

## **Chapter 76A.**

### **Navigation and Pilotage Commissions.**

#### **SUBCHAPTER I. CAPE FEAR RIVER NAVIGATION AND PILOTAGE COMMISSION.**

##### **Article 1.**

##### **General Provisions.**

##### **§ 76A-1. Commission established; powers generally.**

In consideration of the requirement for the safe and expeditious movement of waterborne commerce on the navigable waters of the State, it is deemed necessary to establish the Cape Fear Navigation and Pilotage Commission, hereinafter referred to as the Commission. The Commission shall have the exclusive power to license and regulate a group of river pilots familiar with the waters of the Cape Fear River and Bar to best guide vessels within those waters and to exercise authority over navigation in the Cape Fear and Bar and to and from the sea buoy of the port. (1981, c. 910, s. 1; 1983 (Reg. Sess., 1984), c. 1081, s. 1.)

##### **§ 76A-2. Membership.**

The Commission shall consist of five voting members, four appointed by the Governor, and the president of the Wilmington-Cape Fear Pilots Association who shall serve as an ex officio voting member. Of the four members appointed by the Governor three shall be from New Hanover County, one shall be from Brunswick County. One member shall represent maritime interests. The Governor shall designate a member to serve at his pleasure as Chairman. With the exception of the ex officio member, licensed pilots and members of their immediate families shall not be allowed to serve on the Commission. (1981, c. 910, s. 1.)

##### **§ 76A-3. Term.**

It shall be the duty of the Governor to make initial appointments to the Commission on July 1, 1981. Two of the initial appointees shall serve two-year terms; the other two appointees shall serve four-year terms. All appointees after the initial appointments shall serve four-year terms. Any vacancy in the membership appointed by the Governor shall be filled by the Governor. (1981, c. 910, s. 1.)

##### **§ 76A-4. Quorum.**

A simple majority of the Commission shall constitute a quorum and may act in all cases. (1981, c. 910, s. 1.)

##### **§ 76A-5. Duties and authority.**

(a) Rules and Regulations, Pilotage. – The Commission shall make and establish such rules and regulations as necessary and desirable respecting the qualifications, arrangements and station of pilots and for the control of navigation within the Cape Fear River and from and to the Cape Fear Bar and the sea buoys. In the development of such rules and regulations, the Commission should request the advice of the United States Coast Guard, the U.S. Corps of Engineers, the Pilots Association, other maritime interests and any other party that the Commission might deem beneficial.

(b) Examination and Licensing. – The Commission may examine such persons who hold a federal pilot's license as may offer themselves to be a pilot on the Cape Fear River and Bar. The

examination shall consist of, but not be limited to: a personal interview before the Commission; contact by the Commission with personal references; and a physical examination by a licensed physician based on a standard established by the Commission. Licenses shall be granted for a one-year period.

(c) License Renewal. – Each license shall be renewed annually provided during the preceding year the holder thereof shall have complied with the provisions of this act and the reasonable rules and regulations as prescribed by the Commission under authority hereof. The Commission may for special considerations validate a license for less than a one-year period. Each license renewal submittal shall be accompanied with a physical examination comparable to the standards set in G.S. 76A-5(b).

(d) Fine, License Suspension and Cancellation. – The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the United States Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) Pilots to Give Bond. – The Commission shall require of each pilot prior to granting his commission a bond with surety acceptable to the Commission in an amount not to exceed ten thousand dollars (\$10,000). Every bond taken of a pilot shall be filed with and preserved by the Commission in trust for every person, firm or corporation, who shall be injured by the neglect or misconduct of such pilots, and any person, firm or corporation, so injured may severally bring suit for the damage by each one sustained.

(f) Jurisdiction over Disputes as to Pilotage. – Disputes between pilots may be voluntarily appealed by one of the pilots to the Commission for resolution. If a resolution is not reached or the Commission decision is unacceptable to either party, normal legal recourse is available to resolve the dispute. (1981, c. 910, s. 1; 1983 (Reg. Sess., 1984), c. 1081, s. 2; 1998-215, s. 137(a); 2011-183, s. 127(b).)

#### **§ 76A-6. Classes of licenses.**

The Commission shall have general authority to issue the following classes of licenses:

- (1) Limited. – Limited licenses may be issued to those who pass requirements established by the Commission to entitle such person to a limited license.
- (2) Full. – A license to pilot any vessel. Provided there is a vacancy in the number of pilot positions established pursuant to G.S. 76A-14, a full license shall be issued to the holder of a limited license who has in the opinion of the Commission satisfactorily served at least one year under a limited license. Additionally the Commission may issue a full license to any one who in the Commission's judgment has sufficient credentials as established under G.S. 76A-5(b) to perform the pilotage task associated with a full license.

- (3) Apprentice. – A license to engage in a program, approved by the Commission, as apprentice pilot under the terms of G.S. 76A-12. (1981, c. 910, s. 1; 1983 (Reg. Sess., 1984), c. 1081, s. 3; 1985, c. 631, ss. 1, 2; c. 689, s. 26.)

**§§ 76A-7 through 76A-11. Reserved for future codification purposes.**

Article 2.

Pilots.

**§ 76A-12. Apprentices.**

The Commission when it deems necessary for the best interest of the State is hereby authorized to appoint in its discretion apprentices, none of whom shall be less than 21 years of age, and to make and enforce reasonable rules and regulations relating thereto. Apprentices shall serve for a minimum of one year but no longer than three years in order to be eligible for a limited license. The Commission shall adopt rules and regulations to monitor the progress of apprentices on a regular basis to assure the progressive development of knowledge and skill necessary to obtain a limited license. (1981, c. 910, s. 1; 1987, c. 475.)

**§ 76A-13. Pilotage association.**

In consideration that a mutual association for pilots has been formed, is operational and is expedient for effective management, the Commission shall recognize such a proper pilot association formed for the smooth business transactions in the provision of services. However, the Commission may prescribe such reasonable rules and regulations for the governance of such associations in its direct relationship with the Commission as it deems necessary. Any licensed pilot refusing to become a member of such association shall be subject to suspension or have his license revoked, at the discretion of the Commission. (1981, c. 910, s. 1.)

**§ 76A-14. Number of pilots.**

The Commission shall govern the number of pilots necessary to maintain an efficient pilotage service. Present active pilots shall continue to serve with the Commission's power of reduction to be effective only in the case of natural attrition except as provided in G.S. 76A-15. At no time shall the number of active licensed pilots exceed 15. Docking masters shall not be deemed pilots for this section or any other section in this Chapter. (1981, c. 910, s. 1.)

**§ 76A-15. Pilot retirement.**

The Commission shall have and is hereby given authority in its discretion and under such reasonable rules and regulations as it may prescribe to retire from active service any pilot who shall become physically or mentally unfit to perform a pilot's duties. Provided, however, that no pilot shall be retired, except with his consent for physical or mental disability unless and until such pilots shall have first been examined by the public health officer or county physician of his respective county of residence and such public health officer or physician shall have certified to the board the fact of such physical or mental disability. (1981, c. 910, s. 1.)

**§ 76A-16. Compulsory use of pilots.**

Every foreign vessel and every U.S. vessel sailing under register, including such vessels towing or being towed when underway in the Cape Fear River and Bar and over 60 gross tons, shall employ and take a State-licensed pilot, except when maneuvering during berthing or unberthing

operations, shifting within the confine of ports or terminals, passing through bridges, with tug assistance and with a docking master aboard the vessel. Any master of a vessel violating this section shall be guilty of a Class 1 misdemeanor except as provided for in G.S. 76A-18. (1981, c. 910, s. 1; 1993, c. 539, s. 577; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 76A-17. Pilotage rates.**

The Commission shall set charges for pilotage services on a published tariff basis to be reviewed and revised annually as necessary. The initial publication of rates and subsequent revisions shall be preceded by public notice at least 30 days prior to publication. The rates may be based on the method chosen by the Commission and may be varied on a geographic or other basis which the Commission deems appropriate. In establishing pilotage rates the Commission shall consider but not be limited to factors such as vessels' lengths, vessels' drafts, general design of vessels, distances for which pilotage services are to be provided, nature of waters to be traversed and the rates for comparable pilotage services in other ports. (1981, c. 910, s. 1.)

**§ 76A-18. Vessels not liable for pilotage.**

Any vessel coming in from sea for harborage without the assistance of a pilot the wind and weather being such that such assistance or service could not have been reasonably given, shall not be liable for pilotage inward from sea. (1981, c. 910, s. 1.)

**§§ 76A-19 through 76A-23. Reserved for future codification purposes.**

Article 3.

Commission Funds.

**§ 76A-24. Expenses of the Commission.**

The pilots association shall pay to the Commission according to rules prescribed by the Commission a percentage of pilotage fees not to exceed two percent (2%) per annum for the purpose of providing funds to defray the necessary expense of the Commission. The appropriate percentage shall be set on an annual basis by the Commission. The fees paid shall be deposited to a special account with the State Treasurer in the name of the Commission and shall be administered by the Secretary of Commerce. Surpluses in the account in excess of three thousand dollars (\$3,000) at the end of the fiscal year shall be returned to the pilot association on a prorated basis determined and distributed by the Commission. The Commission, in carrying out its duties, may incur necessary legal and auditing expenses and expenses for its travel and investigation which in addition to the one hundred dollars (\$100.00) per meeting fee and other allowances provided by law shall be paid from the foregoing funds. (1981, c. 910, s. 1; 1983 (Reg. Sess., 1984), c. 1081, s. 4.)

**§ 76A-25. Widows and Orphans Fund.**

The Widows and Orphans Fund established by Chapter 76, Section 7 of the General Statutes shall be dissolved at the earliest possible date under a method to be determined by the Commission. The method of dissolution should be equitable to all current recipients of benefits from the fund and should attempt to make reasonable provision for their future needs in lieu of on-going payments from the fund. Should the Commission determine that the assets of the fund are in excess of those needed to provide for the recipients, it may determine that a portion of the fund may be retained by the Commission and deposited in its operating fund. In such an event the requirement

for payment referred to in G.S. 76A-24 shall be suspended until the balance of the operating fund is reduced to three thousand dollars (\$3,000) as prescribed in G.S. 76A-24. (1981, c. 910, s. 1.)

**§§ 76A-26 through 76-30. Reserved for future codification purposes.**

**SUBCHAPTER II. MOREHEAD CITY NAVIGATION AND PILOTAGE COMMISSION.**

Article 4.

General Provisions.

**§ 76A-31. Morehead City Navigation and Pilotage Commission.**

In consideration of the requirement for the safe and expeditious movement of waterborne commerce on the navigable waters of the State, it is deemed necessary to establish the Morehead City Navigation and Pilotage Commission, herein called Commission. The Commission shall have the exclusive power to license and regulate pilots familiar with the waters of Morehead City Harbor and Beaufort Bar and the water route from Morehead City to Aurora, North Carolina (to include from Morehead City through the Inland or Intracoastal Waterway North, through Adams Creek, the Neuse River, the Bay River, the Hobuken Canal, the Pamlico River, and South Creek to Aurora or from the Neuse River around Brant Island Shoal through the Pamlico River and South Creek to Aurora), referred to herein as the regulated area, to best guide vessels within those waters and to exercise authority over navigation in Morehead City Harbor and Beaufort Bar and to and from the sea buoy of the port. (1981 (Reg. Sess., 1982), c. 1176, s. 1; 1985, c. 517, s. 1.)

**§ 76A-32. Membership.**

The Commission shall consist of three voting members, all appointed by the Governor. The president of the Morehead City Pilots' Association shall serve as an ex officio nonvoting member. All of the three members appointed by the Governor, shall be from Carteret County. One additional nonvoting ex officio member shall represent the maritime interests and shall be designated by the Governor. The Governor shall designate a voting member to serve at his pleasure as chairman. With the exception of the ex officio members, licensed pilots and members of their immediate families shall not be allowed to serve on the Commission. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-33. Term.**

It shall be the duty of the Governor to make initial appointments to the Commission on July 1, 1982. One of the initial appointees shall serve an initial three-year term. One shall serve an initial two-year term and one for an initial one-year term. Thereafter, all appointments shall be for a three-year term. The representatives of the maritime interest shall be appointed for a one-year initial term and three-year terms thereafter. Any vacancy in the membership appointed by the Governor shall be filled by the Governor. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-34. Quorum.**

A simple majority of voting members of the Commission shall constitute a quorum and may act in all cases. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-35. Duties and authority.**

(a) Rules and Regulations, Pilotage. – The Commission shall make and establish such rules and regulations as necessary and desirable respecting the qualifications, arrangements and station of pilots and for the control of navigation within the regulated area. In the development of such rules and regulations, the Commission should request the advice of the United States Coast Guard, the U.S. Corps of Engineers, the Pilots' Association, other maritime interests and any other party that the Commission might deem beneficial. However, the Commission may not establish rules and regulations concerning the Morehead City to Aurora water route except as they may apply to foreign vessels displacing over 60 gross tons.

(b) Examination and Licensing. – The Commission may examine such persons who hold a federal pilot's license and who have complied with an apprentice course approved by the Commission as may offer themselves to be a pilot on the regulated area. The examination shall consist of, but not be limited to: a personal interview before the Commission; contact by the Commission with personal references; and a physical examination by a licensed physician based on a standard established by the Commission. Licenses shall be granted for a one-year period.

(c) License Renewal. – Each license shall be renewed annually provided during the preceding year the holder thereof shall have complied with the provisions of this Subchapter and the reasonable rules and regulations as prescribed by the Commission under authority hereof. The Commission may for special considerations validate a license for less than a one-year period. Each license renewal submittal shall be accompanied with a physical examination comparable to the standards set in G.S. 76A-35(b).

(d) Fine, License Suspension and Cancellation. – The Commission shall have the power to fine or call in and suspend or cancel the license of any pilot found to be derelict of duty, in violation of the reasonable rules and regulations as set out by the Commission or for other just cause. Grounds for suspension or cancellation shall include but not be limited to: citation by the United States Coast Guard and/or Commission for careless or neglectful duty resulting in damage to property or personal harm; absence, neglect of duty, absence from duty for a period longer than four weeks without written submission to and written approval from the Commission Chairman; other violations of regulations or in actions found by the Commission to be unduly disruptive of the pilotage and service and/or harmful to person or property.

The clear proceeds of fines levied pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) Pilots to Give Bond. – The Commission shall require of each pilot prior to granting his commission a bond with surety acceptable to the Commission in an amount not to exceed ten thousand dollars (\$10,000). Every bond taken of a pilot shall be filed with and preserved by the Commission in trust for every person, firm or corporation, who shall be injured by the neglect or misconduct of such pilots, and any person, firm or corporation so injured may severally bring suit for the damage by each one sustained.

(f) Jurisdiction over Disputes as to Pilotage or Navigation. – Disputes between pilots or over matters related to navigation in the regulated area may be voluntarily appealed by one of the pilots to the Commission for resolution or so presented to the Commission by any interested party for resolution. If a resolution is not reached or the Commission decision is unacceptable to either party, normal legal recourse is available to resolve the dispute. (1981 (Reg. Sess., 1982), c. 1176, s. 1; 1985, c. 517, s. 2; 1998-215, s. 137(b); 2011-183, s. 127(b).)

### **§ 76A-36. Classes of licenses.**

The Commission shall have general authority to issue three classes of licenses:

- (1) Limited. – A license to pilot vessels whose draft does not exceed 25 feet combined with a maximum length to be fixed by Commission rules. Limited licenses may be issued to those who pass requirements established by statute and by the Commission to entitle such person to a limited license.
- (2) Full. – A license to pilot any vessel. Full license shall be issued to all holders of a limited license who have in the opinion of the Commission satisfactorily served at least one year under a limited license. Additionally, the Commission may issue a full license to anyone who in the Commission's judgments has sufficient credentials as established under G.S. 76A-35(b) to perform the pilotage task associated with a full license.
- (3) Apprentice. – A license to engage in a program, approved by the Commission, as apprentice pilot under the terms of G.S. 76A-42. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§§ 76A-37 through 76A-41. Reserved for future codification purposes.**

Article 5.

Pilots.

**§ 76A-42. Apprentices.**

The Commission when it deems necessary for the best interest of the State is hereby authorized to appoint in its discretion apprentices, none of whom shall be less than 21 nor more than 35 years of age, and to make and enforce reasonable rules and regulations relating thereto. Apprentices shall serve for a minimum of one year but no longer than three years in order to be eligible for a limited license. The Commission shall adopt rules and regulations to monitor the progress of apprentices on a regular basis to assure the progressive development of knowledge and skill necessary to obtain a limited license. That upon application of any person already partially qualified by prior experience, the Commission may waive the 35 maximum age limit and may vary the time requirements for the time period of such apprenticeship. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-43. Pilotage association.**

In consideration that a mutual association for pilots has been formed, is operational and is expedient for effective management, the Commission shall recognize such a proper pilot association formed for the smooth business transactions in the provision of services. However, the Commission may prescribe such reasonable rules and regulations for the governance of such associations in its direct relationship with the Commission as it deems necessary. Any licensed pilot refusing to become a member of such association shall be subject to suspension or have his license revoked, at the discretion of the Commission. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-44. Number of pilots.**

The Commission shall govern the number of pilots necessary to maintain an efficient pilotage service. Present active pilots shall continue to serve with the Commission's power of reduction to be effective only in the case of natural attrition except as provided in G.S. 76A-45. Docking masters shall not be deemed pilots for this section or any other section in this Subchapter. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-45. Pilot retirement.**

The Commission shall have and is hereby given authority in its discretion and under such reasonable rules and regulations as it may prescribe to retire from active service any pilot who shall become physically or mentally unfit to perform a pilot's duties. Provided, however, that no pilot shall be retired, except with his consent for physical or mental disability unless and until such pilots shall have first been examined by the public health officer or county physician of his respective county of residence and such public health officer or physician shall have certified to the board the fact of such physical or mental disability. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-46. Compulsory use of pilots.**

Every foreign vessel and every United States vessel sailing under register, including such vessels towing or being towed when underway or docking in the waters of the Morehead City Harbor and Beaufort Bar, either incoming or outgoing, and over 60 gross tons, shall employ and utilize a State licensed pilot. Every foreign vessel sailing including such vessels towing or being towed when underway or docking in the Morehead City to Aurora water route, and over 60 gross tons, shall employ and utilize a State licensed pilot. Any master of a vessel violating this section by failing to use a State licensed pilot shall be guilty of a Class 1 misdemeanor except as provided for in G.S. 76A-54. (1981 (Reg. Sess., 1982), c. 1176, s. 1; 1985, c. 517, s. 3; 1993, c. 539, s. 578; 1994, Ex. Sess., c. 14, s. 45, c. 24, s. 14(c).)

**§ 76A-47. Pilotage rates.**

The Commission shall set charges for pilotage services on a published tariff basis to be reviewed and revised annually as necessary. The initial publication of rates shall be those now in effect and subsequent revisions shall be preceded by public notice at least 30 days prior to publication. The rates may be based on the method chosen by the Commission and may be varied on a geographic or other basis which the Commission deems appropriate. In establishing pilotages' rates, the Commission shall consider, but not be limited to, factors such as vessels' lengths, tonnage, vessels' drafts, general design of vessels, distances for which pilotage services are to be provided, nature of waters to be traversed and the rates for comparable pilotage services in other ports. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§ 76A-48. Vessels not liable for pilotage.**

Any vessel, for reasons of safety, coming in from sea for harborage without assistance of a pilot, the wind and weather being such that such pilot assistance or service could not have been reasonably and safely given, shall not be liable for pilotage inward from sea. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)

**§§ 76A-49 through 76A-53. Reserved for future codification purposes.**

Article 6.

Commission Funds.

**§ 76A-54. Expenses of the Commission.**

The pilots' association shall pay to the Commission, according to rules prescribed by the Commission, a percentage of all pilotage fees not to exceed two percent (2%) per annum for the purpose of providing funds to defray the necessary expense of the Commission. The appropriate percentage shall be set on an annual basis by the Commission. The fees paid shall be deposited to a

special account with the State Treasurer in the name of the Commission and shall be administered by the Secretary of Commerce. Surpluses in the account in excess of three thousand dollars (\$3,000) at the end of the fiscal year shall be returned to the pilots' association on a prorated basis determined and distributed by the Commission. That the Commission in carrying out its duties may incur necessary legal and auditing expenses and expenses for its travel and investigations which in addition to the one hundred dollar (\$100.00) per meeting fee and other allowances allowed by law shall be paid from the foregoing funds. (1981 (Reg. Sess., 1982), c. 1176, s. 1.)