

PART V. PILOTAGE FEE COMMISSION

§1121. Pilotage Fee Commission; composition

A. The Pilotage Fee Commission shall exist to establish pilotage fees.

B. The commission shall be composed of eleven members and nine alternates. The governor shall appoint the members as follows:

(1) To represent the interests of the associations, the governor shall appoint four members, and four alternates thereof, which members and alternates shall be designated by the board of directors of the four pilot associations. The four pilot associations shall each nominate one member and one alternate, such associations being the Associated Branch Pilots for the Port of New Orleans, the River Port Pilots for the Port of New Orleans, the New Orleans Baton Rouge Steamship Pilots Association, and the Associated Branch Pilots for the Port of Lake Charles. In the event that one or more of the nominating entities does not participate by submitting a name or names for nomination, then those participating entities shall submit four nominees and alternates of their choosing. In the event that none of the nominating entities send names for nomination to the governor, then the governor shall appoint the four members and their alternates, all of whom shall be commissioned pilots.

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

(3) Three at-large members and one at-large alternate. Those members shall sign and maintain a statement of neutrality and shall not be a family member of nor have a financial, business, or pecuniary relationship with a member or with any entity represented on the commission or on the Board of Louisiana River Pilot Review and Oversight. No at-large member shall have any ex parte communication with any member of any pilot association or with any member of the nominating industry groups or any other person or entity that has an interest in any issue pending before the commission except for educational purposes and during such educational time both the pilot association members and the industry members shall be afforded an opportunity to attend, provided that at no time a quorum is present. The level of participation of the at-large alternate shall be governed by rules or regulations adopted and promulgated by the Pilotage Fee Commission.

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

- (5) The alternates shall serve in the event of vacancy, inability, or absence of the member.
- (6) The terms of the members, and of the alternates thereto, shall run concurrently with that of the governor appointing them. However, they shall remain in office until their successors have been appointed and duly qualified. Any member appointed by the governor may serve more than one consecutive term.
- (7) The appointments shall be subject to confirmation by the Senate. The governor shall make appointments within thirty days of the expiration of a term of office or the occurrence of a vacancy in office. A member may be removed only for good cause shown.
- (8) At the expiration of the term of each member and of each succeeding member, the governor shall appoint a successor who shall serve for a term of four years using the selection process as provided for in Subsection B of this Section.
- (9) The three at-large members of the commission and the one at-large alternate member shall each receive one hundred fifty dollars per diem while executing their duty as a commission member. Additionally, such members shall be entitled to reasonable expenses as approved by the chairman.
- (10) A member who fails to attend two consecutive quarterly meetings of the commission, without good cause shown in the minutes of the commission meetings, shall be deemed to have vacated his office as a member.
- (11) Six members shall constitute a quorum.
- (12) At its first meeting the commission shall determine the domicile of the commission and thereafter the domicile shall remain unless changed by statute.
- (13) An alternate of a member shall serve and shall be entitled to the rights and be bound by the duties of the member when the member is unable to fulfill their duties.

C. All meetings of the commission shall be public, and, except as otherwise provided by law, all records of the commission shall be open to inspection. Notwithstanding the provisions of R.S. 44:1 et seq., upon request of a pilot association, member of industry, or any other person with a substantial interest as provided for in R.S. 34:1122(D), any records received by the pilot fee commission which are deemed by the pilot fee commission to be trade secret or proprietary shall be kept confidential and shall be exempt from public disclosure.

Acts 1968, No. 579, §1; Acts 1987, No. 202, §1, eff. June 29, 1987; Acts 1999, No. 906, §1; Acts 2004, No. 902, §1, eff. Jan. 1, 2005; Acts 2008, No. 234, §1.

NOTE: SEE ACTS 1987, NO. 202, §§2 AND 3.

§1122. Fees and charges; adjudication of disputes

- A.(1) 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) 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.

(3) The pilotage fees and rates shall bear as a lien and privilege on the ships or vessels for non-payment of same, together with reasonable attorney fees, all of which may be enforced in any court of competent jurisdiction within one year from the date the service was offered or performed.

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

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

(3) Pilotage fees and rates shall provide for all ordinary and necessary operating and administrative expenses of the Pilotage Fee Commission in the discharge of its duties, functions, and responsibilities as provided in this Part.

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

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

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

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

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

additional expertise required to render the particular service; the length of the training, experience, or apprenticeship program; and the number of trips the pilot is required to ride light.

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

(2) If any standard for establishing pilotage fees and rates set forth herein is not applicable to a particular pilot service, then it shall not be considered in the determination of fees and rates for such service.

D.(1) Any requests to the commission for action shall be filed with the commission and publicly noticed in the official journals of both the state and the parish in which the fee commission is domiciled. Any party with a substantial interest who desires to participate or appear in opposition or support shall file a notice of intervention or protest with the commission within twenty-five days following the date of publication of said notice. If no notice of protest is filed within the twenty-five day period, the proceeding shall continue as an uncontested matter.

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

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

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

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

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

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

(8) If the request involves a proposed increase in fees and rates, the commission by majority vote may permit the proposed increase to be put into effect, in whole or in part, pending its decision, subject to protective bonding and other security requirements set by the commission.

(9) If the request involves a proposed increase in fees and rates and the commission does not permit the proposed increase to be put into effect prior to its decision, the proposed increase shall nevertheless go into effect, and shall remain in effect unless and until it reaches a full and final decision disallowing the increase, immediately following the lapse of twelve months following its receipt of certification of the request if it has not rendered a decision by such time, subject however, to reasonable protective bonding and other security requirements set by it.

(10) If the request involves a proposed increase in fees and rates and such has been put into effect prior to full and final decision of the issue by the commission and the full and final

decision disallows the increase, in whole or in part, the increase which is disallowed shall be refunded in a manner as prescribed by the commission.

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

(12) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the commission, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

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

Acts 1968, No. 579, §2; Acts 1987, No. 202, §1, eff. June 29, 1987; Acts 2004, No. 902, §1, eff. Jan. 1, 2005; Acts 2006, No. 6, §1, eff. April 26, 2006.

§1123. Agreements

All pilot associations may enter into agreements with the masters or owners of ships and vessels, or agents representing them, pertaining to pilotage rates, or for special services and for the hire of boats and equipment for such rates and for such sums as may be agreed between them.

Acts 1968, No. 579, §3.

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

All pilotage fees and charges provided by applicable laws shall remain in full force and effect until changed by majority vote of the Pilotage Fee Commission.

Acts 1968, No. 579, §4; Acts 2004, No. 902, §1, eff. Jan. 1, 2005.

§1125. Operation of commission; rules

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

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

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

C. The chairman shall call meetings of the commission, or special meetings may be called on written notice to the members, signed by any two members thereof. All actions of the commission shall be by a majority vote of all members.

Acts 1968, No. 579, §5; Acts 2004, No. 902, §1, eff. Jan. 1, 2005.

§1126. Existing laws as to services not modified or repealed

Nothing herein contained shall be construed to modify or repeal existing laws as to pilotage services other than as refers to rate making.

Acts 1968, No. 579, §6.

§1127. Contesting validity of commission decisions

Proceedings may be brought before courts of competent jurisdiction under state law for the purpose of contesting the validity of any decision of the commission hereunder.

Acts 1968, No. 579, §7.