



Options to Modify Harbor Pilot Oversight Could Improve Regulation and Rate Setting

at a glance

The Florida Department of Business and Professional Regulation houses two boards that oversee harbor pilots. The Board of Pilot Commissioners licenses and regulates harbor pilots who operate as independent contractors within their local associations. The Pilotage Rate Review Board oversees requests for rate increases to ensure that rates are fair, just, and reasonable.

The Legislature could consider several options for modifying Florida's current harbor pilot regulatory and rate-setting systems, including

- maintaining the current system, but making changes to address concerns about foreign ships that frequent Florida ports and regulatory and rate-setting consistency, and
- implementing an alternative regulatory or rate-setting process similar to that used by other states or by the federal government.

Scope

As directed by the Legislature, this report examines state regulation of harbor pilots and answers four questions.

1. How are harbor pilots regulated in Florida?
2. How are harbor pilot rates established?
3. What alternative regulatory and rate-setting systems for harbor piloting are used by other states and governments?
4. What options could the Legislature consider for modifying harbor pilot regulation?

Background

The maritime industry is important to Florida's economy. A study conducted for the Florida Ports Council found that the cargo shipping industry had an estimated statewide economic impact of approximately \$66 billion in 2008. The U.S. cruise industry also has a large physical and economic presence in Florida; in 2008, passengers, crew, and cruise lines spent \$6.3 billion in the state.

The U.S. Coast Guard is charged with ensuring the safety of the nation's navigable waters to support maritime industries and prevent damage to vessels, bridges, other structures, and the environment. The Coast Guard issues federal pilot's endorsements that are required for individuals that pilot U.S.-flagged ships sailing between U.S.

ports.^{1, 2} The Coast Guard also regulates U.S. harbor pilots operating on the Great Lakes, as these lakes include international waters and Canadian ports.

Florida regulates foreign-flagged ships and U.S.-flagged ships coming from foreign ports, which reportedly make up the bulk of ships entering or leaving Florida ports. To help protect against economic and environmental damages from accidents on Florida waterways, the state requires ships to use state-licensed harbor pilots who have detailed knowledge of local conditions such as water depth, currents, tides, and navigational hazards and how these factors affect ship movements in port channels. Pilots serve as advisors to shipmasters (captains) when taking ships into or out of port, but the shipmasters are ultimately responsible for the safe navigation of their vessels. Harbor pilots serve 11 of Florida's 14 deep-water ports (see Appendix A).³ Pilots belong to local pilot associations that coordinate piloting services, with members sharing expenses and compensation.

Prior to 1975, the Legislature set the number of harbor pilots authorized in each Florida port, and local boards regulated pilot services. The 1975 Legislature established the Board of Pilot Commissioners to oversee statewide licensing and regulation of harbor pilots; the board is administratively housed within the Department of Business and Professional Regulation.⁴ In 1994, the Legislature established a second board, the

Pilotage Rate Review Board, to oversee rate setting for pilot services.

Licensing fees and an annual assessment on gross state pilotage revenues support state regulatory costs.⁵ The department reported that its costs for regulating 94 state-licensed harbor pilots and 4 certified deputy pilots in Fiscal Year 2008-09 were \$378,088. The department also reported a deficit of \$18,705 at the end of the fiscal year, as its regulatory costs exceeded revenues.⁶

Technology and port improvements have enhanced ships' ability to safely enter Florida waters since the state began licensing harbor pilots in 1975. For example, most ships now use Global Positioning System receivers to more precisely determine their location and electronic charts that can be updated to reflect current conditions. In addition, some large vessels such as cruise ships have steerable propulsion pods and thrusters to improve their maneuverability.⁷ Moreover, many ports have deepened and widened their shipping channels. As a result of these improvements, shipping concerns have raised questions regarding whether the state should change its requirements that most ships use licensed state pilots when entering and leaving Florida ports. Harbor pilots, however, assert that the larger ships prevalent today are more difficult to maneuver and represent a greater risk to the port, the environment, and other ships.

¹ Ships fly the flag of the country where they are registered. Some countries like the United States require registered ships to comply with labor, safety, and other regulations. Ships often register with other countries that have minimal regulatory requirements.

² Federal law prohibits foreign-flagged ships from traveling directly between U.S. ports without making an interim stop at a foreign port.

³ Three deep-water ports in Florida are inactive and not currently served by state harbor pilots - Boca Grande, Fort Myers, and Port St. Joe.

⁴ Chapter 310, *F.S.*

⁵ Section 310.131, *F.S.*, requires the department to assess the state-licensed pilots a percentage (not to exceed 2%) of their gross pilotage earnings each year, which is used to pay for regulatory costs.

⁶ In Fiscal Year 2007-08, the department reported regulatory costs of \$303,729 and a surplus of \$33,097.

⁷ Marine propulsion units consist of electrically driven propellers mounted on a steerable device that allows the ship to make horizontal movements.

Questions and Answers –

How are harbor pilots regulated in Florida?

Florida law specifies licensing requirements and other regulations governing harbor pilots. The licensure process typically takes several years to complete. State law also prescribes the responsibilities of the Board of Pilot Commissioners and the Pilotage Rate Review Board. Both boards have extended vacancies and members are serving with expired terms, which may affect the boards' effectiveness. The state has little evidence to assess the overall effectiveness of its regulatory processes.

The licensure process takes several years and requires on-the-job training, state examination, and licensing. The process for becoming a licensed state harbor pilot requires several steps and typically takes several years to complete. Individuals may not apply for pilot licensure until the board declares an opening at a port upon the request of the local pilot association. Applicants must possess certain minimum maritime credentials, including a Coast Guard license as an unlimited second mate and at least two years of maritime service. The board approves the applicant to sit for an exam administered by the department that is specific to the port(s) at which the applicant wishes to serve. This examination includes drawing a detailed chart of the harbor and its channels, including factors such as water depth and navigational hazards.

Once these steps are completed, the department certifies as qualified all candidates that pass the exam. The secretary selects the person to fill the vacancy, most often the individual with the highest exam score. The candidate must then complete a minimum two-year training program as a certified deputy

harbor pilot before being eligible for state licensure. This training program is essentially an apprenticeship in which the deputy pilot accompanies and learns from the port's state pilots. In the later stage of the training program, a deputy pilot serves as an advisor to a shipmaster while a pilot oversees his or her activities.

Once a deputy pilot has completed the training program and obtained a Coast Guard first-class unlimited pilot's endorsement covering the waters of the port, the port's pilot association requests that the board allow the deputy pilot to take an examination to become a state pilot. This examination is similar to the deputy pilot's examination.

Board vacancies and expired terms may affect regulatory effectiveness. The Board of Pilot Commissioners licenses pilots, determines the number of state-licensed pilots for each port, and administers discipline for the profession. The Pilotage Rate Review Board sets pilotage rates for individual Florida ports. The Department of Business and Professional Regulation provides administrative, investigative, legal, and other support services for both boards. The Governor appoints members of both boards, subject to Senate confirmation.

Both boards are experiencing vacancies and many members are serving with expired terms. As of November 30, 2009, the 10-member Board of Pilot Commissioners had one member serving on a current term, one vacancy, and the remaining eight commissioners were continuing to serve although their terms had expired, including the chair, whose term expired in 2006.⁸ The seven-member Pilotage Rate Review Board had four vacancies and the remaining three members were continuing to serve after their terms expired.

⁸ Section 20.165(5)(c), *F.S.*, allows a member whose term has expired to continue to serve on the board until a replacement is appointed.

These vacancies and expired terms may affect stakeholder perspectives on the boards' effectiveness and reduce the expertise and representation intended by state law. For example, the Pilotage Rate Review Board is currently operating without two statutorily mandated members, a certified public accountant and a Coast Guard-licensed unlimited master, which can affect stakeholders' opinions on whether the board possesses the range of expertise intended by the Legislature. Due to vacancies, a majority of the current members of the Board of Pilot Commissioners are licensed pilots, although state law provides that state pilots fill only 5 of 10 board seats.⁹ The lack of a statutorily mandated balance in pilots and non-pilots may result in allegations of bias in board decision making.

The Board of Pilot Commissioners has taken disciplinary action against three state licensed harbor pilots during the last three fiscal years. The board may take disciplinary action against pilots for various violations, such as being unable to perform their duties with reasonable skill and safety due to alcohol or drug use or illness, failing to navigate with caution in restricted visibility, and failing to obtain or properly use available information.

The Department of Business and Professional Regulation investigates complaints, most of which are self-reported marine incidents.^{10, 11} Department staff

⁹ The current Board of Pilot Commissioners includes five harbor pilots and four maritime consumer members. The current membership of the Pilotage Rate Review Board includes a retired administrative law judge and two consumer representatives.

¹⁰ Section 310.111, *F.S.*, provides that each collision, grounding, stranding, or other marine peril sustained or caused by a vessel on which there was employed a licensed state pilot or certificated deputy pilot must be reported to the board office or the piloting consultant within 48 hours of the occurrence. While pilots are required to report their own marine incidents, others are not prohibited from also doing so. Marine incidents may or may not involve allegations against a harbor pilot. For

investigate all legally sufficient complaints and then present the information to a board panel for review. As shown in Exhibit 1, during Fiscal Years 2006-07 through 2008-09, the department received a total of 54 marine incident complaints, of which 49 met the state threshold for legal sufficiency, resulting in an investigation of a pilot.¹² The board panel sought disciplinary action in seven cases, and three resulted in disciplinary action by the Board of Pilot Commissioners.¹³

Exhibit 1
The Board of Pilot Commissioners Investigated 54 Complaints in the Last Three Fiscal Years and Took Disciplinary Action Against Three State Pilots

	Fiscal Year		
	2006-07	2007-08	2008-09
Complaints Received	28	3	23
Complaints Deemed Legally Sufficient	26	2	21
Complaints with Probable Cause Determination	2	3	2
Disciplinary Actions	2	1	0

Source: Department of Business and Professional Regulation.

example, a marine incident such as a stranding may result from the mechanical failure of a ship not related to a pilot's decisions. Nevertheless, the incident must be reported to the board.

¹¹ Self-reported marine incident data may not be comprehensive and cannot be independently verified.

¹² Section 455.225(1)(a), *F.S.*, provides that a complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred.

¹³ One case in 2004 resulted in payment of disciplinary costs (\$1,337) as well as additional continuing education and training. The second case in 2004 resulted in a fine (\$500), payment of costs (\$391), and a formal reprimand. A 2005 case resulted in 18 months probation, payment of costs (\$3,516), and license suspension for 14 days.

Representatives of state harbor pilots and the shipping industry have widely varying opinions on many aspects of the current regulatory system, including its effectiveness. For example, shipping concerns asserted that because harbor pilots are not personally liable for damages in the event of an accident, the pilots are not sufficiently accountable. Piloting concerns asserted that pilots are accountable because they can lose their licenses if they violate state regulations. For a summary of these differing opinions, see Appendix B.

How are harbor pilot rates established?

Fees for harbor pilot services in Florida are based on the size of the vessel, with larger ships paying higher fees, but also vary among ports. The Pilotage Rate Review Board considers a number of factors when deliberating rate change requests, including the average net income of pilots serving a port.

Pilotage rates are primarily based on ship size and vary among Florida's ports. The Pilotage Rate Review Board generally prescribes pilotage rates based on a ship's size, measured as its gross tonnage, and draft.¹⁴ A ship's gross tonnage represents its total capacity expressed in volumetric tons and its draft represents the ship's depth below the waterline.¹⁵

Rates charged for tonnage and draft vary among ports (see Exhibit 2). For example, rates for pilot services at the Port of Jacksonville are \$.0464 per ton and \$21.20 per foot of draft, while the comparable rates for Port Canaveral are \$.028 per ton and

\$12.50 per foot of draft. A large vessel (gross tonnage of 23,200 tons with a 20-foot draft) would pay \$1,500 for piloting services in Jacksonville, while the same ship would pay \$900 in Port Canaveral. The shipping company pays these fees for each one-way trip into or out of a port.

The Pilotage Rate Review Board oversees the rate-setting process, which involves several steps.

- A pilot association or another party whose interests are substantially affected by pilotage rates submits an application to the Pilotage Rate Review Board requesting that the rates be changed in a specific port.
- The board's Investigative Committee visits the port to hold a public meeting at which stakeholders can provide input on the proposed rate change. Once the investigation is complete, the committee presents a report on the proposed rate change to the board.
- The board then conducts a public hearing on the proposed rate change, takes testimony from interested parties, and either approves the requested rate change, approves a modified rate change, or disapproves any change.

The Pilotage Rate Review Board considers many factors in reviewing rate change requests. State law requires that rates for pilotage fees be fair, just, and reasonable.¹⁶ When reviewing rate change requests, the Pilotage Rate Review Board is to consider many factors, including the average net income of pilots in the port, pilotage rates in other ports, the amount of time each pilot spends on actual piloting duty, the prevailing compensation of individuals in other maritime services of comparable skill and standing, the effect the rate change may have on individual pilots, projected changes

¹⁴ Two ports, Panama City and Pensacola, do not have a gross tonnage rate but instead use a rate based on the following formula: Ship unit = (Length X Width)/100.

¹⁵ Section 310.151 (6), *F. S.*, requires the board to base pilotage fees on factors besides a ship's gross tonnage and draft, such as its length, beam, and height above the waterline. However, the board has historically set pilotage rates based only on a ship's tonnage and draft.

¹⁶ Section 310.151(3), *F.S.*

in vessel traffic, and special characteristics and risks of a particular port.¹⁷

Net income of pilots is defined as the total pilotage fees collected in the port minus reasonable operating expenses divided by the number of licensed and active state pilots within the port. Given that total pilotage fees can rise and fall with the economy, association revenues also can fluctuate due to economic changes. Pilot expenses vary over time, but typically include the purchase and maintenance of pilot boats, the costs associated with hiring employees, and retirement and medical plan costs. The different pilot associations may have vastly different operating expenses, methodologies for calculating costs, and obligations regarding pilot benefits and retirement.

Under state law, pilot compensation must equal or exceed the compensation available to individuals in comparable maritime employment. Current annual compensation for Florida harbor pilots ranges from an estimated \$100,000 to over \$400,000, varying among ports due to differences in factors such as pilotage rates and shipping volume.

The upper end of Florida's pilot compensation range is similar to pilot compensation levels in other states with large ports. For example, pilots in Charleston, South Carolina, and Savannah, Georgia, earn estimated annual salaries of between \$460,000 and \$560,000.^{18, 19} In contrast, experienced

cruise ship captains who are ultimately responsible for safely navigating ships into and out of ports reportedly earn between \$180,000 and \$195,000 a year. As shown in Appendix B, the state harbor pilots and the shipping industry hold differing opinions regarding the appropriate comparison for pilot compensation.

Information used to support rate changes is not standardized and is not verified by the board. Two concerns exist regarding the state's current harbor pilot rate-setting process. First, no standardized measures exist for certain pilot activities considered in rate-setting such as the time spent on actual piloting duties ("bridge time") and length of time in transit, which by one definition can include wait time and time spent on administrative tasks.²⁰ As a result, the board receives information from the various pilot associations that use different workload measures and data to support rate change requests.

Second, the board's Investigative Committee does not verify bridge and transit time information supplied by pilot associations. Instead, the board uses historical data from prior rate requests and accepts association-provided pilot workload data as being accurate. The absence of standardized and verified measures introduces subjectivity into the rate-setting process, which may contribute to the board approving unnecessary changes in pilotage rates. In addition, the subjective nature of the process may contribute to conflicts between pilots and shipping interests.

¹⁷ Section 310.151(5)(b), *F.S.*

¹⁸ A 2008 study conducted for the Galveston, Texas harbor pilots notes that in some cases, pilot organizations act like employers and pay the cost of employee benefits such as health, dental, disability and life insurance and pension contributions. In other organizations, pilots act as independent contractors and shareholders in the pilot organization, which may pay part or none of the pilot's benefits.

¹⁹ In response to a 2009 rate increase request, the Pilotage Rate Review Board's Investigative Committee suggested

that pilot associations should include fringe benefits when calculating pilot compensation since the associations pay some benefits.

²⁰ The distance a ship has to travel upon entering pilotage waters to reach its berth varies among ports. For example, the distance a ship has to travel to reach a berth in the Port of Tampa is approximately 45 miles while a ship reaching a berth in Port Everglades would travel an estimated 2.5 miles.

Exhibit 2

Rates for Pilot Services Vary Significantly Among Ports

Florida Port	Rate per Foot of Draft	Rate per Gross Ton	Small Vessel Total Fee ¹	Large Vessel Total Fee ²
Fernandina	\$23.09	\$0.05183	\$545.20	\$1,664.26
Fort Pierce	12.50	0.015	255.50	598.00
Jacksonville	21.20	0.0464	520.80	1,500.48
Key West	18.40	0.0345	401.34	1,168.40
Miami	17.43	0.0364	404.79	1193.14
Palm Beach	14.75	0.033	332.59	1,060.60
Panama City	25.00	Not applicable ³	882.40	1,655.61
Pensacola	20.00	Not applicable ³	710.00	1,279.27
Port Canaveral	12.50	0.028	295.00	899.60
Port Everglades	13.30	0.0356	328.40	1,091.92
Tampa	37.96	0.07	825.59	2,383.20
Average (mean)	\$19.65	\$0.0389	\$500.14	\$1,317.68

¹ 2,033 tons with 18 feet of draft.

² 23,200 tons with 20 feet of draft.

³ Two ports, Panama City and Pensacola, do not have a comparable gross tonnage rate but instead use a rate based on the following formula:
Ship unit = (Length X Width)/100.

Source: Pilotage Rate Review Board.

What alternative regulatory and rate-setting systems for harbor piloting are used by other states and governments?

Florida's current regulatory system for pilot services resembles the systems used in most other states, although states differ in their rate-setting processes. The U.S. Coast Guard regulates U.S. harbor pilots operating on the Great Lakes as well as pilots on U.S.-flagged ships. Other countries use alternative systems to regulate pilotage for foreign-flagged vessels.

Florida's regulatory model for pilot services is similar to that used by other states. Other states use a regulatory system similar to Florida's system that includes pilot licensure, pilot associations, and state regulatory boards. For example, the Virginia Board for Branch Pilots, housed in the state's Department of Professional and Occupational Regulation,

licenses and disciplines pilots while a separate commission sets pilotage rates. Maine, Oregon, and South Carolina use a single board or commission that both licenses pilots and sets rates. In each of these states, pilot associations function similarly to those in Florida with regard to coordinating piloting services and related business activities.

Other states use state boards for licensing and regulation, but have different mechanisms to set rates. In Alaska, a state board adopts pilotage rates proposed by the pilot associations and holds a hearing only if there is an objection to the proposal; however, ship owners also have the option to negotiate rates with individual pilot associations. In Delaware and New York, state boards regulate pilots, but the state legislature sets pilotage rates. In Alabama, the state pilotage commission sets rates and the legislature approves them. In Maryland, the state's public service commission sets pilotage rates.

California uses several systems to regulate harbor pilots. California harbor pilots are regulated differently depending upon the port in which they operate. In San Francisco, the pilot association operates under a state board that administers licensing and regulatory functions in the same manner as Florida. However, in four California ports, including Los Angeles and Long Beach, harbor pilots are only required to have a U.S. Coast Guard license.²¹ Long Beach contracts with a private firm to provide piloting services, with shipping companies paying for these services as part of the port tariffs set by the city. This contractor determines the number of pilots needed to meet the demand for the services. Los Angeles hires pilots as municipal employees and determines how many pilots it will employ. It also determines the pilots' pay and benefits; the cost of using these services is part of the port's tariffs.²²

The U.S. Coast Guard oversees piloting on the Great Lakes and issues U.S. pilot endorsements. The U.S. Coast Guard regulates U.S. harbor piloting in the Great Lakes because these lakes include international waters and Canadian ports. Under treaty, the Coast Guard has the authority to determine the number of pilots and set pilotage rates for ships entering U.S. ports. Pilotage rates are based on a formula that takes into account the average compensation for shipmasters and mates on the Great Lakes vessels and pilot bridge hours.

The Coast Guard also licenses U.S. pilots. Under federal law, U.S.-flagged ships must have a federally endorsed pilot on board when operating between U.S. ports.²³ When operating with a federally-endorsed pilot on board, U.S.-flagged ships are not required to have a state

harbor pilot on board, although the ship may choose to use the services of a state harbor pilot.²⁴ The Coast Guard does not determine the number of pilots or set pilotage rates, but can take disciplinary action against federally-licensed pilots.

Some countries allow alternative regulation for foreign ship officers. Harbor pilot services are typically required in ports throughout the world. However, some European countries, including Belgium, France, Norway, Portugal, and the United Kingdom, allow for alternative pilotage of foreign-flagged ships through a pilotage exemption certificate. This certificate allows shipmasters or other officers to bring ships into port without a harbor pilot on board.

Qualifications for obtaining an exemption certificate vary somewhat among countries, but generally include a ship's officer having to demonstrate that he or she possesses necessary skill, experience, and knowledge of local port conditions; passing a written or practical examination; and completing a specified number of trips to the port within a given time period. Some countries restrict exemption certificates to individuals meeting language requirements. For example, the United Kingdom requires English proficiency while Norway requires proficiency in either a Scandinavian language or English. The level of ship officer experience required for an exemption certificate also may vary depending on the size and type of vessel (e.g., cargo versus passenger). For example, the port of Southampton in the United Kingdom requires a passenger ship officer to complete 12 round trips to qualify for an exemption, while the ship officers of other vessels are required to complete 6 round trips.^{25, 26}

²¹ The *Memorandum of Agreement between the U.S. Coast Guard, the State of California, and certain California Ports* governs requirements for pilots on vessels engaged in foreign trade. The ports are responsible for establishing apprenticeship programs and any additional requirements deemed necessary.

²² Pilots in Los Angeles belong to the local longshoreman's union, which negotiates on their behalf.

²³ U.S. government vessels have the option to use Department of Defense harbor pilots, individuals (either military or civilian) who are employed to provide harbor pilot services to these ships.

²⁴ Florida law requires state pilots to have a federal pilot's license for the port(s) they service.

²⁵ Our review of pilot exemption certificates used in other countries indicates that these certificates are used primarily for short sea shipping, which refers to shipping excursions occurring on a single continent without crossing an ocean.

²⁶ In 2005, the U.S. Coast Guard approved changes by the U.S. Virgin Islands Port Authority to allow pilotage exemption certificates issued by the port authority.

Pilot exemption certificates have been available since 1988 at all ports in the United Kingdom and are typically used by pilots of smaller vessels rather than larger cruise ships.

What options could the Legislature consider for modifying harbor pilot regulation?

The Legislature could consider several options for modifying Florida's current harbor pilot regulatory and rate-setting systems, including maintaining the current system but making changes to address concerns raised by shipping industry representatives about foreign ships that frequent Florida ports and the state's regulatory and rate-setting processes. Alternatively, the Legislature could implement a new regulatory or rate-setting process. Exhibit 3 presents the advantages and disadvantages associated with each option. However, data are not available to draw definitive conclusions about the impact of these alternatives.

When contemplating changes to harbor pilot regulation and rate setting, the Legislature may wish to do so in the context of impending changes to the current pilot workforce. The potential for a significant number of active harbor pilots to retire over the next decade could affect the supply of harbor pilots in the coming years. Specifically, the state's 94 active harbor pilots range in age from 32 to 69; with 44% of active pilots age 55 or older. Accordingly, the state should consider whether current pilot selection and training provisions will produce the needed numbers of highly competent pilots in coming years. In addition, should the Legislature choose to maintain the current regulatory structure, it may wish to encourage the Department of Business and Professional Regulation to continue working with the Governor's Office to address vacancies in the Board of Pilot Commissioners and the Pilotage Rate Review Board.

Options to modify the current regulatory system. The Legislature could consider several changes to the current regulatory system to address concerns raised by shipping industry representatives. These changes could include (1) allowing pilot exemption certificates for officers of foreign-flagged ships that make frequent calls at Florida ports; (2) establishing a formula to determine pilot fees; and (3) establishing a formula to determine the number of pilots needed at each port.

Issue exemption certificates for certain officers of foreign-flagged vessels. Operators of foreign-flagged vessels that frequently enter Florida ports using the same captain and crew, such as cruise ships, that dock multiple times each month, assert that their vessels do not need to hire harbor pilots because their ship officers are capable of safely navigating the port. These operators also assert that the need to hire Florida pilots for routine trips unnecessarily increases their costs.

To address this issue, the Legislature could consider establishing pilotage exemption certificates as are used by other countries. These exemption certificates would authorize select, qualified ship officers to pilot their own ships when entering or leaving specific ports. Exempting certain ships from the requirement to use Florida pilots would reduce shipping costs and could make Florida's ports more competitive. However, pilot associations oppose this option and suggest that it would increase risks because a ship piloted by an inexperienced person could run aground and become damaged, blocking the shipping channel and producing major economic and environmental consequences to the port and Florida's economy. The economic effects of a blocked channel would include lost wages and a disruption of the supply chain resulting in shortages, higher prices, and lost sales revenue.

If the Legislature chose to implement this option, it would need to establish fees to cover the costs of processing the certificates. The port of Southampton in the United

Kingdom charges £150 (approximately \$248) in addition to 25% of the normal pilotage fee for the first 100 trips into or out of port where an exemption certificate is used.

Develop a formula to determine maximum pilot fees. To establish a more uniform rate-setting method, the Legislature could direct the Pilotage Rate Review Board to establish a formula to determine maximum rates for piloting services that takes into account factors such as the length of a trip. In addition, the board could take steps to ensure that information it uses to support rate changes is verifiable.

A more uniform rate-setting method may help ensure that pilot rates are fair, just, and reasonable, as required by state law. However, pilots may not support changes to the rate-setting process because they believe the current system appropriately accounts for unique differences in each port. These differences include the length of the ship's travel into port (which can vary from less than 3 miles to over 47 miles), river currents and other hazards, and levels of shipping traffic.

Establish a formula to determine the number of pilots per port. To effectively manage workload in Florida ports, the Legislature could direct the Board of Pilot Commissioners to establish a system similar to the Great Lakes system, which relies on a formula to establish the number of pilots needed in each port. This would entail using standardized workload measures, such as the amount of time a pilot is on duty on a vessel, to determine the number of pilots needed. The advantage of this option is that it would help the board make more consistent decisions in establishing the number of pilots needed by state ports. However, pilots may oppose formulas that do not take into account the unique characteristics of each port.

Options to establish new regulatory and rate-setting processes. The Legislature could establish a different regulatory system to address shipping industry representatives' concerns. There are several alternative systems that the Legislature could consider that are used by other jurisdictions, including providing local

regulation for harbor pilots; abolishing the current state regulatory system and relying on federal licensing; and creating a new rate-setting system in which the Legislature or some other entity directly establishes pilotage rates.

Adopt local regulation of pilot services. The Legislature could grant individual ports control of harbor piloting for their area, relieving the state of this responsibility. Each port could establish its own regulatory system, which could include licensing pilots, using contractors, or hiring pilots as local government employees. Each port also would establish the number of pilots needed, regulate pilot licensing, and control pilotage rates. The advantage of this decentralized system is that it would reduce the size of state government and move regulatory authority closer to the local level where services are provided. However, this option could result in a lack of uniformity in regulating piloting within the state because each port would implement regulations that address its unique characteristics.

Abolish state regulation and rely on federal licensure. The Legislature could eliminate state regulation of harbor pilots and require that persons who pilot foreign-flagged ships in Florida ports possess a federal first-class harbor pilot endorsement. The state would no longer license or discipline pilots, but would rely on the Coast Guard for regulation. This change could increase competition and potentially reduce pilotage rates and shipping costs. However, this option would reduce licensure requirements, as the federal licensing system requires pilots to complete 20 trips into a port, while Florida's current system requires pilots to serve a two- to three-year deputy pilot apprenticeship before being licensed. Pilots assert that persons with less experience may be more prone to violate safety rules and increase risks to ports.

Create alternative rate-setting procedures. The Legislature could directly set pilot rates or assign this responsibility to the Public Service Commission rather than the current Pilotage Rate Review Board. Rate setting or approval by elected officials or the Public Service Commission may have more credibility than the current system,

which relies on appointed volunteers. Both the Legislature and the commission have professional staff that could provide research and verify data, and both hold public hearings that provide opportunities for public input. However, pilot associations may oppose this alternative as they believe the current system is fair and transparent and that such changes could politicize rate setting, create an adversarial process, and increase costs to participants.

Agency Response ---

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Interim Secretary of the Department of Business and Professional Regulation to review and respond. The Interim Secretary's written response is included in Appendix C.

Exhibit 3
The Legislature Could Consider Several Options to Modify Harbor Pilot Regulation

Modify the Current Regulatory or Rate-Setting System		
Action	Advantage	Disadvantage
Issue pilotage exemption certificates	<ul style="list-style-type: none"> ▪ Could reduce shipping costs and make Florida’s ports more competitive. 	<ul style="list-style-type: none"> ▪ Having foreign ship officers pilot their own ships might pose increased security, environmental, and economic risks. ▪ Safety could be threatened, as shipmasters are distracted with responsibilities other than navigation. ▪ Could increase state costs because it would require the state to establish an administrative structure.¹
Establish a formula to determine maximum pilotage fees	<ul style="list-style-type: none"> ▪ Increased consistency and/or objectivity in rate setting. 	<ul style="list-style-type: none"> ▪ Such a formula might not be feasible or useful because of the unique characteristics of each port.²
Establish a formula to determine the number of pilots per port	<ul style="list-style-type: none"> ▪ Could reduce the conflict over the process by providing greater consistency. 	<ul style="list-style-type: none"> ▪ Such a formula might not be feasible or useful because of the unique characteristics of each port and a concern that bridge time cannot be standardized.³
Implement New Regulatory or Rate-Setting Systems		
Action	Advantage	Disadvantage
Authorize local regulation	<ul style="list-style-type: none"> ▪ Move regulation closer to those being regulated. 	<ul style="list-style-type: none"> ▪ Might result in lack of uniformity of piloting regulation across Florida. ▪ Might threaten port safety with ports competing for each other’s business.
Abolish state regulation in favor of federal government authority	<ul style="list-style-type: none"> ▪ Competition between pilots could result in reduced pilotage rates. 	<ul style="list-style-type: none"> ▪ Might threaten port safety because of less stringent federal requirements and competition between pilots. ▪ Could be difficult to ensure continual pilot availability in a competitive environment.
Require Legislative approval of pilotage rates	<ul style="list-style-type: none"> ▪ Might lend more legitimacy to the rate-setting process. ▪ The Legislature has staff that can analyze and verify data. 	<ul style="list-style-type: none"> ▪ Might further politicize rate setting ▪ The current system is perceived by pilot representatives to be fair and transparent.
Authorize another independent entity, such as the Public Service Commission (PSC) to set pilotage rates	<ul style="list-style-type: none"> ▪ The commission has experience in rate setting. ▪ The commission has staff that can analyze and verify data. ▪ PSC commissioners are full-time professionals, and all commission positions are filled. 	<ul style="list-style-type: none"> ▪ Rate setting by other states’ public service commissions is perceived by some to be contentious and costly.⁴

¹ A fee could be charged to cover the administrative costs of issuing exemption certificates.

² The U.S. Coast Guard has created a rate-setting formula for the U.S. Great Lakes that takes into account factors such as length of transit and geography.

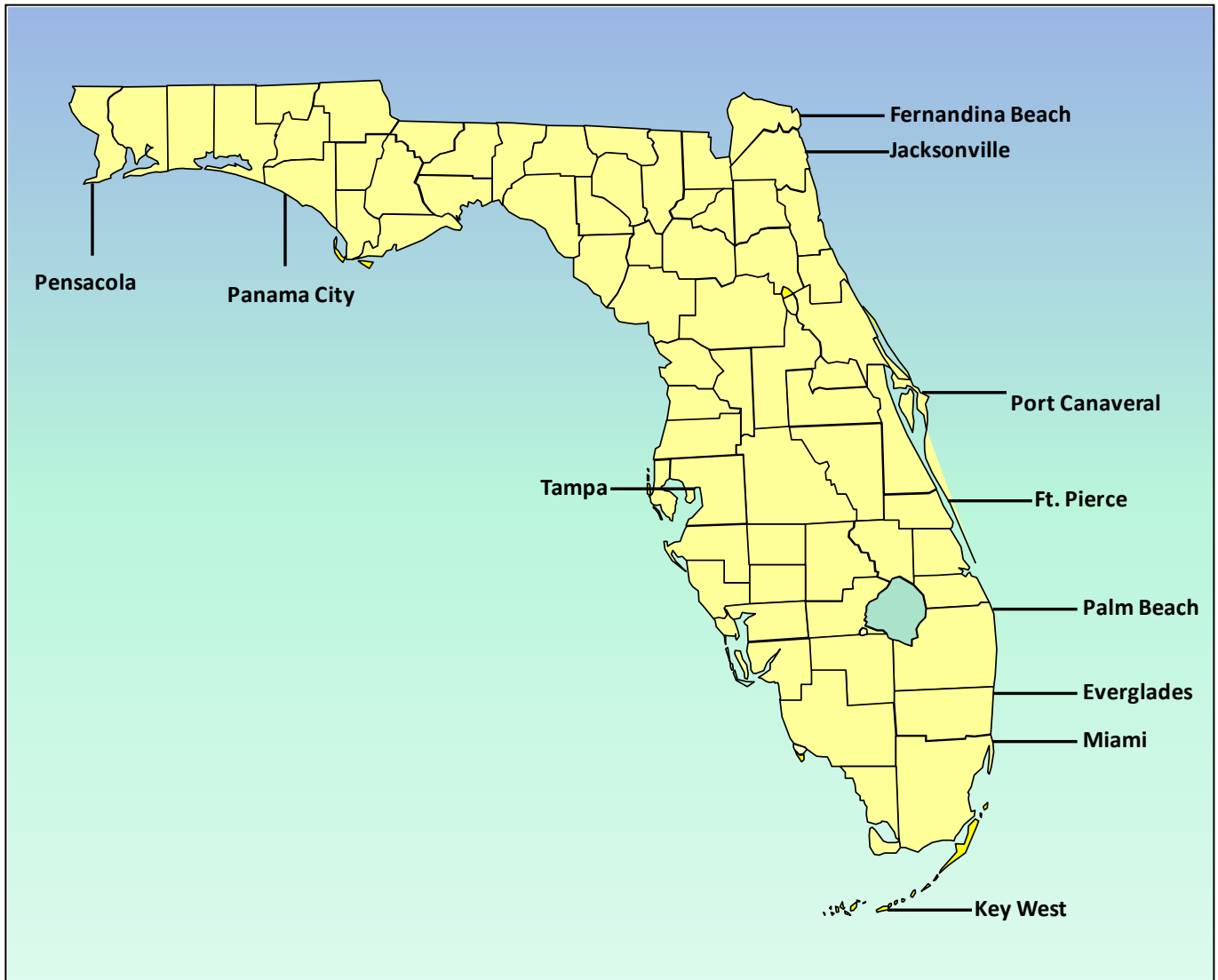
³ The U.S. Coast Guard has created a formula to determine the number of pilots required at U.S. Great Lakes’ ports.

⁴ There has been only one pilotage dispute brought before the Maryland Public Service Commission since 2004.

Source: OPPAGA analysis.

Appendix A

Florida Has 11 Active Deep Water Ports Served by State Harbor Pilots¹



¹ Inactive ports include those located at Boca Grande, Fort Myers, and Port St. Joe.

Source: Florida Ports Council.

Appendix B

Harbor Pilots and Shipping Industry Interests Have Different Positions Regarding the Current System for Pilot Services

State harbor pilots and shipping industry interests hold different positions regarding Florida’s current regulatory structure for harbor pilots. The following table provides position statements that summarize opinions expressed by the Florida State Pilots Association, the American Pilots’ Association, and the representatives of the Florida Alliance of Maritime Organizations.

Issue	Harbor Pilot Position	Shipping Industry Position
Licensing	<ul style="list-style-type: none"> ▪ Florida state regulation of harbor pilots is comprehensive and transparent in its procedures, and separates the licensing and disciplinary functions from the rate-setting function. ▪ Controlling the entrance of pilots into the profession is necessary, as competition among pilots would threaten safety. ▪ State-licensed pilots have minimum qualifications above those of pilots with only a federal license. ▪ State-licensed pilots continually increase their knowledge base by attending ship simulation and other training. 	<ul style="list-style-type: none"> ▪ The regulatory and rate-setting system establishes a state-supported monopoly disconnected from market forces. ▪ State pilots control the number of pilots in Florida as a matter of financial interest rather than solely from a safety concern. ▪ Shipping companies should have the option to use a harbor pilot of their choosing. ▪ In certain circumstances, federally-licensed pilots are as qualified as state-licensed pilots; shipmasters who make regular transits into a port may have better ship-specific knowledge than state-licensed pilots. ▪ State-licensed pilots have minimal statutory continuing education requirements.
Rates	<ul style="list-style-type: none"> ▪ Harbor pilot fees represent a small percentage of port fees and do not affect the competitiveness of individual ports or the state. ▪ Shipping industry pays the costs of harbor pilotage rather than Florida taxpayers. 	<ul style="list-style-type: none"> ▪ Harbor pilot rates can cause a port to be less competitive and can negatively affect Florida’s economy as a whole. ▪ Harbor pilot fees are passed through to consumers and are reflected in increased cargo and cruise ship rates.
Rate setting	<ul style="list-style-type: none"> ▪ No change is needed to the current practice of setting pilotage rates based on draft and tonnage. ▪ No change is needed to the use of a rate review board for setting rates; states that use other systems have experienced problems. 	<ul style="list-style-type: none"> ▪ Use of a ship’s tonnage and draft to set pilotage rates lacks a consistent, substantive basis. ▪ Differences in transit times are not reflected in the rates. ▪ Enhanced maneuverability due to improved technology is not reflected in the rates. ▪ The reliability of information on expenses and costs used to support pilot rate increases is questionable. ▪ There is no unlimited master or certified public accountant currently serving on the Pilotage Rate Review Board as required by statute.

Issue	Harbor Pilot Position	Shipping Industry Position
Compensation	<ul style="list-style-type: none"> ▪ Harbor pilot pay should be compared to other pilots' pay for compensation purposes rather than to shipmasters' pay, because shipmaster duties primarily relate to the management of the ship rather than to the pilot's primary duty of safely navigating the ship in pilotage waters. ▪ Harbor pilots should be compensated to reflect the dangerous nature of their work, especially the boarding process. ▪ State-licensed harbor pilots have large capital expenses that should be considered in rate increase decisions. ▪ Harbor pilot compensation must be sufficiently high to attract the most qualified applicants into the profession. 	<ul style="list-style-type: none"> ▪ Harbor pilot compensation should be comparable to other maritime professions, such as shipmasters, rather than based on pilot compensation at other ports; harbor pilots can also be compared to commercial airline pilots and air traffic controllers for their role in ensuring the public safety of navigation. ▪ Cruise ships have low-level boarding doors, eliminating the need for pilots to climb a long ladder during the boarding process and minimizing risks to pilots. ▪ Some pilot operating expenses and compensation (e.g., pilot retirement packages and replacing pilot association cars every three years) should not be used to support rate increase requests. ▪ Current regulated compensation levels are not required to attract the best and most qualified individuals to become state pilots.
Accountability	<ul style="list-style-type: none"> ▪ Navigation of a ship in pilotage waters is a shared responsibility between the pilot and the shipmaster and bridge crew. ▪ State-licensed harbor pilots are accountable as they can lose their license if they violate state regulations. ▪ Harbor pilots in other states have been held personally liable and criminally responsible for their piloting errors. 	<ul style="list-style-type: none"> ▪ State-licensed harbor pilots act as advisors to shipmasters; the shipmaster has ultimate responsibility for safe passage of the vessel. ▪ Harbor pilots might be legally liable for piloting errors in some cases but in practice, rarely are.
Security	<ul style="list-style-type: none"> ▪ State-licensed harbor pilots undergo a background check to obtain a Transportation Workers Identification Credential (TWIC) provided by the U.S. Transportation Security Administration and the U.S. Coast Guard; crew members of foreign-flagged vessels do not have such clearance. ▪ State-licensed harbor pilots are the "first line of defense" for suspicious activity in Florida's ports; they have a memorandum of agreement with the U.S. Coast Guard that commits pilots to report suspicious activity. 	<ul style="list-style-type: none"> ▪ There is little security screening for harbor pilots compared to ship captains who enter and exit Florida's ports regularly. ▪ State-licensed harbor pilots do not have a formal role in port security.
Safety	<ul style="list-style-type: none"> ▪ State-licensed harbor pilots have minimum training and experience surpassing that of pilots who hold only a federal license, resulting in safer piloting activity. ▪ The small number of disciplinary actions against state-licensed pilots in Florida demonstrates their superior safety. ▪ State-licensed pilots represent the interests of the state and have independent judgment; they are uniquely oriented to prevent major environmental and economic damages to Florida's ports. 	<ul style="list-style-type: none"> ▪ No evidence exists that transits by state-licensed harbor pilots are safer than those by pilots with only a federal license or ship officers who regularly navigate the same waters. ▪ Ship officers, as employees of the shipping interests, have the same level of interest in safe navigation as state-licensed pilots. ▪ State pilots have no accountability to the ports, the Coast Guard, or the owners of the ships they pilot.
Technology	<ul style="list-style-type: none"> ▪ The larger ships prevalent today are more difficult to maneuver and represent a greater risk to the port, the environment, and other ships. ▪ Technology is a tool that is only as beneficial as the user is skilled at using it; it is not a substitute for a pilot's local expertise. ▪ Harbor pilots have expert technological knowledge; pilots introduced much of the current piloting technology. 	<ul style="list-style-type: none"> ▪ Advancements in technology have made operating ships and tugboats safer; larger ships are often easier to maneuver than smaller ones. ▪ Because of technological advances, mariners and federally-licensed pilots have access to the same local knowledge as do state-licensed harbor pilots, minimizing state-licensed harbor pilots' unique contribution to marine navigation. ▪ Pilots have less ship-specific technological knowledge than shipmasters.

Source: OPPAGA analysis based on interviews with pilot and shipping industry representatives.

Appendix C



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Charlie Liem, Interim Secretary

Charlie Crist, Governor

February 4, 2010

Gary R. VanLandingham, Director
Office of Program Policy Analysis and Government Accountability
Claude Pepper Building, Room 312
111 West Madison Street
Tallahassee FL 32399-1450

Dear Mr. VanLandingham:

Attached is the Department of Business and Professional Regulation's response to the February 2010 draft report, *Options to Modify Harbor Options to Modify Harbor Pilot Oversight Could Improve Regulation and Rate Setting*.

We have worked closely with your staff in providing information for your report and offer the following additional information in response to specific OPPAGA proposed legislative options.

We appreciate the time and energy put forth by your staff and we look forward to reviewing the final report. If you need additional information, please contact Ned Luczynski, Inspector General, at 414.6700.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charlie Liem".

Charlie Liem
Interim Secretary

CL/rf

cc: Maureen Olson, Deputy Secretary of Professional Regulation
Ned Luczynski, Inspector General

**Department of Business and Professional Regulation
Response to OPPAGA Report No. 10-xx
Options to Modify Harbor Pilot Oversight Could Improve
Regulation and Rate Setting**

What options could the Legislature consider for modifying harbor pilot regulation?

Options to modify the current regulatory system.

Issue exemption certificates for certain officers of foreign-flagged vessels.

Agency Comment:

This option to modify harbor pilot regulation would not be the Department's recommendation. Pilot Exemption Certificates are generally used for smaller vessels, conducting trade between ports within the same country or for short-sea shipping occurring on a single continent, not in crossing an ocean, similar to our Coast Guard oversight on only U.S. enrolled vessels.

Develop a formula to determine maximum pilot fees.

Agency Comment:

It is correct that the Pilotage Rate Review Board's Investigative Committee does not verify bridge and transit time information supplied by pilot associations. The committee uses historical data, because historically the time it takes to traverse a given port has remained essentially the same unless major changes in channels were made since the rate setting process formalized years ago. The difference today is not the time element, but the size of the vessel and its hydrodynamic effects on vessels and channel parameters when it makes the port call. To date, no entity has questioned the data submitted.

Options to establish new regulatory and rate-setting processes.

Adopt local regulation of pilot services.

Agency Comment:

The Department believes that this option, while possible, is not a workable solution to modify harbor pilot regulation. Under this alternative, eleven new regulatory systems would need to be set up (one for each active port), including governance, staffing, fees, enforcement, review, etc. Additionally, it would be a significant budget concern for local governments and represent a net increase of regulatory costs to the State.

**Department of Business and Professional Regulation
Response to OPPAGA Report No. 10-xx
Options to Modify Harbor Pilot Oversight Could Improve
Regulation and Rate Setting**

Abolish state regulation and rely on federal licensure.

Agency Comment:

The department agrees with the disadvantages of this option to modify harbor pilot regulation that OPPAGA listed in Exhibit 3. (See, Implement New Regulatory or Rate-Setting Schemes, Abolish state regulation in favor of federal government authority, Disadvantages). Moreover, the federal government has a small regulatory presence in Florida, i.e., approximately 2% of the vessels navigating Florida waterways are regulated by the U.S. Coast Guard according to a harbor pilot consultant. It is unlikely that the federal government would be able to increase its scale of operation to include the other 98% of vessels in Florida regulated by the State. In addition, the standards of the federal regulatory system are significantly lower than that of Florida and would impact the public health, safety, and welfare of the State.

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

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