

Governor's Report

GOVERNOR'S REPORT

Governor's Letter to House Commerce Committee Chairman

Calcasieu River Waterway/River Port Pilots
(LAC 46:LXXVI.Chapter 6)

Editor's Note: This letter was originally promulgated in the May 2002 edition of the Louisiana Register on page 1544 and is being repromulgated for corrective purposes. A portion of this letter was not printed in the May 2002 edition.

The Honorable Gil Pinac
Chairman, House Commerce Committee
State Capitol
Baton Rouge, LA 70802

Dear Chairman Pinac:

As you know, but non-legislators may not, under the Louisiana Administrative Procedure Act (LAPA) Section 968 (R.S. 49:968) the appropriate legislative oversight subcommittee has the authority to find a rule proposed by a state agency (or board, commission, etc.) "unacceptable". If the subcommittee does so, it is required to deliver a report to the governor no later than four days thereafter including therein a summary of the determinations made by the subcommittee. The governor has ten days after receipt of the report to disapprove the action of the subcommittee or allow the action to stand. If the governor disapproves such action, the agency can complete the rule-making process as proposed; otherwise, the unacceptable provision cannot be adopted by the agency at that time.

On May 10, 2002, I received from you a report of the Subcommittee on Oversight of the House Commerce Committee concerning its meeting on May 7, 2002, to review certain rules governing river port pilots and navigation proposed by the Board of River Port Pilot Commissioners and Examiners for the Calcasieu River Waterway (the Board). A copy of that report is attached and reflects that eight provisions of the rules [603(L), 607, 609, 613(A), 613(E), 617(D), 619(G), and 621(B)] were found unacceptable because of potential liability to the state and possible undue burden for river port pilots. The subcommittee subsequently voted to approve the remainder of the proposed rules. Thus, under the LAPA legislative oversight process, the only provisions of the proposed rules before me are the eight above listed rejected provisions.

The underlying authority for these rules is R.S. 34:1072 which provides in part that "the board [of River Port Pilot Commissioners and Examiners for the Calcasieu River Waterway] shall make whatever rules and regulations they may deem necessary for the purpose of regulating pilots, pilot associations, masters and owners of vessels plying the navigable waters of the state of Louisiana within its jurisdiction." On its face, Section 1072 is a broad legislative grant of authority to the Board.

After careful review, I have decided to allow the subcommittee's decision to reject Sections 609 (oral/written exams) and 613(A) (multiple pilot associations) to stand - the former because of its vagueness and lack of guidance and standards, and the latter because it is in direct conflict with R.S. 34:1075, which expressly states that there can be only one association for the Calcasieu River Waterway.

Furthermore, after careful deliberation and consultation, I have decided to exercise my right under the LAPA to disapprove the action of the subcommittee as to the other six provisions. During the joint meeting of the Senate and House oversight subcommittees there were many excellent concerns expressed and the House subcommittee vote appeared to be one of caution due to some degree of confusion and a lack of time to dispel doubt.

Having had the luxury of some time for review, I have concluded that all expressed concerns regarding these provisions can be properly addressed by either the Louisiana Public Service Commission through the exercise of its rate-setting authority consistent with recent rulings by the Louisiana Supreme Court or by the reasonable administration of the rules by the Board itself. However, I do share the subcommittee's concern that because various provisions of the rules (e.g. Sections 619 and 621) do grant the Board and district some degree of control over navigation within the waterway, this may create a path to some limited liability of those entities. This issue should be revisited by the Board without delay.

Indeed, I note that the officers of the Board in their letter to me on May 8, 2002, repeatedly committed to revise various sections to address all expressed concerns. I strongly encourage the Board do so without delay.

I wish to thank you and your members for all efforts to help address these important issues. Should you wish to discuss these matters, please let me know.

M.J. "Mike" Foster, Jr.
Governor

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