt by regulation maximum tariffs that

may be charged by pilots for the provision of specific pilotage services. The board shall identify those expenses that are included in the tariff. In adopting maximum tariffs under this subsection, the board shall take into consideration

(1) reasonable compensation for actual time aboard a vessel as a pilot and for time engaged in preparing to provide pilotage services;

(2) differential compensation for seasonal and weather conditions, risks involved in providing pilotage service, and overtime;

(3) dispatch expenses, transportation expenses, and other associated costs directly related to the provision of pilotage services;

(4) reasonable overhead expenses that are necessary to provide year round pilotage services for the region; and

(5) other expenses identified by the board.

(b) A pilot organization recognized by the board, acting on behalf of its members may adopt a new or revised tariff for provision of pilot services if the pilot organization follows the procedures set out in (c) of this section. The tariff adopted under this subsection must include those expenses identified by the board under (a) of this

section, but may not exceed the maximum tariff set by the board. The tariff adopted under this subsection may be revised annually.

(c) A pilot organization shall send a notice of intent to adopt a tariff for provision of pilot services to the board and publish the notice on at least three days during a period of 14 consecutive days in a newspaper of general circulation in the state. The notice of intent to adopt a tariff shall include a copy of the proposed tariff, the name and mailing address of the pilot organization that intends to adopt the tariff, and statement of the time and place of adoption of the tariff. A pilot organization may not adopt a tariff until 30 days have elapsed from the date of the mailing of the notice of intent to adopt a tariff to the board or the last date of publication of the notice of intent to adopt a tariff. A tariff may not take effect until 30 days after the tariff is adopted by the pilot organization.

(d) A pilot organization recognized by the board or a member of the pilot organization may not charge a tariff for the provision of pilotage services that exceeds the maximum tariff set by the board, that is different from the

tariff adopted by the pilot organization, or that has not taken effect under (c) of this section.

Sec. 08.62.050 - Marine Pilot Coordinator. DELETE THIS ENTIRE SECTION

- (a) The department, with the approval of the board, may hire a marine pilot coordinator who is qualified to assist the board in administering and enforcing the provisions of this chapter. The coordinator is in the partially exempt service under AS 39.25.120.
- (b) The person who is hired as coordinator may not
- (1) be an active member of a pilot organization in the state;
 - (2) work as a pilot while employed as the coordinator, except to the extent required by official duties; or
 - (3) have a financial interest in a pilot organization or in a pilot vessel or other equipment used by a pilot organization.

Sec. 08.62.080

- (a) A person may not pilot a vessel subject to this chapter unless the person is licensed under this chapter (and is a member of a pilot organization recognized by the board.)

(b) (A pilot may not be licensed in more than one pilotage region at one time, unless the board determines that it is in the best interest of the state to license pilots for parts of more than one pilotage region.)

(c) A license issued under this chapter must identify the specific waterways and ports in each (pilotage region) geographic pilotage area in which a licensee is authorized by the board to pilot vessels. The board shall authorize a licensee to pilot vessels in a specific waterway or port (in a pilotage region) in any or all geographic areas upon the licensee satisfying the training and other requirements required by the board to pilot vessels in that waterway or port.

Sec. 08.62.090

(a) The board shall issue a deputy marine pilot license (for a marine pilotage region) to a person who

Sec. 08.62.093

(b) A person who applies for a deputy marine pilot license under this chapter shall provide proof satisfactory to the board of any of the following experiences or a combination thereof:

(5) three normal working years as a member of a professional pilot's organization, during which the person actively engaged in piloting while holding at least a license as a master of freight or towing vessel of not more than 1,600 gross tons.

(c) A person who applies for a deputy marine pilot license under this section shall possess an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the port, waterways or geographic area (for the pilotage region) for which the person seeks the deputy marine pilot license.

NOTE - this change to (c) directly revokes

12 AAC 56.029 (4) which reads:

Possess a valid deputy marine pilot license without geographical exclusions in the region for which the marine pilot license is sought.

Sec. 08.62.100

(a) The board shall issue a marine pilot license (for a marine pilotage region) to a person who

Sec. 08.62.120

(4) (A) engaged in piloting vessels subject to this chapter in the marine pilotage areas, or waterways or ports for which the license is to be renewed on a regular basis, considering the seasonal traffic (during at least 60 days of each calendar year) in the licensing period immediately preceding the licensing period for which renewal is sought, or

Sec 08.62.140 Fees.

The department shall set fees under AS 08.01.063 for applications, licenses, agent registration, investigations, (audits, and training.)

Sec. 08.62.163. Pilots as independent contractors. DELETE THIS ENTIRE SECTION.

- (a) Pilots licensed under this chapter are independent contractors and may not be employed as an employee of the owner or operator of a vessel subject to this chapter.
- (b) The owner or operator of a vessel subject to this chapter may not employ a person licensed under this chapter as an employee.

Sec. 08.62.165. DELETE ENTIRE SUB-SECTION.

- (a) (2) (The error, omission, fault, or neglect of the

pilot constitute an act for which the board shall
impose a disciplinary sanction under AS 08.62.150
(a) (1), (2), (3), (5), (6), (7).)

Sec. 08.62.175 - Regional marine pilot organizations. DELETE THIS
ENTIRE SECTION

- (a) To the extent permitted under federal and state law, persons licensed under this chapter may form organizations of pilots within each pilotage region established by the board.

- (b) the board shall recognize pilot organizations that satisfy the minimum standards established by the board by regulation

- (c) A pilot organization recognized by the board shall
 - (1) Promote a safe and reliable system of marine pilotage for the region in which the organization is recognized;
 - (2) provide for the dispatch of pilots who are members of the organization;
 - (3) adopt and revise tariffs for the provision of pilotage services by the members of the organization;

- (4) be open to membership by all persons licensed under this chapter to pilot vessels in the pilotage region in which the organization is recognized;
 - (5) operate or participate in a training program for pilots and deputy pilots that is approved by the board;
 - (6) cooperate with and assist the board in implementing this chapter.
- (d) A pilot organization recognized by the board may not begin operating until the articles, bylaws, and rules of the pilot organization are approved by the board on the basis of
- (1) uniform and nondiscriminatory application of the articles, bylaws, and rules to marine pilots and deputy marine pilots licensed under this chapter and trainees for marine pilot licenses;
 - (2) compliance with applicable laws; and
 - (3) effectiveness in
 - (A) promoting an efficient , reliable, and professional marine pilotage system in the region;
 - (B) maintaining a sufficient number of qualified pilots available for dispatch to serve the needs of vessels visiting the region during

each hour of the day and each day of the year to the extent that it is reasonably possible given the size of the membership of the pilot organization;

- (C) promoting training programs for marine pilots and deputy marine pilots that are approved by the board.

08.62.200. Termination of the board. The board terminates effective 6/30/98 unless otherwise extended by the legislature.

SENT BY:

3-29-95 : 5:21PM :

ASHBURN & MASON-

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ASHBURN AND MASON

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March 29, 1995

VIA TELECOPIER NO. 586-6252

Mr. Robert Evans
Juneau, Alaska

Re: CS for House Bill No. 260
Our File No. 8355.002

Dear Bob:

I have reviewed the Committee Substitute for House Bill No. 260. There are two separate provisions in the Bill that serve to reinforce the legal position that a pilot organization is not engaging in price-fixing when it sets rates for the services offered by the organization's pilot members.

Section 12 of the Bill amends, in part, AS 08.62.150(a)(8). The Section clearly implies that a pilot member can charge an amount for pilotage service that is the same as the amount set by the organization of which a pilot is a member. Indeed, the Section declares, in effect, that a pilot member must charge the amount set by his organization.

Section 16 of the Bill amends, in part, AS 08.62.175(C). The Section declares that a pilot organization shall enter into agreements with vessel operators concerning the terms of pilotage service to be provided by its members. Again, the Section appears to clearly recognize that the pilot organization will be negotiating and entering into price agreements with vessel operators on behalf of the pilot members of the organization.

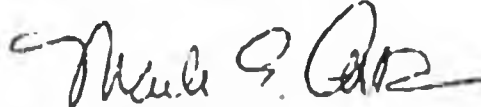
Mr. Robert Evans
Page 2
March 29, 1995

Both of these Sections reinforce the language of AS 08.62.045 which appears to authorize pilot organizations to set rates for its pilot members. Such statutory authorization strengthens the argument that there is no antitrust violation when a pilot organization sets rates for its member pilots.

Please contact me if you have any questions.

Very truly yours,

ASHBURN & MASON



Mark E. Ashburn

MEA:dt

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THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

Statutes and Regulations

Marine Pilots

December 1994

ALASKA

**DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING**

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Audit Report



**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS**

November 4, 1993



Audit Control Number:

08-1415-94

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

November 4, 1993

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF MARINE PILOTS

November 4, 1993

Audit Control Number

08-1415-94

The audit reports on whether the Board of Marine Pilots (BMP) should continue its existence. Currently AS 08.03.010 has BMP scheduled for termination on June 30, 1994. BMP would be allowed one year in which to conclude its affairs. We recommend that the legislature extend BMP, but remove all powers and duties that make BMP ineffective because of conflict of interest situations.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.



Randy S. Weiker, CPA
Legislative Auditor

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