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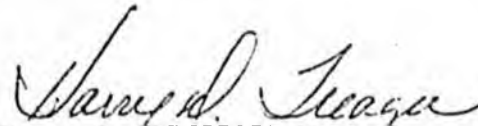
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
POSITION PAPER
SB 145; HB 218
BOARD OF MARINE PILOTS

The department has consistently agreed with the Division of Legislative Audit that the Board of Marine Pilots should continue to regulate and license the marine pilot profession. For the protection of human life and property, shipping and the environment, it is imperative that marine pilots be licensed and regulated and that vessels operating in the inside waters be required to have a licensed pilot in command.

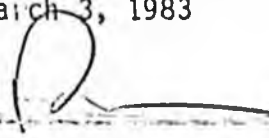
The board has continued to operate in the interest of the public, the licensees and the applicants. It has addressed issues such as the licensing vessel agents and the adoption of regulations to clarify standards and misconduct, held tariff hearings for southeast ports, reviewed and updated examinations and worked toward training for marine pilots through participation in the WICHE program.

There has been no complaint filed against this board.

The Department of Commerce and Economic Development endorses the continuation of the Board of Marine Pilots.



Harry D. Treager, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development
March 3, 1983



3/9/83

Richard A. Lyon, Commissioner
Department of Commerce and
Economic Development

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 145 Date on Bill: February 24, 1983
 Title: "An Act relating to the Board of Marine Pilots."
 Sponsor: Labor and Commerce Committee
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 |
|-----------|-------|-------|-------|-------|
| Capital | | | | |
| Operating | -0- | -0- | -0- | |
| Total | | | | |

b. Revenues:

| | | | | |
|---------|--|--|--|--|
| Revenue | | | | |
|---------|--|--|--|--|

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: No additional fiscal impact will be incurred with this Senate Bill.

~~Funding to be continued and provided for in the
Department's FY-84 Budget.~~

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: *Darrell Miller* Darrell Miller Phone: 465-2535
 Division: Occupational Licensing Date: March 2, 1983
 Approved by Commissioner: Richard A. Lyon Date: 3/9/83
 Department: Commerce & Economic Development

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

BOARD OF MARINE PILOTS

Current Number of Licensees - Marine Pilots - 56
 Registered Agents - 12

FY '82

| | | |
|---------------------------|-------|-------------|
| Revenues | 1.8 | |
| Expenditures | 15.1 | |
| **Personal Services | | 8.3 |
| *Contractual | | 1.7 |
| *Commodities | | 0 |
| Board Travel and Per Diem | | 5.1 |
| | TOTAL | <u>15.1</u> |

FY '83 - Allocated (board travel & per diem only) - 7.5

| | | |
|--|-------|------------|
| Revenues (7/1/82 to 3/1/83) | 18.8 | |
| Expenditures | 9.5 | |
| **Personal Services (7/1/82 to 3/1/83) | | 5.3 |
| *Contractual | | .5 |
| *Commodities | | -0- |
| Board Travel and Per Diem | | 3.7 |
| | TOTAL | <u>9.5</u> |

FY '84 - (Board Component - Division Budget) Total 201.5
 Board of Marine Pilots Allocation 7.9

*The above items are funded in the Administration component of the division's budget.

**Personal services are 1/3 of 1 licensing examiner position.

A PERFORMANCE REVIEW OF THE
ALASKA STATE BOARD
OF MARINE PILOTS

August 4, 1982

Audit Control Number

08-1078-83-R

Commissioner, Department of
Commerce and Economic
Development

Richard A. Lyon

Deputy Commissioners, Department
of Commerce and Economic
Development:

Edward Eboch
Vacant

Members of the
Board of Marine Pilots

Chairperson
Member
Member
Member
Member
Member
Member

Charles R. Webber
Captain Donald Oldow
Captain Jack Maroni
David V. George
Marvin Taylor
William H. Barrington
Kenneth Peavyhouse

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

October 11, 1982

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the
Alaska Statutes, the attached report is submitted for your
review.

A PERFORMANCE REVIEW OF THE
ALASKA STATE BOARD
OF MARINE PILOTS

August 4, 1982



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20 .271(1) and 44.66.050 (sunset legislation), an audit of the Board of Marine Pilots was conducted to review Board activities and accomplishments to determine if the Board has operated in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Marine Pilots should be reestablished. The law currently specifies that this Board will terminate on June 30, 1983, but will continue until June 30, 1984, for the purpose of concluding its affairs.

Scope

The major areas reviewed were the Board's operations and its licensing, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

- (1) Applicable statutes and Board regulations;
- (2) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;
- (3) interviews with OL employees;
- (4) complaints filed with OL and the Attorney General's Office; and
- (5) interviews with personnel from the U.S. Coast Guard.

ORGANIZATION AND FUNCTION

Responsibility for the regulation of marine pilotage is shared by the federal and state governments. The federal government, through the U.S. Coast Guard (USCG), regulates pilotage on enrolled vessels, while the individual states are given the right, in the United States Code, to regulate pilotage on registered vessels. Enrolled vessels are vessels registered in the United States and engaged in commerce between American ports; registered vessels are those vessels engaged in foreign trade. The individual states have the right to regulate pilotage on vessels engaged in foreign trade.

The Alaska Board of Marine Pilots was created under Alaska Statute 08.62 to carry out the State of Alaska's responsibility of regulating pilotage on registered vessels. The Statute became effective in 1970.

The Board is made up of seven members - two marine pilots, two agents or managers of vessels, two public members and the Commissioner of the Department of Commerce and Economic Development. Per the Statutes (08.62), the purposes of the Board of Marine Pilots are to license qualified pilots; to take disciplinary action against negligent or incompetent pilots; and to regulate pilotage fees.

Once a marine pilot has received a license from the Board, he is authorized to pilot registered vessels within the established boundaries of inside waters of the State. The inside waters are defined by regulations as all of Southeastern Alaska, Prince William Sound, Cook Inlet and Resurrection Bay. Alaska Statute 08.62 requires registered vessels to carry State licensed pilots when inside these boundaries. It is the pilot's job to direct a vessel safely through the inside waters; dock and undock the vessel.

To obtain an unlimited pilot's license an applicant must first obtain both a pilot's license and a master's license issued by the U.S. Coast Guard. In addition, he must perform ten to twenty dockings and undockings and pass written and oral examinations administered by the Board.

The Board also issues limited pilot's licenses and channel pilot's licenses. The holders of limited pilot's licenses may pilot vessels of 2,000 gross tons or less. Channel pilots may pilot vessels in main ship channels only, and can perform dockings and undockings under the direct supervision of pilots holding unlimited pilot's licenses. Proof of dockings and undockings is required to obtain all classes of licenses. Applicants for any of the three licenses can obtain temporary licenses by meeting all the licensure

requirements and taking a temporary license examination. A second examination is required for permanent licensure.

To obtain license renewal, a pilot must show that he has worked at least two months in each area for which he holds a license. The two months' time must have been worked within two years prior to the renewal date. License renewal is required biennially.

Another function of the Board is regulating fees for pilotage services. Any increases of the fees charged by pilots for their services must be approved by the Board.

The Board is assisted in performing its licensing and other administrative functions by staff support from the Division of Occupational Licensing (OL). OL processes applications, maintains files, answers correspondence dealing with the Board and provides other administrative support as needed by the Board. In addition, OL investigates any complaints or accident reports involving marine pilots.

REPORT CONCLUSION

In our opinion, the Board of Marine Pilots should continue to regulate and license the marine pilotage profession. The regulation and licensing of marine pilots by a State agency is necessary to assure the protection of shipping, human life and property, and the environment from potential dangers caused by registered vessels sailing in Alaskan waters.

We recommend that the Board of Marine Pilots: (a) define terms as they are used in the regulations and (b) require that a procedures manual be completed as soon as possible.

We recommend that the Department of Commerce and Economic Development, Division of Occupational Licensing: (a) ensure that public notices of examinations are sufficiently and timely advertised and (b) review their applications for licensure and delete any questions which could lead to discrimination against applicants.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Marine Pilots should recommend regulatory changes to make the license renewal requirements less vague.

The regulation which sets down the requirements for the renewal of State pilot's license is vague. Alaska Administrative Code (AAC) 12.56.080 requires applicants for the biennial renewal of State pilot's licenses to submit proof of having worked at least two months in each area for which they are requesting renewal. The two months must have been worked in a licensed deck officer capacity during the two years prior to the date of renewal of the license.

The regulation is vague in that the terms and phrases used are not defined. For example, "two-months" can mean 60 days or 60 days less week-ends or one trip a week for eight weeks. "Licensed deck officer capacity" can mean any position from third mate to pilot. The regulation states the pilot must have worked "in the area for which he was licensed during the last biennial period" (emphasis added). A person licensed for all of Southeastern or Southwestern Alaska could spend two months in only one of many ports in the area and still fulfill the "in the area" requirement.

The Board should define or clarify the following terms or phrases:

- A. Does the term "licensed deck officer capacity" include or exclude time as a pilot?
- B. How does a pilot calculate the two month period required by 12 AAC 56.080(b)?
- C. What exactly is meant by "in the area"?
- D. How does the Board determine what is sufficient knowledge and experience?

Recommendation No. 2

The Board should establish formal procedures to conduct its business more effectively and promote better communication with supporting personnel.

The Board members and licensing examiner for the Board should develop a procedures manual to be used by the Board members and the examiner. Many misunderstandings between the licensing examiner and the Board members can be cleared

up this way. In addition, a procedures manual would provide continuity between licensing examiners--this would help alleviate the problems caused by the rapid turnover of license examiners.

Recommendation No. 3

The Department of Commerce and Economic Development, Division of Occupational Licensing should ensure that public notices of examinations are sufficiently and timely advertised.

The Department is required by statute to publish notices of examinations, and it is each board's responsibility to notify the Department of upcoming examinations well enough in advance to permit proper advertisement.

During our review of examination advertisements, we found that four out of six notices did not allow adequate time for individuals interested in taking the examination to submit applications within the advertised deadline. Regulations for the Board of Marine Pilots, 12 AAC 56.070(a), say in part, "all applications for examination must be submitted to the board at least 60 days before the date of examination."

Advertisements should be published early enough to allow adequate time for all interested candidates to submit applications before the required deadline.

Recommendation No. 4

The Department of Commerce and Economic Development, Division of Occupational Licensing, should review their application forms for licensure and delete any questions which could lead to discrimination against applicants.

One of the public need criteria for the continued existence of a board is the extent to which State personnel practices, including affirmative action requirements, have been complied with by the board in its area of activity.

In reviewing the applications for licensure of the Board of Marine Pilots, we noted that the applications contain questions which could lead to discrimination by Board members against applicants. The applications request information on sex, age, height, weight, color of eyes and hair. We did not find any evidence of discrimination against an applicant based on the answers to these questions. However, the potentiality for discrimination exists.

We recommend that the Board of Marine Pilots and the Division of Occupational Licensing consult with the State Equal Employment Opportunity Office or the Human Rights Commission on the makeup of the applications for licensure. These two

agencies could help the boards make a determination as to whether or not the questions asked are of a discriminatory nature. Then, any discriminatory-type questions should be analyzed to determine if a real need for the information exists. If not, the questions should be deleted.

This is a problem common to many boards. Basically the same recommendation was made in "A Performance Review of the Division of Occupational Licensing," dated October 30, 1978.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Board activities relates to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

- I. The extent to which the board, commission or program has operated in the public interest.
 1. The Board of Marine Pilots has operated in the public interest by promulgating regulations which help assure that a State-licensed marine pilot has the experience, knowledge and skill required for safe pilotage. The qualifications required for licensure as a State pilot exceed the requirements for a U.S. Coast Guard issued pilot's license as follows:
 - a. Applicant must possess a U.S. Coast Guard issued master's license;
 - b. applicant must document having completed 10 to 20 dockings and undockings under the supervision of a State licensed pilot; and
 - c. applicant must be at least 25 years old.
 2. The Board is protecting the public by providing a mechanism to help assure the protection of shipping, human lives and property and the environment from the dangers posed by vessels in Alaskan waters.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The following enhanced the performance of the Board of Marine Pilots.

1. The Governor, when making appointments to a board or commission, requests that the appointee attend at least 75% of the meetings.

From 01/30/79 through 12/15/81, three board members had 100% attendance, one had 93%, one had 90% and one had 86% attendance of all scheduled meetings.

2. The Board receives administrative services support from the Division of Occupational Licensing (DOL).
3. The Board receives legal assistance from the Attorney General's Office.
4. The Board has established a working relationship with the U.S. Coast Guard and with industry representatives.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

1. During the 1979 Legislative session, a bill was passed that increased the maximum fine payable by violators of the statute, which required pilots aboard registered vessels, from \$1,000 to \$5,000. This is in the public's best interest because it should have more of a deterrent effect on potential violators than the \$1,000 maximum penalty did.
2. In 1980, AS 08.62.150 was amended by adding paragraph (7) which includes a provision to allow the Board to revoke or suspend a license based on the revocation or suspension of a U.S. Coast Guard pilots license.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, and availability of service which it has provided.

1. The public is invited, by notices in the four major newspapers throughout the State, to the Board's meetings. However, in many cases, the notices are not published timely enough to allow a person interested in attending a meeting time to prepare for the meeting.
2. At each of the meetings of the Board there have been at least four industry representatives other than the Board members or support staff in attendance at the meetings.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

1. As stated in Criteria IV, Number 1, the public is invited to the Board of Marine Pilots' meetings to give input about Board business.
2. The public also has a chance to give input about proposed regulations, since proposed regulations have to be published in the newspapers before they can become effective. In the public notices, the public is invited to make testimony on the proposed regulations.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. There were no complaints filed with the Office of the Ombudsman, State E.E.O., Human Rights Commission, or the Attorney Generals' Office.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

1. Based on the requirements for licensure as a State marine pilot, the applicants should be qualified to pilot vessels in the inside waters of Alaska.
2. Since 1978, there were 24 licensed pilots who were eligible to have their licenses renewed. All 24 pilots, voluntarily did not apply for license renewal. However, licenses have been issued to 15 newly qualified applicants.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

1. Applicants for State pilot's license must by regulation be at least 25 years old. It is recommended by the State Division of Equal Employment Opportunity (E.E.O.) that on the Application/Renewal Forms, instead of asking

for the "date of birth," the question should be; "are you at least 25 years of age?"

2. The Board of Marine Pilots Application/Renewal Forms require: place of birth, weight, height and sex. According to E.E.O. guidelines, this information is not necessary for licensing and should be deleted from the forms.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

1. See Recommendations No. 1 through No. 4.

APPENDIXES

APPENDIX A

BOARD OF MARINE PILOTS
REVENUES COMPARED WITH EXPENDITURES
 Fiscal Year 1982
 (UNAUDITED)

| | |
|---|--------------------|
| Revenues (see Schedule 1 and Note 1) | \$ 10,072 |
| Expenditures (see Note 2) | <u>51,138</u> |
| Excess of Expenditures over Revenues | <u>\$ (41,066)</u> |

Schedule 1
 Types of Revenue

| <u>Revenues</u> | <u>Amount</u> | <u>Time of Collection</u> |
|------------------------------------|---------------|-----------------------------------|
| Application and Examination Fee | \$ 10.00 | With submittal of application. |
| Temporary License Fee | \$ 50.00 | With submittal of application |
| License Fee | \$300.00 | Biennially |

Note 1

Most of the revenues collected by this Board are comprised of license renewal fees. These fees (\$300) are collected once every two years, which causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, the revenue figure reported above is an average of the revenues collected in fiscal years 1980 and 1981, in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures includes those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for the efforts of other departments, such as the Department of Law, in assisting the Board and OL.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH D
JUNEAU, ALASKA 99911
PHONE: 465-2500

October 28, 1982

RECEIVED
OCT 28 1982

LEGISLATIVE
AUDIT

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Re: Board of Marine Pilot Audit Report

We have reviewed your preliminary audit report on the Performance Review of the Board of Marine Pilots. The Department of Commerce and Economic Development concurs with your findings that the board has operated in the public interest.

Thank you for the opportunity to comment on your findings. We concur with Recommendations 1, 2 and 3 and concur, in part, with recommendation 4. We have addressed each recommendation in our response. The board is tentatively scheduled to meet on December 6, 1982 in Anchorage. If additional comments are developed at that time, we will inform your office.

The following is our immediate response to the recommendations as they appear in your report:

Recommendation #1

The Board of Marine Pilots should recommend regulatory changes to make the license renewal requirements less vague.

We concur with the recommendation that the terms "two months," and "licensed deck officer" are vague and should be further defined. The term "in the area" is further explained in 12 AAC 56.080(b)(2) by the continuation of the sentence "... for which his license was originally issued." The answer to part D of your recommendation the board determines sufficient knowledge and experience by written examination of the knowledge for the subjects listed in 12 AAC 56.070 and the oral interview administered by no less than three board members on subjects noted in 12 AAC 56.070(c)(1)(2) and (3).

Recommendation #2

The board should establish formal procedures to conduct its business more effectively and promote better communications with supporting personnel.

The department concurs in general with the idea in this recommendation. However, we have no knowledge of problems in communicating with board members. Due to the board members being in private business and unavailable for immediate responses has caused only minimum delay. Board members frequently visit the division office when in Juneau.

In 1981, a manual for the board chairpersons of all the boards and commissions was completed. A portion of the manual is for effective operations between the boards and support staff. The division is in the final drafting stage of desk manuals for the examiner staff in each licensing occupation. The final manuals should be completed by December 1982.

Recommendation #3

The Department of Commerce and Economic Development, Division of Occupational Licensing, should ensure that public notices of examinations are sufficiently and timely advertised.

We concur public notices should be made in a timely manner. The Division of Occupational Licensing has attempted to give notice throughout the State. A list of radio, television and other media outlets has been compiled, and copies of notices are sent to 82 different agencies and media offices. Additional support staff has been hired in the clerical field and this will be an assigned function under the guidance of the examiner staff. This should eliminate this problem and comply with your recommendation. Procedures have been developed for the examiner's desk manual addressing this issue.

Recommendation #4

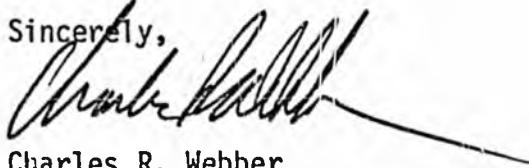
The Department of Commerce and Economic Development, Division of Occupational Licensing, should review their application forms for licensure and delete any questions which could lead to discrimination against applicants.

The department and division would agree with the theory of this recommendation. However, in practice, assurance is a must in licensing those individuals who file documentation are the same individuals who are tested. Personal data insures this. The division has experienced a situation where a son attempted to gain a professional license by use of his father's documentation. The use of personal data assisted in the discovery of this attempt. The division does and will continue to review applications to protect the applicants and delete unnecessary information requirements. As stated in your review, there have been no complaints against the board.

October 28, 1982

In closing, I would like to thank you and your staff for the constructive evaluation contained in your review, and for the opportunity to respond. Your staff should be commended on their professional approach, and the manner they go about their audit task. Their recommendations are well taken.

Sincerely,



Charles R. Webber
Commissioner

CRW/wfs 1/10

SB 145 TITLE & SPONSOR SUMMARY 14:14 5/22/84 PAGE 1 OF 2
AMENDED TITLE:
AN ACT RELATING TO THE BOARD OF MARINE PILOTS

PRIME SPONSOR: SENATE LABOR&COMM COMMITTEE.
CO-SPONSORS:

CURRENT STATUS: 2/24/83 IN (S) LABOR & COM

SB 145 SENATE ACTION 14:14 5/22/84 PAGE 2 OF 2
DATE SEQ PAGE LEGISLATIVE ACTION

02/24/83 01 0253 FIRST READING --- COMMITTEE REPORTS
LABOR & COMMERCE
RULES

*** ** ** *** ** *



ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

March 14, 1983

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

The Senate Labor and Commerce Committee has had under consideration for "Sunset Review" the Board of Marine Pilots pursuant to your referral under AS 44.66.050 and AS 08.03.010.

In accordance with the statutory requirement, a public hearing was held on the review of this board. The Committee considered the proposed budget of the board and examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided, in part, by the report prepared by the Legislative Audit Division, the Committee took into consideration the factors required to be considered under AS 44.66.050(c). The Board of Marine Pilots has operated in the public interest by pronulgating regulations which help assure that a state licensed marine pilot has the experience, knowledge and skill required for safe pilotage. The public is encouraged to attend the Board meetings and express any concerns regarding the Board's activities. In the past, the Board has taken an active role in recommending statutory changes which would help assure safe pilotage of registered vessels sailing in Alaskan waters. The attendance rate of the Board members at the scheduled meetings is excellent, and should be commended.

The Senate Labor and Commerce Committee recommends that the Board of Marine Pilots be continued for another four years, i.e. until June 30, 1987.

Sincerely,

Senator Dick Eliason, Chair
Senate Labor and Commerce Committee

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 2, 1983

Mr. Richard D. Pennington
Aglivetti & Pennington
733 W. Fourth Ave., Suite 206
Anchorage, AK 99501

Re: Board of Marine Pilots
License Qualification
Regulations 12 AAC56.030(5)
and 040(7)

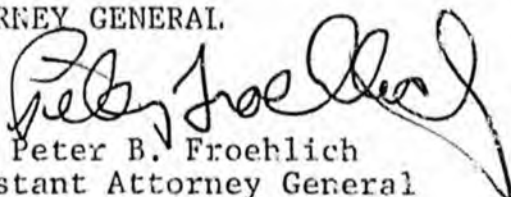
Dear Mr. Pennington:

This is a response to your April 11 letter concerning the anticompetitive effect of the supervised docking and undocking requirements of 12 AAC 56.030(5) and 040(7).

As indicated by the enclosed notice, the board is currently proposing to amend or repeal those regulations. Hopefully, any problems will be eliminated by whatever action the board ultimately determines to take. Meanwhile, I urge your continued persistence in making these problems known to the board by submitting a statement and argument in response to the notice.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Peter B. Froehlich
Assistant Attorney General

PEF:eja

Enclosure:

cc: Harry Treager
Senator Richard Eliason ✓
Ms. Mary Levan
Representative Walt Furnace
Mr. Jefferson Barry

STATE OF ALASKA

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS

Notice is hereby given that the Department of Commerce and Economic Development, Board of Marine Pilots, under authority vested by AS 08.62.040(a) and (b), proposes to amend and adopt regulations in Title 12 of the Alaska Administrative Code, dealing with qualifications for licensure (dockings and undockings) for unlimited, limited and channel pilot's licenses and further clarify boundaries for inside Southwestern Alaska waters to implement AS 08.62.030, AS 08.62.040, AS 08.62.050 and AS 08.62.100 as follows:

1. 12 AAC 56.030 is amended to amend or delete the docking and undocking requirements as a qualification for an unlimited pilot's license.
2. 12 AAC 56.040 is amended to amend or delete the docking and undocking requirements as a qualification for a limited pilot's license.
3. 12 AAC 56.050 is amended to amend or delete the docking and undocking restriction imposed on channel pilots.
4. 12 AAC 56.100(b) is amended by adding a new paragraph to clarify what waters are included as inside waters for Southwestern Alaska.

Notice is also given that any person interested may present written or oral statements or arguments relevant to the actions proposed at a public hearing to be held in the Main Conference Room of the Department of Commerce and Economic Development, 9th Floor, State Office Building, Juneau, Alaska, starting at 9:30 a.m., Monday, May 23, 1983.

Notice is also given that any person interested may present written statements or arguments relevant to the actions proposed by mailing or delivering them so they are received by 5:30 p.m., Friday, May 20, 1983 to:

Department of Commerce & Economic Development
Division of Occupational Licensing
Board of Marine Pilots - Regulations
Pouch D-LIC
Juneau, Alaska 99811

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing the above address, or by calling (907)465-2535.

The Department of Commerce & Economic Development, Division of Occupational Licensing, Board of Marine Pilots, upon its own motion or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.



Richard A. Lyon, Commissioner

Date: April 14, 1983

STATE OF ALASKA

BOARD OF MARINE PILOTS

NOTICE OF FORTHCOMING MEETING AND EXAMINATION:

The Alaska Board of Marine Pilots will hold a meeting May 23-25, 1983, beginning at 9:30 a.m., each day, at the State Office Building, Department of Commerce and Economic Development, 9th Floor Commissioner's Conference in Juneau, Alaska.

Notice is also given that the board will conduct a marine pilot examination for licensure (temporary permits, and extension of routes) on Tuesday, May 24, 1983. The exam will be at the Alaska Office Building, Health and Social Services Conference Room #6, Juneau, Alaska, beginning at 9:00 a.m.

Anyone desiring further information on the meeting or the examination may contact the Division of Occupational Licensing, Pouch D, Juneau, Alaska 99811-0800, (907) 465-2542.



Richard A. Lyon, Commissioner

Date: 4-15-83

CAPTAIN EDWARD MURPHY
COMMITTEE TESTIMONY ON SUNSET
REVIEW OF THE BOARD OF MARINE PILOTS
FEBRUARY AND MARCH, 1983

Mr. Chairman and ladies and gentlemen of the committee, thank you for this opportunity to testify in favor of retaining the Alaska Board of Marine Pilots. My name is Edward Murphy and I am appearing today as a representative and spokesman from the Southwest Alaska Pilots Association. Southwest Pilots is one of the two associations of state and federally licensed marine pilots in Alaska and provides state pilots to shipping from Cape Spencer north.

I would like to acknowledge the assistance of Captain George Quick and the American Pilots Association in the preparation of this testimony.

I would first like to give an historical overview of pilotage from colonial times to the present to provide a meaningful context for my comments.

All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping. We may not be the oldest profession but we are certainly the oldest regulated profession. The colonial legislatures had pilotage laws in effect prior to our becoming a nation. The first congress assembled after the adoption of the Constitution in 1789 realized the federal government's constitutional right to regulate interstate and foreign commerce would interfere with pilotage systems and state regulations and quickly passed an act that left pilotage under state control.

The state laws generally provided for a system of regulated public pilots who conducted ships to and from the sea and whose terms and conditions of service were established by law. Pilotage remained exclusively a public service under state control until 1871 when congress acted to provide for the federal licensing

of pilots on steam vessels engaged in coastwise or interior commerce of the country. At that time steam vessels were considered inherently dangerous and many laws were being passed to protect the public from this new threat created by the industrial revolution. Since many states exempted ships engaged in strictly coastwise or interior commerce from the requirement of taking aboard a public pilot, congress felt that there was a need to insure that these new and dangerous vessels driven by steam employ someone familiar with the waters over which the vessel was navigating.

This new act of congress created a different category of federally licensed pilots who were employees of the ship and who often were actually the master or other officer acting as pilot by virtue of additional endorsement on his license. This new category caused confusion in defining the term pilot and in defining the role and function of a pilot.

The term pilot in the United States today is used to describe two entirely different sets of relationships:

- 1) It can refer to a federally licensed employee of the ship who is subject to the selection and control of the ship owner and whose terms and conditions of employment are determined by mutual agreement. The relationship is common law one of employer and employee.

- 2) It can refer to the state licensed publically regulated pilot who is not subject to the control and selection of the ship owner and whose terms and conditions of service are established by statute and not subject to negotiation. The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court cases applying principles of maritime law.

In simple terms, the federally licensed pilot is acting in a private capacity on privately agreed terms and conditions, and the state licensed pilot is exercising a public function on publically regulated terms and conditions.

The legal text writers and the court decisions attempt to avoid confusion by generally referring to the pilot acting in a private capacity as a voluntary pilot and referring to the pilot exercising a public function as a compulsory pilot.

In the voluntary pilot situation the employment contract is by mutual agreement between the ship owner and the employee pilot, even though the ship owner is naturally compelled to select his employee from among a class, i.e., federally licensed pilots. In the compulsory pilot situation the pilot is forced on the ship owner by compulsion of law and under terms and conditions established by law. The concept of compulsory pilotage excludes any right of the ship owner and pilot to mutually agree on the terms of their relationship. The right of selection and control, as well as the terms and conditions of service are not properly the subject of negotiations, they are established by the state to serve the state's superior interests.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that separate the federally licensed employee pilot and the state licensed public pilot. An understanding of the differences is necessary.

The state licensed pilot is regulated by state statutes creating compulsory pilotage. His state license is both a certificate of competency and a franchise as a public servant requiring him to assume public obligations in maintaining pilot stations and operating a pilotage system. The rights, duties, and obligations of the owner, the ship, the master and the pilot are created by law and not by mutual agreement between the parties. Common law principles governing the usual employment contract have no application.

The general scheme in effect throughout most of the world is one in which a vessel approaching the coast with the intent of making port has a compulsory

obligation to accept a local pilot skilled in navigating those waters and knowledgeable as to local hazards, place him in charge of the navigation of the ship, and pay the fee for his services prescribed by local law. The purpose is to protect the safety of shipping by assuring a complement of pilots will be available when needed at designated locations (pilot stations) and placing navigational control of the ship in the hands of a qualified local expert when the ship is in a high risk area.

As part of their franchise as a public service it is compulsory for the pilot to maintain pilot boats on established stations known to all mariners, to keep a complement of qualified pilots available to render services at all times, to go to any ship needing his service without discrimination or choice and to provide his services under legally established terms and conditions, and for a fee prescribed by law and published in a tariff.

Compulsory pilotage is a creation of law, not a contract. It is regulated in much the same manner as a public service company and charged with the public responsibility of rendering pilotage services to vessels. The pilot is in no sense the employee or servant of the ship owner or the vessel he pilots. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property--and in today's world, the environment--from the hazards of navigation. He sees his duty and obligation as being owed to local political authority and to the public, rather than to the ship owner in the role of an employer. The public nature and regulation of the terms and condition of his service protect and insulate him from the demand and pressures that can be placed on an ordinary employee to compromise the margins of safety.

In contract, the federally licensed pilot is a common law employee of the ship owner serving in a private capacity. The ship owner has the right of

selection and the right to exercise control over his employees in the performance of their duties. The terms and conditions of employment are privately agreed to with the ship owner. The prospects of future employment are dependent on how well the employee satisfies the demands placed on him by his employer. The master and the federally licensed pilot work for and are answerable to the same employer and are licensed by the same federal agency, the Coast Guard. In some cases the master and pilot may in fact be the same person serving in a dual capacity. This lack of independence and the absence of checks and balances should give the public cause for concern when they consider that the sea-going coastwise tankers are largely exempt from the protection of state compulsory pilotage laws. Many of them are navigated on our inland waters by company employee pilots or masters serving in the dual capacity of pilot.

So, compulsory state pilotage operating under the authority of the state Board of Marine Pilots functions to protect and insulate independent decision making affecting the safety of ships from commercial pressures by placing navigational control in high risk areas in charge of a compulsory public pilot who does not belong to the ship, i.e., free of the ship owner's interest and control. That independent pilot who is aboard the vessel for one reason, safety, is licensed and regulated by the state board.

In light of this state's continuing need to protect the lives and property of its citizens from the inherent hazards of navigation under high risk conditions in Alaskan waters, it is essential to maintain state licensed public pilots under the control of the Alaska Board of Marine Pilots.

In conclusion, I urge the committee to recommend the retention of the Board in its present form. Qualified independent Alaska licensed pilots are necessary for the safe and efficient flow of commerce in Alaskan waters. Only a properly constituted licensing and regulatory body, such as the Board, is capable of assuring the maintenance of professional standards essential to the piloting profession in a state so dependent on waterborne commerce.

Duty - Board of Marine Pilots regulates pilotage on registered vessels (vessels engaged in foreign trade)

Members - 2 marine pilots
2 managers of vessels
2 public members
+ Commissioner of Commerce + Economic Dev

Action Taken - License qualified pilots
by Board - Take disciplinary action against negligent or incompetent pilots
- Regulate pilotage fees

Summary of Audit - Should continue to regulate and license the marine pilotage profession

Recommendation to Board

- 1) Define terms used in regulations
- 2) Require procedure be completed

Recommendation to Dept of Commerce

- 1) Ensure public notices of examinations are sufficiently + timely advertized
- 2) Delete questions which could lead to discrimination

Budget Impact of Board of Marine Pilots

License renewal (\$300.00) is required biennially; therefore the revenue is not constant each year. The amount listed for expenditures are funded in the Division of Occupational Licensing. Board of Marine Pilots has allocation of \$7,900 for travel/per diem.