

**BOARD OF PILOT COMMISSIONERS
LEGISLATIVE COMMITTEE MEETING
Hyatt Regency Orlando International Airport
9300 Jeff Fuqua Blvd
Orlando, FL 32827
April 22nd, 2014**

Approved July 14, 2014

CALL TO ORDER

Commissioner Swindell, Chair of the Committee, called the meeting to order at 10:04 a.m.

Members Present

Commissioner Swindell, Chair
Commissioner Fernandez
Commissioner Fox
Commissioner Kurtz
Commissioner Nielsen
Commissioner Phipps
Commissioner Ulrich
Commissioner Walters
Commissioner Winegeart

Members Not Present

Commissioner Trueba

Others Present

Daniel Biggins, Executive Director
Donald Shaw, Government Analyst
Elise Rice, Government Analyst
Michael Flury, Board Counsel
Clark Jennings, Board Counsel
Robyn Barineau, Executive Director
Warren Husband, Florida Harbor Pilots Association (FHPA)
Ben Borgie, FHPA
Allen Thompson, Tampa Bay Pilots Association
Gretchen Winters, FHPA
Dan Ramsey, Florida Docking Masters Association
Stuart Lilly, FHPA
Donna Blanton, Radey Law Firm
Andy Melick, Biscayne Bay Pilots Association
Mike Jaccoma, Biscayne Bay Pilots Association
Doug Mutter, Cape Canaveral Pilots Association
Mark Poole, Biscayne Bay Pilots Association
George Barkley, MPI

Sam Stephenson, Port Everglades Pilots Association
David Fath
Jorge Viso, Tampa Bay Pilots Association
Stephen Geisecki, FHPA
Court Reporter present

Commissioner Swindell called the meeting to order at 10:04 am and thanked the members of the audience for appearing. Mr. Swindell asked that all members of the audience please sign in, and if they intend to address the Committee, to please limit their comments to a total of five minutes.

Review and Approval of Minutes

Commissioner Swindell asked if there was a motion to approve the minutes. Commissioner Nielsen made a motion to approve the minutes. Commissioner Winegeart seconded the motion for discussion. Commissioner Winegeart expressed concern over a vote that occurred at the previous meeting regarding changing the experience requirements to add the requirement of a four-year degree and add a level of experience at the "con". Mr. Nielsen stated that while he may have voted in the affirmative, he did so not fully understanding what he was voting on. Commissioner Winegeart stated he was under the impression it was an "or" requirement, not an "and" requirement. Mr. Flury indicated that the minutes need to be an actual representation of what happened. Whether or not a Commissioner did not understand what was being voted on is different than the minutes incorrectly reflecting what was being voted on.

Commissioner Nielsen withdrew his motion to approve the minutes, and Commissioner Winegeart withdrew his second. Commissioner Nielsen made a motion to table the minutes until a later meeting so that additional review of the minutes could be performed by staff. Commissioner Winegeart seconded the motion. The motion passed unanimously.

Discussion of Topics

- **Minimum Requirements for Licensure/Deputy Pilot Licensing Process**

Mr. Dan Ramsey went on the record stating his opposition to the requirement that exam candidates be required to have a four-year degree.

Commissioner Nielsen stated that, to the best of his recollection, the discussion about imposing the requirement of a four-year degree was based on the fact that ships have changed. Commissioner Swindell stated that, as far as he remembers, there was not a caveat in the degree requirement that the degree be obtained from a maritime institute; that a degree from any accredited institution would be sufficient. Commissioner Fox asked Commissioner Nielsen if the captains of the ships of his company, Princess Cruise Lines, are required to have four-year degrees. Commissioner Nielsen stated they are. Commissioner Winegeart stated that he feels the current examination and

training process is more than sufficient to ensure that pilots are properly trained, even with the new technology, and that he doesn't think possessing a four-year degree has any bearing on the capabilities of a pilot or a potential pilot.

Commissioner Fox indicated that while he feels the process currently in place is sufficient and has its merits, it only yields the top candidates that have been able to make it through that particular process. Commissioner Fox stated his more fundamental question is whether the process itself is garnering the best possible candidates. Commissioner Fox also stated that as far as the minority and woman issue is concerned, it's pretty clear that the process in place hasn't yielded great results in licensing minorities and women.

Commissioner Ulrich stated he voted in favor of the requirement of a four-year degree, but he stated that if the goal is to make the license more obtainable, then requiring a four-year degree is a good way to accomplish the opposite. Commissioner Ulrich stated that he would have to reconsider his vote if the issue came up again.

Commissioner Fox stated his main issue is that there do not appear to be enough pilots for the port requirements, and that individuals can undertake the process of obtaining licensure without being guaranteed that the process will result in them getting a job as a pilot. Commissioner Fox expressed concern that an individual can go through a two or three year process and not be given a job at the end of that process. Commissioner Fox stated that he hears consistently that the process is resulting in the best possible people getting pilot licenses but he disagrees and feels that this process does not ensure that.

Commissioner Swindell stated that what he has seen over the years is that certain people have done very well on the examination but have proven in their training that they weren't capable of handling the ships. Commissioner Swindell stated that, while it would be nice for an individual to be guaranteed a job at the end of the process, ultimately if an individual is not up to the demands of the job, that person doesn't deserve to be licensed.

Commissioner Fox clarified that he doesn't believe that people should be guaranteed a job. He reiterated that the process of licensure is consistently touted as being the very best process, but he feels the process itself only draws a certain type of person; the type of person who can devote two or three years to the process; the type of person who can afford to take a risk with two or three years of training and risk not having a job at the end of the process. Commissioner Ulrich stated he understands what Commissioner Fox is saying because during his deputy training, the fear of not making it through the training was very real fear of his but the way the system is currently set up, he's unaware of anyone going through the process and not being given a job at the end.

Commissioner Fox stated that if he is the only person that feels this way, he's willing to move on to the next agenda item. Commissioner Swindell stated that there probably

are areas that can be looked at, but he's of the opinion that the training process and the merit based system is what makes Florida stand out as one of the best in the country. Commissioner Swindell stated that the process makes the best ship handlers rise to the top, but you also have to possess the academic prowess to be able to pass the exam. Commissioner Swindell stated that while there does appear to be a lack of minority and women candidates, the best and brightest are being drawn to Florida, and he's not sure how the pool of potential candidates can be expanded without diluting the overall pool of candidates. Commissioner Swindell stated that the process is very demanding, but it's that way because the industry wants the very best.

Commissioner Walters requested clarification on the process as far as what happens if an individual passes the test but is not chosen to enter the training program. Commissioner Walters asked if another opening was declared at the same port an individual already tested for, if that person had to retest if that some port had another opening at a later time. Commissioner Swindell stated it is his recollection that the individual would have to retake the test. Commissioner Swindell stated that his understanding is that if a last minute opening is declared at the same port, that individual's exam score could be used to put him in the potential pool of candidates to enter the training program.

- **Health Requirements for Pilots**

Commissioner Swindell mentioned that discussion took place at the previous meeting regarding the physical requirements of state pilots. Commissioner Swindell stated that as far as he recalls the previous consensus was that the federal standard was probably sufficient and Florida didn't need to create its own set of standards.

- **Continuing Education Requirements**

Commissioner Nielsen mentioned that with the changing technology, it might be a good idea to institute some sort of continuing education requirements. Commissioner Phipps stated that, presently, what state pilots do is take recommendations from the American Pilot Association ("APA") and occasionally classes will be developed by the APA. Commissioner Phipps also stated that state pilots normally take a two day "ECDIS" (Electronic Chart Display and Information System) training course and a "BRMP" (Bridge Resource Management for Pilots) training course. Commissioner Phipps stated that while it's not statutorily required and someone could argue that it should be statutorily required, most state pilots volunteer to take these courses. Commissioner Swindell asked if that was something that could be taken care of in the rules or if that needed to be addressed in the Statute. Commissioner Winegeart stated that this situation probably could be looked at in 61G14-13 of the Florida Administrative Code and addressed by the Rules Committee. Commissioner Ulrich stated that in some states a budget is set aside for training, and that is something that Florida pilots could consider. Commissioner Swindell stated that as far as he knows the California pilots charge a surcharge per ship for advanced training.

- **Frequency Of Board Meetings**

Commissioner Swindell stated that currently the Board meets twice a year in person and via conference call as needed. Commissioner Swindell stated he was a proponent of putting this on as a discussion topic as he's of the opinion that the Board could accomplish more if meetings were conducted quarterly. Commissioner Swindell stated that not only would it ensure that Commissioners were more familiar with each other and what was going on, but that the Board could better regulate the industry. Commissioner Ulrich stated it would also contribute to being able to see more ports and Commissioner Swindell agreed, stating that familiarizing everyone with the all the ports is a key part of their responsibilities as Commissioners.

Mr. Biggins reminded the Board that as long as they stay within their budget, the Board can meet as often as they deem necessary. Commissioner Swindell stated that the individual Commissioners should determine if meeting more frequently would be an imposition on their schedule and he wanted to gather a consensus from them. Commissioner Swindell asked if they could have time certain meetings to establish a stop time for a particular committee meeting. Mr. Jennings addressed the time certain question posed by Commissioner Swindell and stated that, because of noticing requirements, if a hard time is established the meeting cannot run past the noticed end time, which is something to consider

Commissioner Fox stated that one thing he has an issue with is the amount of phone calls and the short duration of those phone calls. Commissioner Fox stated that it appeared to be somewhat constant and if the scheduling of those could be improved. Commissioner Swindell stated the board office has streamlined the Deputy Pilot advancement phone calls. Ms. Rice clarified that the Deputy Pilot advancement phone calls only require one board member to participate, but occasionally a situation will arise in which the full board must vote on something and that the vote must be done within a certain time frame and can't wait until the next in-person meeting. Ms. Rice stated that if there were more meetings, the amount of phone calls could be reduced.

Mr. Biggins stated that at the meeting scheduled for October, staff could present four potential meeting dates for the following year, and if the Board needed something sooner than that, to let staff know. Ms. Rice stated that meetings had to be conducted in September/October and in January. Commissioner Swindell asked if the pilot associations would have any issue with perhaps raising the pilotage assessment to accommodate more meetings. Stuart Lilley, President of the FHPA, stated that whatever it takes for the Board to conduct business would be supported by the FHPA.

- **Uniformity of Pilotage Rates**

Commissioner Swindell asked if someone would like to take the lead on this particular discussion topic. Commissioner Swindell said it's his opinion that it's very important that

each Commissioner see all the ports because each port is so different, and those differences present a challenge in making pilotage rates uniform across all the ports.

Commissioner Walters stated that at the time of his appointment he had come onto the Board at the tail end of two rate review applications. Commissioner Walters stated it's his opinion that there is no hard and fast methodology on determining the rates of pilotage across the ports and he would like more clarity on how the process works.

Commissioner Swindell gave a brief overview of the process and explained that users of a particular port can request either a rate increase or a rate decrease. The timeframe, delineated in statute, starts once a particular application has been submitted and deemed complete. Once an application has been deemed complete, an investigative committee is appointed who conducts a hearing and drafts a report. The Rate Review Committee, composed of all five consumer members of the board and two of the sitting pilots, then schedules a port visit and a public hearing to go over the application and the investigative report, and either approves or denies the rate change application.

Commissioner Fox clarified that as far as he is aware, the rate review committee is an independent committee apart from the full board, and any decision made by that committee is final and does not need to be ratified by the full board. Mr. Jennings confirmed this. Mr. Jennings proceeded to explain all the criteria that the rate review committee considers in determining whether or not to grant or deny the rate change request. Mr. Jennings stated the purpose is for the committee to look at all the data and determine whether or not the rate is appropriate. Mr. Jennings stated that uniformity in pilotage rates is very difficult to achieve because every port is different and has different needs. Mr. Walters asked if the system allows an application to be submitted to decrease the rates at a port because the only applications he's seen have been for increases. Commissioner Swindell stated the system allows for either an increase or decrease application.

- **Rate Review Timeline**

Commissioner Swindell gave a brief overview of the timelines required per statute in which a rate change application must be decided on. Commissioner Swindell stated that the timelines currently in place are very tight and make things very difficult on staff. Commissioner Swindell requested the staff provide him with what they feel would be an adequate timeframe in which everything could get accomplished. Ms. Rice stated she feels that a specific timeframe doesn't need to be implemented but that the process usually takes at least 90 days.

Mr. Biggins stated that an application for licensure is subject to the deemer provision, meaning that the Department and/or the Board has 90 days to determine if an application is complete and make a ruling on the application. Mr. Biggins stated the a rate change application is significantly more involved than an application for licensure, so he is of the opinion that the time requirement be at least 90 days. Mr. Biggins stated that a lot of the timeline requirements can be amended in the Rule, but the statutory

requirement is that the entire process be completed within 60 days, and that appears to be the biggest issue. Mr. Jennings stated that as far as he can remember, the process has never been concluded within 60 days and that the petitioner has always agreed to extend the timeframe in which to rule on the application. Commissioner Swindell asked how changes to the rules could be made. Mr. Jennings suggested that it would make the most sense just to have the entire rate review committee make those changes, as opposed to creating a rules committee of the rate review committee.

Commissioner Swindell asked if the 60 days could be removed from the statute altogether and if the rules could then delineate a timeframe under which the application would have to be ruled on. Commissioner Swindell asked what the consensus was as far as the statutory timeframe was concerned. Commissioner Nielsen stated he'd like to see a minimum of 60 days listed in the statute, and that a maximum of 120 days be put in the statute. Commissioner Fox stated he agreed with Commissioner Nielsen in that there has to be some time limit on which the application must be ruled on. Ms. Rice stated that she could pull previous rate change applications to see the timeframe for those applications. Commissioner Swindell asked the committee if they would prefer to see a specific timeframe, or if they would prefer to completely remove having a specific timeframe altogether, or if the Department would like to do a little research and propose a timeframe in proposed language to be presented to the Committee at a later date. Consensus was that staff would draft language to present to the committee at a later date at which point the board could determine if the time frame needed to be specifically delineated or not.

- **Next meeting date**

Commissioner Swindell asked if the committee would like to schedule another legislative committee meeting in the future. Commissioner Fox stated that he feels most of the issues have been addressed and he's of the opinion that another legislative committee meeting would be more of the same. Commissioner Ulrich stated he would like to see more discussion about the minority process and that he feels a consensus was not reached on that particular issue and that he would like to hear more from the public on how the issue can be resolved. Commissioner Fox stated that he feels that opportunity is being given to minorities in the way of scholarships to the maritime academy, etc., but that person may choose to go a different route and not become a state pilot. Commissioner Fox stated an individual cannot be shackled to becoming a state pilot just because an opportunity was given to them but the pilot licensing board.

Commissioner Fox stated that if the board is comfortable stating it's doing everything it can to ensure women and minorities are being given equal opportunity to obtain licensure, then he feels comfortable saying that as a representative of the Board. Commissioner Fox stated he would like to see staff consider language concerning education and/or training levels, and if the committee thinks that the industry is weak in some areas, then perhaps the legislature should be approached and given the opportunity to propose some language on its own. Commissioner Fox stated he gets the sense that the pilots and other interested parties think Florida's process is the best

in the country and think they're doing everything they can to ensure the industry stays strong while also doing everything they can to recruit women and minorities.

Commissioner Swindell stated he feels that staff has been given enough guidance and that he would like to see proposed statutory language presented at some point in the future. Mr. Biggins stated he would provide proposed language in the near future for the board to look at. Mr. Flury stated that because this is a committee, any recommendations made by the legislative committee would have to be adopted by the full board, so the next meeting to vote on proposed legislation would have to be a meeting of the full board. Commissioner Fernandez stated that he feels at the very least, a conference call should take place to discuss whatever language is drafted, and perhaps vote on that language.

Commissioner Walters asked if anyone had heard anything regarding current legislation that would impact the board or the profession. Mr. Biggins stated there is nothing currently being discussed in the legislature that will impact Chapter 310.

Mr. Biggins requested clarification on items that the committee had come to a consensus on. Commissioner Swindell stated that as far as he's aware, the two main issues were the experience/education requirement, and the timeline for pilotage rate change applications. Commissioner Swindell stated that a lot of the changes discussed can be handled through the rules process. Mr. Biggins stated he would provide language in the near future with proposed changes to the statutes for the board to review and vote on.

NEW BUSINESS

No New Business was discussed.

OLD BUSINESS

Commissioner Swindell acknowledged and thanked Robyn Barineau and Elise Rice for their service and dedication to the Board of Pilot Commissioners over the years.

With nothing further to discuss the Legislative Committee adjourned at 12:40 pm.