

SB

130

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April 7, 1995

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Senator Druc Pearce, President
Alaska State Senate
Juneau, Alaska 99810-1182

Re: Senate Bill 130/House Bill 260 - Marine Pilotage Act Amendments

Dear Senator Pearce:

There has been much discussion about mechanisms for dealing with marine pilotage tariffs. There are three alternatives. 1) Reinstitute "fixed" tariffs set by a State agency. (The Marine Pilot Board was authorized to fix pilotage tariffs until the Legislature amended the Act in 1991.)¹ 2) Reinstitute a State-set maximum tariff, which was implemented in 1991 and sunset in 1994. (Under this scheme, the Board set the maximum tariff, but had no oversight over the actual amounts charged between pilots and vessels under private contracts.) 3) Do nothing and let the marketplace decide the price of pilotage services.

The Southeastern Alaska Pilots' Association supports a State-fixed tariff. If the legislature does not provide a fixed tariff, then there should not be a maximum tariff. Either actively regulate pilotage or let pilots compete. A maximum tariff does neither and has serious repercussions.

In general, when there is competition, the marketplace decides the price, and the law enforces competition and punishes those who conspire to restrain trade.² When there is active state supervision of a private party, there is immunity from the antitrust laws. However, under a maximum tariff, true market forces are thwarted by establishing an artificial price ceiling. And, pilotage associations cannot enjoy antitrust immunity under a maximum tariff provision because there is not active supervision of pilotage prices actually charged.

The United States Supreme Court describes a two part test that must be met in order for groups to obtain "state action" immunity from the antitrust laws. There must be

¹ In 1990, the Alaska Department of Law failed to enforce the fixed tariff against marine pilots who charged less. It may behoove the Legislature to consider authorizing a "citizen suit" provision to allow citizen enforcement of the Marine Pilot Act if the State fails to enforce the Act in the future.

² Section 1 of the federal Sherman Antitrust Act prohibits contracts, combinations, and conspiracies in restraint of trade. 15 U.S.C. § 1.

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- 1) state legislation that clearly articulates and affirmatively expresses anticompetitive action, and
- 2) active state supervision.¹

The State's supervision must exert control, it must be exercised deliberately and independently of private actors, and "not simply by agreement among private parties."²

By fixing pilotage tariffs, the State fulfills the active supervision prong of the state action test over a key component of pilotage (price). However, additional measures must be taken by the legislature before pilots begin to gain state action immunity from antitrust liability.

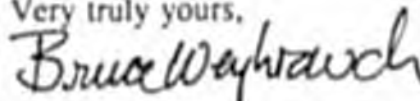
First, the Legislature must clearly articulate and affirmatively express anticompetitive action; in other words, the state must indicate that it intends regulation to displace competition in the Marine Pilotage Act. We commend Florida's Marine Pilot Act for your review as a possible example of such a clearly articulated policy. (See enclosed Fla. Stat. 310.0015.)

Second, the State's supervision of pilotage must be active and pervasive. While antitrust lawsuits against pilots have been filed that have included price fixing claims, the key areas of litigation have involved training, entry, licensing, and discipline. Consequently, the State's supervision of pilotage must be independent of private associations, and must independently and deliberately control and supervise, entry, training, licensing, sanctions, pay, and all other areas of pilotage.

SEAPA supports an actively supervised State system of pilotage. SEAPA believes that this is the only system that will meet the State's interests of safety and a clean environment. Pilots act as agents of the State for the State's interests. This is an ideal situation to implement policies that lead to state action immunity for pilots.

But either allow pilots to compete in the marketplace, or actively supervise and control pilots. Until the Legislature makes a clear policy choice, the Legislature will continue to see litigation, uncertainty, and a never ending stream of pilots, industry representatives, lawyers, and lobbyists at your door.

Very truly yours,



Bruce B. Weyhrauch

¹ California Retail Luxury Dealers Ass'n v. Medical Aluminum, Inc., 445 U.S. 97, 105 (1980).

² FTC v. Toner Title Ins. Co., 119 L. Ed. 2d 410, 423 (1992).

**1994 SUPPLEMENT
TO
FLORIDA STATUTES 1993**

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Bay and Tampa Bay and in the Manatee River, certain materials, as recommended by the Division of Marine Resources of the Department of Environmental Protection, to increase the number of fish available for persons fishing in the above areas.

(4) This section shall not prohibit Pinellas County from placing in Tampa Bay certain materials as recommended by the Division of Marine Resources of the Department of Environmental Protection, to increase the number of fish available for persons fishing in the bay.

History.—Ch. 279, 1981, FS 936 s. 1, ch. 4370, 1975, GS 1270, RGS 240, CGL 2000 s. 1, ch. 61-11, s. 1, ch. 63-423 s. 1, ch. 65-29, ss. 23, 20, 21, ch. 69-106 s. 184, ch. 81-259 s. 31, ch. 94-218 s. 134, ch. 94-226.

CHAPTER 310

PILOTS, PILOTING, AND PILOTAGE

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310.0015 Piloting regulation; general provisions.—

(1) Piloting is an essential service of such paramount importance that its continued existence must be secured by the state and may not be left open to market forces.

(2) Because safety is the primary objective in the regulation of piloting by the state and because of the significant economies of scale in delivering the service, the requirement of a large capital investment in order to provide required service, and the fact that pilots are supplying services that are considered to be essential to the economy and the public welfare, it is determined that economic regulation, rather than competition in the marketplace, will better serve to protect the public health, safety, and welfare.

(3) The rate-setting process, the issuance of licenses only in numbers deemed necessary or prudent by the board, and other aspects of the economic regulation of piloting established in this chapter are intended to protect the public from the adverse effects of unrestricted competition which would result from an unlim-

ited number of licensed pilots being allowed to market their services on the basis of lower prices rather than safety concerns. This system of regulation benefits and protects the public interest by maximizing safety, avoiding uneconomic duplication of capital expenses and facilities, and enhancing state regulatory oversight. The system seeks to provide pilots with reasonable revenues, taking into consideration the normal uncertainties of vessel traffic and port usage, sufficient to maintain reliable, stable piloting operations. Pilots have certain restrictions and obligations under this system, including, but not limited to, the following:

(a) Pilots may not refuse to provide piloting services to any person or entity that may lawfully request such services, except for justifiable concerns relating to safety, or, in the case of a vessel planning a departure for nonpayment of pilotage.

(b) Pilots may not unilaterally determine the pilotage rates they charge. Such pilotage rates shall instead be determined by the Pilotage Rate Review Board in the public interest, as set forth in s. 310.151.

(c) Pilots shall maintain or secure adequate pilot boats, office facilities and equipment, dispatch systems, communication equipment and other facilities, and equipment and support services necessary for a modern, dependable piloting operation.

(d) The pilot or pilots in a port shall train and compensate all member deputy pilots in that port. Failure to train or compensate such deputy pilots shall constitute a ground for disciplinary action under s. 310.101. Nothing in this subsection shall be deemed to create an agency or employment relationship between a pilot or deputy pilot and the pilot or pilots in a port.

(e) In any instance of a payment or transfer of funds, a request for the payment or transfer of funds, or a contractual obligation assumed in respect to the payment or transfer of funds from a licensee payor to a pilot or group of pilots, or to any legal entity or fund administered or controlled by or under common control with such pilot or group of pilots, the pilot or group of pilots shall provide to the licensee payor, at the time the payment or transfer or request for the payment or transfer is made or the obligation is assumed in respect to the payment or transfer, a detailed accounting of the specific assets, tangible or intangible, in which an interest is being directly or indirectly purchased or for which the licensee payor is being granted an interest in return for such payment or transfer of funds or such contractual obligation. This paragraph does not apply to either payments or transfers of funds if their aggregate amounts are less than \$1,000. As used in this paragraph, "licensee payor" means any current or prospective state pilot or deputy pilot.

History.—s. 228, ch. 94-119.

310.002 Definitions.—As used in this chapter, except where the context clearly indicates otherwise:

(1) "Vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(2) "Pilot" means a licensed state pilot or a certificated deputy pilot.

(3) "Board" means the Board of Pilot Commissioners.

(4) "Port" means any place in the state into which vessels enter or depart and includes, without limitation, Fernandina, Nassau Inlet, Jacksonville, St. Augustine, Canaveral, Ft. Pierce, Palm Beach, Port Everglades, Miami, Key West, Boca Grande, Charlotte Harbor, Punta Gorda, Tampa, Port Tampa, Port Manatee, St. Petersburg, Clearwater, Apalachicola, Carrabelle, Panama City, Port St. Joe, and Pensacola.

(5) "Pilotage waters of the state" means the navigable waters within the boundaries of the state.

(6) "Piloting" means the acts of pilots in conducting vessels through the pilotage waters of the state.

(7) "Pilotage" means the compensation fixed by the Pilotage Rate Review Board which is payable by a vessel, its owners, agents, charterers, or consignees to one or more pilots in the port where piloting is performed. The word "pilotage" also means the compensation of all types and sources derived by one or more pilots or deputy pilots for the performance of piloting at that port by licensed pilots or by certificated deputy pilots, whether such piloting is performed pursuant to this chapter or is performed by state-licensed pilots or state-certificated deputy pilots when acting as a federal pilot for vessels not required by this chapter to use a state-licensed pilot or state-certificated deputy pilot.

(8) "License" or "certificate" means the document issued by the board under seal of the department to pilots.

(9) "Department" means the Department of Business and Professional Regulation.

History — s. 2 ch. 75-201 s. 2 ch. 76-168 s. 1 ch. 77-457 ss. 1-16 ch. 78-163 s. 1 ss. 1-5 ch. 81-255 s. 2 ch. 81-318 ss. 2, 3 ch. 84-185 ss. 1, 10, 11 ch. 84-260 s. 2 ch. 89-242 s. 4 ch. 91-029 s. 232 ch. 94-119 s. 22 ch. 94-218.

310.011 Board of Pilot Commissioners.—

(1) A board is established within the Division of Professions of the Department of Business and Professional Regulation to be known as the Board of Pilot Commissioners. The board shall be composed of 10 members, to be appointed by the Governor, 5 of whom shall be licensed state pilots actively practicing their profession. The board shall perform such duties and possess and exercise such powers relative to the protection of the waters, harbors, and ports of this state as are prescribed and conferred on it in this chapter.

(2) In accordance with the requirements of subsection (1), the Governor shall appoint five licensed state pilots who are actively practicing their profession and five citizens of the state who are not pilots, one of whom shall be actively involved in a professional or business capacity in maritime or marine shipping, one of whom shall be a user of piloting services, and three of whom shall not be involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping, to constitute the members of the board. For purposes of this subsection, a "user of piloting services" may include any person with an ownership interest in a business that regularly employs licensed state pilots or certificated deputy pilots for the purpose of delivering piloting services, or any person who is a direct employee of, and who is employed in a management position for, that business. Each member shall be appointed for a term of 4 years. The Governor shall have power to remove members of the board from office for neglect of

duty required by this chapter, for incompetency, or for unprofessional conduct. Any vacancy which may occur in the board in consequence of death, resignation, removal from the state, or other cause shall be filled for the unexpired term by the Governor in the same manner. A majority of those serving on the board shall constitute a quorum.

(3) In appointing members to the board who are pilots, the Governor shall appoint one member from the state at large, one member from any of the following ports: Pensacola, Panama City, or Port St. Joe, one member from any of the following ports: Tampa Bay, Boca Grande, Punta Gorda, Charlotte Harbor, or Key West, one member from any of the following ports: Fernandina, Jacksonville, or Port Canaveral, and one member from any of the following ports: Ft. Pierce, Miami, Port Everglades, or Palm Beach.

History — s. 2 ch. 75-201 s. 2 ch. 76-168 ss. 1, 2 ch. 76-217 s. 1 ch. 77-457 ss. 2, 3, 16 ch. 78-163 ss. 1-6 ch. 81-255 s. 2 ch. 81-318 ss. 2, 4 ch. 83-329 ss. 2, 3 ch. 84-185 ss. 10, 11 ch. 86-280 s. 2 ch. 89-262 s. 4 ch. 91-029 s. 240 ch. 94-119 s. 23 ch. 94-218.

Note — Sections 310.012 and 310.021.

310.021 How board constituted.— [Amended and transferred to s. 310.011(2), (3) by s. 310 ch. 94-119.]

310.071 Deputy pilot certification.—

(1) In addition to meeting other requirements specified in this chapter, each applicant for certification as a deputy pilot must:

(a) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(b) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(c) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician and that controlled substance was prescribed by that physician. To maintain eligibility as a certificated deputy pilot, each certificated deputy pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder satisfactorily meets the standards. The standards for certificateholders shall include a drug test.

(d) Have had maritime experience satisfactory to the board prior to taking the examination required under s. 310.081(2), as evidenced by documentation of the following service while holding a United States Coast Guard license:

1. At least 2 years of service at sea during the 5-year period immediately preceding the examination, 1 year of which must have been in at least the capacity of an unlimited second mate.

2. At least 2 years of service during the 5-year period immediately preceding the examination in a deepwater United States port as an active first-class unlimited pilot; serving on at least an unlimited second mate's license or a license as master of freight and towing vessel of at least 1,600 gross registered tons upon oceans, and acting under authority of a duly constituted governmental regulatory entity.

3. At least 2 years of service during the 5-year period immediately preceding the examination as an active first-class unlimited pilot serving on a Great Lakes unlimited master's license.

4. At least 2 years of towing experience during the 5-year period immediately preceding the examination, 1 year of which must have been in the capacity of master of a tugboat/barge combination of at least 5,000 gross registered tons, combined tonnage, while holding a license as master of freight and towing vessel of at least 1,600 gross registered tons upon oceans, or

5. At least 3 years of experience as a deck watch officer during the 10-year period immediately preceding the examination, 1 year of which in the 5-year period immediately preceding the exam must have been as the commanding officer, executive officer, or operations officer of a United States Navy vessel or a United States Coast Guard vessel of at least 1,600 gross tons, and must currently hold a United States Coast Guard license of at least an unlimited second mate.

(e) Submit full documentation of sea time through discharges, continuous discharge books, or other official documents.

(1) Submit proof of sufficient maritime background and experience, except for required trips, to enable the applicant, if not already so licensed, to be eligible to obtain a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which service as a deputy pilot is intended within 90 days of the appointment as a deputy pilot.

(2) The board may adopt rules authorizing equivalent combinations of service from two or more of the areas specified in subparagraphs (1)(d)1, 2, 3, 4, and 5. However, the board may waive the maritime experience requirements prescribed in paragraph (1)(d) when necessary to fill an opening, provided an applicant meeting such requirements has not applied for the opening and the opening has been advertised more than once.

(3) The initial certificate issued to a deputy pilot shall be valid for a period of 12 months, and at the end of this period, the certificate shall automatically expire and shall not be renewed. During this period, the board shall thoroughly evaluate the deputy pilot's performance for suitability to continue training and shall make appropriate recommendations to the department. Upon receipt of a favorable recommendation by the board, the department shall issue a certificate to the deputy pilot, which shall be valid for a period of 2 years. This certificate may be renewed only two times, except in the case of a fully licensed pilot who is cross-licensed as a deputy pilot in another port, and provided the deputy pilot meets the requirements specified for pilots in paragraph (1)(c).

310.073 State pilot licensing.—In addition to meeting other requirements specified in this chapter, each applicant for license as a state pilot must

(1) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(2) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(3) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician and that controlled substance was prescribed by that physician. To maintain eligibility as a licensed state pilot, each licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the licensee satisfactorily meets the standards. The standards for licensees shall include a drug test.

(4) Have had at least 2 years of service as a deputy pilot in the port in which license as a licensed state pilot is desired, which service must have been attained during the period immediately preceding the examination required under s. 310.081(1). Further, at the time of application, each applicant must have a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which license as a state pilot is desired and must have successfully completed the board-approved deputy pilot training program in the port in which license as a state pilot is desired.

History—s. 11, ch. 88-280, § 2, ch. 89-262, § 4, ch. 91-479, § 342, ch. 92-119.

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(1) The department shall examine persons who file application as state pilot in all matters pertaining to the management of vessels and in regard to their knowledge of the channels, waters, harbors, and port where they wish to serve, and, if upon examination to determine proficiency the department finds them qualified to pilot all classes of vessels liable to enter that port and thoroughly familiar with the waters, the channels, the harbor, and the port, the department shall appoint and license as state pilots such number of pilots as in the discretion of the board are required to act in the ports of the state. However, the number of pilots appointed and licensed by the department shall not exceed the number provided for in s. 310.061.

(2) The department shall similarly examine persons who file applications for certificate as deputy pilot, and, upon examination to determine proficiency, the depart-

ment finds them qualified, the department shall certify as qualified all applicants who pass the examination, provided that not more than five persons who passed the examination are certified for each declared opening. If more than five applicants per opening pass the examination, the persons having the highest scores shall be certified as qualified up to the number of openings times five. The department shall give consideration to the minority and female status of applicants when qualifying deputy pilots in the interest of ensuring diversification within the state piloting profession. The department shall appoint and certificate such number of deputy pilots from those applicants deemed qualified as in the discretion of the board are required in the respective ports of the state. A deputy pilot shall be authorized by the department to pilot vessels within the limits and specifications established by the licensed state pilots at the port where the deputy is appointed to serve.

(3) Pilots shall hold their licenses or certificates pursuant to the requirements of this chapter so long as they

- (a) Possess the qualifications set out in this chapter.
- (b) Are in good physical and mental health as evidenced by documentary proof of having satisfactorily passed a physical examination administered by a licensed physician or physician assistant within each calendar year. The board shall adopt rules to establish requirements for passing the physical examination, which rules shall establish minimum standards for the physical or mental capabilities necessary to carry out the professional duties of a licensed state pilot or a certificated deputy pilot. Such standards shall include zero tolerance for any controlled substance regulated under chapter 893 unless that individual is under the care of a physician and that controlled substance was prescribed by that physician. To maintain eligibility as a certificated deputy pilot or licensed state pilot, each certificated deputy pilot or licensed state pilot must annually provide documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician. The physician must know the minimum standards and certify that the certificateholder or licensee satisfactorily meets the standards. The standards for certificateholders and for licensees shall include a drug test.
- (c) Are subject to a substance abuse program that has been approved by the board, which includes provisions for drug testing.
- (d) Attend a board-approved seminar for continuing education which includes radar certification.
- (e) Remain in active service in the ports for which they are appointed.

Upon resignation or in the case of disability permanently affecting a pilot's ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

History.—s. 2, ch. 75-201, § 2, ch. 76-140, § 1, ch. 77-457, §§ 6, 10, ch. 78-140, § 11, ch. 81-222, § 2, ch. 81-230, §§ 2, 3, ch. 84-104, §§ 27, 31, ch. 86-702, § 2, ch. 89-262, § 2, ch. 90-144, § 4, ch. 91-429, § 3, ch. 92-110.

310.101 Grounds for disciplinary action by the board.—

(1) Any act of misconduct, inattention to duty, negligence, or incompetence, any willful violation of any law or rule, including the rules of the road, applicable to a licensed state pilot or certificated deputy pilot, or any failure to exercise that care which a reasonable and prudent licensed state pilot or certificated deputy pilot would exercise under the same or similar circumstances may result in disciplinary action. Examples of acts by a licensed state pilot or certificated deputy pilot which constitute grounds for disciplinary action include, but are not limited to:

- (a) Failure to make allowances for the foreseeable effects of wind, current, and tide.
- (b) Failure to obtain or properly use information available to the pilot.
- (c) Failure to navigate with caution in restricted visibility.

(d) Navigating in channels where the depth of water under the keel is less than the prescribed bottom clearance as recommended by the licensed state pilots of that port and approved by the board.

- (e) Excessive speed.
- (f) Having a license or certificate to practice piloting revoked, suspended, restricted, placed on probation, or in any way acted against, including, but not limited to, the relinquishing or depositing of the license or certificate in lieu of further disciplinary action, in anticipation of the filing of charges, or in lieu of prosecution, by the regulatory authority of another state, the Federal Government, a territory, or another country for an act which would constitute a ground for discipline if the act had occurred while piloting under authority of the Florida state pilot's license or deputy pilot's certificate.

(g) Making or filing, or inducing another person to make or file, a report which the pilot knows to be false or intentionally or negligently failing to file, or willfully impeding or obstructing the filing of, a report or record required by state law or by rule of the board or the department. Such reports or records include only those which are signed by the pilot in his capacity as a licensed state pilot or certificated deputy pilot.

(h) Being unable to perform the duties of a pilot with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition such as, but not limited to, poor eyesight or hearing, heart disease, or diabetes. In enforcing this paragraph, the department shall have authority, upon recommendation of the probable cause panel of the board, to compel a licensed state pilot or certificated deputy pilot to submit to a mental or physical examination by physicians designated by the department. The failure of a pilot to submit to such an examination when so directed constitutes an admission of the allegations against him, unless the failure is due to circumstances beyond his control, consequent upon which an emergency suspension order may be entered by the department suspending the pilot's license until he complies with the order for a compulsory mental or physical examination. A licensed state pilot or certificated deputy pilot affected under this paragraph must be afforded, at reasonable intervals, an opportunity to demonstrate that he can resume the competent practice of piloting with reasonable skill and safety.

(i) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the pilot knows or has reason to know he is not competent to perform

(j) Delegating professional responsibilities to a person when the pilot delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or license to perform them

(k) Engaging in any practice which does not meet acceptable standards of safe piloting.

(l) Failure to maintain a valid United States Coast Guard first class unlimited pilot's license covering the waters of the port in which the state pilot's license was issued

(m) Having a license to operate a motor vehicle revoked, suspended, or otherwise acted against by any jurisdiction including its agencies or subdivisions, for operating the vehicle under the influence of alcohol or drugs. The jurisdiction's acceptance of a relinquishment of license, stipulation, consent order, plea of nolo contendere, penalty in any form, or other settlement offered in response to or in anticipation of the filing of charges related to the license to operate a motor vehicle shall be construed as action against the license

(n) Being unable to perform piloting with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, or chemicals

(2) When the board finds any person has committed any act set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusing to certify to the department an application for license or certification

(b) Revoking or suspending the license or certificate

(c) Restricting the practice of the violator

(d) Imposing an administrative fine not to exceed \$5,000 for each count or separate offense

(e) Issuing a reprimand

(f) Placing the licensed state pilot or certificated deputy pilot on probation for such period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the pilot to submit to treatment, submit to additional or remedial training, submit to reexamination, or undergo a complete physical examination

(3) The board shall not reinstate the license or certificate of a state pilot or deputy pilot or cause a license or certificate to be issued to a person whom it has determined to be unqualified until the board is satisfied that such person has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of piloting

(4) In any foreign vessel or foreign trading vessel movement that an individual holding a state pilot license or deputy pilot certificate is engaged in directing, whether movement of the vessel in or out of the port or movement in close proximity to a dock or any other movement undertaken in furtherance of his piloting duties, such individual is operating under the authority of his state license or certificate and is accountable to the board for his actions

History.—s. 2, ch. 75-201; s. 3, ch. 76-160; s. 1, ch. 77-457; ss. 10, 16, ch. 78-140; s. 2, ch. 81-318; ss. 2, 3, ch. 84-185; ss. 6, 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 5, ch. 90-54; s. 3, ch. 90-144; s. 4, ch. 91-472; s. 344, ch. 94-119.

Note.—As amended by s. 5, ch. 90-54, Section 2, ch. 90-144 added the language "certificated deputy pilot license" instead of "deputy pilot certificate."

310.102 Treatment programs for impaired pilots and deputy pilots.—

(1) The department shall, by rule, designate approved treatment programs for pilots and deputy pilots under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers based on the policies and guidelines established by the Impaired Practitioners Committee.

(2) The department shall retain one or more impaired practitioner consultants as recommended by the committee. A consultant shall be a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department, and at least one consultant must be a practitioner licensed under chapter 458, chapter 459, or chapter 464. The consultant shall assist the probable cause panel and department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a pilot or deputy pilot is, in fact, impaired.

(3)(a) Whenever the department receives a written or oral legally sufficient complaint alleging that a pilot or deputy pilot licensed or certificated by the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the pilot's or deputy pilot's ability to practice with skill and safety, and no complaint against the pilot or deputy pilot other than impairment exists, the reporting of such information shall not constitute a complaint within the meaning of s. 455.255 if the probable cause panel finds:

1. The pilot or deputy pilot has acknowledged the impairment problem.

2. The pilot or deputy pilot has voluntarily enrolled in an appropriate approved treatment program.

3. The pilot or deputy pilot has voluntarily withdrawn from piloting or limited the scope of piloting as determined by the panel, in each case, until such time as the panel is satisfied the pilot or deputy pilot has successfully completed an approved treatment program.

4. The pilot or deputy pilot has executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the pilot or deputy pilot, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the pilot's or deputy pilot's impairment and his or her participation in a treatment program.

(b) If, however, the pilot or deputy pilot agrees to withdraw from piloting until such time as the consultant determines the pilot or deputy pilot has satisfactorily completed an approved treatment program or evaluation, the probable cause panel shall not become involved in the pilot's or deputy pilot's case.

(c) Inquiries related to impairment treatment programs designed to provide information to the pilot or deputy pilot and others and which do not indicate that

the pilot or deputy pilot presents a danger to the public shall not constitute a complaint within the meaning of s. 455.255 and shall be exempt from the provisions of this subsection.

(d) Whenever the department receives a legally sufficient complaint alleging that a pilot or deputy pilot is impaired as described in paragraph (a) and no complaint against the pilot or deputy pilot other than impairment exists, the department shall forward all information in its possession regarding the impaired pilot or deputy pilot to the consultant.

(e) The probable cause panel shall work directly with the consultant, and all information concerning a licensee obtained by the panel from the consultant shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, subject to the provisions of subsections (5) and (6). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(f) A finding of probable cause shall not be made as long as the panel is satisfied, based upon information it receives from the consultant and the department, that the pilot or deputy pilot is progressing satisfactorily in an approved treatment program.

(4) In any disciplinary action for a violation other than impairment if a pilot or deputy pilot establishes that the violation for which the pilot or deputy pilot is being prosecuted was due to or connected with impairment and further establishes that the pilot or deputy pilot is satisfactorily progressing through or has successfully completed an approved treatment program pursuant to this section, such information may be considered by the board as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(5)(a) An approved treatment provider shall, upon request, disclose to the consultant all information in its possession regarding the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, subject to the provisions of this subsection and subsection (6). This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. Failure to provide such information to the consultant is grounds for withdrawal of approval of such program or provider.

(b) If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program, all information regarding the issue of a licensee's impairment and participation in a treatment program in the consultant's possession shall be disclosed to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 455.225. Whenever the consultant concludes that impairment affects a licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the secretary of the department.

(6) A consultant, licensee, or approved treatment provider who makes a disclosure pursuant to this sec-

tion is not subject to civil liability for such disclosure or its consequences. The provisions of s. 766.101 apply to any officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section.

History — s. 345 ch. 94-119 s. 1 ch. 94-343
*Note — section 455.255 does not exist.

310.112 Motor vehicle reports.—Each licensed state pilot or certificated deputy pilot shall have a duty to report within 48 hours any jurisdiction's revocation or suspension of, or any action against, that pilot's or deputy pilot's license to operate a motor vehicle under circumstances involving alcohol or drugs. The jurisdiction's acceptance of a relinquishment of license, stipulation, consent order, plea of nolo contendere, or other settlement offered in response to or in anticipation of the filing of charges related to the license to operate a motor vehicle shall be construed as action against the license.

History — s. 346 ch. 94-119.

310.121 Application, examination, and biennial fees.—

(1) The department shall, in accordance with rules set by the board, assess and collect the following fees:

(a) A fee not to exceed \$300 for each application for licensure as a state pilot or certification as a deputy pilot. This fee shall be nonrefundable.

(b) A fee not to exceed \$300 for each examination for licensure as a state pilot or certification as a deputy pilot.

(c) A fee not to exceed \$300 for each examination review.

(2) The department shall assess and collect biennially from each licensed state pilot and each certificated deputy pilot a fee, not to exceed \$200 in the case of a licensed state pilot or \$100 in the case of a certificated deputy pilot, such fees to be set by the board.

History — s. 2 ch. 75-201 s. 3 ch. 76-168 s. 1 ch. 77-457 ss. 12, 16 ch. 78-140 s. 2 ch. 81-218 ss. 2, 3 ch. 84-185 ss. 10, 11 ch. 86-280 s. 2 ch. 89-282 s. 4 ch. 91-429 s. 247 ch. 94-119.

310.131 Assessment of percentage of gross pilotage.—The department shall assess the licensed state pilots in the respective ports of the state a percentage of the gross amount of pilotage earned by such pilots during each year, which percentage will be established by the board not to exceed 2 percent, to be paid into the Professional Regulation Trust Fund by such pilots at such time and in such manner as the board prescribes or as is set forth in the General Appropriations Act. The financial records of all pilots and deputy pilots relating to pilotage are subject to audit by the department and the Auditor General. The department shall by rule set a procedure for verifying the amount of pilotage at each port and may charge costs to the appropriate port if the port does not comply with such procedure.

History — s. 2 ch. 75-201 s. 3 ch. 76-168 s. 1 ch. 77-457 ss. 12, 16 ch. 78-140 s. 188 ch. 81-219 s. 2 ch. 81-318 s. 5 ch. 83-279 ss. 2, 3 ch. 84-185 ss. 10, 11 ch. 86-280 s. 2 ch. 89-282 s. 4 ch. 91-429 s. 248 ch. 94-119.

310.141 Vessels subject to pilotage.—

(1) All vessels shall have a licensed state pilot or certificated deputy pilot on board to direct the movements

of the vessel when entering or leaving ports of this state or when underway upon the navigable waters of the bays, rivers, harbors, and ports of this state, except:

(a) Vessels exempted by the laws of the United States;

(b) Mono-hulled vessels drawing less than 7 feet of water;

(c) Multi-hulled, swath, or nondisplacement vessels for which the product of the length overall and extreme beam is less than 6,000 square feet, and which draw less than 7 feet of water;

(d) Any vessel, when docking or undocking, or

(e) Any vessel, when moving about within a shipyard or moving between a shipyard and a berth or slip directly adjacent to the shipyard.

(2) A vessel is docking or undocking when a tug or tugs are assisting the vessel, or the vessel is making use of a bow thruster or other lateral thrust devices incorporated into the vessel itself, in close proximity to the dock, with the vessel under the direction or control of the master, docking master, licensed state pilot, or certificated deputy pilot; if the vessel that is docking or undocking is under the direction or control of the master or docking master, such direction or control must have been delivered from the licensed state pilot or be in the process of being delivered to the licensed state pilot.

(3) Nothing in this section shall be construed to deny the services of a licensed state pilot to a vessel otherwise exempt who applies for such service.

History.—s. 2 ch. 75-201 s. 1 ch. 75-230 s. 3 ch. 76-160 s. 1 ch. 77-457 s. 16 ch. 78-140 s. 2 ch. 81-218 ss. 2, 3 ch. 84-165 ss. 10, 11 ch. 86-280 s. 2 ch. 89-262 s. 7 ch. 90-54 s. 3 ch. 90-144 s. 4 ch. 91-429 s. 349 ch. 94-119

310.146 Exemptions from pilotage.—

(1) United States vessels are exempted from the provisions of this chapter while transiting a private channel built, marked, maintained, and controlled for one-way traffic by a public utility for the sole purpose of servicing that facility and while under the control of a validly licensed federal pilot.

(2) Any vessel is exempted from the provisions of this chapter while transiting the Miami River as a dead ship under the control of tugboats operated by federally licensed personnel.

History.—ss. 9, 11 ch. 86-280 s. 2 ch. 89-262 s. 4 ch. 91-429 s. 350 ch. 94-119

310.151 Rates of pilotage; Pilotage Rate Review Board.—

(1)(a) For the purposes of this section, "board" means the Pilotage Rate Review Board.

(b)1. To carry out the provisions of this section, the Pilotage Rate Review Board is created within the Department of Business and Professional Regulation. Members shall be appointed by the Governor, subject to confirmation by the Senate. Members shall be appointed for 4-year terms, except as otherwise specified in this paragraph. No member may serve more than two consecutive 4-year terms or more than 11 years on the board. The board shall consist of seven members. No member may have ever served as a state pilot or deputy pilot, and no member may currently serve or have served as a direct employee, contract employee, partner, corporate officer, sole proprietor, or representa-

tive of any vessel operator, shipping agent, or pilot association or organization, except that one member shall be or have been a person licensed by the United States Coast Guard as an unlimited master, without a first-class pilot's endorsement, initially appointed to a 2-year term. One member shall be a certified public accountant with at least 5 years' experience in financial management, initially appointed to a 3-year term. One member shall be a former hearing officer, as defined in s. 120.65, or a former judge who has served on the Supreme Court or any district court of appeal, circuit court, or county court, initially appointed to a 4-year term. Except as otherwise provided in subparagraph 2, the remaining members shall be appointed by the Governor from among persons not prohibited pursuant to this paragraph. Members of the board shall be appointed so as to be geographically distributed, with the southern, central, northeastern, and northwestern regions of the state having at least one member each.

2. Three members shall be the consumer members of the Board of Pilot Commissioners serving on that board as of January 1, 1994. Of those members, one shall be appointed to a 1-year term, one shall be appointed to a 2-year term, and one shall be appointed to a 3-year term. Each of those members shall be eligible for reappointment in the same fashion as other members of the board, but, thereafter, no member of the board shall be a current or former member of the Board of Pilot Commissioners. The service of the consumer members of the Board of Pilot Commissioners on this board, while they are maintaining concurrent membership with the Board of Pilot Commissioners, shall be considered duties in addition to and related to their duties on the Board of Pilot Commissioners. In the event that any of the three board members stipulated according to this subparagraph are unable to serve, the Governor shall fill the position or positions by appointment from among persons not prohibited pursuant to this paragraph.

(c) The board is authorized to adopt such rules as are consistent with law and necessary to carry out the duties and authority conferred on it by this section. The department shall provide the staff required by the board to carry out its duties under this section.

(d) All funds received pursuant to this section shall be placed in the account of the Board of Pilot Commissioners, and the Board of Pilot Commissioners shall pay for all expenses incurred pursuant to this section.

(2) Any pilot, group of pilots, or other person or group of persons whose substantial interests are directly affected by the rates established by the board may apply to the board for a change in rates. However, an application for a change in rates shall not be considered for any port for which rates have been changed by this board in the 18 months preceding the filing of the application. All applications for changes in rates shall be made to the board, in writing, pursuant to rules prescribed by the board. In the case of an application for a rate change on behalf of a pilot or group of pilots, the application shall be accompanied by a consolidated financial statement, statement of profit or loss, and balance sheet prepared by a certified public accountant of the pilot or group of pilots and all relevant information.

fiscal and otherwise, on the piloting activities within the affected port area, including financial information on all entities owned or partially owned by the pilot or group of pilots which provide pilot-related services in the affected port area. In the case of an application for a rate change filed on behalf of persons other than a pilot or group of pilots, information regarding the financial state of interested parties other than pilots shall be required only to the extent that such financial information is made relevant by the application or subsequent argument before the board. The board shall have the authority to set, by rule, a rate review application fee of up to \$1,000, which must be submitted to the board at the filing of the application for a rate change.

(3) The board shall investigate and determine whether the requested rate change will result in fair, just, and reasonable rates of pilotage pursuant to rules prescribed by the board. In addition to publication as required by law, notice of a hearing to determine rates shall be mailed to each person who has formally requested notice of any rate change in the affected port area. The notice shall advise all interested parties that they may file an answer, an additional or alternative petition, or any other applicable pleading or response, within 30 days after the date of publication of the notice, and the notice shall specify the last date by which any such pleading must be filed. The board may, for good cause, extend the period for responses to a petition. Multiple petitions filed in this manner do not warrant separate hearings, and these petitions shall be consolidated to the extent that it shall not be necessary to hold a separate hearing on each petition. The board shall conclude its investigation, conduct a public hearing, and determine whether to modify the existing rates of pilotage in that port within 60 days after the filing of the completed application, except that the board may not be required to complete a hearing for more than one port within any 60-day period. Hearings shall be held in the affected port area, unless a different location is agreed upon by all parties to the proceeding.

(4) The applicant shall be given written notice, either in person or by certified mail, that the board intends to modify the pilotage rates in that port and that the applicant may, within 21 days after receipt of the notice, request a hearing pursuant to the Administrative Procedure Act. Notice of the intent to modify the pilotage rates in that port shall also be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to any person who has formally requested notice of any rate change in the affected port area. Within 21 days after receipt or publication of notice, any person whose substantial interests will be affected by the intended board action may request a hearing pursuant to the Administrative Procedure Act. If the board concludes that the petitioner has raised a disputed issue of material fact, the board shall designate a hearing, which shall be conducted by formal proceeding before a hearing officer assigned by the Division of Administrative Hearings pursuant to s. 120.57(1), unless waived by all parties. The failure to request a hearing within 21 days after receipt or publication of notice shall constitute a waiver of any right to an administrative hearing and shall cause the

order modifying the pilotage rates in that port to be entered. If an administrative hearing is requested pursuant to this subsection, notice of the time, date, and location of the hearing shall be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to the applicant and to any person who has formally requested notice of any rate change for the affected port area.

(5)(a) In determining whether the requested rate change will result in fair, just, and reasonable rates, the board shall give primary consideration to the public interest in promoting and maintaining efficient, reliable, and safe piloting services.

(b) The board shall also give consideration to the following factors:

1. The public interest in having qualified pilots available to respond promptly to vessels needing their service.

2. A determination of the average net income of pilots in the port, including the value of all benefits derived from service as a pilot. For the purposes of this subparagraph, "net income of pilots" refers to total pilotage fees collected in the port, minus reasonable operating expenses, divided by the number of licensed and active state pilots within the port.

3. Reasonable operating expenses of pilots.

4. Pilotage rates in other ports.

5. The amount of time each pilot spends on actual piloting duty and the amount of time spent on other essential support services.

6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, it being recognized that in order to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots, the overall compensation accorded pilots should be equal to or greater than that available to such individuals in comparable maritime employment.

7. The impact rate change may have in individual pilot compensation and whether such change will lead to a shortage of licensed state pilots, certificated deputy pilots, or qualified pilot applicants.

8. Projected changes in vessel traffic.

9. Cost of retirement and medical plans.

10. Physical risks inherent in piloting.

11. Special characteristics, dangers, and risks of the particular port.

12. Any other factors the board deems relevant in determining a just and reasonable rate.

(c) The board may take into consideration the consumer price index or any other comparable economic indicator when fixing rates of pilotage, however, because the consumer price index or such other comparable economic indicator is primarily related to net income rather than rates, the board shall not use it as the sole factor in fixing rates of pilotage.

(6) The board shall fix rates of pilotage pursuant to this section based upon the following vessel characteristics:

(a) Length.

(b) Beam.

(c) Net tonnage, gross tonnage, or dead weight tonnage.

- (d) Freeboard or height above the waterline.
- (e) Draft or molded depth.
- (1) Any combination of the vessel characteristics listed in this subsection or any other relevant vessel characteristic or characteristics.

History.—s. 2, ch. 75-261; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 14, 16, ch. 78-140; s. 2, ch. 81-318; s. 6, ch. 83-329; ss. 2, 3, ch. 84-185; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-429; s. 351, ch. 94-119.

Note.—Section 352, ch. 94-119, provides that "the rates of portage in effect on July 1, 1994 shall be collectible and enforceable until the Marine Rate Review Board shall be different rates of portage as provided in section 310.151, Florida Statutes, except that, as of July 1, 1994, all rates set by the Board of Port Commissioners after January 1, 1994, are void and shall return to the previously established rates."

310.183 Immediate inactivation of license or certificate for certain violations; rules.—

(1) The department shall issue an emergency order placing on inactive status, for a period not to exceed 15 days, the license of any pilot or certificate of any deputy pilot who, while providing piloting services, is involved in a marine incident that results in the death of a human or, as determined by rule of the board, substantial physical injury to a human or significant property or environmental damage, unless the department determines that the incident is clearly not the result of the actions of the pilot or deputy pilot.

(2) No later than January 1, 1995, the board shall adopt rules to administer the provisions of this section and shall have continuing authority to amend any such rules it has adopted by that deadline. However, if the board fails to adopt such rules by that deadline, the department shall have exclusive authority to adopt such rules.

History.—s. 253, ch. 94-119.

310.185 Rulemaking.—

(1) The board shall have the power to adopt rules necessary to the provisions of this chapter.

(2) The secretary of the department is deemed to be a person substantially affected by a rule or proposed rule for the purpose of seeking an administrative determination of the invalidity of such rule or proposed rule. The secretary may seek such administrative determination of the invalidity of any rule or proposed rule on the ground that it is an invalid exercise of delegated legislative authority or an undue restriction of competition, pursuant to chapter 120.

History.—s. 12, ch. 81-302; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-429; s. 354, ch. 94-119.

CHAPTER 311

FLORIDA SEAPORT TRANSPORTATION AND ECONOMIC DEVELOPMENT

- 311.07 Florida seaport transportation and economic development funding.
- 311.09 Florida Seaport Transportation and Economic Development Council.

311.07 Florida seaport transportation and economic development funding.—

(1) There is created the Florida Seaport Transportation and Economic Development Program within the Department of Transportation to finance port transporta-

tion or port facilities projects that will improve the movement and intermodal transportation of cargo or passengers in commerce and trade and that will support the interests, purposes, and requirements of ports located in this state.

(2) A minimum of \$8 million per year shall be made available from the State Transportation Trust Fund to fund the Florida Seaport Transportation and Economic Development Program.

(3)(a) Program funds shall be used to fund approved projects on a 50-50 matching basis with any of the deepwater ports, as listed in s. 403.021(9)(b), which is governed by a public body or any other deepwater port which is governed by a public body and which complies with the water quality provisions of s. 403.061, the comprehensive master plan requirements of s. 163.3178(2)(k), the local financial management and reporting provisions of part III of chapter 218, and the auditing provisions of s. 11.45(3)(a)4. Moneys in the trust fund may also be used for the acquisition of economic benefit and trade data information.

(b) Projects eligible for funding by grants under the program are limited to the following port facilities or port transportation projects:

1. Transportation facilities within the jurisdiction of the port.
2. The dredging or deepening of channels, turning basins, or harbors.
3. The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with any of the foregoing.
4. The acquisition of container cranes or other mechanized equipment used in the movement of cargo or passengers in international commerce.
5. The acquisition of land to be used for port purposes.
6. The acquisition, improvement, enlargement, or extension of existing port facilities.
7. Environmental protection projects which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval, which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit, which are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites, or which result from the funding of eligible projects listed herein.
8. Transportation facilities as defined in s. 334.03(31) which are not otherwise part of the Department of Transportation's adopted work program.

(c) To be eligible for consideration by the council pursuant to this section, a project must be consistent with the port comprehensive master plan which is incorporated as part of the approved local government comprehensive plan as required by s. 163.3178(2)(k) or other provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, part II of chapter 163.

(4) A port eligible for matching funds under the program may receive a distribution of not more than \$7 million during any 1 calendar year and a distribution of not

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CHAPTER 310

PILOTS, PILOTING, AND PILOTAGE

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310.001 Purpose.—The Legislature recognizes that the waters, harbors, and ports of the state are important resources, and it is deemed necessary in the interest of public health, safety, and welfare to provide laws regulating the piloting of vessels utilizing the navigable waters of the state in order that such resources, the environment, life, and property may be protected to the fullest extent possible. To that end, it is the legislative intent to regulate pilots, piloting, and pilotage to the full extent of any congressional grant of authority, except as limited in this chapter.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 s 18 ch 78-140 s 2 ch 81-259 s 2 ch 81-318 s 2 ch 84-185 ss 1 10 11 ch 86-290 s 2 ch 89-262 s 4 ch 91-479

310.002 Definitions.—As used in this act:

(1) The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(2) The term "pilot" means a licensed state pilot or a certificated deputy pilot.

(3) The term "board" means the Board of Pilot Commissioners.

(4) The word "port" means any place in the state into which vessels enter or depart and includes, without limitation, Fernandina, Nassau Inlet, Jacksonville, St. Augustine, Canaveral, Ft. Pierce, West Palm Beach, Port Everglades, Miami, Key West, Boca Grande, Charlotte Harbor, Punta Gorda, Tampa, Port Tampa, Port Manatee, St. Petersburg, Clearwater, Apalachicola, Carrabelle, Panama City, Port St. Joe, and Pensacola.

(5) The term "pilotage waters of the state" means the navigable waters within the boundaries of the state.

(6) The term "piloting" means the acts of pilots in conducting vessels through the pilotage waters of the state.

(7) The word "pilotage" means the compensation fixed by the board which is payable by a vessel, its owners, agents, charterers, or consignees to one or more pilots.

(8) The term "license" or "certificate" means the document issued by the board under seal of the department to pilots.

(9) The term "department" means the "Department of Professional Regulation."

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 1 18 ch 78-140 s 185 ch 81-259 s 2 ch 81-318 ss 2 3 ch 84-185 ss 1 10 11 ch 86-290 s 2 ch 89-262 s 4 ch 91-479

*Note.—*Abolished and duties transferred to the Department of Business and Professional Regulation by s 3 ch 93-220

310.011 Board of Pilot Commissioners; qualifications.—A board is established within the Division of Professions of the Department of Professional Regulation to be known as the Board of Pilot Commissioners. Except as provided in s. 310.151(1), the board shall be composed of 10 members, 5 of whom shall be licensed state pilots actively practicing their profession. The board shall perform such duties and possess and exercise such powers relative to the protection of the waters, harbors, and ports of this state as are prescribed and conferred on it in this chapter.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 76-317 s 1 ch 77-457 ss 2 18 ch 78-140 s 186 ch 81-259 s 2 ch 81-318 s 3 ch 83-329 ss 2 3 ch 84-185 ss 10 11 ch 86-290 s 2 ch 89-262 s 4 ch 91-479

*Note.—*Abolished and duties transferred to the Department of Business and Professional Regulation by s 3 ch 93-220

310.021 How board constituted.—

(1) The Governor shall appoint five active licensed state pilots who shall possess the qualifications specified in s. 310.011 and five citizens of the state who are not pilots, two of whom shall be actively involved in their professional or business capacity in maritime or marine shipping and three of whom shall not be involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping, to constitute the members of the board. Each member shall be appointed for a term of 4 years. The Governor shall have power to remove members of the board from office for neglect of duty required by this law, for incompetency, or for unprofessional conduct. Any vacancy which may occur in the board in consequence of death, resignation, removal from the state, or other cause shall be filled for the unexpired term by the Governor in the same manner. Except as provided in s. 310.151(1), a majority of those serving on the board shall constitute a quorum.

(2) In appointing members to the board who are pilots, the Governor shall appoint one member from the state at large, one member from any of the following ports: Pensacola, Panama City, or Port St. Joe; one member from any of the following ports: Tampa Bay, Boca Grande, Punta Gorda, Charlotte Harbor, or Key

West; one member from any of the following ports: Fernandina, Jacksonville, or Port Canaveral; and one member from any of the following ports: Ft. Pierce, Miami, Port Everglades, or Palm Beach.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 2 ch 76-217 s 1 ch 77-457 ss 3 16 ch 78-140 s 167 ch 81-259 s 2 ch 81-318 s 4 ch 83-329 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.032 Oath of members of the board.—Immediately, and before entering upon the duties of said office, the members of the board shall take the constitutional oath of office and shall file the same with the Department of State; there shall thereupon issue to said member a certificate of his appointment.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 s 16 ch 78-140 s 2 ch 81-318 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.042 Organization of board; meetings.—

(1) Immediately after the appointment and qualification of its members, the board shall meet and organize. Said board shall annually elect a chairman and a vice chairman from its membership. Members, while attending official board meetings, shall receive per diem and mileage, as specified in s. 112.061, from their place of residence to the place of meeting and return.

(2) Said board shall hold one or more regular meetings each year at some convenient place in the state on such date or dates as the board may select. Special meetings may be called by a majority of the board. The secretary of the board shall give written notice of all regular and special meetings to all pilots in addition to any other persons required by law to be notified.

(3) Within 14 days from any meeting of the board, the board shall forward a written report to each pilot outlining any actions of the board taken at the meeting which would affect any pilots.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 2 16 ch 78-140 ss 13 15 25 30 34 59 62 ch 80-406 s 2 ch 81-318 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.051 Personnel; employment.—

(1) The department may appoint or employ such personnel as may be necessary to assist the department and the board in doing and performing any and all of the powers, duties, and obligations set forth in this chapter. Such personnel need not be licensed state pilots or members of the board. Such personnel shall be authorized to do and perform such duties and work as may be assigned by the department. Except as otherwise provided in this chapter, the department shall provide all legal services necessary in carrying out the provisions of this chapter.

(2) The department shall hire a person knowledgeable and experienced in matters related to piloting. Such person shall act for the department on matters of examination and investigation and, when he deems it necessary, in the selection of legal counsel qualified in admiralty law. On an annual basis, the board shall recommend to the department a person knowledgeable and experienced in matters related to piloting to fill this post, and the department may accept or reject the recommendation. If the department rejects the board's recommendation, the board shall continue to submit recommendations until one is accepted by the department. Unless there is affirmative action by both the board and

the department, at the end of each year, the position shall be declared vacant and the board shall submit a new recommendation for a person to fill such position.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 5 16 ch 78-140 s 2 ch 81-318 ss 2 3 ch 84-185 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.061 State pilots; number; cross licensing.—

The board shall determine the number of pilots based on the supply and demand for piloting services and the public interest in maintaining efficient and safe piloting services. Based on the economic conditions of the port, the board may adopt rules authorizing cross licensing between ports, if this will best serve the public interest.

*History.—*s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 5 16 ch 78-140 s 13 ch 81-302 s 2 ch 81-318 ss 2 3 ch 84-185 ss 2 3 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.071 Deputy pilot certification.—

(1) In addition to meeting other requirements specified in this chapter, each applicant for certification as a deputy pilot must:

(a) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(b) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(c) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months.

(d) Have had maritime experience satisfactory to the board prior to taking the examination required under s. 310.081(2), as evidenced by documentation of the following service while holding a United States Coast Guard license:

1. At least 2 years of service at sea during the 5-year period immediately preceding the examination, 1 year of which must have been in at least the capacity of an unlimited second mate.

2. At least 2 years of service during the 5-year period immediately preceding the examination in a deepwater United States port as an active first-class unlimited pilot serving on at least an unlimited second mate's license or a license as master of freight and towing vessel of not less than 1,000 gross registered tons upon oceans, and acting under authority of a duly constituted governmental regulatory entity.

3. At least 2 years of service during the 5-year period immediately preceding the examination as an active first-class unlimited pilot serving on a Great Lakes unlimited master's license; or

4. At least 2 years of towing experience during the 5-year period immediately preceding the examination, 1 year of which must have been in the capacity of master of a tugboat/barge combination of at least 5,000 gross registered tons, combined tonnage, while holding a license as master of freight and towing vessel of at least 1,000 gross registered tons upon oceans.

However, except as provided in paragraph (f), the applicant may not be qualified for certification by the board unless he holds a valid license issued by the United States Coast Guard of an equal or higher grade than the

lowest grade of license issued by the United States Coast Guard held by any licensed state pilot in the port in which he seeks certification, notwithstanding subparagraphs 1, 2, 3, and 4.

(e) Submit full documentation of sea time through discharges, continuous discharge books, or other official documents.

(f) Submit proof of sufficient maritime background and experience, except for required trips, to enable the applicant, if not already so licensed, to be eligible to obtain a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which service as a deputy pilot is intended within 90 days of the appointment as a deputy pilot.

(2) The board may adopt rules authorizing equivalent combinations of service from two or more of the areas specified in subparagraphs (1)(d)1, 2, 3, and 4. However, the board may waive the maritime experience requirements prescribed in paragraph (1)(d) when necessary to fill an opening, provided an applicant meeting such requirements has not applied for the opening and the opening has been advertised more than once.

(3) The initial certificate issued to a deputy pilot shall be valid for a period of 9 months, and at the end of this period, the certificate shall automatically expire and shall not be renewed. During this period, the board shall thoroughly evaluate the deputy pilot's performance for suitability to continue training and shall make appropriate recommendations to the department. Upon receipt of a favorable recommendation by the board, the department shall issue a certificate to the deputy pilot, which shall be valid for a period of 2 years. The certificate may be renewed as necessary, provided the deputy pilot meets the requirements specified for pilots in paragraph (1)(c).

History.—s. 2, ch. 75-271; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 78-160; s. 2, ch. 81-378; ss. 1, 2, ch. 84-100; ss. 2, 10, 11, ch. 86-270; s. 2, ch. 87-267; s. 6, ch. 90-54; s. 1, ch. 90-144; s. 73, ch. 91-221; s. 4, ch. 91-479.

310.073 State pilot licensing.—In addition to meeting other requirements specified in this chapter, each applicant for license as a state pilot must:

(1) Be at least 21 years of age, as evidenced by a copy of a birth certificate or other legal proof of age.

(2) Have successfully completed 12 years of formal education, as evidenced by a high school diploma or by equivalent evidence thereof that is satisfactory to the board.

(3) Be in good physical and mental health, as evidenced by documentary proof of having satisfactorily passed a complete physical examination administered by a licensed physician within the preceding 6 months.

(4) Have had at least 2 years of service as a deputy pilot in the port in which license as a licensed state pilot is desired, which service must have been attained during the period immediately preceding the examination required under s. 310.081(1). Further, at the time of application, each applicant must have a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port in which license as a state pilot is desired and must have successfully completed the board-approved deputy pilot training pro-

gram in the port in which license as a state pilot is desired.

History.—ss. 4, 11, ch. 85-260; s. 2, ch. 86-262; s. 4, ch. 91-479.

Note.—The word "meeting" was inserted by the editors.

310.075 Deputy pilot training program.—The licensed state pilots in each port shall submit to the board for its approval a deputy pilot training program of not less than 2 years' duration, applicable to all deputy pilots appointed to serve at such port. The following requirements constitute the parameters within which deputy pilot training programs are to be established and carried out by the licensed state pilots at all ports in this state:

(1) Upon receiving his appointment, a deputy pilot must report to the licensed state pilots at the port he is appointed to serve and must serve a period of not less than 90 days as an observer trainee. During such period:

(a) The observer trainee must accompany licensed state pilots, becoming thoroughly familiar with all of the waters, channels, the harbor, and the port under varied conditions.

(b) The observer trainee must obtain a valid United States Coast Guard first-class unlimited pilot's license covering all of the waters of the port before the board may authorize him to pilot vessels within the limits and specifications established by the licensed state pilots of the port.

(2) Upon completion of the observer-trainee period, the deputy pilot must submit to the board a deputy pilot vessel handling form for each vessel upon which he has accompanied a licensed state pilot. Each such form must be signed by the pilot in charge who accompanied the deputy pilot and must accurately recite:

(a) The vessel's registry, length, gross tonnage, and draft.

(b) The name of the berth from which or to which the vessel was piloted.

(c) The weather and sea conditions encountered.

(d) The time of day.

(e) Any marine incidents required to be reported under s. 310.111 and

(f) The comments of the pilot in charge, including whether, under his supervision, the pilot in charge turned the navigation of the vessel over to the deputy pilot.

(3) Each request to increase the limits and specifications under which a deputy pilot is authorized to pilot must be submitted to the board and must be accompanied by a deputy pilot vessel handling form as provided in subsection (2) for each vessel the deputy pilot has piloted since his limits and specifications were last increased by the board.

(4) For successful completion of the deputy pilot training program, a deputy pilot must have gradually been increased in his authorized limits and specifications until he has been authorized by the board to pilot vessels with a maximum draft of not more than 3 feet less than the normal maximum draft allowable in the port in which he is authorized to pilot, as proposed by the licensed state pilots in that port and approved by the board.

History.—ss. 5, 11, ch. 86-262; s. 2, ch. 88-262; s. 4, ch. 91-479.

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(1) The department shall examine persons who file application as state pilot in all matters pertaining to the management of vessels and in regard to their knowledge of the channels, waters, harbors, and port where they wish to serve, and, if upon examination to determine proficiency the department finds them qualified to pilot all classes of vessels liable to enter that port and thoroughly familiar with the waters, the channels, the harbor, and the port, the department shall appoint and license as state pilots such number of pilots as in the discretion of the board are required to act in the ports of the state. However, the number of pilots appointed and licensed by the department shall not exceed the number provided for in § 310.061.

(2) The department shall similarly examine persons who file applications for certificate as deputy pilot, and, if upon examination to determine proficiency the department finds them qualified, the department shall appoint and certificate such number of deputy pilots as in the discretion of the board are required in the respective ports of the state. A deputy pilot shall be authorized by the department to pilot vessels within the limits and specifications established by the licensed state pilots at the port where the deputy is appointed to serve.

(3) Pilots shall hold their licenses or certificates pursuant to the requirements of this chapter so long as they

- (a) Possess the qualifications set out in this chapter.
- (b) Are in good physical and mental health as evidenced by documentary proof of having satisfactorily passed a physical examination administered by a licensed physician or physician assistant within each calendar year.
- (c) Are subject to a substance abuse program that has been approved by the board, which includes provisions for drug testing.
- (d) Attend a board-approved seminar for continuing education which includes radar certification.
- (e) Remain in active service in the ports for which they are appointed.

Upon resignation or in the case of disability permanently affecting a pilot's ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

History.—s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 9 16 ch 79-140 s 11 ch 81-322 s 2 ch 81-318 ss 2 3 ch 84-183 ss 10 11 ch 86-280 s 2 ch 89-262 s 2 ch 90-144 s 4 ch 91-429

310.091 Powers of the department.—In addition to all other powers conferred by this chapter, the department shall have the following powers:

- (1) To issue a license as a state pilot or a certificate as a deputy pilot to a qualified applicant who passes the examination conducted by the department.
- (2) In the course of any investigation, to issue and serve witness subpoenas and subpoenas duces tecum and administer oaths and take testimony.
- (3) To require holders of licenses or certificates and applicants for licenses or certificates to submit pertinent information under oath necessary to determine their qualifications or to enforce the provisions of this chapter.

(4) When any violation of this chapter or rule promulgated thereunder has occurred or is threatened by any person, to institute proceedings in the appropriate courts in this state to restrain and enjoin such actions.

(5) To require an applicant for vacancy, a licensed state pilot, or a certificated deputy pilot to submit proof of his mental or physical capability to serve, or to continue to serve, as a pilot or deputy pilot.

History.—s 2 ch 75-201 s 3 ch 76-168 s 1 ch 77-457 ss 9 16 ch 79-140 s 2 ch 81-318 ss 2 3 ch 84-183 ss 10 11 ch 86-280 s 2 ch 89-262 s 4 ch 91-429

310.101 Grounds for disciplinary action by the board.—

(1) Any act of misconduct, inattention to duty, negligence, or incompetence; any willful violation of any law or rule, including the rules of the road, applicable to a licensed state pilot or certificated deputy pilot; or any failure to exercise that care which a reasonable and prudent licensed state pilot or certificated deputy pilot would exercise under the same or similar circumstances may result in disciplinary action. Examples of acts by a licensed state pilot or certificated deputy pilot which constitute grounds for disciplinary action include, but are not limited to:

- (a) Failure to make allowances for the foreseeable effects of wind, current, and tide.
- (b) Failure to obtain or properly use information available to the pilot.
- (c) Failure to navigate with caution in restricted visibility.
- (d) Navigating in channels where the depth of water under the keel is less than the prescribed bottom clearance as recommended by the licensed state pilots of that port and approved by the board.
- (e) Excessive speed.
- (f) Having a license or certificate to practice piloting revoked or suspended by the regulatory authority of another state, the Federal Government, a territory, or another country for an act which would constitute a ground for discipline if the act had occurred while piloting under authority of the Florida state pilot's license or deputy pilot's certificate.
- (g) Making or filing, or inducing another person to make or file, a report which the pilot knows to be false or intentionally or negligently failing to file, or willfully impeding or obstructing the filing of, a report or record required by state law or by rule of the board or the department. Such reports or records include only those which are signed by the pilot in his capacity as a licensed state pilot or certificated deputy pilot.
- (h) Being unable to perform the duties of a pilot with reasonable skill and safety by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition such as, but not limited to, poor eyesight or hearing, heart disease, or diabetes. In enforcing this paragraph, the department shall have authority, upon recommendation of the probable cause panel of the board, to compel a licensed state pilot or certificated deputy pilot to submit to a mental or physical examination by physicians designated by the department. The failure of a pilot to submit to such an examination when so directed constitutes an admission of the allegations against him, unless

the failure is due to circumstances beyond his control consequent upon which an emergency suspension order may be entered by the department suspending the pilot's license until he complies with the order for a compulsory mental or physical examination. A licensed state pilot or certificated deputy pilot affected under this paragraph must be afforded, at reasonable intervals, an opportunity to demonstrate that he can resume the competent practice of piloting with reasonable skill and safety.

(i) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the pilot knows or has reason to know he is not competent to perform.

(j) Delegating professional responsibilities to a person when the pilot delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or license to perform them.

(k) Engaging in any practice which does not meet acceptable standards of safe piloting.

(l) Failure to maintain a valid United States Coast Guard first class unlimited pilot's license covering the waters of the port in which the state pilot's license was issued.

(2) When the board finds any person has committed any act set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusing to certify to the department an application for license or certification.

(b) Revoking or suspending the license or certificate.

(c) Restricting the practice of the violator.

(d) Imposing an administrative fine not to exceed \$1,000 for each count or separate offense.

(e) Issuing a reprimand.

(f) Placing the licensed state pilot or certificated deputy pilot on probation for such period of time and subject to such conditions as the board may specify, including but not limited to requiring the pilot to submit to treatment, submit to reexamination, or undergo a complete physical examination.

(3) The board shall not restate the license or certificate of a state pilot or deputy pilot or cause a license or certificate to be issued to a person whom it has determined to be unqualified until the board is satisfied that such person has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of piloting.

(4) In any foreign vessel or foreign trading vessel movement that an individual holding a state pilot's license or deputy pilot's certificate is engaged in directing, whether movement of the vessel in or out of the port or movement in close proximity to a dock or any other movement undertaken in furtherance of his piloting duties, such individual is operating under the authority of his state license or certificate and is accountable to the board for his actions.

History - 1977 - 20 - 15-201; 1978 - 16-140; 1979 - 17-457; 1980 - 18-140; 1981 - 19-23; 1982 - 20-62; 1983 - 21-428; 1984 - 22-318; 1985 - 23-24; 1986 - 24-20; 1987 - 25-26; 1988 - 26-22; 1989 - 27-22; 1990 - 28-24; 1991 - 29-14; 1992 - 30-47.

310.111 Marine incident reports.—Each collision, grounding, stranding, or other marine peril sustained or caused by a vessel on which there was employed a licensed state pilot or certificated deputy pilot shall be reported to the office of the board or the piloting consultant within 48 hours of the occurrence. In addition, a written report shall be submitted to the department on forms and in the manner prescribed by the department within 7 days of the occurrence. However, any marine incident involving oil spillage, pollution, physical injury, or death shall be reported to the board or the piloting consultant by telephone or telegram within 24 hours of the occurrence in addition to submission of the required written report.

History - 1977 - 20 - 15-201; 1978 - 16-140; 1979 - 17-457; 1980 - 18-140; 1981 - 19-23; 1982 - 20-62; 1983 - 21-428; 1984 - 22-318; 1985 - 23-24; 1986 - 24-20; 1987 - 25-26; 1988 - 26-22; 1989 - 27-22; 1990 - 28-24; 1991 - 29-14; 1992 - 30-47.

310.1115 Bridge electronic navigation protection equipment: duty of pilot.—

(1) When a piloted vessel passes under a bridge located in a harbor, in the approaches to a harbor, or in a river, and when electronic navigation protection equipment is available, it is the duty of the pilot or certificated deputy pilot on board to use the electronic navigation protection equipment. If the electronic navigation protection equipment can be utilized only in conjunction with a portable device or devices located on board the piloted vessel, it is the responsibility of the pilot to bring such device or devices on board the piloted vessel and to remove such device or devices upon completion of his duties aboard the piloted vessel.

(2) In the event that any electronic navigation protection equipment or portable device associated with such equipment malfunctions during the approach of a piloted vessel to a bridge and the bridge is not visible from a distance of at least 2 miles from the piloted vessel, the pilot shall not transit the bridge and shall take any prudent action available to avoid such transit.

History - 1987 - 25 - 26; 1988 - 26 - 22; 1989 - 27 - 22; 1990 - 28 - 24; 1991 - 29 - 14; 1992 - 30 - 47.

310.121 Biennial fees for licenses and certificates. The department shall assess and collect biennially from each licensed state pilot and each certificated deputy pilot a fee not to exceed \$200 in the case of a licensed state pilot or \$100 in the case of a certificated deputy pilot, such fees to be set by the board.

History - 1977 - 20 - 15-201; 1978 - 16-140; 1979 - 17-457; 1980 - 18-140; 1981 - 19-23; 1982 - 20-62; 1983 - 21-428; 1984 - 22-318; 1985 - 23-24; 1986 - 24-20; 1987 - 25-26; 1988 - 26-22; 1989 - 27-22; 1990 - 28-24; 1991 - 29-14; 1992 - 30-47.

310.131 Assessment of percentage of gross pilotage.—The department shall assess the licensed state pilots in the respective ports of the state a percentage of the gross amount of pilotage earned by such pilots during each year, which percentage will be established by the board not to exceed 2 percent, to be paid into the Professional Regulation Trust Fund by such pilots at such time and in such manner as the board prescribes or as is set forth in the Appropriations Act. The financial records of all pilots and deputy pilots relating to pilotage are subject to audit by the Auditor General. The department shall by rule set a procedure for verifying the amount of pilotage at each port and may charge costs to the appropriate port if the port does not comply with such procedure.

History—s. 2, ch. 79-27, § 2, 1979; s. 2, ch. 77-457, § 1, ch. 77-470, § 1, ch. 79-140, § 1, ch. 81-253, § 2, ch. 81-318, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, ch. 85-280, § 2, ch. 85-282, § 2, ch. 91-479.

310.141 Vessels subject to pilotage.—

(1) All vessels, except vessels exempted by the laws of the United States or vessels drawing less than 7 feet of water, shall have a licensed state pilot or certificated deputy pilot on board to direct the movements of the vessel when entering or leaving ports of this state or when underway upon the navigable waters of the bays, rivers, harbors, and ports of this state, except:

- (a) When docking or undocking, or
- (b) When moving about within a shipyard or moving between a shipyard and a berth or slip directly adjacent to the shipyard.

(2) A vessel's docking or undocking when tugs are assisting the vessel in close proximity to the dock, with the vessel under the direction or control of the master, docking master, licensed state pilot, or certificated deputy pilot if the vessel that is docking or undocking is under the direction or control of the master or docking master, such direction or control must have been derived from the licensed state pilot or be in the process of being delivered to the licensed state pilot.

(3) Nothing contained in this section shall be construed to deny the services of a licensed state pilot to a vessel otherwise exempt who applies for such service.

History—s. 2, ch. 79-27, § 2, ch. 79-278, § 2, ch. 79-468, § 1, ch. 77-457, § 1, ch. 79-140, § 1, ch. 81-253, § 2, ch. 81-318, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, ch. 85-280, § 2, ch. 85-282, § 2, ch. 91-479.

310.142 Pilotage at St. Marys Entrance.—

The board is authorized to enter into an agreement with the Board of Pilotage Commissioners for the corporate authority of St. Marys, Georgia, for reciprocal pilotage of vessels in the boundary waters and tributaries of St. Marys Entrance. The board shall have the authority to promulgate rules to implement the provisions of this section.

History—s. 2, ch. 79-27, § 2, ch. 91-479.

310.146 Exemption from pilotage.—

United States vessels are exempted from the provisions of this chapter while transiting a private channel built, marked, maintained, and controlled for one-way traffic by a public utility for the sole purpose of servicing that facility and while under the control of a validly licensed federal pilot.

History—s. 1, ch. 85-280, § 2, ch. 85-282, § 2, ch. 91-479.

310.151 Rates of pilotage.—

(1) For the purposes of this section, the board shall consist of one of the pilot members of the board to be designated by the chairman of the board, one of the board members actively involved in his professional or business capacity in maritime or marine shipping to be designated by the chairman of the board, and the three board members not involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping.

(2) The board is granted the power under this chapter to fix the rates of pilotage to be charged to licensed state pilots and certificated deputy pilots after a hearing held pursuant to the Administrative Procedure Act. Such hearing shall be held at the port area affected

by a proposed rate change unless all parties to the proposed change consent to the hearing being held at another location. The rates of pilotage in effect in the ports in the state on the effective date of this act shall be collectible and enforceable until the board fixes different rates of pilotage as provided in this chapter. In addition to any other notice requirements imposed by law, the board shall provide notice of a hearing to consider changes in rates of pilotage for a particular port by publishing such notice in a newspaper of general circulation in the affected port area and making such notice to each person or organization which has requested advance notice of the proceedings of the board. Such publication and making of notice shall occur at least 14 days prior to the hearing.

(3) The board shall not consider an application for a change in rates unless such application is accompanied by a financial statement, including a statement of profit or loss and a balance sheet prepared by a certified public accountant, prepared at the expense of the pilot or pilots submitting the application.

(4) In fixing rates of pilotage pursuant to subsection (2), the board shall give due regard to the following factors:

- (a) Length, net tonnage, gross tonnage, deadweight tonnage, freeboard or height above the waterline, and any other dimensions of the vessels to be piloted.
- (b) The draft of the vessels to be piloted.
- (c) The supply of, and demand for, pilotage services.
- (d) The public interest in maintaining efficient, reliable, and safe pilotage service.
- (e) Other factors relevant to the determination of reasonable and just rates, including any combination of two or more of the foregoing factors.

History—s. 2, ch. 79-27, § 2, ch. 79-140, § 1, ch. 77-457, § 1, ch. 79-140, § 1, ch. 81-253, § 2, ch. 81-318, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, ch. 85-280, § 2, ch. 85-282, § 2, ch. 91-479.

310.161 Piloting without a license: penalties.—

(1) Any individual who is not a licensed state pilot or a certificated deputy pilot, and who directs the movement of a vessel on which a licensed state pilot or certificated deputy pilot is required is guilty of piloting without a license. Any person piloting without a license is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In addition to, or in lieu of, the penalty provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court. The civil penalty shall be not less than \$500 and not more than \$5,000 for each offense. The court shall also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3) The vessel and its owner shall be obligated to pay to the licensed state pilots at the port where the violation of subsection (1) occurred, the pilotage rate which would otherwise have been applicable, and, if the pilots in said port must resort to legal action to obtain a judgment therefor, the court shall also award to the prevailing party court costs and reasonable attorney fees.

History—s. 2, ch. 79-27, § 2, ch. 79-140, § 1, ch. 77-457, § 1, ch. 79-140, § 1, ch. 81-253, § 2, ch. 81-318, § 3, ch. 83-279, § 2, 2, ch. 84-185, § 1, ch. 85-280, § 2, ch. 85-282, § 2, ch. 91-479.

310.171 Pilots may incorporate themselves.— Any one or more licensed state pilots may incorporate in the manner provided under chapter 607 or chapter 621

History.— s. 2, ch. 75-201; s. 3, ch. 76-166; s. 1, ch. 77-457; s. 10, ch. 78-140; s. 2, ch. 79-9; s. 2, ch. 81-318; ss. 2, 3, ch. 84-183; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-479

310.181 Corporate powers.— All the rights, powers, and liabilities conferred or imposed by the laws of Florida relating to corporations for profit organized under chapter 607 or under chapter 608 before January 1, 1976, or to corporations organized under chapter 621 shall apply to corporations organized pursuant to s. 310.171

History.— s. 2, ch. 75-201; s. 3, ch. 76-166; s. 1, ch. 77-457; s. 10, ch. 78-140; s. 2, ch. 81-318; s. 2, ch. 82-318; ss. 2, 3, ch. 84-183; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-479

310.185 Rulemaking.—

(1) The board shall have the power to adopt rules necessary to the provisions of this act, in conformance with the provisions of chapter 120

(2) The secretary of the department is deemed to be a person substantially affected by a rule or proposed rule for the purpose of seeking an administrative determination of the invalidity of such rule or proposed rule. The secretary may seek such administrative determination of the invalidity of any rule or proposed rule on the ground that it is an invalid exercise of delegated legislative authority or an undue restriction of competition, pursuant to chapter 120

History.— s. 12, ch. 81-302; ss. 10, 11, ch. 86-280; s. 2, ch. 89-262; s. 4, ch. 91-479

Facsimile Transmission Cover Sheet

From: Alaska Coastwise Pilots
fax #(907) 247-4568
tel: #(907) 225-7245



TRANSMITTED BY: Michael Spence
DATE: 4.12.95
TO: Senator Leman
Senate Resource Committee
FAX # SENT TO: 465-3810
OF PAGES INCLUDING THIS PAGE: []

NOTES/COMMENTS: Re Marine Pilotage Hearing

of SB 130

Call (907) 225-7245 if difficulty with transmission or the legibility of this FAX. Thank you.

**Captain Michael C. Spence
3736 Justice Court
PO Box 7981
Ketchikan,
Alaska 99901**

**Senator Loren Leman
Chairman,
Senate Resources Committee
Alaska Legislature
Juneau,
Alaska 99811**

April 12, 1995

BY TELEFAX

Dear Senator Leman,

As you are aware, the legislative committees hearing Marine Pilotage bills this session have heard much regarding the issue of competition in pilotage. Adding to this debate, an anticompetitive paper written by Mr. Brad Pierce of the OMB has been widely circulated to members of this legislature.

I believe the attached three letters from pilots in the states of Hawaii, Oregon, and New York, written in response to the Pierce paper, should be admitted into the record also, since they shed some light on the issue of competitive pilotage as it occurs in other states.

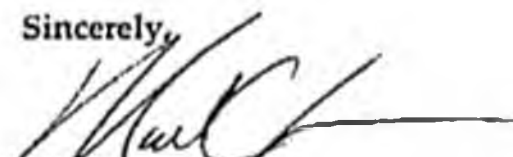
While the Pierce paper offers little in the way of explaining its methodology, my inquiries reveal that it is grossly inaccurate on the facts that are offered. Neither the U.S. Coast Guard, nor the National Transportation Safety Board, nor the State of Alaska, have issued any findings that the grounding of the Nieuw Amsterdam was in any way affected by competitive pilotage. The NTSB is not planning any hearings, as Mr Pierce contends, on the "pilotage situation in Alaska". Neither Hawaii, Oregon or any other maritime state have issued a finding that competition is harmful to safe pilotage. Competition in other maritime states in this nation and worldwide is increasing, not decreasing, as regulatory bodies discover that there is no adverse safety impact from this competition. The few regulatory bodies which have enacted tighter schemes of economic regulation, such as in Florida, have done so not because of a safety factors, but because the pilots had already formed themselves into monopolistic structures, and the legislature would be hard pressed to force them into competition, as had been suggested by the Florida Auditor. Mr. Pierce's analogy of Marine Pilotage with public utilities, which require economic regulation as monopolies, is ironic, since in

recent years public utilities nationwide either have been or are being deregulated in response to findings that those monopolies offer little benefit to the public. In the case of transportation industries, it has been well established by most scientific analyses that safety has *improved* with economic deregulation. The few nations which still maintain state-sanctioned monopolies in aviation are now noted for having the worst safety records on the planet.

Contrary to Mr. Pierce's assertion, training requirements in Southeastern Alaska are many times more stringent than they were during the period of monopoly in the late seventies and early eighties. They are now more stringent than most pilotage areas in the country. Accidents have been reduced, and most importantly, accountability is being increased. The reforms which have occurred in marine pilotage in Alaska during the past five years are largely due to the increased competition which has occurred.

As you ponder the merits of this pilotage legislation, please consider whether it is wise to use a nineteenth century model to set regulatory policy for the twentyfirst. The economic regulation of pilotage is burdensome, costly, and inefficient. Economic or legal protectionism for the dominant pilot groups in the state does not serve the public safety or commerce.

Sincerely,



Michael C. Spence

attachments (3):

letters Capt, Bettinelli, New York
Capt. LePendu, Hawaii
Capt. Nichols, Oregon



February 16, 1995

Representative Gail Phillips
 Speaker of the House
 Alaska House of Representatives
 Alaska State Capitol
 Juneau, Alaska 99810-1182

Re: Document, "Alaska Marine Pilotage System Revisited" (Pierce 1994)

Dear Representative Phillips;

I wish to comment on a recent paper entitled "Alaska Marine Pilotage System Revisited" prepared by the former Commissioner of Commerce and Economic Development.

I am a Hawaii State Pilot licensed by the State of Hawaii and the Federal Government to pilot vessels in all seven commercial harbors in the State of Hawaii. I have been a State pilot for 11 years and Federal licensed pilot for 20 years.

There are inaccuracies in the paper particularly on the issue of regulation of pilotage in Hawaii. Multiple pilot groups have existed in Hawaii and competed since 1984 without any adverse effects on safety. I can assure you that competition in Hawaii is alive and healthy.

HISTORY:

1985... Board of Pilot Commissioners was decommissioned by the legislature on grounds that, "The Board Actions Furthered the Financial Interests of the Licensed Pilots and Not Those of the State." (Legislative Audit 1985)

1989... Director of the Department of Commerce and Consumer Affairs changed the Rules of Pilotage to make the word "association" plural to "associations" to recognize the existence of dual pilot associations working within the State.

1990... Legislature again refused to establish a Pilot Commission based on its findings that, "the Department of Commerce and Consumer Affairs has improved the regulation of pilotage." (Legislative Audit 1990)

1991... Failed... proposed legislation by a pilot association to establish by law only one pilot association, a monopoly. The Bill received no support from industry and died.

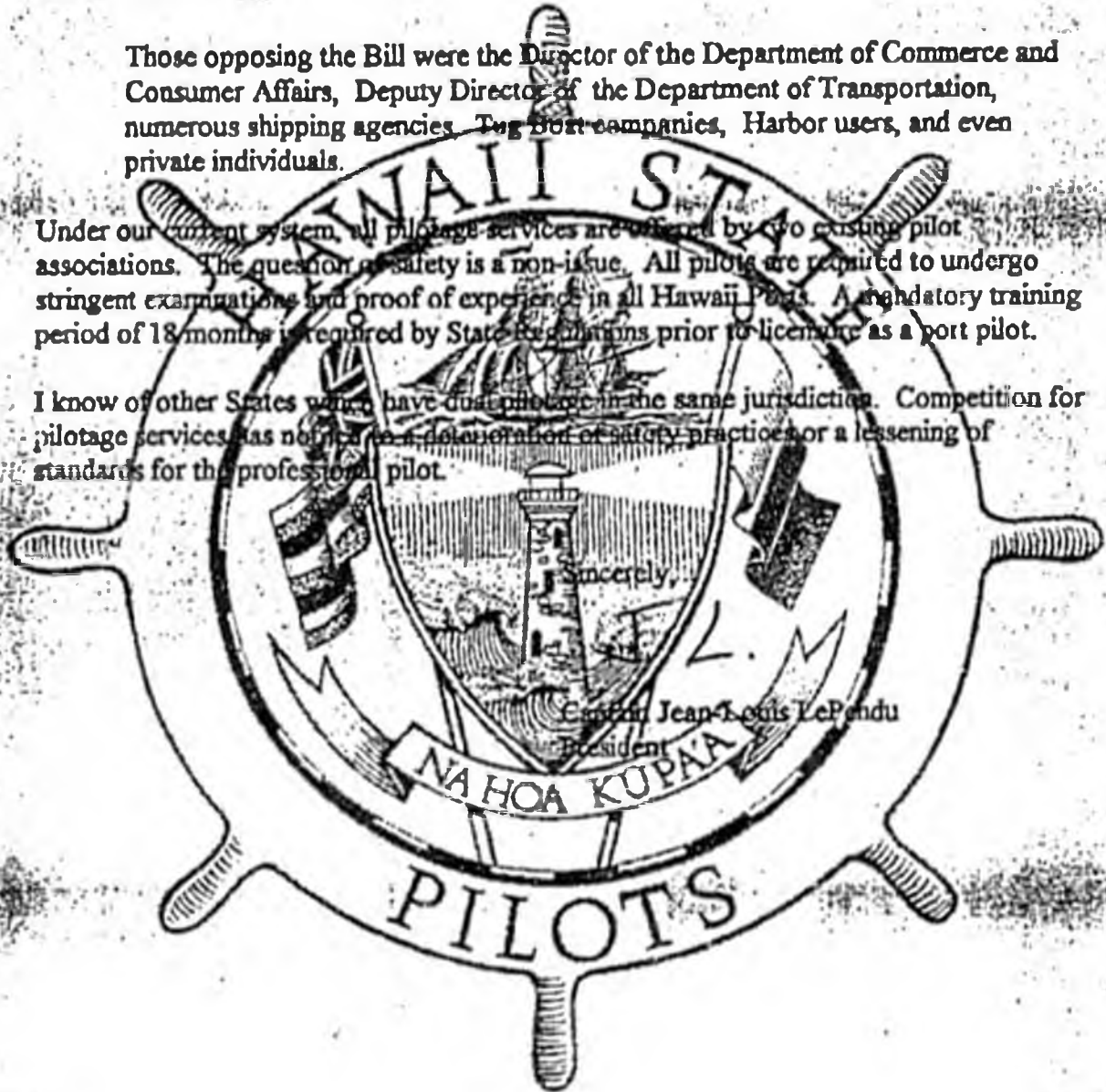
Representative Gail Phillips
February 16, 1995
Page 2

1991... Continued...

Those opposing the Bill were the Director of the Department of Commerce and Consumer Affairs, Deputy Director of the Department of Transportation, numerous shipping agencies, ~~Tug Boat companies~~, Harbor users, and even private individuals.

Under our current system, all pilotage services are offered by two existing pilot associations. The question of safety is a non-issue. All pilots are required to undergo stringent examinations and proof of experience in all Hawaii Ports. A mandatory training period of 18 months is required by State Regulations prior to licensure as a port pilot.

I know of other States which have dual pilotage in the same jurisdiction. Competition for pilotage services has not led to a deterioration of safety practices or a lessening of standards for the professional pilot.



INTERPORT PILOTS AGENCY, INC.

ROSET MONMOUTH, NJ 07788-0016

(908) 787-2554 (800) 346-4877

YAX (908) 787-8538

April 5, 1995

Board of Marine Pilots
 Division of Occupational Licensing
 Dept. of Commerce and
 Economic Development
 P.O. Box 110806
 Juneau, Alaska 99811-0806

DIVISION OF
 OCCUPATIONAL LICENSING
 RECEIVED
 APR 11 1995
 PM 1:30

Dear Sirs:

A colleague of mine, Capt. Michael Spence, has requested that I write to inform the Board of Marine Pilots about the competitive state pilotage scheme which presently exists in Long Island Sound.

There are presently four groups which compete in Long Island Sound for state work. Interport is one of these four groups. Our pilots, as well as the pilots in two other smaller groups, are licensed solely by the state of Connecticut. The fourth group, Sound Pilots, is comprised of pilots from Northeast Marine Pilots and Sandy Hook Pilots. The pilots working in the Sound Pilots group are licensed by both Connecticut and New York. Presently, all four groups operate independently of each other. Pilot work is solicited from ship owners or agents. Each group does its own billing and dispatching, and operates its own equipment. The states fix the rates that are charged by the pilots. This is done in legislation by New York. The rates are set in regulation by Connecticut. The rates are the same regardless of which state pilot is taken. In addition, both Connecticut and New York regulate safety and licensing standards for the pilots.

Throughout most of its history, Long Island Sound has had competitive piloting. New York's history of regulating pilotage in the sound is relatively young. New York did not begin regulating these waters until 1973. Connecticut's history of regulating pilotage in Long Island Sound is even younger. Until recently Connecticut was only concerned with pilots in the ports of Bridgeport, New Haven and New London, leaving regulation of the sound to New York. It was not until the late 1980's that Connecticut began to exercise concurrent jurisdiction over the sound. As such, the state, and the pilots it licenses, had some catching up to do on the regulatory front. This challenge has been met so as to provide for strict regulation by both states. Recent pilot boat regulations proposed in Connecticut are even more strict than New York. In addition, the pilot commissions of each state have begun to meet regularly in order to provide for consistent regulation of these waters.

Pilot Service Since 1959

New York, Long Island Sound, Philadelphia, Baltimore

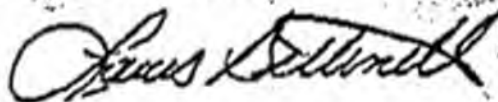
Long Island Sound pilotage cont'

-2-

Piloting is a business which needs to be carefully regulated due to its impact on public safety, the environment, and the economy. Connecticut is quickly approaching the ideal pilot regulatory scheme by allowing competition within a highly regulated environment. When a regulatory body sets high licensing and safety standards, and also sets the rates, the only thing left for which the pilots can compete is quality of service. In this scheme the pilots become far more strict with themselves than the state. Since the customer is paying the same rate regardless of the group he uses that customer will insist on using the best pilots available. The customer wants the most for his money. The individual pilot groups must respond and provide the best pilots they can or risk losing the business to a competitor. If all the groups maintain the same high quality pilots a customer will generally split the work in order to maintain competition and his ability to have a choice. Other regulatory problems, such as too many pilots for an area and the incessant rate increases which characterize the monopolistic schema, are absent in Long Island Sound. The quality of the pilotage is evidenced by the lack of incidents in the area.

The monopolistic system of regulating pilots is an anachronism that should be abandoned. Its only benefactors are the pilots who enjoy the exclusivity provided by such a system. The state and the public are the losers. Safety, environmental, and economic concerns are better met through regulated competition.

Very truly yours,



Capt. Louis Betinelli

From :

PHONE No. :

Dec. 02 1993 7:11PM P01

LEWIS & CLARK PILOTAGE, INC.
P.O. BOX 957
KALAMA, WASHINGTON 98625
PHONE: (206) 673-2277

FEBRUARY 3, 1995

Representative Gail Phillips
Speaker of House
Alaska House of Representatives
Alaska State Capitol
Juneau, Alaska 99810

Dear Representative Phillips,

I have been asked by one of my fellow colleagues in the Alaska State Pilotage system to comment on a recent paper released to the Alaska Governors office and the Alaska legislature by the former Commissioner of Commerce. This paper is entitled "ALASKA'S MARINE PILOTAGE SYSTEM REVISITED" (Pierce 1994)

I am an active Oregon State Pilot licensed by the State of Oregon and the Federal Government to Pilot Vessels on the Columbia River. My state license has been in effect for 21 years and my federal license for 31 years.

Although I sailed Alaska waters for several years I cannot comment on the opinions of the author regarding Alaska Pilotage, I can however tell you that his information is inaccurate as to some of the other States regulation of pilotage on their grounds.

In 1989, LEWIS & CLARKS PILOTAGE INC, was formed to pilot Vessels on the Columbia River in direct competition with the existing pilotage group on the grounds, the results to date have not had any adverse safety consequences. I am familiar with some of the other states that have dual pilotage on the same grounds and am not aware of any evidence that a competitive system has led to lower the standards of safety in any of the other states.

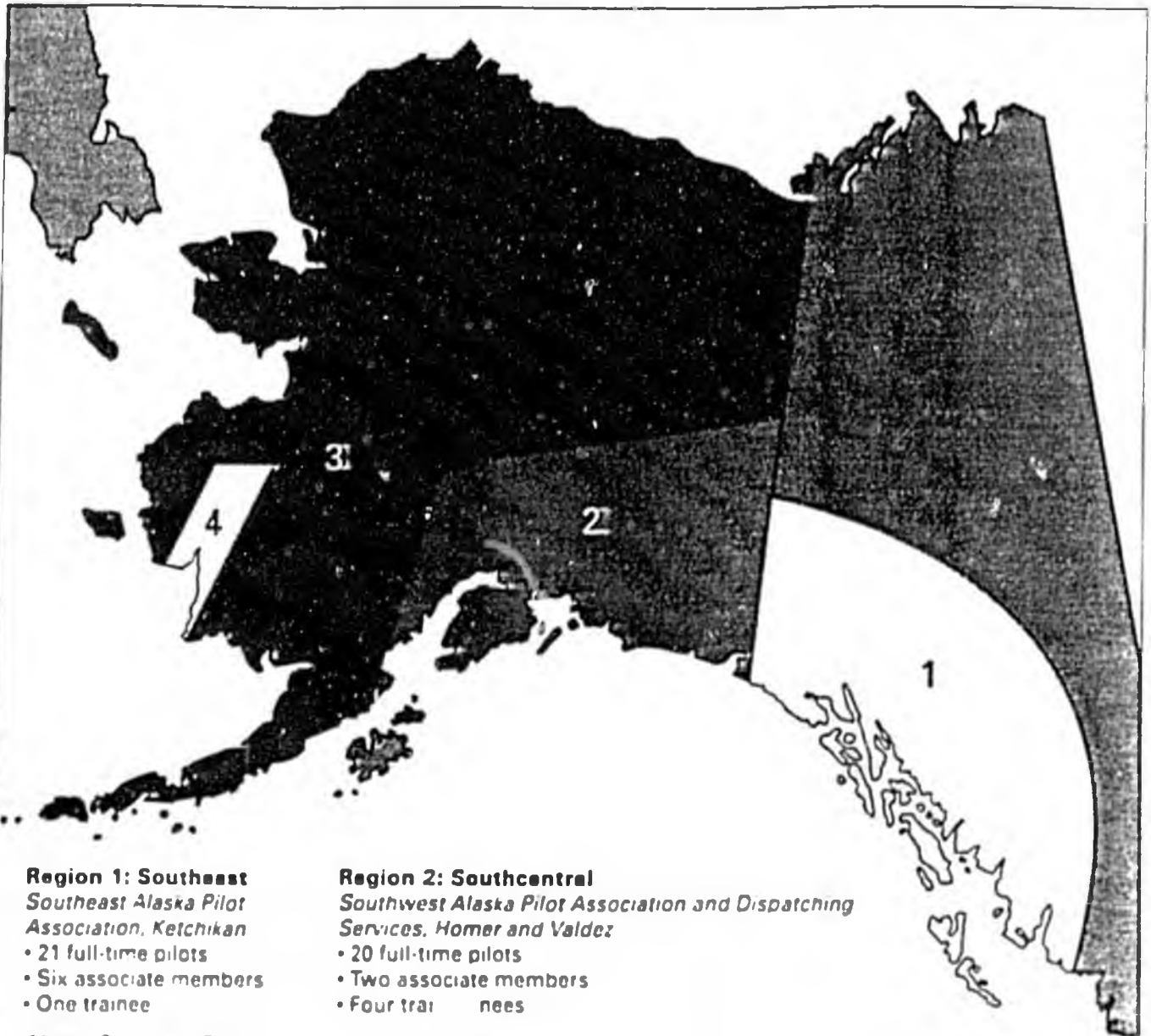
Sincerely,



CAPTAIN MARK D. NICHOLS
PRESIDENT

Apply only to cases where

there is: NO competition
when only one pilot group exists?



Region 1: Southeast
Southeast Alaska Pilot Association, Ketchikan
 • 21 full-time pilots
 • Six associate members
 • One trainee

Alaska Coastwise Pilot Association, Ketchikan
 • 11 full-time pilots
 • Six associate members
 • Three trainees

Region 2: Southcentral
Southwest Alaska Pilot Association and Dispatching Services, Homer and Valdez
 • 20 full-time pilots
 • Two associate members
 • Four trainees

Region 3: Western
Western Alaska Pilots Association, Dutch Harbor
 • Four full-time pilots
 • One trainee

Alaska Marine Pilots, Dutch Harbor
 • 11 full-time pilots

Region 4:
Kuskokwim River
Kuskokwim Pilots Association, Bethel
 • Two full-time pilots

From Senate President
Druie Pearce

TO: ALL LEGISLATORS

FROM: ALASKA STATE PILOTS ALLIANCE
ALASKA STEAMSHIP ASSOCIATION

RE: MARINE PILOTAGE LEGISLATION
DATE: May 1, 1995

We are writing this letter to indicate our mutual support of the Rules Committee CS for SB130. This legislation is the result of extensive negotiations between pilot associations, the shipping industry, and the Department of Commerce and Economic Development.

The bill was also improved in the legislative committee process including language to establish an apprenticeship program which will assist Alaskans wishing to enter the marine pilotage profession without compromising high training and experience requirements.

We urge you to adopt this legislation in its current form.


The Alaska State Pilots Alliance includes the following organizations:

Alaska Coastwise Pilots
Southeast Pilots Association
Southwest Alaska Pilots Association
Alaska Marine Pilots


The Alaska Steamship Association includes the cruise ship industry, cargo shippers, and petroleum and chemical shippers.

Two pilot associations which are not members of the Pilots Association, the Western Alaska Pilots Association and the Kuskokwim Pilots have also endorsed this bill. The Department of Commerce has also indicated its strong support of this legislation. We are not aware of anyone in the private sector who opposes this bill in its present form.

We would appreciate your support of the Rules CS for SB130



Joe Kyle, Representative
Alaska Steamship Association



Eric Eliassen, President
Alaska State Pilots Alliance

SOUTHWEST ALASKA PILOTS ASSOCIATION

TO: ALASKA STATE LEGISLATURE
FROM: SOUTHWEST ALASKA PILOTS ASSOCIATION
RE: TARIFF SETTING IN MARINE PILOTS LEGISLATION

April 18, 1995

This letter is to clarify the position of of SWAPA regarding the setting of tariffs in pending marine pilotage legislation.

SWAPA supports binding arbitration on tariffs for pilotage regions in the state which have only one pilot association, if the parties are unable to reach an agreement through negotiations. This would allow us to conduct our business without the government getting involved in the setting of tariffs.

The board process is well suited to manage licensing issues, as is the case with other occupational licensing boards. But it is somewhat cumbersome when it comes to tariff issues and has raised conflict of interest issues and potential litigation.

If the legislature does charge the board with setting tariffs, we would prefer a maximum tariff rather than a fixed tariff in those regions where there is one pilot association.

Our lobbyist, Paul Fuhs, will be available to provide you with further information and you can reach him at 790-3030 or find him at the Capital.

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.

Senate Bill 130

My name is Peter Lie-Nielsen. I'm a Juneau, Alaska resident. I hold an unlimited pilots' license for the waters of Southeast Alaska and Yakutat. I have been piloting in Southeast Alaska for 8 years, initially working for Southeast Alaska Pilots Association, and as a member of Alaska Coastwise Pilots Association since 1991. I am representing myself only and am not speaking for anyone else. Because I have worked for SEAPA and ACPA, I feel I am qualified to address parts OF Senate Bill 130 from a unique perspective.

In 1991 when the Legislature of Alaska provided for competition in marine piloting, I thought this was good for Alaska and for marine piloting. Having observed firsthand the management dynamics of both SEAPA as a guild and ACPA as an aggressive competitor, I believe there may be certain advantages to both methods. However, competition has:

1. Sharply devided and alienated Southeast pilots as a peer group.
2. Resulted in litigious actions costing individuals and Alaska (Board of Marine Pilots) considerable effort, time and expense.
3. Increased Alaska (BMP), and pilot license fees.
4. Raised serious concerns and questions about pilot training, pilot qualifications and marine safety issues.

In summary I believe the guild system of pilotage provides for stability, better trained pilots, more qualified pilots, and keeps safety of lives, vessels, our shorelines and wildlife foremost. It is in the best interest of Alaska, her peoples and marine pilots to encourage the guild system of pilotage. The true guild system of pilotage cannot exist in a competitive marketplace.

Competition drives tariffs. A maximum tariff pushes competing pilot associations into difficult and at time last-minute tariff negotiations with their principals in order for them to stay in business and insure employment for their members. Its' common knowledge that the low bidder in tariff and contract negotiations usually gets the business. Therefore, industry is in a favorable position. Alaska's public interest should be paramount as regards their water borne trade and manne pilotage. A state-fixed tariff, periodically revisited by an appointed rate review commission would bring structure and stability to a chaotic situation.

Thank You.

Peter D. Lie-Nielsen

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442

April 12, 1995

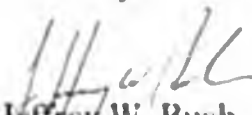
The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Madame President:

Marine pilotage continues to be a controversial subject. Senate Bill (SB) 130 is a bill which extends the Board of Marine Pilots, and contains numerous housekeeping changes to the Marine Pilotage Act of 1991. These changes should reduce the litigation surrounding the administration and enforcement of the marine pilotage system. Therefore, SB 130 will further the state's interest in preventing the loss of lives and property, and the protection of the marine environment.

The Department of Commerce and Economic Development fully supports SB 130.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

JWB/DT/t624.01
041295a

cc: Pat Pourchot, Legislative Director
Office of the Governor

The Honorable Gary L. Davis
House of Representatives

SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977
Homer, Alaska 99603

Tel: (907) 235-8763
Fax: (907) 235-8119

Honorable Drue Pearce
Senate President
Alaska State Legislature

March 21, 1995

Dear Madame President,

Thank you for your strong interest in Alaska's marine pilotage system. I am writing this letter to clarify SWAPA's position with regard to legislative proposals.

First, SWAPA supports all the provisions adopted by ASPA and which are attached to this letter.

In addition, we support the revisions put forward by the Knowles administration with the exception of changes to the minimum requirements for Deputy Marine Pilots which we oppose. We should not be weakening these requirements.

On the matter of compulsory arbitration, we support such a system for those regions where there is only one pilot association.

We do not support changing the membership of the Board of Marine Pilots and would like to see membership determined by pilot region and not by judicial district. We support the requirement that industry representatives on the Board must be actively working in the trade.

We see the proposal for ending the regional system as proposed by WAPA as unworkable and against the State's interest in safe and efficient marine pilotage in Alaska. I have provided a more detailed analysis on the importance and practicality of Alaska's regional pilotage system in the attached Status Report.

Tele: 010-28-358 SWAPLOTS HOMER
Radio Call Sign: KCE-203

— Ltr from SWAPA —

We support the core legislation put forward by ASPA and the housekeeping measures proposed by the administration. We will make ourselves available to testify during the legislative process and our lobbyist, Paul Fuhs will stay in close touch with you to make sure you have any information you need from us concerning this legislation.

Again, thanks for your commitment to safe and efficient marine pilotage in Alaska.

Sincerely,



Eric Eliassen

MARINE PILOTING

Southeastern Alaska Pilots' Association

Telephone: (907) 225-0000
(907) 225-0097

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901.

March 21, 1995

Senator Drue Pearce
Alaska State Senate
Juneau, Alaska 99801-1182

Dear Senator Pearce:

We write to provide you with our concerns about the potential contents of marine pilot legislation that will be introduced this session. We also write to express our pledge to work with you to meet the needs of pilots, the shipping industry, to ensure that the health, safety, and welfare of the Alaska people are met through the State's regulation and oversight of marine pilots.

Below we set forth several areas of concern to us.

BOARD OF MARINE PILOTS

The Board of Marine Pilots (established at AS 08.62.010) is scheduled to sunset this year. We support a renewal of the Board and the State of Alaska's regulation and oversight of Alaska marine pilots by the Board. We also support maintaining the composition of the Board of Marine Pilots to reflect the interests of pilots, industry, and the public.

It is particularly important the voice and interests of the public, as reflected by public membership on the Board, not be diluted by increasing the number of members from other interest groups. The very reason for requiring pilots on vessels is to protect the health, safety, and welfare of the public and protect the marine environment owned by the public. Maintenance of the status quo of Board membership furthers this policy.

LIMITATION OF LIABILITY

The liability of marine pilots is presently limited under AS 08.62.165. However, there are two instances recognized in which there is no limitation on liability. One is where the pilot is grossly negligent or guilty of wilful misconduct. The second is

Senator Drue Pearce
March 21, 1995
Page 2

where a pilot's error, omission, fault, or neglect constitutes an act for which the Board of Marine Pilots imposes a disciplinary sanction for six reasons set forth in statute. We support amending AS 08.62.165(a)(2) to delete references to AS 08.62.150(a)(1), (5), (6), and (7). We support unlimited liability in those instances in which a pilot is found chemically impaired or illegally uses, possess, or sells drugs. However, the Board may impose a very small sanction in cases involving minor pilot error. In those cases, the pilot is subject to unlimited liability. Consequently, punishment could far exceed the error. Cases of gross negligence, wilful misconduct, and drug and alcohol use should not be shield from unlimited liability. Other instances should.

PROSPECTIVE PROHIBITION ON LICENSING IN MORE THAN ONE PILOTAGE REGION

Alaska is divided into five pilotage regions. Alaska law presently has a vague provision placing limitations on the number of regions in which a pilot may be licensed. AS 08.62.080(b) presently reads: "A pilot may not be licensed in more than one pilotage region at one time, unless the board determines that it is in the best interests of the state to license pilots for parts of more than one pilotage region." This language has led to unproductive tussles on the Board and within the marine pilot industry over what constitutes the "best interests" of the state.

A solution that is in the best interests of the state is to flatly prohibit licensure in more than one pilotage region unless there is an emergency. We support amending AS 08.62.080(b) to read:

- (b) A pilot shall not be licensed in more than one pilotage region.
2. The Board may issue temporary licenses to pilots in more than one region if it makes a finding of an emergency shortage in the number of pilots licensed in a region.
3. The Board shall establish criteria for issuing temporary licenses under 2 of this section by regulation.

Since emergencies are rarely found to exist (AS 44.62.270), the Board will rarely have to deal with this issue, but will not be prohibited from dealing with it if necessary.

Senator Drue Pearce
March 21, 1995
Page 3

PRICE MAINTENANCE AND ARBITRATION

Before 1991, the Board had always set the tariffs that pilots could charge, and regulated the income of pilots by regulating the tariff. In 1991, the Legislature amended the Marine Pilot Act, in part, to promote competition in the marine pilot industry. As part of the State's deregulation of marine pilotage, the Legislature sunset the authority of the Marine Pilot Board to regulate tariffs. AS 08.62.045, which gave the Board the authority to set maximum tariffs, sunset in 1994.

Regional pilot associations now compete for contracts with vessels to provide pilotage services. While some pilots believe that competition is harmful and some do not, the system that the Legislature has given pilots is a competitive one and until that changes, pilot groups that do compete must not be prevented from doing so.

Language that would require binding arbitration of pilotage fees would be a serious infringement on pilot's ability to compete for work. No other industry in the state has such a state mandated arbitration requirement. Apparently, the thinking of those promoting binding arbitration is that pilots are 'gouging' vessels that are required to use pilots. However, now that there is no economic regulation of pilotage tariffs, those that would promote, or indicate, that pilots overcharge for pilotage, have the burden of proving that price gouging exists. In the Southeast Alaska pilotage region, where there is competition between pilot associations, there is no evidence of price gouging, the price for pilotage has not approached the maximum tariff that was formally set by the Board (if that can be used as a benchmark), and an adequate supply of pilots has been available. There has been no artificial shortage of pilots because the vessels were not paying enough.

Our Association presently has contracts with vessels companies to provide pilotage services. These contracts contain procedures for resolving price disputes. These procedures have been worked out between fully informed parties in an arm's length transaction. Thus, there is a mechanism within the scope of the contracts that our pilot association has with vessel companies to deal with situations with overcharging if the vessel company thinks that what is happening. Moreover, the companies and our association forged these agreements in the context of competitive pilotage. If the company did not like our contract terms, they could go to another association.

Senator Drue Pearce
March 21, 1995
Page 4

Shipping companies should not worry about price gouging because with competition, if a vessel does not like the price quoted by the association, the vessel can go to another association. If that association charges the same price, then that price is the market price for pilotage. The antitrust laws prevent collusion between competitors so if the vessel pays the amount and believes there has been collusion between pilot organizations on price, the vessel's owner can sue in antitrust court, prove its case, and get treble damages and its attorneys fees to prevent that collusion and be compensated for the antitrust behavior.

There is an additional reason for not legislatively imposing binding arbitration or a maximum on the tariffs that a pilot organization can charge in those regions that have competition. Those promoting further economic regulation of pilots would require the Board of Marine Pilots to deal with economic matters. The logical agency to deal with disputes arising under any economic regulation provision would be the Board of Marine Pilots. Clearly it is not a function of the Board to deal with the economic matters such as binding arbitration. The increased oversight and the increased disputes that will inevitably arise because of that oversight will increase the Board's activities, its functions, and litigation involving the Board. This is not in the State's or pilots' interests.

It is indeed curious that shipping companies seek to impose a mechanism to prevent high prices in the absence of any information that the price of pilotage is too high. It is all the more curious that those interests promoting economic regulation of pilots are not subject to any economic regulation by the State whatsoever. No arbitration mechanism or "price cap" suggested by the shipping industry exists to force shipping companies to pay higher prices for pilotage, or forces them into binding arbitration if the price pilots want them to pay for services is too low, or if the public does not like the price of a ticket on a cruise ship, or the amount charges to ship goods. Nor is this pilot association suggesting one.

Legislation that would force binding arbitration over the price charged by pilots will lead to supervision of pilot associations by the State and remove pilot organizations from the competitive market. If the goal of Alaska's Marine Pilot Act is competition, then binding arbitration over tariffs thwarts that goal.

Senator Druce Pearce
March 21, 1995
Page 5

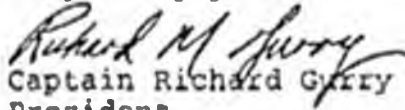
If economic regulation of pilotage is a legislative objective, then the State Legislature must not go half way down the regulatory path. It must either allow pilots to compete in the competitive world that the Marine Pilot Act requires, or the State must actively and thoroughly regulate pilots. That regulation must be active, clear and comprehensive and regulate tariff, income, licensing, discipline, sanctions, and all pilotage disputes.

CONCLUSION

Southeastern Alaska Pilots' Association supports the Alaska State Pilots Alliance position set forth in its letter dated February 22, 1995. In addition, there are other matters that we look forward to talking with you about such as our association's private, long-standing efforts to promote local young peoples interest in becoming pilots by sponsoring a scholarship program in local high schools and promoting ties between the University of Alaska Southeast and several Maritime Academics. Also we are concerned about policing our own pilots and the tremendous liability involved as it concerns "probable cause" drug and alcohol testing. These and other matters should be aired at appropriate committee hearings.

It is inevitable that any legislation dealing with pilotage will need careful consideration by all those affected. Again, we look forward to working with you on legislation relating to marine pilots.

Very truly yours,


Captain Richard Gerry
President



March 22, 1995

From: ALASKA MARINE PILOTS ASSOCIATION

Subject: Position paper regarding S.B. 130

The Membership of Alaska Marine Pilots has reviewed Senate bill No. 130 and submits the following position:

We support the bill in it's entirety with the following exceptions:

Sec. 6 AS 08.62.080 (b):

We feel that the intent is good but would like the following wording added as a safeguard to the associations in the affected region:

The temporarily licensed pilot will join an association in the affected region and abide by it's Articles of Association and it's Bylaws.

Sec. 15 AS 08.62.175 (c)

(3) If the State intends to continue with a competitive environment, agreements and contracts should not be mandated by the legislature but should be dictated by market forces. Additionally, the provision does not compel the master, owner, operator, or agent of a master, owner or operator of a vessel to enter into an agreement. Therefore, pilot organizations are at a serious negotiating disadvantage.

AMP feels that a regulated monopoly is still in the State's best interests.

Respectfully submitted,

Captain David Sanders, Vice President
Alaska Marine Pilots Association



Alaska Constwise Pilots Association
P.O. Box 6337
1621 Tongass Avenue
Suite 100
Ketchikan, Alaska 99901

Marine Pilotage
Dispatch Service

Telephone: (907) 225-7245
Fax: (907) 247-4568

March 22, 1995

Senator Loren Loman, Chairman
Senate Resources Committee

Dear Senator Loman:

We are writing this in support of most of the provisions of S. B. 130 regarding Marine Pilotage. The amendments suggested by the Department of Commerce are generally acceptable to us.

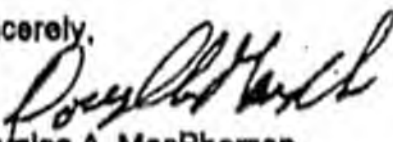
Under the current law, pilot members of the Board of Marine Pilots are selected from two judicial districts and SB 130 would amend that process to select pilot members from pilotage regions. The problem is, there are now three major pilotage regions in the state but with only two pilot members on the Board one of these regions would always be excluded from representation.

We agree with the above amendment, but in keeping with an agreement between ourselves, industry and ASPA in February of this year, we would like to see the board composition increased by one more pilot member, and accordingly one more industry member. This would ensure that all of the three major regions in the state are represented by both industry and pilots. We are sure it was not anyone's intention to exclude Southeast Alaska (which has the most vessel movements of any pilotage region) from having a pilot or industry representative on the Board.

We question whether or not the amendment in Section 13 is well advised, especially in a region where there is only one pilot organization operating. If such an organization was suspended or revoked there would be no lawful pilotage service in that region. In a region where there was more than one pilot organization there would be a major disruption of service and a compromise of safety.

We understand that there may be other legislation coming from the House suggesting that pilots and industry engage in binding arbitration over pricing of services. We are neutral on that issue.

Sincerely,


Douglas A. MacPherson
President

— Ltr from ACPA —

WESTERN ALASKA PILOTS ASSOCIATION

P.O. BOX 792

UNALASKA, ALASKA 99685

+
Post Box
PO Box 180040
Colorado, CA 92178

B. G. ...
Bradley
(907) 272-3365
2-7-95

January 10, 1995

OPEN LETTER TO ALL LEGISLATORS

Marine Pilots don't fly float planes. They offer a valuable service to ships entering and moving about in Alaskan waters. Their value stems from two factors:

1. Pilots have extensive knowledge of local waters and the unique dangers to safe navigation;
2. They are skilled in ship handling under Alaskan conditions

In order for ships coming to Alaska to have confidence in the quality of the pilots they engage, the legislature has seen fit to license pilots. In order for the State to be confident that ships entering Alaskan waters utilize the services of pilots, the legislature has made the use of pilots compulsory. All aspects of pilotage are controlled by AS 08.62 and its detailed articles.

The details of regulating marine pilotage are given to the Board of Marine Pilots. The Board was sunsetted by the previous legislature and expires on June 30, 1995.

During the past legislative session a bill was proposed (HB 237) which would have extended the Board's life to June 30, 1997. HB 237 made no other changes in the Statute. The legislature acted wisely in taking no final action on the bill.

The current statute has gross flaws in it. The manner in which the Board has administered the statute has led to ill feelings among pilots and huge legal bills for pilots and the state. The cost of a pilot's license has jumped from \$200. to \$3,200. under the statute's provisions.

In short, the flawed current statute needs major modifications if its designers' goals are to be achieved.

The problems inherent in the current statute stem from several sources. They are:

1. The make-up of the Board. Out of the seven members of the board only two are pilots. It is not a board of marine pilots. The two pilot members are not representative of the six current pilot organizations in

the state. In fact, no pilot member is currently even licensed in the western region of the state and yet is responsible for writing and grading the examination a candidate for a license in the western region is required to take.

2. The current law is a schizophrenic combination of favoring monopolistic organizations and yet requiring the board to act in no way that is anti-competitive. This split personality coupled with the non-representative make-up of the board creates what can only be described as a mess.
3. The current law places on pilots the responsibility to have ships utilize their services. It is the cart before the horse. Ships should rightly have the responsibility to utilize the skills of pilots and make whatever arrangements are necessary. Pilots should not have the responsibility to be on call if and when a ship happens by. The current law is a carry-over of the days before radio and shipping agents.

The flaws of the current law can be corrected with minimal effort and disruptive effect on the industry. Most importantly, the changes will:

- (a) increase the quality of piloting;
- (b) reduce the cost of regulating the profession, and;
- (c) reinstate the concepts of free enterprise and competition and all of their attendant benefits.

The general features of each change in the current law is followed by the specific language and section of the affected part of the law.

1. Reconstitute the make-up of the Board and limit its powers to those necessary for licensing activities. Of the seven members of the board five (5) should be licensed pilots. Each pilot region should be represented and no more than one representative should be from any one pilot organization.

There are currently four regions and six pilot organizations in the state.

The other two members of the board should consist of a public member and the Commissioner of Commerce and Economic Development (who oversees all professional licensing in the state).

The powers of the Board should be limited to its

membership expertise. Namely, the power to set licensing standards and the activities involved therewith.

The board should have no powers over the way pilots conduct their business activities. Nor should it have the power to decide pilotage waters in which their service is compulsory. This power should remain with the legislature.

The board should have no power over the rates (tariff) the pilots charge for their service. Prices should be the result of a competitive market place and demand and supply.

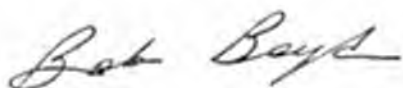
2. Allow pilots the same rights other professions enjoy. These are the rights to practice their trade wherever they are qualified to do so and the right of free association as with to whom they chose to work.

Currently, pilots are allowed to work in only one region. Additionally, they must join an existing pilot organization. Both of these restrictions are uniquely imposed upon professional pilots. Both restrictions create additional costs of pilot services and reduce the quality of their work - i.e. safety.

The above changes to the current law can be done in either of two ways. One, change the most offensive clauses. Two, adopt a new bill which eliminates all of the restrictive language in both statute and the regulations pertaining thereto. The first option is most simple and leaves the newly constituted board the work of rewriting the affected regulations.

It is time to move marine pilotage out of the middle ground which has created such turmoil and expense. I encourage you to support the attached changes which will augment the safety of Alaskan waters while governing pilotage in a sane manner.

Sincerely,



Bob Boyd, President

Western Alaska Pilot Association

For more information contact:

*Bence Bredin
(907) 272-3365*

Note - The underlined words within parenthesis are to be deleted from the current act.

An Act to Amend
AS 08.62.
(Marine Pilots)
and extend the date
of termination of
the Board of Marine Pilots

INTRODUCTION

Section 1.

(b)(2) It is necessary to give the Board of Marine Pilots (broad) statutory authority (including the authority to establish pilotage regions and maximum tariffs and the authority) to establish criteria for the training and licensing of marine pilots.

Sec. 08.62.010. Creation and membership of board.

There is created the Board of Marine Pilots. It consists of five (two) pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, (two agents or managers of vessels subject to this chapter.) one (two) public member in accordance with AS

08.01.025, and, the commissioner or the commissioner's designee. Not more than one pilot (and one agent or manager shall be from any one judicial district) shall be a member of any one pilot organization and each pilotage geographical area shall have at least one representative on the board.

Sec. 08.62.040.

- (4)(c)(A) (pilotage regions in the state)
- (b) (review and approve the articles, bylaws, and rules of pilot organizations;)
- (7) (audit a pilot organization or an individual pilot as necessary to implement and enforce this chapter;)
- (9)(B)(4) (standards under which a pilot may receive a license or endorsement to a license to pilot vessels in more than one pilotage region.)
- (e) The board shall conduct its business in a manner which is in compliance with the Alaska Ethics Act.
- (f) All examinations which the board uses in licensing shall be objective and written.
- (h)(2) A mandatory (random) drug and alcohol testing program for pilots licensed under this chapter.

Sec. 08.62.045 - Pilotage tariffs. DELETE THIS ENTIRE SECTION

- (a) The board shall adopt by regulation maximum tariffs that

may be charged by pilots for the provision of specific pilotage services. The board shall identify those expenses that are included in the tariff. In adopting maximum tariffs under this subsection, the board shall take into consideration

(1) reasonable compensation for actual time aboard a vessel as a pilot and for time engaged in preparing to provide pilotage services;

(2) differential compensation for seasonal and weather conditions, risks involved in providing pilotage service, and overtime;

(3) dispatch expenses, transportation expenses, and other associated costs directly related to the provision of pilotage services;

(4) reasonable overhead expenses that are necessary to provide year round pilotage services for the region; and

(5) other expenses identified by the board.

(b) A pilot organization recognized by the board, acting on behalf of its members may adopt a new or revised tariff for provision of pilot services if the pilot organization follows the procedures set out in (c) of this section. The tariff adopted under this subsection must include those expenses identified by the board under (a) of this

section, but may not exceed the maximum tariff set by the board. The tariff adopted under this subsection may be revised annually.

(c) A pilot organization shall send a notice of intent to adopt a tariff for provision of pilot services to the board and publish the notice on at least three days during a period of 14 consecutive days in a newspaper of general circulation in the state. The notice of intent to adopt a tariff shall include a copy of the proposed tariff, the name and mailing address of the pilot organization that intends to adopt the tariff, and statement of the time and place of adoption of the tariff. A pilot organization may not adopt a tariff until 30 days have elapsed from the date of the mailing of the notice of intent to adopt a tariff to the board or the last date of publication of the notice of intent to adopt a tariff. A tariff may not take effect until 30 days after the tariff is adopted by the pilot organization.

(d) A pilot organization recognized by the board or a member of the pilot organization may not charge a tariff for the provision of pilotage services that exceeds the maximum tariff set by the board, that is different from the

tariff adopted by the pilot organization, or that has not taken effect under (c) of this section.

Sec. 08.62.050 - Marine Pilot Coordinator. DELETE THIS ENTIRE SECTION

- (a) The department, with the approval of the board, may hire a marine pilot coordinator who is qualified to assist the board in administering and enforcing the provisions of this chapter. The coordinator is in the partially exempt service under AS 39.25.120.
- (b) The person who is hired as coordinator may not
- (1) be an active member of a pilot organization in the state;
 - (2) work as a pilot while employed as the coordinator, except to the extent required by official duties; or
 - (3) have a financial interest in a pilot organization or in a pilot vessel or other equipment used by a pilot organization.

Sec. 08.62.080

- (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.)

(b) (A pilot may not be licensed in more than one pilotage region at one time, unless the board determines that it is in the best interest of the state to license pilots for parts of more than one pilotage region.)

(c) A license issued under this chapter must identify the specific waterways and ports in each (pilotage region) geographic pilotage area in which a licensee is authorized by the board to pilot vessels. The board shall authorize a licensee to pilot vessels in a specific waterway or port (in a pilotage region) in any or all geographic areas upon the licensee satisfying the training and other requirements required by the board to pilot vessels in that waterway or port.

Sec. 08.62.090

(a) The board shall issue a deputy marine pilot license (for a marine pilotage region) to a person who

Sec. 08.62.093

(b) A person who applies for a deputy marine pilot license under this chapter shall provide proof satisfactory to the board of any of the following experiences or a combination thereof:

(5) three normal working years as a member of a professional pilot's organization, during which the person actively engaged in piloting while holding at least a license as a master of freight or towing vessel of not more than 1,600 gross tons.

(c) A person who applies for a deputy marine pilot license under this section shall possess an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the port, waterways or geographic area (for the pilotage region) for which the person seeks the deputy marine pilot license.

NOTE - this change to (c) directly revokes

12 AAC 56.029 (4) which reads:

Possess a valid deputy marine pilot license without geographical exclusions in the region for which the marine pilot license is sought.

Sec. 08.62.100

(a) The board shall issue a marine pilot license (for a marine pilotage region) to a person who

Sec. 08.62.120

(4) (A) engaged in piloting vessels subject to this chapter in the marine pilotage areas, or waterways or ports for which the license is to be renewed on a regular basis, considering the seasonal traffic (during at least 60 days of each calendar year) in the licensing period immediately preceding the licensing period for which renewal is sought, or

Sec 08.62.140 Fees.

The department shall set fees under AS 08.01.063 for applications, licenses, agent registration, investigations, (audits, and training.)

Sec. 08.62.163. Pilots as independent contractors. DELETE THIS ENTIRE SECTION.

- (a) Pilots licensed under this chapter are independent contractors and may not be employed as an employee of the owner or operator of a vessel subject to this chapter.
- (b) The owner or operator of a vessel subject to this chapter may not employ a person licensed under this chapter as an employee.

Sec. 08.62.165. DELETE ENTIRE SUB-SECTION.

- (a) (2) (The error, omission, fault, or neglect of the

pilot constitute an act for which the board shall
impose a disciplinary sanction under AS 08.62.150
(a) (1), (2), (3), (5), (6), (7).)

Sec. 08.62.175 - Regional marine pilot organizations. DELETE THIS
ENTIRE SECTION

- (a) To the extent permitted under federal and state law, persons licensed under this chapter may form organizations of pilots within each pilotage region established by the board.

- (b) the board shall recognize pilot organizations that satisfy the minimum standards established by the board by regulation

- (c) A pilot organization recognized by the board shall
 - (1) Promote a safe and reliable system of marine pilotage for the region in which the organization is recognized;
 - (2) provide for the dispatch of pilots who are members of the organization;
 - (3) adopt and revise tariffs for the provision of pilotage services by the members of the organization;

- (4) be open to membership by all persons licensed under this chapter to pilot vessels in the pilotage region in which the organization is recognized;
 - (5) operate or participate in a training program for pilots and deputy pilots that is approved by the board;
 - (6) cooperate with and assist the board in implementing this chapter.
- (d) A pilot organization recognized by the board may not begin operating until the articles, bylaws, and rules of the pilot organization are approved by the board on the basis of
- (1) uniform and nondiscriminatory application of the articles, bylaws, and rules to marine pilots and deputy marine pilots licensed under this chapter and trainees for marine pilot licenses;
 - (2) compliance with applicable laws; and
 - (3) effectiveness in
 - (A) promoting an efficient , reliable, and professional marine pilotage system in the region;
 - (B) maintaining a sufficient number of qualified pilots available for dispatch to serve the needs of vessels visiting the region during

each hour of the day and each day of the year to the extent that it is reasonably possible given the size of the membership of the pilot organization;

- (C) promoting training programs for marine pilots and deputy marine pilots that are approved by the board.

08.62.200. Termination of the board. The board terminates effective 6/30/98 unless otherwise extended by the legislature.

ASHBURN AND MASON

LAWYERS

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March 29, 1995

VIA TELECOPIER NO. 586-8252

Mr. Robert Evans
Juneau, Alaska

Re: CS for House Bill No. 260
Our File No. 8355.002

Dear Bob:

I have reviewed the Committee Substitute for House Bill No. 260. There are two separate provisions in the Bill that serve to reinforce the legal position that a pilot organization is not engaging in price-fixing when it sets rates for the services offered by the organization's pilot members.

Section 12 of the Bill amends, in part, AS 08.62.150(a)(8). The Section clearly implies that a pilot member can charge an amount for pilotage service that is the same as the amount set by the organization of which a pilot is a member. Indeed, the Section declares, in effect, that a pilot member must charge the amount set by his organization.

Section 16 of the Bill amends, in part, AS 08.62.175(C). The Section declares that a pilot organization shall enter into agreements with vessel operators concerning the terms of pilotage service to be provided by its members. Again, the Section appears to clearly recognize that the pilot organization will be negotiating and entering into price agreements with vessel operators on behalf of the pilot members of the organization.

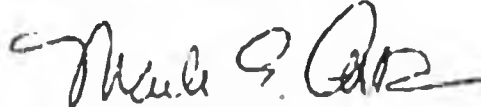
Mr. Robert Evans
Page 2
March 29, 1995

Both of these Sections reinforce the language of AS 08.62.045 which appears to authorize pilot organizations to set rates for its pilot members. Such statutory authorization strengthens the argument that there is no antitrust violation when a pilot organization sets rates for its member pilots.

Please contact me if you have any questions.

Very truly yours,

ASHBURN & MASON



Mark E. Ashburn

MEA:dt

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THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

Statutes and Regulations

Marine Pilots

December 1994

ALASKA

**DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING**

NOTE: The official version of the statutes in this document is printed in the Alaska Statutes, copyrighted by the State of Alaska. The official version of the regulations in this document is published in the Alaska Administrative Code, copyrighted by the State of Alaska. If any discrepancies are found between this document and the official versions, the official versions will apply.

Audit Report

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS

November 4, 1993



Audit Control Number:

08-1415-94

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

November 4, 1993

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF MARINE PILOTS

November 4, 1993

Audit Control Number

08-1415-94

The audit reports on whether the Board of Marine Pilots (BMP) should continue its existence. Currently AS 08.03.010 has BMP scheduled for termination on June 30, 1994. BMP would be allowed one year in which to conclude its affairs. We recommend that the legislature extend BMP, but remove all powers and duties that make BMP ineffective because of conflict of interest situations.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.



Randy S. Weiker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Marine Pilots (BMP) to determine if it should continue in existence.

Objectives

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether BMP should be reestablished. The law currently specifies that BMP will terminate on June 30, 1994 and will have one year from that date to conclude its affairs..

Scope and Methodology

Our audit reviewed BMP's implementation of the Marine Pilot Act of 1991 and how effectively the board exercised its powers and fulfilled its duties as required by that Act. The policy of the Act is *"to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state."* The Act is founded on the premise that any type of marine accident due to pilotage error, while low in probability, would have a serious adverse impact on the State of Alaska. This places BMP in the often difficult situation of having to strive for the highest safety standards, while developing regulations that encourage a competitive economic structure. Since House Bill (HB) 237, which would significantly lessen the competitive aspect of the Marine Pilot Act, was introduced in the first session of the Alaska State 18th Legislature, we have analyzed how the passage of that bill or a similar one would affect BMP's authority.

The scope of our review was limited by the lack of readily available safety performance measurement data from federal government agencies and the State. U.S. Coast Guard, Army Corp of Engineers and members and staff persons of the National Research Committee informed us that pertinent safety information for Alaska coastal waters is not current or readily available for our safety measurement purposes. We found the information does not lend itself to statistical comparison on safety between federal-licensed and state-licensed pilots.

During the course of our examination, we reviewed and evaluated the following:

1. applicable sections of state and federal statutes and regulations;
2. interviews with various state employees including staff within the Department of Commerce and Economic Development, Department of Law, Ombudsman Office,

Equal Employment Opportunity Office, Human Rights Commission, and Alaska Public Utility Commission;

3. interviews with U.S. Coast Guard personnel;
4. interviews with present and former board members;
5. interviews with Alaska pilots, national and local pilot associations;
6. interviews with National Research Committee members;
7. minutes of BMP meetings;
8. director of Occupational Licensing's correspondence files;
9. BMP licensing examiner's correspondence files;
10. BMP licensing files;
11. investigation and litigation files;
12. office of the Ombudsman closed case file;
13. budget documents, session laws and other legislative information relating to the board's operations;
14. internal reports and documents prepared by the board;
15. financial reports from the state accounting system;
16. Office of the Governor, Boards and Commissions' files;
17. prior year audit work papers and audit reports;
18. interviews with Federal Trade Commission employees; and
19. other documents and interviews as deemed pertinent.

ORGANIZATION AND FUNCTION

Chapter 106 SLA 1970, which established the Board of Marine Pilots (BMP), was made effective May 7, 1970. However, the statutes were significantly changed with the passage of the Marine Pilot Act of 1991 to broaden BMP's authority. The legislature felt it necessary to give BMP broad statutory authority, which included establishing pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. All but one section of that Act went into effect on July 2, 1991. That section, which required a pilot to be a member of a pilot association, did not go into effect until January 1, 1993. The policy, findings, and intent of the Marine Pilot Act stated, "*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 and coastal water of and adjacent to the state.*"

Membership on the board

BMP is composed of seven members. Membership consists of two pilots licensed under the statute who are actively engaged in that profession, two agents or managers of vessels subject to the statutes, two public members, and the commissioner of the Department of Commerce and Economic Development or his designee. All members must be residents of Alaska. Not more than one pilot member and one agent can be from the same judicial district (see

Recommendation No. 5). The public members cannot be engaged in the piloting profession, have a legal contract with a pilot, or have a direct financial interest in the piloting profession.

Duties of BMP

BMP's statutory responsibilities include:

1. Adopting regulations establishing qualifications of and required training for pilots and providing for examination of pilots.
2. Keeping a register of licensed pilots, licensed deputy pilots, and agents.
3. Adopting regulations requiring pilotage regions, amount of professional fees, and criteria to recognize pilot organizations.
4. Making copies of the statute and regulations available upon request.

Members of the Board of Marine Pilots

Glenn Reed, Assistant Commissioner,
Department of Commerce
and Economic Development
Dale Collins, Pilot
Michael O'Hara, Pilot
Bob Watt, Agent, Chairman
Donna Bungardner, Agent
Mark E. Springer, Public Member
John C. Klepper, Public Member

5. Reviewing and approving articles, bylaws, and rules of pilot organizations.
6. Auditing a pilot organization or individual pilot as necessary to implement the statute.
7. Reviewing and approving training programs conducted by pilot organizations.
8. Establishing and publishing the dates of future license examinations.
9. Establishing maximum tariffs (see sidebar to the right) that may be charged by pilots for the provision of specific pilotage services.

**ITEMS BMP MUST CONSIDER WHEN
ADOPTING A TARIFF**

Duties of the Department of Commerce and Economic Development

The Department of Commerce and Economic Development (DCED) provides administrative and investigatory assistance to BMP. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. On its own initiative, DCED may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which DCED has authority. DCED can issue an order that the person stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of a person, and issue subpoenas for the attendance of witnesses and records.

Alaska Statute 08.62.045 specifies that BMP shall consider the following when adopting regulations that set maximum tariffs:

1. reasonable compensation for actual time aboard a vessel as a pilot and for time engaged in preparing to provide pilotage services;
 2. differential compensation for seasonal and weather conditions, risks involved in providing pilotage service, and overtime;
 3. dispatch expenses, transportation expenses, and other associated costs directly related to the provision of pilotage services;
 4. reasonable overhead expenses that are necessary to provide year-round pilotage services for the region; and
 5. other expenses identified by the board.
-

Marine Pilot Coordinator

The department may hire a Marine Pilot Coordinator, with the approval of BMP, to assist the board in fulfilling its statutory duties. The Marine Pilot Coordinator cannot work as a pilot, be an active member of a pilot association, or have a financial interest in a pilot association or the equipment that it uses.

Role of pilot associations

Pilots usually form associations to provide service to the shipping industry. Pilot associations offer centralized dispatch of services to industry through its pilot members. The

associations either own pilot boats, or have agents whom make arrangements for pilot boats, to carry pilots to and from vessels. Pilot associations sponsor candidates by providing access to a training officer and vessels with which the association or their agent has a contract. The pilot fees are collected by the association and pilots receive a portion of the revenue collected.

BMP has established four pilotage regions in the State of Alaska and has recognized six pilot associations.

Region	Association	No. of Full-Time Members	No. of Associate Members	No. of Trainees
Southeast	Southeast Alaska Pilot Association	20	10	3
	Alaska Coastwise Pilot Association	7	6	5
Western	Western Alaska Pilots Association	4	-	-
	Alaska Marine Pilots	11	-	-
Southcentral	Southwest Alaska Pilot Association and Dispatching Services	20	2	4
Kuskokwim River	Kuskokwim Pilots Association	2	1	-

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BACKGROUND INFORMATION

Piloting is the act of directing a vessel into and out of areas where navigation has been deemed dangerous or difficult. The difficulties can include restricted waterways, such as channels, ports or harbors; tides, currents and water depths; and type and nature of traffic. A pilot can either be a member of the ship's crew or he can be independent of the crew and brought onto the ship solely for the purpose of guiding the vessel through pilotage waters. The pilot's knowledge of the local geography and weather of the waters he is piloting makes him invaluable to the vessel. The safety of the lives aboard the vessel and for the marine environment is the pilot's responsibility.

History of pilotage in the United States

Prior to the formation of the United States, many maritime states had already started regulating pilotage. The First Congress of the United States had to determine which functions would be administered by the federal government and which functions would be administered by state governments. The Commerce Clause of the Constitution grants the power to regulate interstate and foreign commerce to the federal government. To enable the states to continue regulating pilotage, an amendment was made to the Lighthouse Act of August 7, 1789, which stated

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

Since the passage of the Lighthouse Act, Congress enacted very few laws to impact the states' authority over pilotage. A law was passed in 1852 which provided for federally-licensed pilots to be in charge of vessels propelled in whole or in part by steam and carrying passengers. Since 1871, responsibility for the regulation of marine pilotage is shared by the federal government and state governments. In general terms the federal government, through the United States Coast Guard (USCG), regulates pilotage on enrolled vessels. Enrolled vessels are registered in the United States and engaged in commerce between American ports. However, individual states are given the right to regulate pilotage on registered vessels. Registered vessels are those engaged in foreign trade. The U.S. Customs Service determines in which trade a vessel is operating.

Requirements for federal licensing

The USCG enforces federal pilotage laws and issues federal licenses to individuals who meet its requirements. In most states, if not all, an applicant must have a USCG pilot license in order to obtain a state license. The USCG license is usually referred to as a minimum standard of competence license. The requirements for a USCG license include a required number of months of sea service, a certain number of round trips, and passing a written

examination. The USCG appointed a Pilotage Study Group to make recommendations on pilotage in U.S. waters. The report issued on September 15, 1989 recommended increasing the sea service time and tightening record-keeping requirements to document service qualifications.

A federal license is valid for a period of five years. For renewal of the license, a pilot has to submit evidence of one year of sea service within the previous five years. Pilotage endorsements on the license do not expire, but the pilot must make one round trip refamiliarization trip over the route endorsed every five years. For long or extended routes, the pilot does not have to physically make the refamiliarization trip, the pilot can be certified based on his review of publications and charts.

Requirements for state licensing

Since knowledge of local geography is an essential aspect of the pilotage profession, state licensing procedures require intensive on-the-job training to gain the necessary experience. Some states have apprenticeship programs that provide on-the-job training. Entry into an apprenticeship program often requires little or no previous experience, but the training may last up to seven years. Other states, including Alaska, have deputy pilot programs that provide on-the-job training. Training for deputy marine pilot programs is often for a two-year duration, which is considerably less time than the apprenticeship program. This is because the entry requirements for the deputy pilot includes considerably more sea service experience than the apprentice. Alaska's deputy marine pilot qualifications could take from one to three years to attain. All training programs require the trainee to ride a ship with a fully licensed pilot, observing their handling of the ship. Over time the trainee begins to handle the ship himself under the pilot's guidance.

Licenses granted by the states are for a set period and must be renewed at intervals ranging from one to five years. Alaska has a biennial renewal. According to the American Pilots' Association, several states have continuing training programs or requirements. Alaska has also incorporated renewal requirements for marine pilots. Below is an excerpt from the statute on Alaska's continuing training program.

AS 08.62.120. Renewal of License. (a) In order to renew a marine pilot license, a person who is licensed under AS 08.62.100 shall . . .

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

(A) engaged in piloting vessels subject to this chapter in the marine pilotage region for which the license is to be renewed during at least 60 days of each calendar year in the licensing period immediately preceding the licensing period for which renewal is sought; or

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

Vessels subject to Alaska marine pilotage regulations

A pilot is required to be employed by vessels navigating in the inland and coastal waters of or adjacent to the State, as defined by the board. However, certain vessels are exempt as detailed below.

AS 06.62.180 Exemptions. This chapter does not apply to

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

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

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

(4) vessels of United States registry of less than 300 gross tons and towboats of United States 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 coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

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

(6) pleasure craft.

AS 08.62.185. Certain licensed pilots required for oil tankers. (a) Any oil tankers, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state water beyond Alaska pilot stations employ a pilot licensed by the state under this chapter.

(b) The pilot required in (a) of this section shall control the vessel during all docking operations.

Pilot discipline

The USCG investigates pilotage incidents that involve pilots operating under their federal license. The USCG has the authority to issue a letter of warning or reprimand, levy a fine, or seek criminal prosecution. The USCG may suspend or revoke a pilot's federal license if the pilot violated maritime law or regulation or was negligent or inattentive to his pilotage duties. At the present time, the USCG has no jurisdiction over a pilot's state license if the pilot was operating under that license at the time an incident took place. Both the National Transportation Safety Board and the USCG Pilotage Study Group recommend that federal law be changed so the USCG can take action on a pilot's federal license, even if an incident occurred when the pilot was acting on his state license.

All 24 maritime states have procedures for disciplining pilots when incidents occur while the pilot is operating on his/her state license. In most states, the pilot is required to report in

writing an incident to the oversight entity. In Hawaii the oversight entity is a state department, but in the other 23 states the oversight entity is a board or commission that may or may not include pilot members. In many states, incidents are investigated and findings presented to the oversight entity by a state agency. If just cause is shown, the oversight entity can suspend or revoke the pilot's state license. In Alaska, reports are investigated by DCED, but BMP has the authority to suspend or revoke a pilot's license. BMP also has the statutory power to suspend or revoke a pilot's state license if his USCG license has been conditioned, suspended, or revoked.

Marine Pilot Act of 1991 changes Alaska's pilotage statute

Alaska's Office of the Governor, Division of Policy, issued a report in November 1990 titled, *Improving Alaska's Marine Pilotage System*. The report stated that Alaska's statute treated licensing as an individual right rather than recognizing its importance as a public service. The emphasis on individual's rights had diverted BMP's attention from public safety issues facing state pilotage as BMP was constantly dealing with controversies with individual pilots. The report pointed out Assistant Attorney Generals questioned whether existing language granted BMP the broad discretionary powers intended by the legislature. The report stated, "*weak authority to set specific licensing standards has resulted in the charge that Alaska's marine pilot standards are the lowest among the maritime states.*"

In response to the report, the legislature drafted a bill that came to be known as the Marine Pilot Act of 1991. The Act made significant changes to Alaska's pilotage statute. A policy, findings, and intent section emphasized safety by requiring compulsory pilotage on the inland and coastal waters of the State to prevent the loss of lives and property and to protect the marine environment. The legislature gave BMP broad statutory authority, including setting pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. The effectiveness of BMP's use of this authority is discussed on page 31, in the Analysis of Public Need section of this report.

However, two aspects of the Act created a competitive economic structure for pilotage in Alaska, which was directly contrary to recommendations made in the report. The report had a section on competition and its potentially adverse impact on safety. But the legislature allowed a competitive economic structure by stating the board could not adopt a regulation or take any other action resulting in anti-competitive activities. The report had recommended, "*The Board should be authorized in statute to establish an enforceable tariff schedule, to avoid unhealthy rate competition among pilots.*" Instead, the legislature empowered BMP to adopt maximum tariffs. This means pilot associations can compete with other associations in their region based on price, as long as the maximum tariff is not exceeded.

Impact of economic structures on the pilotage profession

Of the 24 maritime states, competition exists mainly in four states — Connecticut, Oregon, Hawaii, and Alaska. However, we understand that certain ports in California and some East coast areas also have competition. Traditionally, the pilotage profession has been handled

by states as a publicly-regulated monopoly, in much the same manner as a utility company. This is usually accomplished by setting fixed tariffs that pilot associations can charge for their services and, in many states, by limiting the number of licenses granted. The reason advanced for a state endorsing a regulated monopoly is to protect the state's interests by creating pilot independence from the shipping industry. Most pilots and their national association have long argued a pilot is not free to base his piloting decisions solely on safety considerations if he has to solicit jobs from industry. If acting in an employee or contractee situation, a pilot may decide to move a vessel in marginal situations to meet a shipowner's schedule.

Proponents of competition argue the shipping industry is unlikely to place pilots in a position of having to compromise their independent decision-making, because the shipowner has the most to lose if there was an accident in terms of money for cargo, vessel, and insurance premiums. Pilots in favor of competition also allege that incidents go unreported and uninvestigated when there are no competing pilot associations.

A July 23, 1992 performance audit conducted by the State of Florida, Office of the Auditor General recommended a competitive economic structure in spite of foreseeing potential problems if that direction were taken. The audit said additional regulations would likely be needed to overcome potential problems in the areas of training programs for pilot candidates and requiring pilot dispatches for industry. The legislative response to this performance audit argued that piloting is a "natural monopoly," and justified anti-competitive regulatory provisions upon this monopolistic structure.

The Federal Trade Commission (FTC) has performed several reviews of various states' statutory and regulatory policies to determine if they are too restrictive or anti-competitive. Reviews were performed on the State of Florida Board of Pilot Commissioners and the State of South Carolina on the Commissioners of Pilotage for the Port of Charleston. FTC has stated in these reviews that *"We have no reason to believe that harbor pilotage is a natural monopoly. For that reason, price regulation likely represents a response to entry restrictions, which may enable incumbent pilots to charge higher than competitive prices."* The FTC also stated in their review that a direct approach through vigorous safety regulations and enforcement is more effective in promoting safety than the indirect method through economic regulation. Interviews with FTC staff in Washington D.C. and the Seattle Regional Office have confirmed that these statements reflect the current attitude of the FTC regarding marine pilotage.

HB 237 would make Alaska pilotage profession anti-competitive

House Bill (HB) 237 was introduced into the first session of Alaska's 18th Legislature. While this bill is still undergoing amendment as it goes through the legislative committee process, the original bill calls for limiting the number of licenses in a region based on the number needed to assure the safety of human life, property, and the marine environment. The bill also removes the tariff setting duty from BMP and calls for the Alaska Public Utilities Commission to adopt a fixed tariff.

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REPORT CONCLUSION

Alaska Statute 08.03.010 requires that the Board of Marine Pilots be terminated on June 30, 1994, with Alaska Statute 08.03.020 providing for a one-year wrap up period. As of the date of this report, the board is technically in its final year of operation, and if no action is taken by the legislature, the board will be dissolved June 30, 1995. We recommend that legislation be enacted to extend the board's termination date to June 30, 1998, but remove all powers and duties that make BMP ineffective because of conflict of interest situations. (See Recommendation No. 1)

The Findings and Recommendations Section describes areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the board. In our opinion, regulating and licensing of marine pilots within the State of Alaska is a necessary function to ensure the protection of human lives and the marine environment.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should extend the Board of Marine Pilots (BMP) termination date to June 30, 1998.

BMP has been given the responsibility in statute to provide for the maintenance of efficient and competent pilotage service on the inland and coastal waters of and adjacent to the State. Regulation and licensing of qualified professional pilots is necessary to protect shipping and the safety of human life and marine environment. As discussed in Analysis of Public Need on page 31, the board has only been partially successful in adopting regulations, licensing qualified applicants, and approving the hiring of a Marine Pilot Coordinator to conduct investigations which the board hears for disciplinary purposes.

Although BMP has attempted to operate in the public interest, its success has been hindered by circumstances beyond the board's control. We identified two duties of BMP where the board has been ineffective. The two causes which limit the board's effectiveness include the conflict of interest issue (see discussion on page 16) and the lack of economic and financial backgrounds of individual board members. The two board duties which give rise to a conflict of interest are establishing a maximum tariff (see Recommendation No. 3) and participating in the examination of license applicants (see Recommendation No. 4).

BMP has established goals for itself that are in direct opposition to its statutory policy mandate to operate in a competitive environment. Until the board can document evidence that a non-competitive system is superior in assuring public and environmental safety, they should follow statutory mandates. In this report, we identify areas where improvements are needed and recommend action to correct those weaknesses. These areas include training, dispatching, enforcement or sanctions, examinations and tariffing (See Recommendation Nos. 2, 3, and 4). However, these weaknesses do not solely prove that a competitive structure will not work for the Alaskan marine pilotage profession. In our opinion, BMP has not exerted sufficient effort to resolve these weaknesses. Instead, their efforts have tended to advocate a monopolistic structure rather than a competitive one. The Federal Trade Commission (FTC) has suggested addressing safety concerns directly through vigorous enforcement of safety regulations rather than indirectly through economic regulations.

At the present time, the board has listed FY 94 goals for itself that would make the pilotage profession non-competitive. Some of the goals listed in BMP's FY 93 annual report are to encourage and support reform of pilotage statutes, including eliminating competition within regions and establishing fixed tariffs. These goals are discussed further on page 31 in the Analysis of Public Need section.

While BMP has not been entirely effective at meeting its goals, we believe removing time-consuming economic duties from BMP that create conflict of interest situations will enable BMP to focus their attention on areas within their realm of expertise. Duties that are

CONFLICT OF INTEREST ISSUE

The manner in which the Board of Marine Pilots (BMP) votes on certain issues has been greatly impacted by the Ethics Act. Below are the Alaska Statutes, Article 2, which defines the code of ethics applying to public officers, including board members.

Sec. 39.52.110. Scope of Code. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust.

Sec. 39.52.120. Misuse of Official Position. (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public Officer may not . . .

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

(5) attempt to benefit a personal or financial interest through coercion of a subordinate.

During the period of our review, three ethics complaints have been filed against board members. The Attorney General's Office has stated in a letter [redated for print January 1, 1992, RE: Complaint pursuant to the Executive Branch Ethics Act (AS 39.52)] that "A potential conflict of interest exists whenever the board takes actions that will benefit the member's association and, presumably, the member." As a result, certain members are precluded from voting on various board issues.

On the advice of the assistant attorney general assigned to the BMP, the two pilot members have recused themselves from discussing and voting on tariff issues, recognition of associations, participation in license examinations, or in reviewing upgrade applications that apply to their particular region. In addition, the two agent members do not participate in discussion and voting on tariff issues for the regions in which they reside or work. In one instance, this has resulted in the board voting on a licensing issue with only three members participating, which may not constitute a legal quorum.

with in the board's expertise include licensing members into the profession, establishing continuing education and drug testing requirements, monitoring activities of pilot associations through approval of articles and bylaws, and disciplining members who violate the statute and regulations. Those duties are commonly the purview of boards monitoring their profession.

We recommend BMP's termination date be extended, and appropriate regulatory and statutory changes be made to improve BMP's effectiveness. The regulatory and statutory changes we suggest are included in Recommendation Nos. 2, 3, 4, 5, and 8. We further recommend that BMP's operations and related goals conform to the statutory policy mandate. If BMP is opposed to those mandates, the board should seek legislative revision by presenting clear and convincing evidence in support of their position.

Recommendation No. 2

Statutes and regulations should be revised and strictly enforced to adequately protect the best interest of the state.

- A. Competition requires statutes and regulations to ensure access of adequate training and dispatching of services.

Access to Training

The main reason for the pilotage profession is knowledge of local waters. A federal license only addresses, in a cursory way, a person's ability to pilot a ship; the federal license is weak on local knowledge. Trainees for state licenses can gain knowledge of local waters by working a port on a simulator or by gaining experience on the actual waterway. At present, there are no simulators in Alaska and few Alaskan ports have been installed on simulators in other states. Therefore, a trainee needs to gain experience by having access to actual vessels operating in waterways in which the trainee desires to be licensed.

Trainees in the Southeast Region, which until a few months ago was the only region with two competing pilot associations, find it difficult to obtain access to vessels in order to complete their experience requirements (see page 36 of Analysis of Public Need for explanation of Southeast Region situation). The sponsoring association assists the trainee by providing access to vessels that it has contracts with and by having experienced pilots conduct the training. However, the sponsoring association may not have contracts with vessels for all waters and ports with which the trainee needs experience. Naturally, a competing association is not likely to make vessels they have contracts with and their experienced pilots available to competitors for training purposes.

We recommend the board be given statutory authority requiring pilot associations to train all qualified candidates regardless of affiliation. However, pilot associations do not ultimately control access to a vessel. If the shipping industry wants the pilotage profession to remain competitive, industry needs to make sure their vessels are available to trainees from any pilot association. By requiring pilot associations to train qualified applicants in an equitable and timely manner, sufficient qualified pilots should be available to meet the needs of industry.

Dispatch of Pilots

With competition, pilot associations may choose not to provide services to less lucrative ports or shipping companies. The Director of the Division of Occupational Licensing (OL) said, "*The State can neither guarantee marine pilotage services to industry nor insure the professional competency of marine pilots if the forces of competition dictate the terms and structure of the Alaska Pilotage System.*" A situation occurred in the Western Region in 1993 where one vessel moved in Dutch Harbor without a pilot and there was a threat other ships would also move unless a pilot was available on very short notice (see page 32 of Analysis of Public Need for explanation of Western Region situation). When BMP adopted emergency regulations to ensure pilotage service, a Superior Court judge ruled against the board and said that if an emergency was, in fact, found to exist the State could use other alternatives to ensure the availability of adequate pilotage services.

We recommend that the legislature specifically give BMP authority to revoke recognition of a pilot association or impose individual sanctions on a pilot or association who has a qualified pilot available, but refuses to provide pilotage services when requested. In addition, BMP should evaluate and recommend to the legislature other methods of solving disputes between competing associations. One possibility would be a law that requires resolution of disputes through binding arbitration.

- B. Allegations of pilot misconduct should be expeditiously handled by OL and the board. Sanctions levied should be equal to the infraction.

Reporting

A pilot is required by regulation to report to the board within 10 days any incident of a vessel they are piloting going aground, colliding with another vessel or a dock, experiencing any casualty, or being damaged in any way. If a vessel is damaged, the pilot must report the incident as soon as possible after returning to shore. A pilot who fails to report an incident is subject to having his license suspended at the board's discretion. According to a former Marine Pilot Coordinator, pilots rarely report their own accidents timely. However, OL has found one advantage of competition is that all marine accidents, no matter how minor, get reported by competing marine pilots. If competition were to be eliminated, BMP would have to become more proactive and would need to exercise its authority of suspending a pilot's license if he failed to report a marine incident.

Investigating

The Department of Commerce and Economic Development, Division of Occupational Licensing (OL) has not been following up on investigative cases regarding marine incidents in a timely manner. Furthermore, there is no documentation of case prioritization. Of the ten cases we reviewed, two had no action in the past seven months. The Anchorage investigator stated that he did not have time. The Division of Legislative Audit had cited the same problem in previous sunset audits of this board.

The Office of the Governor, Division of Policy had recommended in their *Improving Alaska's Marine Pilotage System* report of November 1990 that OL hire, with BMP approval, a Marine Pilot Coordinator to investigate accidents and incidents of pilot misconduct. Although this position was created and originally filled in January 1992, it was vacant from December 1992 to March 1993 and from August to October 1993. Investigations are being conducted by the Director of OL and by OL investigators. Pilots under investigation often continue to hold their license and work while an investigation is being conducted. If an investigation takes too long, the public could be endangered by an incompetent or negligent pilot. OL should establish documentation procedures to prioritize and track cases on a continuous basis. OL should work cases on a timely basis and close those files which will not go to a hearing.

Disciplining

One would expect sanctions to be immediate and severe in a profession whose national association lobbies for a regulated monopoly because safety is of paramount concern. Both the USCG and other states have been criticized in law reviews for the lack of consistent disciplinary decisions and how lax some sanctions are compared to the magnitude of the incident. In a 1985 sunset audit, the Hawaii Legislative Auditor found the Board of Pilot Commissioners failed to take timely disciplinary action, was selective in its enforcement of rules, and had failed to develop adequate rules.

Alaska's marine pilotage statute is founded on the premise that any type of marine accident due to pilotage error while low in probability, would have a serious adverse impact on the State. Alaska Statute (AS) 08.62.150 states the board shall impose a disciplinary action; which can include a fine, letter of reprimand, or suspension or revocation of the pilot's license; if the board finds the pilot committed one of the offenses listed in that statute. Since the Alaska statute is founded on the premise of low probability, but high impact, which is reflected in Alaska's entry and licensing requirements, we question whether the maximum civil fine of \$5,000 (AS 08.62.155) that the board can impose is sufficiently high enough.

Recommendation No. 3

The legislature should remove the responsibility of setting tariffs from the Board of Marine Pilots.

Alaska Statute (AS) 08.62.045 requires the Board of Marine Pilots to adopt by regulation maximum tariffs that may be charged by pilots for the provision of specific pilotage services. We recommend that the responsibility of setting a maximum tariff be taken away from the board for the following reasons.

Untimely Establishment

Prior to the Marine Pilotage Act in 1991, the board was not required to set tariffs, but to establish the standards by which pilotage fees may be established and to pay for audits, whenever necessary, to collect information needed to apply the standards.

The tariff, that was established in 1979, remained the same until the 1991 Act. SLA 1991 Chapter 89, Section 33 directed the board to implement the requirements for tariffs before January 1, 1992. The board did not meet this time requirement. Nor have they met subsequent time requirements.

The new tariff was eventually adopted by the regulations and became effective May 1992 with a repeal date of January 1, 1993. As of September 27, 1993, proposed regulations for 1993 tariffs have not gone into effect. According to OL's regulations specialist, both pilots and industry do not like to be locked into a tariff for a period longer than a year; yet the board finds it impossible to adopt each year's tariff in a timely manner.

Time-Consuming Process

The board expended a considerable amount of time and effort into the establishment of the 1992 tariff. Pilot associations presented proposals that included proposed rates for their region along with their justification for the rates. BMP requested information on individual pilot income from associations so a comparison could be made to information provided by other states on their average pilot income. Some of the associations were cooperative, but other associations never provided the requested information.

Also, the board created a panel, consisting of two board members and two non-board members, to assist them in their efforts to establish tariffs. While the panel expended some effort, it was eventually abolished without providing any substantive information to the board.

For the 1993 tariff, pilot associations submitted proposals which were reviewed and discussed by the board. Throughout the process, public comments were obtained and evaluated. Since November 1991, tariff setting has been discussed at almost every board meeting. We were told that on some occasions it was discussed over a two-day period.

Some individuals feel that, because the board has to spend so much time on tariffs, other issues, such as safety and licensing, are not being dealt with on a timely basis.

Arbitrarily Set

To determine how tariffs were set, we reviewed minutes of board meetings and some of the proposals presented by the pilot associations. We reviewed proposals for one region and saw one association proposing an 80% increase and another a 98% increase. We were told that another region proposed an increase of approximately 300%. Also, we discussed this issue with individuals involved in the process.

We could not confirm that a specific methodology was used to establish the tariff that was adopted for 1992. We have been told that such a methodology does not exist because the tariff was arbitrarily established as a result of a compromise between the board, industry and pilots.

Except for the Western Region, all ports in May 1992 increased by 50%. The tariff for the Western Region increased by 35%. The proposed rates for 1993 show a change from the May 1992 rate for only the Southcentral and Western Regions. All ports in the Southcentral Region increased by 33% and ports in the Western Region by 27% and 33%. Rates for the newly created Kuskokwim Region have been proposed and are in the process of being adopted.

Require Financial Expertise

Prior to adopting a tariff, AS 08.62.045(a) requires the board to consider various expenses and compensation related to pilotage services. However, the membership of the board does not require that anyone have the necessary expertise to analyze economic or financial information.

One of the proposals we reviewed contained some expenses for the association. There was no indication that the amounts were obtained from audited financial statements. When financial data is provided for future tariff setting, it should be prepared by an independent party and compiled in a manner that is uniform for all regions.

Conflict of Interest

With two agents and two pilots on the board, a majority of the membership has, at some point, a direct financial interest (see Conflict of Interest discussion on page 16) in the decisions pertaining to tariffs. When tariffs are set for the regions they represent, members have to recuse themselves. When this is done, it reduces the effectiveness of a seven-member board.

Because of the concerns enumerated above, we believe the legislature should remove the responsibility of establishing tariffs from the board. We understand such an action is being considered in House Bill No. 237, which was introduced in March 1993. It places the

responsibility of establishing a fixed tariff with the Alaska Public Utilities Commission (APUC). We agree that the responsibility of establishing tariffs should be removed from BMP. Assigning this duty to APUC is an alternative that should be considered and evaluated.

Recommendation No. 4

The examination process for marine pilots needs to be revised.

The Board of Marine Pilots (BMP) has been given statutory authorization to examine applicants for deputy marine pilots and marine pilots as they deem necessary. Through regulation, the board has required an oral examination and a written examination.

12 AAC 56.070. EXAMINATIONS. (a) The examinations required by 12 AAC 56.030(b), 12 AAC 56.040(b) and 12 AAC 56.050(b) for permanent licensure will be given at least once a year at a meeting of the board.

(b) Both the written and oral examination will cover the following topics:

- (1) international rules of the road;*
- (2) seamanship, including shiphandling underway, docking and undocking, including use of tugs and anchors, and emergency procedures;*
- (3) chart navigation, including aids to navigation, chart symbols and abbreviations, and use of charts in piloting;*
- (4) rules and regulations, including all federal and state statutes and regulations, affecting the piloting of vessels in compulsory pilotage waters of Alaska;*
- (5) pilot responsibilities, including duties of a pilot, relationship between master and pilot practical operation of marine radar including plotting, and engine order and rudder commands for U.S. merchant vessels, U.S. naval vessels, and foreign merchant vessels; and*
- (6) local knowledge of individual geographical areas, including routes from sea to port and port to port, change of course points and distances passed abeam, names and locations of landmarks, waterways and aids to navigation, tides and currents, weather, restricted areas and explosive anchorages, dredged channels, cable areas, and other anchorages, docks and dangers.*

Our review of examinations determined that topics examined were in accordance with regulations, and the individuals licensed by the board had received the required percentage for passage. However, there is an apparent need for a change within the current written and oral examination process.

A. The written examination should be more objective.

The BMP has attempted to have a pilot board member be present at the examination. OL has stated the purpose of the pilot's presence is to answer any technical questions that may come up during the examination, which departmental staff cannot answer. The conflict of interest issue (see page 16) has discouraged pilot board members operating within the same region as an examination applicant from participating in this process.

If a pilot board member is involved in examining pilots of a rival association, a question of unethical treatment could be raised by the applicant. In response to one such question, the Attorney General's Office stated that the board member questioned in a particular case "*consistently administered exams fairly and objectively.*" However, the Attorney General's Office advised the board to consider having the non-rival pilot proctor examinations, unless it posed an inconvenience. Nevertheless, pilots are more cautious and less likely to proctor an examination for fear of having an ethical complaint filed against them.

By making the examination more objective, the need for any exchange between the applicant and proctors could be diminished or even eliminated. This would remove pilot board members from a potential conflict of interest situation and alleviate any fear the applicant has of being wrongfully denied a fair chance at successful passage because of undue influence from competing forces.

B. The oral examination, as it is currently structured, should be eliminated.

The process for the oral examination of marine pilots involves the board members asking the applicant a number of questions from a pool of previously prepared questions for that region. The applicant is then required to respond to the question(s). The topics asked are the same as the written examination defined in 12 AAC 56.070.

The oral examination has not been the sole determinant in the decision to deny a license to a particular applicant. Thus, its usefulness is questioned. Because of its nature, an oral examination creates a feeling of arbitrariness unless the oral process is sufficiently documented. However, we found BMP lacks sufficient documentation on their oral examination procedures. There is no reporting of which questions the applicant was asked, how they responded, and how the individual score was derived. With the increase in challenges of board members on the conflict of interest issue, this is one more reason to eliminate the oral examination process and concentrate on the written examination. Unless the subjectivity is eliminated and documentation procedures are improved, we recommend elimination of the oral examination.

The BMP has been given the responsibility of licensing qualified applicants to pilot vessels in Alaskan waters. By making the written examination more objective and eliminating the oral examination, we believe the BMP would be more effective and efficient in performing this duty.

Recommendation No. 5

The statutory criteria for appointment and regional representation of members to the BMP should be refined and strictly adhered to by the governor during the selection and appointment process.

Board members are appointed by the governor, and the creation and composition of those boards are defined within Alaska statutes.

AS 08.01.020. Board Organization. Board members are appointed by the governor and serve at the pleasure of the governor.

AS 08.62.010. Creation and membership of the board. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or the commissioner's designee. Not more than one pilot and one agent or manager shall be from any one judicial district. All members of the board shall be residents of the state.

According to our review of board appointments, from a technically legal perspective, the board has been adequately composed per the statutes. However, public and agent member appointments raise some concerns which should be addressed.

Public Member Criteria

The main purpose for public membership on regulatory boards is to add an objective viewpoint which is not swayed towards the profession or the industry which financially rely on that profession. If a public member is not independent from the profession and industry, objectivity could be compromised. Below is the legal criteria to be used for public member appointments to boards and commissions.

AS 08.01.025. Public members. A public member of a board may not

- (1) be engaged in the occupation that the board regulates;*
- (2) be associated by legal contract with a member of the occupation that the board regulates except as a consumer of the services provided by a practitioner of the occupation; or*
- (3) have a direct financial interest in the occupation that the board regulates.*

In one instance, a public member appointed by the governor to BMP had an indirect financial link to the cruise ship industry. A representative of the industry sent a letter to the board member which an Assistant Attorney General referred to as a "thinly-veiled threat" imposing

economic sanctions against the member. In response to this letter, the member resigned his board seat. We question whether an appointment of this nature can be independent of the forces of industry.

It is our opinion that if an individual has a financial interest in the pilotage profession, whether that be direct or indirect, they should not be appointed as the public member to the board. This financial interest should not be analyzed only if related to pilots, but to the industry which is dependent on pilotage services as well. To avoid this in the future, the board should recommend a change in the statutes which would eliminate a public member candidate with any financial interest (direct or indirect) to the pilotage profession or the industry utilizing that profession.

Agent Member Criteria

An agent appointment to the board has also raised some concerns which should be addressed. An agent member of the board is not currently engaged in an agent's capacity to provide pilotage services. However, the member has properly registered with the State as an agent as required by statute (see below).

AS 08.62.187. Registration of agents required. A person may not act as an agent of a vessel subject to this chapter unless the person's name appears on the register of agents kept under AS 08.62.040(a)(3).

Yet, by definition within the regulations, an agent member must be acting on behalf of an owner or operator of a vessel to secure pilotage services.

12 AAC 56.990. DEFINITIONS. In this Chapter (1) "agent" means a person residing within the state who acts on behalf of the owner or operator of a vessel with actual or apparent authority for the purposes of securing pilotage services.

We question whether this appointment was actually how the legislature intended agents to be represented on the board. If this individual has not acted in the profession (an agent) in which they represent on the board, how effectively do they represent that profession?

It is our opinion that an agent member of the board should be actively engaged in contracting with an owner or operator of a vessel to secure pilotage services, or, at the very least, be recently retired from that profession. This will prevent an individual not active in this field from representing an industry in which they are not considered a "peer."

Regional Representation

While BMP appointments have met the criteria of not more than one pilot and one agent or manager being from any one judicial district, we question whether this requirement is meaningful to the pilotage profession. If the point of the requirement is to ensure adequate representation for all pilots, then this requirement does not ensure representation. Judicial

districts and pilot regions recognized by the board do not coincide. This means technically correct appointments could still result in two members from the same pilot region but different judicial districts. We recommend that the wording of AS 08.62.010 be changed to require not more than one pilot and one agent or manager shall be from the same pilot region recognized by the board.

By making the revision to the public member criteria and assuring that industry is adequately represented on the board through the agent seat, the composition of the board will be as intended by the legislature. Changing the geographic location criteria from judicial district to pilot region will make the board more representative and more effective in accomplishing its purpose. We further recommend that the governor adhere to the public and agent member criteria when making appointments to the BMP.

Recommendation No. 6

The Department of Commerce and Economic Development (DCED) should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

OL's methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and printing of board applications and statute booklets. Other costs, termed indirect costs, are allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

Effective August 24, 1992, DCED was required to establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for that occupation (AS 08.01.065(c)). Prior to FY 93, DCED could establish fees that reflected, but did not exceed, the actual costs of the activity for which the fee was charged and could establish a fee at less than full cost if they deemed it unreasonable to impose the full cost of the activity on the licensee.

Our office and OMB have both reviewed OL's cost allocation methodology to determine if it is sufficient to meet the requirements of AS 08.01.065(c). Both our office and OMB do not believe that OL's cost allocation methodology distributes costs reflective of the actual effort spent. The primary disparity involves the classification of licensing examiners', investigators', and hearing officers' time. The manner in which these three categories of employees' cost have been allocated prior to FY 94 can cause occupations with a large number of licensees to absorb costs that are not associated with the actual effort spent regulating their profession.

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the spreadsheets has not been retained. Review of selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

In their September 1993, *Occupational Licensing Fee-Setting Policy Assessment* report OMB made seven recommendations to OL on how to allocate costs so that the intent of AS 08.01.065(c) is met. According to OMB's report, "A follow-up review for this project will be scheduled for March 1994." DCED has recently indicated that, for the determination of the FY 94 fees, they will allocate costs for licensing examiners, investigators, and hearing officers based on estimated time spent by those employees, with periodic adjustments to actual time spent in accordance with our office and OMB's recommendations. As of October 1993, the allocation of direct and indirect costs using FY 93 expenditure data has not been performed.

DCED should continue to work with OMB in establishing fee levels for occupational licensees that are more reflective of actual regulatory cost of the occupation.

Recommendation No. 7

OL should continue their efforts to adequately provide public notice of board meetings and application deadlines for examinations.

OL has not consistently provided adequate public notice of board meetings and application deadlines for examinations. Alaska Statute 08.01.050 requires the department to publish notice of examinations and meetings. Alaska Statute 44.62.310 requires reasonable notice for all meetings required to be open. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Applications for examination must be received by the board at least 60 days prior to the scheduled examination (12 AAC 56.070).

OL's internal policy defines reasonable notice as at least two weeks before a regularly scheduled meeting and at least one week prior to an unplanned teleconference. We reviewed the public notices of 22 BMP meetings, including teleconferences and examinations, and determined that six, or 27%, were not adequately noticed in accordance with OL's internal policy. Four of those six errors related to teleconferences, and the remaining two errors were related to examination application deadline. However, the errors in the application deadline for examinations did not appear to impede applicants for licensure.

OL has a large volume of public notices and the division's public notice process is very labor intensive. OL is in the process of initiating a system to automate the public notices.

OL should continue their efforts to automate the public notice process in order to ensure adequate public notice.

Recommendation No. 8

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the board performed these duties.

For example, the Marine Pilot Coordinator is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. As a result, board members may not review the minutes until several months later, when they may not be able to properly determine their accuracy. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

Recommendation No. 9

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act, as does Law. Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1991, no reports were submitted to Law. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition, division

personnel have indicated that there is some confusion as to what should be reported. While staff at Law believe that OL understands what should be reported, written policies and procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

Recommendation No. 10

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review the licensure application for each professional occupation to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The Deputy Marine Pilot, Biennial Renewal of Marine Pilot License, and the Vessel Agent Biennial Renewal applications require height, weight, and hair and eye color. The Biennial Renewal of Marine Pilot License and Vessel Agent application also asks the sex of the applicant. EEO, within the Department of Administration, Division of Personnel, discourages agencies from asking applicants information on sex, height, weight, and hair and eye color. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the board members reviewing the application for licensure.

The application forms used by OL should be reviewed with EEO to make sure the requested information is pertinent to the licensure of deputy marine pilots and vessel agents. OL indicated this information is requested for identification purposes to prevent fraud when a licensee moves from one state to another. If this information is considered necessary for identification, to prevent fraud, or for other reasons, it should be separated from the application prior to review of the application for licensure.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

BMP has only been partially successful at operating in the public interest. Some of the board's lack of success has been within their realm of control and some circumstances have been beyond the board's control.

Areas within the board's control include the goals they establish for themselves, licensing pilots, establishing tariffs, and examination procedures. In the Marine Pilot Act of 1991, the legislature established a competitive environment for marine piloting. However, the board has developed goals that are contrary to this mandate. Until the board can document evidence that a non-competitive system is superior in assuring public and environmental safety, they should follow statutory policy mandates (see Recommendation No. 1). BMP has licensed qualified applicants, but some applicants have received their license by hiring an attorney and going through an appeal process. The board has not been consistent in applying licensing requirements to all applicants. Hearing officers have issued decisions based on precedent set by the board and point out BMP cannot be arbitrary when licensing applicants. BMP has not taken an active role in setting tariffs (see Recommendation No. 3). Instead of establishing a reasonable methodology, tariffs have been arbitrarily set. There have been problems with lack of documentation and clarity in BMP's examination process. In addition, BMP's examination process is not objective (see Recommendation No. 4).

Those areas outside of BMP's control include the burdensome regulation process, the vacancy of OL employee positions, and conflict of interest situations. BMP has approved regulations to meet the intent of the Marine Pilot Act of 1991, but most of those regulations are still under review by the Department of Law. The current regulation revision process has been over a two-year period. OL has hired a Marine Pilot Coordinator to conduct investigations which the board will then hear for disciplinary purposes. But since the position was established in January 1992, it has been vacant for a total of seven months (see Recommendation No. 2). The duties of the board, coupled with its membership requirements, create conflict of interest situations. On the advice of Assistant Attorney Generals' members recuse themselves from potential conflict of interest situations, which makes the board less effective (see Conflict of Interest discussion on page 16).

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

In its Annual Performance Report for FY 93, BMP stated that despite its efforts to implement the Marine Pilot Act of 1991, it had been *"thwarted in many of its efforts by incomplete legislation, competition among pilot organizations, and a lack of legal support from Board representation to the Superior court level."* BMP's reference to incomplete legislation refers to the number of times a decision of the board is appealed and the board's decision is not supported by a hearing officer. BMP believes the broad statutory authority the legislature intended to give the board is being eroded by hearing officer decisions. Hearing officer decisions are discussed in greater detail on page 36 in the section dealing with qualified applicants.

The Marine Pilot Act of 1991 created a competitive economic system for the marine pilotage profession in Alaska. BMP has found the competitive system required by the Act created situations where board members may violate the Alaska Executive Branch Ethics Act (see page 16) unless members recuse themselves from voting on certain issues. During the period of our review, three ethics complaints have been filed against board members. Implementation of Recommendation Nos. 3 and 4 would increase BMP's effectiveness as those recommendations remove conflict of interest situations from the board.

The third situation that led BMP to believe their efforts to implement the Marine Pilot Act of 1991 has been thwarted is the lack of legal support from the Attorney General's Office in appealing a case to the Supreme Court level. In June 1993, BMP declared an emergency situation existed in the Western Region. Two competing pilot associations operated in the Western Region. One pilot association had a preferred customer policy refusing service to a client who uses pilots from another organization. According to a judge who later reviewed the situation, the competing association had a disproportionate share of shipping contracts to its membership. An Assistant Attorney General stated that since the first association threatened to boycott, industry was concerned the second association would not be able to provide the required piloting services. BMP was informed one vessel had moved without a pilot when one was available because of the two pilot associations stances. BMP was also informed more ships involved in salmon fisheries would move without a pilot unless one was available on very short notice.

Believing the movement of a vessel without a pilot created a danger to life, property, and the coastal environment, BMP developed emergency regulations which were signed by the Lieutenant Governor on June 30, 1993. The emergency regulations required the two pilot associations to dispatch pilots upon the request of an agent representing a vessel located in the compulsory pilotage waters of Western Alaska. The emergency regulations also required the pilot associations to accept a validly licensed pilot into its membership within 24 hours after receiving documentation. The association with the majority of the piloting jobs for the shipping industry filed a motion in Superior Court requesting a temporary restraining order, to which the State responded by filing for compliance to its statute and the emergency order.

The judge ruled against the State and said that if an emergency was, in fact, found to exist the State could use other alternatives to ensure the availability of adequate pilotage services.

BMP voted unanimously to appeal the judge's decision. An Assistant Attorney General felt there were legal merits to the case that would support the board's petition for review. But a decision was made by the Attorney General's Office to not pursue the appeal for administrative, rather than legal reasons. BMP believes allowing the judge's ruling to stand unchallenged seriously weakens the credibility and viability of the board. We recommend the board be given the authority through statute to place the burden of having competent pilots available on the association with stringent penalties if service is refused when a qualified pilot is available (see Recommendation No. 2).

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

BMP has actively participated in statutory changes regarding the marine pilotage profession. In BMP's FY 91 Annual Report, the board indicated a goal accomplished for the year was that BMP participated in the legislative process regarding the Marine Pilot Act of 1991.

At the April 27-28, 1993 BMP meeting, the members voted to approve the concept of HB 237, which recommends changes to the Marine Pilot Act, and HB 243, which establishes pilot requirements on the Kuskokwim River. In its FY 93 Annual Report, BMP stated the board strongly supported certain aspects of HB 237. The board identified those aspects as being:

1. limiting the number of pilots licensed per region;
2. establishing fixed tariffs; and
3. limiting the dollar amount donated for lobbying efforts by both industry and pilot associations.

Although BMP supports aspects of HB 237, no BMP members participated in any legislative committee meetings regarding HB 237 in FY 93.

In its goals for FY 94, BMP plans to strongly encourage and support reform of the Marine Pilot Act of 1991. BMP mentions its goals as being:

1. eliminating competition within regions;
2. establishing fixed tariffs;
3. firmly establishing the States' interests as the number one priority in the Act; and
4. investigating greater State involvement and the possibilities of contract pilots and dispatch.

BMP supports aspects of HB 237 and have stated so in their FY 94 goals. This bill would restrict competition. Members of pilot associations question whether BMP is specifically

prohibited by AS 08.62.040 (d), which states the board may not take action resulting in anti-competitive activities, from supporting measures that limit competition.

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

The location, date and time of board meetings are published in newspapers around the State so that interested public members can attend the meetings. However, we found that adequate public notice was not always given (see Recommendation No. 7). OL's internal policy defines reasonable notice as at least two weeks before a regularly scheduled meeting and at least one week prior to an unplanned teleconference. In spite of sometimes inadequate notice, interested persons are always in attendance at board meetings.

BMP has been responsive to public participants by setting a public comment time period each day during BMP meetings. During the lengthy regulation process, public notice was allowed several times during the meeting to discuss the specific sections of the regulations on which BMP was currently discussing.

BMP has also called on knowledgeable public individuals to explain issues. For example, a local medical doctor read the State of Washington medical requirements and the proposed pilot medical requirements for the State of Alaska. The doctor offered his opinion as to medical testing BMP might want to consider adopting.

When BMP has voted on some issues, the board has asked the public present if there were any questions or problems with the action taken. Individuals have used this opportunity to ask questions and have appeared satisfied with the responses.

In some instances BMP members have relinquished their seat to a member of the public for commenting on a certain topic. We did not see any evidence where others who wanted to comment were not given the opportunity.

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

BMP has encouraged public participation in the making of its regulations. The passage of the Marine Pilot Act of 1991 required BMP to extensively rewrite regulations for Marine Pilots. The process started at the January 1992 BMP meeting. Most of the first draft for the regulations were written by the Marine Pilot Coordinator. The draft regulations were released for public comment from October 23 to November 27, 1992. Twenty different individuals and/or groups submitted written comments. In addition, several people came to the December 1-4, 1992 BMP meeting and made verbal comment on the draft regulations.

The draft regulations were extensively revised based on the public comments received. The final regulations tried to accommodate the concerns expressed by the commenting public, which was composed of the shipping industry, pilot associations, individual pilots, and captains with the Alaska Marine Highway System (AMHS). BMP decided to eliminate a section that provided funding for training programs because many people described the section as vague. Drug and alcohol regulations were changed so that unsubstantiated results from tests would not be given to the USCG. The biennial license renewal requirements were changed so that AMHS trips would count as familiarization trips. The regional requirements for deputy marine pilot license were changed to accommodate two competing associations in the Southeast Region. The Director of Occupational Licensing referred to the final deputy marine training requirements for that region as *"the lowest common denominator that could be reached by all interested parties."*

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

Public complaints have been filed against BMP with the Office of the Ombudsman, ethics complaints have been filed with the Department of Law, and BMP decisions have been appealed to OL hearing officers. While some of these complaints have been processed and resolved, many complaints are not resolved to date. We found that many cases are not closed in a timely manner and there is no documentation of prioritization of cases.

The Office of the Ombudsman closed two marine pilot cases during the time period July 1, 1989 to August 17, 1993. One case was closed because the complainant had not appealed the board's decision through the available administrative appeal process. The second case was closed because the complainant was waiting for the Marine Pilot Coordinator's decision on his application and the board's subsequent action.

Three ethics complaints have been filed against BMP members with the Department of Law since 1991. Two of the complaints have been dismissed, but one complaint is still open. The open case was filed on December 15, 1992.

OL investigated 55 cases against marine pilots, unlicensed marine pilots, and marine pilots applying for entry or upgrade during the time period FY 91 through FY 93. At the end of FY 93, 20 of these cases remained open. As discussed in Recommendation No. 2, some cases are not being investigated in a timely manner.

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

BMP has had difficulty in issuing professional licenses and endorsements. BMP has responsibility for adopting regulations establishing qualifications of and required training for pilots, reviewing and approving training programs conducted by pilot organizations, and approving license applications. As explained in Recommendation No. 4, BMP does not have objective testing procedures for licensing applicants.

One difficulty trainee applicants face is definitely the result of the competitive economic situation (see Recommendation No. 2). Competition can create a barrier to entry into the profession due to a trainee's inability in obtaining access to vessels to complete their experience requirements. A situation occurred in the Spring of 1992 in the Southeast Region that illustrates how competition hinders a trainee's access to vessels. A trainee was being sponsored by one pilot association. The union for the industry endorses the competing pilot association. The union sent out a letter to AMHS deck officers requesting solidarity regardless of pilot association affiliation. The letter goes on to say, *"I am deeply concerned that any member continuing to work, or any other members accepting employment with this new splinter group, will cause a reaction against our jobs that we may not be able to stop."*

Ten days after the union letter was sent, a letter to his shipmates went out from the captain of the ferry that the trainee was on board as a pilot observer. In his letter, the captain stated that he is convinced the union-endorsed pilots would raid AMHS positions should their pilot association go under. The captain went on to say, *"For my part, I refuse to sign another pilotage trip until the pilot groups are one."* The captain refused to sign the trainee's pilotage trip and the trainee was required to disembark at Juneau. The captain did not appear to have any ill will toward the trainee but was instead responding to what he perceived as a threat. A timely and decisive action by the AMHS port captain alleviated the problem for pilot observers on AMHS vessels.

The port captain developed a formal pilot observer plan that allows access to AMHS vessels irrespective of sponsoring association. While the access problem on AMHS vessels has been solved, this same access problem exists on industry vessels piloted by competing associations. We recommend a statutory requirement to address equal access to a competing association's contracted vessel regardless of association sponsorship (see Recommendation No. 2).

The difficulty of approving licenses by BMP is evidenced by the number of times a hearing officer has reversed BMP's decision on denying an applicant a license or upgrade. Over the two-year period of FY 92 and FY 93, 19%, or 20 out of 104 applicants, were denied a license or upgrade. Fifty percent of the applicants denied licensure or upgrade appealed that decision. We reviewed the case files of seven of the ten applicants who appealed and found that two of the cases were still open, one case was dismissed at the applicant's request, in one case the hearing officer upheld BMP's decision, and in three of the cases the hearing officer rejected BMP's decision.

The regulations regarding licenses and endorsements have been revised effective October 2, 1993. But even the new regulations do not address the essential problems BMP has had regulating the profession. These problems are the competitive economic system in Alaska for the marine pilotage profession and the board's lack of consistently applying standards (See Recommendation No. 1).

One of the board members explained that since competition started, applicants are trying to jump steps in the process of upgrading the ships they are licensed to pilot. The board member said that before competition went into effect, unqualified applicants could not get past their own association to apply for licensure or upgrade; the pilot associations would request that the applicant obtain all the required experience prior to applying for licensure.

Once BMP granted a few pilots license upgrades without completely fulfilling all the requirements, other pilots challenged the licensing requirements. Since the regulations were written to allow BMP to use its discretion to waive license qualification requirements, applicants can make valid interpretations which are strictly for personal benefit and not to enhance public or environmental safety.

While competition may have an impact on the number of unqualified applicants trying to get licensed, another problem is that BMP has not been consistent in enforcing experience requirements. BMP granted a license to two applicants who did not have the required pilotage experience. This licensing action on BMP's part has had a domino effect in that two other applicants who were denied a license cited BMP's decision in the other applicants' cases. In two of the cases we reviewed where the hearing officer reversed the decision of BMP, the applicant was trying to jump steps. In the decision on one of the cases, the hearing officer pointed out that BMP had issued a license to two applicants who did not have the required pilotage experience and that BMP could not arbitrarily decide when to enforce experience requirements. The hearing officer also pointed out that BMP could not arbitrarily require a step system unless every pilot went through that system.

BMP appeared to be acting arbitrarily in choosing to take no action to renew a pilot's license in the third case we reviewed where the hearing officer recommended an action contrary to BMP's decision. The hearing officer initially recommended to BMP that an interim license be granted to the pilot, but the case was subsequently dismissed when the pilot fulfilled the familiarization trip requirement.

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

We did not find any evidence that BMP was not complying with state personnel practices, including affirmative action, in qualifying applicants or in hiring the Marine Pilot Coordinator. Each time BMP has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant. However, we

recommend that OL work with EEO to determine proper application questions (see Recommendation No. ,

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

See Recommendation Nos. 1 through No. 10.

APPENDIX A

Department of Commerce and Economic Development
Board of Marine Pilots
Schedule of Revenues Compared with Expenditures
(Unaudited)
(Note 1)

Revenues (Note 2)	\$ 12,995
Expenditures (Note 3)	<u>125,040</u>
Excess of Expenditures over Revenues (Note 3)	<u>(\$112,045)</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from discussions with Division of Occupational Licensing (OL) personnel and from OL prepared documents comparing revenue and expenditures for fee determination. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is comprised of license renewal fees. For the current fee structure, see Appendix B. Licenses are renewed biennially. Because of the renewals, revenues vary substantially year-to-year. Therefore, OL combined revenues collected in FY 90 and FY 91 and calculated an average in order to obtain a representative amount of annualized revenues collected for comparison with expenditures.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Our understanding of the allocation methodology is discussed in Recommendation No. 6 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating their profession.

APPENDIX B
Department of Commerce and Economic Development
Board of Marine Pilots
Application, License and Other Fees¹

Application and Other Fees²

Type of Fee	Amount
Application	\$ 50
Examination	100
Extension of route or tonnage upgrade application	100
License endorsement application	100

License Fees

License Category	Initial and Biennial Renewal Fee ³
Marine Pilot License	\$2,000
Deputy Marine Pilot License	2,000
Vessel Agent	100

¹The licensing fees charged by the Division of Occupational Licensing for the Board of Marine Pilots are set out in the Alaska Administrative Code at § 12 AAC 02.240. The last fee change for this board was effective November 28, 1992. According to the Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

²The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include: duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

³The biennial renewal period for the Board of Marine Pilots is December 31, 1994.

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

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February 3, 1994

Mr. Randy Welker
Legislative Auditor
Legislative Budget and
Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED
FEB 3 1994
LEGISLATIVE AUDIT

Dear Mr. Welker:

RE: Preliminary Audit Report, Board of Marine Pilots

The Board of Marine Pilots is an independent board that oversees a highly contentious industry. Often decisions of the board are challenged by claims and counterclaims that are settled at the Hearing Officer level. In the report conclusion (page 13), the auditors state that their recommendations, if implemented, will improve the efficiency and effectiveness of the board. Marine pilotage is a very complex and controversial issue. I am not confident that this audit has addressed these controversial issues sufficiently to make realistic recommendations.

In reviewing the Preliminary Audit Report, Board of Marine Pilots, we have noted several discrepancies. Although some of the problems with the report were related to each other and spread throughout the document, we have endeavored to group our comments in relation to the recommendations made by the auditors.

Recommendation No. 1

The legislature should extend the Board of Marine Pilots (BMP) termination date to June 30, 1998.

The department concurs with the recommendation but feels that we must comment on the text of the audit.

The auditors state that the board is not operating in the public interest by establishing goals that are in direct opposition to its statutory policy mandate to operate in a competitive environment. Although the board does state in its FY 93 annual report that its goals are to eliminate competition, it was doing this by supporting legislation that would bring about changes to the pilotage system. The board has recently changed its opinion on HB 237 and has taken a neutral position. While this legislation is being considered, this independent board continues to act completely within the law as mandated by The Marine Pilot Act of 1991. The Marine Pilot Board (MPB) continues to recognize qualified pilot

organizations and continues to license qualified pilots regardless of their affiliation. Although the composition of the board creates conflict of interest issues, we believe it has made every effort to address its business in a fair and impartial manner.

On page 17, the auditors place the burden of proof upon the board to demonstrate that competition is detrimental to protecting the interests of the state before it establishes goals which are contrary to its mandated policy. Albeit the audit then continues to make the board's point by stating several major flaws in the present system.

On page 17 of the report, the auditor cites examples where competition has been detrimental to providing training opportunities that would further the state's interest by licensing a better qualified pilot.

On page 18, the auditors cite an example of problems with the dispatch of pilots (the Western Region incident). The idea of a competitive piloting system walks a fine line between acting in the state's best interest (protecting life, property, and the environment) and violating the provisions of AS 08.62.157 and AS 08.62.163. By allowing pilots, through their organizations, to enter directly into contractual agreements with shipping companies, competitive piloting has the potential to compromise the pilot's ability to act independently, and therefore has the potential to compromise safety.

On pages 16 and 21, the auditors cite examples of how competitive piloting has impeded the board in acting in the best interest of the state by creating conflict of interest situations under the Alaska Executive Branch Ethics Act. Four ethics violations have been filed against members of the Board of Marine Pilots; none of these complaints have been sustained.

Recommendation No. 2

Statutes and regulations should be revised and strictly enforced to adequately protect the best interest of the state.

The department has taken a neutral position on how the statute and ultimately the regulations should be changed. The audit illustrates the overall problems with the current statute but has not probed deeply enough to validate the feasibility of their recommendations.

Recommendation 2(A)

Competition requires statutes and regulations to ensure access of adequate training and dispatching of services.

The department does not consider this recommendation a realistic solution to the problem.

The auditors state that due to the competitive economic structure of marine pilotage in Alaska, the Board of Marine Pilots should be given statutory authority to compel pilot organizations to provide training opportunities to all qualified pilot trainees. However, in the preceding paragraph the auditors state, "Naturally, a competing association is not likely to make the vessels they have contracts with, and their experienced pilots, available to competitors for training purposes." Due to the need of the members of competing pilot organizations to increase their numbers in order to gain an economically viable share of the market, Pilot Docking Evaluation Reports have already lost their objectivity. These reports are the basis by which the Division of Occupational Licensing tracks a trainee's progress and evaluates his/her experience prior to licensure. If a pilot organization needs these trainees to be licensed in order to compete, their training program may already be compromised. It is unlikely that a pilot organization can be legally regulated into providing training for their competition. It is also unlikely that industry, i.e. foreign shipping companies, can be regulated into making their ships available for training to pilot associations that they do not hold contracts with.

There are many legal questions to be covered by this recommendation. Marine pilots carry \$250,000 liability insurance. Can the board, by regulation, compel training pilots from one pilot organization to be financially responsible for the actions of their competition's trainee?

Although recommendation number 2(A) suggests giving the Board of Marine Pilots specific statutory authority to revoke recognition of a pilot organization or impose sanctions on a pilot who fails to dispatch when available, it also suggests the use of binding arbitration to solve disputes between pilot organizations and industry. As illustrated by the pilotage dispute in the western region during the summer of 1993, a potential threat to the public safety by vessels moving without pilots aboard will not wait for the deliberative process of binding arbitration.

Recommendation 2 (B)

Allegations of pilot misconduct should be expeditiously handled by OL and the board. Sanctions levied should be equal to the infraction.

The department agrees with the recommendation: but not the supporting text.

The auditors suggest that if competition were eliminated, the Board of Marine Pilots would have to become more proactive and would need to exercise its authority of suspending a pilot's license if he/she failed to report a marine incident. The department considers the suspension of a pilot's license because of a failure to report an accident to be an unrealistic penalty. This particular concern of the auditor is blown out of proportion inasmuch as now that there is a Marine Pilot Coordinator, the board is and has been proactive.

The auditors stated that the Division of Occupational Licensing has not been following up on investigative cases and closing them in a timely manner. The auditor cites two cases that were reviewed that had no action taken on them in seven months.

The auditors cite the vacancy of the Marine Pilot Coordinator position as one possible reason for this deficiency and also a lack of documented prioritization of cases.

The following is an excerpt of the Division of Occupational Licensing's reply to the Office of Management and Budget regarding prioritization of investigations:

"Within the Investigative Unit, priorities are established as to what cases should be investigated before others. All reports of noncompliance result in a case being opened provided the complaint is not frivolous and potential violation of the law exists.

The exception to this is either a noncooperative complainant or the lack of a competent witness. Anonymous reports will be investigated if the severity of the report dictates such action. Once a case is opened, the following priorities are established to determine where the scarce investigator time will be applied:

1. incidents which represent an immediate danger to the public health and safety. This includes incidents of a continuing nature;
2. incidents which by the severity of their nature dictate a high priority. This also may involve incidents of a continuing nature;
3. routine cases which may involve a one-time complaint;
4. incidents which require a proactive initiation or are the result of violently opposed schools of thought for professional treatment or a time versus expected results. These categories will most likely result in no priority assigned. Due to manpower limitations, the division can only respond to complaints and must allocate it's scarce investigative resources where we get the greatest results. This leaves many professions without adequate investigative services."

From 1989 to the present, the Division of Occupational Licensing has opened and investigated 96 cases involving state licensed pilots; 77 of those cases, or 80.2%, of the total have been closed.

In 1989, 17 cases were opened. All of these cases, or 100%, have been closed.

In 1990, 11 cases were opened. All of these cases, or 100%, have been closed.

In 1991, 17 cases were opened; 15 of these cases, or 88%, have been closed. The remaining two cases, or 12%, have been fully investigated, are in litigation, and cannot be closed until the litigation is completed.

In 1992, 25 cases were opened; 22 of these cases, or 88%, have been closed. Of the remaining three cases, or 12%, two are awaiting action by the United States Coast Guard before the state can proceed, and one case is pending an MOA or litigation if the MOA is not agreed to.

In 1993 (to date), 26 cases have been opened; 12 of these cases, or 44%, have been closed. The remaining 14 cases, or 56%, are in the process of being investigated, are in litigation, or are awaiting hearing officer review.

Of all 96 cases opened since 1989, 19 cases remain open; 14 cases, or 73.7%, of those cases remaining open, were opened in 1993. Some of the cases that remain open were initiated by the hearing officer and are not under the control of the Division of Occupational Licensing.

Recommendation No. 3

The Legislature should remove the responsibility of setting tariff from the Board of Marine Pilots

The department concurs with recommendation No. 3.

Recommendation No. 4

The examination process for marine pilots needs to be revised.

The department concurs with this recommendation.

Recommendation No. 4 (A)

The written examination should be more objective.

The department concurs with this recommendation.

Recommendation No. 4 (B)

The oral exam as it is currently structured should be eliminated.

Because of the conflict of interest issue, competition, and the past board practices, the department concurs with this recommendation. However, the board should still retain the right and duty to question an applicant as to his/her work experience, credentials, and application.

Recommendation 5

The statutory criteria for appointment and regional representation of members to the BMP should be refined and strictly adhered to by the Governor during the selection and appointment process.

The department has no objection to this recommendation but feels that the audit made only a cursory review of the problems concerning the composition of the board.

Recommendation No. 6

The Department of Commerce and Economic Development (DCED) should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licenses that are more reflective of the actual regulatory cost of the occupation.

As this recommendation is applied to the MPB, the department disagrees with this recommendation because it is nonreflective of the MPB fee setting practice. The auditor's comments are general in nature and apply to other occupations but not the MPB. The 1991 Marine Pilot Act authorizes a Marine Pilot Coordinator with the combined responsibility of board executive secretary and investigator. To pay for this new position, all licensed pilots were subject to a one-time additional \$805.00 for FY 92. The bi-annual license fees for pilots increased from \$180.00 to \$2,000.00. These fees were collected as of January 1, 1993, consequently the MPB was the first board to have its fees adjusted to reflect the actual cost. The department does agree that the accounting system is not perfect, but with additional staffing, more precise accounting can be achieved.

An OMB audit of the department fee setting practice was completed in early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators and hearing officers, has been implemented effective July 1, 1993 by the division for all occupations.

The OMB audit recommended a cap on incremental fee increases of no more than 10-25% per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the profession. Unpredictable and unforeseen program expenses occur due to investigations, litigation, and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the division's abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable limit" for fee increase adjustments under the OMB recommendations and in accordance with AS 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as potential economic hardships for licensees who wish to renew their licenses, sit for examinations, etc. The division will make requests

for additional spending allocation to Legislative Budget and Audit Committee to alleviate these harsh consequences, but failing favorable consideration, the division must control its expenditures.

The division does not fully concur with the audit findings that errors were made in the calculation of a two-year average of expenditures used to determine the FY 93 license fees, and as a result, license fees did not truly reflect the cost of providing regulatory services to each occupation. Detailed expenditure information used in calculating a two-year average was based on information obtained from the state accounting system at the time the decision had to be made. The data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff when fee decisions were made.

In conclusion, the Department of Commerce and Economic Development has worked with the OMB auditor on a continuing basis regarding this issue.

Recommendation No. 7

OL should continue their efforts to adequately provide public notice of board meetings and application deadlines for examinations.

The division is continuing to insure that each board meeting and examination is properly public noticed. As indicated in the report, four of the six errors concerned teleconferences. The majority of these teleconferences involved a series of emergency meetings of the board concerning the possible cessation of pilotage in the Western Pilotage Region due to a dispute between pilotage associations. All interested parties associated with this situation were notified of the teleconference and participated in it. No complaints of not being notified have been received. Consequently the intent of the statute has been met but there exists no documentation in the records that proper notice was given through the normal process. The Board of Marine Pilots is operational in nature inasmuch as the board is responsible to insure safe pilotage throughout the state and must act accordingly.

Recommendation No. 8

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and the production of an annual report.

A rewrite of AS 08.01 is available, and the division is seeking legislative support to introduce it. The rewrite makes numerous revisions including amendments to the statutes cited in this recommendation.

The rewrite included revisions which make drafting minutes a department responsibility. It also provides for an annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics

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WALTER J. HICKEL
GOVERNOR



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1994

Mr. Randy S. Welker
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300



Dear Mr. Welker:

We are responding to your request for a written response to preliminary audit report 08-1415-94 Department of Commerce and Economic Development, Board of Marine Pilots, dated November 4, 1993.

We are pleased that Legislative Audit has concluded that appointments to the Board of Marine Pilots have been made in accordance with state statutes (Recommendation no. 5, page 24).

Regarding Recommendation No. 5, the following response is made:

The Governor's Office believes that the public member in question had no "direct financial interest in the occupation that the board regulates". This is in accordance with AS 08.01.025, relating to public members of occupational licensing boards. Legislative Audit concluded the same. We believe that the appointment of this public member was in accordance with statute. Legislative Audit reached the same conclusion.

However, Legislative Audit determined that the public member in question must have had an indirect conflict of interest since he resigned after a threat from the cruise ship industry. We believe that the fact that the cruise ship industry threatened this member and that this member chose to remove himself from this situation does not indicate that the public member had a conflict of interest. We believe this presumption of Legislative Audit to be in error and unsubstantiated.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Kristie D. Leaf".

Kristie D. Leaf
Director, Boards and Commissions

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
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(907) 465-3830
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February 4, 1994

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Department of Commerce and Economic Development's and the Office of the Governor's responses to our audit report. However, nothing has been brought to our attention which would change our position to our recommendations. We have addressed only those recommendations in which the departments have taken exception to.

We agree marine pilotage is a very complex and controversial issue and the board oversees a highly contentious industry. During the course of our audit, we interviewed proponents of competition and monopoly. In order to obtain an unbiased understanding of this contentious and complex marine pilotage industry we contacted neutral professionals including the United States Coast Guard (USCG), the Federal Trade Commission (FTC), plus members and staff of the National Research Council Study.

Recommendation No. 1

We are pleased to note that the board has, subsequent to our audit field work, stated their intentions of taking a neutral position on the passage of House Bill (HB) 237. That bill has been revised in committee to emphasize the need for an independent, impartial, and unbiased board with regards to examinations and the issuance and renewal of pilot licenses. We concur that an unbiased board is important and required for efficient and effective oversight of the present competitive marine pilotage structure in Alaska. However, the department continues to support the non-competitive provisions of HB 237 by claiming weaknesses in the present system pointed out by the auditor proves that competition is detrimental to protecting the interest of the State.

The legislation introducing competition to the marine pilotage profession in the State of Alaska was implemented as recently as 1991. We question whether the implementation of competition could be fully evaluated and an adverse conclusion drawn by the board in such a short period of time. As we state in Recommendation No. 1, we do not believe that the board has exerted sufficient effort to resolve these weaknesses. Instead, their efforts have

tended to advocate a monopolistic structure rather than a competitive one. The FTC has suggested addressing safety concerns directly through vigorous enforcement of safety regulations rather than indirectly through economic regulations.

In the department's response to our report, they raise concerns regarding recommendations to training, safety, and conflict of interest issues of the board. Our report does point out weaknesses in which problems presently exist in the State's competitive structure, yet recommendations to resolve those weaknesses within the competitive structure have also been suggested.

We have recommended that statutory changes be made to require a pilot to train any qualified candidate regardless of pilot association affiliation. However, as recently as January 1994, the board has introduced changes to their regulations in direct opposition to this recommendation. This change states that "*a training pilot may not be compelled to accept a trainee.*" In our comments to Recommendation No. 2 below, we will address this issue in more detail.

The department has stated in their response that by allowing pilots to enter into contractual agreements with shipping companies there is a potential to compromise safety. However, neither the department nor the board has demonstrated or furnished documentation or overwhelming evidence that a competitive system has compromised safety in Alaska or other jurisdictions. Attempts were made to gather information from the USCG and the Army Corp of Engineers to analyze shipping safety in Alaska, but sufficient data was not available to perform such a study.

The department acknowledges that the composition of the board creates conflict of interest issues. The department has concurred with Recommendation Nos. 3 and 4 regarding the tariff setting and examination processes. Implementation of these recommendations will eliminate most conflict of interest situations which arose within Alaska's competitive structure.

Recommendation No. 2

In developing this recommendation, we discussed the possibility of competing associations training all qualified trainees with an Assistant Attorney General. He stated that the suggested statute change would not be considered unconstitutional and would be defensible in court. He also added that a similar situation is already evidenced in case law of common carriers being required to haul freight for their competitors. Without such statutory requirement, pilot associations are not likely to train their competitors. The department's response acknowledges that the board has not thoroughly researched this issue.

A similar situation arose within the Alaska Marine Highway System (AMHS) ferry system where AMHS personnel affiliated with one association refused to train pilot trainees of their competitor. The AMHS port captain was able to resolve this issue by allowing trainees equal access to AMHS vessels irrespective of their sponsoring association. This issue was resolved with little, if any, board involvement. However, to ensure equal access to training on industry's vessels, the board will need to take the same active approach as the AMHS port captain. The authority for this action will be gained through the recommended statutory changes.

The department mentions a possible problem in the current training process is the lack of objectivity of the pilot docking evaluation reports. These forms are utilized to track the trainee's progress and evaluate their experience prior to licensure. The reliability of these forms has been questioned by the department, when the pilot associations are evaluating their sponsored candidate. An advantage of having competing pilot associations train qualified candidates is that the pilot docking evaluation reports, with oversight by the Marine Pilot Coordinator, would enhance the possibility of regaining their objectivity.

The department has stated that they believe it to be unlikely that foreign shipping vessels will make their ships available for training. We believe that industry is an advocate of competition; therefore, they would have an incentive to ensure that competition remains by cooperating in this training effort. In addition, the department's response acknowledges that the board has not researched this issue.

The department states that many legal liability questions arise out of requiring associations to train competing pilot trainees. These are very good questions that the board should be pursuing answers to rather than claiming the competitive structure will not work.

The Assistant Attorney General was also consulted regarding the dispatching issue. His response was that pilot associations could not be forced to accept a less lucrative job over another, but that they could be penalized for their failure to provide a pilot when one was available. This last issue was considered defensible in court.

In the response, the department stated that the suspension of a pilot's license, due to a failure to report an accident, is an unrealistic penalty. However, this sanction is clearly outlined in 12 AAC 56.960 (e) which is a regulation developed by the board. It is important to have in place appropriate enforcement sanctions, in a competitive structure, in order to regulate the profession.

The department noted that policies to prioritize cases for investigative purposes do exist. However, during our review of the investigative files, there was no physical documentation which defined the priority of a particular case. Our recommendation is that the documentation of those procedures to prioritize be maintained within each case file and cases should be tracked on a continuous basis.

In order to resolve the questions raised by the department in their response to this recommendation, we believe it is the board's responsibility to investigate these options rather than respond that our recommendations are unrealistic. To our knowledge, the board has not attempted to review these possibilities.

Recommendation No. 5

We have read the response from the Office of the Governor regarding appointments to the Board of Marine Pilots. Although the governor's office states that the public member in question did not have a direct nor an indirect financial interest, we disagree. The purpose of having public members on boards is to provide an unbiased viewpoint. If those public members are not free from any interests which may influence their opinion, their objectivity could be compromised. We are not suggesting that the public member in question compromised himself, and in fact feel that his immediate resignation was appropriate under the circumstances. Since this public member withdrew his seat due to a threat which would impact his financial well being, this clearly demonstrates an indirect financial interest to industry.

Recommendation No. 6

We have reviewed the agency's response to Recommendation No. 6 and provide the following clarification. We agree that the recommendation is general in nature and addresses the division's fee-setting policy as a whole. Of the \$125,000 average expenditures allocated by the division to the Board of Marine Pilots, almost 80% (approximately \$97,000) is associated with the Marine Pilot Coordinator position which is directly funded by marine pilot fees. However, a portion of costs associated with the division's investigative unit and hearing officers', whom address marine pilot issues, have been allocated to the board in the method described in the recommendation.

Recommendation No. 10

All state documents and forms utilized by this board should be free from potentially discriminatory information. We suggest that the board work with the Equal Employment Opportunity Office to ensure that forms are free of this information. As a result, the protection of the board against discrimination claims would be enhanced.

Analysis of Public Need

We understand that a difference in opinion exists for calculating the effectiveness of the board in approving licenses. However, we do not believe the board can state that it was

February 4, 1994

correct in issuing licenses 97.1% of the time. There is no third party review of all 104 licenses granted or denied. This review would be necessary in order to sustain the 97.1% effectiveness claimed by the department. Therefore, the methodology we use to evaluate the effectiveness of the board's license decisions is solely based upon those cases which were appealed.

Sincerely,



Randy S. Welker, CPA
Legislative Auditor

Alaska's Marine Pilotage System Revisited

December 8, 1994

**Prepared by Brad Pierce
Senior Policy Analyst
Office of Management and Budget**

Introduction

Note: This paper on the status of the state's marine pilotage system is intended as a briefing document for the incoming administration. Public release of the contents is entirely at the discretion of the Commissioner of Commerce and Economic Development.

Marine pilots are responsible for the movement of foreign shipping through our coastal waters and docking of vessels at Alaskan ports. Most citizens are unaware of the vital role performed by pilots every day or the awesome burden of individual liability that comes with a state marine pilot license. The local knowledge and ship handling abilities of pilots are essential for protecting lives, property and the marine environment and problems within the pilotage system have potentially catastrophic consequences. In fact, the problems discussed herein have been cited by investigators as contributing to at least one recent accident, which makes asserting the state's interest in maintaining a safe and efficient pilotage system a high public safety priority. There is also some need to get a grasp of the situation quickly as the Board of Marine Pilots, charged with regulating the profession, is slated to sunset on June 30, 1995.

The report begins with a description of the grounding of the cruise ship *Nieuw Amsterdam* near Ketchikan last August. Competition between pilot groups, legal challenges to the authority of the board to regulate the profession, and contradictions in the state's Marine Pilot Act are cited as factors contributing to the present situation where such accidents are likely and perhaps inevitable. The perspectives of the various stakeholders in Alaska's marine pilotage system are identified and discussed. Competing interests involved in developing the Marine Pilot Act of 1991 are analyzed to explain how economic considerations have come to predominate over safety concerns in the regulatory process. Ongoing efforts of the board to implement the Act are summarized. Finally, the pros and cons of three alternative policy approaches for rectifying problems within the system are discussed.

Several appendices are included to provide backup information. Appendix A provides details on contradictions within the Marine Pilot Act of 1991. Data on the license status of pilots and their associations as well as significant statistics on recent incidents involving ships in Alaska waters, investigations, lawsuits and administrative hearings are contained in Appendices B and C. Appendix D is a letter from Department of Commerce and Economic Development Commissioner Paul Fuhs requesting this study and Appendix E is a letter from Captain Michael Clinkscales cited in the report.

The *Nieuw Amsterdam* Grounding

Note: This accident is currently under investigation by the U.S. Coast Guard, the National Transportation Safety Board (NTSB) and State of Alaska, Division of Occupational Licensing. The U.S. House Subcommittee on Navigation and the Merchant Marine has received testimony from the NTSB on the *Nieuw Amsterdam* grounding during its hearings on cruise ship safety in American waters. This incident has prompted the NTSB to consider holding public hearings in the near

future on the pilotage situation in Alaska. All of the information used in compiling this analysis was taken from public sources.^{1,2,3}

At 0610 on August 9th 1994, the 704 foot, 34,000 gross ton cruise ship *Nieuw Amsterdam*, carrying 1,225 passengers and 500 crew was steaming at 15 knots through Nichols Passage (10 knots over ground) in heavy current and thick fog when she grounded on the rocks at Gravina Point near Ketchikan. The ship struck at an oblique angle rupturing the bulbous bow and deforming 220 feet of the portside hull and bilge keel. One of the four blades on the port propeller was sheared off and the others severely bent. Fortunately, only the lower forepeak tank was ruptured and the ship did not flood beyond the collision bulkhead. A few hundred gallons of hydraulic fluid were spilled from the destroyed propeller's controllable pitch hub (the ship carried approximately 63,000 gallons of fuel). As most passengers on board were asleep, there were no significant injuries and the *Nieuw Amsterdam* was able to refloat herself off the rocks at about 0730 the same morning. According to informed investigators, it was almost miraculous that the hull was not ripped open, which would have probably caused the ship to capsize and sink. A major tragedy was narrowly avoided.

About 45 minutes prior to the accident, a state pilot and an unlicensed observer boarded the ship to bring her into Ketchikan. Both the pilot and observer were members of Alaska Coastwise Pilots (ACP), one of two pilot associations serving the Southeast pilotage region, which extends from Ketchikan northward to Yakutat. At the time she struck, the ship was being conned from the starboard radar console by the observer under the supervision of the pilot standing behind him. Apparently, the observer did not possess a federal pilotage endorsement for any Alaskan waters on his masters license.

Under provisions of Alaska's Marine Pilot Act of 1991, the training programs of pilot associations must be approved by the Board of Marine Pilots to ensure compliance with professional standards. The ACP training program had been approved by the board. State law also requires that entrants into a state sanctioned training program meet stringent entry requirements, among which is a valid federal pilotage endorsement for the region. As he did not qualify as a trainee, it was illegal for the observer to be in control of the ship. The captain and several officers were also present on the bridge at the time, operating the ship's state of the art navigation equipment.

Prior to the grounding, the observer had never handled the *Nieuw Amsterdam*, though he had made several transits of Nichols Passage as an observer. Most of his sea career had been as a Panama Canal pilot. The supervising pilot was on leave from the Alaska ferry system and was more familiar with the handling characteristics of ferries, which have a high horsepower to weight ratio, dual rudders and bow thrusters. The *Nieuw Amsterdam* has only a single rudder and is much lower powered in comparison to its tonnage, hence much less maneuverable than a ferry.

¹"Pilots plead the 5th when questioned about grounding," Morrison L. Edwards, *Marine Digest and Transportation News*, September 1994, p. 33.

²"How the *Nieuw Amsterdam* found her rock in Alaska," *Professional Mariner*, December / January 1995, pp. 36-39.

³Investigative file on *Nieuw Amsterdam* released by U.S. Coast Guard.

In hindsight, it appears that the ship was moving too fast for the conditions and that the pilot exercised poor judgment by relying on radar screen "eyeball navigation," rather than traditional chart plotting in transiting a dangerous passage. (In fact the ship's second mate, who was manning the centerline radar, reportedly warned the captain and pilot that they were steaming too fast for the conditions and that the pilot had missed his turn.)

Ostensibly this grounding was unremarkable, aside from the fact that it was extremely lucky the *Nieuw Amsterdam* did not sink, no one was killed or seriously injured and there was no catastrophic oil spill. In the words of one investigator, "the pilots had a bad day." However, if one looks behind the event to the root causes for a more complete understanding of why it happened, a disturbing picture emerges.

The reasons why an unlicensed observer under the tutelage of a moonlighting mate from the Alaska Marine Highway System (AMHS) was in charge of the safe passage and docking of the 34,000 gross ton cruise ship with 1,725 people aboard and carrying 63,000 gallons of fuel can be traced back to problems within the pilotage profession in Alaska and specifically, to the pressures of market competition between the two competing pilot organizations in Southeast - ACP and the Southeast Alaska Pilot Association (SEAPA).⁴

Changes in the Profession

In the U.S., pilotage is divided between the federal government and maritime states. The federal government exercises control over vessels engaged in domestic trade, while individual states have the authority to require compulsory pilotage for foreign ships and U.S. flag ships on foreign voyages operating within the waters of the state. Alaska is one of a handful of maritime locales worldwide where the pilotage profession is not regulated as a natural monopoly, similar to a public utility.

Traditionally, pilots have formed associations for each port, region or waterway to offer centralized dispatch and billing services. Most associations operate as a tightly controlled guilds, carefully controlling entry into the profession and requiring an extensive apprenticeship program for a trainee to become fully licensed. The associations sponsor candidates for licensure by providing a training officer and access to vessels with which their association or agent has a contract. Pilot fees are collected by the association, with pilots receiving a portion of the revenues.⁵

For the first 10 years after the passage of the original State Pilotage Act in 1970 the marine pilotage system in Alaska virtually ran itself. Pilots voluntarily organized themselves into two associations to serve the Southeast and Southwestern regions of

⁴The Southeast Alaska Pilot Association (SEAPA) currently has 21 full time members, 6 associate members and 1 trainee. Alaska Coastwise Pilot Association (ACP) has 11 full time members, 6 associates and 3 trainees. Associate members are employed on a seasonal basis.

⁵"Department of Commerce and Economic Development Board of Marine Pilots," Audit Report 08-1415-94, Division of Legislative Audit, November 4, 1993.

Alaska. The associations were organized along traditional lines and were responsible for hiring, training, and dispatching pilots and collecting fees from shippers. Occasional discipline problems with individual pilots were handled internally and the associations were responsible for the quality control of their membership.

During the 1980s, marine pilotage in Alaska experienced considerable growing pains as shipping traffic in state waters increased, particularly in the Southeastern and Aleutians regions. This growth resulted in new tensions and opportunities. Challenged by pilots new to the system, traditional association control over pilot training and discipline was eroded by legal actions and fears of potential liability in the wake of the *Exxon Valdez* disaster. The Alaska Marine Pilot Act - originally designed to give the Board of Marine Pilots the flexibility to respond to new conditions - did not provide the board the clear authority it needed to deal with the situation.

Increased demand for pilotage services created niches for new groups and configurations of pilots. During the late 80s, splinter groups of pilots broke off from the original associations to offer competing pilotage services. ACP was formed in 1989, primarily to service the growing cruise ship trade. Its original membership included pilots who were denied entry into SEAPA and SEAPA members who were disaffected with the internal operations of the association. Although actual charges for ship movements are difficult to determine, it appears that ACP was able to find a market niche by offering a lower priced alternative to SEAPA and secured contracts to move several ships, including an exclusive contract with Holland America.⁶

Marine Pilot Act of 1991

In response to concerns raised by pilots and recommendations from a study published by the Governor's Office of Management and Budget, legislation was introduced in 1990 to reform Alaska's marine pilot statutes.⁷ The legislation proposed an explicit social contract between the state and pilot associations. In return for limiting pilot liability and protecting pilot associations from antitrust litigation, the state would require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.⁸ However, due to changes in staffing that occurred between the Cowper and Hickel administrations, neither the Governor's Office nor the Division of Occupational Licensing played any significant leadership role in developing or modifying the legislation as it passed through the legislative committee hearing process. This executive branch leadership vacuum allowed intense lobbying efforts by pilot groups and shippers to exercise inordinate influence in shaping the final legislation.

⁶Because the cruise ship trade in Southeast is highly seasonal, there is not enough work to employ large numbers of full time pilots over the winter months. Thus associate members are used extensively by both organizations. Many of these associate members are either pilots in other places during the winter or Alaska Marine Highway System (AMHS) officers. Ferry system employees are able to work on a seasonal basis for less than full time pilots because they receive state retirement and health benefits as well as extensive amounts of leave time.

⁷*Improving Alaska's Marine Pilotage System*, Manjou Madden and Brad Pierce, November 1990.

⁸During this period The Federal Trade Commission was looking into anti-competitive practices nationwide and antitrust charges had been brought against SEAPA in a lawsuit.

Key legislators added their own ideological stamp in the committee process. Thus, while the legislation, as passed, contained much stricter entry and training requirements for pilots and their associations, it also contained some significant concessions to shippers and dissident pilots. Several contradictions ended up in the law, which have since haunted the board's ability to effectively regulate the industry (see Appendix A). This was an unfortunate but perhaps inevitable consequence of the political process, given the virulent self interest and fractiousness of the participants.

From a public cost and efficiency standpoint, it is obvious that centralized dispatch of pilots for each region makes the most sense, i.e., one association per region. It was hoped that once the internal operations of the associations were opened up to public scrutiny, the various pilot groups would come to some kind of agreement to operate cooperatively. This turned out to be a naive assumption. Overwhelming self interest and a competitive environment precluded any reconciliation.

Led by Holland America, shippers perceived a bottom line advantage to keeping pilot associations in competition with each other and their combined lobbying efforts had a great deal to do with the legislative outcome. Shippers were able to insert language in the final bill forbidding the board from taking any action that would result in "anti-competitive activities," thereby ensuring their ability to foster competition between associations. Senate majority leader Rick Halford added an additional political wrinkle to the process by insisting on "free market" language as a condition for the bill to reach the senate floor for a vote. Specifically, his amendment stipulated that the Board of Marine Pilots could only adopt a maximum tariff, allowing price competition among pilot groups under the tariff cap. His reasoning was that tariff competition would allow market forces to most efficiently allocate resources.⁹ These provisions led to the quasi competitive system in place today and are the source of many of the problems described in this report.

Alaska is one of only a few states that has abandoned the traditional association run pilotage system in favor of a competitive model. Two other states, Hawaii and Florida have experimented in recent years with competitive pilotage systems. Both have failed after experiencing many of the same problems as Alaska. In Hawaii, the state has taken over pilotage and the Florida legislature recently passed legislation specifically abolishing competition between pilot organizations.

In the broadest sense, the Marine Pilot Act of 1991 represented the culmination of a shift in political power from the pilots – who controlled their profession and ran it in traditional fashion from 1970 through the 80's – to the shippers and their agents who have been able to exercise ever greater control in the 90's.

Competition between Pilot Associations and the *Nieuw Amsterdam* Accident

There are not many professional mariner jobs available in the U.S., which makes a pilot's state license an extremely valuable franchise, worth perhaps several million dollars over a career. Although the cruise ship trade in Southeast is growing, primarily through ever larger vessels, competition for market share between the associations

⁹In the overall economics of shipping, pilotage fees are a minuscule proportion of shippers' operating costs and have virtually no impact on Alaskan trade. These facts were apparently lost on the legislature.

amounts to a zero sum game in which increased market share for one organization means less for the other. Thus, competition between pilot associations really amounts to competition for licenses, i.e., the association with the largest number of fully licensed pilots will get the largest share of the available trade.

This competitive situation makes smaller associations desperate to "train up" new pilots. In the case of ACP, the pressures of competition to secure market share reportedly led to shortcutting the traditional training process by having unqualified trainees in the program (e.g., the *Nieuw Amsterdam* accident) as well as other dubious practices, such as allowing multiple observers aboard a ship to meet trip requirements.¹⁰ Competition in the Western region of the state has led in one instance to one association refusing to dispatch a pilot to an agent who used pilots from a rival association. It may also have led to ships moving through compulsory pilotage waters without pilots.

Competition has severely compromised the board's ability to maintain high professional standards. Pressures on pilots to become licensed have become so intense that virtually every trainee who has failed an examination or has been given an unfavorable rating on ship handling during the past few years has brought a legal challenge.¹¹ Conflict of interest charges have been filed against pilot members of the board who administer examinations. The training of new pilots has been severely impacted by competition, with fully licensed pilots refusing (understandably) to train individuals from competing associations. This makes it very difficult for deputy pilots to get full endorsements for their region, particularly for seldom visited ports. Instructor pilots complain to the board that even within their own association they are afraid to flunk a trainee on ship maneuvers for fear of being sued, leaving the state with no protection against incompetence. In fact, training requirements for Southeast, where competition between associations is the fiercest, are the lowest of the four pilotage regions in the state and perhaps the nation.

Thus, while the *Nieuw Amsterdam* grounding can be viewed as the pilot and trainee having a bad day, to those who have studied the profession in Alaska it is symptomatic of a system in trouble. The public interest in maintaining a safe and efficient pilotage system has fallen victim to legal challenges and special interest politics. However, the pernicious effects of competition between pilots and pilot organizations are not readily apparent to the casual observer. The question most often raised in discussions of competition in pilotage is "If competition is so bad then why don't we have more accidents?". The answer is only because of a combination of luck and the professional competence of the majority of senior pilots already in the system; it has little or nothing to do with safeguards in the system itself.

¹⁰A September 5, 1994 letter from SEAPA pilot Michael Clinkscales to Dan Twohig, Marine Pilot Coordinator raised this issue (see Appendix E for full text). He states, "While this may not violate the letter of the law, it does violate the spirit of the law in that several trainees needing for pilotage at one time cannot receive complete and adequate instruction from one instructor pilot." That this practice would be tolerated by a shipper raises serious concerns about their commitment to a safe and professional pilotage system.

¹¹One often overlooked factor in the ingenuity of pilots (aside from the value of the license) is that pilots have license insurance, entitling them to up to \$100,000 in legal expenses. This creates an incentive to sue whenever they face an unfavorable regulatory decision.

Had the *Nieuw Amsterdam* grounding resulted in significant loss of life, one can imagine the flurry of recriminations, investigative reports and editorial articles blaming legislators, the Division of Occupational Licensing and the Board of Marine Pilots for their failure to adequately protect the public. Yet it was only luck that prevented a catastrophe, though lost revenue to Southeast Alaskan towns due to missed port calls was about \$816,000.¹² Damage to the ship is estimated at \$2.5 million and a Holland America spokesman estimates that lost revenues during the three weeks the ship was in drydock totaled perhaps \$30 million. Clearly this accident demonstrates that the state's interest in protecting lives, property and the marine environment is not being supported by present law or regulations. The real tragedy would be if the present situation were allowed to continue.

Where Do We Go From Here?

Before discussing solutions to the problems described above, it is useful to identify the competing interests in the profession and sort out how they affect the regulatory process. According to the American Pilots Association, state pilotage boards or commissions, while varying greatly in their composition, authority and powers, legal status and other features are most often composed of industry representatives, pilots and public members.¹³ The Alaska Board of Marine Pilots is composed of two pilot members, two ships agents, two public members and the Commissioner of Commerce designee. Its membership is meant to be roughly representative of the stakeholders in the profession. (Note that shippers are not directly represented, since they are mostly foreign corporations. Instead they are represented by their domestic agents.) The board is staffed by a Marine Pilot Coordinator.

Stakeholders in Alaska's Marine Pilotage System

State regulation of pilotage is split between safety concerns and economic issues.¹⁴ The interests of the major stakeholders in Alaska's marine pilotage system, which run the full spectrum from exclusive focus on safety to near exclusive focus on economics, can be summed up as follows:

- The public interest is exclusively related to safety, with little or no concern for the earnings of pilots or the profits of shippers. The public has a right to expect their government to protect lives, property and the marine environment through the compulsory pilotage system. In the past few years, the public interest with respect to pilotage has been most effectively represented by environmental groups such as the Prince William Sound Public Advisory Group, formed in the wake of the *Exxon Valdez* disaster.

¹²Based on numbers generated by the DGED, Division of Tourism.

¹³American Pilots Association Comments on State Pilot Commissions, September 4, 1990.

¹⁴*Minding the Helm, Marine Navigation and Piloting*, National Research Council, 1994, p.40.

• **State government's interests** relate primarily to safety and secondarily to administrative efficiency. Since the essence of pilotage is local knowledge and ship handling ability, laws and regulations should emphasize and reinforce these professional skills. Alaska's compulsory pilotage regions are much larger than any in the U.S. so exclusive regional licensing is necessary for pilots to claim expert local knowledge. High entry level qualifications and training standards, a lengthy apprenticeship period and continuing education requirements are desirable. The independence of pilots is necessary so that decisions regarding ship movements during adverse weather, ice or other conditions are based on safety considerations and not the shipper's schedule. A powerful and well staffed board should be able to effectively regulate the system, discipline pilots and promptly investigate incidents / accidents. Legal challenges have made the marine pilotage system extraordinarily expensive to administer – it is the only professional licensing board with a full time staff person and a full time assistant attorney general – though costs are recovered through license fees. The state is involved in economic regulation only to the extent necessary to ensure there are a sufficient number of pilots to service shipping and that tariffs are reasonable and based upon objective criteria.

• **Pilots and their associations** have both a safety and economic interest in the profession. Since a pilot's license is his or her livelihood, their safety concerns closely parallel those of the state. Potential liability for accidents, particularly during training is an ongoing concern. A fair and equitable examination process is necessary to maintain professional standards. Pilots' economic concerns revolve around dividing up the available work, so they tend to focus on limiting the number of licenses in each region and increasing licensing requirements. In the Western and Southeastern regions where competition between pilot associations exists, market share concerns of the associations have in some instances superseded individual pilots' basic interest in safety and professional standards.

• **Shippers concerns** are primarily economic and secondarily related to safety. They tend to favor competition among pilots to keep tariffs low. Safe and reliable pilotage services are important but their safety concerns are largely met by hiring competent officers and carrying adequate insurance. Some shippers would prefer to hire their own "company pilots" to keep costs down. Some shippers would also prefer to allow cross regional licensing of pilots so that they would not have to change pilots when moving from one region to another (e.g., cruise ships traveling from Southeastern waters to Whittier or Seward).

• **Ships agents interests** are almost exclusively economic. Because they provide many services to shippers during port calls, only one of which is pilotage, ships agents have an interest in keeping pilot rates low to enhance their bottom line. In fact, **ships agents are the only stakeholders in Alaska's pilotage system who have virtually no**

financial stake in safety. Agents tend to be split on the issue of competition between pilot associations, with some favoring the convenience of dealing with a single association for dispatch of pilots, while others favor competition to hold down costs.

Ongoing Board Issues

The board continues to attempt to implement the provisions of the Marine Pilot Act of 1991 as discussed below.¹⁵ The Act is only three years old and while some progress has been made in fulfilling its legislative intent, many of the problems that have appeared can only be resolved by changes in statute or are a result of the Governor's appointments to the board. A recent American Pilots Association (APA) survey of pilotage systems in the various states provides some useful comments on what Alaska should strive for when considering changes. According to the APA, "a pilot commission is probably the single most important component of a state system for the regulation of pilotage." The report lists the overall attributes of successful regulating bodies in the various maritime states: "A pilot commission should be active. It should take its licensing responsibilities seriously. It should investigate accidents and complaints against pilots and oversee the activities of the pilots in a purposeful manner. It should be fair and objective in its dealings with pilots. Finally, it should be perceived as independent of both the pilot association and the industry."

Conflict of Interest

Much of the board's conflict of interest problem can be attributed to the pressures of competition between pilot associations. The board and the division are in the process revamping the examinations procedure to provide a more objective, less proctor-intensive examination. Unfortunately these new examinations are being legally challenged before a Hearing Officer and in federal court. The board appointment description in statute does not provide for broad representation of all regions of the state. Because the two pilot members and two ship agent members form a majority and have a direct economic interest in board decisions, conflict of interest situations are almost inevitable, particularly when attempting to set tariffs. Additionally, the Board of Marine Pilots is the only professional board administered by the Division of Occupational Licensing composed of both members of the profession being regulated and their (ships agents) customers. The legislature should look at the composition of the board in any future revisions of the Marine Pilot Act.

Tariff Setting

While the Marine Pilot Act of 1991 made provision for the board to establish maximum tariffs for each region, as a practical matter the board has wasted an enormous amount of time and effort attempting to establish tariffs and has failed miserably. Legislative auditors found that the maximum tariffs in place appeared to be arbitrarily set through negotiations between pilots and shippers rather than objectively determined through some rate setting methodology. Additionally, board members' lack of economic and financial expertise has hindered the board in setting maximum tariffs. Sunset of AS

¹⁵Much of this discussion is summarized from two sources: a Legislative Audit sunset review "Department of Commerce and Economic Development, Board of Marine Pilots," (November 4, 1993) and a DCED, Division of Occupational Licensing report, "Boards, Commissions and Licensing Programs Annual Performance Reports Fiscal Year 1994."

08.62.045, tariff setting authority (as of June 30, 1994), should ease this problem. However, all of the parties involved would probably agree that there needs to be a better defined, regularly scheduled process for setting tariffs. The auditors recommended that the board consider assigning the task of tariff setting to the Alaska Public Utilities Commission (APUC).

Some parties have expressed concern over the possibility of anti-trust suits, should there be no state oversight of the pilot tariff. The implication of assigning this task to the APUC would be that the associations are regulated as utilities, at least with respect to price competition - a very different approach from the present quasi-competitive situation. If tariffs were assigned to an independent third party, at least they would be established according to objective criteria and an agreed upon (and transparent) methodology. The division recommends that this issue be studied by the Office of Management and Budget with recommendations made to the legislature regarding the possibility of tasking the APUC with tariff setting.

Training, Examinations and Licensing

The legislative auditors recommended that the board initiate statutory authority to require all pilot organizations to train all qualified candidates regardless of affiliation. The division flatly disagrees with this recommendation on the grounds that the board has no authority to "regulate" pilot associations into training their competitors. Competition among pilots has been detrimental to the training of highly qualified pilots by limiting training opportunities to the ships with which the trainee's association has contracts. It is unreasonable to expect a pilot to assume the immense liability of training a competitor. In fact, the training issue is at the crux of what is wrong with the current quasi-competitive system. The auditors also recommended that the board initiate statutory authority to compel industry to make vessels available to all trainees. However, this too is unrealistic. It is unreasonable to expect a ship master to be compelled by law to place the safety of his vessel in the hands of a trainee and the use of foreign flag vessels for the training of pilot candidates must, of necessity, remain a cooperative effort between pilot organizations and industry.

The Marine Pilot Coordinator is in the process of updating exams so that they are more objective and test for a well rounded pilot. Restructuring of the examinations has already led to legal challenges. Appeals of examination scores have been filed with the Hearing Officer and a lawsuit has been filed in federal court against the State of Alaska, state officials, and the Board of Marine Pilots (see Appendices C and D). With the development of more objective exams, the need for board members to be actively engaged in the examination process should be reduced. However, despite potential conflicts of interest, pilot members of the board are continually queried for their local knowledge and expertise. Since local knowledge along with ship handling skills are the essence of pilotage, it is difficult to see how the examination process could be structured to eliminate interaction between the person taking the exam and the pilot member representing the region.

State's Authority Over Pilot Associations

Should the investigation of the *Nieuw Amsterdam* grounding confirm that an unlicensed observer was conning the vessel at the time of the accident and/or additional illegal training activities, the board must be able to impose severe sanctions against the

association, including suspension or revocation of its state recognition and ability to operate. The board cannot tolerate violations of state law by state-sanctioned pilot associations.

In a competitive environment, pilot associations may choose not to provide services in less lucrative ports. There have been incidents where an association has refused to dispatch a pilot because the shipper (i.e., agent) had been using competing group's services. The Marine Pilot Coordinator has drafted regulations to address this problem. There have also been several instances where ships have been moved illegally through compulsory pilotage waters without pilots, even when they were readily available. The legislature should initiate statutory changes to strengthen the board's authority to administer the Marine Pilot Act and to hold vessel owners, masters and their agents accountable for the movement of vessels in compulsory pilotage waters without a pilot.

As long as there is tariff competition there will be disputes between pilot organizations. The Marine Pilot Act of 1991 does not provide any method to settle these disputes. AS 08.62.175 requires pilot organizations to cooperate with and assist the board in implementing this chapter. However, in the competitive environment, pilot associations have been reluctant to provide the state with needed information to assist the board and the Department of Commerce and Economic Development in resolving difficulties. The legislative auditors suggested binding arbitration as a possible solution to disputes between associations.

Investigations and Pilot Discipline

Whenever ships are moved in and out of ports, a certain number of accidents is inevitable. One unintended consequence of a quasi-competitive pilotage system is that in the regions with competing associations, virtually all incidents/accidents get reported to the Marine Pilot Coordinator (by pilots from the competing association), no matter how trivial. The division has set priorities for investigation and prosecutes reports of pilot misconduct or incompetence in a timely manner. With assignment of the Marine Pilot Coordinator to handle the maritime investigative case load, great strides have been made in following up on investigations.

Because of the magnitude of the potential threat to life, property, and the marine environment, the legislature should consider increasing civil penalties for violations of the Marine Pilot Act from the current \$5,000 maximum to a higher figure.

Administration

The Division of Occupational Licensing has revised the fee setting process for the upcoming renewal period to reflect the cost to the state. Pilot licensing fees have been increased substantially from a \$2,000 biennial fee to \$3,200. This increase is in large part reflective of the costs of legal challenges to the board's decisions, many of which relate to contradictions in the Marine Pilot Act. As the cost of these legal proceedings is passed on to the profession in the form of license fees, it is likely to eventually have a dampening effect on lawsuits. Since pilotage tariffs must ultimately pay for legal costs, a vessel surcharge collected by the pilot associations may be a more appropriate means of offsetting the cost of regulating compulsory pilotage.

Board Goals for 1995

In its goals for fiscal year 1995, the board stated that its overall objective was to make the safety interests of the state the primary focus of its regulatory activities. The board intends to continue with ongoing implementation of the Marine Pilotage Act of 1991 and to revamp the examination process. The board also supports reform of the Act.

At the October 5, 1994 board meeting in Juneau, the pilot representatives from all groups agreed to form an Alaska State Pilots Alliance to draft a "pilots bill" for introduction in the 19th Legislature to meet the above policy goals. It remains to be seen whether the pilots themselves can find enough common ground on which to draft legislation. Note that a previous "pilot's bill," designed to meet many of the concerns cited above, was introduced by Representative Hudson in the first session of the 18th Legislature. It languished in the committee process for two sessions and eventually died in the House Transportation Committee.

Pros and Cons of Various Policy Approaches for Improving Alaska's Marine Pilotage System

The policy approaches for repairing the pilotage system that have been advocated by various stakeholders and others can be separated into three models or paradigms. The pros and cons of each are described below:

1) Band aid approach as identified by Legislative Audit.

This alternative would basically continue the status quo and try to make the quasi competitive system work better. The Pilot Act would be opened to remove contradictions in statute only. The board would be renewed but would still operate under the "anti-competitive clause" in the law. Tariff setting could be assigned to the APUC, which would collect a fee from the industry for its services. Pilots would be required to train their competitors and serious sanctions would be applied to any association that conducted illegal training activities or refused to dispatch an available pilot.

Pros

The obvious advantage to this approach would be that it is the easiest. The legislature has demonstrated very little interest in wrestling with another thorny marine pilot bill. If tariff setting authority was assigned to the APUC, it might be possible to re configure the board (by eliminating agent and public members) to make it more of a licensing as opposed to regulatory body, which should ease some of the conflict of interest issues. One idea would be to replace some of the non pilot board members with representatives of environmental watchdog groups, e.g., the Prince William Sound Public Advisory Group, who have no economic interest in pilotage but share the state's safety concerns.

Cons

The status quo is not working. Unless the loopholes in the law are closed, the board will continue to find itself mired in lawsuits and legal challenges to virtually every unfavorable decision. Conflicts of interest will continue to hobble the board and legal costs (and license fees) will continue to rise proportionally. The power of the board to

provide a safe and efficient pilotage system will be further diluted. Competition between associations has had a seriously negative effect on public safety. There appears to be no reasonable means to coerce pilots into training their competitors.

2) Free market approach with the board as a licensing body only.

Under this alternative, the board would not be renwed in its present form but rather as a licensing body only, responsible for examinations and license renewals. The Marine Pilot Act would be stripped of provisions relating to pilot associations and the Marine Pilot Coordinator would be eliminated. Tariffs would be negotiated between individual pilots or associations and shippers. (Note that the main reason for having an enforceable tariff is to prevent overcharging. Under deregulation, tariffs could be set at whatever the market would bear, which might be very expensive, e.g., for an out of the way port during a holiday, and could lead to movement of ships without pilots.) Any pretense of pilots as independent contractors responsible to the state for public safety would be abandoned. The state would give up most of its oversight responsibilities and let the free market determine the demand for pilots and the routes for which they could be licensed, i.e., cross regional licensing would be allowed.

Pros

This approach has the virtue of simplicity and is the least cost alternative from the state's perspective. The board would more closely resemble other occupational licensing bodies. Conflict of interest problems would be reduced.

Cons

If pilotage were deregulated, there would be no need for state licensed pilots. At the extreme, shippers could employ anyone with a federal pilotage endorsement and make them "company pilots." The interests of the state in the prevention of loss of life, property and protection of the marine environment would be left in the hands of foreign shipping companies and fiercely competing pilot associations. Deregulation would remove virtually all state oversight and open all parties to potential antitrust complaints. As independent contractors, pilots would lose their liability limitation (currently \$250,000) and be unable to get insurance. This would make pilotage unattractive to otherwise qualified mariners. There is no conceivable way that a viable training program could be carried out under these conditions. The state would have little or no ability to investigate and prosecute marine incidents.

A recent National Research Council study of marine navigation and piloting in the U.S., *Minding the Helm* recommended that federal pilot endorsements be downgraded in the licensing system to become nothing more than a prerequisite for the more demanding state pilot license.¹⁶ For Alaska to go in the other direction would be an unhealthy departure from the recommendations of the most comprehensive and up to date national pilotage study. In short, general deregulation would subordinate the safety concerns of the public to the economic interests of pilots and shippers, creating a recipe for disaster.

¹⁶National Academy Press, 1994.

3) Greater state involvement, i.e., a State Pilotage Authority.

A state pilotage authority would offer central dispatch of pilots and billing. Shippers planning to enter a compulsory pilotage region would call one number to get a pilot. Pilot boats would be contracted by the state. Pilots would be contractual employees of the state, paid either by the day or hour (plus a tonnage multiple). The number of pilots would be controlled to provide a target income to all pilots within a reasonable tariff schedule. Competitive issues would be removed and the state's safety interests would be paramount. The state would take over training. Trainees would be selected from a list of qualified candidates via a competitive examination process. Trainers could receive additional compensation and have their liability covered. Continuing education requirements for renewal of licenses would be monitored by the state. A fixed tariff would be set by the APUC (or other body) and could provide for surcharges to cover the overhead costs of running the system and training. In sum, a state pilotage authority could operate as a self-funded public corporation.

Pilots could form associations to provide group insurance, retirement plans and tariff representation. The state would have direct control of the industry as a regulated utility, thus allowing pilots protection under the state action exemption.

Pros

A state pilotage authority would assure that the state government and public interests predominated in maintaining a safe and efficient pilotage system.

Cons

Even if it was established as a public corporation, a state pilotage authority would be equivalent to adding another layer of bureaucracy. It is doubtful that an authority could operate at less cost than the present system. The powerful shipping agent lobby would undoubtedly object strenuously to such an arrangement, since a portion of their revenues comes from pilot related port fees.

Conclusion

To the uninitiated, the issues surrounding marine pilotage in Alaska can be quite bewildering. The problems within the profession are complex and controversial and the special interest politics involved in amending the Marine Pilot Act are vicious. Both the pilots and shippers are playing for high stakes. Numerous lawyers and lobbyists are making substantial fees off of this unfortunate situation. In fact, the marine pilotage system is a classic "tarbaby" for an incoming administration. There are no easy solutions. Yet we have a serious problem here with potentially catastrophic consequences and state government has a basic public safety obligation to provide safe and reliable pilotage.

This report is an attempt to lay out all of the issues in a manner that is useful for newly appointed officials. While the author takes complete responsibility for the contents, the conclusions and recommendations presented herein are really a consensus of the opinions of executive branch staff who have been charged with studying or regulating pilotage during the past several years. Their general conclusions that the system is not

working and that the state should become further enmeshed in pilotage, rather than deregulating the profession to "let market forces straighten things out," flies in the face of conventional wisdom. Indeed, the most difficult thing about providing sound advice to legislators and other policymakers on pilotage issues is to overcome their inherent bias towards a "market solution." We've tried a market solution in Alaska for three years and have ended up with a system ripe for disaster. Pilotage really is different and problems within the state system do not lend themselves to conventional solutions.

Whatever approach the new administration takes, it is absolutely essential for the executive branch to play a leadership role in asserting the state's interest to protect lives, property and the marine environment in any revisions to the Marine Pilot Act of 1991. Government has an obligation to ensure that the safety concerns of the public predominate over the economic concerns of pilots, shippers and ship agents in the regulatory process.

Appendix A

Contradictions in the Marine Pilot Act of 1991

The Board of Marine Pilots has encountered numerous difficulties in implementing the Marine Pilot Act of 1991.¹⁷ Many of these difficulties can be attributed to the following five major problems and contradictions that the board has identified within the Act.

1) The policy and findings of the 17th Legislature states:

"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 and coastal water of and adjacent to the state."

and further that:

It is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions, and maximum tariffs and the authority to establish criteria for the training and licensing of marine pilots.

AS 08.62.040 Powers and Duties states:

(d) Notwithstanding the exemption from AS 45.50.562-45.50.596 granted to pilot organizations under AS 45.50.572 (a), the board may not adopt a regulation or take any other action resulting in anti-competitive activities that, if the board were subject to AS 45.50.562-45.50.596, would violate AS 45.50.562-45.50.596.

Contradictions:

Marine pilotage under the Marine Pilot Act of 1991 is not a freely competitive profession. It is a carefully regulated profession. Pilots do not compete in a "free market". The State of Alaska creates a need for pilots in the form of a compulsory pilotage statute. The state decides where pilots can operate and prohibits them from competing in more than one region. The state places a limit on how much pilots can charge for their services. Pilots are required to comply with recency criteria attainable only by an organization with sufficient contracts to meet the standards for renewal for all of its members. The state prohibits pilots from becoming the employee of a shipper, yet requires them to belong to an association that contracts with shippers. The state mandates all of these things and then expects pilots to compete on whatever ground is left. This is the basis of the "quasi-competitive" system that is causing many of the regulatory problems facing the board.

¹⁷Excerpted from the FY 94 Board of Marine Pilots Report to the Governor prepared by Dan Twonig, Marine Pilot Coordinator.

- 2) **AS 08.62.163 Pilots as Independent Contractors** requires that pilots be independent contractors and prohibits them from being an employee of a shipper. This statute was passed to ensure that state licensed pilots represented the interests of the state and that safety was not compromised by decisions of an economic nature, e.g., to move a ship during adverse weather or ice conditions to maintain a shippers schedule.

Contradictions:

AS 08.62.175 Regional marine pilot organizations states that pilots may form organizations.

AS 08.62.080 License required; restrictions and conditions, states that pilots must belong to an organization in order to pilot vessels. Pilot organizations (associations) are formed for the common dispatch of pilots, the billing of shippers for services, and disbursement of revenues. Under the present pilotage scheme, pilot associations compete for contracts with shippers. Pilots associated with an organization that has a contract with a shipper are therefore de facto contractual employees of that shipper. Thus the possibility exists for losing the independent contractor status that is required by AS 08.62.163.

- 3) **AS 08.62.080 License required; restrictions and conditions** states:

(b) A pilot may not be licensed in more than one region in the state unless the board determines that it is in the best interest of the state.

Contradiction:

AS 08.62.080(c) requires that a license issued under this chapter must identify the specific waterways and ports in each pilotage region in which a licensee is authorized by the board to pilot vessels. The board shall authorize a license to pilot vessels in a specific waterway or port in a pilotage region upon the licensee satisfying the training and other qualifying requirements by the board to pilot vessels in that waterway or port.

AS 08.62.093 Qualifications for a deputy marine pilot license states:

(a) the board shall issue a deputy marine pilot license for a marine pilotage region to a person who This requires entry level pilots to gain a license for a complete region as opposed to specific ports and waterways within a region.

Several cases are pending in the Hearing Officer process that are caused directly by contradictions in the statutes that refer to cross regional licensing.

- 4) Legislative auditors have stated that training should be mandated by law to be open to all candidates regardless of affiliation. They suggested that the board initiate legislative change requiring pilots to train their competitors (see following section).

Contradiction:

In a competitive environment, a pilot can not be compelled to train a person for his competitors. Regardless of any legal requirements imposed by the state, pilots are reluctant to expose their license to the liability of training a candidate who may become a future competitor. Training pilots have also been subject to lawsuits by trainees for giving less than satisfactory evaluations.

In this sense, competition in piloting has been detrimental to the training of highly qualified pilots. If a pilot organization needs more pilots to gain a larger market share, taking short cuts in training and licensure are in the financial interest of that organization. **Decisions on training have become business decisions and not safety decisions. More pilot organizations sharing a finite amount of work means fewer opportunities to all pilots for training.**

- 5) The Board of Marine Pilots has been stymied in its efforts to adopt regulations that properly implement the Marine Pilot Act of 1991. The regulations written and adopted by the board are continually challenged in the legal arena because of incomplete or contradictory legislation. Lawsuits have been filed and are pending in both state and federal court against the State of Alaska, state officials (both individually and in their official capacities), the Board of Marine Pilots and board members (both individually and in their official capacities).

Appendix B

Licensing Status of Pilot Associations*

Region	Association	No. of Full Time Members	No. of Associate Members	No. of Trainees
Southeast	Southeast Alaska Pilot Association	21	6	1
	Alaska Coastwise Pilot Association	11	6	3
Western	Western Alaska Pilots Association	4	-	1
	Alaska Marine Pilots	11	-	-
Southcentral	Southwest Alaska Pilot Association and Dispatching Services	20	2	4
Kuskokwim River	Kuskokwim Pilots Association	2	-	-
Total		69	14	9

* As of 12/7/94.

Appendix C

Significant Pilotage Statistics

Ship statistics for recent incidents involving vessels in Alaska waters:

* *Reefer Badger* 3,100gt reefer cargo 197 metric tons of fuel
Incident involving a pilot abandoning his duty

* *Regent Star* 24,000gt 850 berths 1,827 mt of fuel
Incident involving collision with a submerged object

* *Nordic Prince* 23,200gt 1,194 berths no fuel data available
Incident involving possible training violations

* *Nieuw Amsterdam* 33,930gt 1,374 berths 2,191 mt of fuel
Incident involving grounding of the vessel with flooding, pollution and injuries

* *Overseas Ohio* 92,017gt 272.5 mbbbl. crude 6215.5 mt of fuel
Incident involving collision with an iceberg and flooding

* *Dhara* 2,187gt reefer cargo no fuel data available
Incident involving vessel moving without a pilot aboard

* *Regal Princess* 69,845gt 1,350 berths 2,100 mt of fuel
Incident involving an "uncomfortable landing" due to high winds

* *Noordam* 33,930gt 1,340 berths 2,191 mt of fuel
Incident involving collision with a gillnet

* *Polar Eagle* 66,174gt LNG carrier no fuel data available
Incident involving a hard landing with damage to pier facilities

* Information gleaned from Lloyds Registry.

Since 1991 there have been 3 fatalities directly involving cruise ship operations in Alaska.

Since 1991 there have been 3 serious incidents involving the use of assist tugs in Alaska. 1 fatality, 2 tugs lost.

Appendix C continued

Since 1989 (when computerized records began), the Division of Occupational Licensing has opened and investigated 126 cases involving marine pilots in the state of Alaska. There are currently 29 cases that remain open. Of these, 16 cases were opened in FY 1994.

Since the creation of the Marine Pilot Coordinator position, 57 cases have been opened and investigated, 97 cases have been closed.

Since 1991 there have been 27 reported collisions between vessels or collisions between vessels and docks.

Since 1991 there have been 9 reported groundings of vessels with pilots aboard.

Litigation Summary

Aside from litigation pending in the hearing officer process, 4 lawsuits are pending in superior court against the state, and several lawsuits between pilots have been filed. Significant among these are 3 anti-trust suits (2 have been settled).

Since 1991, 5 ethics complaints have been filed against members of the Board of Marine Pilots and investigated by the Department of Law (none were sustained).

A pilot board member (public) was forced to resign from the board when his private business was boycotted by the cruise ship industry because they were not pleased with the way that he voted on the board.

Appendix D
Letter from Commissioner Paul Fuhs

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

WALTER J. HICKEE, GOVERNOR

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June 23, 1994

Mr. Shelby Stastny
 Director
 Office of the Governor
 Office of Management and Budget
 P.O. Box 110020
 Juneau, AK 99811-0020

Dear Shelby,

In November of 1990, the Office of the Governor, Division of Policy published a study entitled, **IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM**. This study was commissioned as a result of concerns raised regarding the events leading to the grounding of the tanker **EXXON VALDEZ** on Bligh Reef in 1989.

Since this study was published, the Alaska State Legislature enacted the **Marine Pilot Act of 1991**. This Act promotes a semi-competitive system of pilotage in which more than one pilot group may compete for contracts with vessel owners operating within the state's compulsory pilotage waters. This system was based on the Board of Marine Pilots setting a **maximum tariff** that pilots could charge for their services.

In November of 1993, the Division of Legislative Audit published a performance report on the Board of Marine Pilots which sharply criticized the Pilot Board, the Division of Occupational Licensing, and the Governor for their inability to implement the Marine Pilot Act of 1991. Although the audit grouped its comments into 10 recommendations, the Department of Commerce and Economic Development has identified 31 individual criticisms from the audit of the Pilot Board or the pilotage system as it exists today.

Two major concerns addressed in this report are:

Conflicts of interest among board members. Operating in a competitive environment has made some board members ineffective in the areas of expertise for which they were chosen to sit on the board.

The statutes and regulations should be revised to adequately protect the best interest of the state. The report demonstrated that problems with competition have limited training opportunities for pilots, and recommended that violations of the statutes should be promptly prosecuted and punished, and that the Governor should strictly adhere to the statutory criteria for appointment to the board.

Alaska Statute 08.62.045 (**MAXIMUM TARIFFS**) sunsets on June 30, 1994, thus removing the authority to set and oversee pilotage tariffs from the Board of Marine Pilots. In the opinion of legislative legal council, this action may expose pilot organizations to federal anti-trust suits caused by the loss of protection under

Mr. Shelby Stastny

-2-

June 23, 1994

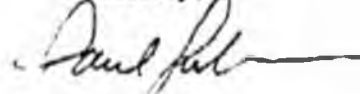
the state action exemption. The Alaska State Legislature adjourned recently without passing legislation to extend the maximum tariffs or passing HB 170 extending the Board of Marine Pilots.

Since the passage of the Marine Pilotage Act of 1991, ships have moved in compulsory pilot waters without pilots (Dutch Harbor and the North Slope in 1993 and Atka in 1994) thus flouting the pilotage system. Five ethics violations arising from possible conflicts of interest with competing pilot organizations have been filed against members of the Board of Marine Pilots, and only three new pilots have been licensed throughout the state (two of whom were licensed to serve a newly created and remote pilotage region on the Kuskokwim River).

With these issues in mind, it becomes obvious that the Alaska Legislature should take a close look at marine pilotage in the coming session. IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM was a very well written analysis of pilotage in Alaska as it stood in 1989. Since its publication, many changes have been made in the pilotage industry, both in Alaska and nationwide. These changes bear another look so that the Legislature has good, up-to-date information to consider when they act on this very complex and controversial topic.

I request that the Office of the Governor, Division of Management and Budget update and revise this report in time for the Legislature to digest it well before the next session. My staff stands ready to answer questions, provide information, or assist the authors in any way possible.

Sincerely,



Paul Fuhs
Commissioner

DT/PF/yd463.01

062394a

Enclosures: IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM
Audit Report, Board of Marine Pilots
Letter from Director, Division of Occupational Licensing,
DCED, Re: Audit, Board of Marine Pilots

Appendix E
Letter from Captain Michael Clinkscates

MARINE PILOTS

Southeastern Alaska Pilots' Association

Telephone (907) 449-9098
(907) 225-8887

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

5 September 1994

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

SEP 07 1994

DIV. OF OCCUPATIONAL LICENSING

Captain Dan Twohig
Dept. of Commerce & Economic Development
Division of Occupational Licensing
P. O. Box 'D'
Juneau, Alaska 99811

Dear Captain Twohig,

I am writing this letter to express my concerns that the current training guidelines of Marine Pilots in Alaska have allowed pilot groups to implement minimal training programs for new pilots. I believe competitive market forces, rather than safety, have been a motivation factor for some pilot training programs.

Since there are no uniform training requirements or standards set by the State of Alaska, individual groups have used their best judgment about criteria and safety factors in training new pilots. Now that a highly competitive atmosphere exists in Alaska marine piloting, safety concerns are more likely to be overlooked in favor of accelerated training programs, so that more pilots can be created in order to expand one group at the expense of another. On several occasions a pilot group has placed more than one trainee (up to 4-5) at a time on a ship. While this may not violate the letter of the law, it does violate the spirit of the law, in that several trainees riding for pilotage at one cannot receive complete and adequate instruction from one instructor pilot.

Virtually nowhere else in the United States and the world are pilot groups allowed to compete in this manner. We can see the results of an instant "shake 'n bake" trainee program with the Nieuw Amsterdam (Holland American Lines) accident, in which a non-licensed pilot observer - not a pilot trainee - was in command in fog and in close waters.

It is also in the interest of agents and the shipping industry to favor one group over another in order to break the groups up into as many pieces as possible. The undesirable effects of these actions are that the newly formed group will need contracts in order to build up its base and expand. It will be pressured to form unhealthy, close relationships with shippers to get these contracts. A pilot then will be less able to keep his independent status.

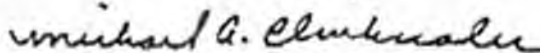
which is paramount when lives, property, and the environment are at stake.

When pilots have a relationship which is too close to shippers the following events occur. If a shipper wants to proceed with a docking in poor weather conditions in order to meet a schedule, the pilot may not feel free to say no. Also, if the shipper's captains insist on taking command through the majority of the voyage, the pilots are not free to protest. In essence, the result is that the independent pilot has become a "company pilot". I feel that this "company pilot" situation now exists in Southeast Alaska.

The solution is for the State to mandate a uniform pilot training program with criteria which will discourage fast-track training of pilots at the expense of safety. There should also be one dispatch roster, per region, through which all pilots are dispatched. Then there would be no favoritism or behind the scenes dealing in assigning pilots to ships. More important, pilots would maintain their independent status. There could be one or more pilot groups per region, and the State could set pilot fees based on U.S. west coast prices, plus a cost of living allowance.

We should remember what happens when safety concerns are overlooked in favor of monetary considerations, such as in the Exxon Valdez accident. Once the accident had occurred (due to various reasons), the cleanup effort was ineffectual because industry and the government had allowed for inadequate cleanup equipment and contingency plans. Monetary considerations had supplanted safety concerns and the environment and the Alaskan people paid the price.

Sincerely,



CAPT. MICHAEL A. CLINKSCALES

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

SEP 07 1994

DIV. OF REGULATORY AFFAIRS

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/14/95

FURTHER: Finance

Date of 5-Day Notice: 3-15-95
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-19-95

Resources Committee considered SB 130

Marine pilots; extending the termination date of the Board of Marine Pilots; efd.

and recommends:

- be replaced with CS SB 130 (YES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

- Senate Bill: same title
- new title
- House Bill: same title
- technical title
- new: SCR#

<u>SIGNING DO PASS</u>	DP	<u>OTHER RECOMMENDATIONS</u>	NR	DNP	AM
<u>Irma Louca</u>	✓	<u>[Signature]</u>	✓		
<u>Robin L. Taylor</u>	✓	<u>[Signature]</u>	✓		
<u>[Signature]</u>					
<u>[Signature]</u>					
<u>CHAIR: Robin L. Taylor</u>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
<u>C+ED</u>	<u>3/17</u>		<u>162.1</u>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

AMENDMENT

Filed 1-40

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 130(RES)(Draft Version K dated 4/11/95)

1 Page 2, after line 23:

2 Insert a new bill section to read:

3 **** Sec. 5.** AS 08.62 is amended by adding a new section to read:

4 Sec. 08.62.046. PILOTAGE TARIFFS. (a) The board shall adopt by
5 regulation maximum tariffs that may be charged by pilots for the provision of specific
6 pilotage services. The board shall identify those expenses that are included in the
7 tariff. In adopting maximum tariffs under this subsection, the board shall take into
8 consideration

9 (1) reasonable compensation for actual time aboard a vessel as a pilot
10 and for time engaged in preparing to provide pilotage services;

11 (2) differential compensation for seasonal and weather conditions, risks
12 involved in providing pilotage services, and overtime;

13 (3) dispatch expenses, transportation expenses, and other associated
14 costs directly related to the provision of pilotage services;

15 (4) reasonable overhead expenses that are necessary to provide year
16 round pilotage services for the region; and

17 (5) other expenses identified by the board.

18 (b) A pilot organization recognized by the board, acting on behalf of its
19 members, may adopt a new or revised tariff for provision of pilotage services if the
20 pilot organization follows the procedures set out in (c) of this section. The tariff
21 adopted under this subsection must include those expenses identified by the board
22 under (a) of this section, but may not exceed the maximum tariff set by the board.
23 The tariff adopted under this subsection may be revised annually.

24 (c) A pilot organization shall send a notice of intent to adopt a tariff for
25 provision of pilotage services to the board and publish the notice on at least three

1 days during a period of 14 consecutive days in a newspaper of general circulation in
 2 the state. The notice of intent to adopt a tariff shall include a copy of the proposed
 3 tariff, the name and mailing address of the pilot organization that intends to adopt the
 4 tariff, and a statement of the time and place of adoption of the tariff. A pilot
 5 organization may not adopt a tariff until 30 days have elapsed from the later of the
 6 mailing of the notice of intent to adopt a tariff to the board or the last date of
 7 publication of the notice of intent to adopt a tariff. A tariff may not take effect until
 8 30 days after the tariff is adopted by the pilot organization.

9 (d) A pilot organization recognized by the board or a member of the pilot
 10 organization may not charge a tariff for the provision of pilotage services that exceeds
 11 the maximum tariff set by the board, that is different from the tariff adopted by the
 12 pilot organization, or that has not taken effect under (c) of this section."

13 Renumber the following bill sections accordingly.

14 Page 5, lines 25 - 26:

15 Delete "[IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE
 16 BOARD OR]"

17 Insert "in excess of the maximum tariff established by the board or"

18 Page 5, line 26:

19 Delete "amount set [TARIFF ADOPTED]"

20 Insert "tariff adopted"

21 Page 7, line 4, after "conditions":

22 Insert ", including tariffs."



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: George Utermohle, Attorney
Legal Services
VIA FAX: 2029

2 pages
[Handwritten signature]

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: April 11, 1995

Please prepare an amendment to the K version of CS for SB 130 (RES) using the language from AS 08.62.045 (attached) which was repealed effective June 30, 1994.

The Resources Committee will be hearing SB 130 tomorrow afternoon. Please deliver the amendment to Capitol Room 115 before 12:00 p.m.. Thank you.

- (4) adopt regulations establishing
- (A) pilotage regions in the state;
 - (B) the criteria for concurring in the amount of license, application, training, investigation, and audit fees proposed by the department under AS 08.01.065;
 - (C) the criteria for recognizing pilot organizations under AS 08.62.175;
 - (5) make available, upon request, copies of this chapter and the regulations adopted under this chapter;
 - (6) review and approve the articles, bylaws, and rules of pilot organizations;
 - (7) audit a pilot organization or an individual pilot as necessary to implement and enforce this chapter;
 - (8) review and approve training programs conducted by pilot organizations; the board shall cooperate with the Department of Environmental Conservation in the review and approval of training programs for pilots of tank vessels; and
 - (9) establish and publish the dates of future license examinations.
- (b) The board may, by regulation, make any other provision for proper and safe pilotage upon the inland and coastal water of and adjacent to the state and for the efficient administration of this chapter, including establishing
- (1) different licensing criteria for a pilotage region if justified by regional differences in piloting;
 - (2) a mandatory random drug and alcohol testing program for pilots licensed under this chapter;
 - (3) criteria for trainee selection and for training programs conducted by pilot organizations; and
 - (4) standards under which a pilot may receive a license or an endorsement to a license to pilot vessels in more than one pilotage region.
- (c) The board may, for good cause, require a pilot licensed under this chapter to submit to a physical or mental examination to determine the pilot's fitness to perform the duties of a pilot.
- (d) Notwithstanding the exemption from AS 45.50.562 - 45.50.596 granted to pilot organizations under AS 45.50.572(a), the board may not adopt a regulation or take other action resulting in anti-competitive activities that, if the board were subject to AS 45.50.562-45.50.596, would violate AS 45.50.562-45.50.596.

Sec. 08.62.045. Pilotage tariffs. (a) The board shall adopt by regulation maximum tariffs that may be charged by pilots for the provision of specific pilotage services. The board shall identify those expenses that

are included in the tariff. In adopting maximum tariffs under this subsection, the board shall take into consideration

- (1) reasonable compensation for actual time aboard a vessel as a pilot and for time engaged in preparing to provide pilotage services;
- (2) differential compensation for seasonal and weather conditions, risks involved in providing pilotage service, and overtime;
- (3) dispatch expenses, transportation expenses, and other associated costs directly related to the provision of pilotage services;
- (4) reasonable overhead expenses that are necessary to provide year-round pilotage services for the region; and
- (5) other expenses identified by the board.

(b) A pilot organization recognized by the board, acting on behalf of its members, may adopt a new or revised tariff for provision of pilot services if the pilot organization follows the procedures set out in (c) of this section. The tariff adopted under this subsection must include those expenses identified by the board under (a) of this section, but may not exceed the maximum tariff set by the board. The tariff adopted under this subsection may be revised annually.

(c) A pilot organization shall send a notice of intent to adopt a tariff for provision of pilot services to the board and publish the notice on at least three days during a period of 14 consecutive days in a newspaper of general circulation in the state. The notice of intent to adopt a tariff shall include a copy of the proposed tariff, the name and mailing address of the pilot organization that intends to adopt the tariff, and a statement of the time and place of adoption of the tariff. A pilot organization may not adopt a tariff until 30 days have elapsed from the later of the mailing of the notice of intent to adopt a tariff to the board or the last date of publication of the notice of intent to adopt a tariff. A tariff may not take effect until 30 days after the tariff is adopted by the pilot organization.

(d) A pilot organization recognized by the board or a member of the pilot organization may not charge a tariff for the provision of pilotage services that exceeds the maximum tariff set by the board, that is different from the tariff adopted by the pilot organization, or that has not taken effect under (c) of this section. ~~(This section repealed June 30, 1994.)~~

Sec. 08.62.050. Marine pilot coordinator. (a) The department, with the approval of the board, may hire a marine pilot coordinator who is qualified to assist the board in administering and enforcing the provisions of this chapter. The coordinator is in the partially exempt service under AS 39.25.120.

- (b) The person who is hired as coordinator may not
- (1) be an active member of a pilot organization in the state;
 - (2) work as a pilot while employed as the coordinator, except to

AMENDMENT

withdrawing

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 130(RES)(Draft Version K dated 4/11/95)

1 Page 2, after line 23:

2 Insert a new bill section to read:

3 **** Sec. 5.** AS 08.62 is amended by adding a new section to read:

4 Sec. 08.62.046. PILOTAGE TARIFFS. (a) The board shall adopt by
5 regulation maximum tariffs that may be charged by a pilot organization for the
6 provision of specific pilotage services in a pilotage region where there is only one
7 pilot organization recognized by the board. The board shall identify those expenses
8 that are included in the tariff. In adopting maximum tariffs under this subsection, the
9 board shall take into consideration

10 (1) reasonable compensation for actual time aboard a vessel as a pilot
11 and for time engaged in preparing to provide pilotage services;

12 (2) differential compensation for seasonal and weather conditions, risks
13 involved in providing pilotage services, and overtime;

14 (3) dispatch expenses, transportation expenses, and other associated
15 costs directly related to the provision of pilotage services;

16 (4) reasonable overhead expenses that are necessary to provide year
17 round pilotage services for the region; and

18 (5) other expenses identified by the board.

19 (b) A pilot organization that is subject to a maximum tariff set by the board
20 under this section, acting on behalf of its members, may adopt a new or revised tariff
21 for provision of pilotage services if the pilot organization follows the procedures set
22 out in (c) of this section. The tariff adopted under this subsection must include those
23 expenses identified by the board under (a) of this section, but may not exceed the
24 maximum tariff set by the board. The tariff adopted under this subsection may be
25 revised annually.

1 (c) A pilot organization that is subject to a maximum tariff set by the board
 2 under this section shall send a notice of intent to adopt a tariff for provision of
 3 pilotage services to the board and publish the notice on at least three days during a
 4 period of 14 consecutive days in a newspaper of general circulation in the state. The
 5 notice of intent to adopt a tariff must include a copy of the proposed tariff, the name
 6 and mailing address of the pilot organization that intends to adopt the tariff, and a
 7 statement of the time and place of adoption of the tariff. The pilot organization may
 8 not adopt the tariff until 30 days have elapsed from the later of the mailing of the
 9 notice of intent to adopt the tariff to the board or the last date of publication of the
 10 notice of intent to adopt the tariff. The tariff may not take effect until 30 days after
 11 the tariff is adopted by the pilot organization.

12 (d) A pilot organization that is subject to a maximum tariff set by the board
 13 under this section or a member of the pilot organization may not charge a tariff for
 14 the provision of pilotage services that exceeds the maximum tariff set by the board,
 15 that is different from the tariff adopted by the pilot organization, or that has not taken
 16 effect under (c) of this section."

17 Renumber the following bill sections accordingly.

18 Page 5, lines 25 - 26:

19 Delete "[IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE
 20 BOARD OR]"

21 Insert

22 "(A) in excess of the maximum tariff established by the board
 23 under AS 08.62.146;

24 (B) [OR]"

25 Page 5, line 26:

26 Delete "amount set [TARIFF ADOPTED]"

27 Insert "tariff adopted under AS 03.62.146"

28 Page 5, line 27, after "member":

A M E N D M E N T

Sealed 1-4
(Signature)

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 130(RES); Version "K" dated 4/11/95

1 Page 2, line 18:

2 Delete "a license or"

3 Insert "[A LICENSE OR]"

4 Page 2, lines 19 - 20:

5 Delete "more than one pilotage region under AS 08.62.080(b)"

6 Insert "a specific port or waterway that is located outside of the pilotage region
7 in which the pilot is licensed [MORE THAN ONE PILOTAGE REGION]"

8 Page 2, line 30, through page 3, line 9:

9 Delete "[.] unless the commissioner [BOARD] determines that an actual or
10 imminent shortage of licensed pilots exists in a [IT IS IN THE BEST INTERESTS OF
11 THE STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE] pilotage region.
12 If the commissioner makes the determination described in this subsection, the board
13 may, after consultation with the recognized pilot organizations in the affected pilotage
14 region, issue temporary licenses for the affected pilotage region to pilots who already
15 hold a license for another pilotage region. The board shall ensure that sufficient pilots
16 are available to provide pilotage services in the affected pilotage region to all vessels
17 required to employ a pilot under this chapter. A temporary license issued under this
18 subsection is valid for a period of not more than one year."

19 Insert "; however, the board may issue an endorsement to a license authorizing
20 a pilot to pilot vessels in a specific port or waterway that is located outside of the
21 pilotage region in which the pilot is licensed [. UNLESS THE BOARD DETERMINES
22 THAT IT IS IN THE BEST INTERESTS OF THE STATE TO LICENSE PILOTS FOR
23 PARTS OF MORE THAN ONE PILOTAGE REGION]."

9-LS0851VK ✓
Utermohle
4/11/95

CS FOR SENATE BILL NO. 130(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

7 • Sec. 2. AS 08.62.010 is amended to read:

8 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is
9 created the Board of Marine Pilots. It consists of two pilots licensed under this
10 chapter who have been actively engaged in piloting on vessels subject to this chapter,
11 two registered agents or managers of vessels subject to this chapter who are actively
12 engaged in the procurement of pilotage services, two public members in accordance
13 with AS 08.01.025, and the commissioner or the commissioner's designee. Not more
14 than one pilot and one registered agent or manager may [SHALL] be from any one

1 pilotage region established by the board. Not more than one registered agent or
2 manager may be employed by, be a contractor for, or hold a financial interest in
3 the same marine industry business entity, including commonly owned, affiliated,
4 or subsidiary business entities [JUDICIAL DISTRICT]. All members of the board
5 shall be residents of the state.

6 * Sec. 3. AS 08.62.040(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 shortage of licensed pilots exists in a [IT IS IN THE BEST INTERESTS OF THE

1 STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE] pilotage region.
2 If the commissioner makes the determination described in this subsection, the
3 board may, after consultation with the recognized pilot organizations in the
4 affected pilotage region, issue temporary licenses for the affected pilotage region
5 to pilots who already hold a license for another pilotage region. The board shall
6 ensure that sufficient pilots are available to provide pilotage services in the
7 affected pilotage region to all vessels required to employ a pilot under this
8 chapter. A temporary license issued under this subsection is valid for a period
9 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 United States Coast Guard
20 inspected vessels of not less than 1,000 gross tons or tug and tow of not less than
21 1,600 combined gross tons while holding at least a United States Coast Guard [A]
22 license as master of steam or motor vessels of not more [LESS] than 1,600 gross
23 tons;

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

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

31 (5) three years of experience as a member of a professional pilot's

1 organization, during which the person actively engaged in piloting while holding at
2 least a United States Coast Guard license as a master of steam or motor vessels
3 [FREIGHT OR TOWING VESSEL] of not more than 1,600 gross tons; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) is chemically impaired;

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

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

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

20 this chapter [IT];

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

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

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

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

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

1 or revoke the recognition of a pilot organization that fails to comply with its
2 articles, bylaws, and rules, so as to no longer satisfy the minimum standards for
3 recognition by the board.

4 * Sec. 14. AS 08.62.165(a) is amended to read:

5 (a) A pilot licensed under this chapter is not liable for damages in excess of
6 \$250,000 per incident for damages or loss occurring as a result of the error, omission,
7 fault, or neglect of the pilot in performing pilotage services, except that the limitation
8 does not apply in a case where

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

10 or

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

14 * Sec. 15. AS 08.62.175(c) is amended to read:

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

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

18 (2) provide for the dispatch of pilots who are members of the
19 organization;

20 (3) subject to the membership application and approval provisions
21 contained in the articles and bylaws of the organization. [ADOPT AND REVISE
22 TARIFFS FOR THE PROVISION OF PILOTAGE SERVICES BY THE MEMBERS
23 OF THE ORGANIZATION:

24 (4) be open to membership by all persons licensed under this chapter
25 to pilot vessels in the pilotage region in which the organization is recognized;

26 (4) [(5)] operate or participate in a training program for pilots and
27 deputy pilots that is approved by the board; a training program for deputy pilots
28 may include a deputy marine pilot apprenticeship program approved by the
29 board;

30 (5) [(6)] cooperate with and assist the board in implementing this
31 chapter.

1 * Sec. 16. AS 08.62.175 is amended by adding a new subsection to read:

2 (e) A pilot organization recognized by the board may enter into agreements
3 with the master, owner, operator, or agent of a master, owner, or operator, of a vessel
4 concerning the terms and conditions under which the pilot organization will provide
5 pilotage services.

6 * Sec. 17. AS 08.62.180 is amended to read:

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

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

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

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

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

17 (A) on the rivers of Alaska; [.] or

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

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

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

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

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

31 (7) pleasure craft of foreign registry of less than 300 gross tons as

1 measured under 46 C.F.R. 69.51 - 69.75.

2 * Sec. 18. TRANSITION. (a) Notwithstanding AS 08.62.010, as amended by sec. 2 of
3 this Act, the current members of the Board of Marine Pilots shall continue to serve for the
4 term to which they were appointed.

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

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

11 * Sec. 19. AS 08.62.093(e) is repealed.

12 * Sec. 20. This Act takes effect July 1, 1995.



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: George Utermohle, Attorney
Legal Services
via fax: 2029

FROM: Annette Kreitzer
Senate Resources Committee Aide

DATE: April 10, 1995

RE: CS for SB 130

Please draft a Committee Substitute for SB 130 incorporating the LS0851NG.1 amendment dated 4/6/95 you prepared for Senator Hoffman.

I need this CS to distribute to committee members by Tuesday evening. It should be delivered to Senator Leman's office, Capitol Room 115.

Thanks.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 130(); Version "G"

BY SENATOR
HOFFMAN

1 Page 7, line 18, after "west":

2 Insert "or north"

~~ADOPTED~~

3 Page 7, line 19:

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

5 Insert "and [,] Hawaii, and including British Columbia, Yukon Territory, and
6 Northwest Territories, Canada"

7 Page 7, lines 20 - 23:

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]"

9-LS0851AG
Utermohle
4/6/95

CS FOR SENATE BILL NO. 130()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsors): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

8 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is
9 created the Board of Marine Pilots. It consists of two pilots licensed under this
10 chapter who have been actively engaged in piloting on vessels subject to this chapter,
11 two registered agents or managers of vessels subject to this chapter who are actively
12 engaged in the procurement of pilotage services, two public members in accordance
13 with AS 08.01.025, and the commissioner or the commissioner's designee. Not more
14 than one pilot and one registered agent or manager may [SHALL] be from any one

1 pilotage region established by the board. Not more than one registered agent or
2 manager may be employed by, be a contractor for, or hold a financial interest in
3 the same marine industry business entity, including commonly owned, affiliated,
4 or subsidiary business entities [JUDICIAL DISTRICT]. All members of the board
5 shall be residents of the state.

6 * Sec. 3. AS 08.62.040(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 shortage of licensed pilots exists in a [IT IS IN THE BEST INTERESTS OF THE

1 STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE] pilotage region.
2 If the commissioner makes the determination described in this subsection, the
3 board may, after consultation with the recognized pilot organizations in the
4 affected pilotage region, issue temporary licenses for the affected pilotage region
5 to pilots who already hold a license for another pilotage region. The board shall
6 ensure that sufficient pilots are available to provide pilotage services in the
7 affected pilotage region to all vessels required to employ a pilot under this
8 chapter. A temporary license issued under this subsection is valid for a period
9 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 United States Coast Guard
20 inspected vessels of not less than 1,000 gross tons or tug and tow of not less than
21 1,600 combined gross tons while holding at least a United States Coast Guard [A]
22 license as master of steam or motor vessels of not more [LESS] than 1,600 gross
23 tons;

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

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

31 (5) three years of experience as a member of a professional pilot's

1 organization, during which the person actively engaged in piloting while holding at
2 least a United States Coast Guard license as a master of steam or motor vessels
3 [FREIGHT OR TOWING VESSEL] of not more than 1,600 gross tons; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) is chemically impaired;

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

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

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

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

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

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

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

1 or revoke the recognition of a pilot organization that fails to comply with its
2 articles, bylaws, and rules, so as to no longer satisfy the minimum standards for
3 recognition by the board.

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6 \$250,000 per incident for damages or loss occurring as a result of the error, omission,
7 fault, or neglect of the pilot in performing pilotage services, except that the limitation
8 does not apply in a case where

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

10 or

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

14 * Sec. 15. AS 08.62.175(c) is amended to read:

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

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

18 (2) provide for the dispatch of pilots who are members of the
19 organization;

20 (3) subject to the membership application and approval provisions
21 contained in the articles and bylaws of the organization, [ADOPT AND REVISE
22 TARIFFS FOR THE PROVISION OF PILOTAGE SERVICES BY THE MEMBERS
23 OF THE ORGANIZATION;

24 (4) be open to membership by all persons licensed under this chapter
25 to pilot vessels in the pilotage region in which the organization is recognized;

26 ~~(4)~~ [(5)] operate or participate in a training program for pilots and
27 deputy pilots that is approved by the board; a training program for deputy pilots
28 may include a deputy marine pilot apprenticeship program approved by the
29 board;

30 ~~(5)~~ [(6)] cooperate with and assist the board in implementing this
31 chapter.

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3 with the master, owner, operator, or agent of a master, owner, or operator, of a vessel
4 concerning the terms and conditions under which the pilot organization will provide
5 pilotage services.

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

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9 except as provided in AS 08.62.185;

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

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

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

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

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

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

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

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

27 * Sec. 18. TRANSITION. (a) Notwithstanding AS 08.62.010, as amended by sec. 2 of
28 this Act, the current members of the Board of Marine Pilots shall continue to serve for the
29 term to which they were appointed.

30 (b) As the terms of the current marine pilot members and current agent or manager
31 members of the Board of Marine Pilots expire, the governor shall appoint marine pilot

MOVED
FROM
SEC. 154

1 members and agent or manager members to the board in accordance with the qualifications
2 set out in AS 08.62.010, amended by sec. 2 of this Act.

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

5 * Sec. 19. AS 08.62.093(e) is repealed.

6 * Sec. 20. This Act takes effect July 1, 1995.

Paul Julius
790-36 Julius
FAX 790-1970

Alaska State Pilots Alliance



TO: Alaska State Legislators
The Knowles Administration
Pilot and Industry Associations

FROM: Eric Eliassen, Chairman
Alaska State Pilots Alliance

March 8, 1995

STATUS REPORT

For over a year now, pilot organizations have been meeting to seek common ground on marine pilotage legislation and have formed the Alaska State Pilots Alliance to promote this cooperation. We have then met with cruise ship and cargo shipping industry representatives in an attempt to find agreement with them. We have also maintained close contact with the administration in the Department of Commerce.

This effort is taken in recognition of the level of contention and litigation within the marine pilotage regulatory framework, of the level of strife the legislature has gone through the last couple times this issue has been addressed, and in recognition of the need this industry has for some stability which will maintain public safety and keep commerce moving. Fortunately, we have made some progress in our efforts.

In this status report I will attempt to lay out as honestly as I can what we can all agree on and what issues are still out there. First, here are the legislative provisions agreed to by ASPA. One pilot group did not endorse this core legislation but 5 pilot associations did, representing 94% of marine pilots in Alaska. Specific legislative language is attached as addendum #1.

CORE LEGISLATIVE PROVISIONS:

- 1) ASPA will not attempt to change the competitive system structure established in 1991 by the legislature. This was very important to some of the pilot groups in the areas that have more than 1 pilot association in their region and it was very important to the shipping and cruise ship industry. Some pilot groups continue to believe that a fully state regulated monopoly within each region best serves the state's interests.
- 2) The Board of Marine Pilots will be re-authorized until June 30, 2000.
- 3) A pilot's liability for their actions will be limited to \$250,000 except in the case of gross negligence, willfull action, or being under the influence of alcohol or drugs. Under current law, Pilot's could lose their limitation of liability for any disciplinary action taken by the board - technically even if a letter of reprimand is issued.
- 4) This provision allows a pilot to be registered in 1 region only. This provision was strongly supported by all the pilot associations with the exception of WAPA. One region licensure is essentially the current situation, except that the existing law is not sufficiently clear to prevent lawsuits over this issue.

Litigation has gotten very expensive overall for the Marine Pilot board and although we pay for it through fees (\$3200 for a license last year) it also increases the State budget since no distinction is made between program receipt and general fund monies. To just hold overall state expenditures level, you must cut the budget elsewhere just to make up for what the State is paying to defend the board and itself from these lawsuits.

It would be an unworkable situation to have pilots licensed in more than 1 region. Most importantly, the regions are very large and pilots must know the best tiding and anchoring conditions in the whole region to

ensure safe pilotage and to protect Alaska's shoreline from pollution which could result from an incident.

Region 3 covers the entire Southwest and Northwest coast from Chignik, out the Aleutians, up the West coast past Barrow and all the way to the Canadian border. This is a huge area to know and also provides great logistical challenges in moving pilots around the region to do the work.

Here is how the logistics work: the Pilot's Association provides a central point of dispatch to ensure that there are enough pilots to cover the entire region and are in the proper location at the proper time to provide pilotage services which are required by State law. Some ports have only a few ships call - say Chignik has 2 foreign cargo ships a month. A pilot will have to fly in 1 day early, move the ship, leave a day later, then weather permitting fly on to the next port of assignment.

Meanwhile in Dutch Harbor, the pilots have been moving 12 ships a day for which they would be paid much more than the pilot who went to Chignik. Under these circumstances who would you ever get to go to Chignik? As a practical matter, what the associations have to do is divide the income between all the Association pilots who are working so that reliable service can be provided as required by law throughout the entire region.

5) Provides for legislation which enables Industry and Pilot associations to negotiate to reach agreements on tariffs without violating State anti-trust laws. This is necessary since the tariff setting powers of the Board have sunsetted.

These are the issues agreed to by ASPA as core legislation necessary as a minimum to efficiently operate marine pilotage in Alaska. Industry representatives did not object to these provisions but felt that other issues should also be included. There are a number of other issues out there and I will attempt to fairly characterize them.

OTHER ISSUES:

1) Alaska Coastwise Pilots feels that the Board should be changed to allow greater representation for marine pilots as part of the core legislation. Other pilot groups don't see it as critically important but would be supportive of the concept if it is adopted. Industry representatives felt that if the number of pilots were increased, then the number of industry board members should also be increased.

2) Industry feels that some method of conflict resolution to resolve disputes over tariffs should be included as part of the core legislation. Some of the pilots groups support this concept but some of the pilot groups in regions where more than 1 pilot association exists, strongly objected to introducing arbitration into a competitive situation. So ASPA did not take an official position on this issue. Individual pilot groups may make individual comments on this issue during legislative hearings. Individual pilot groups may also include such conflict resolution language in their private contracts with industry.

3) The industry also wants to add a provision which would require the industry board member seats to be held by someone actually working in the industry. ASPA supports this provision as a matter of fairness since Marine Pilot board members are required to be active as pilots in the State.

4) The administration has also put forward legislative "housekeeping" language which appears to be acceptable to pilots with the exception of the language on reducing the requirements for Deputy Marine pilots. If anything, we are all under a microscope more than ever before since the Exxon Valdez spill. We are a profession in which the public, the Legislature and the administration expect us to operate with zero defects.

We feel that liberalizing Deputy Marine Pilot requirements could weaken the standards for training and experience which we require and create an additional grey legal area which will lead to more litigation.

Knowing local conditions is important, but just as important is knowing how to control these large vessels, some of which can take up to miles to stop and can damage dock facilities if not handled correctly. Our pilots on cruise ships also have thousands of passenger's lives in their hands.

We feel it would be more appropriate for us to establish voluntary recruitment and training systems within our associations to address the issues raised by the administration. We would be willing to work with them in developing a program.

CONCLUSION:

I hope this status report is useful to you in defining the issues. We were not able to reach total agreement on all issues but we did make significant headway on the core legislative proposals which we would

urge you to adopt in legislation. In addition, I feel that because of this effort, the lines of communication between pilot groups, industry and the Alaska Department of Commerce are working better now than they have in a long time.

On behalf of the Alaska State Pilots Alliance, I would like to thank you for your attention to these matters during this legislative session. I will be available to provide additional information or participate in legislative committee hearings.

Sincerely,

Eric Eliassen

addendum #1

Alaska State Pilots Alliance



2/22/95

To: Senator Drue Pearce, President of the Senate
Representative Gary Davis, Chairman House Transportation Committee

From: Captain Eric Eliassen
Chairman, Alaska State Pilots Alliance

Re: 1995 Marine Pilotage Legislative Proposal

A.S.P.A. respectively submits the following to reauthorize the Marine Pilot Board and to address several inconsistencies in the Pilot Act of 1991.

- A. Amend AS 09.03.010(c)(13) to read:
(13) Board of Marine Pilots (AS 08.62.010)--June 30, 2000;
- B. Amend AS 08.62.165(a)(2) to read:
(2) the error, omission, fault or neglect of the pilot constitutes an act for which the board shall impose a disciplinary sanction under AS 08.62.150(a)(2) or (3).
- C.. Amend AS 08.62.080(b) to read as follows.
- (b) A pilot may not be licensed in more than one pilotage region at one time. If the pilot board determines that a chronic shortage of pilots is either actual or imminent they may, after consultation and agreement with the association(s) in the affected region(s) implement temporary, (maximum of one year duration) measures to ensure that masters and owners of vessels satisfy their obligations under AS 08.62.190.
- D. Amend AS 08.62.175(c) (3) to read
(3) negotiate and enter into agreements with masters, owners and operators of vessels, and with agents acting on behalf of masters, owners and operators of vessels, with respect to the terms and conditions pursuant to which pilotage services will be provided by members of the organization;

Alaska State Pilots Alliance

- E. Amend AS 45.50.572 by adding a new subsection (j) to read;
(j) AS 45.50.562---45.50.596 do not forbid agreements for the providing of pilotage services entered into between marine pilot organizations and masters or owners of vessels or agents or other persons acting on behalf of such masters or owners.

Respectfully yours,

Eric Eliassen

Captain Eric Eliassen
Chairman, A.S.P.A.

⑦



Alaska Steamship Association

234 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

March 8, 1995

To: Representative Gary Davis
From: Joe Kyle
Re: Marine Pilot's Legislation

The following information is a synthesis of the memos provided to you on March 6 and March 4 by Ray Gillespie and Joe Kyle respectively, and they represent the views of the Alaska Steamship Association (ASA). This synopsis is offered to assist you and the House Transportation Committee when you consider revisions to the Marine Pilot Act.

- Binding arbitration is a "fail-safe" provision, and will be invoked when ship owners and pilots have failed to agree. It is in the state's best interest as it ensures that tariff disputes will not disrupt the flow of important and economically critical commerce such as crude oil, cruise ships, fishery products, and other general cargo. Without some mechanism in the Act to resolve tariff disputes, the courts will be the sole recourse for the parties.

- Binding arbitration is a sensible and reasonable manner to resolve money disputes. It has a long and successful history for use in those areas where essential services are provided for the public benefit. Precedent is found for fire fighters, state troopers, and police. It is necessary in areas where work stoppages would result in serious risk to public health, safety, and property. Where the risks involved are deemed unacceptable by policy makers, binding arbitration is often required to protect the public interest.

- We believe that marine pilots serve a vital public safety function, while also assisting the smooth and safe flow of commerce. Indeed, the current Act's POLICY, FINDINGS, AND INTENT state that "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 and coastal water of and adjacent to the state."

- 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 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.

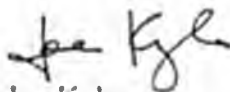
- The state requires that owners utilize the services of a state licensed profession — a profession with significant, formal and informal, barriers to entry. Since the state allowed the maximum tariff to sunset, it now has a duty to provide an alternative mechanism to resolve monetary disputes between 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.

Finally, it is significant to note that the shipping industry (or, in the "labor & management" arena — management) supports binding arbitration. Generally we find labor supporting binding arbitration as a dispute resolution mechanism because work stoppages generally invoke the public's wrath, and weaken labor's bargaining position.

Our offer to submit to binding arbitration is truly a compromise position. It represents our best effort to avoid the controversy surrounding the maximum tariff provision of the Act, which sunsetted on June 30, 1994, and yet still ensure commerce flows smoothly and the states interests are protected.

Sincerely,



Joe Kyle



Alaska Steamship Association

234 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

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

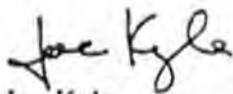
Representative Gary Davis
March 8, 1995
Page 2

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 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,


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



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
SEATTLE REGIONAL OFFICE

915 Second Ave., Suite 2806
Seattle, Washington 98174
(206) 222 6350

January 6, 1995

The Honorable Fran Ulmer
Alaska State Legislature
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Ms. Ulmer:

The staff of the Federal Trade Commission¹ is pleased to offer this comment on the issues raised by H.B. No. 237, a proposal in the last legislative session to regulate competition among marine pilots in Alaska. We understand that a similar bill is likely to be introduced in the next legislative session. We believe that legislation limiting the number of pilots and regulating their rates is likely to lead to poorer service or higher prices than would appear in a competitive market, and that the public interest in safety might be promoted more effectively by laws addressing safety matters directly.

I. Interest and Experience of the Staff of the Federal Trade Commission.

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.² Consistent with this statutory mandate, the Commission and its staff work to identify restrictions that hinder competition and increase costs without providing countervailing benefits to consumers. The FTC and its staff have investigated and studied the competitive effects of restrictions on the business practices of state-licensed professionals.³ In addition, the staff has submitted comments about

¹ These comments are the views of the staff of the Seattle Regional Office and the Bureau of Economics of the Federal Trade Commission, and do not necessarily represent the views of the Commission or any individual Commissioner.

² 15 U.S.C. § 41 *et seq.*

³ See, e.g., *American Medical Ass'n*, 94 F.T.C. 701 (1979); *Iowa Chapter of American Physical Therapy Ass'n*, 111 F.T.C. 199 (1988) (consent order); *Wyoming State Board of Chiropractic Examiners*, 110 F.T.C. 145 (1988) (consent order); *Connecticut Chiropractic Ass'n*, 114 F.T.C. 708 (1991) (consent order); *American Psychological Ass'n*, C-3406 (consent order issued December 16, 1992, 58 Fed. Reg. 557 (January 6, 1993)); *Texas Board of* (continued...)

these issues to state legislatures and administrative agencies and others.⁴ These have included comments to state government bodies about regulation of harbor pilotage.⁵

II. Description of the Current Law and Proposed Amendments.

A bill, H.B. No. 237, in the last legislative session would have authorized the state Public Utilities Commission to set pilotage tariffs (not just a maximum tariff ceiling) and required pilots to adhere to those tariffs. In addition, it would have required the Alaska Board of Marine Pilots (the "Board") to establish, by regulation, limits on the number of pilots in each region. It is anticipated that a similar bill will be introduced in the next session in 1995.

Alaska law requires a ship navigating Alaska's inland or coastal waters to use a pilot licensed by the state.⁶ The pilot must be an independent contractor, not an employee of the

¹(...continued)

Chiropractic Examiners, C-3379 (consent order issued April 21, 1992, 57 Fed. Reg. 20279 (May 12, 1992)); *National Ass'n of Social Workers*, C-3416 (consent order issued March 3, 1992, 58 Fed. Reg. 17411 (April 2, 1993)); *California Dental Ass'n*, D-9259 (administrative complaint issued July 9, 1993); *McLean County Chiropractic Ass'n*, C-3491, 59 Fed. Reg. 22163 (April 29, 1994) (consent order), and C. Cox and S. Foster, *The Costs and Benefits of Occupational Regulation* (1990) (FTC Bureau of Economics, Economic Issues paper).

⁴ See, e.g., Comments to The Honorable Marlin D. Schneider, Wisconsin State Assembly, (September 13, 1993) (funeral and cemetery regulation); Katharine M. Carroll, New Jersey Board of Medical Examiners (September 7, 1993); Kay E. Gunter, Montana Board of Chiropractic Examiners (December 11, 1992); South Carolina Legislative Audit Council (February 26, 1992) (Boards of Pharmacy, Medical Examiners, Veterinary Medical Examiners, Nursing, and Chiropractic Examiners); Jeffrey W. Moran, Commerce and Regulated Professions Committee, General Assembly of New Jersey (April 11, 1991) (dispensing and sale of prescription drugs by physicians); see also testimony to the Washington legislature's Joint Administrative Rules Review Committee, December 15, 1992 (opticians and optometrists) and to the Maine House of Representatives, January 8, 1992 (optometry) and May 3, 1993 (optometry).

⁵ See Comments to Martha G. Wellman, Office of the Auditor General, State of Florida (November 28, 1990); and George L. Schroeder, Director, Legislative Audit Council, State of South Carolina (November 7, 1989).

⁶ Alaska Statutes §08.62.160. Some vessels are exempted from this requirement: those that are required by federal law to use a federally licensed pilot, fishing vessels registered in the United States or Canada, certain vessels shorter than 65 feet, certain other vessels registered in
(continued...)

shipowner.⁷ The Board regulates pilotage, "to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment."⁸ The Board licenses pilots, sets criteria for training and licensing, defines the regions for which licenses are issued, and establishes other regulations. The Board had been authorized to establish maximum pilotage tariffs; however, that authority has recently sunsetted.⁹

The Board supervises the regional pilots' organizations through which pilots offer their (individual) services. These organizations, which coordinate dispatch and billing, must be open to any qualified pilot and must also offer programs to train new pilots.¹⁰ As of 1993, a pilot must belong to such an organization.¹¹ Board recognition of a pilots' organization is conditioned on the organization's uniform and nondiscriminatory application of its own rules, its compliance with applicable laws, and its effectiveness in promoting efficient, reliable, and professional services, maintaining sufficient qualified pilots, and promoting approved training programs.¹²

Board-recognized pilot organizations are granted a limited exemption from state antitrust law. Recognized pilot organizations are classed with labor unions and agricultural cooperatives created for "mutual help" and "not conducted for profit"; the state antitrust law does not forbid their existence or operation or forbid or restrain their members from "lawfully carrying out the legitimate objectives" of the organizations, and the organizations are not to be considered

⁸(...continued)

the United States engaged in river or coastal service (those of less than 300 gross tons or owned by the state of Alaska itself), certain Canadian vessels to the extent Canada grants a reciprocal exemption, and pleasure craft. Alaska Statutes §08.62.180. The penalties for failing to use a pilot where one is required and available, which were substantially strengthened in 1991, are a fine of \$5,000-\$15,000 for a first offense and \$10,000-\$30,000 for repeat offenses. Alaska Statutes §08.62.190(a). The Board of Marine Pilots may determine by regulation when a pilot is "available."

⁷ Alaska Statutes §08.62.163. This requirement was added in 1991; previously, the pilot could be an employee. Pilots serving under Coast Guard licenses, in situations that require federal, not state, licensing, may be employees. The federally-licensed pilots on Alaska's state-run ferry system are employees.

⁸ Alaska Statutes §08.62.040.

⁹ Alaska Statutes §08.62.045.

¹⁰ Alaska Statutes §08.62.175(c)(4), (5). These requirements were added to the law in 1991.

¹¹ Alaska Statutes §08.62.80n.

¹² Alaska Statutes §08.62.175(d).

conspiracies in restraint of trade.¹³ Except for this exemption, the law contemplates competition, for the Board may not adopt regulations or take actions that would result in anticompetitive activities.¹⁴ The legislature in 1991 apparently rejected recommendations that the Board be authorized to regulate more strictly;¹⁵ instead, the Board was given authority only to set maximum tariffs and was denied authority to limit the number of licensed pilots for the purpose of controlling competition.

III. Competition in Pilotage Services in Alaska.

Alaska's original piloting law, enacted in 1970, established the Board to license pilots but otherwise did not set out detailed requirements.¹⁶ In each region an association of pilots provided services, facing no competition in its own area. Conditions changed during the 1980's when the cruise ship industry boomed in the southeast part of the state and the bottomfishing industry expanded in the southwest. The new demand created niches for new groups and configurations. Some pilots broke with the established associations to operate independently or form new groups. There are now four recognized pilotage regions in Alaska, and in two of them, the southeast and southwest, two organizations compete head to head for business.¹⁸ This competition has brought increased responsiveness in provision of pilot services. In the southwest,

¹³ Alaska Statutes §45.50.572(a). This 1991 addition to the law may be in part a response to a ruling in a private antitrust suit that pilot associations were not exempted as labor organizations. *Science v. Southeastern Alaska Pilots' Association*, 798 F.Supp. 1007 (D.Alaska 1990). The 1991 revisions also granted pilots a limitation on their personal liability, of \$250,000; this limitation does not apply in cases of gross negligence.

¹⁴ Alaska Statutes §08.62.040(d). Implicitly recognizing that limiting the number of pilots would be anticompetitive, H.B. 237 would have added a proviso to this section of the law to make clear that the Board would nonetheless issue regulations and take "other actions" to restrict the number of pilot licenses issued.

¹⁵ See Office of the Governor, Division of Policy, *Improving Alaska's Marine Pilotage System* (1990) ("Governor's Report"), Appendix B, for such recommendations from pilots themselves.

¹⁶ See *Governor's Report*; for other background on conditions in the Alaska piloting industry, see Division of Legislative Audit, *Audit Report: Department of Commerce and Economic Development, Board of Marine Pilots* (November 4, 1993) ("*Audit Report*"); and Alaska Board of Marine Pilots, *Fiscal Year 1994 Annual Report* ("*Board Report*").

¹⁷ *Governor's Report* at i-ii, 11-12.

¹⁸ *Audit Report* at 5.

for example, the new organization, Alaska Marine Pilots, has adopted a different business format (a proprietorship, rather than a joint venture partnership) and has set up new dispatch points closer to fishing grounds in the Aleutian Islands than the traditional dispatch point, which is said to be more convenient for the oil tanker business.¹⁹

Efforts to meet the increased demand through new ways to provide piloting services have been accompanied by contention and litigation, among the pilots and their associations and between pilots (and would-be pilots) and the Board.²⁰ Self-regulation broke down as newer pilots questioned the "old-boy" networks of the traditional pilot associations.²¹ Legal challenges by would-be pilots and ship operators seeking more or lower-cost piloting services threatened the associations with liability over denial of access to membership, training opportunities and dispatching services, and over internal discipline of those encouraging dissent or competition.²² Board decisions denying licenses or license upgrades have also been challenged.²³

Increased competition has also raised questions about whether the public interest in safety and environmental protection would be adequately served in a more competitive setting.²⁴ Critics contend that competition will undermine the pilots' primary duty to the public interest.²⁵ According to the Governor's Report, the issue is "directly related" to the number of pilots licensed in each region: if there are "too many" licensees, the association cannot accept them all, and they will compete by cutting rates and following steamship company orders that compromise safety requirements.²⁶

¹⁹ Governor's Report at 14.

²⁰ Governor's Report at i-ii, 1, 11-13; Board Report at 3-4, 13.

²¹ Governor's Report at ii, 11.

²² The types of legal claims are summarized in the *Governor's Report*, Appendix D at 6-7. See also *Audit Report* at 36, for description of refusal to provide training trips in the southeast because of concern about the economic consequences of increased competition.

²³ The Division of Legislative Audit found that, because the Board had granted licenses to unqualified applicants, other unqualified applicants could not legally be denied them. *Audit Report* at 36.

²⁴ Governor's Report at 11-12.

²⁵ On the other hand, critics of the established system complained that it led to coverups of pilot incompetence. See *Governor's Report* at 12-13.

²⁶ Governor's Report at 18-19.

IV. Effects of Proposals to Eliminate Competition.

Requiring pilots to adhere to tariffs fixed by regulation and limiting by law the number of pilots permitted to offer services would eliminate competition in pilotage and replace it with a regulated cartel.²⁷ Pilotage has only a limited history of competitively provided service.²⁸ Still, the economic effects of price and entry restrictions on pilotage are likely to be similar to those in other markets. Restricting output, by limiting the number of pilots, is likely to lead to higher prices and poorer service. Fixing prices reinforces the effects of restricting output, inhibiting responses to changes in supply and demand and leading to inefficient allocation of resources. These economic considerations are distinguishable from safety concerns. Regulation to promote safety may well be necessary to protect vessels, harbors, waterways, the environment and the public from the damage that navigational mishaps can cause. These comments do not extend to regulation aimed specifically at navigation safety. But they do examine whether eliminating competition would necessarily improve safety.

Alaska's recent experience with entry by new pilot organizations suggests that the well-understood processes of a competitive market could be expected to work in piloting as they generally work in other industries. Absent barriers or impediments to entry,²⁹ markets ordinarily tend to adjust supply to meet changing demand. In a market setting, an increase in traffic could increase demand for pilotage services. This happened in Alaska, as increasing demand for cruise ship and fishing traffic led to efforts to increase the supply of pilots, which sparked the recent controversies as incumbent pilots resisted the prospect of competition.³⁰ Normally, incumbent pilots could be expected to respond to the increased demand by raising their prices, and, as a result of higher prices, new pilots would be attracted into the business. As more pilots entered, upward pressure on the price of piloting services would diminish and prices would be expected to stabilize at a new, competitive level. For example, in the Alaska piloting markets, increased demand for piloting services apparently was not adequately met by the existing pilot organizations and thus led to efforts to set up new pilot service arrangements,

²⁷ See *Bain's Report* at 10, encouraging "reform" of statute to "eliminate competition within regions" and establish fixed tariffs.

²⁸ Some degree of competition between different pilot organizations has been reported in Oregon, Connecticut, Hawaii, some ports in California, and some ports in Florida. See *Audit Report* at 10. In the ports of Los Angeles and Long Beach, California, piloting services are provided by a public agency, rather than by a private cartel.

²⁹ Barriers to entry are long-run costs that an entrant into a business must incur, but that are not incurred by incumbent firms. Impediments to entry are conditions that necessarily delay entry into a market for a significant period. See *B.F. Goodrich Co.*, 110 F.T.C. 207, 295-97 (1988).

³⁰ See *Governor's Report* at 11.

potentially at lower prices than the incumbent pilots were charging.³¹ Conversely, a decline in demand would tend to result in a decrease in the price and the exit of some pilots from the business.

Under regulatory programs such as that proposed in H.B. 237, limits on the number of pilots have been accompanied by regulation of their rates. If the number of suppliers is capped by regulation, opportunities for new suppliers to enter the market may be curtailed and incumbents may be able to charge higher prices than would prevail in a competitive market.³² Harbor pilotage does not appear to be a "natural monopoly," that is, an industry in which it would always be most efficient for a single firm to supply all of the demand in the market.³³ In the absence of the cost conditions that lead to natural monopoly, price regulation can exacerbate problems of resource misallocation produced by limiting entry.³⁴

In Alaska to date, neither entry nor rates have been completely controlled by regulation. Alaska law provided only for fixing maximum prices (before even that authority recently sunsetted), and thus has permitted pilots to compete by offering to cut their rates. As long as

³¹ One difficulty reportedly encountered in this process has been the reluctance of incumbent pilots to afford potential competitors the training opportunities they need to become qualified under state law. See *Board Report* at 12, 14-15. Alaska law now requires pilot associations to establish or participate in Board-approved training programs. Alaska Statutes §08.62.175(b)(5). Even without that legal requirement, ships' agents and operators, which have a direct interest in promoting competition, might protect that interest by permitting or even requiring that the pilots they hire help train new ones.

³² A study by the Commission's Bureau of Economics concerning restrictions on entry into the taxi market, which appear to be in many ways analogous to regulations restricting entry into the pilotage market, is particularly instructive. Among other things, the study concluded that entry restrictions enable incumbent firms to exercise market power and thus to charge higher than competitive fares. See M. Frankena & P. Pautler, *An Economic Analysis of Taxicab Regulations* (FTC Bureau of Economics, 1984).

³³ Normally, one reason for price regulation is to prevent industries that are "natural monopolies" from exploiting their market power. See S. Breyer, *Regulation and Its Reform* 15-18 (1984); Jarrell, *The Demand for State Regulation of the Electric Utility Industry*, 21 *J.L. & Econ.* 269, 272-76 (1978). Some studies have questioned whether regulation of public utilities, which are often thought to be natural monopolies, has actually resulted in lower prices than would have prevailed without regulation. See, e.g., R. Braeutigam, *Optimal Policies for Natural Monopolies*, in 2 *Handbook of Industrial Organization* 1289-1346 (R. Schmalansee and R.D. Willig, eds., 1989).

³⁴ Because associations in Alaska are now required by law to admit any qualified pilot, entry can be prevented only by Board decisions about issuing licenses.

entry and rates are not artificially constrained by law or by other means, pilots in Alaska should have the usual market-based incentives to compete for customers through lower prices, innovation, and increased efficiency.

The possibility that such competition would compromise safety standards has sometimes been cited as a reason to permit, or even require, pilots to form a cartel insulated from competitive pressure, as well as to prohibit ships from hiring pilots as employees.³⁵ It has been feared that pilots would compete along the margin of risk-taking and shipowners would hire any pilot willing to take risks.³⁶ Our knowledge of actual safety records in Alaska is limited to what appears in the reports that are cited in this comment. This comment takes no position about whether safety standards and requirements are adequately defined, observed, or enforced in Alaska. The Board and others more familiar with Alaska's particular experiences are obviously in a better position to make that determination. Rather, this comment reviews studies of experiences in other piloting areas and other industries in examining whether the incentives of a competitive market are necessarily inconsistent with safety concerns.

We have found no systematic studies of the differences in safety between pilots in monopoly-like cartels and those subject to greater "commercial" pressures. Studies have compared the safety records of pilots with state licenses and pilots with federal licenses.³⁷ The basic data used in these studies show that the safety records of pilots with both kinds of licenses appear to be essentially equivalent.³⁸ Pilots who are supposedly insulated by their cartel

³⁵ See *Board Report* at 12; *Governor's Report* at 18.

³⁶ *Id.*

³⁷ R. D. Leis, *A Comparative Assessment of State Pilot Safety* (1989) (report prepared by Battelle under contract for the American Pilots Association, Inc.); Booz-Allen & Hamilton, *A Comparative Safety Assessment of State and Federal Pilots* (1991) (response to the Battelle report, prepared under contract for the American Institute of Merchant Shipping); R. D. Leis, *A Critique of Two State Pilot Safety Studies* (1992) (response to the Booz-Allen & Hamilton report). All of these studies relied on the same set of Coast Guard data about ship movements and accidents.

³⁸ The basic accident rate over the period studied was about one "dynamic vessel casualty" per 1700 ship movements, or per 10.5 million tons of cargo moved. Booz-Allen report, p. I-4. Unsurprisingly, in view of their sponsors' interests, the two reports do not reach the same conclusions about which pilots are safer. The report for the pilots' association, which advocates preserving their regulated monopoly status, claims that state-licensed pilots are much safer. The report for the merchant shippers, which prefer greater competition and lower costs, claims that federally licensed pilots are at least as safe as state-licensed ones, and maybe more so. To reach these widely divergent conclusions from the same basic facts, the two reports differ in their assumptions and assignments of weights to differing conditions and types of ship movements.

membership from commercial pressure to take excessive risk have occasionally caused serious accidents.¹⁹ On the other hand, there may also have been accidents caused by inexperienced pilots called into service by competitive demands. It is difficult to identify any trends or to correlate the accidents with differing commercial or competitive situations.

Regardless of the regulatory scheme, the parties involved have incentives not to ignore safety concerns. Pilots under all regulatory schemes are still subject to professional discipline and loss of license for incompetence. Agents may be able to exercise some choice over which pilots they use even from a monopoly pilots' association; thus, an individual pilot might be concerned to avoid a reputation for unsafe conduct, or might be thought to benefit from reputation for taking chances. The ships' agents that hire pilots may well want to complete voyages quickly, but at the same time they would want to avoid loss or delay because of accidents or lawsuits for damages to harbors and waterways. Private parties concerned about profits will also be concerned about safety; the policy question is whether they will be as concerned as the public interest requires.

Policies designed to promote competition should not compromise legitimate safety concerns, but safety is not necessarily inconsistent with a competitive market setting. In other transportation industries, it was also feared that permitting competition would lead to unsafe operations, as firms interested in cost-cutting would take chances to improve productivity. Those fears have not been borne out. Interstate trucking and airlines have been economically deregulated for many years now, and during the deregulated period safety has improved, not deteriorated.²⁰ In piloting ships, as in piloting airplanes, safety concerns need not be addressed only indirectly, through economic regulation. Rather, it might be more effective to address them directly. If safety concerns justify requiring all ships to use pilots of proven qualifications, those concerns can be vindicated through discipline against unsafe practices, application of competency-based pilot licensing standards, and sanctions against shipowners that fail to obey mandatory piloting requirements.

¹⁹ Two incidents of pilot error in Florida in 1980 led to sinking a Coast Guard cutter in a collision, killing 12 people, and destroying one span of the Tampa Bay bridge in the fog, killing 35. Yet Florida has extremely stringent qualification requirements for obtaining a pilot's license and has tried to eliminate competition by fixing the number of individuals granted licenses.

²⁰ See N. Rose, *Fear of Flying? Economic Analyses of Airline Safety*, 6 *J. Econ. Perspectives* 75-94 (1992); and Office of Economics, Interstate Commerce Commission, *The U.S. Motor Carrier Industry Long After Deregulation* 60-67 (1992).

V. Marine Pilotage and the Antitrust Laws.

Pilots in Alaska and elsewhere may offer their services through joint ventures. Some have expressed concern that the antitrust laws may be applied to inhibit joint activities among pilots.⁴¹

The antitrust laws preserve competition in the market place by preventing restraints on competition imposed by competitors. The antitrust laws do not prohibit all joint activities among competitors, only those that restrain competition unreasonably. For example, even though they may restrict some aspects of competition, joint ventures or other cooperative efforts that enable an industry to function efficiently or to produce new services or products may not violate the antitrust laws. Some joint activity among competitors would appear to pose little risk of restraining competition. For example, a centralized billing service that does not facilitate price fixing or allocate customers among competitors may pose little threat to competition.

But actions taken by groups of competitors that unreasonably restrain competition may be unlawful. For example, a joint refusal by competitors to deal with others may be unlawful.⁴² Agreements among competitors to fix prices or allocate customers traditionally have been considered unlawful. Exclusive contracts between a seller and its customers may promote competition by ensuring the availability and continuity of supply, but exclusive contracts used by a dominant firm to exclude its competitors may be unreasonable and unlawful.⁴³

We do not intend here to offer any opinion about the legality of specific practices of associations or joint ventures in the marine piloting industry. The application of the antitrust

⁴¹ See *Board Report* at 3.

⁴² For examples of situations in which antitrust law has been applied to refusals to deal and "boycotts," see *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 458 (1986) (refusal to supply x-rays for insurers' cost-control review); *Klor's, Inc. v. Broadway-Hale Stores*, 359 U.S. 207 (1959) (refusal to supply competing discounter); *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 364 U.S. 656 (1961) (refusal to sell gas for use in competitor's burners); *Medlin v. Professional Rodeo Cowboys Ass'n*, 1992-1 Trade Cas. [CCH] ¶69,787 (D.Colo. 1991) (barring cowboys who had competed in non-sanctioned events).

⁴³ See *Beltone Electronics Corp.*, 100 F.T.C. 68, 204 (1982); see also *United States v. Dairyman, Inc.*, 1985-1 Trade Cas. [CCH] ¶66,638, at 66, 156 (6th Cir.), cert. denied, 474 U.S. 822 (1985); *Kohler Co. v. Briggs & Stratton Corp.*, 1986-1 Trade Cas. [CCH] ¶67,047 (E.D. Wis. 1986).

laws will depend on an analysis of the likely competitive effects of particular conduct in the context in which it occurred.⁴⁴

VI. Conclusion.

Alaska has promoted competition in piloting by permitting pilots to offer lower prices and by allowing as many pilots to offer their services as can obtain certification of their competence. The difficulties, animosities, and litigation that have attended the promotion of competition are not necessarily evidence that competition cannot work in this market; rather, they may be evidence of an established cartel's efforts to prevent or avoid it. Agreements to prevent competition through boycotts, price fixing, and market division may run afoul of the antitrust laws. But cooperation and coordination among pilots about dispatching and training could be permissible under the antitrust laws, and indeed might even be procompetitive. Establishing a monopoly in piloting, by limiting the number of pilots and setting their rates by regulation, is

⁴⁴ In the Commission's analysis, a practice is considered "inherently suspect" if it appears likely, absent an efficiency justification, to restrict competition and decrease output. When such a practice is identified, the Commission then asks whether there is a plausible efficiency justification for it; if not, it will be found illegal. If there appears to be a plausible efficiency justification, that is, a claim that the practice might actually enhance competition by reducing costs, creating a new product, or improving the operation of a market, then the Commission will examine that claim in more detail to determine whether it is valid. If it is not, then the practice will be found illegal. If the efficiency claim is found to be valid, the Commission will undertake a complete "rule of reason" analysis to identify and compare the practice's likely anticompetitive and procompetitive effects. See *Massachusetts Board of Registration in Optometry*, 110 FTC 549, 604 (1988).

The Honorable Fran Ulmer
Page 12

likely to result in higher prices or poorer service, but does not appear necessary to promote the public interest in safety.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles A. Harwood".

Charles A. Harwood
Director, Seattle Regional Office


MEMORANDUM

State of Alaska

Office of the Governor
Office of Management and Budget
Office of the Director

January 27, 1995

TO: Annalee McConriell
Director

FROM: Brad Pierce 
Senior Policy Analyst

SUBJECT: Marine Pilots Contract

You asked for an explanation of some contract work I performed for Southeast Alaska Marine Pilots (SEAPA) in 1991 and whether it involved a conflict of interest with my duties as a policy analyst or in any way influenced my work for the Governor's Office.

My involvement with marine pilots began in the Spring of 1990 when Marilou Madden (another policy analyst employed by OMB at the time) and I were assigned by Director of the Division of Policy, Mary Halloran, to conduct a study of the state's marine pilotage system and make recommendations on how it might be improved. Our report entitled *Improving Alaska's Marine Pilotage System* was published in November 1990. Legislation incorporating many of the recommendations in the study was introduced in the 1991 Legislature and passed the same year.

In the course of our study, we surveyed all of the pilots in Alaska and uncovered significant problems in the internal operations of the existing pilot associations, particularly in SEAPA. Problems included charges of nepotism, favoritism, access barriers to entry and training, substance abuse, and financial mismanagement. As recommended in our study, provisions in the Marine Pilot Act of 1991 required pilot associations to have their "articles bylaws and rules" approved by the Board of Marine Pilots. The intent was to clean up the internal operations of the associations by exposing them to Board scrutiny and approval.

In the Fall of 1991, the SEAPA leadership attempted to rewrite the association's bylaws to conform with state law. Because of dissension within their membership, the SEAPA Board of Directors could not reach agreement on what their bylaws and operating rules should contain. They asked Marilou and I to help them rewrite their bylaws. We discussed at great length whether it was appropriate for us to contract with SEAPA to do this work. Finally, we decided that writing a set of bylaws for SEAPA could serve as a model for other associations and close the final chapter in our attempts to improve the state's marine pilotage system. We discussed the situation with OMB Director Shelby

Stastny, and he didn't have any problem with us doing the contract on our own time. A copy of the ethics disclosure form I filed at the time of the contract is attached.

After briefly working with the SEAPA Board, it became obvious that the changes we proposed to their bylaws and operating rules were too radical of a departure from the status quo for them to accept and we terminated the contract. I don't recall exactly how much we were paid but it was only for a few weeks work on our own time and amounted to between \$2,000 and \$4,000 each.

In hindsight it was naive of me to think that I could divorce myself from marine pilot issues so easily and I now regret having been associated with SEAPA. Although I did nothing illegal or unethical, I understand that my having contracted with SEAPA, however briefly, does give the appearance of conflict of interest. The only defense I can offer at this late date is that at the time I thought I would never deal with marine pilot issues again, since the study we conducted was a one-time effort and very different from our normal duties. Also the internal problems of SEAPA we uncovered and publicized in our study certainly did not help the organization in any material way.

As you know, in June 1994 Department of Commerce Commissioner, Paul Fuhs, asked me to conduct another study of the problems within the marine pilotage system. I was very reluctant to do so, having suffered through the viscous politics and personal attacks from pilots, shippers, lobbyists and attorneys involved in the Marine Pilot Act of 1991. I expressed my concerns to Shelby Stastny and reluctantly agreed to the project. I did so for three reasons:

- 1) DCED needed the help and wanted an independent look at the issues;
- 2) My supervisor wanted me to do it, though I probably could have gotten out of it if I would have insisted that I didn't want to or could have even claimed conflict of interest; and
- 3) I felt a sense of responsibility to exercise whatever policy influence I have to avoid another *Exxon Valdez* accident or cruise ship disaster. I believe strongly that the individual competence of the state's marine pilots and a well run profession are critical factors in preventing marine accidents.

After discussions with the Deputy Commissioner, Director of Occupational Licensing and Marine Pilot Coordinator, it was decided to write the report as a briefing document for the new DCED Commissioner. The resulting paper was entitled *Alaska's Marine Pilotage System Revisited* and Commissioner Hensley decided to release it publicly last week. My contract work for SEAPA in 1991 had no influence what so ever on any of the conclusions reached in preparing this document or on my effectiveness as a policy analyst. I had nothing to gain personally from writing this paper - quite the contrary. After my experience with the legislative process in 1991, I anticipated nothing but grief from trying to articulate the situation in the pilotage profession for the new commissioner.

I apologize if my actions in the past have caused you or the Knowles administration any embarrassment.

Ethics Disclosure Form

Outside Employment or Services Notification

To: Designated Supervisor

Subject: Certification of Outside Employment or Services (AS 39.52.170)

In accordance with AS 39.52.170(b), I hereby officially report my employment or pr of services outside the Department of Office of Management & Budget

These outside duties will in no way affect my usual State duties or duty hours in this Department. This employment or service consists of the following:

Rewrite examination manuals for the Southern Pilots Association.

Hours and days of the week < \$2,500 total @ \$40/hr.

I understand that for any employment outside State service, no State owned/operat facilities, supplies, equipment and/or vehicles (Including personnel time and effort) shall be utilized in any manner whatsoever.

Bradley S Pierce

(Signature)

9/24/91

(Date)

Bradley S Pierce

(Printed Name)

013037

(PCN)

Senior Policy Analyst

(Job Title)

Tuneau

(Location)

Designated Supervisor's Acknowledgement

Your notification of engagement in outside employment or service has been received.

Acknowledgement of your outside employment or service is made with the understanding that your outside work will not in any way detract from or be in conflict with the proper discharge of your official duties as an employee of this Department.

Please note that any change in your outside service or employment must be reported as it occurs.

[Signature]
(Signature-Designated Supervisor)

9

Alaska State Legislature



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716 West 4th Avenue, Suite 500
Anchorage, Alaska 99501-2133
(907) 258-8185
Fax (907) 258-0226

During Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4993
Fax (907) 465-3872

Drue Pearce
President of the Senate

Sponsor Statement for Senate Bill 130

Senate Bill 130 is designed to extend the Board of Marine Pilots and to provide housekeeping changes to the Marine Pilotage Act of 1991 aimed at reducing the level of litigation surrounding the marine pilotage industry and providing a stable regulatory environment for determining rate for pilotage services.

This legislation is the result of extensive negotiations and compromises between pilots, the shipping industry and the administration

This legislation is supported in its current form by all of these groups.

The passage of Senate Bill 130 will ensure that the health, safety, and welfare of the Alaska people are met through the state's regulation and oversight of marine pilotage.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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Juneau, Alaska 99801-2105

MEMORANDUM

May 1, 1995

SUBJECT: Sectional Summary of CSSB 130(RLS); An Act relating to marine pilots and the Board of Marine Pilots and extending the termination date of the Board of Marine Pilots.

TO: Senator Drue Pearce, President
Alaska State Senate

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of CSSB 130(RLS); An Act relating to marine pilots and the Board of Marine Pilots and extending the termination date of the Board of Marine Pilots.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 08.03.010(c)(13) in order to extend the termination date of the Board of Marine Pilots until 1999.

Section 2 of the bill amends AS 08.62.010 by changing some of the qualifications for certain members of the Board of Marine Pilots.

Section 3 of the bill amends AS 08.62.040(a) by requiring the board to approve rates for pilotage services.

Section 4 of the bill amends AS 08.62.040(b) by modifying provisions of the drug and alcohol testing program for marine pilots and authorizing the board to establish regulations governing the procedures for the review of rates for pilotage services.

Section 5 of the bill adds a new subsection to AS 08.62.040 providing that the board may delegate duties to the marine pilot coordinator.

Section 6 of the bill adds a new section (AS 08.62.046) establishing the procedures for adoption of new and revised rates for pilotage services and for review and approval or disapproval of rates that are subject to objections from the maritime industry. The board shall provide copies of a schedule of rates to registered agents in the state.

Section 7 of the bill adds a new subsection to AS 08.62.050 to authorize the marine pilot coordinator to review applications for examination and licensure.

Section 8 of the bill amends AS 08.62.080(b) to allow marine pilots to be temporarily licensed for more than one pilotage region under certain limited situations when there is an actual or imminent shortage of pilots in a pilotage region.

Section 9 of the bill amends AS 08.62.090(b) to require the Department of Commerce and Economic Development to prescribe the form of, and information required in, applications for marine pilot licenses.

Section 10 of the bill amends AS 08.62.093(b) makes clarifying amendments to the requirements for a deputy marine pilot license and authorizes a person to obtain a deputy marine pilot license through four years of experience in an apprentice program.

Section 11 of the bill amends AS 08.62.093(d) to allow a deputy marine pilot to pilot vessels of up to 25,000 gross tons.

Section 12 of the bill amends AS 08.62.097(b) to allow, under certain limited situations, a deputy marine pilot to supervise the training of persons seeking a deputy marine pilot license.

Section 13 of the bill amends AS 08.62.120(a) to require that a licensed marine pilot be engaged in the provision of pilotage services during at least 120 days in a year in order to renew the license.

Section 14 of the bill amends AS 08.62.150(a) in order to conform with provisions relating to rates that were added by secs. 6 and 18 of the bill.

Section 15 of the bill amends AS 08.62.155(b) in order to provide that the board may fine a pilot organization for violating AS 08.62 and may suspend or revoke recognition of a pilot organization that no longer satisfies the requirements for recognition by the board.

Section 16 of the bill amends AS 08.62.165(a) to reduce the of situations in which the limitation on liability for damages caused by a marine pilot would not apply.

Section 17 of the bill amends AS 08.62.175(c) by amending the duties of pilot organizations.

Senator Drue Pearce
May 1, 1995
Page 3

Section 18 of the bill adds new subsections to AS 08.62.175 in order to allow pilot organizations to enter into agreements for the provision of pilotage services with representatives of a vessel and to require a pilot organization to dispatch a licensed pilot when requested by the representative of a vessel.

Section 19 of the bill amends AS 08.62.180 by changing provisions that exempt certain vessels from the mandatory pilotage requirements under AS 08.62.

Section 20 of the bill provides for the transition from the current eligibility requirements for members of the Board of Marine Pilots to the new eligibility requirements established by sec. 2 of the bill.

Section 21 of the bill provides for the transition from the current process for setting rates for pilotage services to the new procedures established by sec. 6 of the bill.

Section 22 of the bill repeals AS 08.62.093(e), relating to the definition of "years of service", which is not needed.

Section 23 of the bill provides that the bill takes effect immediately under AS 01.10.070(c).

GU:klb
95-314.klb

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442

May 1, 1995

The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Madam President:

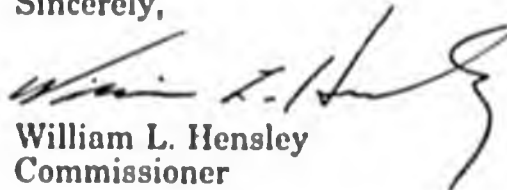
Marine pilotage continues to be a controversial subject. Senate Bill (SB) 130 is a bill which extends the Board of Marine Pilots and contains numerous housekeeping changes to the Marine Pilotage Act of 1991. In addition, this bill creates a pilot apprenticeship program that allows entry into the pilotage profession to otherwise qualified persons who may not have had access to the prerequisite maritime career opportunities.

After exhaustive negotiations among representatives of pilot groups, the shipping industry, the Department of Commerce and Economic Development, and the Department of Law, all parties have agreed to the rate setting and dispute resolution mechanism as written in Section 6 of the CS for SB 130 (RULES).

These changes should reduce the litigation surrounding the administration and enforcement of the marine pilotage system, and further the state's interest in preventing the loss of lives and property and the protection of the marine environment.

The Department of Commerce and Economic Development fully supports the CS for SB 130 (RULES) as written.

Sincerely,



William L. Hensley
Commissioner

WLH/sh059.co
050195a

cc: Pat Pourchot, Legislative Director
Representative Gary Davis

FISCAL NOTE

CS for
BILL NO. SB 130 (Rules)

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: May 1, 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: Senator Pearce

Requestor: Senator Pearce

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						
TOTAL OPERATING	162.1	237.1	162.1	162.1	162.1	162.1

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
1008 GF/MHTIA						
Other						
TOTAL	162.1	137.7	162.1	162.1	162.1	162.1

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)

SB 130 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
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: May 1, 1995
 Date: May 1, 1995

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Juneau, Alaska 99801-2103

MEMORANDUM

April 30, 1995

SUBJECT: CSSB 130(FIN); Prohibiting Alaska marine pilots from holding marine pilot licenses in another state or country

TO: Senator Drue Pearce

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to the query of Stephanie Szymanski, of your staff, as to whether sec. 9, CSSB 130(FIN) is constitutional.

Section 9, CSSB 130(FIN) states: In addition to the prohibition against being licensed in more than one pilot region at one time under (b) of this section, a pilot licensed under this chapter may not hold a marine pilot license issued in another state or country.

In the time available, I have not found a case that addresses a statute similar to that proposed by section 9 of the bill. However, the section does implicate several provisions of the state and/or federal constitutions which may serve as a basis for challenging the section.

EQUAL PROTECTION

The equal protection provisions of the state and federal constitutions are implicated by section 9 of the bill because it distinguishes between persons who are otherwise qualified to receive a marine pilot license in this state based on whether they possess a marine pilot license issued in another state or country. Under the state constitution (article I, sec. 1), which is more rigorous than the federal constitution (State v. Anthony, 810 P.2d 155 (Alaska 1991)), as the importance of the personal interest impaired by the governmental classification scheme increases so does the burden on the government to demonstrate that an equally important or more important governmental purpose is being served by the classification. State v. Ostrosky, 667, P.2d 1184 (Alaska 1983). Also as the importance of the individual interest at risk increases, the better the fit between the state's purpose and the means chosen to achieve that purpose must be in order to survive an equal protection challenge. Id.

Generally economic interests such as the right to engage in an occupation is accorded a relatively low level of protection under equal protection analysis. Anthony, 810 P.2d at 158. On the other hand, a state goal to protect human life and property and protect shipping is an

Senator Drue Pearce

April 30, 1995

Page 2

important state purpose. Thus the state's purpose in imposing restrictions on who may be licensed as a marine pilot in the state may survive initial review under equal protection analysis. The final element under equal protection analysis is whether the means to the end is appropriately tailored. Under a case such as this, the means must bear a fair and substantial relationship to the state's purpose. Though the "fair and substantial relationship" standard is rather deferential to the state, it is not altogether clear that sec. 9 of the bill would survive review under that standard. If safety is the state's goal, there are means available to achieve that goal which are more closely tailored to promoting safety than an outright ban on state pilots being licensed in other states or countries. Unless the state can present evidence that the mere licensure in another state or country makes an Alaska pilot less safe, the ban on out of state and foreign licenses may be too crude to survive judicial scrutiny under the "fair and substantial relationship" standard."

RIGHT TO TRAVEL

By prohibiting a person who has a marine pilot license in another state or country from holding an Alaska marine pilot license, the state places a burden on that person by requiring that person to surrender an important property right in the out-of-state license before the person could obtain an Alaska marine pilot license. Such burdens on the right to travel, a fundamental constitutional right under the federal constitution, must be shown to promote a compelling governmental interest in order to be valid. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). The "compelling interest" test is a very rigorous though not impossible test to satisfy. The state's important interest in providing for the safe pilotage of vessels in the state may not be sufficient to satisfy this test.

PRIVILEGES AND IMMUNITIES CLAUSE

On its face, sec. 9 appears to be residency-neutral and equally applicable to residents and nonresidents who currently hold an Alaska marine pilot license or who may seek an Alaska marine pilot license in the future. However, to the extent that sec. 9 can be shown to be a bar to licensing of nonresidents as marine pilots in the state (nonresidents would probably be disproportionately burdened by the prohibition against out-of-state marine pilot licenses), the federal privileges and immunity clause could bar application of that section.

The federal privileges and immunities clause (article IV, sec. 2, Constitution of the United States) protects the right of citizens of the United States to engage in an occupation or profession in any state on the same basis as the residents of that state. Any restriction on the practice or occupation or profession based on residency is prohibited by the privileges and immunities clause unless there is a substantial reason for the different treatment of nonresidents and there is a substantial relationship between the discrimination against

¹¹ The burden on the state to justify the degree of fit between the means and state purpose could be significantly increased, if the individual interest at stake involves rights guaranteed under the federal constitution, such as the right to travel. Alaska Pacific Assurance Co. v. State, 653 P.2d 201 (Alaska 1984).

Senator Drue Pearce

April 30, 1995

Page 3

nonresidents and the state's reason for the discrimination. Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 84 L.Ed.2d 205 (1985). This is a difficult test for a state to satisfy. The state's interest in safe pilotage may not be sufficient to justify discrimination against nonresidents merely because they hold marine pilot licenses in another state or country.

In conclusion, there are a number of constitutional issues raised by sec. 9 of CSSB 130 (FIN). Based on the limited scope of the research conducted on the issues presented by sec. 9, it is not clear whether sec. 9 would be struck down as exceeding the permissible extent of state authority to regulate marine pilots, however the risk of invalidity is real and substantial.

If I may be of further assistance, please advise.

GU:imb

95-184.lmb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 1, 1995

The Honorable Drue Pearco
President, Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Re: CSSB 130(RLS)
An Act relating to Marine Pilots

Dear President Pearco:

You have asked this office to comment upon CSSB 130(RLS), an Act relating to marine pilots and the Alaska Board of Marine Pilots. The sole change to the bill made in the Rules Committee yesterday was the deletion of Section 9 of CSSB 130(FIN).

At its meeting of April 29, 1995 the Senate Finance Committee passed out CSSB 130(FIN). The Finance Committee CS contains numerous specific amendments to the Resources Committee CS of the bill. These amendments embody the consensus reached among representatives of the pilots and industry regarding the best way to establish pilotage rates and to resolve disputes. In addition, just before the bill passed out, the committee adopted a "conceptual amendment" proposed by Senator Donley that was intended to prohibit a state-licensed marine pilot in Alaska from holding a marine pilot license in any other jurisdiction.

The conceptual amendment adopted by the Finance Committee was drafted as a new subsection (d) to be added to AS 08.62.080, regarding marine pilot license requirements and restrictions. The new language, contained in Section 9 of CSSB 130(FIN) read: "In addition to the prohibition against being licensed in more than one pilot region at one time under (b) of this section, a pilot licensed under this chapter may not also hold a marine pilot license issued in any other state or country."

We support the change made to SB 130 in the Rules Committee. We are concerned about the constitutionality of a license limitation such as that in Section 9 of CSSB 130(FIN) under the equal protection and due process clauses of both the United States and Alaska Constitutions. As you know, a state may not unfairly discriminate against the citizens of other states in the country. We question the defensibility of a provision that conditions licensure in Alaska upon a pilot's willingness to give up state licenses for which he or she has qualified in other states or jurisdictions.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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100 CUSHMAN ST., SUITE 400
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FAX: (907) 451-2846
- P.O. BOX 110300-DIMOND COURT HOU.
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

The Honorable Drue Pearce
President, Alaska State Senate

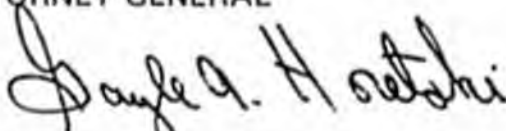
May 1, 1995
Page 2

As you know, license holders have a cognizable property interest in a professional license. The state has a right to regulate the manner in which pilotage services are provided within the state, including the establishment of reasonable licensure requirements. But if an individual is qualified for licensure as a marine pilot in a pilotage region in Alaska, it will be difficult to defend the denial of licensure (or the denial of renewal of a presently-held Alaska license) solely because the person also holds a marine pilot license somewhere else in the world.

For all of these reasons, the Department of Law supports the change made to CSSB 130(FIN) in the Rules Committee.

Sincerely yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 

Gayle A. Horetski
Assistant Attorney General

GAH/jp

cc: Bruce Botelho, Attorney General
Department of Law

Barbara Ritchie, Deputy Attorney General
Department of Law

Deborah Behr, Legislation/Reg Attorney
Department of Law

Pat Pourchot, Legislative Liaison
Office of the Governor

Jeff Bush, Deputy Commissioner
Department Commerce & Economic Development

Daniel C. Twohig, Marine Pilot Coordinator
Department Commerce & Economic Development

Senate Bill 130 - Marine Pilots
Summary of changes in CS (9-LS0851AK)

Page 1 Section 2

This section addresses the creation and membership of the board of marine pilots. There were some concerns that the agent representatives who sit on the board were not necessarily active agents. This section clarifies that a person being considered for an agent seat on the board must be currently active in the procurement of pilotage services and registered with the state.

It further clarifies that the two agents appointed to the board may not be employed by, be a contractor for, or hold a financial interest in the same or related marine industry business entity.

Page 2 Section 6

In the original bill the word "chronic" was used to help describe the situation that must occur before the commissioner of commerce could issue temporary licenses to pilots from different regions. The Department of Commerce was concerned the word chronic would cause interpretive problems when trying to assess pilot shortage situations.

Page 3 Section 8

The addition of the words "United States Coast Guard inspected" better defines vessels that qualify for entry level experience and hold applicants to a higher safety level in documenting their experience.

Page 6 Section 14

Additional language in this section is a conforming amendment to the establishment of apprenticeship programs found in section 8 of this bill.

Page 7 Section 16

This is a new section added to allow pilot organizations to enter into agreements with industry. The original bill mandated this practice.

Page 7 Section 17

Adds an exemption from state pilotage requirements for Canadian vessels operating out of the Canadian Arctic and servicing Alaska north slope communities.

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

OFFICE OF THE COMMISSIONER

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
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April 12, 1995

The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Madame President:

Marine pilotage continues to be a controversial subject. Senate Bill (SB) 130 is a bill which extends the Board of Marine Pilots, and contains numerous housekeeping changes to the Marine Pilotage Act of 1991. These changes should reduce the litigation surrounding the administration and enforcement of the marine pilotage system. Therefore, SB 130 will further the state's interest in preventing the loss of lives and property, and the protection of the marine environment.

The Department of Commerce and Economic Development fully supports SB 130.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

JWB/DT/t624.01
041295a

cc: Pat Pourchot, Legislative Director
Office of the Governor

The Honorable Gary L. Davis
House of Representatives

SB-130

Sectional Analysis

Section 1 amends AS 08.03.010(c)(13) to extend the existence of the Alaska Board of Marine Pilots four years from the effective date of this bill.

Section 2 amends AS 08.62.010, Creation and Membership of the Board, to tie the residence of members of the Board to state pilotage regions, rather than judicial districts. The use of judicial districts in existing law was probably chosen for administrative convenience, but the boundaries of the state's judicial districts bear no relationship to the state's pilotage regions. If the goal is diversified and representative membership on the Board, it makes more sense to tie membership to pilotage regions. At present there are four such regions; the boundaries of the regions are established by regulation (12 AAC 56.021).

Section 3 amends AS 08.62.040, Powers and Duties of the Board, in two ways. Subsection (b)(2) is amended 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. AS 08.62.040(b)(4) is amended to cross reference changes to AS 08.62.080(b).

Section 4 amends AS 08.62.040, Powers and Duties of the Board, to add a new subsection (e) 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. This ability to delegate tasks to its staff is essential for the Board's efficient operation, and is implicit in existing law; the addition of this language is a clarification, not a change.

Section 5 amends AS 08.62.050, Marine Pilot Coordinator, to add a new subsection (c), which clarifies the authority of the marine pilot coordinator to perform administrative tasks, including the review of applications for marine pilot examination and licensure. The requirements to qualify for examination and licensure are established by statute and by Board regulations, and this language would not change that.

Section 6 amends AS 08.62.080(b) to better define under what circumstances the board may grant a marine pilot license for parts of more than one pilotage region.

Section 7 amends AS 08.62.090, Applications, to clarify that the Department of Commerce and Economic Development (Department) may revise application forms (to comply with revised Board regulations, for example) without being required to convene a Board meeting to obtain formal Board approval of the revised form. The actual requirements for licensure are set by statute and by the Board, and this amendment would have no effect on that.

Section 8 amends AS 08.62.093, Qualifications for Deputy Marine Pilot License, in several ways. Subsection (b) contains numerous technical amendments intended to clarify the types of marine

Sectional Analysis

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. New paragraph (b)(6) establishes an additional method of qualifying for licensure as a deputy marine pilot, a five-year "apprenticeship" program. This change would allow 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. Due to the continuing decline in the number of U.S. flagged and crewed vessels in the maritime industry in recent years, opportunities to gain sea time as the master or chief mate of a vessel have substantially decreased. Most pilotage systems in the world have such apprenticeship programs, and they are recommended by the American Pilots Association, The International Organization of Masters, Mates and Pilots, and the National Research Council in its recent national pilotage study Minding the Helm. The requirements of the new program would be established by the Board through regulation.

Section 9 amends AS 08.62.093(d), Qualification for Deputy Marine Pilot License, 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 and the removal of smaller aging vessels from service.

Section 10 amends AS 08.62.097, Training Programs for Deputy Marine Pilot License, to address a problem in current law as it applies to the Kuskokwim River pilotage region (Region 4). Under AS 08.62.097(b), a pilot authorized to train deputy marine pilot candidates must hold an unlimited pilot's license under AS 08.62.100. There is no marine pilot in the Kuskokwim River Region 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 is obviously an unacceptable situation, as no new pilots can be developed in that region if no training can occur. This problem arose as the result of the creation of Region 4 in 1993, after the 1991 Marine Pilotage Act was adopted. The problem is addressed by the addition of language allowing a qualified, experienced deputy marine pilot to train other deputy marine pilots in a region where no qualified marine pilots exist.

Section 11 amends AS 08.62.120, Renewal of Licenses, to allow license renewal forms to be revised by the Department without the necessity of formal Board approval. This change mirrors that made in AS 08.62.090; see section 7, above. AS 08.62.120(a)(4)(A) is amended to allow a marine pilot to renew his license if he has piloted a total of 120 days in the preceding license period (two years). Present law requires that a pilot have piloted vessels for at least "60 days of each calendar year", and allows no flexibility for the renewal of the license of a pilot who may have piloted vessels for less than 60 days in one year, but more than that in the next calendar year. The current statute seems to be unnecessarily restrictive.

Section 12 amends AS 08.62.150, Denial, Revocation, or Suspension, to delete a reference in paragraph (a)(8) to the maximum tariff established by the Board. The Board's authority to establish maximum tariffs expired on June 30, 1994 (former AS 08.62.045), so this is a necessary conforming amendment.

Section 13 amends AS 08.62.155, Disciplinary Sanctions, to eliminate an error in the language of

the existing law, and make it clear that it is the Board, not the Department, that may 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 mirrors an existing Board regulation: 12 AAC 56.320. Thus, this is not a change to existing law, but a clarification to it.

Section 14 amends AS 08.62.165, Limitation of Liability, to protect pilots from the loss of their liability cap for relatively minor infractions of the pilotage statutes or regulations.

Section 15 amends AS 08.62.175(c) 3), Regional Marine Pilot Organizations, to clarify the pilot association's ability to enter into agreements with shippers for the provision of pilotage services. Subsection (c)(4) is amended to allow pilot association to establish membership application and approval criteria in their board approved articles and bylaws.

Section 16 amends AS 08.62.180, Exemptions, to clarify the types and size of foreign flagged "pleasure craft" that are exempt from pilotage requirements under existing law. This is a technical amendment that would help to clear up questions regarding which foreign vessels registered in their flag state as pleasure craft are required to obtain the services of a state marine pilot and which are not. The new language cross-references to international measurement standards established in federal law.

Section 17 Transition. This section is added to provide a smooth transition to the membership of the Board of Marine Pilots in light of changes made to board composition in section 2.

Section 18 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 19. Effective date. This section provides for an effective date of this bill. This special effective date is needed to ensure that there is no interruption in the existence of the Board of Marine Pilots.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 130

1995 LEGISLATIVE SESSION

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: Senator Pearce

Requestor: Senator Pearce

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						
TOTAL OPERATING	162.1	237.1	162.1	162.1	162.1	162.1

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						
TOTAL	162.1	137.7	162.1	162.1	162.1	162.1

Estimate of any current year (FY 95) cost: \$ 00

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

SB 130 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: 3/18/95

Approved by Commissioner: William L. Hensley

Date: 3/17/95

Agency: Commerce and Economic Development

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