

**HB**

**260**

# Alaska State Legislature

## House of Representatives

Transportation Committee

### SPONSOR STATEMENT

#### HOUSE BILL 260

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

Alaska law requires most ships navigating Alaska's inland or coastal waters to use a marine pilot licensed by the state. Marine Pilots are professional experts with respect to local knowledge, familiarity with the vessels they control, and shiphandling skills under the full range of operational conditions that a vessel may experience in the service area. The pilot is expected to direct and control each vessel safely along the entire pilotage route, be capable of placing a vessel in a safe anchorage, and be capable of docking and undocking a vessel, with or without the assistance of tugs. How well a pilot performs this service not only affects the safety of the vessel, crew, and cargo, but by extension, protection of the environment and, in some cases public safety as well.

The Board of Marine Pilots' sunset clause became effective on June 30, 1994 and is now in its wind-down year. House Bill 260 extends the Board of Marine Pilots to June 30, 1999.

Along with extending the Board, HB 260 proposes other amendments to the Marine Pilotage Act of 1991. Most of these amendments provide clean-up language or clarify existing policies in statute.

Others issues addressed include cross-regionalization, conflict resolution through statutes, and the inclusion of a deputy marine pilot apprenticeship program.

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### SECTIONAL ANALYSIS

#### CS for HOUSE BILL 260 work draft

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

Section 1 Amends AS 08.03.010(c)(13) to extend termination date of the Board of Marine Pilots to June 30, 1999.

Section 2 Amends AS 08.62.010 to clarify that the industry representatives of the Board of Marine Pilots shall be actively engaged in obtaining pilotage services for vessels subject to this chapter -- the same requirement exists for the pilot members of the board. In addition, .010 now requires that not more than one of the pilot or industry representatives be from the same pilotage region instead of the same judicial district.

Section 3 Amends AS 08.62.040(b) to clarify the Board's existing authority to require licensed marine pilots to participate in a drug and alcohol testing program, to clarify the scope of the required program, and to make it clear that the Board may delegate the administration of all or part of the program to pilot organizations. Also, language is added to bring .040(b) into compliance with AS 08.62.080(b).

Section 4 Amends AS 08.62.040 by adding a new subsection to explicitly authorize the Board to delegate duties to the marine pilot coordinator as necessary to carry out the Board's functions under AS 08.62. The addition of this language is a clarification, not a change.

Section 5 Amends AS 08.62.050 by adding a new subsection clarifying the authority of the marine pilot coordinator to perform administrative tasks, including the review of applications for marine pilot examination and licensure.

Section 6 Amends AS 08.62.080(b) by granting the commissioner, rather than the Board, the authority to determine a chronic shortage of licensed pilots exists. The Board could then issue temporary licenses for the region where a shortage exists.

Section 7 Amends AS 08.62.090(b) by granting the department the authority to revise application forms without requiring formal board approval of the revised form.

Section 8 Amends AS 08.62.093(b) by adding numerous technical amendments intended to clarify the types of marine licenses that an applicant must hold to meet the requirements for licensure as a state deputy marine pilot. These changes would conform state law to the language used on U.S. Coast Guard licenses. The addition of (b)(6) establishes an additional method of qualifying for licensure as a deputy marine pilot, a five-year "apprenticeship" program. This change would allow easier entry into the pilot profession by otherwise qualified mariners who may not have had the opportunity to gain the "sea time" needed under current law.

Section 9 Amends AS 08.62.093(d) to increase the size of vessels that a deputy marine pilot may pilot from 20,000 to 25,000 gross tons. This is a "housekeeping" amendment which recognizes the increasing size of newer vessels.

Section 10 Amends AS 08.62.097(b). Currently, a pilot authorized to train deputy marine pilot candidates must hold an unlimited pilot's license under AS 08.62.100. In the Kuskokwim River Region there is no marine pilot who meets this requirement, in part because of a lack of sufficient larger tonnage vessel traffic in that region. So technically there is no one qualified to train deputy pilots in that region. This will prevent an unacceptable situation where no new pilots can be developed.

Section 11 Amends AS 08.62.120(a) to allow license renewal forms to be revised by the Department without the necessity of formal Board approval. This mirrors the change made in Section 7. In addition, .120(a) is amended to allow a marine pilot to renew his license if he has piloted a total of 120 days in the preceding licensing period (two years) rather than 60 days in each previous year. This will allow some flexibility for pilots who may have piloted vessels for less than 60 days in one year, but more than that in the next or prior year.

**Section 12** Amends AS 08.62.150(a) to delete a reference to the maximum tariff established by the Board. The Board's authority to establish maximum tariffs expired on June 30, 1994, so this is a necessary conforming amendment.

**Section 13** Amends AS 08.62.155(b) to make the Board, not the Department, able to impose a civil fine on a marine pilot organization for violations of the law. A new sentence is added to subsection (b) to make it clear that, in addition to a fine, the Board may (under certain serious conditions) also revoke its recognition of a pilot organization. This language is taken from an existing board regulation -- 12 AAC 56.320. Thus, this is not a change to existing law, but a clarification of it.

**Section 14** Amends AS 08.62.157 by adding new subsections to clarify that a pilot, who is not a member of a pilot organization, shall provide pilotage services when requested under AS 08.62.160. Also, clarifies that a person licensed under this chapter who is a member of a pilot organization shall provide pilotage services to a vessel upon being dispatched by a pilot organization.

**Section 15** Amends AS 08.62.165(a) to narrow a pilots unlimited liability to those instances in which a pilot is found chemically impaired or illegally uses, possesses, or sells drugs. Currently, the Board may impose a small sanction in cases involving minor pilot error. In those cases the pilot is subject to unlimited liability. Thus, it is possible that the punishment could far exceed the error.

**Section 16** Amends AS 08.62.175(c) to clarify that a pilot organization can enter into agreements with the master, owner, operator, or agent of the above concerning the terms and conditions under which the pilot organization will provide pilotage services. Also, grants pilot organizations the ability to establish basic criteria for membership.

**Section 17** Amends AS 08.62.175 by adding a new subsection clarifying that a pilot organization shall dispatch a pilot to provide pilotage services when requested by the representative of a vessel.

**Section 18** Amends AS 08.62 adding a new section 08.62.178 regarding dispute resolution. In (a) either party may request the marine pilot coordinator to appoint an arbitrator, under AS 09.43.010 - .180, to determine reasonable compensation for services provided when an agreement has not been reached between the pilot organization and the representative of the vessel. In (b) a pilot organization or owner of a vessel or owner's authorized representative may submit a controversy to binding arbitration under AS 09.43.010 - 09.43.180

(Uniform Arbitration Act). The controversy would concern the terms or conditions, including the amount of compensation, of an existing agreement under which the pilot organization provides pilotage services.

Section 19 Amends AS 08.62.180 to clarify the types and size of foreign flagged "pleasure craft" that are exempt from pilotage requirements under existing law. The new language cross-references measurement standards established in federal law.

Section 20 Provides transition language for the Board.

Section 21 Repeals AS 08.62.093(e). The term "years of service" is not defined in 46 C.F.R. 10: it does not make sense to "cross-reference" to a definition that does not exist. The Board has adopted regulations clarifying how creditable service under AS 08.62.093 is to be calculated.

Section 22 Provides an effective date.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 260

Revision Date: March 17, 1995 Department: Commerce and Economic Development  
 Title: An Act relating to marine pilots and the BRU: Occupational Licensing  
 Board of Marine Pilots:.... Component: Operations  
 Sponsor: House Transportation  
 Requestor: House Transportation COMPONENT SERIAL #: 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	74.1	74.1	74.1	74.1	74.1	74.1
TRAVEL	24.7	24.7	24.7	24.7	24.7	24.7
CONTRACTUAL	62.7	137.7	62.7	62.7	62.7	62.7
SUPPLIES	0.6	0.6	0.6	0.6	0.6	0.6
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>162.1</b>	<b>237.1</b>	<b>162.1</b>	<b>162.1</b>	<b>162.1</b>	<b>162.1</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	6.6	382.2	6.6	307.2	6.6	307.2
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	162.1	137.7	162.1	162.1	162.1	162.1
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>162.1</b>	<b>137.7</b>	<b>162.1</b>	<b>162.1</b>	<b>162.1</b>	<b>162.1</b>

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

HB 260 extends the Board of Marine Pilots to June 30, 1999 and make other amendments to the marine pilot act, AS 08.62. The costs and anticipated revenue shown above are included in the division's FY 96 operating budget request. A one time increment in the operating budget is reflected in the FY 97 column above. Fees would have to be reviewed prior to the next renewal in FY 97 to ensure full costs of the program are covered by licensing fees. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144  
 Division: Occupational Licensing Date: 3/16/95  
 Approved by Commissioner: William L. Hensley Date: 3/17/95  
 Agency: Commerce and Economic Development

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CS FOR HOUSE BILL NO. 260( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

8 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is  
9 created the Board of Marine Pilots. It consists of two pilots licensed under this  
10 chapter who have been actively engaged in piloting on vessels subject to this chapter,  
11 two industry representatives [AGENTS OR MANAGERS OF VESSELS SUBJECT  
12 TO THIS CHAPTER], two public members in accordance with AS 08.01.025, and the  
13 commissioner or the commissioner's designee. A person who is appointed to the  
14 board as an industry representative shall be an owner, manager, or agent, or an

1 employee of an owner, manager, or agent, of a vessel subject to this chapter and  
2 shall be actively engaged in obtaining pilotage services for vessels subject to this  
3 chapter. Not more than one pilot and one industry representative [AGENT OR  
4 MANAGER] shall be from any one pilotage region established by the board  
5 [JUDICIAL DISTRICT]. All members of the board shall be residents of the state.

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

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

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

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

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

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

21 \* Sec. 4. AS 08.62.040 is amended by adding a new subsection to read:

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

24 \* Sec. 5. AS 08.62.050 is amended by adding a new subsection to read:

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

28 \* Sec. 6. AS 08.62.080(b) is amended to read:

29 (b) A pilot may not be licensed in more than one pilotage region at one time  
30 [,] unless the commissioner [BOARD] determines that an actual or imminent,  
31 chronic shortage of licensed pilots exists in a [IT IS IN THE BEST INTERESTS OF

1 THE STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE] pilotage  
2 region. If the commissioner makes the determination described in this subsection,  
3 the board may, after consultation with and concurrence by the recognized pilot  
4 organizations in the affected pilotage region, issue temporary licenses for the  
5 affected pilotage region to pilots who already hold a license for another pilotage  
6 region. The board shall ensure that sufficient pilots are available to provide  
7 pilotage services in the affected pilotage region to all vessels required to employ  
8 a pilot under this chapter. A temporary license issued under this subsection is  
9 valid for a period of not more than one year.

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

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

13 \* Sec. 8. AS 08.62.093(b) is amended to read:

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

16 (1) one year of service as a master on ocean or coastwise vessels while  
17 holding a United States Coast Guard license as master of ocean steam or motor  
18 vessels of any gross tons:

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

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

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

30 (5) three years of experience as a member of a professional pilot's  
31 organization, during which the person actively engaged in piloting while holding at

1 least a United States Coast Guard license as a master of steam or motor vessels  
2 [FREIGHT OR TOWING VESSEL] of not more than 1,600 gross tons; or

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

7 \* Sec. 9. AS 08.62.093(d) is amended to read:

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

11 \* Sec. 10. AS 08.62.097(b) is amended to read:

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

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

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

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

24 \* Sec. 11. AS 08.62.120(a) is amended to read:

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

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

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

31 (3) provide evidence of satisfactory completion of a physical

1 examination by a licensed physician within 60 days before the date of renewal of the  
2 license:

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

4 (A) engaged in piloting vessels subject to this chapter in the  
5 marine pilotage region for which the license is to be renewed during at least  
6 120 days [60 DAYS OF EACH CALENDAR YEAR] in the licensing period  
7 immediately preceding the licensing period for which renewal is sought; or

8 (B) completed the minimum number of familiarization trips  
9 required by the board for renewal of a marine pilot license for a marine  
10 pilotage region for which the license is to be renewed.

11 \* Sec. 12. AS 08.62.150(a) is amended to read:

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

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

15 (2) is chemically impaired;

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

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

18 (5) violates a provision of this chapter or a regulation adopted under  
19 this chapter [IT];

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

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

23 (8) charges, collects, or receives an amount for pilotage services that  
24 is [IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE BOARD  
25 OR] different from the amount set [TARIFF ADOPTED] by the pilot organization of  
26 which the person is a member.

27 \* Sec. 13. AS 08.62.155(b) is amended to read:

28 (b) The board [DEPARTMENT] may impose a civil fine not to exceed \$5,000  
29 on a marine pilot organization recognized by the board [,] if the organization violates  
30 this chapter or a regulation adopted under this chapter. The board may also suspend  
31 or revoke the recognition of a pilot organization that fails to comply with its

1 articles, bylaws, and rules, so as to no longer satisfy the minimum standards for  
2 recognition by the board.

3 \* Sec. 14. AS 08.62.157 is amended by adding new subsections to read:

4 (c) A person licensed under this chapter who is not a member of a pilot  
5 organization shall provide pilotage services upon the request of a representative of a  
6 vessel required to employ a pilot under AS 08.62.160.

7 (d) A person licensed under this chapter who is a member of a pilot  
8 organization shall provide pilotage services to a vessel upon being dispatched by the  
9 pilot organization.

10 \* Sec. 15. AS 08.62.165(a) is amended to read:

11 (a) A pilot licensed under this chapter is not liable for damages in excess of  
12 \$250,000 per incident for damages or loss occurring as a result of the error, omission,  
13 fault, or neglect of the pilot in performing pilotage services, except that the limitation  
14 does not apply in a case where

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

16 or

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

20 \* Sec. 16. AS 08.62.175(c) is amended to read:

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

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

24 (2) provide for the dispatch of pilots who are members of the  
25 organization;

26 (3) enter into agreements with the master, owner, operator, or  
27 agent of a master, owner, or operator of a vessel concerning the terms and  
28 conditions under which the pilot organization will provide [ADOPT AND REVISE  
29 TARIFFS FOR THE PROVISION OF] pilotage services [BY THE MEMBERS OF  
30 THE ORGANIZATION];

31 (4) subject to the membership application and approval provisions

1 contained in the articles and bylaws of the organization, be open to membership  
2 by all persons licensed under this chapter to pilot vessels in the pilotage region in  
3 which the organization is recognized;

4 (5) operate or participate in a training program for pilots and deputy  
5 pilots that is approved by the board;

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

7 \* Sec. 17. AS 08.62.175 is amended by adding a new subsection to read:

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

11 \* Sec. 18. AS 08.62 is amended by adding a new section to read:

12 Sec. 08.62.178. DISPUTE RESOLUTION. (a) If a pilot required to provide  
13 pilotage services under AS 08.62.157(c) or a pilot organization required to dispatch a  
14 pilot under AS 08.62.175(d) cannot reach an agreement with the representative of the  
15 vessel who requested the pilot services as to compensation for the pilotage services  
16 provided, then either party may request the marine pilot coordinator to appoint an  
17 arbitrator to determine reasonable compensation for the services provided. Except as  
18 otherwise provided in this subsection, arbitration of the controversy shall be conducted  
19 under AS 09.43.010 - 09.43.180.

20 (b) Except as provided in (a) of this section, a pilot who has an agreement to  
21 provide pilotage services to a vessel, a pilot organization that has an agreement to  
22 dispatch pilots to provide pilotage services to a vessel, or the owner of a vessel, or the  
23 owner's authorized representative, may submit a controversy to arbitration under  
24 AS 09.43.010 - 09.43.180, if the controversy concerns the terms or conditions,  
25 including the amount of compensation, of an agreement under which the pilot or the  
26 pilot organization provides pilotage services. An agreement to submit a controversy  
27 arising under an agreement to provide pilotage services is an implied provision of the  
28 agreement to provide pilotage services. The parties to an agreement for the provision  
29 of pilotage services may, consistent with AS 09.43.010 - 09.43.180, establish  
30 procedures under which arbitration will be conducted.

31 \* Sec. 19. AS 08.62.180 is amended to read:

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

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

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

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

8                   (4) vessels of United States registry of less than 300 gross tons and  
9 towboats of United States registry and vessels owned by the State of Alaska, engaged  
10 exclusively

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

12                           (B) in the coastwise trade on the west coast of the United States  
13 including Alaska, Hawaii, and British Columbia, Canada;

14                   (5) vessels of Canada, built in Canada and manned by Canadian  
15 citizens including Canadian cruise ships, engaged in frequent trade between British  
16 Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels  
17 owned by the State of Alaska and those of United States registry; [AND]

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

19                   (7) pleasure craft of foreign registry of less than 300 gross tons as  
20 measured under 43 C.F.R. 69.51 - 69.75.

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

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

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

30       \* Sec. 21. AS 08.62.093(e) is repealed.

31       \* Sec. 22. This Act takes effect July 1, 1995.

## DISCUSSION PAPER OBSERVATIONS ON PILOT DEVELOPMENT

Prepared by Wayne Young, CDR, USCG (ret)  
Senior Program Officer  
Marine Board Professional Staff  
January 26, 1994

*The views expressed in this discussion paper are those of the author and do not necessarily reflect those of the National Research Council, any of its constituent units, the NRC Committee on Advances in Navigation and Piloting, or the NRC Committee on Ship Bridge Simulation Training.*

*The paper was prepared in response to a request for information from the Program Coordinator for Affirmative Action/EEO Programs, Oregon Department of Transportation. The information presented is based on a review of available literature and the author's general knowledge of marine navigation and piloting practices. If used for developing and implementing pilotage development programs, the insights provided should be confirmed with professional pilots. Consultation with the American Pilots' Association (Captain Jack Sparks, President, 202-333-9377) and the International Organization of Masters, Mates, and Pilots (Captain George Quick, Vice President-Pilotage, 410-850-8700) is suggested and encouraged.*

### PILOT DUTIES AND PROFICIENCY

Marine pilots are professional experts with respect to local knowledge, knowledge about behavior of every category of vessel upon which they may be called to serve, and shiphandling skills under the full range of operational conditions that a vessel may experience in the service area. The Pacific Northwest operating area, particularly the conditions that affect the Columbia River Bar and its seaward and river approaches, are some of the most challenging in the world. The pilot is expected to direct and control each vessel safely along the entire pilotage route, be capable of placing a vessel in a safe anchorage, and be capable of docking and undocking a vessel, with or without the assistance of tugs. How well a pilot performs this service not only affects the safety of the vessel, crew, and cargo, but by extension, protection of the environment and, in some cases, public safety as well. Assuring that individuals are adequately prepared to perform these duties and to accept the associated professional and public responsibilities is not an easy task. A well-founded professional development program is essential.

## PHASES OF PILOT DEVELOPMENT

Development of virtually all marine pilots proceeds through three essential phases regardless of whether the pilot candidate is recruited from the marine industry or is involved in a formally or informally administered pilot development program. These phases are:

- (1) development of basic maritime experience,
- (2) an apprenticeship (or intense local familiarization program), and
- (3) progressive advancement once licensed as a marine pilot.

Every marine pilot has to go through these three steps as a practical necessity in order to develop the necessary comprehensive knowledge, skills, leadership abilities, and professional maturity needed to:

- effectively direct and control vessels for the protection of the vessel, crew, cargo and the environment;
- meet the professional expectations of colleagues, especially with respect to vessel interactions in restricted channels;
- command the confidence and trust of each vessel's Master who turns over navigational control to the pilot; and to
- meet the pilotage licensing requirements of governing authorities.

### DEVELOPMENT OF BASIC NAUTICAL KNOWLEDGE AND MARITIME EXPERIENCE

Development of basic nautical knowledge and maritime experience takes an absolute minimum of 3-4 years in order to meet federal licensing requirements for deck officers and vessel operators (towing industry vessels) and for original licenses as federal pilots. Virtually all marine pilot associations and pilotage administrations expect that a state pilot candidate already hold or acquire during their pilot apprenticeship a federal pilotage license or pilot's endorsement on their marine license as an entry level requirement. Although the federal pilot's license or endorsement does not require a demonstration of proficiency (required formally or informally of pilot apprentices by all pilot associations), the written examination required for an initial marine license and the chart drawing requirement for the routes on which the federally-licensed pilot will navigate, serve to indicate basic nautical knowledge and route familiarity. The more intense local requirements to establish competency and ultimately proficiency build upon this foundation.

Marine pilots can be "built from the ground up" by pilot associations or recruited from the marine industry. Both forms are in use, although recruitment from the marine industry dominates and is becoming the norm; there are fewer large "station boats" than in the past upon which an individual that is accepted for training can obtain basic maritime expertise. Furthermore, objective competitive recruitment into the pilotage profession is a

growing trend. Basic maritime expertise can be obtained on the vessels being piloted as an alternative to service on a pilot station boat. Graduates of maritime academies bring a third mates license with them as well as basic sea service experience gained through cruises aboard training ships or aboard U.S.-flag ships. Individuals recruited from the marine industry bring either extensive on-the-job experience or a maritime academy background plus extensive on-the-job experience.

## APPRENTICESHIPS

Virtually all pilot development programs are based on expert opinion rather than job task analysis. Whether professional development requirements could be reduced based on quantitative analysis of task requirements has not been determined. In the absence of quantitative job-task analyses, it would seem prudent to follow the traditional approaches rather than to attempt an alternative approach with uncertain effects on the quality of learning and skill development. There are three well-developed pilot development programs that are used for building pilots without prior maritime experience.

- The program used by the United Sandy Hook Pilots of New York and New Jersey is the most formal and perhaps most complete in the United States, providing for initial maritime experience aboard station boats, classroom work, apprenticeships, and progressive advancement once an individual is licensed. The Sandy Hook Pilots' program is accredited for college credit and by the Coast Guard for sea service experience requirements for an initial federal first class pilot's license. A point of contact is Captain Henry Mahlmann, 718-448-9015.
- The Panama Canal Commission also has a formal and complete pilot development program with various professional development paths designed to qualify Panamanian citizens without prior maritime experience as marine pilots. You may wish to contact Captain Sergio Orlando Allard, Chief, Maritime Training, P. O. Box 1764, Balboa, Ancon, Panama, Republic of Panama, telephone 507-60-4132. In particular, the Panama Canal Commission may be able to offer considerable insight on difficulties that may be encountered in establishing a pilot development program to build marine pilots from scratch.
- A number of small state pilot associations use a professional development program authored by Captain Robert Bennett, USCG (ret), an employee of the Charleston Navigation Company. The program consists of a curriculum for development of nautical knowledge and professional skills. The program needs to be adapted to the local operating environment in which it is applied. For example, the Wilmington-Cape Fear Pilots Association which uses the curriculum have identified a need for 360 round trips over their 18 mile

pilotage route. The trips are acquired over a 3-year period under the tutelage of licensed marine pilots to develop the necessary nautical knowledge and professional skills and to satisfy sea service requirements for an original federal first class pilot's license or license endorsement. Although this association uses the "ground up" approach, it nevertheless attempts to bring in individuals with prior nautical experience. Captain Bennett may be contacted at 803-577-7014 regarding his curriculum.

During apprenticeships, the pilot candidate obtains expert familiarity with the pilot routes upon which the individual will serve once licensed, expert knowledge of ship behavior on the route, and expert knowledge and skills for shiphandling for all types of vessels under a full range of possible operational conditions. Generally, depending upon prior experience and pilotage development requirements for the service area, apprenticeships can take from one to four years (at least 3 years if the apprenticeship is being used to develop sea service experience for an original Coast Guard issued deck officer or pilot's license).

All pilot associations rely on an extensive program of round trips under the tutelage of licensed marine pilots. The candidate initially observes and progressively engages in hands-on piloting under the guidance of the pilot tutor. The scope and intensity of the apprenticeship depends upon the nautical background of the candidate and the operational requirements of the pilot route. Individuals without prior ship or towing industry service have more to learn and experience and thus would seem to need a much more comprehensive pilot development program than individuals who have an extensive nautical background. The transformation of individuals with prior nautical experience depends on the nature and extent of that experience. For these individuals the apprenticeship can be tailored to provide route specific familiarity and to enhance their professional expertise in areas where their experience may be limited.

### PROGRESSIVE ADVANCEMENT

Once a pilot is licensed, most pilot associations or governing authorities require progressive advancement. Usually this involves the piloting of smaller vessels. As individuals become more proficient and can handle more difficult assignments, they are progressively assigned to larger vessels or vessels with less predictable maneuvering behavior. Individuals may also participate in special trips aboard pilot vessels or as an observer aboard a ship or tug transit in order to obtain the necessary number of round trips required for a pilot route extension on either their federal or state license, or both. How long it takes to progressively advance depends upon the route and pilotage needs. For a small port with only a few types of vessels, the newly licensed pilot may be fully qualified through the apprenticeship program. For a complex port and waterways system with many different categories of vessels and operating conditions, it may take several years or more to reach unrestricted pilotage qualifications.

## MARINE SIMULATION

There is considerable interest in the use of marine simulation for professional development purposes. Both manned-model simulations and computer-based simulations are used by a growing number of marine pilot associations in continuing professional development and a few are using simulation in apprenticeship programs (Sandy Hook and Panama Canal Commission). These simulations are used as an enhancement of existing professional development programs; they are not used as a substitute for experience gained through the traditional trip-based approach. (A committee operating under the Marine Board is currently assessing the use of ship bridge simulation in marine training and licensing at the request of the Coast Guard and U.S. Maritime Administration. The report is expected to be available for public release in late 1994.)

## GENERAL OBSERVATIONS

It will take a minimum of 3 years to obtain the necessary entry level maritime expertise on-the-job (at least 4 years if the individual attends a maritime academy) and perhaps more for Pacific Northwest ports since (1) each association currently recruits pilot candidates from the pool of highly qualified mariners from the U.S. shipping and towing industries and (2) the extreme operating environment, particularly the seaward approaches and the bars, demand very mature individuals who are well versed in shiphandling under challenging operating conditions. For a pilot development program to be credible in relation to the well-founded programs of other states, it would need to assure that individuals completing it were qualified to obtain, at the minimum, an initial federal first class pilot's license or a first class pilot's endorsement on a marine license already held. The pilot development program would need to provide for a large number of round trips determined by local experts. The minimum number of trips would be no less than those required by the existing pilot associations; perhaps more would be needed to help make up the difference in actual service between seasoned mariners and individuals without prior service in the shipping or towing industries.

Ultimately, the pilot development program must produce an individual who is mature and professional in order to be credible to the master of the vessel being piloted, otherwise the master may exercise command prerogatives and not fully turn over the direction and control of the vessel to the pilot. Minorities and women may come under closer scrutiny than their colleagues because their backgrounds differ from those of mariners generally. Therefore, they may find it necessary to be particularly attentive to the professional maturity and command presence aspects of pilotage in order to command the professional respect they will need to induce in the master and bridge team when they board to provide expert service.

## EXPANDING THE POOL OF PILOT CANDIDATES

*A pilot development program must fulfill its primary objective of developing*

*qualified pilots, otherwise marine safety objectives could be compromised.* Although the number of individuals that might be interested in becoming a pilot may be large, the number of pilots that each local marine navigation and piloting system can support is relatively small. The individual and corporate investment in developing a marine pilot is relatively large because pilot candidates by necessity must be or become master mariners for their pilot grounds. Care must be exercised in selecting pilot candidates to protect the individual's investment of time and effort as well as that of the pilot association and governing authority. Further, there is a need to assure the pilot candidates have the appropriate aptitude and attitude required in the profession. A number of pilot associations have begun using reliable profiling regimes to screen for attributes or traits that would make an individual unsuitable for the nature of work undertaken in the profession. These tests are approached very carefully to assist all concerned in making the appropriate choices and to avoid infringing on laws and regulations governing employment practices.

There are a number of pathways that are already open that could be used by any individual to enter the pilot profession. These include graduation from a maritime academy followed either by sea service and pilot candidacy, or by direct entry into a pilot apprenticeship program following graduation. *There are a number of win-win ways in which the pool of pilot candidates might be broadened through expanded use of multiple pathways leading to selection as a pilot apprentice while also providing marine industry employment opportunities for individuals in the pool who are not selected.* Further elaboration of this concept is beyond the scope of this discussion paper. Some of the issues that would need to be considered in broadening the pool are the responsibilities for sponsorship, funding, candidate screening, and candidate selection processes.

## SUMMARY

Implementation of a comprehensive pilot development program is difficult. Such a program requires a substantial, long-term commitment of financial resources. Also required is a long-term commitment by the local pilot association to support and administer the professional development program. Responsibility and mechanisms for funding and administration are issues that need to be resolved in advance of program establishment. As competition for highly sought after pilotage positions increases, candidates who are maritime academy graduates, and particularly maritime academy graduates with service in the shipping or towing industries, are likely to enjoy a natural advantage for selection in terms of their professional credentials.

This would replace text on pg. 7, Lines 12-30, of Committee Substitute for House Bill No. 260.

Sec. 08.62.178. DISPUTE RESOLUTION. (a) If a pilot organization required to dispatch a pilot under AS 08.62.175(d) cannot reach an agreement with the representative of the vessel who required the pilot services as to compensation for the pilotage services provided, then either party may request the department to mediate the dispute in order to assist in the determination of reasonable compensation for the services provided. If such request is made, the commissioner shall designate a mediator from within or from outside the department, the cost of such mediator to be borne evenly by the parties. If the mediator concludes that the dispute will not be resolved through mediation, the mediator shall so notify the commissioner whereupon the [board/commissioner] shall resolve the dispute in the manner hereafter provided in this section.

(b) If the mediator provides notice under (a) of this section, the [board/commissioner] shall determine what would constitute reasonable compensation for the services provided, which determination shall be final and binding upon the parties.

(c) A pilot organization that has an agreement to dispatch pilots to provide pilotage services to a vessel, or the owner of a vessel, or the owner's authorized representative, may submit a dispute under such agreement regarding the amount of compensation owed for pilotage services to mediation and [board/commissioner] determination under (a) and (b) of this section. An agreement to submit a dispute arising under an agreement to dispatch pilots to provide pilotage services is an implied provision of the agreement

to dispatch pilots to provide pilotage services.

(d) In making any determination under (b) of this section, the following factors shall be taken into account:

(1) current and historical rates charged for comparable pilotage services in the state;

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

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

(4) the financial impact of pilotage expenses on the owner of the vessel, except that this factor shall only be considered if the owner provides all such financial information as the mediator or [board/commissioner], as the case may be, shall determine is necessary for determining such impact;

(5) the number of vessels and volume of pilotage services at issue in the dispute;

(6) the impact of the determination on the income of effected pilots relative to prior years taking into account changes in vessel tonnage and vessel traffic in the pilotage region from year to year;

(7) prior determinations by the [board/commissioner] under (b) of this section; and

(8) in the case of a determination as to future pilotage services, the time period stipulated to by the parties, if any, during which the pilotage services are to be provided.

DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
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Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

April 4, 1995

**SUBJECT:** CSHB 260 ( ), version M  
**TO:** Representative Gary Davis  
Attn: Darin Morgan  
**FROM:** George Utermohle *GU*  
Legislative Counsel

*Corrected by legal dept  
no action necessary*

The draft CS for HB 260 (CSHB 260( ), version M) contains two typographical/editorial/drafting errors

First, on page 3, line 3, the phrase "and concurrence by" is present. This phrase was not included in the bill as introduced and was not intended to be included in the CS. This phrase will be deleted from the bill the next time that a new version of the bill is prepared. Unless the committee chooses to retain this language in the bill, this phrase will be deleted without further action by the committee.

Second, on page 8, line 20, the reference to portions of the Code of Federal Regulations should read "46 C.F.R. 69.51 - 69.75" not "43 C.F.R. 69.51 - 69.75". This error will also be corrected without further action by the committee.

Both errors arose when a prior uncorrected version of HB 260 was used as the starting point to prepare the CS.

GU:klb  
95-234.klb

SB-130/HB-260

Proposed amendments:

1. Section 8 AS 08.62.093

Amend subsection(b)(2) to read: two years of service as a master on inspected vessels of not less than than 1000 gross tons or tug and tow of not less 1,600 combined gross tons while holding at least a United States Coast Guard [A] license as master of steam or motor vessels of not more [less] than 1,600 gross tons;

2. Section 16 AS 08.62.175

Amend Subsection (d)(3)(C) to read: promoting training programs for marine pilots and deputy marine pilots which may include apprenticeship programs that are approved by the board.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE MACLEAN

TO: CSHB 260( ); Version "M"

- 1 Page 8, line 8, after "United States":
- 2       Insert "or Canadian"
  
- 3 Page 8, line 9, after "United States":
- 4       Insert "or Canadian"
  
- 5 Page 8, line 12:
- 6       After "west":
- 7       Insert "or north"
- 8       After "United States":
- 9       Insert "or Canada"
  
- 10 Page 8, line 13, after "Columbia,":
- 11       Insert "Yukon Territory, or Northwest Territories,"

AMENDMENT

# /

OFFERED IN THE HOUSE

BY REPRESENTATIVE G.DAVIS

TO: CSHB 260( ): version "M"

- 1 Page 3, line 19, after "on":
- 2 Insert "inspected"

#2

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE G.DAVIS

TO: CSHB 260( ), Version "M"

- 1 Page 2, lines 30 - 31:
- 2 Delete "chronic"

A M E N D M E N T

# 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE G.DAVIS

TO: CSHB 260( ); version "M"

1 Page 6, lines 3 - 9:

2 Delete all material and insert:

3 \*\* Sec. 14. AS 08.62.157 is amended by adding a new subsection to read:

4 (c) A person licensed under this chapter shall provide pilotage services to a  
5 vessel upon being dispatched by the pilot organization of which the person is a  
6 member."

7 Page 7, lines 12 - 13:

8 Delete "a pilot required to provide pilotage services under AS 08.62.157(c) or"

9 Page 7, line 14, after "AS 08.62.175(d)":

10 Insert "does not have an agreement to dispatch pilots to provide pilotage services to  
11 a vessel and"

12 Page 7, lines 20 - 21:

13 Delete "Except as provided in (a) of this section, a pilot who has an agreement to  
14 provide pilotage services to a vessel, a"

15 Insert "A"

16 Page 7, line 22, after "to a vessel":

17 Delete "."

18 Page 7, line 26:

19 Delete "submit a controversy"

20 Insert "arbitrate controversies"

**DIVISION OF LEGAL SERVICES**  
**LEGISLATIVE AFFAIRS AGENCY**  
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130 Seward Street, Suite 409  
Juneau, Alaska 99901-2105

**MEMORANDUM**

April 4, 1995

**SUBJECT:** Amendment M 2 to CSHB 260( ), version M

**TO:** Representative Gary Davis  
Attn: Darin Morgan

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum accompanies amendment M 2 to CSHB 260( )

The amendment makes a number of corrections to the draft CS

**FIRST:** The amendment deletes references and allusions to "marine pilots who are not members of a pilot organization" that are contained in secs. 14 and 18 of the bill. The CS as drafted did not take note of a 1993 amendment to AS 08.62.080 which required that all marine pilots be members of a marine pilot organization. As the result of the 1993 amendment, there are no pilots who are not members of a pilot organization.

**SECOND:** The amendment clarifies that the first part of sec. 18 (Sec. 08.62.178(a)) applies to marine pilot organizations that have provided pilotage services to a vessel even though the pilotage organization does not have an agreement with a representative of the vessel to provide pilotage services. If the pilot organization and the representative of the vessel can not agree as to the amount of compensation to be paid for the pilotage services then either party may seek arbitration of the controversy.

The amendment then clarifies that the second part of sec. 18 (Sec. 08.62.178(b)) applies to situations where there is an agreement to provide pilotage services between a pilot organization and a representative of a vessel, but the parties have a controversy over the terms of the agreement. The agreement to submit the controversy to arbitration is declared to be an implied term of the original agreement to provide pilotage services.

**THREE:** The amendment amends the penultimate sentence of sec. 18 (page 7, lines 26-28), so that it is a complete sentence. As the sentence currently reads it does not state what is intended to be an implied provision of the agreement to provide pilotage services. The amendment made to page 7, line 26 of the bill makes clear that an agreement to arbitrate controversies is an implied provision of all agreements to provide pilotage services.

Representative Gary Davis

April 4, 1995

Page 2

If I may be of further assistance, please advise

GU glc klb

95-285 glc

Enclosure

AMENDMENT #4

OFFERED IN THE HOUSE

BY REPRESENTATIVE G.DAVIS

TO: CSHB 260( ); version "M"

1 Page 7, after line 6:

2 Insert a new bill section to read:

3 " \* Sec. 17. AS 08.62.175(d) is amended to read:

4 (d) A pilot organization recognized by the board may not begin operating  
5 until the articles, bylaws, and rules of the pilot organization are approved by the board  
6 on the basis of

7 (1) uniform and nondiscriminatory application of the articles, bylaws,  
8 and rules to marine pilots and deputy marine pilots licensed under this chapter and  
9 trainees for marine pilot licenses;

10 (2) compliance with applicable laws; and

11 (3) effectiveness in

12 (A) promoting an efficient, reliable, and professional marine  
13 pilotage system in the region;

14 (B) maintaining a sufficient number of qualified pilots available  
15 for dispatch to serve the needs of vessels visiting the region during each hour  
16 of the day and each day of the year to the extent that it is reasonably possible  
17 given the size of the membership of the pilot organization;

18 (C) promoting training programs, that may include deputy  
19 marine pilot apprenticeship programs, for marine pilots and deputy marine  
20 pilots that are approved by the board."

21 Renumber the following bill sections accordingly.

22 Page 7, line 8:

23 Delete "(d)"

1

Insert "(e)"

AMENDMENT

#5

OFFERED IN THE HOUSE

BY REPRESENTATIVE G.DAVIS

TO: CSHB 206( ); Version "M"

1 Page 7, line 7:

2 Delete "a new subsection"

3 Insert "new subsections"

4 Page 7, line 8:

5 Delete "(d)"

6 Insert "(e)"

7 Page 7, after line 10:

8 Insert a new subsection to read:

9 "(f) Subject to the prior approval of the apprenticeship program by the board,  
10 a pilot organization may establish a deputy marine pilot apprenticeship program for  
11 the pilotage region in which the organization is recognized."

A M E N D M E N T

#6

OFFERED IN THE HOUSE

BY REPRESENTATIVE G.DAVIS

TO: CSHB 260( ); Version "M"

1 Page 8, line 12, after "west":

2 Insert "or north"

3 Page 8, line 13:

4 Delete ", Hawaii, and British Columbia, Canada"

5 Insert "and (.) Hawaii, and including British Columbia, Yukon Territory, and

6 Northwest Territories, Canada"

7 Page 8, lines 14 - 17:

8 Delete

9 "(5) vessels of Canada, built in Canada and manned by Canadian  
10 citizens including Canadian cruise ships, engaged in frequent trade between British  
11 Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels  
12 owned by the State of Alaska and those of United States registry: [AND]"

13 Insert

14 "(5) vessels of Canada, built in Canada and manned by Canadian  
15 citizens [INCLUDING CANADIAN CRUISE SHIPS], engaged in frequent trade  
16 between

17 (A) British Columbia and Southeastern Alaska south of 58  
18 degrees, 10 minutes North latitude, if reciprocal exemptions are granted by  
19 Canada to vessels owned by the State of Alaska and those of United States  
20 registry; or

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

A M E N D M E N T

# 7

OFFERED IN THE HOUSE

BY REPRESENTATIVE G.DAVIS

TO: CSHB 260( ); Version "M"

1 Page 1, line 9:

2 Delete "two"

3 Insert "three [TWO]"

4 Page 1, line 11:

5 Delete "two industry representatives [AGENTS]"

6 Insert "three industry representatives [TWO AGENTS]"

7 Page 8, after line 27:

8 Insert a new subsection to read:

9 "(c) Notwithstanding AS 08.01.035, the governor shall make appointments to  
10 fill the new pilot and industry representative positions created on the Board of Marine  
11 Pilots by AS 08.62.010, as amended by sec. 2 of this Act, by appointing

12 (1) one pilot member to the board for an initial three-year term  
13 beginning June 1, 1995; and

14 (2) one industry representative member to the board for an initial four-  
15 year term beginning June 1, 1995."

16 Reletter the following subsection accordingly.

**AMENDMENT**

**OFFERED IN THE HOUSE      By Representative Sanders**

**TO:    HB 260**

**Page 6, lines 4 through 9**

**Delete sections 14(c) and (d) in their entirety.**

AMENDMENT

OFFERED IN THE HOUSE      By Representative Sanders

TO:    HB 260

Page 6, line 26 through 30

Delete subparagraph (3).

Page 7, line 6 after "chapter":

Insert paragraph (d)

"A pilot organization recognized by the board [SHALL] may enter into agreements with the master, owner, operator, or agent of a master, owner or operator of a vessel, concerning the terms and conditions under which the pilot organization will provide [ADOPT AND REVISE TARIFFS FOR THE PROVISION OF] pilotage services [BY THE MEMBERS OF THE ORGANIZATION]."

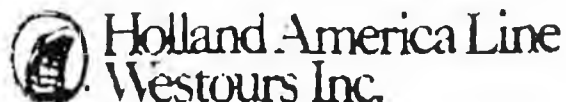
AMENDMENT

OFFERED IN THE HOUSE      By Representative Sanders

TO:    HB 260

Page 7, lines 7 through 30

Delete sections 17(d) and 18 in their entirety.



BY TELECOPIER - 907-465-3835

March 23, 1995

The Honorable Gary L. Davis  
Chairman - House Transportation Committee  
Alaska State House of Representatives  
Juneau, Alaska

Re: House Bill 260

Dear Chairman Davis:

I am writing to urge your support for HB 260, legislation currently pending in the Transportation Committee that would amend various provisions of the Marine Pilotage Act. In our opinion, this legislation represents a fair compromise between the needs of the State, pilots and industry.

I understand that at yesterday's hearing on HB 260, concerns were raised regarding the binding arbitration provisions. Industry had proposed binding arbitration as the fairest and most efficient way of resolving a glaring problem that now exists in the Act as a consequence of the repeal of the maximum tariff provisions in June of last year. There are other options for dealing with this problem. Industry and several of the pilot groups believe, however, that binding arbitration is better than any of the other options identified to date.

Initially, it is important that everyone be cognizant of the problem that now exists in the Act. AS 08.62.160 requires vessels to employ licensed pilots. AS 08.62.045, prior to being repealed effective June 30, 1994, required the Board of Marine Pilots to adopt a maximum tariff. Pilot organizations were not allowed to charge for services an amount that was in excess of the maximum tariff. While it was not explicit in the Act, one could conclude that if a pilot organization was charging at or below the maximum tariff, a vessel could not refuse to employ a pilot on the basis that the charges were unacceptable.

With the repeal of AS 08.62.145, there is no guidance under the Act as to what happens when a vessel and pilot organization are unable to agree on the appropriate charge for pilotage services. It is easy to envision a situation where a tanker, a passenger ship or another vessel requests a pilot, the pilot advises the vessel as to the rate to be charged, the vessel refuses to pay the requested charges and the ship sails without a pilot. If there is then a marine casualty involving that vessel, the public will wonder how it is possible that such a glaring problem was allowed to exist under the Act.

Industry is aware of only three available options at this time. First, we could return to the maximum tariff. All parties agree, however, that the Board of Marine Pilots performed at its worst when it came to establishing maximum tariffs. In addition, the

The Honorable Gary L. Davis  
March 23, 1995  
Page 2

process consumed valuable Board time and resources required perform other functions. I believe all parties would concede that the Board has operated much more smoothly since the repeal of the maximum tariff. Having said this, industry would support a return to the maximum tariff if the Legislature views this as the preferred option.

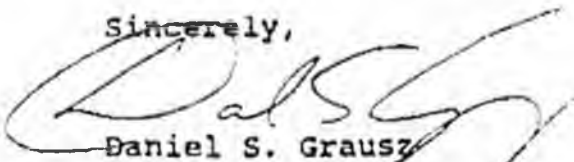
The second option would be to simply include a provision in the Act which requires pilots to provide pilotage services upon request of a vessel. While industry would be very supportive of this option, it would create a great uncertainty as to what happens when the pilot organization then tries to collect for those services absent a prior agreement with the vessel. Certain pilot organizations have testified that they would never refuse to dispatch a pilot. One has to assume, however, that this representation assumes payment would be forthcoming. Industry believes that it would be counterproductive to create an obligation on the part of pilots to work without any means available to determine an appropriate compensation for that work.

The final option is binding arbitration. Industry views this as the compromise position between the other two alternatives. It ensures that pilots will respond to a call for services and guarantees pilots that fair compensation will be paid for services rendered. We understand the reticence of legislators to adopt a system that has come under increasing attack in the public sector. The fact of the matter is, however, that the State of Alaska mandates the use of licensed pilots. It is incumbent upon the State to then take the next step and ensure that a system is in place that will give meaning to that mandate and enable it to be practically implemented.

This is not an issue of government regulation of free enterprise. While there is competition among pilot organizations, the fact remains that Alaska law requires vessels to utilize the services of a select group of people, all of whom are required by law to be members of recognized pilot organizations. At this time, there are two pilotage regions with only one recognized pilot organization and two regions with two recognized organizations. Under these circumstances, it is only a matter of time before a dispute over rates threatens the provision of pilotage services in the State. The Legislature needs to decide whether to deal with the problem before it occurs or wait for a dispute to occur with the possibility of a marine casualty being the consequences.

Holland America appreciates your consideration of this matter. If there are any questions regarding this letter, I would be glad to discuss this with you. My direct telephone number is 206-286-3490.

Sincerely,



Daniel S. Grausz  
Vice President and  
General Counsel



**ALASKA MARINE PILOTS**  
**DISPATCHING SERVICE**

P.O. BOX 730 • DUTCH HARBOR, ALASKA 99692 • 907 581-1240  
 AMP FAX 907 581-1372

March 9, 1995  
 VIA Fax 907-465-3835

Representative Gary Davis  
 State Capitol, Room 420  
 Juneau, Alaska 99801-1182

Re: Marine Pilot Legislation

Dear Representative Davis,

Alaska Marine Pilots would like to take a few minutes of your time and address what we feel is misleading information provided to you by Alaska Steamship Association (ASA) March 8, 1995 by Joe Kyle.

Alaska Marine Pilots stands by our position: We believe that competition has no place in marine piloting. It is interesting that ASA is now comparing marine pilots to firefighters, State troopers and the police. Competition is not allowed in these "essential services" that protect the "public health, safety and property". Industry seeks to mandate the availability of pilots and impose a system of price controls upon pilots via "binding arbitration". This does not sound like a competitive environment to AMP.

The historical background provided to your office regarding the summer of 1993 is slightly skewed. Alaska Marine Pilots Association never threatened any of the 3 steamship agencies with a work stoppage "unless they received written contracts, guaranteeing a certain percentage of the work available." We were asking for guidance from the steamship agencies as to how much work they were going to allocate to AMP so that AMP could schedule the proper number of pilots. The agents were unwilling to provide this vital information to AMP. Therefore AMP as a dispatching entity was unable to schedule the pilots thereby forcing our members to seek employment outside of piloting. In fact, AMP returned to work at the State's request, providing the pilots necessary to keep commerce in the region from stopping; without any assurances of an income to support our families.

Alaska Marine Pilots never, in any forum, gave our support to binding arbitration as presented in the proposed legislation. In fact, in the meeting that is alluded to in the memorandum, AMP was not even present to present our views on the matter. Alaska Marine Pilots has, at this time, no contracts with any steamship agency. Negotiations are underway to try and secure contracts but as of now we have none. Another interesting point is brought to light in these memos. If it was "primarily for legal, anti-trust considerations" the

Page 2

three agencies could not guarantee in writing a percentage of the workload then, AMP asks what has changed between then and now that makes signed contracts possible?

To summarize, AMP does desire a regulated monopoly in Marine Piloting in the State of Alaska, because it is the best way to continue to provide the "State of Alaska with a safety net to protect people, property, and the environment from the hazards presented by waterborne commerce." AMP is opposed to the concept of competition in marine piloting, however, AMP has no "ideological bent" intent on creating a crisis for the people of the State of Alaska.

Thank you for your time in this important matter. If I can be of any further assistance please do not hesitate to call me at our Dutch Harbor office.

Respectfully submitted,



Captain David Sanders, Vice President  
Alaska Marine Pilots Association

cc: Senator Pearce

DAS/cgs

word/state/signed/95.doc

# ASA Alaska Steamship Association

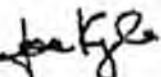
234 Gold Street Juneau, Alaska 99801 (907) 586-3107 FAX 586-1001

March 4, 1995

To: Representative Gary Davis  
 From: Joe Kyle  
 Subject: Need for Binding Arbitration/Conflict Resolution in Marine Pilot Act

The following points are offered to support our belief, that since the maximum tariff provision of the Act was allowed to sunset in 1994, the Act needs a new section which addresses the safe movement of vessels in Alaskan waters when pilots and ship owners are in dispute over price.

- First, this section of the Act will rarely, if ever come into play. It is a "fall-safe" provision, and will be invoked when ship owners and pilots have failed to agree.
- It will be invoked when a contract between a pilot association and a ship owner has lapsed, and for some reason, over a protracted period of time, they cannot agree on a new contract price; or, a new service is being introduced into Alaska, and the ship owner and existing pilot association/s in the affected area cannot fix a price.
- The primary purpose, and benefit, of this provision is to ensure that piloting services, which protect the state's interest in protecting lives, property, and the environment; continue without interruption when pilots and owners may be arguing over price.
- It might be said that, given a competitive environment in piloting, why not let owners and pilots argue until they agree on price, and piloting services will simply not be provided in the interim?  
 — Piloting services are compulsory, when reasonably available; if the pilots refuse to provide the service while they and owners argue over price, two things will happen, and neither is in the state's best interest. One, ships will move into and out of state waters without state licensed pilots; or two, waterborne commerce will not cease where disputed.
- Without a binding arbitration/conflict resolution provision, an uneven playing field will exist. Pilots will be in a position to create a crisis environment to resolve their monetary disputes. The state will be forced to declare an "emergency" and take pre-emptive action in a politically charged and highly publicized environment. Owners will face the dilemma of moving ships less safely (no pilots aboard), or suffer the severe economic consequences of leaving cargo at the dock, or at sea.
- The state requires that owners utilize the services of a state licensed profession — a profession with significant, formal and informal, barriers to entry. Since the state allowed the maximum tariff to sunset, it now has a duty to provide an alternative mechanism to resolve monetary disputes between service providers and users in a rational and methodical manner.
- Naturally, such a mechanism serves the state's need to protect people, property, and the environment; it offers pilots and owners a secure, predictable, and stable work environment; and it enhances the business climate in the state.

Joe Kyle 

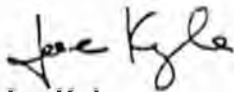
Representative Gary Davis  
March 8, 1995  
Page ?

arbitration in an effort to elicit their support. They verbally gave us their support before our meeting with you, Representative Phillips, and Senator Pearce and Kelly — the quid pro quo being a signed contract with the largest of the three steamship agencies operating in the western region. They now have that contract, and have reneged on supporting binding arbitration.

Given the P's strong, ideological bent for obtaining "regulated monopoly" status for pilot associations in Alaska, and our past experiences with them; we have absolutely no confidence that they will not continue to create problems for competitive piloting. The ability to withhold services during a contractual dispute is an ideal, and already used, device to create a crisis for the state . . . since state licensed pilots provide the state with a safety net to protect people, property, and the environment from the hazards presented by waterborne commerce.

If you need any additional information, please call me at 907 - 586 - 3107.

Sincerely,

  
Joe Kyle



MEMORANDUM

March 8, 1995

To: Representative Gary Davis  
From: Joe Kyle  
Subj: Additional Info re Arbitration/Conflict Resolution

You asked if our desire for an arbitration / conflict resolution provision in the Marine Pilot Act is based on actual, or theoretical, concerns. For us, the threat of pilots refusing to move vessels into or out of state waters without a written, contractual agreement in place is very real.

During the spring of 1993, the Alaska Marine Pilots (AMP) threatened the three steamship agencies operating in the Unalaska/Dutch Harbor and Bering Sea area with a work stoppage unless they received written contracts, guaranteeing a certain percentage of the work available. Primarily for legal, anti - trust considerations; the three agencies could not guarantee — in writing — AMP a percentage of the overall workload in the Bering Sea pilot region.

AMP then notified the agencies that they would no longer respond to requests for piloting services unless a written contract was in place. AMP then began a work stoppage. The Board of Marine Pilots, through the Lieutenant Governor, declared an emergency in the western pilot region. The board imposed emergency regulations to correct the situation. AMP's competitor in the region filed for a temporary restraining order, alleging the board's remedy for the emergency was anti -competitive since the practical effect of the state's remedy was to allow a hostile takeover of their association by AMP.

Three days of hearings before a Superior Court judge in Anchorage ensued. After hearing oral arguments from both pilot associations, the state, and the shipping industry, the judge invalidated the state's action. Among other things, he found the state acted improperly in finding an emergency (since the smooth flow of commerce was never disrupted — the competing pilot association was able to cover for the vessels AMP refused to pilot) and that its remedy was anti - competitive.

It is our belief that AMP's philosophical opposition to the statute's mandate for a competitive environment in marine piloting dominates their behavior. In past Board of Marine Pilot meetings, they threatened the board and industry with " breaking the system " so that it can be fixed — shorthand for doing anything they can to ensure competition does not work, and that a regulated monopoly is instituted.

For this session, we compromised our support for the maximum tariff to binding

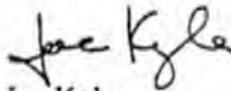
Representative Gary Davis  
March 8, 1995  
Page 2

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Given AMP's strong, ideological bent for obtaining "regulated monopoly" status for pilot associations in Alaska, and our past experiences with them; we have absolutely no confidence that they will not continue to create problems for competitive piloting. The ability to withhold services during a contractual dispute is an ideal, and already used, device to create a crisis for the state . . . since state licensed pilots provide the state with a safety net to protect people, property, and the environment from the hazards presented by waterborne commerce.

If you need any additional information, please call me at 907 - 586 - 3107.

Sincerely,

A handwritten signature in cursive script that reads "Joe Kyle".

Joe Kyle

Western Alaska Pilots Association P.O. Box 792 Unalaska, Alaska 99685

March 20, 1995

An Open Letter to Senators and Representatives of the Nineteenth Legislature:

I am writing to you regarding changes to the Marine Pilotage Act which is currently being considered for amendment via Senate Bill 130 and House Bill 260.

The present law and regulations divide the state's waters into regions. A pilot may not be licensed in more than one region. While the law allows exceptions if "it is in the state's interest" there are those who would make the prohibition absolute. The typical argument for singular regional licenses is that it is a matter of safety.

Their argument is that Alaska's waters are so vast and unique that an individual pilot can not be qualified to pilot under so many diverse situations. The argument is flawed for several reasons:

1. A ship traveling through two regions on the same trip currently must employ two different pilots. If unsafe weather conditions prevents one of the pilots from boarding the ship, the ship can, after a brief wait, move on into port without a pilot. If a pilot were licensed (after qualifying) to work in both regions he/she could ride the vessel to the next port. Thus, licensing across current regional lines would enhance safety.
2. Piloting the entire state is not impossible. The U.S. licenses pilots through the Coast Guard for all registered vessels. Such licenses cover any waters for which the individual qualifies. This is the case with SeaLand, TOTE and any other registered vessels. A pilot thereon may pilot from Ketchikan to Anchorage to Dutch Harbor-across three regions. Pilots on these vessels have as good a (if not better) safety record as do state regional pilots.
3. The safety argument to justify a pilot working only in a confined region falls apart in that the current law will also

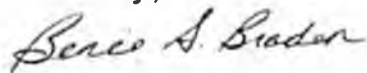
not allow a pilot to work one port. thus becoming a "local expert". This one port license is criticized on the grounds that it is "cherry picking" - and will leave less lucrative ports without an available pilot.

In short, the regional license is designed to allow a pilot group to have a monopoly in a region and forever eliminate new competition. This is especially true when coupled with the law that prevents a pilot working unless affiliated with a board recognized association.

As you consider the pilotage legislation that will soon face your committee, I urge you to eliminate all references to regions and the requirement that a pilot be a member of a pilot organization as a condition of working. I also urge you to increase the number of pilots on the board to broaden the representation of pilot interests. While this will take effort in drafting the bill, it will provide a way to a more effective piece of legislation and a safer and less litigious era of pilotage.

I would be delighted to discuss this further with you. I can be reached at 272-3365. You can also expect to see me at public hearings on the pilotage act. Thank you for your time and consideration.

Sincerely,



Benée S. Braden  
Business Manager  
Western Alaska Pilots Association

**Western Alaska Pilots Association P.O. Box 702 Unalaska, Alaska**

Requested Changes to Senate Bill 130 and House Bill 260 - "An act relating to marine pilots.."

Sec 2. AS 08.62.010 to be changed as follows:

"It consists of three [two] pilots licensed under this chapter who have been actively engaged in piloting vessels subject to this chapter, three [two] industry representatives, one [two] public members in accordance with AS 08.01.025. [and the commissioner or the commissioner's designee.]

Rationale: a. increases the pilot expertise on the board and provides better representation of pilots across the state.  
b. maintains parity between pilots and industry  
c. relieves the Commissioner of responsibility of sitting on this Board.

Sec 6. AS 08.62.080 (a) to be changed as follows:

(a) A person may not pilot a vessel subject to this chapter unless the person is licensed under this chapter. [and is a member of a pilot organization recognized by the board.]

Rationale: a. Sec. 08.62.175 of this chapter states that pilots "may" form organizations that ask to be recognized by the board. Sec. 08.62.080 (a) requires such membership. We ask for clarity in the language.  
b. requiring a pilot to belong to a board approved organization prior to providing pilotage services effectively reduces the right of a pilot to compete and is a restraint of free trade.

Sec. 6. AS 08.62.080 (b) to be changed as follows:

(b) A pilot may [not] be licensed in more than one pilotage region at a time. [Delete remainder of section.]

Rationale: a. allowing cross-regional licensing decreases the anti-competitive language in the act.  
b. it will eliminate the onus on the Commissioner to determine if and when a shortage of pilots exists and the attached liability.  
c. it will improve safety and access to pilots.

**Final note:** These changes may precipitate the need for other small changes to the bill. It is our hope that by identifying some substantive changes to the Act that will alleviate some of the discrepancies in its language that a more effective piece of legislation will be enacted.

Western Alaska Pilots Association P.O. Box 792 Unalaska Alaska

March 27, 1995

Representative Gary Davis  
State Capitol, Suite 420  
Juneau, Alaska 99801

Dear Representative Davis:

I am greatly appreciative of the time and effort you are expending in dealing with the marine pilotage legislation. For such a small group, pilots demand an enormous amount of attention. As you said on Friday, it is important that the legislation passed this year be far-sighted and comprehensive in dealing with the problems. Maybe then we will go away and do our work and not bother the legislature for a long time!

In the letter that I left with you last week, I raised the issue of cross regional licensing. While it seems that there is reluctance in discussing it, I encourage you and the committee to give the topic a fair hearing. It is an issue of importance to my group of pilots and, if they were pressed, to the other groups and industry.

Let me give you an analogy. Suppose that the medical board decided one day that, due to the many differences between children and adults, general practitioners were no longer licensed to practice medicine on children under the age of twelve. The rationale was safety. Pediatricians were more highly qualified and children would receive "better care". Suddenly, the GP's across the state have been denied access to a large percentage of their former practice. The state offers no compensation. Of course, the physician could go back into residency and become a pediatrician, but what about the rest of his practice? Or his livelihood in the interim?

Subsequent to the passage of the Marine Pilotage Act of 1991, Region 3 was formed. Prior to that the pilots in my group had been licensed to pilot in what is now Region 2 and Region 3. We view the arbitrary drawing of regional lines as a disenfranchisement and blatantly anti-competitive. With the work in Region 3 slowing, my pilots would like to seek work in Cook Inlet, Kodiak and Prince William Sound. Under the current law as well as the pending legislation, that option is denied us.

What about the safety issue? Well, getting licensed or even renewing a lapsed license is no cakewalk. Keeping a license current also requires a lot of time in the pilot house. I again encourage you to invite the Coast Guard commander over marine safety to testify as to his perceptions of the safety issue. I also encourage you to ask industry what their concerns might be related to this.

Representatives from the other groups may tell you that being licensed in more than one region is not important to their pilots. But I would be very surprised if, given the opportunity to do so, pilots in southeast failed to seek licensure to bring cruise ships into Prince William Sound. I would also expect to see pilots from all regions spread their licensure into "new waters".

In the long term, cross regional licensing may solve the dispute resolution issue. Industry's concern seems to be that a dispute over fees may stop their ships. If they could call on four groups instead of one or two, perhaps their fears would be abated.

This is not an easy issue. Again, I only ask that you give it some consideration and a fair hearing. Because of its importance to my group, I have dedicated this letter solely to it. WAPA's concerns related to the composition of the board and other items in the legislation, I will submit to you separately, or in teleconference.

If you need further clarification on the issue, do not hesitate to call me at 272-3365. I will also be available on Wednesday via teleconference from Anchorage.

Respectfully,

Benée S. Braden  
Business Manager  
Western Alaska Pilots Association

Law Offices of  
SIMPSON, TILLINGHAST, SORENSEN & LORENSEN, P.C.

One Sealaska Plaza, Suite 300 Juneau, Alaska 99801  
Telephone: (907) 586-1400, Facsimile: (907) 586-3065

Leslie Longenbaugh  
Ronald W. Lorensen  
L. Merrill Lowden

E. Budd Simpson  
Stephen F. Sorensen  
Jon K. Tillinghast

MEMORANDUM

To: Members, House Transportation Committee  
From: Ronald W. Lorensen *RWL*  
Date: March 21, 1995  
Re: Proposed Amendment to HB 260, Relating to Marine Pilots

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Northern Transportation Company, Ltd. (NTCL)<sup>1</sup> is a Canadian maritime transportation company that has been operating tugs and barges serving communities and defense installations in the Canadian Western Arctic for 40 years. In 1993, NTCL began delivering fuel products to several communities on Alaska's North Slope.

Fuel delivery on the North Slope requires that tugs and barges operate in shallow water conditions, including actually beaching the barge before off-loading the fuel. Before NTCL began delivering fuel to the North Slope communities, fuel was delivered to them by U.S.-based shipping companies using U.S. registered tugs and barges. Fuel delivery by these U.S. tugs and barges was conducted in the same manner (beaching the barge)--and still is at numerous other communities along Alaska's western coast.

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1. NTCL's headquarters are in Hay River, Northwest Territories. NTCL is a wholly owned subsidiary of NorTerra, Inc., a holding and management company owned equally by Inuvialuit Development Corporation, representing the Inuvialuit of the Western Arctic, and Nunasi Corporation, representing the Inuit of the Keewatin, Central, and Eastern Arctic regions of Canada.

2. Those being Kaktovik on Barter Island, Barrow, Wainwright, Point Lay, and Point Hope. NTCL's operations in Alaska comply with all Department of Environmental Conservation and U.S. Coast Guard environmental and ship safety regulations.

Under Alaska's marine pilotage act (AS 08.62), U.S. tug and barge operations on the North Slope--as well as the rest of Alaska--are not required to use a marine pilot in their operations. This is because "towboats of United States registry" are exempted under AS 08.62.180(4). There is no similar exemption for Canadian-based vessels conducting the exact same operations, however. As a result, the State of Alaska, through the Board of Marine Pilots, has taken the position that NTCL must use a licensed marine pilot in its operations in compulsory pilotage waters in Alaska.

NTCL does not understand why Alaska requires Canadian vessels to use a pilot in operations where their U.S. counterparts are specifically exempt. This is particularly troubling to NTCL, given its long and extensive history of operating in shallow waters and making beach landings in the Canadian Arctic under similar conditions as those that exist on the North Slope. NTCL's navigating officers and tug crews have extensive experience in the Arctic maritime environment--it is what they do for a living. In comparison, most U.S. tug crews have less experience operating in the Arctic environment and conducting beach landings. Additionally, because U.S. tugs have never been required to use marine pilots on the North Slope, there are few, if any, licensed marine pilots with any real experience in or knowledge of the areas served by NTCL.

If U.S. tugs do not need pilots, then Canadian tugs do not need pilots, either. The approaches to the beaches are direct and unrestricted, and there are no hazards to navigation or other conditions requiring any special local knowledge. As a practical matter, there is no purpose served by requiring NTCL to use a pilot when U.S. tugs do not--particularly when the cost of those pilot services can run into several thousands of dollars per stop.

The difference in the state's treatment of U.S. and Canadian tugs presents substantial legal problems under the United States Constitution. The requirement that Canadian tugs use pilots while U.S. tugs are exempted has the clear and direct effect of

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3. Although only Point Hope is presently within a "compulsory pilotage area," the Board of Marine Pilots is considering designating all of the North Slope as a compulsory pilotage area.

4. The landing and departure operations are each typically carried out in two to three hours. However, NTCL's cost for a pilot in 1994 for just its stop at Point Hope was over \$6,000, which included charges for four days standby time due to weather. Even for that cost, the pilot never boarded the NTCL tug for either its approach or its departure from Point Hope.

Members, House Transportation Committee

Page 3

March 21, 1995

discriminating against foreign commerce. This is forbidden under the Commerce Clause of the United States Constitution.<sup>5</sup> It is also a violation of the Equal Protection Clause of both the Alaska and United States Constitutions, in that there is no rational basis for requiring Canadian vessels to utilize pilots while exempting their U.S. counterparts engaged in the very same operation.

In 1994, NTCL filed suit in the Superior Court, First Judicial District at Juneau, challenging the constitutionality of the state's exemption of U.S. tugs while requiring Canadian tugs to use marine pilots. Although NTCL's attorneys believe that their case is strong, NTCL does not view litigation with the state as a desirable means for solving the marine pilotage problem. Instead, NTCL is seeking the support of the Legislature for an amendment that would treat its operations in the same way as those carried out by comparably sized U.S. vessels operating under similar conditions.

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5. Attached as Appendix I is a brief legal analysis of the Commerce Clause issue.

6. The proposed language for an amendment is set out in Appendix II.

Appendix I  
Discrimination Against Foreign Commerce is Prohibited

"When a state statute directly regulates or discriminates against interstate [or foreign] commerce, or when its effect is to favor in-state economic interests over out-of-state interests, [the Court has] generally struck down the statute without further inquiry." Brown-Foreman Distillers v. N.Y. Liquor Authority, 476 U.S. 573, 579, 90 L. Ed. 2d 552, 559 (1986). Other cases to the same effect include Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 64 L. Ed. 2d 702 (1980); Philadelphia v. New Jersey, 437 U.S. 617, 51 L. Ed. 2d 475 (1978); and Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 65 L. Ed. 2d 383 (1977).

Under AS 08.62.180(5), "towboats of United States registry" are completely exempted from the marine pilotage requirements of AS 08.62. The exemption is granted irrespective of the tug's port of origin, its size, its destination, its crews' experience in Alaskan waters, the nature of the cargo it is towing, or the character of the waters or coastline along which it is operating. All that is required is U.S. registry, plain and simple.

As a result of this exemption, U.S. tug and barge deliveries of equipment, goods, and fuel to communities and other locations throughout Alaska have been conducted for decades without marine pilots. Under the current law, however, NTCL cannot claim the same exemption and must use a pilot in all compulsory pilotage waters. This difference in treatment clearly works a direct discrimination against foreign commerce.

There is no reasonable basis for exempting U.S. tugs from pilotage requirements while making Canadian tugs comply. Concerns of environmental safety and protection of vessels and shore-based facilities from damage apply equally to all tug and barge operations in Alaska, irrespective of the vessels' country of registry. The only basis upon which this differential treatment can be explained is economic protectionism, which is prohibited by the constitution: "[W]here simple economic protectionism is effected by state regulation, a virtually per se rule of invalidity has been erected." Philadelphia v. New Jersey, supra, at 624.

Amending the pilotage exemption for tugs and towboats at AS 08.62.180(4) to treat U.S. and Canadian vessels alike would correct this constitutional defect.

Appendix II

Proposed Amendment to Marine Pilotage Act

\* Sec. \_\_\_\_ . AS 08.62.180(4) is amended to read as follows:

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

(A) on the rivers of Alaska, or

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

Western Alaska Pilots P.O. Box 792 Unalaska, Alaska 99685

April 3, 1995

Representative Gary Davis  
State Capitol Suite 420  
Juneau, Alaska 99801

Dear Representative Davis:

I have been asked by Alan Walker, representative for NTCL, to convey to you WAPA's position on the proposed amendment to House CS 260 regarding the tug and barge operations on the North Slope. After discussing this issue and the amendment with the pilots in my organization, I feel confident that our position is one of positive support for the amendment. As a region three pilot group, they are familiar with the area and the pilotage issues. Captain Boyd feels that the operations currently in practice are in no need of the services of a state licensed marine pilot for safety or efficiency.

If further information is needed, do not hesitate to contact me.

Sincerely,



Benée S. Braden  
Business Manager

cc: Mr. Alan Walker

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

TONY KNOWLES, GOVERNOR

P.O. BOX 110806  
JUNEAU, ALASKA 99811-0806  
PHONE: (907) 465-2534  
TDD: (907) 465-5437

Representative Gary Davis  
Chairman, House Transportation Committee  
Room 420  
State Capital  
Juneau, Alaska 99801-1182

April 17, 1995

### PERSONAL HAND DELIVERED

Dear Representative Davis,

As stated before, the Marine Pilot Coordinator wears many hats. Today I am writing with my hats in my hand.

The House Transportation, and Senate Resources Committees are making great strides in working through the marine pilot bills. When we are done, we may have legislation that will clean up the Marine Pilotage Act of 1991, thereby possibly reducing the expensive litigation surrounding these thorny issues. When dealing with marine pilotage it is important to remember that there are always at least three sides to every story. No matter what comes out of these bills, chances are that somebody will not be completely happy. In the preamble accompanying the Marine Pilotage Act is the following statement of intent:

**It is the policy of the state to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland water of and adjacent to the state.**

In its 1994 annual report to the Governor, the Board of Marine Pilots made the following statement:

**The interests of the State of Alaska in providing well trained pilots and ensuring that they are dispatched to vessels transiting the compulsory pilotage waters of the state must come first above all other interests.**

The Marine Pilot Coordinator was created by the Legislature to assist the Board of Marine Pilots in administering and enforcing the law. The Marine Pilot Coordinator does not set policy. He administers the policies that are set down by the Governor, the Legislature, and the Board of

Marine Pilots. He does this in as fair, and impartial a manner as possible. Therefore, in order to maintain credibility in this position, it is imperative for the Marine Pilot Coordinator to admit when he is wrong.

On April 5th, in the House Transportation Committee, I was answering a question regarding a proposed amendment to HB-260 and I used the figure of speech "flipped a coin" to describe a decision making process used in a particular incident involving state pilotage. This caused a disturbance in the committee room and the ruffling of some feathers that probably didn't need ruffling. . . After checking with four different sources representing all three sides of the equation. I have determined that my description of the incident and use of the phrase "flipped a coin" mis-characterized what actually occurred. I used this phrase (and please excuse the pun) "flippantly" and therefore my words were inaccurate and inappropriate.

After careful research, I have determined that in this instance I was wrong. If I've caused anybody any heartburn, or confused any committee members on the issues, it was inadvertent and I apologize. I intend not to waste this Legislature's very valuable time belaboring this issue and move on.

If there are any committee members who would like me to clarify this letter further, please feel free to have them contact me at 465-2548.

Sincerely,

  
Captain Daniel C. Twohig  
Marine Pilot Coordinator



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

"Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

**Regional Citizens' Advisory Council of Prince William Sound  
Testimony on HB 260 Board of Marine Pilot Bills  
April 5, 1995**

My name is Tex Edwards. I am a member of the executive committee of the Prince William Sound Regional Advisory Council. The RCAC's mission is "citizens promoting the environmentally safe operation of the Alyeska terminal and associated tankers." RCAC is certified as an alternative council under Section 5002 of the Oil Pollution Act of 1990. The work of the RCAC is guided by its contract with the Alyeska Pipeline Service Company and the Oil Pollution Act of 1990. RCAC has 18 member organizations representing communities and boroughs impacted by the 1989 *Exxon Valdez* oil spill, as well as commercial fishing groups, Alaska Native interests, and environmental, aquaculture and business organizations. I thank you for the opportunity to testify on HB 260, an act extending the Board of Marine Pilots.

Safety is RCAC's primary concern regarding marine pilotage. Marine pilotage is of critical importance to the residents of the Prince William Sound Region. We have acutely experienced the tragic impact of relatively "minor adjustments" to marine pilotage with the *Exxon Valdez* oil spill. As stated in the legislative intent and findings, marine pilotage is "to assure the protection of lives and property and the marine environment of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels on inland and coastal water...." This safety concern is also the primary concern of the public and the State of Alaska. RCAC has no vested economic interest in pilotage. We urge the legislature to remain focused on the potential impacts on safety of the bill under consideration.

During recent years, the Alaska Department of Commerce and Economic Development, Division of Occupational Licensing, Marine Coordinator has made significant improvements towards making licensing, examinations and training more objective. RCAC applauds and supports this progress. However, the department has also been stymied in their efforts to efficiently improve marine pilotage by constant litigation. We hope that the housekeeping portions of this bill will indeed reduce the conflict in the system and allow the State to focus more clearly on the important issues affecting safety. RCAC looks forward to constructive interaction to facilitate continued improvement to the system.

RCAC members and residents of Southcentral Alaska appreciate the excellent safety record of the Southwest Alaska Pilots Association (SWAPA), which has avoided many of the growing pains and accompanying problems occurring in Southeast and Western Alaska. However, we believe this is more a credit to the

members of SWAPA, not how the program is regulated by the State. SWAPA has maintained high professional standards in recruiting, training and licensing pilots. In addition, the Alyeska Pipeline Service Company also evaluates the qualifications of new pilots calling at the TransAlaska Pipeline System (TAPS) terminal. Alyeska can approve or disapprove new certification for pilots serving the TAPS tankers loading at the Port of Valdez. The combination of these two influences have helped to maintain rigorous professional standards for pilot services on TAPS trade tankers.

In hearings to date, there has been considerable discussion regarding competition and whether competition exists. True economic competition can not exist in an industry where the use of pilotage services are mandatory and pilots must belong to pilot associations that must provide services. Arguing whether competition exists is of relatively little use. The larger issue is whether competition between pilot groups and between pilots and shippers has a detrimental impact on safety and whether competition compromises the ability of pilots to make safety decisions unencumbered by fear of reprisal---either in the form of loss of market share to competing pilot groups or reduction in negotiated fees for services.

We question whether there are sufficient measures in state law to protect Prince William Sound, the public and the state's resources from the problems that appear to be the result of competition. RCAC believes that pilot associations should not be able to reduce training and licensing standards in order to increase membership.

It appears that the effect on safety by competition is a negative one. It seems relevant that Alaska is the only coastal state that provides for the setting of pilot fees based on competition. It also seems that this purely economic issue continues to distract attention from more important issues of recruiting, licensing, training and safety. In addition, since the supporters of competition are now advocating binding arbitration, one would question whether the quasi-competition system for setting pilotage fees has worked.

Competition can be used as leverage by shippers to keep downward pressure on pilotage rates. While it is understandable that shippers would seek reasonable pilot rates, competition may potentially poses a constant threat that undermines the ability of pilots to freely and independently assert their professional judgment on safety considerations. RCAC has received comments from pilots that the competitive system dampens pilot's comfort with expressing safety concerns. Many pilots believe that the shippers binding arbitration proposal further shifts the balance toward shippers.

The State needs to be more proactive in assuring that training, examinations, licensing, and safe operating standards are rigorously regulated. Given the State's historic role, we question whether this diligence is likely. The State has usually taken a hands off approach to regulating state pilotage---not stepping in unless there is a problem. Proponents of competition advocate regulating safety directly. The public needs assurance that this will happen. Allowing training

and licensing standards to be eroded decreases public confidence. State and Board of Marine Pilots should set high professional training, licensing, and safety standards that can not be lowered by shippers or pilot groups.

Specific comments on bill sections (work draft CS "M", 3/21/95):

Section 2: Board membership. With the board no longer setting tariffs, we question the continued requirement for industry representation on the Board. Maybe the Board should be a safety, training and licensing board with pilot and public members from all pilotage regions. Currently only two representatives each for public, pilots and industry are from Southeast and Southcentral. Most importantly, because the purpose of marine pilotage is to protect the public interest, RCAC believes that the public throughout the state should be represented and we oppose any reduction in public members.

Section 8: qualifications for deputy license. We support the DCED and Captain O'Hara's proposed amendment to avoid reduction in training entry standards.

Section 13: revocation of recognition of a pilot association. This poses a technical problem if pilot membership in an association is required and recognition is revoked. There would be no legal mechanism for pilots to offer services. this would be an unacceptable situation.

Section 15: sanctions against pilots for drug or alcohol use. In previous hearings, there was testimony that this new section allows a pilot's liability to be unlimited in any situation for which the board can sanction a pilot and is thus arbitrary and too harsh. It appears that the section actually provides for unlimited liability in situations in which the pilot could be sanctioned for drug or alcohol use. RCAC supports this excellent and reasonable provision.