

**CS FOR SENATE BILL NO. 130(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/30/95

Referred: Rules

Sponsor(s): SENATOR PEARCE

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to marine pilots and the Board of Marine Pilots; extending the  
2 termination date of the Board of Marine Pilots; and providing for an effective  
3 date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 08.03.010(c)(13) is amended to read:

6 (13) Board of Marine Pilots (AS 08.62.010) -- June 30, 1999 [1994];

7 \* Sec. 2. AS 08.62.010 is amended to read:

8 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is  
9 created the Board of Marine Pilots. It consists of two pilots licensed under this  
10 chapter who have been actively engaged in piloting on vessels subject to this chapter,  
11 two registered agents or managers of vessels subject to this chapter who are actively  
12 engaged in the procurement of pilotage services, two public members in accordance  
13 with AS 08.01.025, and the commissioner or the commissioner's designee. Not more  
14 than one pilot and one registered agent or manager may [SHALL] be from any one

1 pilotage region established by the board. Not more than one registered agent or  
2 manager may be employed by, be a contractor for, or hold a financial interest in  
3 the same marine industry business entity, including commonly owned, affiliated,  
4 or subsidiary business entities [JUDICIAL DISTRICT]. All members of the board  
5 shall be residents of the state.

6 \* **Sec. 3.** AS 08.62.040(a) is amended to read:

7 (a) The board shall

8 (1) provide for the maintenance of efficient and competent pilotage  
9 service on the inland and coastal water of and adjacent to the state to assure the  
10 protection of shipping, the safety of human life and property, and the protection of the  
11 marine environment;

12 (2) consistent with the law, adopt regulations, subject to AS 44.62 (  
13 [THE] Administrative Procedure Act [(AS 44.62)], establishing the qualifications of  
14 and required training for pilots and providing for the examination of pilots and the  
15 issuance of original or renewal pilot licenses to qualified persons;

16 (3) keep a register of licensed pilots, licensed deputy pilots, and agents;

17 (4) adopt regulations establishing

18 (A) pilotage regions in the state;

19 (B) the criteria for concurring in the amount of license,  
20 application, training, investigation, and audit fees proposed by the department  
21 under AS 08.01.065;

22 (C) the criteria for recognizing pilot organizations under  
23 AS 08.62.175;

24 (5) make available, upon request, copies of this chapter and the  
25 regulations adopted under this chapter;

26 (6) review and approve the articles, bylaws, and rules of pilot  
27 organizations;

28 (7) audit a pilot organization or an individual pilot as necessary to  
29 implement and enforce this chapter;

30 (8) review and approve training programs conducted by pilot  
31 organizations; the board shall cooperate with the Department of Environmental

1 Conservation in the review and approval of training programs for pilots of tank  
2 vessels; [AND]

3 (9) establish and publish the dates of future license examinations; **and**

4 **(10) approve or disapprove rates for pilotage services as provided**  
5 **under AS 08.62.046.**

6 \* **Sec. 4.** AS 08.62.040(b) is amended to read:

7 (b) The board may, by regulation, make any other provision for proper and  
8 safe pilotage upon the inland and coastal water of and adjacent to the state and for the  
9 efficient administration of this chapter, including establishing

10 (1) different licensing criteria for a pilotage region if justified by  
11 regional differences in piloting;

12 (2) a mandatory [RANDOM] drug and alcohol testing program,  
13 **including random tests, post-incident tests, and tests based upon reasonable cause,**  
14 **for pilots licensed under this chapter; the board may delegate responsibility for**  
15 **administration of all or a portion of a testing program to pilot organizations;**

16 (3) criteria for trainee selection and for training programs conducted by  
17 pilot organizations; [AND]

18 (4) standards under which a pilot may receive a license or an  
19 endorsement to a license to pilot vessels in more than one pilotage region **under**  
20 **AS 08.62.080(b); and**

21 **(5) procedures for the review of proposed rates by the board under**  
22 **AS 08.62.046.**

23 \* **Sec. 5.** AS 08.62.040 is amended by adding a new subsection to read:

24 (e) The board may delegate duties to the marine pilot coordinator as necessary  
25 to assist the board in administering and enforcing this chapter.

26 \* **Sec. 6.** AS 08.62 is amended by adding a new section to read:

27 Sec. 08.62.046. RATES FOR PILOTAGE SERVICES. (a) A pilot  
28 organization recognized by the board shall adopt and publish rates for the provision  
29 of pilotage services. The pilot organization shall adopt rates for pilotage services as  
30 provided under this section. Notwithstanding this section, a pilot organization may  
31 enter into agreements with the master, owner, operator, or agent of a master, owner,

1 or operator, of a vessel for the provision of pilotage services at rates of compensation  
2 that are different from the rates adopted under this section. Unless a pilot organization  
3 has an agreement with the master, owner, operator, or agent of a master, owner, or  
4 operator, of a vessel that sets rates for the provision of a pilotage service, the pilot  
5 organization may not charge a rate for the provision of the pilotage service to the  
6 vessel that is different from the rate adopted or established under this section.

7 (b) If a pilot organization intends to adopt a new or revised rate for the  
8 provision of a pilotage service, the pilot organization shall, before October 15, send  
9 a notice of intent to adopt a rate for provision of the pilotage service to the board and  
10 to all registered agents and publish the notice on at least three days during a period of  
11 14 consecutive days in a newspaper of general circulation in the state. The notice of  
12 intent to adopt a rate must include a copy of the proposed rate and the name and  
13 mailing address of the pilot organization that intends to adopt the rate. If no objection  
14 to the proposed rate is filed with the board under (c) of this section, the rate takes  
15 effect on January 1 of the year following the year in which the notice of the intent to  
16 adopt the rate was filed with the board.

17 (c) The master, owner, operator, or agent of the master, owner, or operator, of  
18 a vessel required to employ a pilot under this chapter may object to the proposed rate  
19 for a specific pilotage service by filing a written notice of objection, containing the  
20 grounds for the objection and relevant evidence demonstrating that the rate is not  
21 reasonable, with the board within 60 days after the final date of publication of the  
22 proposed rate in a newspaper of general circulation. The pilot organization that  
23 proposed the rate has until 15 days after the close of the period for filing objections  
24 to the proposed rate to provide its written response to the notice of objection and  
25 relevant evidence demonstrating that the rate is reasonable. If the pilot organization  
26 does not respond to the notice of objection by the close of the 15-day period for  
27 response to the objection, the board may not take action on the proposed rate and the  
28 proposed rate does not take effect. If the pilot organization does respond to the notice  
29 of objection before the close of the response period, the board shall hold a hearing to  
30 determine whether the proposed rate is reasonable. If the board finds that the proposed  
31 rate is reasonable, the rate is approved and takes effect retroactive to January 1 of the

1 calendar year in which the rate would have taken effect under (b) of this section if no  
2 objection had been filed. If the board finds that the proposed rate is not reasonable,  
3 the proposed rate is disapproved and does not take effect. In determining what  
4 constitutes a reasonable rate, the board shall consider the following factors:

5 (1) current and historical rates charged for comparable pilotage  
6 services;

7 (2) the actual time aboard the vessel, time engaged in preparing to  
8 provide the pilotage services, seasonal and weather conditions, and risks;

9 (3) the reasonable expenses incurred in providing the pilotage services  
10 such as dispatch, transportation, overhead, and other associated expenses;

11 (4) the financial effect of pilotage expenses on the owner of the vessel,  
12 except that this factor shall only be considered if the owner provides all financial  
13 information that the board determines is necessary to determine the financial effect;

14 (5) the number of vessels and volume of pilotage services at issue in  
15 the dispute and the number of members of the pilot organization;

16 (6) the effect of the determination on the income of affected pilots  
17 relative to prior years, taking into account changes in vessel tonnage and vessel traffic  
18 in the pilotage region from year-to-year;

19 (7) prior determinations under this subsection; and

20 (8) other factors the board considers relevant.

21 (d) Pending the review and approval of the proposed rate for a specific  
22 pilotage service by the board under (c) of this section, the current rate then in effect  
23 for that pilotage service remains in effect until the board approves the proposed rate.

24 If the proposed rate approved by the board is greater than the current rate, then the  
25 master, owner, or operator of the vessel or the vessel is liable for the payment of the  
26 additional amount owed for the provision of pilotage services during the pendency of  
27 the review by the board due to retroactive application of the approved rate under (c)  
28 of this section. If the proposed rate is less than the current rate, then the pilot  
29 organization is liable to the master, owner, or operator of the vessel or the vessel for  
30 reimbursement of the amount overpaid for the provision of pilotage services during the  
31 pendency of the review by the board due to the retroactive application of the approved

1 rate under (c) of this section.

2 (e) If the board finds under (c) of this section that a proposed rate is not  
3 reasonable, the pilot organization may propose a new rate for that pilotage service  
4 within 60 days after the decision of the board is issued by sending a notice of intent  
5 to adopt a rate for provision of the pilotage service to the board and to all registered  
6 agents and publishing the notice on at least three days during a period of 14  
7 consecutive days in a newspaper of general circulation in the state. The notice of  
8 intent to adopt a rate must include a copy of the proposed rate and the name and  
9 mailing address of the pilot organization that intends to adopt the rate. If a timely  
10 objection to the proposed rate is not filed with the board under (c) of this section, the  
11 rate takes effect retroactive to January 1 of the same calendar year in which the initial  
12 rate proposed under (b) of this section would have taken effect if no objection had  
13 been filed. If a timely objection is filed, the provisions of (c) and (d) of this  
14 subsection apply to the proposed rate.

15 (f) The board shall provide a schedule of current rates adopted and interim  
16 rates established under this section to agents registered under AS 08.62.187.

17 \* **Sec. 7.** AS 08.62.050 is amended by adding a new subsection to read:

18 (c) In addition to other duties as may be assigned by the board, the marine  
19 pilot coordinator may review applications for examination and licensure to ascertain  
20 whether the applicant satisfies the applicable requirements.

21 \* **Sec. 8.** AS 08.62.080(b) is amended to read:

22 (b) A pilot may not be licensed in more than one pilotage region at one time  
23 [.] unless the **commissioner** [BOARD] determines that **an actual or imminent**  
24 **shortage of licensed pilots exists in a** [IT IS IN THE BEST INTERESTS OF THE  
25 STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE] pilotage region.  
26 **If the commissioner makes the determination described in this subsection, the**  
27 **board may, after consultation with the recognized pilot organizations and**  
28 **registered agents in the affected pilotage region, issue temporary licenses for the**  
29 **affected pilotage region to pilots who already hold a license for another pilotage**  
30 **region. The board shall ensure that sufficient pilots are available to provide**  
31 **pilotage services in the affected pilotage region to all vessels required to employ**

1 a pilot under this chapter. A temporary license issued under this subsection is  
2 valid for a period of not more than one year.

3 \* **Sec. 9.** AS 08.62.080 is amended by adding a new subsection to read:

4 (d) In addition to the prohibition against being licensed in more than one pilot  
5 region at one time under (b) of this section, a pilot licensed under this chapter may not  
6 hold a marine pilot license issued in another state or country.

7 \* **Sec. 10.** AS 08.62.090(b) is amended to read:

8 (b) The application shall provide the information and be made on a form  
9 prescribed by the **department** [BOARD].

10 \* **Sec. 11.** AS 08.62.093(b) is amended to read:

11 (b) A person who applies for a deputy marine pilot license under this chapter  
12 shall provide proof satisfactory to the board of the following experience:

13 (1) one year of service as a master on ocean or coastwise vessels while  
14 holding a **United States Coast Guard** license as master of ocean steam or motor  
15 vessels of any gross tons;

16 (2) two years of service as a master on **United States Coast Guard**  
17 **inspected** vessels **of not less than 1,000 gross tons** or tug and tow of not less than  
18 1,600 combined gross tons while holding **at least a United States Coast Guard** [A]  
19 license as master of **steam or motor** vessels of not **more** [LESS] than 1,600 gross  
20 tons;

21 (3) two years of service as a chief officer on ocean or coastwise vessels  
22 of not less than 1,600 gross tons while holding a **United States Coast Guard** license  
23 as master of ocean steam or motor vessels of any gross tons;

24 (4) two years of service as commanding officer of United States  
25 commissioned vessels of not less than 1,600 gross tons **and hold a United States**  
26 **Coast Guard** [WHILE HOLDING A] license as master of ocean steam or motor  
27 vessels of any gross tons; [OR]

28 (5) three years of experience as a member of a professional pilot's  
29 organization, during which the person actively engaged in piloting while holding at  
30 least a **United States Coast Guard** license as a master of **steam or motor vessels**  
31 [FREIGHT OR TOWING VESSEL] of not more than 1,600 gross tons; **or**

1                   **(6) four years of experience gained in a board approved deputy**  
2                   **marine pilot apprenticeship program in the pilotage region for which the deputy**  
3                   **marine pilot license is sought and hold at least a United States Coast Guard**  
4                   **license as master of steam or motor vessels of not more than 1,600 gross tons.**

5 \* **Sec. 12.** AS 08.62.093(d) is amended to read:

6                   (d) A person licensed as a deputy marine pilot under this section may, except  
7                   as otherwise provided by the board, pilot vessels of **25,000** [20,000] gross tons or less  
8                   in a marine pilotage region for which the license is issued.

9 \* **Sec. 13.** AS 08.62.097(b) is amended to read:

10                   (b) A person who supervises the training of persons who are seeking a deputy  
11                   marine pilot license under this chapter shall

12                   (1) hold a marine pilot license issued under AS 08.62.100; **however,**  
13                   **if the board finds that there are no marine pilots licensed in a pilotage region who**  
14                   **are available to supervise training under this section, the board may authorize a**  
15                   **person who is licensed in that pilotage region as a deputy marine pilot to**  
16                   **supervise the training of persons who are seeking a deputy marine pilot license**  
17                   **in that pilotage region;**

18                   (2) receive prior authorization from the board to supervise the training  
19                   of those persons;

20                   (3) maintain a written log and evaluation on a form provided by the  
21                   board of the training and progress of the person being supervised.

22 \* **Sec. 14.** AS 08.62.120(a) is amended to read:

23                   (a) In order to renew a marine pilot license, a person who is licensed under  
24                   AS 08.62.100 shall

25                   (1) submit an application for renewal of the license on a form provided  
26                   by the **department** [BOARD];

27                   (2) submit proof of continued qualification under AS 08.62.100 to  
28                   receive a marine pilot license;

29                   (3) provide evidence of satisfactory completion of a physical  
30                   examination by a licensed physician within 60 days before the date of renewal of the  
31                   license;

- 1 (4) submit proof satisfactory to the board that the person has  
2 (A) engaged in piloting vessels subject to this chapter in the  
3 marine pilotage region for which the license is to be renewed during at least  
4 120 days [60 DAYS OF EACH CALENDAR YEAR] in the licensing period  
5 immediately preceding the licensing period for which renewal is sought; or  
6 (B) completed the minimum number of familiarization trips  
7 required by the board for renewal of a marine pilot license for a marine  
8 pilotage region for which the license is to be renewed.

9 \* **Sec. 15.** AS 08.62.150(a) is amended to read:

10 (a) The board shall impose a disciplinary sanction on a person licensed under  
11 this chapter when the board finds that the person

- 12 (1) is incompetent in the performance of pilotage duties;  
13 (2) is chemically impaired;  
14 (3) illegally possesses, uses, or sells narcotic or hallucinogenic drugs;  
15 (4) makes a false statement to obtain a license;  
16 (5) violates a provision of this chapter or a regulation adopted under  
17 this chapter [IT];  
18 (6) is guilty of misconduct during the course of employment;  
19 (7) has had the person's United States Coast Guard pilot license  
20 conditioned, suspended, or revoked; or  
21 (8) charges, collects, or receives an amount for pilotage services that  
22 is different from the rate adopted or established under AS 08.62.046 or the rate  
23 agreed to under AS 08.62.175(e) [IN EXCESS OF THE MAXIMUM TARIFF  
24 ESTABLISHED BY THE BOARD OR DIFFERENT FROM THE TARIFF  
25 ADOPTED] by the pilot organization of which the person is a member.

26 \* **Sec. 16.** AS 08.62.155(b) is amended to read:

27 (b) The board [DEPARTMENT] may impose a civil fine not to exceed \$5,000  
28 on a marine pilot organization recognized by the board [,] if the organization violates  
29 this chapter or a regulation adopted under this chapter. The board may also suspend  
30 or revoke the recognition of a pilot organization that fails to comply with its  
31 articles, bylaws, and rules, so as to no longer satisfy the minimum standards for

1            **recognition by the board.**

2        \* **Sec. 17.** AS 08.62.165(a) is amended to read:

3            (a) A pilot licensed under this chapter is not liable for damages in excess of  
4            \$250,000 per incident for damages or loss occurring as a result of the error, omission,  
5            fault, or neglect of the pilot in performing pilotage services, except that the limitation  
6            does not apply in a case where

7                    (1) the pilot is either grossly negligent or guilty of wilful misconduct;

8            or

9                    (2) the error, omission, fault, or neglect of the pilot constitutes an act  
10            for which the board shall impose a disciplinary sanction under **AS 08.62.150(a)(2) or**  
11            **(3)** [AS 08.62.150(a)(1), (2), (3), (5), (6), OR (7)].

12        \* **Sec. 18.** AS 08.62.175(c) is amended to read:

13            (c) A pilot organization recognized by the board shall

14                    (1) promote a safe and reliable system of marine pilotage for the region  
15            in which the organization is recognized;

16                    (2) provide for the dispatch of pilots who are members of the  
17            organization;

18                    (3) adopt and revise **rates** [TARIFFS] for the provision of pilotage  
19            services **not covered by an agreement under (e) of this section** [BY THE  
20            MEMBERS OF THE ORGANIZATION];

21                    (4) **subject to the membership application and approval provisions**  
22            **contained in the articles and bylaws of the organization,** be open to membership  
23            by all persons licensed under this chapter to pilot vessels in the pilotage region in  
24            which the organization is recognized;

25                    (5) operate or participate in a training program for pilots and deputy  
26            pilots that is approved by the board; **a training program for deputy pilots may**  
27            **include a deputy marine pilot apprenticeship program approved by the board;**

28                    (6) cooperate with and assist the board in implementing this chapter;

29                    (7) **by February 1 of each year, submit a report to the board that**  
30            **includes information on the status of training and apprenticeship programs, the**  
31            **number of members of the pilot organization who are state residents, and other**

1 **information requested by the board.**

2 \* **Sec. 19.** AS 08.62.175 is amended by adding a new subsection to read:

3 (e) A pilot organization recognized by the board may enter into agreements  
4 with the master, owner, operator, or agent of a master, owner, or operator, of a vessel  
5 concerning the terms and conditions under which the pilot organization will provide  
6 pilotage services.

7 (f) A pilot organization recognized by the board shall dispatch a person who  
8 is licensed under this chapter and who is a member of the organization to provide  
9 pilotage services upon the request of a representative of a vessel required to employ  
10 a pilot under AS 08.62.160.

11 \* **Sec. 20.** AS 08.62.180 is amended to read:

12 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

13 (1) vessels subject to federal pilot requirements under 46 U.S.C. 8502  
14 except as provided in AS 08.62.185;

15 (2) fishing vessels, including fish processing and fish tender vessels,  
16 registered in the United States or in British Columbia, Canada;

17 (3) vessels propelled by machinery and not more than 65 feet in length  
18 over deck, except tugboats and towboats propelled by steam;

19 (4) vessels of United States registry of less than 300 gross tons and  
20 towboats of United States registry and vessels owned by the State of Alaska, engaged  
21 exclusively

22 (A) on the rivers of Alaska; [,] or

23 (B) in the coastwise trade on the west **or north** coast of the  
24 United States including Alaska **and** [,] Hawaii, and **including** British  
25 Columbia, **Yukon Territory, and Northwest Territories,** Canada;

26 (5) vessels of Canada, built in Canada and manned by Canadian  
27 citizens [INCLUDING CANADIAN CRUISE SHIPS], engaged in frequent trade  
28 between

29 (A) British Columbia and **Southeastern** Alaska **south of 58**  
30 **degrees, 10 minutes North latitude,** if reciprocal exemptions are granted by  
31 Canada to vessels owned by the State of Alaska and those of United States

1 registry; or

2 (B) northern Alaska north of 68 degrees, 7 minutes North  
3 latitude and Yukon Territory or Northwest Territories; [AND]

4 (6) pleasure craft of United States registry; and

5 (7) pleasure craft of foreign registry of less than 300 gross tons as  
6 measured under 46 C.F.R. 69.51 - 69.75.

7 \* **Sec. 21.** TRANSITION; APPOINTMENTS. (a) Notwithstanding AS 08.62.010, as  
8 amended by sec. 2 of this Act, the current members of the Board of Marine Pilots shall  
9 continue to serve for the term to which they were appointed.

10 (b) As the terms of the current marine pilot members and current agent or manager  
11 members of the Board of Marine Pilots expire, the governor shall appoint marine pilot  
12 members and agent or manager members to the board in accordance with the qualifications  
13 set out in AS 08.62.010, amended by sec. 2 of this Act.

14 (c) In this section, the current members of the board are those persons serving on the  
15 Board of Marine Pilots on the day before the effective date of this Act.

16 \* **Sec. 22.** TRANSITION; RATES. (a) Pending the adoption of rates under AS 08.62.046,  
17 added by sec. 6 of this Act, the rates for the provision of pilotage services are equal to the  
18 maximum tariffs established by 12 AAC 56.210, 12 AAC 56.220, 12 AAC 56.230, and 12  
19 AAC 56.240, as those regulations read on the day before AS 08.62.045 was repealed.

20 (b) Pending the adoption of rates under AS 08.62.046, added by sec. 6 of this Act,  
21 if a rate for a specific pilotage service is not established by (a) of this section, the Board of  
22 Marine Pilots may establish the rate for that pilotage service by emergency regulation under  
23 AS 44.62.

24 (c) The establishment of rates under (a) and (b) of this section does not create a  
25 presumption that the rates are either reasonable or unreasonable under AS 08.62.046, as added  
26 by sec. 6 of this Act.

27 (d) For the purposes of AS 08.62.046(d), added by sec. 6 of this Act, the rates  
28 established by (a) and (b) of this section are the current rates.

29 (e) Notwithstanding other provisions of this section, a pilot organization that has an  
30 agreement with the master, owner, operator, or agent of a master, owner, or operator, of a  
31 vessel may charge rates established by the agreement for the provision of pilotage services that

1 are different from the rates established by this section.

2 (f) Unless a pilot organization has (1) an agreement with the master, owner, operator,  
3 or agent of a master, owner, or operator, of a vessel that sets rates for the provision of a  
4 pilotage service; or (2) adopted rates under AS 08.62.046, as added by sec. 6 of this Act, that  
5 have taken effect, the pilot organization may not charge a rate for the provision of the pilotage  
6 service that is different from the rate established under (a) or (b) of this section.

7 (g) Each pilot organization recognized by the Board of Marine Pilots shall propose  
8 for adoption on January 1, 1996, rates for the provision of all pilotage services offered by the  
9 pilot organization.

10 \* **Sec. 23.** AS 08.62.093(e) is repealed.

11 \* **Sec. 24.** This Act takes effect immediately under AS 01.10.070(c).