

CS FOR SENATE BILL NO. 130(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Offered: 5/1/95

Referred: Today's Calendar

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 rates adopted under this section to
16 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 08.62.090(b) is amended to read:

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

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

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

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

12 (2) two years of service as a master on **United States Coast Guard**
13 **inspected** vessels **of not less than 1,000 gross tons** or tug and tow of not less than
14 1,600 combined gross tons while holding **at least a United States Coast Guard** [A]
15 license as master of **steam or motor** vessels of not **more** [LESS] than 1,600 gross
16 tons;

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

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

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

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

1 * **Sec. 11.** AS 08.62.093(d) is amended to read:

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

5 * **Sec. 12.** AS 08.62.097(b) is amended to read:

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

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

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

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

18 * **Sec. 13.** AS 08.62.120(a) is amended to read:

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

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

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

25 (3) provide evidence of satisfactory completion of a physical
26 examination by a licensed physician within 60 days before the date of renewal of the
27 license;

28 (4) submit proof satisfactory to the board that the person has

29 (A) engaged in piloting vessels subject to this chapter in the
30 marine pilotage region for which the license is to be renewed during at least
31 **120 days** [60 DAYS OF EACH CALENDAR YEAR] in the licensing period

1 immediately preceding the licensing period for which renewal is sought; or
2 (B) completed the minimum number of familiarization trips
3 required by the board for renewal of a marine pilot license for a marine
4 pilotage region for which the license is to be renewed.

5 * **Sec. 14.** AS 08.62.150(a) is amended to read:

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

8 (1) is incompetent in the performance of pilotage duties;

9 (2) is chemically impaired;

10 (3) illegally possesses, uses, or sells narcotic or hallucinogenic drugs;

11 (4) makes a false statement to obtain a license;

12 (5) violates a provision of this chapter or a regulation adopted under

13 **this chapter** [IT];

14 (6) is guilty of misconduct during the course of employment;

15 (7) has had the person's United States Coast Guard pilot license
16 conditioned, suspended, or revoked; or

17 (8) charges, collects, or receives an amount for pilotage services that
18 is **different from the rate adopted under AS 08.62.046 or the rate agreed to under**
19 **AS 08.62.175(e)** [IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY
20 THE BOARD OR DIFFERENT FROM THE TARIFF ADOPTED] by the pilot
21 organization of which the person is a member.

22 * **Sec. 15.** AS 08.62.155(b) is amended to read:

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

29 * **Sec. 16.** AS 08.62.165(a) is amended to read:

30 (a) A pilot licensed under this chapter is not liable for damages in excess of
31 \$250,000 per incident for damages or loss occurring as a result of the error, omission,

1 fault, or neglect of the pilot in performing pilotage services, except that the limitation
2 does not apply in a case where

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

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

8 * **Sec. 17.** AS 08.62.175(c) is amended to read:

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

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

12 (2) provide for the dispatch of pilots who are members of the
13 organization;

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

17 (4) subject to the membership application and approval provisions
18 contained in the articles and bylaws of the organization, be open to membership
19 by all persons licensed under this chapter to pilot vessels in the pilotage region in
20 which the organization is recognized;

21 (5) operate or participate in a training program for pilots and deputy
22 pilots that is approved by the board; a training program for deputy pilots may
23 include a deputy marine pilot apprenticeship program approved by the board;

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

25 (7) by February 1 of each year, submit a report to the board that
26 includes information on the status of training and apprenticeship programs, the
27 number of members of the pilot organization who are state residents, and other
28 information requested by the board.

29 * **Sec. 18.** AS 08.62.175 is amended by adding a new subsection to read:

30 (e) A pilot organization recognized by the board may enter into agreements
31 with the master, owner, operator, or agent of a master, owner, or operator, of a vessel

1 concerning the terms and conditions under which the pilot organization will provide
2 pilotage services.

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

7 * **Sec. 19.** AS 08.62.180 is amended to read:

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

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

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

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

15 (4) vessels of United States registry of less than 300 gross tons and
16 towboats of United States registry and vessels owned by the State of Alaska, engaged
17 exclusively

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

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

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

25 (A) British Columbia and **Southeastern** Alaska **south of 58**
26 **degrees, 10 minutes North latitude,** if reciprocal exemptions are granted by
27 Canada to vessels owned by the State of Alaska and those of United States
28 registry; **or**

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

31 (6) pleasure craft **of United States registry; and**

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

3 * **Sec. 20.** TRANSITION; APPOINTMENTS. (a) Notwithstanding AS 08.62.010, as
4 amended by sec. 2 of this Act, the current members of the Board of Marine Pilots shall
5 continue to serve for the term to which they were appointed.

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

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

12 * **Sec. 21.** TRANSITION; RATES. (a) Pending the adoption of rates under AS 08.62.046,
13 added by sec. 6 of this Act, the rates for the provision of pilotage services are equal to the
14 maximum tariffs established by 12 AAC 56.210, 12 AAC 56.220, 12 AAC 56.230, and 12
15 AAC 56.240, as those regulations read on the day before AS 08.62.045 was repealed.

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

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

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

25 (e) Notwithstanding other provisions of this section, a pilot organization that has an
26 agreement with the master, owner, operator, or agent of a master, owner, or operator, of a
27 vessel may charge rates established by the agreement for the provision of pilotage services that
28 are different from the rates established by this section.

29 (f) Unless a pilot organization has (1) an agreement with the master, owner, operator,
30 or agent of a master, owner, or operator, of a vessel that sets rates for the provision of a
31 pilotage service; or (2) adopted rates under AS 08.62.046, as added by sec. 6 of this Act, that

1 have taken effect, the pilot organization may not charge a rate for the provision of the pilotage
2 service that is different from the rate established under (a) or (b) of this section.

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

6 * **Sec. 22.** AS 08.62.093(e) is repealed.

7 * **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).