

# **EXECUTIVE SUMMARY**

## **Board of Pilot Commissioners**

### **I. General Information**

Meeting Type: Finance Committee, Rules Committee, Probable Cause  
Panel and General Business Meetings

Meeting Date: January 12 and 13, 2006

Meeting Location: Sea Turtle Inn  
1 Ocean Boulevard  
Atlantic Beach, Florida 32233

#### Attendees:

Commissioner Victoria Robas, Chair  
Commissioner Cheryl Phipps, Vice Chair  
Commissioner Eric Bryson  
Commissioner J. Michael "Mike" Buffington  
Commissioner Rivers H. Buford, Jr.  
Commissioner John Fernandez  
Commissioner John Hiers  
Commissioner Donald "Don" N. Molitor  
Commissioner Eugene "Gene" F. Sweeney  
Secretary Simone Marsteller, Department of Business and Professional Regulation  
(DBPR)  
Dennis Yecke, Deputy Secretary of Professions, DBPR  
Rick Morrison, Director, Division of Professions and Regulation, DBPR  
Robyn Barineau, Executive Director, DBPR  
Elise Rice, Government Analyst, DBPR  
Drew Winters, Assistant General Counsel, DBPR  
Mary Ellen Clark, Assistant Attorney General, Department of Legal Affairs (DLA)  
Galen W. Dunton, Consultant  
David de la Parte, Counsel for Florida State Pilots Association (FSPA)  
Jorge J. Viso, President, FSPA  
Gretchen Rayborn, Executive Director, FSPA  
Margaret Mathews, Attorney for Captain Douglas G. Ferguson  
Allen L. Thompson, Jr., Executive Director, Tampa Bay Pilots Association  
Tim McGill, St. Johns Bar Pilots Association (SJBPA)  
Joe Brown, SJBPA  
Barrie Snyder, SJBPA  
John Atchison, SJBPA  
Brian Seuter, Cumberland Sound Pilots Association  
Gayle Featheringill, Court Reporter

### **II. Major Issues/Actions**

- Chair Victoria Robas thanked Secretary Marsteller, Deputy Secretary Yecke and Director Morrison for their interest and attendance in the board meeting and encouraged their attendance at future board meetings

- Vice Chair Cheryl Phipps thanked all those who participated in the December 2005 meeting in Tallahassee with the task of developing or amending the rules associated with the military spousal exemption; she added that the group came up with a working draft that was agreed upon by all parties
- Ms. Mary Ellen Clark, Assistant Attorney General, also commended all parties who participated in the December 2005 meeting to develop and/or amend the following rules:

- 61G14-11.010 – Definition of “Active Service”
- 61G14-11.011 – Extended Absences
- 61G14-12.001 – Renewal of Licenses and Certificates
- 61G14-12.002 – Definition of “Active Service” – Proposed Repeal
- 61G14-12.003 – Exemption from Licensure Renewal for Spouses of Members  
Of the Armed Forces

Ms. Clark mentioned that she forwarded the proposed language to the Joint Administrative Procedures Committee (JAPC) to obtain an advance opinion on the language; Ms. Suzanne Printy of JAPC called Ms. Clark and informed her that the draft was a good faith effort on the board’s part but there was no statutory authority for the board requiring license renewal; Ms. Printy added that JAPC was sympathetic and appreciated the board’s diligence in attempting to comply with Section 455.02(2), Florida Statutes; Ms. Printy also informed Ms. Clark that letters were sent to the House Business Regulation Committee and the Senate Regulated Industries Committee informing them of the apparent conflict between Section 455.02(2), Florida Statutes, and Chapter 310, Florida Statutes; Ms. Clark recommended the board withdraw the rule for spousal exemption and Ms. Clark agreed that the board should consider addressing the apparent conflict between Section 455.02(2), Florida Statutes, and Chapter 310, Florida Statutes; Ms. Clark also provided a January 9, 2006, letter from JAPC to the board in which Ms. Printy expressed her opinion that the board did not have statutory authority for its renewal provisions and Rule Chapter 61G14-12, Florida Administrative Code; Ms. Clark stated she had spoken with Ms. Printy regarding this letter, and Ms. Printy agreed no immediate changes to the board’s procedures should be contemplated; Ms. Clark also stated she had discussed the matter with Mike Martinez of the DBPR Office of the General Counsel and whether or not Section 455.203(1), Florida Statutes, would provide statutory authority for the board’s renewal procedures; Commissioner Rivers Buford suggested a department rule be promulgated to include language relating to active service and renewal and then the department rule could defer to the board rule for definition of active service; Mr. David de la Parte, Counsel for Florida State Pilots Association (FSPA), indicated that the FSPA would like a little more time to comment on the rule information prepared at the December 2005 meeting and the JAPC letters, and he suggested disseminating the information to all the ports for comment; Ms. Clark added that Section 455.203(1), Florida Statutes, could be a potential resolution regarding renewal, but the department would be required to promulgate a department rule to address the board’s specific renewal; Commissioner Buford also suggested amending the safety guidelines; Commissioner Mike Buffington agreed with Commissioner Buford’s suggestion to amend the safety guidelines rule so that whenever a pilot returns to active service at a particular port, the port must submit a refamiliarization plan to the board and the pilot would be subject to discipline if they were not in compliance; the board agreed that Ms. Clark should forward a letter to JAPC thanking them for their concerns and informing them that the board is working with the department and other interested parties in attempt to address their

- concerns; the board agreed to withdraw Rule 61G14-12.003, Florida Administrative Code; this issue will again be discussed at the April 2006 board meeting
- Ms. Clark informed the board that the gross pilotage rate reduction from 6/10 of one percent to ¼ of one percent was delayed from January 1, 2006, to January 8, 2006, because rule development had not been re-noticed with the Florida Administrative Weekly after the July 2005 board meeting; the board asked that the gross pilotage assessment rule (Rule 61G14-19.001, Florida Administrative Code) be noticed for rule development at every board meeting so the board can address the potential need to increase/decrease the gross pilotage assessment during each board meeting
  - Commissioner Buffington reviewed the board's first quarter Financial Report for the 2005-2006 fiscal year and indicated that the expense figures outlined in the Financial Report are approximately 7% below projections and the revenue figures appear to be approximately 11% over projections; he suggested the gross pilotage rate be reduced to 1/10 of one percent effective May 1, 2006; the board approved the reduction of the gross pilotage rate from 6/10 of one percent to ¼ of one percent effective February 1, 2006, and approved the reduction of the gross pilotage rate from ¼ of one percent to 1/10 of one percent effective May 1, 2006
  - Chair Robas asked Ms. Clark to explain the new gifts/lobbying law recently signed into law by Governor Bush; Ms. Clark advised the board not to accept a gift or anything of value from anyone that seeks to gain the goodwill of the board
  - The board adopted the Settlement Stipulation in the matter against Captain Douglas G. Ferguson
  - Secretary Simone Marstiller informed the board of her goal for the department to increase accountability to all professions and improve customer service; she added that she welcomes the opportunity to work with the board and its membership
  - Chair Robas mentioned the board's desire to conduct port tours at the various ports around the state; she added that for educational reasons, it is imperative that staff gain the invaluable first-hand experience of seeing the pilots as they operate on a daily basis by riding on a pilot boat for a trip out to meet a ship and seeing the pilot get on/off the pilot boat; Commissioner Buford added that he was counsel to this board for many years before becoming a board member and that he did not appreciate the work of a pilot until he joined in on a pilot boat ride to deliver a pilot to a ship
  - Mr. Drew Winters, Assistant General Counsel, reported there are currently 22 pilot cases in the legal department
  - Commander Galen Dunton advised the board that he reviewed 31 applications for individuals who have applied for the upcoming Deputy Pilot examination for the Port of Tampa; he informed the board of his concern with applicants submitting incomplete applications; Ms. Robyn Barineau, Executive Director, indicated that she and Ms. Elise Rice, Government Analyst, will review the application package and the board's webpage and insert information stressing the importance of applicants providing complete applications to the department

- The following individuals were approved to sit for the March 2006 Deputy Pilot examination for the Port of Tampa:
 

-James Clifford	-Scott Moser
-Miriam Coddington	-Igor Nechepurenko
-John Dos Santos	-Martin Poole
-Cyril Gittens	-Joseph Purcell
-Peter Glynn	-Caleb Rallis
-Garrett Johnson	-Robert Ripley
-William Kavanaugh, Jr.	-Donald Sacca
-Chris Kincaid	-Stephen Sottak
-Kris Kubiak	-Francisco Sta Cruz
-Gregg MacLaren	-Jana Staron
-Thomas McCarthy	-Charles Zenter
-Narayan Mons	
- The board approved the application of Gene Tarzetti to sit for the March 2006 Deputy Pilot examination for the Port of Tampa pending receipt of proof of his having met the sea service requirements by January 27, 2006
- The board approved the following applicants' sea service requirements to sit for the March 2006 Deputy Pilot examination for the Port of Tampa pending receipt by January 27, 2006, of the required department information as follows:
  - John Humphreys – Results of December 30, 2005, drug test
  - Cameron Kirkconnell – Notarized application, copy of high school diploma, copy of physical examination results completed within the last six months, and results of a drug test administered within the past six months
  - Joseph Lachnicht – Results of January 10, 2006, drug test
  - Thomas Spain – Copy of physical examination results completed within the last six months and results of a drug test administered within the past six months
- The board denied the application of Alistair Devlin to sit for the March 2006 Deputy Pilot examination for the Port of Tampa based on requirements set forth in Rule 61G14-11.002, Florida Administrative Code, and Section 310.071(1)(d), Florida Statutes
- The board denied the application of Joseph Hood to sit for the March 2006 Deputy Pilot examination for the Port of Tampa based on requirements set forth in Rule 61G14-11.002, Florida Administrative Code, Section 310.071, Florida Statutes, and based upon information provided by the Policy Letter 0901 dated April 26, 2002, from the National Maritime Center
- The board denied the application of Jonathan Leck to sit for the March 2006 Deputy Pilot examination for the Port of Tampa based on requirements set forth in Section 310.071(1)(d)1., Florida Statutes
- The board approved the request from the St. Andrews Bay Pilots Association to approve Captain Brian McGee for examination for cross licensure for the Port of Panama City
- The board approved the request from the Ft. Pierce Pilot Association to issue a two year certificate for Deputy Pilot William Wetzel
- The board conducted the annual review of their Executive Director, Prosecuting Attorney, and Consultant
- The Probable Cause Panel closed nine cases with no finding of probable cause, asked that two Letters of Guidance be issued, and remanded one case back to the department for further review

- The board asked that the Marine Incident Report be revised to include information including the length and beam of the vessel, whether or not tugs were utilized, and if tugs were used, the horsepower and type of propulsion of the tugs
- Ms. Barineau solicited the board's assistance with vacancies on departmental boards and commissions; she encouraged board members to have individuals who are interested in serving to contact the department or visit the Governor's website for an appointments questionnaire
- Ms. Barineau informed the board that the information related to the staff announcements was included in the agenda for informational purposes
- Ms. Barineau informed the board that she would be soliciting their assistance with articles for the November 2006 board newsletter
- Ms. Barineau informed the board that the top ten candidate listing for the March 2005 Deputy Pilot Examination for Port Everglades was included in the agenda per the board's previous request
- Ms. Barineau indicated that she hopes to provide the Finance Committee and full board in the near future with a copy of the board's five year projection as developed by the department
- Commissioner Don Molitor mentioned that the port security information contained in the agenda was included for informational purposes
- Commander Dunton informed the board that he will be out of the country several weeks in March but ensured the board that a contingency plan is in place should piloting consulting services be necessary during that time
- Commissioner John Fernandez requested that Ms. Barineau and Ms. Rice participate in the American Pilots Association meeting to be conducted in Orlando, Florida, October 22-28, 2006
- The board agreed to conduct its July 13 and 14, 2006, board meeting in Ft. Pierce and its October board meeting in Pensacola

### **III. Legislation/Rule Promulgation**

- Ms. Clark will withdraw Rule 61G14-12.003, Florida Administrative Code, from rule development
- Ms. Clark will notice for rule development Rule 61G14-19.001, Florida Administrative Code, for possible discussion at every board meeting
- Ms. Clark will amend Rule 61G14-19.001, Florida Administrative Code, to reflect a reduction in the gross pilotage assessment rate from  $\frac{1}{4}$  of one percent to  $\frac{1}{10}$  of one percent effective May 1, 2006

### **IV. Action Required**

- The board will discuss the concerns raised in the JAPC letter of January 9, 2006, at their April 2006 board meeting
- Ms. Barineau and Ms. Rice will review the board application package and webpage and insert information stressing the importance of individuals providing complete applications to the department
- Ms. Barineau and Ms. Rice will work with Commissioner Buffington on revising the Marine Incident Report

- The board asked staff to provide them with the definition of “minority” as considered in section 310.081(2), Florida Statutes, and report their findings at the next board meeting
- Chair Robas asked staff to check on the possibility of a port tour in conjunction with the Ft. Pierce board meeting; Chair Robas also asked that Captain Dave Leech be contacted to see if there is public access meeting space available in the Ft. Pierce area to conduct the board meeting as the members may be required to lodge outside of the Ft. Pierce area because of the hurricane repair going on in the immediate Ft. Pierce area

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Robyn Barineau  
Executive Director  
January 24, 2006