

ACT No. 902

HOUSE BILL NO. 1708 (Substitute for House Bill No. 320 by Representative Pinac)

BY REPRESENTATIVES PINAC, ALEXANDER, ANSARDI, ARNOLD, BADON, BALDONE, BAUDOIN, BAYLOR, BEARD, BOWLER, BROOME, BRUCE, BRUNEAU, BURNS, BURRELL, K. CARTER, CAZAYOUX, CRANE, CROWE, CURTIS, DAMICO, DANIEL, DARTEZ, DOERGE, DORSEY, DOVE, DOWNS, DURAND, ERDEY, FANNIN, FARRAR, FAUCHEUX, FLAVIN, FRITH, FUTRELL, GALLOT, GEYMANN, GLOVER, GRAY, E. GUILLORY, M. GUILLORY, HAMMETT, HEATON, HEBERT, HONEY, HOPKINS, HUTTER, JACKSON, JEFFERSON, JOHNS, KATZ, KENNARD, KENNEY, LABRUZZO, LAFLEUR, LAMBERT, LANCASTER, MARCHAND, MARTINY, MCDONALD, MCVEA, MONTGOMERY, MORRISH, MURRAY, ODINET, PIERRE, PITRE, M. POWELL, T. POWELL, QUEZAIRE, RICHMOND, RITCHIE, ROMERO, SCALISE, SCHNEIDER, SHEPHERD, SMILEY, GARY SMITH, JANE SMITH, ST. GERMAIN, STRAIN, THOMPSON, TOOMY, TRAHAN, TRICHE, TUCKER, WADDELL, WALKER, WALSWORTH, WHITE, WINSTON, WOOTON, AND WRIGHT AND SENATORS DARDENNE AND HOLLIS

1 AN ACT

2 To amend and reenact R.S. 34:1073, 1076, 1121, 1122(A)(1) and (2), (B), (C)(1), and (D),
3 1124, and 1125, to enact Part VI of Chapter 6 of Title 34 of the Louisiana Revised
4 Statutes of 1950, to be comprised of R.S. 34:1129 through 1136, and to repeal R.S.
5 34:962, 966, 991.1, 1001, 1049, 1055, and 1076.1, relative to river pilots; to provide
6 relative to the Associated Branch Pilots for the Port of Lake Charles; to provide a lien
7 and privilege for nonpayment of pilotage fees; to create a single Pilotage Fee
8 Commission; to provide for appointment and membership; to provide for resolution
9 of disputes; to provide for rulemaking authority; to create the Board of Louisiana
10 River Pilots Review and Oversight; to provide for appointment and membership; to
11 provide for duties and responsibilities; to provide for resolution of complaints; to
12 provide for oversight; to provide for funding; to provide for liability; to provide for
13 judicial review; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 34:1073, 1076, 1121, 1122(A)(1) and (2), (B), (C)(1), and (D), 1124,
16 and 1125 are hereby amended and reenacted and Part VI of Chapter 6 of Title 34 of the
17 Louisiana Revised Statutes of 1950, comprised of R.S. 34:1129 through 1136, is hereby
18 enacted to read as follows:

1 §1073. Body of pilots; name; duty

2 There shall be a body of pilots to be known as ~~River Port Pilots~~ the
3 Associated Branch Pilots for the Port of Lake Charles whose duty it shall be to pilot
4 seagoing vessels within the state of Louisiana, ~~through~~ on all navigable streams,
5 canals, channels, rivers, ~~passes and bars~~ within the state of Louisiana and across the
6 ~~bars and passes,~~ and boundary waters within the Intracoastal Canal, Calcasieu, and
7 Sabine Rivers, and across the bars and passes, except that this Section shall not apply
8 to the pilotage of vessels or ships for entrance of and upon the Mississippi River or
9 any other waterway connecting the port of New Orleans or any other port on the
10 Mississippi River with the Gulf of Mexico.

11 * * *

12 §1076. Pilotage fees; exceptions

13 A. The ~~pilot~~ Associated Branch Pilots for the Port of Lake Charles shall be
14 entitled to and receive a ~~pilotage fee of two and one-half dollars per foot of water~~
15 ~~drawn by vessels piloted by them up or down the waters and rivers of the state,~~
16 ~~except as otherwise provided in this section.~~ for their pilotage services.

17 B. ~~In any locality where it is necessary to navigate over or across a bar to~~
18 ~~reach or depart from the main port, the pilots shall be entitled to and receive, in~~
19 ~~addition to the pilotage fee of two and one-half dollars referred to in the first~~
20 ~~paragraph of this section, a pilotage fee at the rate of four and one-half dollars per~~
21 ~~foot of water drawn by vessels piloted by them while plying the navigable waters of~~
22 ~~that locality.~~ The fees for pilotage services shall be established in accordance with
23 R.S. 34:1121 et seq.

24 C. ~~The pilots shall be entitled to and receive a pilotage fee of four dollars per~~
25 ~~foot of water drawn by vessels piloted by them through the intracoastal ship channel~~
26 ~~which connects the Calcasieu and Sabine rivers.~~ The river port pilots shall also be
27 entitled to enter into agreements with the masters, owners, or their agents, of ships
28 and vessels, not otherwise subject to compulsory pilotage as provided by these

1 statutes, for special services, boats, equipment, transportations, and other necessary
2 fees at such rates and for such sums as may be agreed between them.

3 ~~D. The charges herein provided shall be paid by every vessel subject to~~
4 ~~pilotage entering or leaving the ports, provided that where any vessel has a draft of~~
5 ~~less than ten feet, the pilotage charge shall be twenty dollars. When pilot services are~~
6 ~~timely offered and refused, the vessels shall pay the charges nevertheless. All vessels~~
7 ~~shall employ a pilot when navigating the operating territory described in this Part~~
8 ~~except those vessels exempted by the laws of the United States or vessels of one~~
9 ~~hundred gross tons or less, lawfully engaged in coastwise trade.~~

10 ~~E. In case of refusal to take a pilot as required, the master, owner, agent, or~~
11 ~~consignee of any vessel required to employ a pilot shall pay the established pilot fee~~
12 ~~as if a pilot had been employed.~~

13 ~~F. The pilot shall have a lien and privilege upon any vessel employing a pilot~~
14 ~~for the nonpayment of pilotage fees and charges and for all reasonable attorney fees~~
15 ~~incurred in connection with the recovery of pilotage fees and charges and~~
16 ~~enforcement of the lien. The lien and privilege may be enforced in any court of~~
17 ~~competent jurisdiction.~~

18 ~~E. G. The pilots shall be entitled to and receive from every vessel subject to~~
19 ~~pilotage entering or leaving ports an additional charge of twenty-five dollars per day~~
20 ~~pilotage fee for every day she may be detained at a quarantine station, provided that~~
21 ~~the pilots are detained on board the vessel. ~~The pilotage fee and the additional charge~~~~
22 ~~of twenty-five dollars per day Pilotage fees and all reasonable attorney fees incurred~~
23 ~~in connection with the recovery of the pilotage fees and enforcement of a lien shall~~
24 ~~bear as a lien and privilege upon the vessel, ; which lien shall prescribe within one~~
25 ~~year, should the said vessel return to port within that time. The lien and privilege may~~
26 ~~be enforced in any court of competent jurisdiction.~~

27 ~~F. Vessels of one hundred tons or under, lawfully engaged in the coastwise~~
28 ~~trade of the United States, shall not be required to take a pilot, but the master thereof~~
29 ~~may demand pilot services.~~

1 names for nomination to the governor, then the governor shall appoint the four
2 members and their alternates, all of whom shall be commissioned pilots.

3 (2) To represent the ~~interest~~ interests of the ~~steamship~~ industry, the governor
4 shall appoint four members and four alternates thereof, from nominees submitted to
5 him by the New Orleans Steamship Association, the Mississippi River Maritime
6 Association, the Lake Charles Maritime Association, and the International Freight
7 Forwarders and Customs Brokers Association of New Orleans, Inc., the Louisiana
8 Association of Business and Industry, the Louisiana Chemical Association, and the
9 Louisiana Mid-Continent Oil and Gas Association. Each group shall nominate two
10 nominees, and the seven nominating groups will select four nominees and four
11 alternates to be jointly submitted to the governor. No nominee submitted pursuant to
12 this Section shall serve on the Board of Louisiana River Pilot Review and Oversight.

13 (3) Three at-large members. Those members shall sign and maintain a
14 statement of neutrality and shall not be a family member of nor have a financial,
15 business, or pecuniary relationship with a member or with any entity represented on
16 the commission or on the Board of Louisiana River Pilot Review and Oversight. No
17 at-large member shall have any ex parte communication with any member of any
18 pilot association or with any member of the nominating industry groups or any other
19 person or entity that has an interest in any issue pending before the commission
20 except for educational purposes and during such educational time both the pilot
21 association members and the industry members shall be afforded an opportunity to
22 attend, provided that at no time a quorum is present.

23 ~~(3)~~(4) The appointees shall be residents of the state of Louisiana.
24 Notwithstanding any prohibition contained in Part II of Chapter 15 of Title 42 of the
25 Louisiana Revised Statutes of 1950, the pilot fee commission members and alternates
26 appointed pursuant to Paragraphs (B)(1) and (2) shall be eligible to serve on the pilot
27 fee commission and participate in transactions before the commission.

28 ~~(4)~~(5) The alternates shall serve in the event of vacancy, inability, or absence
29 of the member.

1 ~~(5)~~(6) The terms of the members, and of the alternates thereto, shall run
2 concurrently with that of the governor appointing them. However, they shall remain
3 in office until their successors have been appointed and duly qualified. Any member
4 appointed by the governor may serve more than one consecutive term.

5 (7) The appointments shall be subject to confirmation by the Senate. The
6 governor shall make appointments within thirty days of the expiration of a term of
7 office or the occurrence of a vacancy in office. A member may be removed only for
8 good cause shown.

9 (8) At the expiration of the term of each member and of each succeeding
10 member, the governor shall appoint a successor who shall serve for a term of four
11 years using the selection process as provided for in Subsection B of this Section.

12 (9) The three at-large members of the commission shall receive one hundred
13 fifty dollars per diem while executing their duty as a commission member.
14 Additionally, such members shall be entitled to reasonable expenses as approved by
15 the chairman.

16 (10) A member who fails to attend two consecutive quarterly meetings of the
17 commission, without good cause shown in the minutes of the commission meetings,
18 shall be deemed to have vacated his office as a member.

19 (11) Six members shall constitute a quorum.

20 (12) At its first meeting the commission shall determine the domicile of the
21 commission and thereafter the domicile shall remain unless changed by statute.

22 (13) An alternate of a member shall serve and shall be entitled to the rights
23 and be bound by the duties of the member when the member is unable to fulfill their
24 duties.

25 ~~C. As is further referenced in R.S. 34:1122(D), in the event that the members~~
26 ~~representing the interest of the association and the members representing the interests~~
27 ~~of the steamship industry are unable to resolve any dispute as to pilotage fees and~~
28 ~~rates or any other legitimate business of the commission, the Louisiana Public~~
29 ~~Service Commission shall constitute the commission for the purpose of making a~~

1 ~~decision relative to the dispute, which decision of the Louisiana Public Service~~
2 ~~Commission shall constitute the decision of the fee commission.~~ All meetings of the
3 commission shall be public, and, except as otherwise provided by law, all records of
4 the commission shall be open to inspection. Notwithstanding the provisions of R.S.
5 44:1 et seq., upon request of a pilot association, member of industry, or any other
6 person with a substantial interest as provided for in R.S. 34:1122(D), any records
7 received by the pilot fee commission which are deemed by the pilot fee commission
8 to be trade secret or proprietary shall be kept confidential and shall be exempt from
9 public disclosure.

§1122. Fees and charges; adjudication of disputes

A.(1) ~~Each~~ The fee commission shall have exclusive authority to fix and establish reasonable and just fees and rates for:

(a) Pilotage service to ships and vessels.

(b) Pilotage service to ships in distress.

(c) Extraordinary pilotage service.

(d) A pilot being carried to sea unwillingly, which fee and rate shall include reimbursement for his return to pilot station.

(e) The detention of a pilot.

(2) ~~Each~~ The fee commission shall have authority to hire an administrator, hold hearings, subpoena witnesses, administer oaths, take depositions, fix fees and mileage of witnesses, compel the attendance of witnesses, and assess the cost of all hearings and expenses incurred by the commission equally on the pilot association to which it relates and the shipping industry.

* * *

B.(1) Pilotage fees and rates shall provide for all ordinary and necessary operating and administrative costs and expenses, including but not limited to the cost of, replacement of, and reasonable return on investment of pilot stations, administrative offices, furniture and fixtures, communication equipment and facilities, vessels, launches and other required vehicles of transportation and the

1 expenses of maintaining and repairing same, other transportation expenses, the
 2 expense of maintaining necessary employees, operating materials, consumables and
 3 services, pensions, pension plans, hospitalization, disability compensation, taxes and
 4 licenses, life insurance, license insurance, trade promotions when requested to
 5 participate by industry or any port, ~~public relations, required continuing education,~~
 6 legal expense, accounting expense, professional dues, administrative and professional
 7 publications, state pilot commissions, state and federal requirements, and fair average
 8 annual compensation for a state ship pilot, in comparison to regulated state ship
 9 pilotage in other United States ports.

10 (2) Nothing in this Section shall authorize the inclusion of expenses for a
 11 lobbyist as defined in R.S. 24:51(5) and R.S. 49:72 or for political contributions as
 12 part of the ordinary and necessary operating and administrative costs and expenses.

13 C.(1) In determining such fees and rates, ~~individual~~ the pilotage fee
 14 ~~commissions~~ commission may give due regard to, but shall not be limited to:

15 (a) Consideration of the length, draft, dimensions, and tonnage of the vessels
 16 to be piloted.

17 (b) The difficulty and inconvenience of the particular service and the skill
 18 and additional expertise required to render it.

19 (c) The public interest in maintaining safe, efficient, and reliable pilotage
 20 service.

21 (d) The piloting time required; the distance traveled of the vessels to be
 22 serviced; the travel time required and distance traveled to and from vessels; the
 23 method of travel and travel cost required to and from vessels; the time devoted by
 24 pilots to making themselves available when needed; the time required to be on station
 25 or on call while both on and off station; the length of time duty requires the pilot's
 26 absence away from home; the difficulty of the particular service including working
 27 conditions; risk factors of the route; inconvenience and living conditions; the skill
 28 and additional expertise required to render the particular service; the length of the

1 training, experience, or apprenticeship program; and the number of trips the pilot is
2 required to ride light.

3 (e) ~~Another~~ Any other factor relevant to the determination of reasonable and
4 just fees and rates, including those factors previously considered and determined by
5 the Louisiana Supreme Court, and the national average pilotage cost per mile for
6 state regulated pilots operating in United States ports.

7 * * *

8 ~~D.(1) A decision by a majority of the members of the commission shall
9 constitute the decision of the commission. Whenever negotiation of an issue has
10 been requested, in writing, by any two members and a majority of the commission
11 is unable to decide the issue within ninety days of the request for negotiation, any
12 member may certify and file, in writing, the issue with the Louisiana Public Service
13 Commission for expedited adjudication. Upon such filing, as is provided by R.S.
14 34:1121(C), the Louisiana Public Service Commission shall constitute the
15 commission.~~

16 ~~(2) Within ninety days following the certification of the issue to the
17 Louisiana Public Service Commission, it shall hold hearings where interested
18 members of the fee commission may file and present their evidence and arguments,
19 at the same time, relative to the issue. The Louisiana Public Service Commission
20 shall render a full and final decision relative to the issue prior to the lapse of twelve
21 months from its receipt of certification of the issue. Any requests to the commission
22 for action shall be filed with the commission and publicly noticed in the official
23 journals of both the state and the parish in which the fee commission is domiciled.
24 Any party with a substantial interest who desires to participate or appear in
25 opposition or support shall file a notice of intervention or protest with the
26 commission within twenty-five days following the date of publication of said notice.
27 If no notice of protest is filed within the twenty-five day period, the proceeding shall
28 continue as an uncontested matter.~~

1 (2) All appearances shall be subject to a motion to strike decided by the
2 commission upon a showing that the party has no substantial interest in the matter.
3 In the event the commission determines that a party does not have a substantial
4 interest, such decision shall be final as to that party and that party shall have a right
5 to appeal the decision in the same manner as provided for in this Subsection.

6 (3) Upon notice to the parties issued by the commission, a conference shall
7 be held to establish a schedule for discovery, motions, and a hearing on the merits.

8 (4) The commission shall hold a hearing on the request for action at which
9 parties shall be permitted to file and present evidence, cross-examine witnesses, and
10 present arguments.

11 (5) Following the hearing, the commission shall decide the request by
12 majority vote and issue an order that includes findings of facts and conclusions of
13 law.

14 (6) When all parties to a proceeding reach agreement as to all issues or the
15 request is uncontested, the parties shall file a proposed stipulated settlement with the
16 commission. In such case, a stipulation hearing shall be held to introduce into
17 evidence the proposed stipulated settlement and supporting documentation. The
18 commission shall then accept or reject the settlement.

19 (7) A full transcribed record of all proceedings and hearings shall be kept and
20 compiled.

21 ~~(3)(a)~~ (8) If the dispute request involves a proposed increase in fees and rates,
22 ~~the Louisiana Public Service Commission~~ commission by majority vote may permit
23 the proposed increase to be put into effect, in whole or in part, pending its decision,
24 subject to protective bonding and other security requirements set by it the
25 commission.

26 ~~(b)~~ (9) If the dispute request involves a proposed increase in fees and rates
27 ~~and the Louisiana Public Service Commission~~ commission does not permit the
28 proposed increase to be put into effect prior to its decision, the proposed increase
29 shall nevertheless go into effect, shall and remain in effect unless and until it reaches

1 a full and final decision disallowing the increase, immediately following the lapse of
 2 twelve months following its receipt of certification of the ~~dispute~~ request if it has not
 3 rendered a decision by such time, subject however, to reasonable protective bonding
 4 and other security requirements set by it.

5 (e) ~~(10)~~ (10) If the ~~dispute~~ request involves a proposed increase in fees and rates
 6 and such has been put into effect prior to full and final decision of the issue by the
 7 ~~Louisiana Public Service Commission,~~ commission and the full and final decision
 8 disallows the increase, in whole or in part, the increase which is disallowed shall be
 9 refunded in a manner as prescribed by the ~~Louisiana Public Service Commission.~~
 10 commission.

11 (11) Any person or entity recognized by the commission to have a substantial
 12 interest at stake in the issue by allowing them to present evidence and arguments
 13 shall have the right to appeal any final decision of the commission to the district
 14 court in the parish in which the commission is domiciled. Appeal from the district
 15 court shall be to the appellate court that has jurisdiction over decisions of that district
 16 court. Thereafter, an appeal may be taken to the supreme court. Upon request of any
 17 party with the right to appeal, the commission shall forthwith certify the entire record
 18 of the case, including the transcript of the evidence taken and testimony given, to the
 19 district court. Upon the filing of the record of the proceeding in the the court of
 20 competent jurisdiction, the appeal shall be heard with the greatest possible
 21 expedition, giving the proceeding precedence over all other matters except those
 22 pursuant to R.S. 23:847 and Code of Civil Procedure Article 1573 and older matters
 23 of the same character. When requested by a party and after payment of the costs, any
 24 court shall forthwith certify the entire record of the case, including the transcript of
 25 the evidence taken and testimony given to the court which has jurisdiction for the
 26 appellate review.

27 (12) The review shall be conducted by the court without a jury and shall be
 28 confined to the record. In cases of alleged irregularities in procedure before the

1 commission, not shown in the record, proof thereon may be taken in the court. The
2 court, upon request, shall hear oral argument and receive written briefs.

3 (13) The court may affirm the decision of the commission or remand the case
4 for further proceedings. The court may reverse or modify the decision if substantial
5 rights of the appellant have been prejudiced because the commission findings,
6 inferences, conclusions, or decisions are arbitrary or capricious.

7 * * *

8 §1124. Fees and charges to remain in effect until changed

9 All pilotage fees and charges provided by applicable laws shall remain in full
10 force and effect until changed by majority vote of the ~~pilotage fee commission~~ for
11 any of said pilot associations. Pilotage Fee Commission.

12 §1125. ~~Rules and by-laws; officers~~ Operation of commission; rules

13 ~~Each pilot fee commission~~

14 A. The Pilotage Fee Commission shall operate under Rule 1 through Rule
15 47 of the Rules of Practice and Procedure of the Louisiana Public Service
16 Commission effective July 1, 1976, and as amended April 20, 2004, only to the
17 extent that any part of a rule or rules, or any one or more rule or rules do not conflict
18 with any provision of this Part and only for that period of time in which the
19 commission has not adopted its own rules to replace Rules 1 through 47. The
20 Pilotage Fee Commission may adopt rules of procedure and ~~by-laws~~ bylaws and elect
21 officers, ~~other than~~ including the chairman. The Pilotage Fee Commission may also
22 adopt rules and regulations for the purpose of administering this Part.

23 B.(1) The commission may incur necessary expenses in the discharge of the
24 duties, functions, and responsibilities of this Part.

25 (2) The costs of salaries, equipment, office space, office supplies, and all of
26 the necessary expenses for the administration, implementation, and enforcement of
27 this Part shall be paid from self-generated funds or other funds made available to the
28 commission for such purposes. The commission may accept grants, allocations, or
29 appropriations from the United States government or the state government, or

1 domiciled in Louisiana for not less than five years. Any vacancy on the board shall
2 be filled in the same manner as the initial appointment for that seat on the board was
3 made.

4 C. The governor shall appoint the members as follows:

5 (1) A pilot member of the Board of Examiners of Bar Pilots for the Port of
6 New Orleans as referred to in R.S. 34:941.

7 (2) A pilot member of the Board of River Port Pilots Commissioners for the
8 Port of New Orleans as referred to in R.S. 34:991.

9 (3) A pilot member of the Board of Examiners for New Orleans and Baton
10 Rouge Steamship Pilots for the Mississippi River as referred to in R.S. 34:1041.

11 (4) A pilot member of the Board of River Port Pilot Commissioners and
12 Examiners as referred to in R.S. 34:1072.

13 (5) Two members chosen from a list of four persons nominated jointly by the
14 Louisiana Association of Business and Industry, the Louisiana Chemical Association,
15 the Louisiana Farm Bureau Federation, and the Louisiana Mid-Continent Oil and Gas
16 Association.

17 (6) Two members chosen from a list of four persons nominated by the
18 Louisiana Ports Association.

19 (7) Three former judges who served on the Louisiana Supreme Court, a
20 Louisiana appellate court, or a Louisiana district court.

21 (8) Notwithstanding any prohibition contained in Part II of Chapter 15 of
22 Title 42 of the Louisiana Revised Statutes of 1950, the commission members
23 pursuant to Paragraphs (1) through (6) of this Subsection shall be eligible to serve on
24 the commission and participate in transactions before the commission.

25 D. No members appointed as former judges pursuant to Paragraph (7) of
26 Subsection C of this Section shall be a family member of or have a financial,
27 business, or pecuniary relationship with any member or with any entity represented
28 on the board or the Pilotage Fee Commission.

1 E. The appointments by the governor shall be subject to confirmation by the
2 Senate. The governor shall make appointments within thirty days of the expiration
3 of a term of office or the occurrence of a vacancy in office. A member may be
4 removed only for good cause shown.

5 F. Members shall serve terms concurrent with that of the governor and shall
6 continue in office until their successors are qualified and appointed. Any member
7 appointed by the governor may serve more than one consecutive term.

8 G. The members of the board shall serve without compensation. However,
9 the members appointed as former judges shall be entitled to a per diem, not to exceed
10 one hundred fifty dollars while executing their duties as board members.
11 Additionally, the members who shall be appointed judges shall be entitled to
12 reasonable expenses as approved by the chairman.

13 H. All actions taken by the board shall be in accordance with the
14 Administrative Procedure Act, R.S. 49:950 et. seq., including the right to subpoena
15 witnesses and documents pursuant to R.S. 49:956, to the extent that any procedure
16 in the Administrative Procedure Act does not conflict with any provision of this Part.
17 §1132. Meetings; quorum

18 A. The board shall meet at least twice per year, at a place of their choosing,
19 and at other such times and places as it may determine. Six members of the board
20 shall constitute a quorum. A decision by a vote of a majority of the members of the
21 board shall constitute the decision of the board.

22 B. The governor shall appoint members and convene the first meeting of the
23 board on or before March 1, 2005.

24 C. At the first meeting and annually thereafter, the board shall elect a
25 chairman and such other officers of the board as they may determine necessary and
26 appropriate for the administration, implementation, and enforcement of this Part.

27 §1133. Powers; functions; duties; responsibilities

28 A. The board shall issue rules and regulations to administer, implement, and
29 enforce this Part. The procedure for proposing, amending, repealing, and

1 promulgating a rule or regulation shall be in accordance with the Administrative
2 Procedure Act, R.S. 49:950 et seq. to the extent that any procedure in the
3 Administrative Procedure Act does not conflict with any provision of this Part.

4 B. The board shall review and may approve or reject any proposed rule or
5 regulation that may be adopted by any of the Board of Commissioners or Examiners,
6 except for rules and regulations adopted on an emergency basis. Any rejection by the
7 board shall be within ninety days of submission of the proposed rule or regulation to
8 the board; otherwise, such rule or regulation shall be deemed approved.

9 C. The board shall request, receive, and review reports prepared by the Board
10 of Commissioners or Examiners related to accidents involving state commissioned
11 pilots subject to this Chapter while the pilot is acting under his state commission, and
12 the board may either:

13 (1) Review the report and take no further action, consenting to the action of
14 the submitting Board of Commissioners or Examiners.

15 (2) Remand the matter to the submitting Board of Commissioners or
16 Examiners for further investigation or proceedings, the results of which are to be
17 submitted to the board.

18 D. The board shall receive reports as to consent disciplines agreed to by and
19 between a pilot and the Board of Commissioners or Examiners, and the board may
20 either:

21 (1) Review the report and take no further action, consenting to the action of
22 the submitting Board of Commissioners or Examiners.

23 (2) Remand the matter to the submitting Board of Commissioners or
24 Examiners for further investigation or proceedings, the results of which are to be
25 submitted to the board.

26 E. The board shall receive reports as to all formal disciplinary adjudications
27 rendered by the Board of Commissioners or Examiners, and the board may either:

28 (1) Review the report and take no further action, consenting to the action of
29 the submitting Board of Commissioners or Examiners.

1 (2) Remand the matter to the submitting Board of Commissioners or
2 Examiners for further investigation or proceedings, the results of which are to be
3 submitted to the board.

4 F. The board shall receive appeals from any party to a formal disciplinary
5 proceeding before the Board of Commissioners or Examiners. Following notice and
6 a hearing, the board may acquit the pilot or may impose its own sanctions against a
7 pilot, including but not limited to reprimand of the pilot, ordering the pilot to
8 participate in remedial training, impose a fine not to exceed ten thousand dollars,
9 order the pilot to pay the costs of the hearings inclusive of attorney fees, or
10 recommend to the governor that the pilot's commission be suspended or revoked.
11 The board shall have the authority to suspend a pilot's commission in the event of an
12 emergency pursuant to the emergency procedures of the Administrative Procedure
13 Act.

14 G. The board shall receive sworn complaints against any pilot from any
15 source for actions taken by a pilot while in the performance of his duties, including
16 acts of misconduct, carelessness, incompetence, intoxication, negligence, or the
17 refusal to offer timely pilotage services without just cause. In addition the board
18 shall receive sworn complaints for abuse of legally prescribed medication and illegal
19 use of controlled dangerous substances. The board may conduct investigations, refer
20 the matter to the Board of Commissioners or Examiners for investigation, or conduct
21 hearings pursuant to the Administrative Procedure Act and the rules adopted by the
22 board. Following notice and a hearing, the board may acquit the pilot or may impose
23 sanctions against the pilot, including but not limited to reprimand of the pilot, order
24 the pilot to participate in remedial training, impose a probationary period, impose a
25 fine not to exceed ten thousand dollars, order the pilot to pay the costs of the hearings
26 inclusive of attorney fees, or recommend to the governor that the pilot's commission
27 be suspended or revoked. The board shall have the authority to suspend a pilot's
28 commission in the event of an emergency pursuant to the emergency procedures of
29 the Administrative Procedure Act.

1 H. Nothing in this Part shall prohibit the governor, in his discretion, from
2 suspending or revoking a pilot's commission.

3 I. The board shall submit an annual report to the general counsel of the
4 Department of Transportation and Development on accident investigation, which
5 report shall identify the accident and location, the pilot involved, a description of the
6 damage sustained, and the action taken by the board or the Board of Commissioners
7 or Examiners. The annual report shall be submitted on or before the last day of
8 February for accidents occurring during the previous year.

9 J. The board shall require that a permanent accident or incident record on
10 each pilot shall be maintained as well as an accident investigation file as long as the
11 pilot involved has a pilot commission.

12 K. The board shall submit an accident report as soon as practically possible
13 to the general counsel of the Department of Transportation and Development in those
14 accidents in which state property is involved or damaged. Such accident report shall
15 provide a description of the circumstances surrounding the accident, including but
16 not limited to the time and location, the state property involved or damaged, the name
17 of the pilot, the name of the vessel, the name of the vessel's agent, and the name of
18 the insurer of the vessel.

19 L. The board shall provide to all commissioned pilots a copy of the board's
20 rules and regulations.

21 M. No provision contained in this Part shall limit or supersede the duties and
22 responsibilities of the Board of Commissioners or Examiners.

23 N. Notwithstanding any other provision of law, no part of a report issued or
24 received by the board or the Board of Commissioners or Examiners, including
25 findings of fact, opinions, recommendations, deliberations, or conclusions, shall be
26 admissible as evidence or subject to discovery in any civil or administrative
27 proceeding, other than an administrative proceeding initiated by the board or the
28 Board of Commissioners or Examiners. No member of the board or the Board of
29 Commissioners or Examiners shall be subject to deposition or other discovery, or

1 otherwise testify in such proceedings relevant to the performance of their duties on
 2 the board or Board of Commissioners or Examiners. If an employee or member of
 3 the board or the Board of Commissioners or Examiners is called as an expert or fact
 4 witness pursuant to their duties, their testimony shall not be admissible and their
 5 report shall not be considered the report of an expert.

6 §1134. Expenditures; funding

7 A. The board may incur necessary expenses in the discharge of its duties,
 8 functions, and responsibilities of this Part.

9 B. The cost of equipment, office space, office supplies and all other
 10 necessary expenses for the administration, implementation, and enforcement of this
 11 Part shall be paid from self-generated funds or other funds made available to the
 12 board for such purpose.

13 C. The board may accept grants, allocations, or appropriations from the
 14 United States government or donations, grants, or other forms of assistance from
 15 private foundations or other sources.

16 §1135. Liability

17 Any party seeking to hold a pilot acting under his state commission issued in
 18 accordance with this Chapter liable for damages or loss occasioned by the pilot's
 19 errors, omissions, fault, or neglect shall be required to prove by clear and convincing
 20 evidence that the damages arose from the pilot's gross negligence or willful
 21 misconduct.

22 §1136. Judicial review

23 Proceedings may be brought before courts of competent jurisdiction under
 24 state law in the parish in which the commission is domiciled for the purpose of
 25 contesting the validity of any decision of the board.

26 Section 2. R.S. 34:962, 966, 991.1, 1001, 1049, 1055, and 1076.1 are hereby
 27 repealed in their entirety.

28 Section 3. This Act shall become effective January 1, 2005.

1 Section 4. Notwithstanding any other provisions of this Act, the provisions of the
2 latest rate orders of the Public Service Commission shall be null and void as of the effective
3 date of this Act only with respect to funding of any new pilots for the Associated Branch
4 Pilots for the Port of New Orleans and the River Port Pilots for the Port of New Orleans. The
5 approval and funding of six pilots on July 1, 2004, and six pilots on July 1, 2005, shall
6 remain in effect from the rate order of the Public Service Commission for the New Orleans-
7 Baton Rouge Steamship Pilots Association. The pilotage fee commission shall fund no less
8 than fourteen pilots for the Associated Branch Pilots of the Port of Lake Charles until
9 December 31, 2006. The automatic tariff rate adjustment mechanism (ATRAM) in place as
10 of the effective date of this Act shall remain in place for all pilot associations except that the
11 New Orleans-Baton Rouge Steamship Pilots Association shall not be entitled to the
12 consumer price index adjustment and the expense growth component for the year 2004.
13 Subject to the provisions of this Act, the automatic tariff rate adjustment mechanisms in
14 place as of July 1, 2004, shall remain in effect through June 30, 2005. Thereafter such filings
15 shall be made in accordance with the rules and regulations promulgated by the pilotage fee
16 commission. Except as otherwise provided in this Act, any reduction in the number of pilots
17 previously authorized and funded shall occur only through attrition. No state pilot shall
18 retain their state commission beyond the end of the calendar year in which they reach the age
19 of seventy years old.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____