

HB

194

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1991

FURTHER REFERRALS:

Labor & Commerce  
Judiciary  
Finance

Date of Committee Action: 3/19/91

The TRANSPORTATION Committee considered:

HB 194

HOUSE BILL NO. 194

REGULATION OF MARINE PILOTS

"An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot organizations; and providing for an effective date."

RECOMMENDATIONS:  the same title  
be replaced with \_\_\_\_\_  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DCED

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Neil Phillips</i>	x	<i>Gene Kubina</i>		X	
<i>Ben Simpson</i>	x	<i>Jim M...</i>		X	
<i>Neil Hudson</i>	x	<i>Robert A. Suman</i>		✓	

*Jim M...*  
CHAIRMAN'S SIGNATURE

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO. HB 194**

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: An Act relating to the Board of BRU: Occupational Licensing  
Marine Pilots, marine pilots.... Component: Administration  
 Sponsor: Reps. C. Davis, et. al.  
 Requestor: House Transportation **COMPONENT SERIAL NO.**

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	56.5	56.5	56.5	56.5	56.5	56.5
TRAVEL	23.5	23.5	23.5	23.5	23.5	23.5
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0	3.0	3.0	3.0	3.0	3.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>96.0</b>	<b>89.0</b>	<b>89.0</b>	<b>89.0</b>	<b>89.0</b>	<b>89.0</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>	0	250.9	0	250.9	0	250.9
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FUNDING: (Thousands of Dollars)

GENERAL FUND	96.0					
FEDERAL FUNDS						
OTHER (GF/PR)		89.0	89.0	89.0	89.0	89.0
<b>TOTAL</b>	<b>96.0</b>	<b>89.0</b>	<b>89.0</b>	<b>89.0</b>	<b>89.0</b>	<b>89.0</b>

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary.)**  
 (SEE ATTACHED)

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144  
 Division: Occupational Licensing Date: March 18, 1991  
 Approved by Commissioner: Glenn A. Olds *UB*  
 Agency: Commerce and Economic Development Date: 3-18-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## FISCAL NOTE ANALYSIS

HB 194

The bill makes a number of amendments to the Marine Pilotage Act. The expenses identified in this fiscal note result from increasing the mandatory number of meetings to at least four as required by Section 3 of the bill, and the employment of a Marine Pilot Coordinator established by Section 5.

Since Section 22 places the Marine Pilot Coordinator position in the partially exempt service of State government, and is charged with the responsibility to administer and enforce the chapter similar to executive secretaries of other regulatory boards, the costs identified reflect similar arrangements.

### Personal Services:

Marine Pilot Coordinator, XE, 12 months, \$56.5  
Range 18A

Travel: 23.5

Section 3 of the bill increases the number of meetings to at least four each year. Currently the board is required to meet once a year and it is often difficult to fund an additional meeting when approved by the Governor. Funding of \$13.5 will provide for the three additional meetings.

Funding of \$10.0 will cover travel and per diem expenses for the marine pilot coordinator to travel to each marine pilotage region to audit regional marine pilot organizations, review training programs, and to enforce compliance with the marine pilotage act.

Contractual Services: 5.0

This funding will provide for communications, postage, printing and advertising costs.

Supplies: 1.0

Funding will provide for daily operating supplies for the Marine Pilot Coordinator position.

Equipment:

10.0

Funding will provide one-time equipment costs for the Marine Pilot Coordinator position. This funding will also provide for on-going office space costs.

TOTAL COSTS:

\$96.0

Revenues:

There are approximately 123 licensed marine pilots whose licensing fees must be increased to cover the new costs provided in the bill. In addition, current expenses of the Board of Marine Pilots exceed revenues generated through licensing fees to support its licensing program. Therefore, licensing fees will have to be increased substantially in order for the licensing program to support its costs. Biennial licensing fees of \$2,040 (\$1,020 per year) will be necessary to fully fund program costs. Marine Pilot licensees currently pay a biennial fee of \$180 (\$90 per year), and reflect a deficit of \$36.2 in covering its costs by licensing fees. If licensing fees are not increased to cover program costs, the program must then be supported by the general fund.

Since marine pilot licenses are due for renewal on December 31, 1992 (FY 93), revenues will not be collected in the first year of operation under provisions of HB 194. Funding in the first year must therefore be covered by general funds, unless a special one time assessment fee is made to licensees in FY 92.

The revenues identified in this fiscal note are based on the assumption that licensees will be willing to increase their fees to fully cover the costs of its licensing program beginning in FY 93 in conjunction with the license renewal period.

# ALASKA STATE LEGISLATURE

## ELECTIVE DISTRICT 1

HYDER  
KETCHIKAN  
KUPREANOF  
MEYERS CHUCK  
PETERSBURG  
SAXMAN  
WRANGELL



## HOME

P.O. BOX 5723  
KETCHIKAN, AK 99901  
PHONE 225-6304

## DURING SESSION

P.O. BOX V  
STATE CAPITOL BUILDING  
JUNEAU, AK 99811  
PHONE 465-3424

## Representative Cheri L. Davis

### TESTIMONY MARINE PILOTAGE ACT HOUSE BILL 194

The legislatures of all coastal States have, by statute, created boards or commissions to govern the operation of pilots of their respective states; for the appointment and licensing of such pilots; and, frequently, for the fixing of rates for pilots. Such boards and commissions are administrative agencies and, as such, are creatures of statute. The jurisdiction and authority which they assert must be found within the four corners of the statutes under which they were created.

House Bill 194 gives our Board of Marine Pilots this jurisdiction and authority.

It has been almost twenty years since any major changes were made regarding piloting in Alaska. Since introducing this bill, I have been told by some people, "things are fine...if it isn't broken, don't fix it." While I don't feel our pilotage regulations are "broken," I do feel they can use some much needed maintenance.

Pilots play an important, integral part, of transportation in Alaska. Pilots are taken on board at a particular place for the purpose of conducting a ship through inside coastal waters, or from or into a port. It is their "local knowledge" that ensures the safe passage of vessels through our waters.

This bill is a product of compromise. I have met with several representatives from the shipping industry, pilot board members, pilots and pilot organizations. I have taken into consideration all of their comments and requests and incorporated those constructive suggestions into this bill.

The Law of Tug, Tow and Pilotage gives a history of everything you could ever want to know about piloting. It gives a history of the pilotage industry and cites court cases that back-up the need for a strong Pilot Board. Giving the board the statutory power to enforce and regulate its pilots will serve in the best interest of Alaska.

Thank you.

RESPONSE TO DRAFT  
MARINE PILOTING ACT  
*HB 194*

The proposed bill represents a rather unusual combination of strengthening the Board while at the same time weakening it by dictating many details of matters the Board should deal with. On balance the negative aspects seem to outweigh the positive which leads to the conclusion that the proposal needs much more work before beginning its journey through the legislative process.

There are too many conflicts in the proposal between improvements to the pilotage industry and purely self-serving pilot interests.

**Positive aspects are:**

1. Clarification of the powers of the Board. For example, the language in the present Act leaves some doubt as to the Board's power to set tariffs compared to the power to merely determine criteria as to how the tariffs should be set. The proposal clarifies the ambiguity and states clearly that the Board can set rates.

2. The proposal clarifies the issue of pilot organizations and anti-trust law.

3. The proposal deals directly with the issue of limiting a pilot's monetary liability for damages resulting from accidents.

4. The proposal deals with the cross-over liability between individual pilot actions and his or her organization and other pilots in the organization.

The four items above should be part of any new, or changes to the existing, statute.

### Specific sections that create problems:

Unfortunately the proposal consists mostly of matters that are self-serving for existing pilot organizations and create many barriers to entry to the profession and anti-competitive, or monopolistic, features. Some of these features stem from the nature of the profession, but most are more evidently designed as self-protection measures from a pilot perspective.

References to the specific parts of the proposal will show why the above generalizations are valid and demonstrate why the proposal needs a lot of work before being submitted for consideration by the legislature.

#### SECTION 1(2)

Serves no purpose other than to imply that pilots working directly for shipping companies don't provide an essential service to the state. Further, the statement implies that it is the independent relationship that provides the service instead of the qualifications of the pilot that are based upon the license.

#### SECTION 2(6)

The pilot members of the Board should be pilots who are actively engaged in piloting and not merely those who have been active.

The Board is presently balanced by an equal number of representatives from the public, the industry, and pilots. While it would be nice to have a pilot from a third region (really an organization) such a change would create an imbalance in pilot representation that should be countered by adding a third member from the public and industry.

What the proposed change really amounts to is an acknowledgement that the pilot members have unduely represented their organization and not profession. There may be other ways (than increasing the size of the Board) to address this issue. Alternatives should be explored.

#### SECTION 4

The number of Board meetings is not as important as the quality of the meetings. Alternatives as to the way the Board operates should be studied as an alternative to merely increasing the number of meetings.

#### SECTION 5(5)

We disagree with the idea that the tariff should include a charge to the ships in order to provide a training fund for either prospective or licensed pilots. We feel the creation of such a fund would be the source of many disputes. If the Board had power to create such a fund it would create a subsidy to a profession that would be both unique to regulated professions and unduely increase costs to the shipping industry.

Other parts of this section represent such a change to the industry that the general topic of regionalization recognition of pilot organizations must be commented upon in total and not in paragraph number.

The previous administration's study on marine piloting emphasized the desirability of improving two aspects of the industry. These were, (1) increasing the standards and training for entry into the profession, and (2) a greater emphasis on local knowledge as a licensing and practicing criteria.

The recommended solution to these two aspects included the suggestion that licensing areas, or regions, should be limited. The criteria for delineating the regions should be in part based upon the general nature of shipping (tankers, tour ships, fishing, bulk

carriers, etc...), variety of piloting tasks (channel riding, docking, anchoring, etc...), transportation costs and time, and variety and number of harbors and ports, etc...

The study also acknowledged that piloting is provided most effectively through centralized dispatching and billing organizations of pilots. Further, piloting is a skill learned through apprenticing because of the need for hands-on experience. Consequently, the organizations play a major role in training and if the training is valid it must be designed around some uniform standards.

Notwithstanding the essential role that pilot organizations have and the natural tendency for traditional organizational boundaries to define pilotage regions, it is not an improvement in the law to simply put such things in legislative concrete.

Another important part of the state's study dealt with barriers of entry into the profession and creating monopolies for the pilot organizations. Some pilot testimony during the hearings on the study focused on the "evils" of competition in the piloting industry. Little was heard about the "evils" of monopoly.

The proposal does not recognize nor deal with the need to eliminate barriers to entry into the profession. In fact, the proposal erects additional barriers under the guise of Board-approved training programs. The approved programs are done through the pilot organizations, administered by pilots with five years of piloting experience who are also approved by the Board. These requirements are coupled with the proposed license requirement that allows a trainee to have only a small number of supervised rides by one approved pilot.

What the combination of these provisions means, in fact, is that no new groups of pilots can start-up or grow. Such a result creates an environment rich for the "evils" of monopoly to develop.

Without going into lengthy discourse on the specifics of the above, I'll say that it is an area that I'd like the opportunity to discuss with you in person.

Additionally the regions created by Section 5(11)(d) need a lot of refinement with the exception of Southeastern Alaska.

#### SECTION 7(a)

This section limiting licenses to one region is not practical until the regions are defined adequately and the issues of the monopolistic organizations and other barriers to entry are resolved.

#### SECTIONS 10, 11. QUALIFICATIONS FOR LICENSE

These two sections need additional work to make them articulate together, and internally consistent.

It appears that Sec. 10 contains the requirements for what may be termed a "full" or <sup>"unlimited"</sup> ~~"limited"~~ license whereas Sec. 11 seems meant to be a "lesser" or "limited" license- ie. vessels not exceeding 20,000 gross tons. Further, it is confusing whether or not each class of license has separate pre-requisites or if each class has separate (with some overlap) pre-requisites.

For example, the Sec 10 license requires a variety of sea-going experience as well as unspecified training to be specified by the Board.

On the other hand the Sec 11 Deputy license requires very specific training but evidently no specific sea-going experience.

The full license is based upon a Coast Guard endorsement of 1,600 gross tons but evidently has no tonnage restrictions on the state license. The deputy license has no Coast Guard tonnage specifications but is limited to 20,000 gross tons for the state license.

(5)

It also appears that the deputy license requires familiarization rides and supervised dockings while the "full" license does not. Or, does Sec. 10(3) refer to the training program in Sec. 11(3)? Does the sea-going experience of Sec. 10(6) also, in some way, cover Sec 11 licenses?

In short the proposal leaves more questions unanswered than answered regarding licensing. As it is written the proposal serves no useful purpose other than to make a deputy "lesser" license almost impossible to get for someone trying to get into the profession.

#### SECTION 12(2)

To what part of AS 08.62.100 is the term "continued qualification" referring?

#### SECTION 12(4)(6)

Again, the deputy license is treated differently than the "full" license by not specifying the conditions (or possibility) of renewal.

#### SECTION 13(6)

See comment above reference to Section 12.(4)(6).

#### SECTION 16(2)

This should clarify that the limit is \$5,000 per accident and not \$5,000 per claimant.

#### SECTION 18

It appears that the conceptual goal of Section 18 material is worthwhile. Pilot organizations do promote operational efficiency and have a great responsibility for training. However, the content of Sec. 18 again leaves many unanswered questions. Some of these are:

- a. How many pilots are required to form an organization? It would seem the answer is two.
- b. Does a pilot have to work through an organization?

- c. Is an established organization required to let any pilot join?
- d. If more than one organization operates in a region, which one is the "cost center" upon which the regional tariff is imposed?
- e. Is an organization required to accept all applicants for training?
- f. Can an organization function in more than one region?
- g. If two organizations exist in the same region, by which criteria does the Board "recognize" one?
- h. Can a trainee get approved training in a non-recognized organization?

### SUMMARY

Based upon the above brief discussion of source of intent, language, and unresolved matters in the draft proposal, it seems reasonable to conclude that much work remains to be done before a piece of workable legislation can be presented. A lot of the problems seem to be a result of the legislation trying to incorporate details better left to the Board. However, the desire to legislate Board members reflects a lack of confidence in the Board.

The legislation would probably be improved if it were restricted to:

1. Continuing the Board
2. Powers of the Board
3. Pilot liability and anti-trust issues -

It seems that the alternative to the three things above is for the legislation to be redone in detail- almost as a substitute for regulations and the Board to be given fairly limited powers.

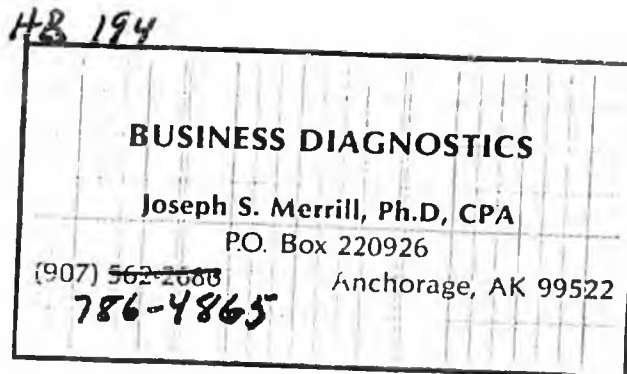
I hope I have the opportunity to discuss in greater detail the concerns I have briefly discussed above. I would be happy to come to Juneau to meet with you.

I appreciate your interest and concern with marine piloting, and I appreciate your follow-up with me.

Joseph S. Merrill *Jm*  
For Alaska Marine Pilots Dispatch Service  
In Anchorage:

786-4865 day  
243-2395 evening  
248-2567 FAX

P.O. Box 220926  
Anchorage, AK 99522



**Southeastern Alaska Pilots' Association**

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

HOUSE BILL NO. 194

MARINE PILOT ACT

HOUSE TRANSPORTATION COMMITTEE

SEVENTEENTH LEGISLATURE - FIRST SESSION

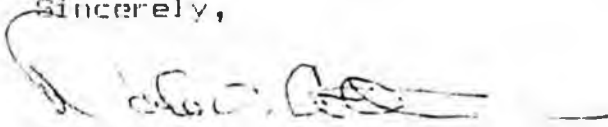
March 19, 1991

The State of Alaska enacted the first Pilot Act in 1970. Two pilot associations formed to meet the pilotage requirements mandated by the State and the marine industry. The Southeastern Alaska Pilots' Association and the Southwest Alaska Pilots' Association have served the State and industry well over the last twenty years. The associations and the State pilot board worked closely together for fifteen years and developed needed regulations to provide and maintain an efficient pilotage system in the State.

During the last five years the associations and the pilot board have been under constant pressure to relax standards, grant waivers for licenses, and hindered while trying to formulate necessary regulations by the Attorney General's office, industry, and dissident pilots who seek to circumvent the pilot regulations. No one segment is fully responsible for the failure of the pilotage system in Alaska.

Rather than debate past failures, the State needs to develop a new pilotage act that will remedy the problems the Board of Marine Pilots is now confronting. The pilotage bill introduced by Representative Cheri Davis will go a long way to solve the problems and concerns of the Board of Marine Pilots. The Southeastern Alaska Pilots' Association respectfully requests the Transportation Committee to view this bill as important legislation to the State of Alaska and its citizens.

Sincerely,

Captain Dale O. Collins  
President  
S.E.A.P.A.

COMMITTEE TESTIMONY IN SUPPORT OF H.B. 194  
BY CAPT. W.E. MURPHY, SOUTHWEST ALASKA PILOTS

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of House Bill 194. My name is Edward Murphy. I reside in Homer and I've been a marine pilot in Alaska since 1974. I pilot ships throughout Southwest Alaska including very large crude carriers and other tankers, cruise ships, container ships, bulk carriers and fisheries related vessels. I served on the Alaska Board of Marine Pilots for four years, three of them as chairman.

In January of last year I wrote Governor Cowper a letter concerning grave safety problems I saw emerging in Alaska's state pilotage system. Among them:

- The lowest entry standards for licensing in the country.
- No state mandated standards or requirements for pilot training.
- Control and manipulation of state pilots by Outside steamship companies and agents.
- Pilot Board difficulties in maintaining and upgrading pilot standards.
- Inordinate delays in pilot discipline cases.
- Legal problems for pilot associations in training pilots and maintaining high standards in the absence of state requirements.

Governor Cowper responded to the concerns expressed in my letter by ordering his Office of Management and Budget to conduct an independent study of Alaska's state pilotage system and to make recommendations for improvement based on the study findings. The result of the staff study is a booklet entitled Improving Alaska's Marine Pilotage System. This document is a remarkably thorough and thoughtful look at pilotage in Alaska written by researchers who have no ax to grind except the public interest. If you have not already done so, I urge you to read the study. It will tell you far better than I can the problems with our state's pilotage system and the need for legislative change to the marine pilot statutes.

House Bill 194 represents a collaborative effort between the Southeastern and Southwest Pilot Associations along with representative Davis and her staff. The pilots who live and work in Alaska believe this Bill, or something close to it, is legislation you can all proudly support because it is, ultimately, a safety bill. Consider the following:

Committee Testimony on H.B. 194

Capt. W.E. Murphy

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1. The "FINDINGS" section makes clear for the first time the public service nature of a pilot's work by stating that, " the first and paramount duty of marine pilots is to provide for the public safety and the protection of the marine environment." It says that "marine pilots operating independently of the shipping industry have provided and will continue to provide essential service to the state." The independence of the pilot from the shipowner's interest and control is a crucial element of safety long recognized by state pilots and identified by the study staff. The federal government recognized this essential element of piloting in the Oil Pollution Act of 1990 by requiring state licensed pilots who are not a member of the ships crew to pilot tankers in certain sections of Prince William Sound.

2. The bill clearly establishes the powers and duties of the Board of Marine Pilots. The ambiguity of the existing law in this regard has long been the cause of conflicting interpretation by staff attorneys from the A.G.'s office. The result has often been Board confusion, frustration, failure to act in the public interest, and law suits.

3. The Bill raises the entry standards for pilot license applicants. The staff study, pages 15 through 17, clearly illustrates how remarkably low Alaska's standards are. The American Pilot Association says they are the lowest in the country.

4. The Bill establishes a "deputy pilot" system whereby new pilots can be trained under the supervision of veterans.

5. The Bill declares that the pilot board will establish standards for training programs. Incredibly, pilot training is not addressed at all under current statute.

6. The staff study pointed out the essential element of local knowledge in all piloting and recommended that Alaska's vast coastline be divided into pilot regions where pilots would be restricted to piloting in one region only. The Bill permits the Pilot Board to establish regions but stops short of restricting pilots to a particular region. Without this requirement regionalization does nothing to assure the public a pilot has adequate familiarity with a particular area. I urge you to strengthen the Bill by inserting such a requirement.

In addition to the features of the Bill previously listed, there are 2 more areas of concern which are equally crucial to a workable and professional piloting system. These are limiting pilot liability and permitting the Pilot Board to recognize certain pilot organizations. I'd like to talk about these areas:

The Bill limits a pilot's liability and that of pilot organizations. Every time a pilot steps on a ship he faces the possibility of financial ruin. This is in addition to possible criminal penalties he may suffer in the event the vessel he is piloting suffers an accident. Criminal penalties are called for in House Bill 315 passed by the legislature in 1990. Piloting is a high risk profession and few, if any, pilots can stand the sort of twin liabilities now emerging in this state. Some sort of liability limitation is reasonable as the legislatures of other maritime states have found. Washington is an example: its pilot act also sets a liability limit of \$5,000. Note that H.B. 194 does not limit liability if the pilot's error or negligence was wilful.

Liability is also a major problem for pilot organizations because they are caught in a "Catch-22" situation. The state doesn't require any pilot training. Yet all mariners, and probably laymen too, know that pilots have to be well trained. Yet when we train new pilots, as we must, we can be sued if that pilot has an accident. But if we failed to train a new pilot who then had an accident we would be sued for negligence. It's an impossible situation and another compelling reason why the state must both require pilot training and limit the liability of pilot organizations in their training function.

The Bill gives the Board the authority to recognize organizations of marine pilots for certain pilot regions of the state. It is important to recognize that the state cannot realistically maintain its own pilot training and dispatch service. Pilots form themselves into organizational structures called associations for this purpose. The associations provide pilots, central dispatching, employees, boats, equipment, pilot stations, radio and communications equipment, transportation, training and administration of the whole as a system. We do this with Alaska resident pilots 24 hours a day, 365 days a year in every kind of weather. House Bill 194 recognizes these facts and requires groups of pilots to do certain things in order to be recognized. It requires compliance with state standards in terms of nondiscrimination, promoting a professional pilot service, maintaining sufficient pilots to serve area shipping, and maintaining training programs. The Bill does not franchise particular groups or require individual pilots to belong.

Committee Testimony on House Bill 194

Capt. W. E. Murphy

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I urge you to strengthen this section by requiring 24 hour per day, 365 days a year service as an additional standard for recognition as a regional pilot organization.

Alaska's original state pilotage act of 1970 has changed little since it was enacted. Yet shipping in the state has increased many fold with larger and faster ships carrying more dangerous cargoes and an ever increasing number of passengers. Often these ships ply the waters of Alaska with only one United States citizen aboard; that person is the ship's pilot who is licensed by this state. The consequences of the pilot's failure to adequately meet the demands placed upon him can have profound consequences for the marine environment and the citizens of Alaska. The pilot's role is a public service one. Alaska's citizens have a right to expect that state pilots have met high entry standards, have undergone rigorous training and possess extensive local knowledge. As the study group recognized, safety demands that pilots be independent and free of the shipowner or his agent's interest and control. House Bill 194 is long overdue. I urge you to consider it favorably.

Thank you

To: Transportation Committee  
Alaska State House of Representatives

From: Captain H.K. Elsensohn

Subject: House Bill No. 194

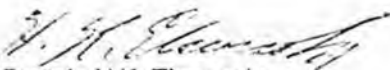
You will find attached excerpts from the book "THE LAW OF TUG, TOW, and PILOTAGE", by Alex L. Parks. This shows clearly that the Congress of The United States has given the individual states the right and responsibility to regulate pilotage on their waters.

I am nearing the end of my four year term as a member of the Alaska State Board of Marine Pilots. AS 08.62.040 states- "(a) The board shall (1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property; (2) Consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.52) establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original and renewal pilot licenses to qualified persons." The foregoing seems to be clear enough, but it has been impossible for the board to require all applicants to obtain the same training. The basis of State Pilotage is local knowledge. The pilot must know the area of his work thoroughly. The only way to become a proficient pilot is through the tutelage of an experienced pilot.

There are only two reasons for HOUSE BILL NO. 194, they are-

- 1 - To allow the Board of Marine Pilots to set the standards for pilots.
- 2 - To be sure that the State of Alaska has control of state pilots.

The "CONCLUSIONS AND RECOMENDATIONS" contained in the Division of Policy study 'IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM' lead to the solutions of HOUSE BILL NO. 194.

  
Captain H.K. Elsensohn  
119 Austin, Apt. 506  
Ketchikan, Alaska 99901

TELECOPY MESSAGE

DATE: March 19, 1991

TO: House Transportation Committee  
Alaska State Legislature

NUMBER: 907-465-2444

PAGES TO FOLLOW: 7

FROM: Dan Grausz  
Vice President and General Counsel  
Holland America Line-Westours Inc.  
300 Elliott Ave. West  
Seattle, Washington 98119  
U.S.A.  
(206) 286-3490

RESPONSE TELECOPY NUMBERS: (206) 284-8332 (Direct)

MESSAGE:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT SUE LUNDGREN AT  
(206) 286-3491.



Holland America Line  
Westours Inc.

March 19, 1991

House Transportation Committee  
Juneau, Alaska

Members of the Committee:

Per your request, enclosed please find a copy of the testimony that I gave earlier today regarding House Bill No. 194. Per your request, I will be providing you before the end of this week with specific line-by-line comments on this legislation.

Sincerely yours,

Daniel S. Grausz  
Vice President and  
General Counsel

cc: Mr. Cees Deelstra  
Mr. Tony Thein

TESTIMONY OF DAN GRAUSZ BEFORE THE HOUSE TRANSPORTATION COMMITTEE  
ON HOUSE BILL 194 - MARCH 19, 1991

Mr. Chairman, Members of the Transportation Committee. My name is Dan Grausz and my address is 300 Elliott Ave. West, Seattle, Washington. I am the Vice President and General Counsel of the Holland America Line/Westours/Westmark Hotels group of companies. We pride ourselves on being the largest cruise and cruise/tour operator in the State of Alaska. I appreciate being given the opportunity to testify this morning regarding House Bill No. 194.

First, let the record be very clear that Holland America/Westours supports any reasonable effort designed to enhance safety and protect the environment of the State of Alaska. We believe in compulsory pilotage. We support efforts to increase the qualifications and training of pilots. In fact, if one was to look closely at the history of cruise ship pilotage in the State of Alaska, they would find that many of the pilots now working on cruise ships in Alaska learned their skills on the bridges of our ships under the tutelage of our officers.

If this Committee believes a problem with the quality of pilotage in the State of Alaska now exists, it behooves this Committee to address that problem. This bill has far too much excess baggage attached to it. We ask this Committee to throw the excess baggage overboard and report out a bill that will truly enhance the quality of pilotage in Alaska. In this regard, we find it strange to say the least that this bill makes it more difficult for a person to be a deputy pilot than a regular pilot.

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There is no secret that the main proponents of this legislation are the two largest pilot organizations in Alaska, both of which we have worked with in the past and expect to work with in the future. In our dealings with these organizations, we have treated each other as equals negotiating our arrangements in an arm's length manner. This legislation will turn what has been negotiations into take it or leave it bargaining such that we will be at the mercy of what will become quasi-governmental organizations blessed with what are tantamount to governmental powers but without the public accountability that should go hand in hand.

Let us be very clear on what a pilot organization is and is not. It is not a labor union or a non-profit group that exists merely to serve the interests of its members or the public. It is an association set-up to allocate the monies earned by all pilots on an arbitrary basis. It is no different from any other business entity. As such, it should be required to deal with other private entities as an equal, not as an arm of government.

Governmental organizations are required to adhere to due process requirements; pilot organizations have no such limitation on their actions. Governmental organizations are subject to political constraints; pilot organizations are not. Governmental bodies need not be concerned with antitrust issues because they are subject to procedural and political safeguards. Pilot organizations under this legislation will obtain antitrust

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immunity without the safeguards.

This bill will allow pilot organizations to monopolize the market by effectively giving them complete control over pilot training, dispatching and, in the words of the legislation, "other functions that the organization may assume."

It is not sufficient to state that the public interest is protected by the audit and review powers granted to the pilot board over these organizations particularly when 2 out of 7 board members will be working for the organizations being reviewed. What that audit and review power will not control is the exercise by these organizations of economic power over the shipping industry that this legislation gives these organizations.

The bottom line here is that we have no objection to pilot organizations. We are prepared to negotiate with them in the same manner we negotiate with any other private entity. All we ask is a level playing field. Do not give these organizations special powers and immunities. Let them survive in our free enterprise system if market forces justify their survival, not because the government has given them a license to dictate the terms and conditions of pilotage.

The second issue I would like to address concerns the question of pilot independence. Section 1 of the bill asserts that marine pilots operating independently of the shipping industry have and

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will continue to provide essential service to Alaska. In effect, this legislation attempts to preclude shippers from hiring pilots on their payrolls with the potential resulting cost savings. The claim undoubtedly here is that pilots, who are also employees, are unable to exercise independent judgment.

I submit to you that this is an insult to each and every one of us who has ever been employed. I know of no other profession in which direct employment is prohibited including doctors, engineers, nurses, teachers, psychologists, real estate professionals, veterinarians, plumbers, electricians, dentists, architects, lawyers, surveyors, accountants. Are we to assume that pilots are somehow lacking in character, morals or ethics that make them different from all these other people such as to preclude them from being able to exercise independent judgment? Should we assume that the architect or construction foreman on the developer's payroll who designs or builds a 10-story building is going to compromise his or her ethics and standards merely because he or she is an employee? So why do we make that assumption in the case of pilots.

The role of the pilot relative to certain other professionals who are allowed to be employees makes it even more absurd to prohibit employment of pilots. When all is said and done, pilots are merely advisors to the captain of the ship. It is the captain, an employee, who makes the final decisions. Are we to believe that because a person is employed, he is unwilling to even give advice?

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What is really going on here is that the pilot organizations are concerned about losing their monopoly power over their members if those members have, as an alternative, direct employment with ship owners. It is just possible, however, that individual pilots may find that direct employment is an attractive alternative given the benefits attendant to direct employment such as job security. We cannot understand why the Alaska Legislature would deem it appropriate to tell people which company they can or cannot work for particularly when all they are hired for is to give advice.

The third issue is the rates for pilotage. Initially, I would like to put into perspective what we are talking about here. Holland America has four ships operating in Alaska waters. For a typical Inside Passage Cruise stopping at Ketchikan, Juneau and Sitka, this means 41 hours of actual pilotage time. Depending on the size of the ship, we pay between \$10,000 and \$12,500 in pilotage fees for each Inside Passage cruise. This works out to approximately \$275 per hour for pilotage. In addition, we pay for lodging, meals and travel expenses. There are few, if any, other professions who can obtain similar pay particularly given the lack of overhead requirements.

We do not understand why pilots need to have government to assist them in setting rates. Government pricing is appropriate where the service provider has monopoly power. In that case, the public needs to be protected against the monopolist. That is why

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government has historically regulated pricing by public utilities.

In this legislation, it is the pilot organizations who are seeking protection from the public. The pilot organizations are afraid to live by the same laws of supply and demand that the rest of us are subject to. They want the government to do their negotiating for them. We are blessed to live in a country that believes in free enterprise. Pilots, like other professionals, must be subject to the laws of supply and demand.

The final issue is pilot liability. First, the State tells us we must employ pilots. This legislation then tells us that we will be forced to deal with specific pilot organizations on the basis of prices that are non-negotiable. We are told that pilots perform a valuable service and we want to make sure that we have only the most qualified people providing that service. But then, when it comes to mistakes or even negligence, the pilots are not accountable for their actions.

We ask you what incentive these pilots have to not make mistakes when all they risk losing is something less than the fees being paid them for the particular assignment. A person who earns \$275 per hour should be expected to be held accountable for negligence. Even we lawyers are held fully liable for our actions. I cannot see how one fosters responsibility and professionalism by creating a system that tells someone that it is acceptable to make mistakes, that it is acceptable to be negligent, that it is

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acceptable to be at fault, that it is acceptable to put lives in jeopardy, that it is acceptable to risk our environment because all you really stand to lose is your days pay. I further do not understand why these pilot organizations that seek the power this legislation will confer upon them are not held accountable for assigning unqualified pilots.

A person hired for the most menial of jobs has more liability than a pilot who is charged with safeguarding human lives. There is something inherently wrong about such a system.

As I indicated at the outset, Holland America/Westours supports a pilotage bill that will enhance safety and the environment. That is not the bill you have before you today. HB 194 will turn the clock backwards by creating a regulated industry with no accountability and no liability.

Thank you for your time and consideration of our position.

91-B/PILOT.TES

3/18/91

SECOND EDITION

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THE LAW OF  
TUG, TOW,  
AND PILOTAGE

BY ALEX L. PARKS

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*State Control*

The First Congress in 1789 obviously felt that until further action was taken, it was the better part of wisdom to leave the regulation of local pilotage grounds to the various states since different situations existed with respect to the various states in relation to their respective harbors, ports and waters. This made it advisable to permit the states to promulgate different rules and regulations, and occasioned the enactment of the statute now codified as 46 U.S.C.A. 211, reading:

Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be, or with such laws as the states may respectively enact for the purpose.

Later, the Congress supplemented this section by enacting a provision leaving to the states the right to regulate the piloting of vessels into and going out of the waters bounding two states. 46 U.S.C.A. 212 reads:

The master of any vessel coming into or going out of any port situated upon waters which are the boundary between two states, may employ any pilot duly licensed or authorized by the laws of either of the states bounded on such waters, to pilot the vessel to or from such port.

In interpreting this latter statute, the courts have held that the waters between two states must in a real sense be the *boundary* between the two jurisdictions. Thus, in *The Glenearne*, (USDC, Ore.) 7 Fed. 604, the court held that a steamboat bound to Portland, Oregon might take either a Washington or Oregon pilot while on the Columbia River [the boundary between Oregon and Washington for much of its distance] but only the Oregon licensee was entitled to pilot the vessel on the Willamette River [which, although a major tributary of the Columbia River, is located wholly within the State of Oregon]. So, too, the United States Supreme Court held, in the case of *Leech v. Louisiana* (1909), 214 U.S. 175, that a pilot holding a license issued by the State of Mississippi was not licensed to pilot a vessel engaged in the foreign trade from the Gulf of Mexico to New Orleans, "since New Orleans is not situated upon waters which are

the boundaries between two states." The United States District Court in Massachusetts held to a like strict construction in *The Swift Arrow*, 1923 A.M.C. 1012, 292 Fed. 101.

Federal statutes, permitting the regulation of pilots to remain in the states until Congress had legislated otherwise, were held to be within the ambit of Congressional power and thus constitutionally valid by the United States Supreme Court in the landmark case of *Cooley v. The Board of Wardens of the Port of Philadelphia*, 12 How. (U.S.) 299. Subsequently this principle was reaffirmed in *Pacific Mail S.S. Co. v. Joliffe*, 69 U.S. 450; *Ex Parte McNeil*, 102 U.S. 572; *Olsen v. Smith*, 195 U.S. 332; and *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187. The most recent affirmation of constitutionality is *Jackson v. Marine Exploration Co., Inc.* (1979), *supra*, which set forth with great clarity the dichotomy which exists between the Federal and state systems and upheld the Florida pilotage act against assaults on its constitutionality under the Due Process Clause and Equal Protections Clause.

The status of state pilotage acts—and in fact the entire system of state pilotage—was seriously threatened and in a state of hiatus from 1852 until 1871.

Between 1812 and 1849, Congress sought to provide for greater safety at sea by requiring certain inspections of equipment aboard steam vessels. In August, 1852, a new act was passed making it unlawful for any person to employ or any person to serve as engineer or pilot on steam vessels unless he was licensed by the United States inspectors. Although the act did not treat specifically of state pilotage, neither did it make an exception which could be construed as permitting state pilots to operate even though not licensed by the Federal government.

The Supreme Court rescued the state pilot system from the confusion into which it was thrown by the above-mentioned act by its decision in *Pacific Mail Steamship Company v. Joliffe*, 69 U.S. 450 in which it was held that the act was not intended to cover "port" pilots.

Again, in 1866, state pilotage was thrown into turmoil by the passage of an act requiring every American seagoing steam vessel navigating the bay, inlets, rivers and harbors of the United States to be under the control of a pilot licensed by the Federal government. While the purpose of such legislation appears to have been strengthening the safety provisions with respect to steam vessels, the net ef-

fect was that state pilotage was doomed. For seven months, this situation prevailed until February, 1867, when Congress, recognizing the total disruption of state pilotage systems, moved to correct the problem by adding a proviso to the 1866 Act reading:

. . . Provided, however, that nothing in this Act, or in the Act of which it is amendatory shall be construed to annul or affect any regulation established by the existing law of any state requiring vessels entering or leaving a port in such state to take a pilot duly licensed or authorized by the laws of such State, or of a State situated upon the waters of the same port.

In 1912, Justice Hughes in *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187, in commenting on this proviso, stated:

. . . The existing State laws respecting port pilotage again became operative.

In 1871, Congress repealed the acts of 1852 and 1866 and substituted in lieu thereof a new act which consolidated certain portions of the two earlier acts and set forth clear provisions concerning pilotage of coastwise seagoing steam vessels. It was to this consolidated act that Justice Hughes was directing his remarks in *Anderson v. Pacific Coast S.S. Co.*, *supra*.

It should be emphasized that the Congress, in permitting the states to retain jurisdiction of pilotage, has in no way abdicated its authority to regulate and to license pilots and to place restrictions upon the states in this respect. Although the states have enacted regulatory laws governing the licensing of pilots, their activity, their organization, their compensation and their supervision, such state laws affect only United States vessels sailing under register [authorized to engage in the foreign trade] and foreign-flag vessels plying waters in the several states; the Federal government has preempted the licensing of "pilots" serving on board enrolled, or enrolled and licensed vessels; i.e., vessels authorized to engage in the "coastwise trade." *Anderson v. Pacific Coast S.S. Co.*, *supra*. Moreover, the Federal government has acted to prevent state-licensed pilots from discriminating between vessels which they may lawfully pilot. For example:

46 U.S.C.A. 213 provides:

No regulations or provision shall be adopted by any State which shall make any discrimination in the rate of pilotage or half-pilotage

between vessels sailing between the ports of one state and vessels sailing between the ports of different states, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any such discrimination are annulled and abrogated.

46 U.S.C.A. 214 provides that the Coast Guard shall grant to an applicant for a license to pilot steam vessels<sup>6</sup> such license for a term of five years if it is satisfied, after diligent inquiry, that the applicant possesses the requisite knowledge and skill and is trustworthy and faithful. It also provides for the revocation of the license for certain causes.

46 U.S.C.A. 224 provides that it is unlawful to employ any person or for any person to serve as a pilot of any steamer who is not licensed by the Coast Guard.

46 U.S.C.A. 215 is more to the point and constitutes a flat interdiction against the states invading the sphere of Federally regulated pilotage. It provides, in part:

No State or municipal government shall impose upon pilots of steam vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by Title 52 of the Revised Statutes. . . .

See *Sprague v. Thompson*, 118 U.S. 90, interpreting the above-quoted language.

(Title 52, Revised Statutes contains many statutory sections, but insofar as it concerns the licensing of pilots it applies specifically to coastwise seagoing vessels not sailing under register (i.e., enrolled vessels and enrolled and licensed vessels) and therefore does not apply to vessels engaged in the foreign trade. See *Pacific Mail S.S. Co. v. Joliffe*, 69 U.S. 450, and *Anderson v. Pacific Coast Steamship Co.*, 225 U.S. 187.)

#### *Federal Control of Coastwise Vessels*

In addition to the statutes cited above, Congress has affirmatively required that all coastwise seagoing vessels shall be under the control

<sup>6</sup> As is noted, *infra*, a further statute provides that the term "steam vessel" or "steamer," or "propelled by steam" also means any vessel subject to inspection, propelled in whole or in part by any form of mechanical or electrical power, with certain exceptions not here material.

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Mary Van Nimwegen

*House Transportation*

*3-19-91*



# House Transportation Committee

DATE: 5/19/91

PLACE: 17

SUBJECT OF MEETING:

HB 194  
 HB 162  
 HB 175

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/WHICH BILL?
Kirkby Day	CLAA	1429 Tongass LTV	99801	225-7711	225-6157	Y N	HB 194
D MONKMAN	Alaska Coastwise Pilots	Dillon & Fiddley 800 Sealaska Plaza Jno	99801		586-4000	Y N	"
Capt. H. K. Frenschke	S. W. Alaska	114 Austin Apt. 202 Kodiak	99801	225-2583		Y N	"
DALE C COLLINS	Seal Pilots	4212 S. TONGASS LTV	99801	225-5511	225-7671	Y N	"
Capt. W. C. Murphy	S.W. Alaska	Box 527 Homer, AK	99603	225-6271	225-8703	Y N	HB 194
GREG O'CLARAY	MEBA	124 FRONT ST, JUNO	99801	586-6150		Y N	HB 175
Ann Boudreaux	occ. LIC DCED			586-2533	2538	<del>Y</del> N	HB 194
Ann Boudreaux	occ. LIC DCED				2538	Y <del>N</del>	HB 162
Jim Towler	SE CONFERENCE	124 W. 5th St. / JUNO	99801	586-1905	463-3445	Y N	HB 175
Don Kub	Master Pilots & Pilots Club Pacific	12280 MID LOOP RD	99801	784-9273		Y N	HB 194 HB 175
Jim Ayers	AMHS./DOT	P.O. box R	99811	5-3959		Y N	HB 175