

HB

172

HOUSE COMMITTEE REPORT

(11)

Date referred: 3/20/87

FURTHER REFERRALS:

DATE: 4/9/87

The Finance Committee has considered HB 172

"An Act extending the termination date of the Board of Marine Pilots; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 172 (L&C) [] the same title
- [] attached amendment(s) a new title
- do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: [] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [] fiscal impact [] same as previous fiscal note published _____
- [] zero fiscal note
- [] zero with analysis same as previous zero fiscal note published 3/20/87

SIGNING DO PASS:

ADAMS Albert B. Adams

FOURCROT [Signature]

LARSON [Signature]

SWACK-HAMMER [Signature]

BOYER [Signature]

RIEGER [Signature]

WALLS [Signature]

DAVIS [Signature]

GOLL [Signature]

SIGNING OTHER RECOMMENDATIONS:

BROWN Jay Brown - No Rec

Albert B. Adams
Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:Bill Version CASHB 172(L&C)Publish Date: HOUSE 3/20/87

Revision Date: _____

Agency Affected: Commerce & Econ. Dev.Title: An Act extending the termination date of the Board of Marine Pilots:BRU: Occupational LicensingSponsor: House Labor & CommerceComponents: All

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Funding for continuation of the Board of Marine Pilots is budgeted in the department's FY 88 operating budget request and is anticipated to be covered primarily through program receipts.

Prepared by: Jennifer Strickler, Management AnalystPhone: 465-2144Division: Occupational LicensingDate: 3/16/87Approved by Commissioner: J. Anthony Smith

Date: _____

Agency: Commerce and Economic Development**Distribution (by preparer):**

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 172 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the regulation of marine pilots;

7

extending the termination date of the Board of Marine

8

Pilots; and providing for an effective date."

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

10 * Section 1. AS 08.03.010(c)(12) is amended to read:

11

(12) Board of Marine Pilots (AS 08.62.010) -- June 30, 1991

12

[1987].

13

* Sec. 2. AS 08.62.150(a) is amended to read:

14

(a) The board [, AFTER COMPLIANCE WITH THE ADMINISTRATIVE PROCE-

15

DURE ACT (AS 44.62),] may impose a disciplinary sanction on a person

16

licensed under this chapter when the board finds that the person

17

[DENY, REVOKE OR SUSPEND THE LICENSE OF A PERSON WHO]

18

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

19

(2) is habitually intoxicated;

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(3) illegally uses or sells narcotic or hallucinogenic

21

drugs;

22

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

23

(5) violates a provision of this chapter or a regulation

24

adopted under it;

25

(6) is guilty of misconduct during the course of employ-

26

ment; or

27

(7) has suffered revocation of federal licensure as a

28

pilot.

29

* Sec. 3. AS 08.62 is amended by adding a new section to article 2 to

1 read:

2 Sec. 08.62.155. DISCIPLINARY SANCTIONS. (a) The board may
3 impose the following sanctions singly or in combination:

- 4 (1) permanently revoke a license or permit to practice;
- 5 (2) suspend a license for a stated period of time;
- 6 (3) censure a licensee;
- 7 (4) issue a letter of reprimand;
- 8 (5) impose limitations or conditions on the professional
9 practice of a licensee;
- 10 (6) impose peer review;
- 11 (7) impose professional education requirements until a
12 satisfactory degree of skill has been attained in those aspects of
13 professional practice determined by the board to need improvement;
- 14 (8) impose probation and require the licensee to report
15 regularly to the board upon matters involving the basis for the pro-
16 bation;
- 17 (9) accept a voluntary surrender of a license.

18 (b) The board may withdraw probation status if it finds that the
19 deficiencies that required the sanction have been remedied.

20 (c) The board may summarily suspend a license before final
21 hearing or during the appeals process if the board finds that the
22 licensee poses a clear and immediate danger to the public health and
23 safety. A person whose license is suspended under this section is
24 entitled to a hearing by the board within seven days after the effec-
25 tive date of the order. If, after a hearing, the board upholds the
26 suspension, the licensee may appeal the suspension to a court of
27 competent jurisdiction.

28 (d) The board may reinstate a license that has been suspended or
29 revoked if the board finds, after a hearing, that the applicant is

1 able to practice with skill and safety.

2 (e) The board may return a license that has been voluntarily
3 surrendered if the board determines that the licensee is competent to
4 resume practice and that applicable renewal fees are paid.

5 (f) The board shall seek consistency in the application of
6 disciplinary sanctions. A significant departure from prior decisions
7 involving similar situations shall be explained in the findings of
8 fact or order.

9 * Sec. 4. AS 08.62.150(b) is repealed.

10 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS

November 28, 1986

Audit Control Number

08-1272-87-R

Commissioner, Department of Commerce
and Economic Development

J. Anthony Smith

Deputy Commissioners, Department of
Commerce and Economic Development

Greg Baker
Terry Elder

Members of the
Board of Marine Pilots

Chairperson
Member
Member
Member
Member
Member
Member

J. Anthony Smith
William H. Barrington
Judith M. Brady
James A. Hodgman
W. Ed Murphy
William G. Ruddy
Paul Taylor

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

November 28, 1986

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS

November 28, 1986

Audit Control Number

08-1272-87-R



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

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PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Marine Pilots to determine if the Board has been operating in an efficient and effective 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, 1987 but will continue until June 30, 1988 for the purpose of concluding its affairs.

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documents of licensees.
3. Interviews with the Division of Occupational Licensing (OL) employees.
4. Complaints filed with OL, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General's Opinions applicable to professional boards.
8. Interviews with personnel from the U.S. Coast Guard.

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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 AS 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. The purpose of the Board of Marine Pilots is to license qualified pilots, to take disciplinary action against negligent or incompetent pilots, and to establish standards for 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 compulsory pilotage waters for the State. The compulsory pilotage waters and the exclusions for entering compulsory pilotage waters are defined by regulations. Alaska Statute 08.62.160 requires registered vessels to carry State licensed pilots when inside these boundaries. It is the pilot's job to direct a vessel safely through Alaska's designated 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, the applicant must perform ten to twenty supervised 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 the limited

and unlimited 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, more extensive, examination is required for permanent licensure which is administered at the subsequent Board meeting.

To obtain license renewal, a pilot must have worked within the area(s) for which he was licensed within the last two biennial periods or petition the Board for determination that he has sufficient knowledge and experience to resume pilotage in the area(s). License renewal is required biennially. It is a pilot's duty to report quarterly the names of all vessels served that were subject to the services of a licensed pilot.

Another function of the Board is to establish standards for setting pilotage fees for services. Any changes 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 complaints or accident reports involving marine pilots.

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendation presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Marine Pilots should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by investigation of complaints and revocation or suspension of licenses when appropriate.

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FINDINGS AND RECOMMENDATION

Recommendation No. 1

The Division of Occupational Licensing's investigative unit should ensure timely, effective, and efficient investigations of licensing complaints.

The Division of Occupational Licensing (OL) is responsible for monitoring and enforcing ethical and professional licensing standards and requirements for various professional boards. Complaints alleging improper practices on the part of licensees as well as those contesting board licensing decisions are investigated by OL. The effective performance of this function is necessary to promote the welfare of the public and protect the rights of licensees.

During the December 15, 1985 special report on OL, several cases were found where there was up to a year's delay in the appointment of a hearing officer; up to six months between the completion of an investigation and the time an accusation was drawn and served; and up to three months between the time a licensing board made a final decision and notice of the decision was served the disciplined licensee. It was determined that the primary cause of those delays was the absence of an effective case management system. There was no system in place to effectively track investigations from the time of the first complaint through its various stages until final resolution. Also noted was that cases were assigned and prioritized through an informal system with little centralized management control.

The conditions found in 1985 were present for much of our audit period. In addition, the investigative unit had significant delays in processing complaints regarding marine pilots in 1985-1986. Review of the 9 complaints received in Juneau by OL from July 1, 1985 (the cutoff test date of the prior audit) showed 4 complaints received in OL 30 - 70 days prior to processing by the investigative unit. OL has recently initiated a process to log in and update complaint file status utilizing computer resources. Centrally available case information and the newly established investigative procedure manual should provide a basis from which OL can enhance complaint processing by the unit.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law. These analyses are not intended to be comprehensive, but address 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.
 - A. The Board of Marine Pilots has operated in the public interest by examining and licensing qualified applicants and proposing changes in regulations that are necessary to enforce State statutes and assure the protection of shipping, human lives, property, and the environment from the dangers posed by vessels in Alaskan waters. To accomplish these functions, the Board has held 6 board meetings, 2 teleconferences, and 6 examination sessions for marine pilots during the past 4 fiscal years.
 - B. Two applicants were issued temporary upgraded licenses prior to fulfilling the docking and undocking certification as required in regulations 12 AAC 56.030 and 12 AAC 56.040.
- 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.
 - A. The Governor, when making appointments to a board or commission, requests that the appointee attend at least 75% of the meetings. From December 1982 through November 1985, one of the seven members had attended only 50% of the meetings. In addition, late appointment caused Board members to fall to 6 (including Commissioner's designee) for two Board meetings.
 - B. The Board pilot members regularly review the examination content and revise it as needed. The State areas differ slightly from the USCG endorsements available and therefore, the Board needs to ensure that applicant requirements are clear regarding these areas. Also under revision is the accident report form.

- C. The Board and OL license examiners are utilizing a procedures manual thereby enhancing effective communication between the administrative function and the Board.
- D. The following has hampered or enhanced the Board's effectiveness due to administrative actions by OL:
 - 1. The Board received assistance in drafting legislation and regulatory changes from OL.
 - 2. Alaska Statute 08.01.070(7) requires the Board to forward Board minutes to OL within 20 days of the meetings. This time requirement was not met for the May 1985 Board meeting.
 - 3. OL does not have an allocation plan for indirect costs for each individual board. They do have procedures to recoup costs in total. Available records indicate the Board is not self-supporting.
 - 4. Alaska Statute 08.01.050(9) states licenses will be issued as authorized by the Board. Two licenses were issued in December 1981 with no apparent Board resolution existing in the Board minutes.
 - 5. Board Regulation 12 AAC 56.060(c) requires temporary exams to be administered by two Board members. Two exams were administered with OL Commissioner's designee's authority in Unalaska in 1984 due to the applicant's expression of financial hardship.

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

- A. The Board changed or deleted definition vagueness in 12 AAC 56.080 and 12 AAC 56.160 concerning experience requirements for biennial license renewal and duties of pilots. This action was in response to a Division of Legislative Audit recommendation in the FY 82 Sunset Review.
- B. The Board has revised its regulations effective December 14, 1986 to include a clause (12 AAC 56.075) under which applicants can request a waiver from qualification requirements due to extenuating circumstances. This regulation was needed to lessen the restrictive nature of the Board of Marine Pilots' regulations.

- C. The Board redefined the Southwest compulsory pilotage water boundaries in order to eliminate confusion as to area requirements. This action provides more concise information to those individuals in the profession or striving to be, therefore, improving adherence to marine pilot regulations.
 - D. The Board has proposed legislation affecting AS 08.62.150 which would expand the Board's authority regarding disciplinary action. The enactment of this legislation would allow the Board to reprimand licensees for inattention to duty and negligence.
- 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, economy of service, and availability of service which it has provided.
- A. The public is informed of examination dates and regulation changes by notices in 5 newspapers throughout the State.
 - B. Minutes of Board meetings include "guest" names which consist of industry representatives and/or support staff in attendance.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. As stated in Criteria IV, Letter A, the public is invited to the Board of Marine Pilots' meetings to give input about Board business and 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.
- A. There were no complaints filed with the Office of the Ombudsman, State Office of Equal Employment Opportunity or the Human Rights Commission.
 - B. A case management system and procedures is currently being established by the Division of Occupational Licensing, Investigative Unit. This implementation should enhance complaint handling. (see Recommendation No. 1).

C. The Division of Occupational Licensing has not always handled complaints and/or accident reports for the Board in a timely manner (see Recommendation No. 1). This could cause unnecessary delays in revoking a negligent pilot's license or in acquiring case facts and therefore affect the due process rights of an individual.

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

A. The Board currently regulates 72 pilots and 18 agents. There have been 22 new licenses issued since December 1981. Nine licenses lapsed since 1982; 7 of which were voluntarily not renewed, 2 of which were subsequently renewed after the license expiration date.

B. The Board requires, from pilots, quarterly reports documenting vessels serviced that require State licensed pilots.

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.

A. The Office of Equal Employment Opportunity does not feel the weight, height, or date of birth questions are necessary with the application form and may encourage discrimination. However, neither the Human Rights Commission nor the Equal Employment Opportunity Office have received complaints related to the Board's activities.

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.

A. Please refer to the previous section, Findings and Recommendation.

APPENDIX

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APPENDIX A
 BOARD OF MARINE PILOTS
 REVENUES COMPARED WITH EXPENDITURES
 For the Fiscal Year Ended June 30, 1986
 (Unaudited)
 (Note 1)

Average Revenue (See Schedule 1 and Note 2)	\$11,489
Expenditures (See Note 3)	<u>14,611</u>
Excess of Revenues over Expenditures	<u>\$ (3,122)</u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount Prior to 11/20/86</u>	<u>Amount Effective 11/20/86</u>	<u>Collection Time</u>
Application and Examination Fee	\$ 50.00	\$120.00	With submittal of application
Temporary License Fee	\$ 50.00	\$ 20.00	With submittal of application
License Fee	\$300.00	\$180.00	Biennially
Extension of Route or Upgrade Fee		\$ 20.00	With submittal of application

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Statement of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is composed of license renewal fees. Licenses are renewed biennially and the last renewal date was December 31, 1984. Because of the renewals, revenues vary substantially every other year. Therefore, we averaged revenues collected in fiscal year 85 and fiscal year 86 in order to obtain a representative amount of average annual revenues collected.

Note 3

Expenditures consist of direct costs resulting from Board activities, which includes travel, per diem, and miscellaneous contractual expenditures incurred by the Board members and the Board's licensing examiner. This amount does not include indirect administrative expenditures of the Division of Occupational Licensing or expenditures for efforts of other departments assisting the Board.

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

February 6, 1987

FEB 17 1987

Mr. Gerald Wilkerson
Legislative Auditor
Legislative Audit Division
P.O. Box W
Juneau, AK 99801

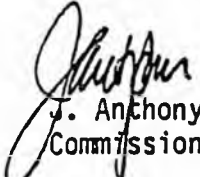
Dear Mr. Wilkerson:

Thank you for the opportunity to respond to the preliminary performance report on the Board of Marine Pilots. The department concurs that the board should be reestablished and agrees with the recommendation that the Division of Occupational Licensing's investigative unit should ensure timely, effective, and efficient investigations of licensing complaints. As you acknowledged in the report, the division has implemented the following procedures over the past six months which are targeted at increasing the effectiveness of the investigative unit:

1. all current cases in investigation and litigation have been computerized;
2. an in-depth investigation and litigation manual has been prepared and adopted; and
3. all complaints received by licensing examiners are now logged into the investigative unit within three days of receipt.

These procedures have increased the effectiveness of case tracking and processing but will not impact the timely processing of all complaints. There are currently four investigators who have the responsibility for investigating allegations of incompetence and unlicensed activity in 25 occupational areas. Each investigator currently has an average caseload of 50 investigations. This has necessitated the development of a system of prioritizing cases based on the degree of risk to the public. Unfortunately, not all cases can be handled in a timely manner.

Sincerely,


J. Anthony Smith
Commissioner

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020587a

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February 10, 1987

BOARD OF MARINE PILOTS RESPONSE TO PRELIMINARY SUNSET AUDIT DATED NOVEMBER 28, 1987, BY CAPTAIN W.E. MURPHY, MEMBER.

The preliminary audit report is generally a fair and reasonable statement of the Board's performance and problems. Some areas, however, need to be clarified and expanded upon.

PURPOSE OF THE REPORT

The auditors claim that in making their report they "reviewed and evaluated" discussions with Board members. In fact, I know of no Board member who had any dialogue with an auditor relative to their sunset investigation. Contact between Board members and sunset auditors was noticeable by its absence. An auditor did sit in on a Board meeting but did not interview Board members.

ORGANIZATION AND FUNCTION

Under this section the report describes the Board's purpose and duties but does not state its primary duty, established by statute. That is Alaska Statute 08.62.040 which states, in part, "The Board shall (1) provide for the maintenance of an efficient and competent pilot service on all waters covered by this chapter to assure the protection of shipping and the safety of human life and property." This is the most important of the statutes which the Board's performance should be measured against.

The preliminary report, in describing the Board's licensing functions, refers to limited pilot license of under 2000 gross tons. Recently new licensing regulations were put into effect by the Board which creates 4 license categories: channel pilot; step 1 license for vessels of less than 20000 gross tons; step 2 license for vessels of under 40000 gross tons; and unlimited tonnage license.

REPORT CONCLUSION

POLICY ISSUES

The meaning of this paragraph is not clear. Therefore no comment is offered.

REPORT CONCLUSION

The Board concurs with the auditors' conclusion that it should be reestablished. While not without problems, the Board does a good job of protecting the public's interest by regulating pilotage in this state. The demise of the Board would spell the end of any state control over the competence of the navigation of the many foreign vessels and very large tankers which ply Alaska's waters.

FINDINGS AND RECOMMENDATIONS

The Board could not agree more that timely, effective and efficient investigation of licensing complaints should be ensured. Board members have been extremely frustrated with the inordinate amount of time license suspension/revocation proceedings have taken, a process over which the Board exercises no control. The problem goes beyond investigative delay, however. In two recent cases months passed after the investigations were completed before a hearing officer was assigned. The hearing officer, once appointed, granted a series of delays and continuances to both counsel which further slowed the proceedings.

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FEB 10 1987

Bd. of Marine Pilots Response to Preliminary Audit
February 10, 1987
page 2

About two years passed before the cases were resolved, during which time the Board suffered much criticism. The perception of the maritime public was that the Board was refusing to act, while in fact the Board could do nothing until the hearing process was finished. This is an example of how bureaucratic inertia can undermine public confidence in a regulatory board. It is a very real problem for this board.

The director of Occupational Licensing is aware of this problem and has instituted reforms which the Board feels will improve the timeliness of both investigations and hearings.

ANALYSIS OF PUBLIC NEED

II D (3)

The audit report points out that the Pilot Board is not self supporting. Board members are aware of this and were mystified when, in 1986, Occupational Licensing lowered the fees for marine pilot licenses. It is the Board's position that it should indeed be self sustaining.

VI C See comments under findings and recommendations.

VIII A The Board has eliminated from its applications questions which might tend to be discriminatory. Weight, height and date of birth information was left on the application at the request of the investigative unit in order to assist it in identifying a licensee it might be required to investigate.

APPENDIX A

BOARD OF MARINE PILOTS REVENUES COMPARED WITH EXPENDITURES

As stated previously the Board feels it should be self supporting but does not have the authority to set its own fees. This is done by Occupational Licensing. The Board did not recommend and cannot explain why fees were reduced in 1986

FEB 11 1987

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 19, 1987

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Board of Marine Pilots' response to our preliminary report. Our comments follow:

Purpose of the Report

In his response, Board member Captain W. E. Murphy indicated that no Board member was contacted regarding the sunset review. However, both current and past members were contacted for discussion of current and past Board activity. Members contacted were Judith M. Brady, Marvin Taylor, Captain Donald Oldow, and Kenneth Peavyhouse.

Organization and Function

The new licensing regulations referred to by Captain W. E. Murphy became effective December 14, 1986.



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

CAPTAIN EDWARD MURPHY
COMMITTEE TESTIMONY ON SUNSET
REVIEW OF THE BOARD OF MARINE PILOTS
1987

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 both as a member of the Board of Marine Pilots and as a practicing pilot in southwest Alaska.

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

All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping. Pilots 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 existing 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.

(2) Captain Edward Murphy

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 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 the 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 a common law one of employer and employee.

2) It can refer to a state licensed publically regulated pilot who is not subject to the control and selection of the shipowner and whose terms and conditions of employment 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.

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

(3) Captain Edward Murphy

Pilots acting in a private capacity are generally referred to as voluntary or "federal" pilots while pilots exercising a public function are known as compulsory or "state" pilots.

In the voluntary pilot situation the employment contract is by mutual agreement between the shipowner and the employee pilot. In the compulsory pilot situation, which exists in Alaska and the other maritime states, the pilot is forced on the shipowner by compulsion of law and under terms and conditions established by law. The concept of compulsory pilotage excludes any right of the shipowner 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. As part of their franchise as a public service it is compulsory for the state pilot to keep a complement of qualified pilots available to render service at all times, to go to any ship needing their service without discrimination and to provide services under legally established terms and conditions, and for a fee prescribed by law and published in a tariff.

(4) Captain Edward Murphy

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 an employee of the shipowner 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 a shipowner 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 demands and pressures that can be placed on an ordinary employee to compromise the margins of safety.

In contrast, the federally licensed pilot is a common law employee of the shipowner serving in a private capacity. The shipowner has the right of selection and the prospects of future employment are dependent on how well the employee satisfies the demands placed upon him by the employer. The master and the pilot work for and are answerable to the same employer. In many 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.

What does compulsory state pilotage operating under the authority of the Alaska Board of Marine Pilots mean? It protects and insulates independent decision making affecting the safety of navigation from commercial pressures by placing navigation control in high risk areas in charge of a compulsory state pilot who is free of the shipowner's interest and control.

(5) Captain Edward Murphy

It establishes and maintains a system for examining and licensing pilot applicants. It maintains high professional standards. And, finally, it disciplines pilots found guilty of misconduct or judged incompetent

In light of Alaska's continuing need to protect its environment and the lives and property of its citizens from the inherent dangers of navigation under sometimes high risk conditions, it is essential to maintain state licensed public pilots under the control of the Board of Marine Pilots. I urge the committee to recommend retention of the Board. 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.

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE BY THE LABOR AND
COMMERCE COMMITTEE
2 CS FOR HOUSE BILL NO. 172 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the regulation of marine pilots;
7 extending the termination date of the Board of Marine
8 Pilots; and providing for an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 08.03.010(c)(12) is amended to read:
11 (12) Board of Marine Pilots (AS 08.62.010) -- June 30, 1991
12 [1987].
13 * Sec. 2. AS 08.62.150(a) is amended to read:
14 (a) The board [, AFTER COMPLIANCE WITH THE ADMINISTRATIVE PROCE-
15 DURE ACT (AS 44.62),] may impose a disciplinary sanction on a person
16 licensed under this chapter when the board finds that the person
17 [DENY, REVOKE OR SUSPEND THE LICENSE OF A PERSON WHO]
18 (1) is incompetent in the performance of pilotage duties;
19 (2) is habitually intoxicated;
20 (3) illegally uses or sells narcotic or hallucinogenic
21 drugs;
22 (4) makes a false statement to obtain a license;
23 (5) violates a provision of this chapter or a regulation
24 adopted under it;
25 (6) is guilty of misconduct during the course of employ-
26 ment; or
27 (7) has suffered revocation of federal licensure as a
28 pilot.
29 * Sec. 3. AS 08.62 is amended by adding a new section to article 2 to

1 read:

2 Sec. 08.62.155. DISCIPLINARY SANCTIONS. (a) The board may
3 impose the following sanctions singly or in combination:

4 (1) permanently revoke a license or permit to practice;

5 (2) suspend a license for a stated period of time;

6 (3) censure a licensee;

7 (4) issue a letter of reprimand;

8 (5) impose limitations or conditions on the professional
9 practice of a licensee;

10 (6) impose peer review;

11 (7) impose professional education requirements until a
12 satisfactory degree of skill has been attained in those aspects of
13 professional practice determined by the board to need improvement;

14 (8) impose probation and require the licensee to report
15 regularly to the board upon matters involving the basis for the pro-
16 bation;

17 (9) accept a voluntary surrender of a license.

18 (b) The board may withdraw probation status if it finds that the
19 deficiencies that required the sanction have been remedied.

20 (c) The board may summarily suspend a license before final
21 hearing or during the appeals process if the board finds that the
22 licensee poses a clear and immediate danger to the public health and
23 safety. A person whose license is suspended under this section is
24 entitled to a hearing by the board within seven days after the effec-
25 tive date of the order. If, after a hearing, the board upholds the
26 suspension, the licensee may appeal the suspension to a court of
27 competent jurisdiction.

28 (d) The board may reinstate a license that has been suspended or
29 revoked if the board finds, after a hearing, that the applicant is

1 able to practice with skill and safety.

2 (e) The board may return a license that has been voluntarily
3 surrendered if the board determines that the licensee is competent to
4 resume practice and that applicable renewal fees are paid.

5 (f) The board shall seek consistency in the application of
6 disciplinary sanctions. A significant departure from prior decisions
7 involving similar situations shall be explained in the findings of
8 fact or order.

9 * Sec. 4. AS 08.62.150(b) is repealed.

10 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 172

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act extending the termination date of the Board
7 of Marine Pilots; and providing for an effective
8 date."

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