

NEWS FROM THE DOCKS



ASSOCIATION OF LOUISIANA

Louisiana Ports Deliver

June 2015

Volume 16, No 6

Message from the PAL Office

What do the following have in common?
...water, 3 day supply of non-perishable food, battery powered radio, flashlight and extra batteries, first aid kit, a whistle, battery cell phone charger, manual can opener... They are the basic recommended supplies to have on hand during hurricane season. Now that we are into hurricane season perhaps we should stock up and be prepared.

No doubt it is the start of another long, hot summer. But, we have some exciting plans that are sure to keep us active. PAL will meet on June 9th in Vidalia. If you have not been to the new riverfront area, you need to come. It is quite lovely and we always have some fun activities. If you plan to come, or would like to have more information contact me at dotatpal@bellsouth.net. On August 6th we will meet in Lake Charles. Plans are for us to stay at the new Golden Nugget Casino. Again, let me know if you are interested in attending.

Associate Members please check to see if your dues for 2015 have been paid. Notices went out the first of the year. Feel free to contact the PAL office if you would like to check your membership status.

Legislative Update

The following are summaries of issues which may be of interest.

Legislative Session

Port Priority Program—The Joint Transportation Committee met on May 19th to consider and approve a \$21.2 million project submitted by the Port of Iberia which requires \$2.9 million of state funding through the Port Priority Program. There are now 23 continuing and new projects in the PPP estimated to cost \$514 million, requiring \$130.7 million of state funding, supporting 2,963 Jobs.

Revenue Bills - During the last 4 days of the Session, the Legislature continues in its efforts to find funding for the 2015-16 Operations Budget, and, to date, has sent the Senate bills with approximately \$615 million of potential additional revenue which is estimated to cover the higher education short fall. There remains a short fall for other programs including health care. The following bills may affect state revenues this and future fiscal years.

HB 629 by Representative Katrina Jackson reduces all tax credits by 20% (\$213 million). This bill is one of the revenue measures which the House has sent to the Senate. At the present time the Port tax credits are exempt.

HB 208 by Terry Landry limits funding from the Transportation Trust Fund for the State Police beginning in 2016-17 to \$25 million and thereafter to \$10 million per fiscal year. The 2015-16 budget appropriates State Police \$71 million from the TTF. This limitation has the potential to make more money available from the 20% of the TTF funding source for the Port Priority, State Police, Flood Control and Parish Road funds. The bill has passed the House and will be considered by Senate Finance during the week of June 1st.

Representative Karen St. Germain continues to work to find additional methods for funding infrastructure. **HB 767** creating an Infrastructure Bank has passed the House and is pending Senate passage today. **HB 778** imposes a 1% sales tax for 10 years to fund major economic development corridors of highways, bridges, and port infrastructure. The bill received 52 yeas and 42 nays on May 28th. **HB 777** which raises the fuel tax by 10 cents has not been considered by the House.

SB 161 by Senator Norby Chabert has passed the House and Senate and has been sent to Governor Jindal for consideration. The bill consolidates six sections the Office of Multimodal Commerce (OMC) into four—Ports and Waterways, Commercial Trucking, Aviation, Freight and Passenger Rail Development. The bill also provides that the OMC Commissioner would become effective on January 12, 2016 to be appointed by the Governor, and the operational plan to be presented to the 2016 legislature would be implemented July 1, 2016. The bill also provides that the Multimodal Advisory Commission will continue in an advisory capacity and the Commissioner would be a member.

Senator Robert Adley's bills relative to Transportation funding include **SB 122** which raises the threshold from \$850 million to \$950 million of mineral funds available to the general fund before deposit to the Budget Stabilization Trust Fund. The price of minerals may determine the amount of revenue which may be available for the Fund. **SB 221** and **259** by Senator Adley, utilize the potentially available additional general fund money of \$100 million (SB 122 as noted above) for increased transportation funding. Senator Chabert's Senate Floor amendments to the bills may result in an additional \$7 million for Port Priority. Both bills have passed the House.

SB 202 by Adley, is a constitutional amendment converting the Budget Stabilization Fund to the Budget and Transportation Stabilization Fund which provides that the first \$500 million of mineral revenue be deposited to the Budget Stabilization and the next \$500 million for transportation infrastructure. An amendment by Senator Chabert provided that of the transportation Infrastructure funds not less than 20% are to be utilized by a DOTD Intermodal

connector program. This has the potential to make available funds for port connector highways. The bill is pending House Appropriations consideration.

SB 66 by Senator Gary Smith relative to Design Build for Ports, extending the law to December 31, 2020, has passed the Senate and House Transportation committees and will be considered for final passage in the House on June 1, 2015.

H B 661 by Rep. Helena Moreno relative to restricting truck traffic on certain highways in St. Bernard and Orleans Parishes was deferred by House Transportation committee and is pending a possible study of the issue by the committee.

HB 360 by Rep. Chaney is a constitutional amendment which amends the definition of "Public land and other public property used for public purposes." The amendment would provide that "Land or property owned by another state or owned by a political subdivision of another state shall not be exempt under this paragraph". The bill has passed the House and is pending Senate action.

HB1, HB 2 and HB3 all passed the Senate today and are referred to conference committee.

HB 515 has increased the tobacco tax to \$1.08 per pack.

Trade Promotion Authority/Import-Export Bank—PAL has sent a letter to the La. Congressional Delegation asking that they support granting Trade Promotion Authority to the President. Additionally, PAL has added our endorsement to the U. S. Chamber of Commerce letter supporting the Import-Export Bank reformation and reauthorization.

Ports of La. Import Export Tax Credit application format has been finalized by LED.

Mississippi River Deepening Project—The U. S. Army Corps of Engineers is preparing a Draft Supplemental Environmental Impact Statement relative to deepening the Mississippi River channel to 50 feet, from the Gulf to Baton Rouge. It has held scoping meetings at Belle Chasse, New Orleans, and Baton Rouge. I represented PAL at the Baton Rouge hearing on

May 28th, and for the record stated that the Ports of Louisiana supported the project.

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Joe Accardo
Executive Director

Employment Opportunity

PAL is seeking to fill the position of Association Manager. Applicants should be self-motivated with computer and organizational skills and should be able to work well with others. It would be helpful to have knowledge about the maritime industry, state government and the legislative process.

Responsibilities include office management, correspondence, e-mail, processing membership renewals, monthly meetings, monthly newsletter, annual conference, processing bills for payment, website maintenance, etc.

Applications/résumés should be submitted to the PAL office at 3055 East Lakeshore Drive, Baton Rouge, LA 70808 and must be received by June 26, 2015. This position is considered part-time and is for a one year interim time period. Salary will be determined commensurate with education, abilities and experience.

Corporate Member News



River Region Economic Development Initiative (RREDI) Hosts Industry Appreciation Event

The Port of South Louisiana and the parishes of St. Charles, St. John, and St. James, collectively known as RREDI, sponsored and held its River Parishes Industry Appreciation event on Thursday, May 7, 2015. The event is held to recognize the contributions that the industrial facilities along the 54-mile port district make to the Port and the River Region economy.

Industry leaders, including plant managers and other company representatives, members of the Port's Commission, parish officials, and state legislators were invited to the event. Paul G. Aucoin, Executive Director of the Port of South Louisiana, along with St. Charles Parish President V.J. St. Pierre, St. John the Baptist Parish President Natalie Robottom, and St. James Parish President Timothy Roussel, welcomed attendees, who enjoyed an afternoon of Louisiana seafood at the boil held at the St. John Airport in Reserve, Louisiana.



Port of South Louisiana Executive Director Paul G. Aucoin

Port of New Orleans



PORT NOLA
THE PORT OF NEW ORLEANS

Trade Promotion Authority Means Business

As New Orleans approaches her 2018 tricentennial we are reminded of New Orleans' metamorphosis from accidental trading post to key port city. New Orleans has always been a port city, whether feeding the westward expansion of our nascent country through the Mississippi River, or engaging Caribbean and European merchants through global markets. Despite the economic challenges created by globalization and the human tragedies wrought by manmade and natural disasters, our *raison d'être* remains trade nearly three centuries later. One in five, or 170,200, Louisiana jobs depend

on international trade. Louisiana exports doubled from \$32 billion in 2009 to over \$65 billion in 2014. Our exports have increased an astounding 227 percent in the past decade. In fact, 25 percent of Louisiana's GDP is from exports, the largest amount ever recorded for any US state and favorably compared with the export powerhouse Germany. Regardless of the metric, Louisiana's economy depends upon robust international trade.

Congress is currently debating whether to promote international trade by granting the President Trade Promotion Authority (TPA). TPA is the legislative tool by which the President concludes free trade agreements and sends them to Congress for an up or down vote. TPA and free trade are nothing if not controversial. TPA legislation in 2002 passed the US House by a mere 3 votes. The 1992 TPA extension paved the way for the North American Free Trade Agreement (NAFTA) in 1994. Since NAFTA's implementation, Louisiana exports to Canada and Mexico increased by \$7.3 billion, an astonishing 848 percent jump.

TPA 2015 is necessary for the United States to conclude the Trans Pacific Partnership (TPP) agreement negotiations with 11 important Asian and South American countries. Our TPP trading partners account for roughly 40 percent of U.S. GDP. Closer to home, Louisiana exported \$17.6 billion in goods to TPP countries in 2014, accounting for 27 percent of our total exports. Erasing tariff and non-tariff barriers in TPP countries will increase opportunities for Louisiana exports. We also believe Louisiana stands to absorb a disproportionate percentage of increased inbound trade from the TPP agreement. TPP countries are in a geographically superior position to move cargo through the expanded Panama Canal. We are working hard to ensure that our Mississippi River system enjoys its share of increased Panama Canal traffic. TPP means business for Louisiana throughout our port system and in value-added manufacturing.

TPA is not moving through this Congress alone. U.S. Congressman Charles Boustany has fought hard to increase Louisiana's economic opportunities through TPA and TPP, but also to enhance the safety net for our industries that suffer due to unfair competition. Congressman Boustany's PROTECT Act is a key part of trade enforcement and facilitation legislation that will ensure our workers and businesses can redress

unfair trade practices. Louisiana's shrimp and crawfish industries are examples of key Louisiana cultural and economic institutions that have been crippled by unfair trade. Congressman Boustany's legislation provides enhanced trade enforcement as part of the TPA and eventual TPP trade expansion package.

Let's celebrate New Orleans' tricentennial by reigniting our historical comparative advantage with 21st Century trade legislation that seeks new opportunities while affording common sense protection.

Eddy Hayes

Chairman of Board of Directors,
World Trade Center of New Orleans



Gary LaGrange

President & Chief Executive
Officer, Port of New Orleans



Associate Member News



RIVER CONSULTING®

River Consulting Continues Its Run on ENR Top 500 Design Firm List for the Eighth Year

River Consulting is ranked as one of the "Top 500 Design Firms" in the country by *Engineering News-Record (ENR)* for the eighth consecutive year. Published annually, the *ENR* Top 500 recognizes top-performing architectural and engineering firms. River Consulting took the 390th spot in the *Engineering News-Record* May 11, 2015 issue, moving up the list from last year. The ranking is based upon 2014 revenue.

"Being recognized by the engineering community as a top design firm eight years in a row is a great honor. Our continual ranking over this period is testament to our ability to consistently meet the needs of our clients," stated Gregory DiFrank, P.E., president. "The

past eight years has witnessed a remarkable shift in client and industry needs, as companies respond to the changing economic, regulatory, and energy supply landscape. Our ability to flex our services to meet these changing demands has allowed us to continue delivering solutions that help our clients achieve their project goals.” DiFrank’s more than 25-year tenure at River Consulting includes sponsorship of national and international multi-million dollar projects, team leadership, and the development of strategic business endeavors that contribute to company growth and sustainability.

River Consulting is a leading mid-major A/E to global energy, food, process and industrial clients, delivering multidiscipline engineering and project management solutions for major capital projects and facility and process expansions. As part of the Houston Interests family of companies, River Consulting along with its sister companies provides solutions for clients worldwide. Through combined and diverse expertise, the Houston Interests group brings more than three decades of global experience to a vast array of industries, delivering flexibility for all phases of a project. The firm’s office locations include Columbus, Oh; New Orleans, La.; Pittsburgh, Pa; and Tulsa, Ok. River Consulting is recognized nationally by Engineering News-Record as a Top 500 design firm. Visit riverconsulting.com for more information.

DOTD News

DOTD announces the employment of Chris Collins. Chris will be working as the Marine Program Manager. He has previously worked in the Governor's office, Legislative Auditor's Office, and most recently Coastal Protection and Restoration Authority (CPRA). Chris is a graduate of LSU with a degree in finance and an MBA.



We look forward to working with him.

Legal News



Punitive Damages Revisited

In our October edition, I reported on the matter of *McBride v. Estis Well Service, LLC*. The case arose out of an accident aboard Estis Rig 23, a barge supporting a truck-mounted drilling rig operating in Bayou Sorrell, a navigable waterway in Louisiana. The truck toppled over, and one crewmember was fatally pinned between the derrick and mud tank, and three others suffered injuries. At the time of the incident, Estis Well Service, LLC (“Estis”) owned and operated Rig 23 and employed the plaintiff crewmembers.

The plaintiffs filed suit in the U.S. District Court for the Western District of Louisiana against Estis, stating causes of action for unseaworthiness under general maritime law and negligence under the Jones Act and seeking compensatory as well as punitive damages under both claims. Estis moved to dismiss the claims for punitive damages, arguing that punitive damages are not available as a matter of law where liability is based on unseaworthiness or Jones Act negligence. The District Court granted the motion, entered judgment dismissing all claims for punitive damages, and granted plaintiffs’ motion to certify the judgment for immediate appeal to the U.S. Court of Appeals for the Fifth Circuit.

The Fifth Circuit panel concluded that the Supreme Court’s recent opinion in *Atlantic Sounding Co., Inc. v. Townsend* (2009) controlled this case and that the remedy of punitive damages are available to injured seamen and the survivors of deceased seamen. The Fifth Circuit granted rehearing *en banc* and, on rehearing, affirmed the District Court. The Fifth Circuit concluded that the Supreme Court’s decision in *Miles v. Apex Marine Corp.* (1990), which holds that that Jones Act limits a seaman’s recovery to pecuniary losses where liability is predicated on the Jones Act or unseaworthiness, is controlling. The Supreme Court, in *Townsend*, did not overrule *Miles*. Rather, it took pains to distinguish maintenance and cure cases from unseaworthiness under general maritime law and negligence under the Jones Act, and it confirmed that the reasoning of *Miles* remains sound. Because punitive damages

are non-pecuniary losses, punitive damages may not be recovered in this case.

As expected, plaintiffs applied to the U.S. Supreme Court for writs on May 18, 2015. The Court denied their application. Thus the 5th Circuit's decision denying punitive damages for wrongful death and personal injury due to a breach of the warranty of seaworthiness.

The U.S. Supreme Court on May 4, 2015 also denied writs in *Skye v. Maersk Line, Ltd. Corp.*, 751 F.3d 1262 (11th Cir. 2014). As reported by Max Schellenberg writing on behalf of the Loyola Current, the law blog produced by the Loyola New Orleans maritime law journal,

Last May, a divided panel of the Eleventh Circuit reversed judgment for a seaman who filed suit for damages when he developed left ventricular hypertrophy due to excessive work hours and an erratic work schedule. At trial, he was awarded a judgment of over \$2 million which was later reduced by the trial judge to \$590,574. The defendant employer appealed to the Eleventh Circuit which reversed and rendered the judgment in favor of the employer. In a very divided opinion, the court drew an analogy between the plaintiff in Carlisle in the *Gottshall* decision. *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 114 S. Ct. 2396, 129 L.Ed. 427 (1994). In that consolidated case, Mr. Carlisle experienced "insomnia, headaches, depression, weight loss, and a nervous breakdown attributable to 'work[ing] 12- to 15-hour shifts for weeks at a time.'" He was denied recovery when the Supreme Court adopted the Zone of Danger Test. Like Carlisle, the seaman, Skye, had physical manifestations due to work-related stress. But, not every physical injury is compensable under the Jones Act. "An arduous work schedule and an irregular sleep schedule are not physical perils."

Judge Fay concurred feeling bound by *Gottshall* but noting that requiring an employee to work 90 to 105 hours a week for 70 to 84 days hardly constitutes a safe work place and urged

the Supreme Court to "revisit this area of law."

Judge Jordan filed a dissent regarding the disparate application of *Gottshall* by federal and state courts and would permit recovery.



BY WILTON E. BLAND, PARTNER

MOULEDOUX, BLAND, LEGRAND & BRACKETT.

LA Assoc. of Business & Industry



In April of 2015 LABI issued a Maritime Work Force Study entitled *An Invisible Giant: The Maritime Industry in Louisiana*. For a copy of that report follow this link:

http://labi.org/assets/media/documents/LABI_2015_Program_of_Work_4.20.15.pdf

America's Wetlands



Louisiana Civic Organizations Weigh in on Coast

New survey results align with earlier polling citing importance of restoration while showing lack of confidence that plan can be fully executed.

America's WETLAND Foundation (AWF) released results of a 2015 survey distributed to Louisiana civic organizations that align with earlier findings that 74 percent of Louisiana voters cite coastal land loss as the issue of their lifetime, while raising uncertainty about the implementation of the state's future plan for restoration.

Survey responses representing thousands of community leaders echoed the growing anxiety about coastal land loss in Louisiana. While more than 95 percent of respondents see cooperation as the only way out, findings in the survey show a split of 42-58 percent showing civic leaders have low confidence in the full execution of the state's plan.

"We have a solid coastal plan in which hundreds of top scientists have been drawn to Louisiana to build workable solutions. The public is concerned about making sure all of our hard earned gains move quickly into implementation and effective projects," King Milling, AWF chairman, said. "As we have always known, now is the time for key tradeoffs and compromises that lead to a level of cooperation that is critical to seeing restoration move forward in a timely manner."

Ninety-eight percent of civic leaders feel it will take a team effort of government, industry, education and nonprofit organizations to restore Louisiana's coast and agree a unified effort is the best hope for coastal restoration and protection. Along similar lines, the latest poll results mirror those from 2014: 95 percent believe perceived conflicts between energy production and environmental protection have become too politically divisive, citing the need for leaders to cooperate more and not engage in partisan politics.

"Again we see civic leaders who have so much at risk in their lives and in their communities want cooperation by all sectors to save our coast," Val Marmillion, AWF's managing director, said. "When 98 percent of responders say saving the coast will require a team effort to restore Louisiana's wetlands, we know it's time to step up and act now to find new solutions to our land loss challenges. We are doing just that with innovative public-private partnerships. Confidence with voters and the public will be a key factor going forward, and that will come

when projects are under way; until then, the public may be skeptical that progress is being made."

The new poll also noted the belief that there is not one party responsible for the loss of our coast over the last century. Eighty percent said it is the combination of levees constructed by the federal government after the flood of 1927, subsidence, sea level rise, permits issued along the coast to support economic development, and energy exploration and production activities that have contributed to our current state of emergency.

In the first quarter of 2015, America's WETLAND Foundation distributed more than 400 surveys to Louisiana civic clubs and organizations to determine the impact of coastal restoration on Louisiana communities. The Foundation received 65 responses representing thousands of organizational members via mail, fax and online submissions. This poll represents a random popular sampling, and the findings, while not scientific, allow the Foundation to compare with 2014 polling data of Louisiana voters from qualified surveyed organizations

Welcome New Associate Members

PAL welcomes one new associate member.

GLF Construction Company, a general construction contractor located in Miami. They will be represented by Mr. Jade Rung.

MARK YOUR CALENDARS

July 9, 2015 PAL Monthly Meeting, 10am, Vidalia, LA

August 6, 2015 PAL Monthly Meeting, 1AM, Lake Charles, LA

