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Harbor Pilots and Pilotage in Florida

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NOTES

HARBOR PILOTS AND PILOTAGE IN FLORIDA

> The pilot is an instrument of the law, a means created and employed by the sovereign to promote commerce, and to such end is invested with certain power and authority as to navigation. . . . This power is the result of an exclusive grant to him and his class by the government. . . . These powers appertain to the public, affect an interest of great magnitude to all commerce and commercial people, and can exist in the hands of the citizen only by virtue of legislative grant.*
>
> —Florida Supreme Court

For Florida, with its fourteen seaports, the movement of goods to and from the state by shipping represents a vital part of its rapid economic growth. An important but often neglected and abused facet of Florida's commercial complex is its harbor pilotage. Although Florida has legislated extensively in this area, making pilotage compulsory for the protection of life and property, the state has failed, in practice, to provide coherent and responsible statutory direction or regulation for the harbor pilot system. Some of the statutes are as antiquated as part of their old English verbage. A re-evaluation of the pilotage situation is essential, particularly in terms of public policy and ultimate state objectives. In order to fully comprehend the operation of the present system and the need for improvement in Florida, it is necessary first to understand how the state pilotage system has developed and how it operates in the United States today.

DEVELOPMENT OF STATE PILOTAGE

A harbor or river pilot is one who takes control of a vessel at a particular place to guide her safely through a river or into and out of a port.[1] He must know specially the local waters in which he operates; when on board a ship his duties are second only to those of the master.[2] Piloting is among the oldest of commercial professions. As early as the fourteenth century England had pilot guilds that provided bodies of licensed pilots.[3] When the Constitution of the United States was adopted each state already had its own regulations for pilotage.[4] Although recognizing that pilotage was within its grant of power "to regulate commerce with foreign nations, and among the several

* State v. Jones, 16 Fla. 306, 310-11 (1878).

1. 70 C.J.S. *Pilots* §1 (1951).

2. HUGHES, ADMIRALTY §12 (1901).

3. U.S. DEP'T OF COMMERCE, PILOTAGE IN THE UNITED STATES (Special Agents Series No. 136, 1917).

4. See Anderson v. Pacific Coast S.S. Co., 225 U.S. 187, 195 (1912).

States,"[5] the first Congress specifically chose not to supersede the state legislation unless the state laws interfered with the flow of commerce or until national legislation became necessary.[6] This gesture of cooperative federalism remains in effect today without significant alteration.

The Supreme Court of the United States has sustained the constitutionality of Congressional adoption of existing state pilotage systems thus giving the state legislation the same validity as if their respective provisions had been enacted by Congress. "Whatever subject of this [commerce] power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress. That this cannot be affirmed of laws for the regulation of pilots and pilotage is plain."[7]

Congress has, however, placed certain limitations and conditions on the states' power to regulate pilotage. "All coastwise seagoing vessels . . . subject to the navigation laws of the United States" shall, except on the high seas, be under the control of a federally licensed pilot when under way.[8] The quoted words are words of art, for the act does not apply to American vessels sailing coastwise under *registry*, but only to vessels under enrollment or license.[9] In effect, the federal government has permitted the states to require and control pilotage of all vessels in state waters except those American vessels under enrollment and license. An American ship under enrollment or license is engaged in domestic or interstate commerce and may not engage in foreign trade under penalty of forfeiture.[10] These vessels must be under the charge of federally licensed pilots who are licensed and regulated by the United States Coast Guard.[11] Other vessels are registered and alone are entitled to engage in foreign trade. The various states may and do *require* that foreign vessels, American registered vessels, sailing vessels, and tows take state pilots or pay full or half pilotage fee.[12] The power of the states to make pilotage compulsory in their ports has been consistently sustained as a valid exercise of of police power in the protection of life and property.[13]

5. U.S. CONST. art. 1, §8.
6. See REV. STAT. §4235 (1875), 46 U.S.C. §211 (1958).
7. Cooley v. Board of Wardens, 53 U.S. (12 How.) 299, 319 (1851).
8. REV. STAT. §4401 (1875), 46 U.S.C. §364 (1958).
9. Anderson v. Pacific Coast S.S. Co., 225 U.S. 187 (1912).
10. REV. STAT. §4337 (1875), 46 U.S.C. §278 (1958).
11. REV. STAT. §4401 (1875), 46 U.S.C. §364 (1958).
12. See Cooley v. Board of Wardens, 53 U.S. (12 How.) 299 (1851); REV. STAT. §4444 (1875), 46 U.S.C. §215 (1958).
13. Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947); Olsen v. Smith, 195 U.S. 332 (1904); Brechtel v. Board of Examiners, 230 F. Supp. 18 (E.D. La. 1964).

The appointments, discipline, and fees of the state pilots are usually controlled by state pilot commissioners or other state officials.[14] Often a pilot will have both a state and a federal license, thus subject to regulation by both governments. Although the United States does not allow a limitation on the number of federally licensed pilots, most of the states have limited the number of state licensed pilots for each port by placing limitations on the number of pilots or apprenticeships for each port.[15] Some states have left the limit or the number of pilots to the reasonable discretion of the designated state authorities.[16] The distinction between enrolled and registered vessels often makes little difference as to who shall pilot the ship because state licensed pilots are usually federally licensed and may pilot an enrolled vessel in a dual capacity as a federal pilot.[17] Many pilots with a federal license, however, have no state license because of the limited number available and are, therefore, precluded from piloting foreign or registered ships.[18]

The constitutionality of requiring a foreign vessel to take on a state pilot has been upheld by the United States Supreme Court against the assertion that the requirement was an unlawful interference with foreign commerce.[19] Although one state may not discriminate against another in pilotage rates or against federally licensed pilots,[20] rates need not be general and uniform throughout the state, but may be regulated according to local needs.[21]

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14. For states currently having regulations on pilotage see the laws of Alabama, California, Connecticut, Delaware, Florida, Georgia, Indiana, Louisiana, Maine, Maryland, Massachusetts, Mississippi, North Carolina, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Washington.

15. *E.g.*, FLA. STAT. §310.03 (1963); PA. STAT. ANN. tit. 55, §41 (1930); S.C. CODE ANN. §56-1413 (1962).

16. *E.g.*, Alabama, where the number of pilots is left to the "reasonable discretion" of the board of pilotage commissioners, ALA. CODE tit. 38, §56 (1958); and Connecticut which provides: "The superior court . . . may . . . license as many residents . . . as said court or such judge deems necessary . . . ." CONN. GEN. STAT. REV. §15-13 (1958). In Florida only Port Everglades has this discretion in the pilot commissioners, see Fla. Laws 1963, ch. 63-1173, at 301.

17. Questionnaires sent to fifty Florida pilot commissioners by the authors on June 26, 1964, revealed that most pilot commissioners require a federal pilot license as a condition to the issuance of a state license although this is not required by Florida statutes. For states requiring a federal license see CONN. GEN. STAT. REV. §15-13 (1958); WASH. REV. CODE ANN. §88.16.090 (1962).

18. Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947); Olsen v. Smith, 195 U.S. 332 (1904); Brechtel v. Board of Examiners, 230 F. Supp. 18 (E.D. La. 1964).

19. Anderson v. Pacific Coast S.S. Co., 187 U.S. 225 (1912).

20. See Olsen v. Smith, 195 U.S. 332 (1904).

21. The Chase, 14 Fed. 854 (D. Fla. 1882).

FLORIDA'S PILOT SYSTEM

Generally, Florida's regulation on pilotage, initially adopted in 1868,[22] is similar to the national pattern. Each county in which a port is situated has a board of pilot commissioners.[23] The board, which is composed of five members appointed by the governor with the advice and consent of the senate,[24] is the regulatory body administering pilotage within the county. These commissioners, who also act as port wardens, serve for four years and may not be interested in any manner with the business of pilotage or the employment of pilots.[25] Many commissioners have been reappointed to successive terms, with some commissioners serving twenty to thirty-five years.[26] The commissioners examine and license pilots[27] and stevedores in the port and harbor for which they are appointed.[28] The pilot commissioners also set pilotage rates[29] and promulgate regulations for the port,[30] as well as rules necessary for the discharge of their duties as pilot commissioners.[31] They are further empowered to suspend pilots or revoke their licenses for any conduct detrimental to commerce or injurious to navigation.[32] For these services, the pilot commission receives one per cent of the gross salary that each port pilot has earned during the year.[33]

Although, in some states, the pilots are officially appointed by the governor[34] and considered officers of the state,[35] in Florida, the pilot

22. FLA. STAT. chs. 310-12 (1963).

23. FLA. STAT. §310.01 (1963).

24. FLA. STAT. §310.01 (1963). See also FLA. STAT. §313.01 which provides for the appointment by the governor, with the consent of the senate, of the harbor master, who under FLA. STAT. §314.03 is an ex officio member of the Board of Pilot Commissioners.

25. FLA. STAT. §310.01 (1963).

26. This was revealed by responses to questionnaires sent by the authors on June 26, 1964, to all the pilot commissioners appointed by the governor. This survey was designed to determine current pilot practices and the way in which they are regulated by the pilot commissioners.

27. FLA. STAT. §310.03 (1963).

28. FLA. STAT. §307.01 (1963).

29. FLA. STAT. §310.11 (1963).

30. FLA. STAT. §310.12 (1963).

31. FLA. STAT. §310.19 (1963). It is further provided in FLA. STAT. §310.20 (1963), that violation of any lawful rule or regulation of the board is punishable by imprisonment up to sixty days or by fine not exceeding one hundred dollars.

32. FLA. STAT. §310.05 (1963).

33. FLA. STAT. §310.26 (1963).

34. *E.g.*, IND. ANN. STAT. §42-1101 (1952); LA. REV. STAT. ANN. §34:945 (1951); ME. REV. STAT. ANN. ch. 99, §1 (1954).

35. See Kotch v. Board of River Pilot Comm'rs, 330 U.S. 552 (1947); Palmer v. Woodbury, 14 Cal. 43 (1859).

commissioners are the sole appointing authority,[36] and the pilots are not considered public officers.[37] In some states, pilots are appointed or licensed for a specific term and must continue to meet certain state qualifications in order to have their license renewed.[38] In Florida, the license is granted during good behavior;[39] there is no requirement of renewal nor additional statutory qualifications such as a periodic check on the physical or mental alertness of the pilots.[40] In fact, the only specific statutory qualification set for obtaining the initial license is the rather vague requirement of examination by the pilot commissioners.[41] The applicable Florida statute concerning this examination reads as follows:[42]

> The board of pilot commissioners shall examine persons who may wish to be licensed as pilots, in all matters pertaining to the management of vessels; also in regard to their knowledge of the channel and the harbor where they wish to act as pilots . . . .

Since the test given to persons seeking to pursue the practice of funeral directing in Florida is given by licensed funeral directors,[43] and the barber test administered by barbers,[44] it would appear that five men unskilled in the profession of pilotage, which requires extremely technical nautical knowledge, would not be qualified to administer an examination in pilot activities. Due to this lack of experience, the boards in most ports consider the possession of a federal license prima facie evidence of qualification to serve as a state pilot.[45] Consequently, in those ports the public and commercial interests are guaranteed that the pilots will meet at least Coast Guard standards, which includes a physical examination every five years.[46] Nevertheless, in practice, the governing body — the commission — follows the recommendations of the pilots in most aspects of pilotage, rather than seeking to govern the pilots according to any specified standard.[47]

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36. FLA. STAT. §310.03 (1963).
37. State v. Jones, 16 Fla. 306, 310 (1878).
38. *E.g.*, Delaware, DEL. CODE ANN. tit. 23, §115 (1953) and a similar statute in Pennsylvania, PA. STAT. ANN. tit. 55, §42 (Supp. 1963).
39. FLA. STAT. §310.03 (1963).
40. *Ibid.*
41. *Ibid.*
42. *Ibid.*
43. FLA. STAT. §470.09 (1963).
44. FLA. STAT. §476.17 (1963).
45. A response to questionnaire, note 26 *supra*.
46. Commandant, U. S. Coast Guard, *A Report on Pilotage in the United States* (1942), prepared at the direction of the Secretary of the Navy.
47. A response to questionnaire, note 26 *supra*.

PILOT ASSOCIATIONS

An overwhelming majority of the state licensed pilots belong to pilot associations.[48] An examination of these associations, which in their modern form have developed within the last eighty years, is perhaps the most convenient approach to the state pilot system.

In early competition unlimited numbers of pilots were forced to fight for whatever pilotage they could get. Often competition was carried to such extremes that pilots would go out as far as two hundred miles from shore to board incoming vessels.[49] Although one author contends that this competition may have increased the alertness of the pilots,[50] most authorities believed this cut-throat system to be unprofitable, unsafe, and erratic, mainly because pilots often were not available when needed.[51]

Realizing the disadvantages of the competitive system, the pilots formed associations. Organized similarly to guilds, these associations were closed groups with membership open only to those acceptable to the present members. By limiting membership in such a manner, the associations were able to shut out unfriendly competition. Shipping and insurance interests encouraged these formations as they apparently facilitated the flow of shipping while making it safer. Since the forming of the associations, cruising grounds for pilot vessels or pilot stations convenient to incoming and out going traffic have been established. Today, the master of a vessel off the entrance of a port may count on finding a pilot in almost any weather to bring the ship in safely.[52]

The typical state pilot association has no counterpart in contemporary business associations, but it does have many of the characteristics of the fifteenth and sixteenth century guilds. Like the guild, the association exhibits the following general characteristics:[53]

(1) a voluntary basis of association,
(2) a fraternity of membership,
(3) highly developed interdependence,
(4) an organization based on democracy,
(5) joint determination of conditions of work and remuneration . . .
(8) common ownership of assets, and
(9) joint efforts for common welfare and protection.

48. LOWE, STATE PILOTAGE IN AMERICA 85 (1960).
49. 1 PARSONS, MARITIME LAW 482 (1863).
50. *Ibid.*
51. *E.g.*, LOWE, STATE PILOTAGE IN AMERICA 24 (1960); *A Report on Pilotage, supra* note 46.
52. *A Report on Pilotage, supra* note 46, at 7.
53. LOWE, STATE PILOTAGE IN AMERICA 13 (1960).

In effect, the organizations are associations for mutual aid in a common profession with a limited membership enjoying monopoly rights in return for service to the state.[54] In 1854, the Supreme Court of Florida upheld the legality of pilots agreeing among themselves to associate for business purposes.[55] The state legislature gave its stamp of approval to pilot organizations in 1903;[56] this law continues in effect today with few changes. The present laws allow the pilots to incorporate themselves.[57]

Although most associations today are not incorporated, an incoming pilot is generally required to purchase a share. The association does no business except as an agent of its members, owns no property, has no income as an entity, is not required to pay income taxes,[58] and usually is not liable for any member's negligence.[59] Earnings of individual pilots are turned over to the association, which pays pensions to retired members and all the expenses of operations, including a percentage compensation to the state appointed pilot commissioners.[60] In some associations, the balance is divided equally among the member pilots, while in others it is prorated according to the amount of work done by each pilot.[61]

Although many of the associations do not have official "retirement" programs, when a member retires he receives, in effect, a pension. In Tampa, for example, a share in the pilot association is valued at thirty thousand dollars. When a pilot owning a full share in the association retires, he is entitled to receive his share in one hundred installments of three hundred dollars per month. At the same time, a new pilot is hired to take the position of the retiring pilot, and he is required to purchase a share in the association in the same installments as it is being paid out. This results in a smooth transition, leaving the association's actual assets relatively unchanged and untouched.

In 1884, the pilot associations in the larger ports formed the American Pilots' Association as a governing body to conduct negotiations between groups to effect uniformity and to promote the interests of pilot associations.[62] The bylaws of the American Pilots' Association expressly provide that the president shall keep up-to-date

54. *Id.* at 28-29.
55. Jones v. Fell, 5 Fla. 510 (1854).
56. Fla. Laws 1903, ch. 5227, §1, at 209.
57. See FLA. STAT. ch. 312 (1963).
58. Mobile Bar Pilots Ass'n v. Commissioner, 97 F.2d 695 (5th Cir. 1938).
59. See Guy v. Donald, 203 U.S. 399 (1906).
60. The percentage in Florida is currently one per cent, FLA. STAT. §310.26 (1963).
61. *A Report on Pilotage, supra* note 46, at 8.
62. LOWE, STATE PILOTAGE IN AMERICA 84 (1960).

on all anti-pilot legislation.[63] At present, forty-five of the state pilot associations are members of the American Pilots' Association.[64] One of the few large ports not represented is Los Angeles, where federally licensed pilots are municipally controlled and paid.[65]

Although the state pilot associations are independent in their respective localities and in their dealings with local authorities, they have delegated certain authority to the American Pilots' Association to represent them in matters of national scope.[66] Since the state licensed pilots are under the exclusive control of the states, a jurisdictional problem arises concerning the activities of those pilots in waters supervised by the Coast Guard. In an attempt to solve this problem, the American Pilots' Association entered into an agreement with the Coast Guard. This agreement, which went into effect April 1, 1963, is summarized as follows:[67]

> (1) There shall be maintained a cordial and frank relationship between the representatives of the American Pilots' Association and the Coast Guard and a prompt and full exchange of information shall be provided for at all times.
>
> (2) State pilots will, in all cases, assist and testify in Coast Guard investigations into marine casualties and other incidents involving possible misconduct, negligence or incompetence not necessarily connected with a marine casualty.
>
> (3) State pilots are subject to federal jurisdiction in all cases when acting under the authority of their federal licenses.
>
> (4) If, as a result of a Coast Guard investigation into a marine casualty or other incident involving misconduct, negligence or incompetence not necessarily connected with a marine casualty, a state pilot is deemed to have been in some measure at fault, a copy of the investigative findings of fact will be forwarded directly to the appropriate State Pilotage Commission for action by the state authorities. The President of the American Pilots' Association will also be furnished a copy of the findings of fact and will undertake to advise the Coast Guard of the Commission's action in the case.
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> (5) The Coast Guard undertakes to provide the appropriate State Pilotage Commission and the American Pilots' Association

63. American Pilots' Ass'n, Inc., Bylaws, art. V, §1 (b) (1962).

64. See Letter From E. A. Clothier, 2d Vice President of American Pilots' Association, to authors, July 28, 1964, on file with *University of Florida Law Review.*

65. Letter From Assistant General Manager, Port of Los Angeles to authors, July 22, 1964, on file with *University of Florida Law Review.*

66. LOWE, STATE PILOTAGE IN AMERICA 86 (1960).

67. Letter From Chief, Merchant Vessel Personnel Division, U. S. Coast Guard to a Florida attorney, Feb. 3, 1964, copy on file with the *University of Florida Law Review.*

with information concerning any action against the federal license of a state pilot. The American Pilots' Association undertakes to provide the Coast Guard with information concerning any disciplinary action by a State Pilotage Commission against a state pilot whether or not the action resulted from an incident referred to the Commission by the Coast Guard as stated in Item 4 above.

(6) Notwithstanding the provisions of Item 4 above, nothing in this agreement will preclude the Coast Guard from assessing monetary penalties for violations of statutes or regulations when deemed appropriate. However, it is understood that in most cases the assessment of such penalties would occur only after the appropriate State Pilotage Commission has had an opportunity to consider the individual case.

(7) The Coast Guard reserves the right, in the event this agreement proves unsatisfactory from the standpoint of safe navigation, to take appropriate action toward establishing a clearer disciplinary jurisdiction over licensed officers piloting vessels in the waters of the United States.

This agreement has no well defined legal status; it is only a memorandum of understanding between the Coast Guard and the American Pilots' Association.

Apprenticeship

Generally, among the associations operating in the Eastern and Gulf ports, new members are recruited only through an apprentice system with the period of apprenticeship varying from six months in New Orleans[68] to four years in New Jersey,[69] Pennsylvania,[70] and Florida.[71] Upon completing this term, an apprentice may receive his license as a full pilot, but only when a vacancy or new position arises. He will then join the local pilots' association and purchase a share of stock, which may vary in value up to several thousands of dollars depending upon the prosperity of the association. The apprentice system is not widely used on the West coast where new members are customarily ex-shipmasters who are able to purchase their way in and are acceptable to the association.

The demanding duties of a pilot call for only the most experienced and qualified personnel. In order to gain a state license, the candidate must pass an examination as to his professional and physical capabili-

68. La. Rev. Stat. §34:993 (1952).
69. N.J. Stat. Ann. §12:8-11 (1939).
70. Pa. Stat. Ann. tit. 55, §44 (1930).
71. Fla. Stat. §310.04 (1963).

ties. Many states require standards of morality and sobriety,[72] and often demand that each pilot give a bond for the faithful performance of his duties.[73]

Section 310.04 of the Florida Statutes, which provides for an apprentice system to train pilots, contemplates a four-year apprenticeship by the indenture of a minor, unversed in pilotage, to a regularly licensed pilot willing to accept the apprentice. In addition, a majority of the port's pilots must approve the written application of the prospective apprentice. If a vacancy exists in the number of apprentices allotted for each port, the board of pilot commissioners is *required* to accept the approved applicant, who is then assigned to a regular pilot boat in order to learn the pilot's trade.[74]

In Florida today, this system is unrealistic and archaic. While the wording of section 310.04 indicates that a minor is to be indentured,[75] Florida's apprentice pilots are in fact selected from the ranks of retired or at least well-experienced seamen, most of whom have master licenses. Because the apprentice is given "prior consideration"[76] by the pilot commission when selecting a new pilot, and because it is virtually impossible to be licensed without first satisfying the pilots,[77] many experienced shipmasters are willing to serve a period of apprenticeship. State pilot licenses are very lucrative, particularly in the larger ports[78] where there are usually hundreds of applications on file. The pilot's job enables a seaman to draw on his valuable maritime experience, hold a very respectable and well-paying job and live at home most of the time. As an apprentice, however, he generally receives a set salary, which is sometimes supplemented by a small commission for each ship handled.[79] Although the apprentice may do substantially the same work as the licensed pilots after his initial training,[80] he does not receive a percentage of the earnings of the association.

The old-fashioned idea of a minor or adult indenturing himself to a "master" and doing menial chores while learning the trade is

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72. ALA. CODE tit. 37, §57 (1958) is an example.

73. *E.g.*, Delaware, DEL. CODE ANN. tit. 23, §113 (1953); Florida, FLA. STAT. §310.03 (1963); Virginia, VA. CODE ANN. §54-536 (1958).

74. FLA. STAT. §310.04 (1963).

75. FLA. STAT. §310.04 (1963) requires parental approval as a condition for indenture.

76. FLA. STAT. §310.03 (1963).

77. A response to questionnaire, note 26 *supra*.

78. *Ibid.*

79. See Letter From C. A. Register and C. O. Barrett to T. N. Brown, Jr., Manager, St. John's Bar Pilots Association, Aug. 13, 1962, copy on file with the *University of Florida Law Review*.

80. *Id.* at 3. See also FLA. STAT. §310.041 (1963), which indicates that many

not only alien to our modern way of life, but also unnecessary and in complete contrast to the training process as it actually operates. Additional training is necessary for even an experienced ship captain because each port has its own peculiar physical characteristics, which must be completely mastered. Nevertheless, a training program for experienced seamen should not require a four-year apprenticeship.[81] A shorter period of a year or less as a trainee, with specific duties, rights, and expectations would be more acceptable, especially if a new trainee were engaged after or soon before a vacancy arose in the ranks of the licensed pilots. Thus, the trainee would be assured of a pilot's position at the onset of his apprenticeship. If no vacancy occurs at the port, the apprentice has no recourse other than to seek other employment or remain an apprentice doing substantially the same work at the licensed pilots, but without the benefits of a full state license and membership in the pilots' association.

One example of how the apprentice system may be used by the pilot association is revealed in a recent Jacksonville situation. An apprentice, in letters sent to all of the member pilots of the St. Johns Bar Pilot Association, requested that the association support an amendment to Florida Statutes, section 310.03 that would increase the number of pilots from nine to eleven so another apprentice and he could become fully licensed pilots.[82] Pending such amendment, the apprentice asked to be paid a share of the net income of the association as well as other benefits.[83] His requests were based on the following contentions:[84]

> (1) He was approximately forty years of age and held a United States Coast Guard license of Master for any gross tons, and a first-class license for any gross tons for the St. Johns River area. He claimed that no member of the association could present a better license or endorsement.
>
> (2) He alleged that he did substantially the same work as the regular pilots. He stated that in 1961 he had handled three hundred and fifty-three vessels, while the average of the regular pilots was only two hundred and fifty-nine. He stated that he customarily did the piloting alone, not under the supervision of any regular pilot, and grossed $42,658.90 in pilotage fees for the association in that year. Yet, the apprentice's annual income was only $6,225.80, while the licensed pilots in the association received over $30,000 as their share.

"apprentices" are soon capable of handling practically any vessel entering port.

81. FLA. STAT. §310.04 (1963).
82. Letter, note 79 *supra*.
83. *Ibid.*
84. *Ibid.*

(3) He further alleged that a situation similar to the one then existing in Jacksonville formerly existed at the Port of Tampa. The apprentice pilots were piloting more than the average pilot and receiving inequitable compensation merely because of the strict limitation on the number of pilot licenses. As a result, the board of pilot commissioners for the Tampa Port recommended and the Florida State Legislature passed an amendment to Florida Statutes, section 310.03, which increased the number of allotted pilots in Tampa from eleven to fifteen.[85] Thus, all of the apprentices were licensed and became full members of the Tampa Bay Pilot Association.

Upon receipt of the apprentice's letter the St. Johns Bar Pilot Association withdrew its agreement of indenture[86] and substantially cut the apprentice's salary. At the request of the apprentice, the pilot commissioners required the association to restore the apprentice's wages and reinstate the indenture.[87] But when his term of apprenticeship was about to expire, the association notified the apprentice that it would not renew his apprenticeship to that organization.[88] Although the apprentice sought legal aid to assure himself a state pilot license so he could operate independently, he was without legal remedy. No position was open in Jacksonville because the port had reached its statutory limit of licensed pilots. Furthermore, even if there were a vacancy, the pilots of the association certainly would not recommend him to the pilot commission.

A local pilot association is understandably not inclined to recommend additional licensed pilots for their ports since it would increase the number of shares by which its income from pilotage fees is divided. Thus, an apprentice's attempts to initiate an increase in the statutory limit of licensed pilots is likely to raise ill will among the pilots. The statute might be amended to afford the apprentice some measure of legal rights because he is unable to bargain at arm's length with the close-knit pilot associations that have traditionally and jealously guarded their monopolies in this country.[89] The inequities become apparent when it is considered that pilotage is not open to free enterprise but rather the associations' monopolies are fully protected by law from competition. A prospective pilot has no choice but to accept an apprenticeship with the port's only pilot association

85. Fla. Laws 1961, ch. 61-348, §3, at 665.

86. Letter From E. P. Teague to C. A. Register, Oct. 4, 1962, copy on file with the *University of Florida Law Review.*

87. See Letter From C. O. Barrett to G. W. Milam, Oct. 8, 1962, copy on file with the *University of Florida Law Review.*

88. Letter From T. R. Priddy to C. A. Register, March 28, 1963, copy on file with the *University of Florida Law Review.*

89. *A Report on Pilotage, supra* note 46.

if he desires to ever become a licensed pilot. It is questionable that laws enacted to preserve the public safety were intended to allow the association to continue a monopoly for the benefit of a limited membership. When a port's traffic requires an apprentice to do as much piloting as a fully licensed pilot,[90] it would seem that there should be some provision for readily increasing the port's number of licensed pilots.

Tampa's present policy of not hiring an apprentice until a vacancy occurs in the ranks of the pilots avoids this type of problem. This approach contemplates a period of training short of the "binding out" of a four-year apprenticeship. It provides for a much smoother transition to the rank of a licensed pilot, because the apprentice does not have to work for four years doing practically the same chores as the licensed pilots for a fraction of the compensation. This operation cuts short the inevitable demands of an adult apprentice, who after an initial training period may pilot vessels without assistance. This practice has evolved in Tampa as a result of past conflicts and currently appears to be a satisfactory solution.

In Louisiana, the pilots have been able to exercise such control over selection of new pilots that mostly members of their own families were serving as state pilots.[91] Only those who had served a six-months apprenticeship and had been certified were eligible for appointment by the governor.[92] The pilots selected the apprentices and were able to completely govern the licensing of pilots. Because of the limitation on the number of pilots, those not chosen were unable to pursue their profession in competition with the local association. In response to a challenge of this law by the excluded pilots, the Supreme Court in 1947 stated, through Mr. Justice Black:[93]

> The practice of nepotism in appointing public servants has been a subject of controversy in this country throughout our history. . . . [But] the advantages of early experience under friendly supervision in the locality of the pilot's training, the benefits to morale and *esprit de corps* which family and neighborly tradition might contribute, the close association in which pilots must work and live in their pilot communities and on the water, and the discipline and regulation which is imposed to assure the State competent pilot service after appointment,

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90. See FLA. STAT. §310.041 (1963), which reveals the present practice for handling this situation.

91. See, *e.g.*, Mobile Bar Pilots Ass'n v. Commissioner, 97 F.2d 695, 697 (5th Cir. 1938); KANE, DEEP DELTA COUNTRY ch. 10 (1944); Kalshoven River Royalty, Saturday Evening Post, Sept. 7, 1946, p. 26.

92. Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947).

93. *Id.* at 563.

might have prompted the legislature to permit Louisiana pilot officers to select those with whom they would serve.

Recently, the Associated Federal Coast Pilots of Louisiana, Inc., a group of ten experienced pilots licensed by the United States Coast Guard, but unable to obtain Louisiana state licenses, again challenged the state's pilotage statutes on the grounds that they violated the fourteenth amendment of the United States Constitution and the Sherman Anti-Trust laws.[94] Plaintiffs contended that the statutes denied them due process and equal protection of the laws by creating an arbitrary monopoly, which not only unlawfully restrained trade and competition but also deprived them of their right to pursue their profession, because they provided for a system of commissioning pilots on a familial basis in most instances, and on a personal basis in all instances.[95] The district court held for the defendants, relying exclusively on *Kotch v. Board of River Port Pilot Commissioners*[96] and *Olsen v. Smith*.[97] *Olsen*, a 1904 United States Supreme Court case, held that a state pilotage law did not violate the fourteenth amendment or anti-trust laws of Congress merely because it prevents an unlicensed, though competent, person from rendering services as a state pilot or because it creates a monopoly in favor of the pilots who are licensed under the act. The Court reasoned that since the states were granted the power to regulate pilotage, they had the right to select and commission those who were to render pilotage services for the state. The Court added that if the laws were unwise, as the complainants contended, "the remedy is in Congress, in whom the ultimate authority on the subject is vested."[98] In ruling that Louisiana's pilot statutes also did not violate the fourteenth amendment or create and maintain an unlawful monopoly in the harbor pilot profession, the district court stated that "inasmuch as all questions of law have been previously passed upon by the Supreme Court in concise terms this Court is constrained to grant the [defendants'] motions and dismiss the action . . . ."[99]

Florida is fortunate in not having this problem. Nevertheless, it is likely that the Supreme Court will change its view of this situation, particularly where, as in Louisiana, the pilot is an officer of the state.[100] Equal protection of the laws demands that in addition to sustaining the test of valid public purpose, a state law must also use means that

94. Brechtel v. Board of Examiners, 230 F. Supp. 18 (E.D. La. 1964).
95. *Id.* at 21.
96. 330 U.S. 552 (1947).
97. 195 U.S. 332 (1904).
98. *Id.* at 345.
99. Brechtel, *supra* note 94, at 23.
100. See Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947).

are *reasonably* related to that end.[101] It might be contended that such laws are not so related in that those similarly situated are arbitrarily excluded by the criterion of family relationship.[102] Although there must be some way to limit the number of pilots to allow close supervision, it does not follow that the accident of birth should be the prevailing test.

Although an apprenticeship is not legally required for the issuance of a state pilot license in Florida, new pilots are chosen almost exclusively from the applicants who have served an apprenticeship. In this manner the state pilots exercise *de facto* control over the selection of members to their group. In fact, a survey of the major ports in Florida reveals that a vast majority of the pilot commissioners give great weight or complete deference to the recommendation of the licensed pilots even though such approval is not required by statute for the issuance of a state license.[103] Consequently, in addition to meeting the varying qualifications set by the board of pilot commissioners, the prospective pilot must also be "acceptable" to the licensed pilots.

Liability of Pilots

The pilot is personally liable to the ship owner for losses resulting from his negligence in piloting[104]—negligence being the handling of "vessels in a manner which nautical experience and good seamenship would condemn as unjustifiable at the time."[105] A pilot is not an insurer of the vessel, but the law holds him to a high degree of efficiency with the amount of skill required of him being measured by the familiar rule of reasonableness under the circumstances.[106] In the event of a maritime collision, the vessel is liable in rem for the

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101. See Buchanan v. Warley, 245 U.S. 60 (1917).

102. This assumes that those excluded are equally qualified. See Skinner v. Oklahoma, 316 U.S. 535 (1942) where the Court held arbitrary exclusion of a group similarly situated violated equal protection. This argument of "under inclusiveness" would fall, however, if the state could show reasonable relation to a valid public purpose.

103. A response to questionnaire, note 26 *supra*. *Compare* Fla. Stat. §310.03 (1963), which is the licensing statute for state pilots *with* Fla. Stat. §310.04 (1963), which relates the requirements for a license as an apprentice.

104. Transportes Maritimos de Estados v. Rotch, 289 Fed. 115 (D. Mass. 1923). See also Fla. Stat. §312.04 (1963).

105. General Petroleum Corp. v. City of Los Angeles, 42 Cal. App. 2d 591, 593, 109 P.2d 754, 756 (1941). For a good discussion of the qualifications and duties of pilots see Essex County Elec. Co. v. Motor Ship Godafoss, 129 F. Supp. 657, 1955 Am. Mar. Cas. 755 (D. Mass. 1955).

106. Wilson v. Charlotte Pilots' Ass'n, 57 Fed. 227 (E.D.S.C. 1893).

negligence of the pilot even when the pilotage is compulsory.[107] This liability is not based upon any theory of agency, but upon the principle of maritime law that the vessel, irrespective of who is legally in control, is considered as the wrongdoer liable for the tort, and subject to a maritime lien for the damages.[108] When a pilot is taken on voluntarily by the master, that is, without compulsion[109] of a state statute, in addition to the vessel being liable in rem, the shipowner is liable under the ordinary rules of agency because the pilot is in his employ.[110]

Although the pilot is liable over to the ship owner or the insurer of the vessel for damages caused by the pilot's negligence,[111] this liability is often illusory. It is unlikely that a pilot, as an individual, would be able to pay the loss resulting from even a moderate collision. Even if the pilot were covered by liability insurance, actual satisfaction against the pilot at fault is at least questionable. The injured party may assume, in cases involving even moderate damages, that the pilot is relatively judgment proof or that he carries little or no insurance since it is not required by statute. Also the pilot, as a professional man like a doctor or lawyer, is not liable for an error in judgment.[112] Negligence must be proved, which is almost impossible without expert testimony. It is understandably rare to find one state licensed pilot testifying against another, and usually there are very few, if any, other qualified pilots around, even if they would be willing to testify.

Another factor governing liability of the pilot is found in the reluctance of the ship owners or insurers of vessels to initiate the suit. This situation exists as a result of several other factors. First, the pilots are a close-knit group and, naturally, are concerned with their professional reputation. Negligence of one member, even if alleged, is a reflection upon the group. Secondly, the pilots are usually active in local affairs, particularly in the port area, and occupy a relatively high social status. Finally, negligence of a

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107. The China, 74 U.S. (7 Wall.) 53 (1868); Homer Ramsdell Transp. Co. v. La Compagnie Générale Transatlantique, 182 U.S. 406 (1901).

108. 24 R.C.L. *Shipping* §276 (1919).

109. Florida's pilotage laws appear to be compulsory. FLA. STAT. §310.06 (1963) provides a $100 fine for anyone acting as a pilot without a license, and FLA. STAT. §310.11 (1963) requires all vessels to have pilots except those "drawing less than six feet of water, and having a coastwise license." This latter phrase probably should read "*or* having a coastwise license" as the states cannot require any coastwise licensed vessels, irrespective of draft, to take on a state pilot.

110. See Homer Ramsdell Transp. Co. v. La Compagnie Générale Transatlantique, 182 U.S. 406 (1901).

111. Guy v. Donald, 157 Fed. 527 (4th Cir. 1907).

112. General Petroleum Corp. v. City of Los Angeles, 42 Cal. App. 2d 591, 109 P.2d 754 (1941).

pilot is so rare that if a suit were initiated in one of the few occasions involving a pilot's negligence, repercussions upon the shipping community would outweigh any immediate benefits gained as the result of a judgment. Since most accidents of significance involving ships occur while a pilot is in control of the vessel, the pilot's testimony or statement is practically indispensible to any settlement or court action. Even though not concerned with fault, the cooperation of the pilots greatly facilitates the handling of these matters. Further, the pilots could be "unaviodably delayed" in meeting future ships, thus delaying the shipping companies' passengers or cargoes from entering port. It is not suggested that these or similar tactics are currently being used in any of Florida's ports, but merely that the shipowner weighs the possibility of such action in determining whether to initiate suit against the pilots. Nevertheless, in the event of a major collision, any fear of reprisal would probably be outweighed and the pilots would be sued.

Although liability insurance is voluntary, in that it is not required by statute, the board of commissioners "shall require from each pilot satisfactory bond for the faithful performance of his duty . . . ."[113] Many states, by statute, allow suit on these bonds for injuries caused by the negligence of a pilot.[114] Florida has no specific statutory provision declaring who may sue on the bond or on what grounds, other than failure of the pilot to faithfully perform his duty. The Fifth Circuit Court of Appeals, however, interpreting a Texas statute[115] that has a bond requirement similar to Florida, held that since a pilot licensed under Texas law is not discharging any official duty in piloting vessels, he is not liable on his bond for damages resulting from his negligence.[116] Georgia, moreover, has provided in her statutes that "suits on bonds . . . may be brought in any court having jurisdiction . . . by any person or vessel endangered or endamaged by the misconduct, carelessness or neglect of the pilot."[117] Florida's laws should be amended to provide for a bond of a set sum as a condition precedent to obtaining a license from the state as a pilot. Such a statute should also allow a suit by individuals or vessels injured as a result of the pilot's misconduct. Even compulsory liability insurance similar to that required for automobiles would be an improvement over the present vague statute.

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113. FLA. STAT. §310.03 (1963).

114. *E.g.*, ALA. CODE tit. 38, §§63, 64 (1958); CONN. GEN. STAT. REV. §15-13 (1958); GA. CODE ANN. §80-105 (1964); IND. ANN. STAT. §42-1102 (1952); MASS. GEN. LAWS ANN. ch. 103, §6 (1954); N.C. GEN. STAT. §76-8 (1960).

115. TEX. REV. CIV. STAT. ANN. art. 8253 (1954).

116. Moody *ex rel.* United States v. Megee, 41 F.2d 515 (5th Cir. 1930). The court found that no official duties were imposed by the laws of Texas.

117. GA. CODE ANN. §80-105 (1964). The sum of the bond is set at $2,000.

Another possible source of satisfaction for a pilot's negligence lies in the pilot association. In the early part of the century the pilot associations were struggling in their attempts to keep up with the growing demands of an expanding shipping industry. As a result, the associations were small and in many instances insecure financially. Today, however, some of the associations in Florida own and operate extensive assets valued at more than three hundred thousand dollars.[118] Thus, efforts will undoubtedly be made to reach these assets in the event of any major collision attributable to a pilot's negligence.

A brief look at decisions on this important point reveals that attempts to reach the assets of the allegedly negligent pilot's association have generally failed. In *Guy v. Donald*,[119] the owners of a vessel that had caused a collision sought to recover the damages they had paid out from the twenty-six member Virginia Pilot Association, of which the negligent pilot was a member. On the question of the association's liability, the Supreme Court declared:[120]

> The defendants are a voluntary, unincorporated association. By their agreement they take turns in boarding vessels required by law to take a pilot, and the fees, which otherwise would be paid to the pilot . . . are paid . . . to the association . . . and go into a common fund, from which the association pays the expenses of the business, including office rent.

The control of the board of pilot commissioners was such that Mr. Justice Holmes expressed the view that "substantially the whole government of the Association is in the hands of the Board."[121] The Court viewed the association's liability the same as if the pilots had retained their own fees and had acted, in essence, individually. This holding seems to indicate that when the pilots' association does not have the right to select, control, and discharge its members, it will not be held liable for the negligence of any individual pilot.

By contrast, when the pilots do have the power to select, control, and discharge members of the association, and the operation displays the characteristics of a partnership, it appears that liability of the association would exist for the negligence of a member pilot. This is the indication of *The Joseph Vaccaro*,[122] in which the court stated that the Associate Branch Pilots of the Port of New Orleans, which exhibited the above characteristics, was an ordinary partnership under

118. See Evans, *Harbor Pilots in Tampa Bay*, Tampa Tribune, April 5, 1964, §D, p. 1, col. 5.
119. 203 U.S. 399 (1906).
120. *Id.* at 404.
121. *Id.* at 405.
122. 180 Fed. 272 (E.D. La. 1910).

the laws of Louisiana. This ruling barred a suit by the pilot association against a vessel that, under the control of one of the association's members, had negligently collided with the association's pilot boat. The underlying reasoning supporting this decision was that one partner could not sue another partner for damages incurred while acting as an agent for the partnership. Although it may be argued that the particular facts of this case weakens its precedent value in a suit by a vessel against a pilot association,[123] once the status of a partnership is attained, this decision indicates that liability would be available on general agency principles. Nevertheless, it was subsequently held by the Fifth Circuit Court of Appeals in *Dampskibsselskabet Atalanta A/S v. United States*[124] that even if a partnership were shown, this alone was not enough to establish liability of the association for the negligence of a member pilot.[125]

> [F]or the purposes of this case, it is immaterial whether a pilots' association be considered a partnership or not. The fundamental principle underlying the exemption of pilots' associations from liability for negligence of their members in performing their duties as pilots is *that the association exercises no control over the manner in which those duties are to be performed,* and therefore a pilot cannot be said to be an agent of the association in that respect.

The Florida Statutes on the incorporation of pilots are very explicit on the question of liability of the association *as incorporated*: "The corporation, however, shall not be responsible for any loss or damage accruing by any vessel through the negligence of any stockholding pilot, but such stockholder shall be individually liable to the same extent as if he were not a stockholder."[126] Before claiming exemptions from liability under this statute, an association must first be incorporated just as any other corporation in Florida. But, since there are tax disadvantages in incorporating,[127] only one Florida port has taken advantage of limited liability under this statute; all of the other pilot organizations are either voluntary associations or partnerships. Although neither the voluntary association nor the

123. See Dampskibsselskabet Atalanta A/S v. United States, 31 F.2d 961, 962, 1929 Am. Mar. Cas. 855, 856 (5th Cir. 1929). For a criticism of *The Joseph Vaccaro* see The Griffdu v. United States, 25 F.2d 312, 313 (S.D. Tex. 1928).

124. 31 F.2d 961 (5th Cir. 1929).

125. 31 F.2d 961, 962 (5th Cir. 1929). Criticized in 4 TUL. L. REV. 133 (1930). (Emphasis added.)

126. FLA. STAT. §312.04 (1963).

127. In Mobile Bar Pilots' Ass'n v. Commissioner, 97 F.2d 695 (5th Cir. 1938), the court held that the unincorporated pilot association did not have to pay income taxes as an entity.

partnership is recognized by statute, the Florida Supreme Court has sanctioned the legality of pilots banning together to earn a living;[128] the liability of these organizations, however, is not entirely settled. If the courts accept the reasoning in *The Joseph Vaccaro* and find that the associations do in fact have the power to control, select, and discharge their members and also, if the facts meet the requirement in *Atalanta* that the associations exercise control over the manner in which the pilot members' duties are to be performed, liability may lie.

The pilots in the major ports of Florida, through the pilot associations, exercise much more control over the selection, control, and discharge of fellow pilots than they may appear to have in the statutes. A factual survey reveals that although membership in the association is not required by any of the pilot commissioners in Florida, a prospective licensee is "expected" to join.[129] The present pilot organizations exert control over the individual pilots with each pilot having a vote in determining the affairs of the group. Officers are elected at regular intervals and serve set terms. Discharge appears voluntary upon retirement, the retiring member often taking his interest in the association in the form of monthly payments. Nevertheless, it is possible that the association could discharge or suspend a member if the members so desired as there is no law providing otherwise, except perhaps the general powers of the pilot commissioners to regulate the individual pilots. The practical effect upon the individual pilot of such expulsion by the association can be seen in a recent Louisiana case. In that case, a state circuit court of appeal sustained the right of a pilot association to suspend a member from the association for "conduct unbecoming a pilot."[130] Although the association's action did not affect the pilot's license, its practical effect left him without piloting work, which he contended would prevent him from earning pilot fees of thirty thousand dollars a year.[131] This serves to point out again the power of the pilot associations, a power that has a decided effect upon pilotage, but which is at present beyond the law.

If the courts chose to follow *Guy v. Donald*,[132] they could find that "the implication is plain that a condition of the association being permitted by the board [of pilot commissioners] to exist is that every pilot belongs to it."[133] In other words, the commissioners do in fact control the association, which in turn exercises only nominal control

128. Jones v. Fell, 5 Fla. 510 (1854).

129. A response to questionnaire, note 26 *supra*.

130. Heuer v. Crescent River Port Pilots' Ass'n, 158 So. 2d 221, 222 (Ct. App. La. 1963).

131. *Ibid.*

132. 203 U.S. 399 (1906).

133. *Id.* at 407.

over its members by the grace of the commissioners. Such a finding would focus upon a factual determination of the relationship between the pilot association and the pilot commissioners in each port. Liability of the association would depend upon the amount of control exerted by the commission over the association concerning the selection, control, and discharge of the association members, and the further determination of the exercise of control by the association over the manner in which the duties of the member pilots are to be performed.

Another possibility exists for the ship owner sustaining damages as the result of a pilot's negligence. One author has noted that "the Port Authority movement might prove a godsend to a shipowner compelled to take for a delicate job risking his ship a person who was substantially a mere wage earner."[134] Although no port authority in Florida has taken control of pilotage so completely, other states have done so and thus have had to face this problem of liability. For example, a pilot in the employ of the port of Portland, Oregon, a municipal corporation, was negligent in the handling of a vessel, which resulted in a collision. In an action brought by the injured party, the City of Portland was held liable for the negligence of the municipal pilot.[135] Further, since the suit was brought in admiralty, the state law governing the Port of Portland, which limited the port's liability to ten thousand dollars for damages caused by the fault of its tugs or the negligence of its pilots, was held ineffective to limit the liability of the municipal corporation.[136] Another example of liability being imputed to the port authority is found in a California decision in which the City of Los Angeles was held liable for the negligence of a pilot in its employ when the taking of a pilot was compulsory.[137] But in another case the city was found not liable when the municipal pilot was voluntarily taken by the master of a vessel; it was held that, although the pilot was a general employee of the city, he was under the control of the master of the vessel.[138]

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134. ROBINSON, ADMIRALTY §96, at 700 (1939).

135. The Thielbek, 241 Fed. 209 (9th Cir. 1917).

136. *Ibid.*

137. General Petroleum Corp. v. City of Los Angeles, 42 Cal. App. 2d 591, 109 P.2d 754 (2d Dist. Ct. App. 1937).

138. City of Los Angeles v. Standard Transp. Co., 32 F.2d 988, 1929 Am. Mar. Cas. 1287 (9th Cir. 1929). In denying the city's liability, the determining answer came from the question, "Whose was the work, and whose the power of control?" Since the pilot was taken on voluntarily, and not under compulsion of state law, he was in the service and control of the ship and its master, rather than the city, which initially employed him. The court, in dictum, notes an exception to this holding where the pilot employed by the city was of known incompetence.

Perhaps the real rationale supporting the decisions holding the associations not liable is found in this statement issued by the Florida Supreme Court in 1854:[139]

> It [associations] made and conducts our government, constructs our railroads, our steam vessels, our magnificent ships, our temples of worship . . . [and] builds up our cities and towns. . . . Why then should this important agency be denied to this meritorious class of our citizens? They [pilots] are in general men of small means, to whom an association may not only be desirable, but necessary and indispensable.

This language is given further significance by words of similar import spoken by the Fifth Circuit Court of Appeals in 1938:[140]

> Pilot associations have existed at all ports in civilized countries from time immemorial. It is not necessary for a man to be a member of an association to practice his profession but in the nature of things it would be impossible for him to operate alone. He must meet vessels beyond the bar in all kinds of weather and maintain boats of sufficient size and seaworthiness to permit him to do so. This would be impossible without an organization as the cost would be prohibitive to a single individual.

The courts seem to recognize that the associations pick their members,[141] but rationalize that since the pilots perform a job for the state, at no expense to the state, in a manner necessary to accomplish the job they were licensed to do, it would be wrong to force the association to be responsible for the actions of a member whose licensing was not *entirely* within its control. The courts reason, moreover, that forcing such responsibility on the association would wreck the organization, thus casting the burden of sustaining the pilots upon the state. This reasoning, however, is not only unrealistic but also inequitable to the shipping interests who, under the present system in Florida, must ultimately bear the full burden of loss either in the form of risk or insurance rates. This is particularly true where pilotage is compulsory. When a pilot is acting in his capacity as a state licensed pilot, the master of the vessel has no choice whether to employ a pilot nor which of a number of licensed pilots to employ.

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139. Jones v. Fell, 5 Fla. 510, 515-16 (1854).

140. Mobile Bar Pilots' Ass'n v. Commissioner, 97 F.2d 695, 697 (5th Cir. 1938).

141. See Dampskibsselskabet Atalanta A/S v. United States, 31 F.2d 961, 1929 Am. Mar. Cas. 855 (5th Cir. 1929); The Joseph Vaccaro, 180 Fed. 272 (E.D. La. 1910).

He must take on the first licensed state pilot who speaks to his vessel.[142] Under these circumstances, the cost of doing business certainly rests with the pilots, and they should have the risk of loss.

Where state pilotage is not compulsory,[143] the ships may or may not engage a pilot. In fact, the master can qualify as a pilot by obtaining a Coast Guard endorsement on his master's license for a particular port. If the master does not wish to qualify as a pilot, he may employ any person having a Coast Guard pilot license. Thus, under noncompulsory pilotage, the master has a *choice* of (1) qualifying as a pilot or hiring a pilot, and (2) if he desires to hire a pilot, choosing *any* federally licensed pilot.[144]

In Florida this choice is only fictional. The authors' survey reveals that most of the state licensed pilots also hold federal licenses. Therefore, in order to obtain a pilot, the master of a coastwise vessel usually calls the state pilot association office, which sends him the pilot whose name is next on the list. The office then places this pilot's name at the bottom of the list so all the other pilots will be called before his name comes up again. Integration of this state pilot system of selecting pilots into noncompulsory or coastwise pilotage amounts to a restriction in the freedom of choice that the master of a coastwise vessel otherwise could exercise. Except in Tampa and Jacksonville, no pilots hold only a federal license. Consequently, in a majority of Florida ports, the state pilots benefit directly from the monopoly given them in registered vessels, in that they have *de facto* control over federal pilotage as well.

The statutes should require the pilots or the associations to meet their responsibility by carrying sufficient insurance or by posting a bond that would be available to the parties or property owners in the event of damage inflicted by a negligent pilot required by law to be taken on by the vessel.

Organizational Problems of the Pilotage System

In 1942, the United States Coast Guard made a comprehensive study of all of the pilotage laws in the various states. The study found that "the state-licensed pilots, as a class, are responsible citizens and proud of their work, and they are probably at least as capable as the

142. Fla. Stat. §310.11 (1963). Since, in practice, the pilot association designates who is to pilot a particular vessel, there is no problem in Florida concerning which pilot offered his services first.

143. See text accompanying note 109 *supra*.

144. In either alternative it is the master's choice. In so assuming the risk of loss he should be held liable for damages incurred by a negligent noncompulsory pilot.

pilots of any other country."[145] The study also revealed that the state pilot system in general exhibited the following defects: (a) a lack of uniformity in the administration and operation of the local systems making a central control agency with definite regulatory powers desirable; (b) a rotation system that designates a pilot for a particularly difficult job, not on his qualifications, but because it is his turn; (c) lack of compulsory periodic physical examination and compulsory retirement for pilots; and (d) weak leadership in some ports and lack of internal discipline probably due to the "attitude of a few pilots who regard their long held monopoly as a right immune from regulation."[146]

The present pilotage system as appearing in the Florida Statutes and operating in the various ports presents a number of apparent weaknesses. Some weaknesses are peculiar to only one port while other weaknesses appear throughout the state. Many may be eliminated by a conscientious re-evaluation of the objectives desired and implementation of efficient means to achieve those objectives.

The composition of the boards of pilot commissioners represents the weakest link in the system. The board, created to provide a governing body for pilotage regulations in the ports, generally fails to provide the direction needed to cope with the various required tasks. Although the individual commissioners are conscientious, the very system that creates their offices thwarts any effective control. Neither experience in the pilotage field nor other maritime background are required for the position. On the contrary, the statute[147] specifically eliminates pilots and others directly concerned with pilotage, except the harbor master, who serves as an ex officio member of the board.[148] Due to local legislation in this area, however, the office of harbor master has been abolished in most of the major ports, leaving the board without anyone close to the needs of the port to advise the commissions.[149] Their lack of experience in the area that they are to regulate requires the commissioners to depend greatly on the advice of those regulated concerning the technical aspects of pilotage. One pilot commissioner states that in his port: "Pilot Commissioners serve virtually no purpose in this age. At this port, we do not fix rates, and can license a pilot only if approved by the

145. *A Report on Pilotage, supra* note 46.

146. *Id.* at 11.

147. FLA. STAT. §310.01 (1963).

148. FLA. STAT. §313.01 (1963).

149. See Fla. Laws 1963, ch. 63-817, at 372 where Escambia County abolished her harbor master post. The office of harbor master has been similarly abolished in most other Florida ports. The duties of harbor master have been taken over in most cases by the port authorities.

existing ones, who are, incidentally, competent, conscientious men."[150] Another states that "the duties of the Pilot Commission are practically nil" due to the inactivity of the port.[151] In other ports, with greater volumes of commerce, the commission is more active, but indications are that no systematic method is utilized in handling the duties set out for the board in the statutes.[152] The boards of pilot commissions have regular offices in only a few ports. It is doubtful that their one per cent compensation provides sufficient revenue for offices or extensive records. The commissioners also have full-time occupations that demand their constant attention, thus leaving their commission duties to be administered on a piecemeal basis.[153]

Section 310.27 of the Florida Statutes requires the boards of pilot commissioners to keep full and accurate account of all their receipts and expenditures and to transmit an annual copy to the state comptroller; upon investigation, however, the office of the comptroller "discovered that no such report had ever been filed with this office."[154] Inquiry was made directly to the pilot commissioners of eleven Florida ports[155] as to the average yearly income of the state licensed pilots in their respective ports. Of the commissioners responding, those in the smaller ports[156] estimated yearly incomes ranging from seven thousand to twenty thousand dollars. On the other hand, of those few commissioners in the larger ports who responded to this question, replies ranged from twenty-eight thousand dollars in Jacksonville to "unknown, ask the pilots" in Miami to "?" in Tampa. Requests for these figures made directly to the pilot associations in two out of three of these ports were unanswered. Since the pilot commissioners of most ports are empowered to fix pilot rates within a statutory minimum and maximum,[157] it seems this information would be essential in determining rates that would allow the pilots reasonable compensation for their services. The pilots in this state operate under a monopoly or franchise that has been defined by the Florida Supreme Court as a legislative grant of "immunities and privileges in which

150. A response to questionnaire, note 26 *supra*.

151. *Ibid.*

152. *Ibid.*

153. *Ibid.* See FLA. STAT. §310.19 (1963), which requires the board to keep an office in the port or city for which it is appointed.

154. Letter From General Counsel, Office of the Comptroller to authors, July 2, 1964, on file with the *University of Florida Law Review*.

155. Ports of Jacksonville, Pensacola, Miami, Panama City, Boca Grande, Port St. Joe, Tampa, Key West, Port Everglades, Palm Beach, and St. Petersburg. Fifty questionnaires were mailed, but only sixteen were returned.

156. Based upon gross tonnage. Gross tonnage figures published by the Army Corps of Engineers for 1963 give the top five Florida ports in the following order: Tampa, Jacksonville, Port Everglades, Charlotte Harbor, and Miami.

157. FLA. STAT. §310.11 (1963).

the public has an interest."[158] If the public has an interest in pilotage and its operation, the commissioners and pilots should endeavor to meet all the statutory requirements and, even though not required by statute, to make the earnings of the pilots a matter of public record. As employees of the state, the pilots owe a duty to the citizens of the state to make an accounting of their activities, which are sanctioned by virtue of a legislative grant.

In Miami, population legislation provides that the "Board of Pilot Commissioners . . . [shall] consist of five (5) members, at least two (2) of whom shall be licensed pilots who shall hold unlimited master's licenses . . . ."[159] The port of Fernandina has a similar provision that requires only one commissioner to be a licensed pilot,[160] because there is only one active state licensed pilot in that port. Although remedying the lack of pilotage experience of the board, this provision raises another defect. This law gives the pilots a strong voice in the regulation of pilotage in their ports without providing a counter-balancing voice for other groups affected by local pilotage. Thus, the pilots are in an excellent position to effectuate regulations that would serve their own best interests. This population legislation appears diametrically opposed to the obvious intent of the general legislation, which provides that members of the pilot commission "shall not be pilots, owners or agents of pilot boats . . . or in any manner interested in the business of pilotage or the employment of pilots . . . ."[161] It is unclear why only these two ports require pilots sitting on the pilot board. If nautically experienced members are needed for the promotion of public safety, it would seem that each Florida port would need such experience on the board, especially the larger ones.

In order to obtain a better balance of experience and a fairer representation on the board, members from other maritime commercial interests should have similar representation. Several other maritime states follow the practice of selecting men from different and complementary facets of the port's commercial complex to serve as pilot commissioners. Of the six commissioners in New York City, three are elected by the chamber of commerce and two elected by the marine insurance companies of that city, leaving one member, appointed by the governor, who shall be a member of the Albany port

158. State v. Jones, 16 Fla. 306, 311 (1878).

159. Fla. Laws 1955, ch. 30133, §1, at 186, as amended, Fla. Laws 1961, ch. 61-1552, at 1093. The 1961 amendment only raised the population of the county affected, thus continuing to limit the act to Dade County.

160. Fla. Laws 1961, ch. 61-1459, at 1001.

161. FLA. STAT. §310.01 (1963).

district commission.[162] Rhode Island's three-man commission is appointed by the governor and consists of one licensed pilot, one person representing the public, and the chief of the division of harbor and rivers, ex officio.[163] Washington's five commissioners are the director of labor and industries, who serves as chairman, and four other men, appointed by the governor, of the following qualifications: two active and licensed pilots and two men actively engaged in the ownership, operation, or management of deep sea cargo or passenger carrying vessels.[164] A pilot board composed of members experienced in and representative of various and important maritime commercial areas would provide a much more effective governing body for pilotage than either boards composed of members unexperienced in important maritime areas or the two specially created boards of which some members are pilots but that exclude other interests associated with pilotage.

In Port Everglades, which is subject to a great deal of special legislation, the commissioners of the port authority serve as pilot commissioners.[165] This arrangement has some characteristics that would make its adoption in those ports having port authorities appear favorable. Port commissioners are naturally closer to the needs of the port and have more of the background necessary to regulate all phases of the port's operation, including pilotage. One pilot commissioner states that the "operation and supervision of the harbor and bar pilots could be greatly improved on. One possibility . . . would be to turn our duties over to the Port Authority and thus eliminate some of the red tape in our state and county government."[166] There appears to be no compelling reason for continuing this division of authority in the larger ports that have port authorities. Presently, port authorities, charged with the responsibility of managing the port, have no real control over a very necessary and important port operation — pilotage. This division of authority can raise numerous problems, as in Miami, where the practice of having pilots on the pilot commission board without giving the port authority a similar voice aggravates those problems.

In a detailed evaluation of the Miami seaport operations, an independent accounting firm reported to the board of county commissioners that numerous problems have arisen due to the independence of the governor-appointed board of pilot commissioners.[167] That

162. N.Y. NAV. §87.
163. R.I. GEN. LAWS ANN. §46-9-5 (1956).
164. WASH. REV. CODE ANN. §88.16.010 (1962).
165. Fla. Laws 1963, ch. 63-1173, §2, at 303.
166. A response to questionnaire, note 26 *supra.*
167. Morgan, Altemus & Barrs, *Report on the Survey of the Effectiveness of*

board can make rules and regulations and set rates without obtaining the approval of county authorities. In addition, it is pointed out that it is not always practical, because of inadequate port facilities and operations, to enforce to the letter the regulations of the pilot commission and that this is one reason for the variance of interests that arise between the port authorities and the pilots. Settlement of the conflicts lies in mutual negotiation rather than in referral to a higher local authority. In the words of the report:[168]

> The widely scattered authority for establishment of Seaport rules, regulations, and rates . . . acts to inhibit change and reforms, however badly needed or manifestly desirable these may be. In the absence of a single governing authority devoted solely to Seaport affairs, differences of opinion or conflicts of interest among the many users of the Port, the Port Administration, the Board of Pilot Commissioners, the Consulting Engineers, and the various County Departments are difficult to resolve and require undue periods of time for consideration.
>
> To the extent that such differences are resolved at all, the solutions tend to be reached in an atmosphere of expediency or compromise, and therefore may not necessarily be in the best interests of effective Seaport operation, or of the County taxpayers as a whole.

The report suggests the adoption of a permanent seaport committee to supervise and administer all seaport activities. The committee could be composed of four business men and at least one pilot commissioner, all of whom should have no personal conflict of interest with any seaport activity. The report points out that while this committee might not be as effective in realizing all of the port's income potential or in resolving all operational problems as are the independent authorities, which have been created to govern many successful ports throughout the country, it would possess the merit of being immediately capable of commencing operation. The committee would be a specific body with authority to consider the various problems of the port and to make recommendations to the county commission, which would retain complete responsibility for the policy of port operations. The report suggests that great improvement would be effectuated under centralized management control that could better resolve conflicts of interest and the general lack of understanding and coordination that inevitably arises under the present organization of divided authorities.

Existing Policies and Procedures at the Dade County Seaport (1964) (prepared for the Board of County Commissioners, Metropolitan Dade County).

168. *Id.* at 8.

The report devotes considerable space to recommendations that would add approximately four hundred thousand dollars annual revenue for the seaport operation.[169] This additional revenue would be used to help alleviate the inadequate and overcrowded Miami seaport facilities. The scope of the recommendations extends from requiring fees from stevedoring and warehousing companies to giving a percentage of the travel insurance vending machine revenues to the seaport as is done at the Miami airport. Conspicuously absent from the report is a recommendation that the seaport share in the revenues received from pilotage operations. This is probably so because the authors of the report knew that under present conditions the county authorities have no power to require such a sharing of those benefits. Nevertheless, consideration should be given to a change in the law that would allow the port to benefit from the substantial pilotage revenues. The five pilots in that port earn a total of approximately two hundred seventy-six thousand dollars in gross pilotage fees annually,[170] none of which goes to improvement of port facilities. It seems that this revenue could easily provide adequate and fair compensation for the five pilots and still be a substantial revenue source for the port operations in general.

In those smaller ports without a port authority, pilot commissions composed of men closely associated with and vitally interested in the progress of the port would be sufficient. Under any plan it seems that port management should have some voice in the regulation of the port's pilots as it is often better able to decide what is best for the development and efficient operation of the port without being subject to pressure to favor one interest over another.

One pilot commissioner advocates that an even greater measure of control by the port management seems logical. This commissioner suggests that the "Port Authority furnish pilots, hire them, have a bonus system of compensation, and . . . charge ships either more or less than . . . cost according to the dictates of economy and competition."[171] A small number of ports in other states employ salaried pilots. In Mississippi, the port commissioners, who act as port wardens and pilot commissioners, select and employ harbor pilots along with stevedores, harbor masters, and others performing services for the public shipping. The commissioners appoint a sufficient number of qualified pilots necessary to handle the port's traffic. Pilots are chosen for four-year periods.[172] The fees for piloting are so fixed as not to be

169. *Id.* at 12.

170. Letter From G. S. Okell, Jr. to David Batcheller, Jan. 30, 1964, copy on file with the *University of Florida Law Review.*

171. A response to questionnaire, note 26 *supra.*

172. MISS. CODE ANN. §7549 (1956).

unduly burdensome on shipping and are paid into the city treasury to be used for the benefit of the port.[173] At the Port of Los Angeles, pilots are salaried employees of the harbor department, a branch of the municipal government. Pilots are subject to all of the requirements of the Los Angeles Civil Service Department and have the protection of rights that the system affords. The civil service examination is usually given orally by a board consisting of at least three qualified citizens associated with the maritime industry. The last board consisted of the head of the contract pilot service from the neighboring port of Long Beach, the head of a towboat company and the marine superintendent of a large steamship company. The board of harbor commissioners sets the standards for qualifications to take the pilot examination. Qualifications include a Coast Guard pilot's license for the harbor, several years of service as a tugboat master or master of a deep sea vessel, and passing a rigid physical examination. Los Angeles' pilot force consists of fourteen pilots and two senior pilots who receive salaries from nine hundred and twenty-seven dollars to twelve hundred and two dollars per month depending on their services. From a technical standpoint, pilotage operations are under the supervision of a senior pilot who is in charge of one of the two twelve-hour shifts. From the administrative standpoint, the pilot station is under the supervision of the port's operations department.[174]

The Mississippi and Los Angeles arrangements offer some distinct qualities such as centralized control of pilotage in the port's administrative body; the selection of new pilots by an experienced yet impartial body that provides for a more effective and systematic governing body for the pilots; a periodic licensing every four years of pilots rather than an unlimited license conditioned solely on continued good behavior; a reasonable compensation for the pilot's services; and use of the excessive pilotage fees for the improvement of the port facilities. In addition, the governmental agency employing the pilot may be held liable for its employees' negligence, thus providing the shipper with a reasonable opportunity to recover his damages.[175]

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173. MISS. CODE ANN. §7551 (1956).

174. Letter From Assistant General Manager, Port of Los Angeles to authors, July 22, 1964, on file with the *University of Florida Law Review*. See also BOARD OF HARBOR COMMISSIONERS, TARIFF No. 3 (1951) (naming rates, charges, rules and regulations at Los Angeles harbor).

175. ROBINSON, ADMIRALTY §96, at 700 (1939).

Conclusion

Generally, pilotage in Florida is typical of that found throughout the United States. The pilot operates under a state franchise and has immunities and privileges in which the public is greatly concerned. Pilotage is compulsory and the pilot's right to collect fees from commercial interests is fixed by law. State pilotage has stood the test of time, and since 1917 there has been no attempt by Congress to withdraw from the states their traditional control over that profession.

Yet, Florida, like other seaboard states, must meet a responsibility to atune her pilotage system to the demands of a rapidly expanding and modern maritime commerce. The local port authority movement in Florida, as the state-wide port authority movement in most other maritime states, reflects an attempt to provide direction and organization for expanding port operations. But pilotage has failed to progress. Many of Florida's pilotage statutes are antiquated by and inconsistent with contemporary pilotage practices, yet there has been no reform.

The varying needs of large and small ports are not recognized nor are the general provisions adequate to meet much diversity. Although Florida's pilots are technically able to accomplish their main task of safely piloting vessels into port, it is at least questionable that the present pilotage system best serves the public. This area is steeped with vested interests and tradition favoring the status quo. But this is not the age of sail vessels nor of hardy pilots eking out a livelihood; it is the age of giant steamships and of pilots reaping the bountiful benefits of compulsory pilotage. The legislature should evaluate the merits of the state's pilotage system in terms of these technological and economic advances. The state must always be willing to assure that the system is so organized that pilotage may serve most beneficially the public interest.

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