ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7555 SENATE LABOR & COMMERCE

BOB NESTEL, CPCU, ARM
16810 Easy Street, #2
Eagle River, Alaska 99577

where did this come from?

December 13, 1990

David Walsh, Director
Division Insurance
3601 C eet, et, Suite 740
Anchor, Ala Alaska 99503

Re: Sale of MICA eff. 12/31/90

Dear Dave:

I attended the three public hearings in October and December. MICA has devised a policy form, but does not say if it is a mutual, stock, or reciprocal. Without a determination being made by the Director of Insurance, Legislature or the Court System, the sale must be delayed until this determination is made.

I have reviewed the Price Waterhouse documents sent to MICA. There is no mention of any remuneration for the "transfer"; "Gift" or "Giving" of the policy holders to Norcal. Why?

If the "transfer", gift" or "giving" goes through the legislative process, the doctors, hospitals or clinics will have an opportunity to testify.

Also, the question that must be asked is what happens to those doctors who are uninsured? Is "son of MICA" in order?

It is my request that the 1st Session of the 17th Legislature, after it convenes January 21, 1991, examine this transaction.

Sincerely,

Bob Nestel

Bob Nestel, CPCU, ARM

CALL BOB NESTEL AFTER 8 PM. NL WITH CONTACT.

cc: Mary Pierce, MICA
Rep. (Sen-elect) Virginia Collins
Rep. Max Gruenberg
Rep. Dave Donley

MICA Medical Indemnity Corporation of Alaska
ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503
(907) 563-3414

DATE: October 22, 1990

TO: All MICA Policyholders

FROM: Ron Keller, M.D.
Chairman of the Board of Governors
Medical Indemnity Corporation of Alaska

RE: Announcement of quarterly meeting & notice of potential purchase offer for MICA

On November 2nd, MICA's Board of Governors will hold our regular quarterly meeting in Anchorage at the Clarion Hotel beginning at 9 a.m.

I am sending you this quick memo to let you know some good news: It's likely that we will be receiving a formal offer to purchase MICA, and we'll deal with that issue at the meeting. Policyholders are, naturally, invited to attend. But we also invite you--if you've got questions about these developments--to give MICA Executive Director Mary Pierce a call at 563-3414. She'll be glad to answer any questions and fill you in on the recent events since we last contacted you.

Let me give you a quick run down. As you'll recall, MICA's tax exempt status was challenged by the IRS; and as a result MICA cannot continue to operate the way it has been operating since it was established in 1976. The three choices for MICA are to:

- Merge into the state bureaucracy.
- Spin off to become a totally private mutual insurance company.
- Have its assets & liabilities purchased by a private carrier.

Of these options, the MICA Board has unanimously chosen to pursue a purchase.

We have every indication that a physician owned mutual, very closely aligned philosophically with MICA will be making us an offer. This firm has indicated they are willing to meet the tough conditions that the MICA Board has placed on any sale. Those conditions are:

- A 5-year guarantee that all current policyholders who are otherwise acceptable underwriting risks will receive continued coverage.
- No cancellation of existing policyholders without an Alaska-based appeal process.
- No geographical discrimination in underwriting terms & benefits.
- Continuation of current rating classifications, with a special category for family practice docs doing obstetrics.
- Purchaser will keep an Alaska office with both claims adjusting and risk management staff, plus provide an 800 toll-free phone number.
- Certain policyholder benefits will continue, such as the current DDR (free tail); availability of tail policies for purchase; policyholder inception date with MICA used to determine benefits based on length of coverage; and insureds will still have to give written consent to settle any claim.

As you can see, the MICA Board's top priority is safeguarding your interests. We'll be contacting you again once a formal offer is made, and after our meeting on Nov. 2nd. Meanwhile, please feel free to call Mary at 563-3414 to get questions answered or to find out more about where MICA is going.

Thanks.

MICA Medical Indemnity Corporation of Alaska

ALEUT PLAZA
4000 OLD SEWARD HWY., SUITE 203
ANCHORAGE, ALASKA 99503
(907) 563-3414

TO: William Brock
Roger Holmes, Esq.
Susan Mason, Esq.

FROM: Mary Pierce MP

DATE: May 8, 1990

RE: Tax Issue History

The final tax issue history is enclosed for your files. I don't plan on distributing this other than to the three of you at this time. Thanks for you help on this, it may prove to be a good reference in the future.

MP/tmb

Internal Revenue Service Department of the Treasury

Washington, DC 20224

William G. Brock
Chairman of the Board
Medical Indemnity Corporation
of Alaska
400 Old Seward Highway
Anchorage, Alaska 99503

Person to Contact:
Thomas J. Kelly

Telephone Number:
(202) 566-3506

Refer Reply to:
CC:FI&P:2 - TR-31-3927-88

Date:
MAR 19 1990

RECEIVED
MAR 21 1990
MICA

Dear Mr. Brock:

The Deputy Chief Counsel of the Internal Revenue Service approved your closing agreement on March 15, 1990.

I have enclosed the signed duplicate of the agreement for your records.

Thank you for your cooperation.

Sincerely yours,
Assistant Chief Counsel
Financial Institutions and Products

By: William E. Coppersmith
William E. Coppersmith
Chief, Branch 2

Enclosure:
Duplicate of closing agreement

DUPLICATE
Taxpayer's Copy

Department of the Treasury - Internal Revenue Service

CLOSING AGREEMENT ON FINAL DETERMINATION

COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code, the Medical Indemnity Corporation of Alaska (MICA), 4000 Old Seward Highway, Anchorage, Alaska 99503, Employer Identification Number: 92-6017594 and the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS,

(1) An issue has arisen whether MICA's income is not included in gross income under section 115 of the Internal Revenue Code; and

(2) MICA and the Commissioner of Internal Revenue (IRS) desire to settle this issue with respect to all past and present tax years and with respect to future tax years through and including tax year ending December 31, 1992; and

(3) MICA and the IRS desire to identify specific actions that MICA will undertake between the date of execution of this Closing Agreement and December 31, 1992;

IT IS DETERMINED AND AGREED for Federal income tax purposes that:

(1) With respect to all past and present tax years and with respect to future tax years through and including tax year ending December 31, 1991, MICA's income shall not be included in gross income under section 115 of the Internal Revenue Code.

(2) With respect to the tax year ending December 31, 1992, MICA's income shall not be included in gross income under section 115 of the Code only to the extent that MICA establishes that such income is attributable to physicians or other health care providers who, despite a reasonable effort, could not obtain medical malpractice coverage from another insurance company.

(3) During the period from the date of execution of this Closing Agreement until December 31, 1992, MICA agrees as follows:

(a) before May 1, 1990, and annually thereafter until December 31, 1992, MICA will send written notice to all insurance companies that now offer medical malpractice coverage in the State of Alaska and also to at least five other companies that write medical malpractice coverage informing them of the existence of the statutory mechanism for the purchase of MICA's business under Alaska Statute 21.88.095 ("Transfer of Corporate Assets and Liabilities"); and

(b) upon receipt of any good faith offer or expression of interest, MICA will make a good faith effort to negotiate an agreement for the transfer of corporate assets and liabilities on the terms authorized by said statute and to obtain the approval of the Director of the Alaska Division of Insurance for such transfer; and

(c) before the end of the current legislative session, which is required by law to end by May 10, 1990, MICA will transmit to the Alaska Legislature a written report that (1) summarizes the provisions of this Closing Agreement, (2) describes the principal statutory changes that may be necessary with respect to MICA's structure and tax status, and (3) alerts the legislature to the need to take legislative action with respect to MICA during the next two-year legislative term, which will begin in January 1991, if the Legislature wishes to preserve MICA's tax-exempt status; and

(d) after the statewide elections in the fall of 1990, MICA will transmit to the newly-elected Governor and to all members of the Alaska Legislature for the 1991-1992 term a written report that (1) summarizes the provisions of this Closing Agreement, (2) describes the principal statutory changes that may be necessary with respect to MICA's structure and tax status, and (3) alerts the legislature to the need to take legislative action with respect to MICA during the 1991-1992 term of the Legislature, if the Legislature wishes to preserve MICA's tax-exempt status; and

(e) before the beginning of the next legislative session, which will begin in January 1991, MICA will consult with the newly-elected Governor and will contact key individual legislators for the 1991-1992 legislative term, for the purpose of developing a legislative proposal regarding MICA's future structure and tax status; and

(f) during the 1991-1992 term of the Alaska Legislature, MICA will initiate and maintain regular and ongoing contacts with the Governor's office, with the Director of the Division of Insurance, and with key individual legislators for the purpose of informing them of the need for legislative action with respect to MICA; and

(g) throughout the 1991-1992 term of the Alaska Legislature, as necessary or advisable, MICA will prepare or assist in the preparation of appropriate proposed legislation and will seek to have that proposed legislation introduced as early as possible after the Legislature goes into session in January 1991; and

(h) if appropriate legislation pertaining to MICA is introduced during the 1991-1992 term of the Alaska Legislature, MICA will participate in the legislative hearing process and will otherwise take appropriate action to encourage the passage of the legislation.

(4) Beginning with the tax year ending December 31, 1993, none of MICA's income shall be excluded from gross income under section 115 of the Internal Revenue Code.

(5) However, if MICA's organic statute (Alaska Statute 21.88) is repealed, reenacted or otherwise revised so as to establish MICA as an integral part of the State, MICA's income shall not be subject to federal tax as of the effective date of the statutory change.

(6) If MICA is established as an integral part of the state or MICA's structure is otherwise changed so that MICA no longer claims that its income is excluded from gross income under section 115 of the Code, MICA's obligation under paragraph (3) above shall cease.

Closing Agreement
Medical Indemnity Corporation of Alaska

This agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;

(2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions, notwithstanding any other law or rule of law except for Code section 7122; and

(3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to that tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

Medical Indemnity Corporation of Alaska

By: W Brock
William G. Brock
Chairman of the Board

Date signed: Mar. 12, 1990

Commissioner of Internal Revenue

By: [signature]
Peter K. Scott
Deputy Chief Counsel

Date signed: March 15, 1990

TAX ISSUE HISTORY

1988

Sometime in early 1988 as MICA was working with Ernst & Whinney on our reserve issue Tom Koecher advised Mary Pierce, Executive Director, that their office felt there may be a question regarding MICA's tax status due to the change in the 1986 tax law. He said they were looking into it and would get back to us.

March 12 - Executive Committee Meeting. Tom Koecher, Orie Orien of Anchorage and Dave Wilson (Seattle) all of Ernst & Whinney were at the meeting to discuss reserve increases. They told the Executive Committee about the tax status question and that their tax advisor would be attending the next Executive Committee meeting.

March 18 - Executive Committee Meeting. Koecher, Orien and Shelby Stastny explained question of tax status to committee. They explained two prong test to be tax exempt.

1) Income must accrue to the State
and
2) Must have a public purpose or "essential governmental function."

The Executive Committee asked them to investigate the question and report back. Brock, Pierce and Koecher would meet with Director Roller on March 25th to advise him of tax exempt status question.

April 26 - Stastny reported to Executive Committee that initial informal discussion with IRS suggested we would not receive a favorable ruling. Suggested we file tax returns and pursue formal tax ruling request. Cost to do research and ruling request est. $10 - 15,000.

May 6 - Engagement letter from Stastny outlining course of action on request for tax ruling and cost.

May 13 - Board votes to submit formal ruling request to IRS. Estimated cost from E & W is $20,000.

June 17 - Paul Roller, Director Division of Insurance and Deputy Director, Jim Jordan present at Board meeting. A draft tax ruling request given to Executive Committee. Stastny asked Arliss Sturgulewski to do some legislative research to help answer legislative intent questions. Letter to be finalized soon.

June 30 - Memo from Maureen Weeks to Sturgulewski stating she had researched the records of the 1976 session and there was not any specific testimony to create for-the-good-of-the-public issue.

July 15 - Stastny reports to the Executive Committee that ruling request not sent yet. He is waiting for final information from legislative research. MICA has provided all pertinent back-up from 1975 Governor's Medical Malpractice Insurance Commission and all other historical data.

July 24 - At Quarterly meeting of the Board, Director Paul Roller tells Board he has spoken to several legislators. They are anxious to help us clear up any misunderstandings about legislative intent and would like our proposed changes by September.

August 4 - Stastny sends some ideas for proposed legislative changes that may help us win our case to Roger Holmes, Brock and Pierce.

August 5 - Stastny's research has uncovered three companies very similar to MICA who requested rulings. Sent to Holmes and Pierce. All three received unfavorable rulings.

August 11-30 - Holmes proposes legislative changes. He believes that these changes will make it clear that our earnings belong to the state.

August 23 - David Bickerstaff gives us estimate that rates will need to increase 15-17% for 1989 to cover taxes.

August 24 - MICA sends revenue ruling request to IRS.

- Special Executive Committee meeting on tax status with entire Board of Governors. Koecher and Stastny present.
They explain problem and that Holmes' proposed legislation could resolve it by making it clear MICA's earnings belong to the state.
The Board votes to forward Holmes' legislation to Governor and legislature.

September 7 - Roller (Director) agrees to hand carry the letter to the Governor. The letter explains our dilemma to the Governor and asks if he might sponsor legislative changes.

- Roller also suggest we purchase an insurance company with net losses to offset our taxes.

September 16 - Brock receives letter from Stastny advising him that MICA can't use net losses of an acquired corporation (insurance company) to offset income.

- Executive Committee Meeting. E & W tells committee ruling request filed on 8-24-88 and we will have a response within 90 days. Unfortunately a rate filing must be made by November 1 and a 15% increase is needed to just cover 1989 taxes. Executive Committee votes to file 1-1-89 rate based on pure premium and to then retroactively charge an amount needed for taxes later in year if we don't receive legislative fix.

September 16 thru 30 - Holmes and Pierce meet with Senator Kelly and Representative Cotten to personally advise them of our problem and show them proposed legislation.

November 4 - Board has Quarterly meeting. Jim Jordan reports to Board that although the Governor has not released his legislative priorities the informal message is that he will sponsor our legislation.

A plan of action to get information to legislators while we are waiting for official response from the Governor is proposed. The Legislative Committee will register as lobbyists for this purpose.

November 11 - A letter is sent to the policyholders explaining 1989 rating structure.

November 22 - Tom Kelley the agent at the IRS has several questions regarding MICA that he asks of Stastny. We respond with a letter to Kelley.

November 25 - A draft letter is composed to have board members send to legislators. This is sent to the Board members along with:

a) a fact sheet
b) a copy of the letter sent to policyholders on the rates
c) a spread sheet of our financials for the last 5 years.

Pierce sends letter to Senator Kelly and Representative Cotten.

December 1 - The Legislative Committee meets to devise plan to distribute information to legislators since told Governor would not sponsor legislation because a) he could not investigate all possibilities in a timely manner and b) he did not feel that the state should be in the insurance business.

December 8 - A special Board meeting is called.

Chairman Brock had met with Director Roller and Stan Garlington. Roller said it was reasonable to assume that legislation will pass and the Governor will not oppose or veto bill. Board votes to approve 10.5% increase for hospitals and 12.6% increase for physicians to be taken for taxes if it is determined we were liable.

Chairman Brock reported we have been asked to meet with the IRS in Washington, D.C. Also Stastny reported the tax accountants in Washington advised us we may be relieved retroactively of taxes. We had previously been told this wasn't possible. The IRS's single question was "do our profits inure to the state." The Board discussed if that could mean fewer legislative changes.

Finally, it was discussed if MICA should even propose legislation considering there was a) a question of our tax liability b) reluctance of Governor to sponsor legislation and c) whether MICA wanted to legislatively bind itself closer to the state. Board agreed to meet after Brock meets with IRS.

Director Roller also approved of us hiring a lobbyist to forward legislation.

- Executive Committee approves Brock to go to Washington, D.C.

December 14 - Brock, Stastny, Phil Royalty and Ken Tracy from E & W in Washington, D.C. met with Tom Kelley and Kelley's boss, Maura Sullivan and another person Alvin Brown from the insurance section. Brock hopes to at least find out what kind of legislative changes would be needed to maintain tax exemption. IRS not sympathetic and will not give information on legislation. E & W expects we will have ruling by January 1989. We will provide additional information requested by IRS. E & W feels a favorable opinion from Alaska Attorney General regarding state "ownership" could be helpful.

December 10 thru 16 - The legislative drafter is contacted by Holmes thru Senator Kelly's office to anticipate information from Brock's meeting in D.C. Drafter later informed to hold off on that legislation by Holmes as result of December 14th meeting with I.R.S.

December 20 - Brock spoke to Jim Jordan about obtaining the AG's opinion. Jim will discuss with Paul Roller and get back to us.

December 30 - Director Roller prepares request for AG's opinion on disposition of MICA's assets if MICA were to be dissolved.

1989

January 11 - Letter from Stastny to IRS explaining how unique we are, unlike previous adverse ruling cases.

February 8 - Jeffrey Bush, Deputy Commissioner of Commerce, forwards Director Roller's request for opinion to AG's office.

February 10 - Board meeting in which Chairman Brock informs board we still have no ruling. Brock tells board that Pierce will be preparing a summary of issues and will forward.

February 22 - Memo from Pierce to Board outlining all of our choices if tax ruling is favorable or unfavorable.

February 28 - Stastny calls IRS to get word on ruling. He is informed by Kelley that although Kelley is favorable his boss isn't. This could mean arbitration within IRS. Holmes advises MICA to get tax attorney.

March 7 - Bruce Gagnon and Sue Mason of Atkinson, Conway & Gagnon meet with Brock, Holmes, Crabtree, Koecher, Stastny and Pierce. Advise us to take an aggressive approach with IRS.

March 8 - Engagement letter from Atkinson, Conway and Gagnon. Advise MICA that we should propose a resolution to have the legislature clear up question about MICA being an integral part of the state.

March 8-22 - We talk to Roller and then Deputy Commissioner Jeff Bush and advise them we want to do resolution.

- We contact Cotten in House and Sturgulewski in Senate to see if they might sponsor resolution.

March 17 - Executive Committee meets and is informed about need for tax attorney. They approve contract with Atkinson, Conway and Gagnon. They will ask Board to approve.

March 20 - Brock, Pierce and Mason meet in Juneau with Jeffrey W. Bush, Deputy Commissioner of the Department of Commerce and Economic Development, and later with Cotten's aide, regarding proposed legislative resolution.

March 22 - MICA sends "Background Summary" on tax issue to Cotten.

House Joint Resolution 40, co-sponsored by Gruenberg and Cotten, is introduced.

- Brock sends a letter to Ron Clarke in Governor's office regarding discussion with Jeff Bush on resolution enclosing copy of proposed legislative resolution.

March 26 - Gagnon, Phil Royalty & Ken Tracy (E & W, Washington, D.C.) have conference call with Tom Kelly at IRS and learn that a proposed adverse ruling is now being reviewed by Maura Sullivan. Kelly says that the ruling would be based on the Maryland Savings Share case.

March 28 - Mason writes to AG's office and outlines factors supporting conclusion that MICA's assets would revert to the state upon dissolution.

April 3 - Senate Joint Resolution 41, sponsored by Sturgulewski is introduced.

April 13 - A. G. couldn't reach an opinion that was helpful to MICA so request for an opinion was abandoned.

April 18 - Executive Committee has joint meeting with Underwriting. They are informed that resolution has been forwarded and we expect it to pass. In the meantime Gagnon and Mason advise us not to implement mid-year premium increase because we would be admitting liability.

April 25 - Mason has telephone discussion with Deputy Commissioner Bush regarding distribution of Joint Legislative Resolution.

April 26 - Mason has telephone discussion with Shari Kochman, Assistant to Bob Evans in the Governor's Office, regarding Joint Legislative Resolution.

April 28 - Quarterly Board meeting and board advised we still have not heard from the IRS.

Board told that tax attorneys will be working with the Governor to draft an appropriate letter to our Congressional delegation. We are hopeful that the congressional delegation can assist us to consult with someone of a higher stature in the IRS. We aren't getting anywhere at level we are at.

Roller and Jordan attend the meeting but only for their report.

Board increases budget to cover legal and audit counsel expenses on our tax issue.

Board votes not to take rate increases for taxes.

The Board has a lengthy discussion that the tax issue has been more complicated than anticipated. Since this tax liability is shown on our financial statements it will continue to accumulate. The Board feels that we need a long term solution.

Chairman Brock points out that if we receive an adverse ruling we can litigate. However, that litigation would take time and be costly and our tax liability would continue to accumulate.

- Legislative Committee meets and is informed that the resolution should pass.

May 5 - Senate Joint Resolution 41 passes the House.

May 8 - Brock sends Ron Clarke a draft of a proposed letter from the Governor to the Congressional delegation enclosing copies of Senate Joint Resolution 41 and "Background Summary".

May 12 - Senate Joint Resolution 41 transmitted to Governor from Legislature.

May 25 - Pierce talks to Clarke to confirm letters will be sent soon.

June 2 - Governor Cowper sends letters to Young, Murkowski and Stevens, enclosing Senate JR 41 and requesting they assist MICA on tax issue.

- Cowper sends copy of letters to his special assistant, John Katz in Washington, D.C. office to ask him to assist.

June 12 - Phil Royalty (E & W) discussed MICA with Tom Kelley of IRS and learned that a decision had been made to issue an adverse ruling; Maura Sullivan is no longer involved and Bill Coppersmith is Kelley's new supervisor, and MICA will have an opportunity to meet with him before the ruling is issued. Kelley says that the basis for the decision is that MICA is insuring <u>private</u> interests. Royalty requests copies of Joint Legislative Resolution and of Governor's letters to the Congressional delegation.

June 13 - Bob Evans of the Governor's Office tells Mason he has discussed the situation with John Katz and that MICA should contact Katz.

June 16-21 - The Governor signs Legislative Resolve #38. Copy of it and letters Governor sent to congressional delegation sent from Mason to Royalty. Ask Royalty to give to IRS.

June 19 - Mason and Gagnon discuss situation by telephone with John Katz, who offers the assistance of Eric Ostrovsky in his office.

June 21 - Special Board meeting. Holmes, Mason and Stastny in attendance to discuss tax issue with the Board. Stastny and Mason advise Board to withdraw revenue ruling request until we can meet with the IRS and advise them of the Legislative Resolve. Board gives them authority to pull request if they deem necessary.

June 22 - Mason talks by telephone to Ostrovsky regarding possible meeting with IRS to include representatives from Katz's office and from Stevens' office and regarding possible federal legislation.

June 27 - Chuck Konigsberg from Senator Stevens' office calls to offer us help to meet with IRS attorneys and with Office of Tax Policy in the Treasury Department.

July 18 - Mason receives letter from Pierce advising that Konigsberg is setting up a meeting with the Department of the Treasury for the week of August 7.

July 19 - Royalty sends copy of Legislative Resolve #38 to IRS. He tells them we will be meeting with the Department of the Treasury in August. He asks that if they determine before then that we should have an adverse ruling to advise us so we can pull the request.

July 21 - MICA meets with Roller to advise him of our progress.

July 26 - Konigsberg sends letter to following for 8-8-89 meeting with Department of the Treasury: Brock, Mason, Pierce, Royalty and partner Dave Bierenson from E & W, and Eric Ostrovsky from the Alaska State Office in Washington, D.C.

August 8 - Meeting with Department of Treasury in Washington, D.C. Attendees: Brock, Pierce, Mason, Konigsberg, Royalty, with Kay Gouwans rather than Eric Ostrovsky from Governor's office. This group meets at Senator Stevens' office prior to the meeting at the Treasury Department, to be briefed on what kind of questions we might be asked.

Treasury meeting chaired by Dana Trier, Deputy Assistant for Tax Policy, Treasury Department. His assistants Evelyn Brody and Cathlyn Farrow are also present and Bill Coppersmith, Tom Kelley's supervisor from the IRS, is also there.

Mr. Trier seems favorably disposed toward MICA. They are fearful if they allowed MICA to remain tax exempt that they will create a "slippery slope" which would allow others to structure themselves like us. We try to convince them that we are unique. We end with the agreement that we will submit supplemental information regarding MICA's history and current business to the IRS.

August 9 - The same core group meets again in Senator Stevens' office, this time with Ostrovsky from the Governor's Office rather than Gouwans. Our purpose is to prepare for a meeting with the Senate Finance Committee aides to evaluate if seeking federal legislative relief is an option.

We meet with Rick Grafmeyer, a minority aide for Finance, and aides; Scott McCloud, a specialist in insurance tax issues, and Mel Thomas a specialist in tax issues from the Joint Committee on Taxation.

We are not encouraged by them to seek federal legislation after we advise them of our plight. There is a thought that a provision dealing with MICA's tax exemption could be attached to a Rural Health Care bill and Konigsberg said he will talk to Senator Stevens about that possibility.

August 17 - Pierce sends memo to Board of Governors summarizing meetings in Washington, D.C.

August 18 - A Supplemental Submission to the IRS is sent to Phil Royalty.

- A thank-you letter is sent to Dana Trier from Konigsberg.

August 22 - Senator Stevens sends a thank-you letter to Trier with MICA's Supplemental Submission attached and a copy of a letter from Royalty explaining why the Maryland Saving Share Ins. Corp. v. U.S. case is different from MICA.

August 28 - Konigsberg is in Anchorage and Gagnon, Mason, Kathy Crabtree and Pierce meet with him. We discuss unlikely possibility that we would win a court case against the IRS. Konigsberg says he will work on federal legislation but feels that our chances this year are extremely slim. Consensus is that if litigation is necessary, it would be better to obtain adverse ruling than to withdraw the request.

September 15 - Mason in attendance at Executive Committee meeting. Executive Committee worried about mounting tax assessment. They vote to get revenue ruling whether favorable or not.

- There is discussion of litigating in U.S. District Court (must pay tax first) or in U.S. Tax Court (must wait for IRS to assess deficiency).

September 20 - Konigsberg informs Mason that he is exploring possibility of federal legislation and is drafting a proposal. He also reports that he has spoken by telephone to Dana Trier. Trier says that the IRS is considering entering into a closing agreement with MICA, which is basically a settlement agreement that can eliminate past and future tax liability for a specified number of years (authorized by Internal Revenue Code 7121).

September 21 - Mason has conference call with Royalty, Tom Meyerer (E & W) and Konigsberg to discuss ramifications of closing agreement.

September 26 - Konigsberg asks Pierce for information so he can draft federal legislation. Pierce faxes him: - date Governor signed bill, 5-28,76; date legislation effective, 5-29,76, although couldn't write insurance until 6-28-76.

Copy of original statute and current statute sent with major difference between old and new being:

a) Exclusive and mandatory dropped
b) Occurrence changed to claims-made
c) Joint Underwriting Authority (JUA) concept dropped.

October 6 - Konigsberg faxes Mason first draft of proposed federal legislation, and Mason and Gagnon fax Konigsberg revisions after discussing with Royalty.

- Conference call: Mason, Crabtree, Konigsberg, Royalty, Meyerer, Coppersmith, Jim Malloy, and Pete Scott, Acting Chief Counsel of the IRS. Discussed possible closing agreement and agreed to meeting in Washington on October 16.

October 10 - Mason sends notice of meeting with Department of Treasury and IRS on 10-16-89. We have been advised by Konigsberg that IRS may want to propose a closing agreement. We are informed that this is to be treated as very confidential.

- Mason sends Pierce a draft with a review by she and Gagnon of potential federal legislation proposed by Konigsberg.

October 16 - Meeting with IRS and Department of Treasury in Washington, D.C. Core group of Mason, Pierce, Konigsberg, Royalty and Tom Meyerer of E & Y (new player) and Eric Ostrovsky from Governor's Office meet in Senator Stevens' office to discuss closing agreement concept. Pierce informs group that MICA's Executive Committee has been polled and are very interested in this concept.

Meeting at the IRS chaired by Pete Scott, Acting Chief Counsel of the IRS, Jim Malloy, Assistant Counsel for Financial Institutions (Section 115 co's under his jurisdiction) and Bill Coppersmith all from IRS. Dana Trier and Evelyn Brody are there again representing Office of Tax Policy in the Treasury Department.

Scott says we have very sympathetic case. They believe a closing agreement would be in everybody's best interest. We discuss what to do to remain tax exempt and MICA's unique structure again. They ask MICA to submit closing agreement. Scott suggests the following parameters for an agreement: past tax liability eliminated; MICA agrees to try to change structure within specified

period; MICA becomes taxable at end of specified period if no change in structure; MICA must take interim steps toward phasing out or bifurcating; if MICA becomes part of state, problem disappears. In response to a direct question, Scott says that, if a ruling is issued, it will be adverse.

October 23-24 - Mason sends draft closing agreement and copy of federal regulations covering closing agreements to Pierce. Closing agreement proposes elimination of any past tax liability and future tax liability through 1994 with partial or full taxability beginning in 1995, unless MICA has been made an integral part of the state.

October 24 Pierce sends memo to Board of Governors outlining closing agreement concept and the advantages to MICA. Two major advantages are relief from past tax liability and being tax-exempt for some future period.

October 25 - Brock and Pierce meet with Jim Jordan, Acting Director of Division of Insurance and discuss details of closing agreement. Jordan to discuss with his boss Mercurlieff who will discuss with Governor's office. Jordan approves concept and draft closing agreement, doesn't anticipate problems from anyone else in Administration.

October 26 - Executive Committee and Finance Committee have joint meeting. Mason and Holmes in attendance. Mason explains this is a binding agreement and other details of closing agreement.

October 27 - Quarterly Board meeting with Gagnon, Mason and Orien in attendance.

The Board discusses the closing agreement and authorizes the draft. Gagnon and Mason feel that state should also approve based on the state's involvement in MICA by statute.

The Board gives the Executive Committee the power to finalize this agreement with Brock.

- Gagnon and Mason meet with Jordan. He agrees to be a signor on closing agreement with Brock.

October 30 - Closing Agreement hand-delivered to Pete Scott by Royalty.

November 2 - Mason sends letter to Pierce with a copy of cover letter to closing agreement that Royalty gave to Scott. She also states she had a discussion with Konigsberg and informs Pierce that the President has nominated a new Chief Counsel to replace Acting Pete Scott. The Senate may confirm that replacement before Thanksgiving. Pierce very concerned because new Chief Counsel may not agree to closing agreement between IRS and MICA and we would have to start the process again.

- Letter from Senator Stevens to Pete Scott, attaching closing agreement and requesting his attention.

November 10 - Pierce calls Royalty requesting his assistance with IRS in approving closing agreement.

November 30 - Executive Committee meeting in which Pierce informs them that we have no word on agreement.

1990

November 30 thru February 5 - Various phone calls among Pierce, Royalty, Konigsberg and Mason requesting information on status of closing agreement.

January 2 - Pierce meets with Jordan and discusses closing agreement and MICA's financial stability. Jordan says state should concern itself with MICA staying strong financially because he feels a restructuring and independence are imminent. Jordan says will stay as Acting Director until new Administration (end of year).

February 5 - Letter to Scott from Royalty referencing Scott's recent conversation with Meyerer and requesting resolution of closing agreement.

February 16 - Letter to Konigsberg from Pierce explaining crucial deadlines with Convention Statement, NAIC, A.M. Best, etc. that are adversely affecting MICA's financial reputation and stability because of the unresolved tax issue.

February 20 - Royalty calls Pierce and Mason to inform them that Scott has met with Royalty and Meyerer and proposed a new agreement. He wants to only allow tax exemption through 1990 for MICA to work with legislature to restructure. MICA can only remain tax-exempt if becomes part of state and he wants immediate bifurcation of business.

February 23 - Letter from Mason to Royalty with new draft closing agreement, proposing elimination of tax liability for past years and through 1992, with full tax liability beginning in 1993 unless MICA becomes integral part of the state.

- Letter from Pierce to Scott summarizing our understanding of his verbal concerns and explaining things we can't control, i.e., length of time necessary to obtain legislative action and upcoming change of administration.

- Brock, and Pierce and Holmes participating telephonically, meet with new Director, Dave Walsh to explain tax issue. Walsh agrees to sign if agreement remains the same in concept.

February 28 - Letter to Scott from Brock (with the legal advice of Mason) explaining serious practical problems in carrying out bifurcation.

March 2 - Royalty and Meyerer meet with Scott and Coppersmith regarding changes IRS wants in closing agreement: exempt through 1991, partially taxable (bifurcation) in 1992, fully taxable beginning 1993 unless become "integral part of state."

March 5 - Conference call with Brock, Frazier, Keller, Smith (Executive Committee) and Mason to discuss revised closing agreement incorporating Scott's changes. Revised closing agreement approved.

March 6 - Final draft of closing agreement after agreeing to time deadlines for interim actions to be taken by MICA.

- After rethinking closing agreement Director Walsh feels he should not sign due to potential liability to the state and other agencies similar to MICA.

- At Walsh's request, Assistant Attorney General Alexis Gabay telephones Mason. Mason faxes background information to Gabay. Mason discusses situation with Gabay and (now) Assistant Attorney General Jeffrey Bush by telephone.

March 7 - Letter from Mason to Alexis Gabay, Assistant Attorney General, enclosing proposed letter from the Director to Brock concurring with MICA's decision to enter into a closing agreement.

March 8 - Meyerer and Royalty contact the IRS and Director Walsh is removed as signor on closing agreement.

Director confers with Ron Clarke in Governor's office about MICA's closing agreement and his discomfort with the agreement.

- Holmes sends letter to Walsh explaining history of the tax issue and the involvement of the state in negotiations. Holmes informs Walsh that he has advised the Board to sign the closing agreement.

March 9 - Closing agreement is to arrive today from the IRS for Brock's signature.

Walsh confers with Ron Clarke and Clarke is of the opinion MICA shouldn't sign the agreement.

Mason and Holmes have telephone meeting with Clarke. Clarke then discusses situation with Attorney General, Doug Baily. Clarke agrees MICA

can sign but state will remain neutral. He requests that MICA report to Director Walsh once the agreement is signed.

- Mason faxes to Pierce a summary of conversation with Clarke.

- Director Walsh sends letter to Brock, who faxes to Pierce, Mason and Holmes, stating state cannot concur with MICA's signing the agreement.

- Pierce sends letter to Walsh (via fax) stating it was her understanding state taking neutral position and attaching Mason's summary letter regarding conversation with Clarke.

March 12 - Walsh calls Pierce regarding her letter. They agree on their understanding of state's position which is that the state is not taking a position.

Pierce sends memo to Brock with copy to Holmes and Mason summarizing above conversation.

- Brock signs Closing Agreement and returns to IRS.

March 15 - Scott signs Closing Agreement.

March 19 - Final Closing Agreement received by MICA signed by Scott and Brock.

SB

218

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K—STATE CAPITOL JUNEAU 99811

September 5, 1975

H. Phillip Hubbard
Deputy Commissioner
Department of Commerce
Pouch D
Juneau, Alaska 99811

Re: Tariffs for licensed pilots on enrolled ships (AS 08.62.040, AS 08.62.180, 12 AAC 56.160(j))

Dear Deputy Commissioner Hubbard:

You have requested an opinion from the Attorney General whether or not the Board of Marine Pilots has statutory authority to regulate tariffs charged by licensed pilots employed on enrolled ships. It is the opinion of this department that the board does have such authority. The rationale for this conclusion is set out below.

The powers and duties of the board are set out in AS 08.62.040(a), which reads in part as follows:

> (1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;
>
> # # # # # #
>
> (4) regulate pilotage fees; . . . .

This statute then gives the board authority to regulate services by licensed pilots on specified waterways to assure protection of shipping, the safety of human life and property, and to regulate tariffs charged by licensed pilots for their services.

Under AS 08.62.180(1), "vessels under enrollment" are explicitly excepted from the requirements of AS 08.62. However, the board has promulgated regulation 12 AAC 56.160(j) which reads as follows:

> When a pilot licensed under AS 08.62 is employed on an enrolled ship, the same regulations [as for ships not excepted from the requirements of AS 08.62] apply.

It is generally held that an express exception in a statute "comprises the only limitation on the operation of the statute and no other exception will be implied." 1/ In the matter at hand, the fact that AS 08.62.180(1) provides an express exception for enrolled vessels does not require an implied exception from the board's tariff regulations for licensed pilots employed on those vessels.

The enrolled ship exception in AS 08.62.180(1) does not expressly extend to licensed pilots employed on such vessels. That is, the board is authorized and has the duty to establish qualifications of licensed pilots to provide for examination of pilots and their licensing, and to provide for efficient and competent pilot service, as well as, to regulate pilotage fees for licensed pilots regardless of whether the vessel in question is enrolled. One might at first view this result as indirect regulation of the enrolled vessels themselves, in violation of AS 08.62.180(1). However, owners of enrolled vessels are not required to take on licensed pilots while in Alaskan waters. These owners are free to go elsewhere for pilotage advice.

Therefore, it is the opinion of this department that the board is authorized under AS 08.62.040 to regulate tariffs charged by licensed pilots employed on enrolled ships. And so, 12 AAC 56.160(j) is a valid regulation pursuant to this authority.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Wilson Condon
Deputy Attorney General

WC:chp

1/ 2 A Sutherland Statutory Construction §47.11 (4th ed.)

Rep Pearce : E-2H

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

Rep. Andre Marrou
Pouch V
Juneau, Alaska 99811

February 14, 1985

MEMORANDUM

TO: Representative Andre Marrou

FROM: Heidi Borson Paine HBP
Legislative Analyst

RE: Forms of Limited Entry in Alaska Society
Research Request 85-139

You requested information on limited entry in Alaska society, which you defined as areas in which limits are imposed on the number of participants. You also asked this agency to determine if Alaska's collective experience with limited entry has been good and whether or not the legislature should extend this concept to other areas.

Entrance into many occupations is based on an applicant's ability to meet the qualification standards of various boards and commissions. According to Harry Traeger, Director of the Division of Occupational Licensing, out of the 98 disciplines his division licenses, only guiding involves licenses issued on a quota system. (See Attachment A for a list of occupations licensed by the division.) This memorandum focuses on five areas of limited entry: big game guiding, fisheries, alcoholic beverage sales, utilities, and the Anchorage taxicab industry.

Big Game Guiding

Alaska Statute 8.54.040(a)(8) directs the Guide Licensing and Control Board to "establish a quota of licensed operating guides who may operate within designated geographic game units or subunits of the state" and requires that preference be given to qualified guides residing within the game area. Consequently, Alaska was divided into 27 guide areas or districts. To limit the number of guides allowed to guide in a particular area, the board regulates entry by issuing permits for exclusive or joint use of the area. The board has not set a limit on the total number of guides statewide, nor on the maximum number of guides who may be certified for each guide area. However, according to Nancy Ferguson, Licensing Examiner, the board is considering limiting the total number of guides allowed in some Southeast areas.

Under 12 AAC 38.040(d), guides may be certified for no more than three areas. Currently, a total of approximately 430 permits are distributed throughout the 27 units. (See Attachment B for a breakdown of permits by unit.) The Division of Occupational Licensing was unable to provide information of the number of applicants denied entry into each guiding area at this time. However, such information can be collected if necessary.

According to Harry Traeger, Director of the Division of Occupational Licensing, limited entry in guiding is intended to allow for only the number of guides the resource can accommodate. As such, the concept of limited entry is employed to protect a resource. The permit process is also designed to favor residents of a given area and to protect the livelihood of persons already guiding in a given area.

Salmon, Herring and Crab Fisheries

Alaska Statute 16.43.010, which was passed in 1973, created the Commercial Fisheries Entry Commission (CFEC) and introduced the concept of limited entry to Alaska's fisheries. A Supreme Court decision established the constitutionality of limiting entry based on the following purposes: 1) to enhance the economic benefit to fishermen (because too many involved in the industry prevented those relying on fishing for a livelihood from securing adequate remuneration); 2) to conserve the fishery; and 3) to avoid unjust descrimination in the allocation of a limited number of entry permits (Commercial Fisheries Entry Commision v. Apokedak, 1980). According to the CFEC, entry limitation in the fisheries is based on a balance of biological, economic and equitable considerations, with entry permits initially awarded to those with greatest historical participation in and economic dependence on the fisheries.

Initially, nineteen fisheries were limited. However, that number has since increased to 26 salmon fisheries and 7 herring fisheries. The maximum number of entry permits was established in 20 AAC 05.320 as a total of 11,827 permits for all limited salmon fisheries and 501 permits for the limited herring fisheries. As of January 1, 1985, the Commercial Fisheries Entry Commission had issued a total 12,218 entry permits for the limited salmon fisheries and 420 entry permits for the limited herring fisheries. The commission has denied a total of 3,470 entry permit applications for the limited salmon and 104 applications for entry into the limited herring fisheries.

According to Frank Glass, Hearing Officer for the CFEC, the number of entry permits issued exceeds the maximum number of permits in some salmon fisheries because of several factors. First, AS 16.43.270 (a) provides that no person with a priority classification specified in

AS 16.43.250(b) may be denied an entry permit regardless of the maximum number of permits established in regulation. The priority classification established in AS 16.43.250(b) includes persons who would suffer significant economic hardship by exclusion from the fishery. In addition, after the permit issuance point level had already been set, the Alaska Supreme Court in Isakson v. Rickey (1976) allowed all persons holding gear licenses in 1973 and 1974 to apply for limited entry permits. The initial cutoff date was January 1, 1973.

In 1984, after conducting public hearings, the Commercial Fisheries Entry Commission determined that three crab fisheries in Southeast had reached levels of participation requiring entry limitation. The regulations approving the limited entry of these Southeast crab fisheries were adopted on November 25, 1984. Under 20 AAC 05.320 (d), the maximum number of permits for each fishery was set as follows:

Fisheries	Maximum Number of Entry Permits
Southeastern Alaska:	
red and blue king crab pot fishery	61
brown king crab fishery	57
tanner crab pot fishery	83

Limited entry permits will not be issued until the CFEC develops a point system for ranking all eligible applicants. However, in the interim, all persons who may ultimately qualify for an entry permit because of participation in the fishery prior to January 1, 1984 are issued interim-use permits.

According to Kurt Schelle, Director of Research and Planning for the commission, limited entry in the fisheries is unique because it involves a common property resource. Limited entry in the fisheries is motivated both by conservation and economic goals. He points out that in other industries where property rights are private, limited entry often results in the availability of less service at a higher price. However, he maintains that limited entry (as it applies to fisheries) does not limit the amount of resource which is permitted to be harvested. Consequently, limited entry has little effect on the availability or the price of the product.

Mr. Schelle notes that in fisheries, a trade-off occurs when trying to sustain the maximum yield of the fisheries. If limits are not placed on the number of participants, then other restrictions must be

imposed to maintain the maximum yield, such as limiting the length of fishing seasons, efficiency of the gear, and areas open for fishing, measures which often result in higher harvesting costs. On the other hand, if the number of participants is limited, then State fishery managers do not have to employ as many other methods of reducing efficiency in order to conserve the resource.

According to Commissioner Bruce Twomley of the Entry Commission, limiting entry in fisheries is appropriate, the question is how best to limit entry. He maintains that there may be more economic ways of limiting the fisheries, but concludes the current form of limited entry is better than none at all. In addition, he points out that the current system of limited entry encourages access to the fisheries in that permits may be bought and sold. On the other hand, access is limited to those who can afford to purchase the permits.

Alcoholic Beverages

According to Patrick Sharrock, Director of the Alcoholic Beverage Control Board (ABC Board), the sale of alcoholic beverages has been regulated in Alaska since the turn of the century. The ABC Board was created to regulate the sales and distribution of alcohol in Alaska shortly after statehood. Alaska Statute 4.11.C10 provides that a person may not "manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage" without a license or permit issued by the ABC Board. Under AS 4.11.400(a), the ABC Board is authorized to issue one license of each type for each 1,500 persons or a fraction thereof. (See Attachment C for a list of license types.)

Inside established villages, incorporated cities and unified municipalities, the population count is based on the total population within the organized area's boundaries. In unorganized areas, population is based on the total population within a five-mile radius circle from the premise seeking licensure. The ABC Board is also authorized to approve licenses for beverage dispensary or to a restaurant or eating place without regard to population if it appears the issuance or transfer of the license will encourage the tourism trade by encouraging the construction or improvement of a hotel, motel, resort, or an airport terminal [AS 4.11.400(g)].

Currently, there are 1,652 alcoholic beverage licenses in Alaska, 36 of which were approved under the "tourism provision." In addition, the ABC Board has issued 41 duplicate licenses. Duplicate licenses are issued to license holders and allow them to open a second sales outlet at a previously approved premise. For example, a hotel which already has a permit to sell alcohol at its restaurant may apply for

a duplicate license to open a cocktail lounge. According to Mr. Sharrock, data on the number of applications the ABC Board has denied since its inception is not available. However, during 1983 and 1984, the ABC Board received 408 new applications for permits, 138 of which were denied. 75%. 75%

According to Mr. Sharrock, the intent of limiting entry in the alcoholic beverage industry is "to ensure that there is an orderly scheme of operating businesses dealing with the sale of controlled substances." He contends that limited entry in the alcoholic beverage industry is good because of the controversial nature of alcohol. He maintains that limited entry protects the public interest by regulating the kinds of establishments distributing alcohol. In addition, Mr. Sharrock notes that limited entry helps ensure that businesses selling alcohol are not involved in illegal activities often associated with alcohol consumption (such as gambling and prostitution).

On the other hand, limited entry is problematic because it creates a property value for the license. According to Anchorage Municipal Assemblyman John Wood, Anchorage can no longer expect any small restaurants to open there because of the high price of liquor licenses, which currently sell for approximately $500,000 in Anchorage. Mr. Wood also contends that limited entry in the alcoholic beverage business is ineffective in that it does not address the intended goal of controlling consumption. Although limited entry may affect consumption because it raises the price of alcohol, the price of alcohol could also be raised by increasing liquor taxes without limiting entry.

Public Utilities

According to Commissioner Marv Weatherly of the Alaska Public Utilities Commission (APUC), regulation of public utilities in Alaska dates back to statehood. However, the APUC was not established as a full-time regulatory commission until July 1, 1970. The APUC was created under AS 42.05.010 to regulate every public utility engaged in or proposing to engage in business in Alaska. Two of the commission's goals are preventing unnecessary duplication of facilities, and assuring that public convenience and necessity are met. Consequently, before operating in Alaska, a public utility must obtain a certificate from the commission declaring that public convenience and necessity require or will require the service [AS 42.05.221(a)].

According to Commissioner Weatherly, the statutes and regulations do not establish a quota limiting the number of utilities in each area. However, in practice, the APUC usually certifies no more than one utility of each kind in a given area. Currently, 257 utilities are

certified to operate in Alaska. A list of the number and kind of certified utilities follows:

57 - Electric
3 - Natural Gas
23 - Cable Television
7 - Radio Common Carriers
26 - Telephone
59 - Water
33 - Wastewater
33 - Refuse
1 - Steam Heat
13 - Crude Oil Pipelines
2 - Natural Gas Pipelines

Total: 257 certified public utilities

According to Commissioner Weatherly, the APUC does not maintain records of the number of applications denied. He pointed out that in public utilities, acceptance of one application does not necessarily mean rejection of another. Instead, contracts may be split between several utility companies. In addition, Commissioner Weatherly noted that utilities are capital intensive. Consequently, the number of applicants is usually small.

When asked to judge the efficacy of limited entry, Commissioner Weatherly cautioned that limited entry as applied in public utilities is much different than limited entry in other areas, such as fisheries. First, as indicated above, most utilities are capital intensive and require significant amounts of up-front capital. Consequently, competition for certification to provide services is limited, unlike the demand for entry into the fisheries. Second, the APUC regulates a service industry rather than a renewable resource.

Jack Farleigh, Executive Director of the APUC, argues limited entry in utilities is beneficial because it prevents unnecessary duplication of facilities which could result in undue costs to the consumer. In addition, limited entry protects the public by requiring companies to prove their services meet public necessity and convenience. Furthermore, he indicated that the precedent and legal principles for limited entry in utilities are set in federal courts.

Anchorage Taxicab Industry

The concept of limited entry is also applied on the local level in Alaska, as illustrated by the taxicab industry in Anchorage. In

1975, the Municipal Assembly of Anchorage passed an ordinance basing the number of available taxicab permits on two factors: 1) a quota of one taxicab for every 1,500 persons, and 2) the public's convenience and necessity. The Transportation Commission was charged with the issuance of permits. On January 31, 1984, the Assembly amended the ordinance by dropping the population quota thereby basing the issuance of permits solely on public convenience and necessity and establishing a sealed bid process for permits.

Decisions on the issuance of additional permits are based on four criteria: the existence of public demand for additional cabs; whether or not the request for service is filled; the current waiting time for service; and the economic impact of additional permits on the cab industry. If the need for additional permits is proven, the permits are now opened up to a sealed bid process and issued to the highest bidder. Prior to the 1984 amendments, the Transportation Commission awarded permits for a fee of $250 per year. The 1984 amendments raised the permit fee to $750 per year in addition to establishing the sealed bid process.

According to Bud Macatee, Manager of the Municipality's Transportation Inspection Office, 163 taxicab permits have been issued to date, five of which are limited permits for the Eagle River area. Mr. Macatee indicated that records on the number of applicants have not been kept until recently. He estimated that from September 1983 through when the ordinance was amended on January 31, 1984, approximately 250 applications were submitted for taxicab permits. Mr. Macatee explained that the number of applicants during this time was exaggerated by two factors: 1) knowledge of the impending law change; and 2) a court case in which one person was awarded 12 taxicab permits.

According to Mr. Macatee, only five limited permits have been issued since the 1984 ordinance went into effect. The five limited permits sold for a total of $27,000. He notes that permit holders may also sell their permits. The last two permits sold on the market sold for $32,500 each.

Mr. Macatee points out that limited entry has worked against persons wishing to enter the taxicab business, while benefiting those already holding permits. Consequently, current permit holders do not favor opening entry into the Anchorage taxicab industry. He also notes that the sealed bid process limits entry to persons with access to significant capital assets and often prevents taxicab drivers from participating in the taxicab industry in Anchorage.

According to John Wood of the Anchorage Municipal Assembly, five entities currently control 55 percent of the taxicab permits in Anchorage. These companies lease the permits for between $750 and $1,300 per month. Mr. Wood maintains that the permit owners earn more per shift than the taxicab driver. He estimates that the average driver leasing a permit must make 390 trips per month before "putting a dime in his/her pocket." As such, limited entry harms the consumer who pays unnecessarily high fares.

The Anchorage Municipal Assembly recently concluded public hearings on a proposal to deregulate the taxicab industry. The proposal failed with a 6-2 vote on February 12, 1985. However, Assemblyman John Wood, sponsor of the measure, hopes to put the question before the voters this fall. The Transportation Commission, which is charged with regulating the taxicab industry, was split concerning whether or not to deregulate the taxicab industry. Some of the members favored maintaining the current system with the addition of a lottery system to distribute permits instead of a sealed bid process, while others favored opening entry.

Conclusion

Each area of limited entry discussed in this memorandum was designed to meet a specific goal such as to protect the public, conserve resources, or protect persons already participating in an industry. Determining whether or not those goals are beneficial or should be the function of government will vary according to one's personal convictions and philosophy of government.

Many economists do not recommend limited entry, maintaining that the market should be allowed to determine the number of participants in a given industry. Exceptions may be limited entry as it applies to public utilities and to the harvesting of public resources. Public utilities are generally accepted as an industry that functions best as a regulated monopoly. By limiting the number of participants, service can be improved and costs of providing service can decrease. In addition, consumer costs are regulated in order to limit the profits of the service providers. In an industry such as fishing, limited entry serves to maintain the life of an industry, protect the resource, and ensure a steady supply to the consumer.

Limited entry in a service industry can limit the availability of the service and lead to increased prices for consumers. As discussed in the sections on the taxicab and alcoholic beverage industries, limiting entry by providing a limited number of permits is problematic because it creates a property value for the permits. The inflated cost of these permits often prevents persons trained in an industry from participating because of the inability to purchase permits.

The difference between service industries and resource industries is that limiting entry does not appear to benefit consumers either by lowering costs (as in utilities) or by aiding the management of a depletable resource (as in fisheries). The primary beneficiaries of limited entry in service industries appear to be the permit holders. Although one can argue strongly against extending limited entry in the service sector, it is difficult to revoke an existing system of limited entry permits because of the significant investment current permit holders have already made.

* * * * *

I hope the information provided in this memorandum is of use to you. Please contact me if you have any additional questions.

HBP

Attachments

ATTACHMENT "A"

INTERNATIONAL ORGANIZATION OF MASTERS MATES & PILOTS

ROBERT J LOWEN
International President
ALLEN C SCOTT
International Executive Vice President
LLOYD M MARTIN
International Secretary-Treasurer
GEORGE A QUICK
Vice President

J ALFRED ELLIS JR
East Coast Regional Representative
DAVID C WHEAT
Gulf Coast Regional Representative
BERT HOLMES
West Coast Regional Representative
EMIL F BOWERMAN
Panama Canal Regional Representative

October 3, 1989

Mr. John Tamashiro
Executive Secretary, Pilot Program
Department of Commerce and Consumer
Affairs
State of Hawaii
Post Office Box 541
Honolulu, Hawaii 96809

Dear Mr. Tamashiro:

It has come to our attention that one of our members, Jean Louis Lependu, is advocating competition among pilots in Hawaii. Such a position is contrary to the stated policy of this Organization. We recognize only one branch or affiliate in each area to provide pilotage service to shipping.

Experience has shown that competition among pilots does not serve the public interest. The inefficiencies inherent in maintaining duplicate services; the lack of a central dispatching system to assure the availability of pilots at all times; the failure of having a single pilot administrative entity to represent all pilots and be collectively accountable for the administration and quality of the pilotage system, inevitably leads to a service with inadequate equipment, low standards and chaos.

The most recent example of the problems that exist, in permitting pilots to operate independently, occurred in San Juan, Puerto Rico.

Pilots were separately licensed with no provision to form an Association to jointly provide service. Each pilot had his own boat and operator. Individually no one pilot could afford a boat capable of working outside the harbor in moderately rough sea conditions. There was no joint responsibility to be available for service or a central dispatching system. Vessels routinely entered the harbor without a pilot when they could not be properly boarded outside the entrance due to poor equipment that could not operate under moderate wind and sea conditions. In addition, even under good weather conditions, a high percentage of ships entered and left without pilots because none could be found without a dispatch office and an organizational

structure that could be held accountable for maintaining an orderly pilotage system.

A large container ship recently attempted to enter the port when a pilot was not available and grounded in the entrance channel. The ship blocked the entrance to San Juan Harbor, the second largest passenger cruise ship port in the world. The consequences were disastrous with thousands of passengers trapped in the port aboard ships unable to sail and thousands of others diverted to alternate ports due to the inability of ships to enter San Juan Harbor. The ship remained aground for several days. The supply of fuel for the electric power plant that furnishes electricity to the City of San Juan was down to the point that the National Guard was put on alert to maintain order in the event there was a blackout. The channel was reopened and fuel supplied to the power plant only hours before a shut down would have been necessary.

The incident caused the Governor of Puerto Rico to appoint a Committee to study pilotage in Puerto Rico. New regulations are in the process of being enacted to force the pilots into an Association to jointly maintain a pilotage service, and funded at a level that the Association can maintain proper equipment for all weather operations with a central dispatch and administrative office.

It is interesting to note that while the Governor's Committee was holding meetings, a second ship grounded under the same circumstances and closed the port. The move to bring the San Juan Harbor pilots under a single Association is strongly supported by management, represented by the Shipping Association, and by the Port Authority of Puerto Rico. The pilots are being offered financial incentives to form an Association and collectively maintain a pilotage system.

Any attempt to foster individual or independent pilotage services in Hawaii will only lead to a situation similar to that which occurred in San Juan and require remedial efforts in the future to undo the damage.

If I can be of any assistance in furnishing more information, please call me at (301) 557-8757 or (301) 850-8700.

Very truly yours,

George A. Quick

George A. Quick
Vice President - Pilots

the information already contained in the application or petition. [Eff and comp 12/2/89; comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

SUBCHAPTER 12

STATEWIDE PILOTAGE SYSTEM

§16-96-61 Statewide pilotage system. All pilots shall be required to participate in assuring the maintenance of the pilotage services in all pilotage waters of the State. Such participation shall require that each pilot:

(1) Remain in active service;

(2) Participate in the central scheduling system as set forth in section 16-96-62;

(3) Participate in the pilot training program as set forth in section 16-96-63; and

(4) Adhere to the work rules adopted pursuant to this chapter. [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

§16-96-62 Central scheduling system. (a) All pilots shall participate in the central scheduling system that is established by the director. The director may contract with any person or entity, including any existing pilotage system, to establish and operate a central scheduling office for all pilotage services in the State.

(b) Any person or entity that seeks to operate the central scheduling system shall submit a proposal to the director that shall include, but is not limited to, work rules that assure the following:

(1) All needed pilotage services will be available at all times and for all designated pilotage waters;

(2) Any request for a particular pilot or group of pilots shall be accommodated to the greatest extent possible;

(3) The refusal to use any particular pilot shall always be honored;

(4) An expeditious grievance process for the resolution of all complaints including a pilot's complaint that the central scheduling system has been operated to the disadvantage of that pilot;

(5) Equitable distribution of pilotage work to all licensed pilots; and

(6) Method of financing for the proposed central scheduling system.

(c) All requests for pilotage services shall be made through the central scheduling office. No pilot may engage in any pilotage service that is not assigned through the central scheduling system.

Conforms to law

(d) All operating costs for the central scheduling office shall be borne by all licensed pilots on an equal basis. [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

§16-96-63 Training program. (a) All pilots shall participate in a program to train deputy port pilots which shall be established by the director. The director may contract with any person or entity to establish and operate such a training program. There shall be only one training program in existence at any one time.

(b) All deputy port pilots shall receive their training under the program established pursuant to this section provided that any deputy port pilot licensed prior to the effective date of this section may complete training outside of this program.

(c) All pilots shall accept training assignments made by the program unless the pilot is physically or mentally impaired or unless the pilot is unable to obtain the necessary support facilities at reasonable rates in the port involved.

(d) The costs of operating the training program shall be offset by a fee to be assessed per vessel movement during any period when a deputy pilot is being trained. The fee shall be assessed on all vessel movements whether or not the particular vessel involved is carrying a deputy port pilot. [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

§16-96-65 Work rules. All pilots shall adhere to the work rules of the central scheduling system that is established by the director pursuant to section 16-96-62 or adopted pursuant to subchapters 2 and 3 of this chapter." [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

2. Material, except source notes, to be repealed are bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments and compilation of chapter 16-96, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Report of the Alaska Oil Spill Commission
Executive Summary

SPILL

The Wreck of the Exxon Valdez
Implications for Safe Marine Transportation

January 1990

Recommendation 20
Marine pilot qualifications

Training and experience standards for marine pilots in Alaska should be upgraded to require actual experience in Alaska operations of vessels at thresholds of 60,000 and 150,000 deadweight tons.

Training and experience requirements have been reduced for pilots of large tankers in Prince William Sound and Cook Inlet since the late 1970s, allowing pilots to qualify for very large ship operations on insufficient experience. While no accidents have been caused by this circumstance, a system with multiple thresholds is inherently safer.

Recommendation 21
State as co-insured

Insurance policies should identify the State of Alaska as an additional insured or named beneficiary.

The shipping industry is responsive to economic incentives. Insurance premiums and premium requirements create incentives. The insurance industry is responsive to the needs of co-insureds. Such practices were required during construction of the trans-Alaska pipeline. There is every reason to revive them.

Recommendation 22
Remote spill response

The state should set rigorous requirements for private oil spill prevention and response capability in remote locations. The state also should develop response plans for major spills and articulate a prevention program from the Aleutian Islands to the Arctic.

Despite the state's obligation to respond to major spills, only if private resources are committed to prevention systems and response can an acceptable reduction in risk be achieved.

Marine traffic in arctic Alaska already poses unacknowledged risk. Fuel provisions delivered by sea and vessels fueled by oil create risks of damage in these hazardous and environmentally fragile waters. Spills are usually impossible or much more difficult to contain and collect in arctic waters. Immediacy of response is the key to cleanup if a spill occurs.

Measures should be undertaken to reduce spill risk in the arctic, including better vessel tracking and contingency plan requirements for all large vessels transiting the arctic, and for smaller vessels carrying oil or major fuel supplies.

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
P.O. BOX WF
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

RECEIVED
SEP 24 1990
OFFICE OF THE COMMISSIONER

September 24, 1990

The Honorable Jane Angvik
Commissioner
Department of Commerce and
Economic Development
Box D
Juneau, AK 99811-0800

Dear Commissioner Angvik:

RE: Interim Letter No. 1
Board of Marine Pilots

It is the policy of the Division of Legislative Finance to inform the Board of any significant findings noted during the course of our review. We would appreciate receiving a written response from you to help us evaluate the findings and recommendations presented below.

Since the review has not yet been completed, information included in this letter should be considered confidential. A preliminary report which may or may not contain these findings will later be sent to you for your comments.

In order to facilitate the completion of the review, please furnish this Division with your written reply within 10 working days after the receipt of this letter.

Recommendation No. 1

The Division of Occupational Licensing should review the role of pilot associations in the training and regulation of pilots and recommend statutory or regulatory clarification as necessary.

Pilot associations have performed a valuable role in training and upgrading the skills of their members. Associations provide for familiarization with new piloting areas and certify that members have made the appropriate dockings and undockings for adding endorsements to pilots' licenses. They also, however, limit membership and dispatch only their own members. Recently there have been a number of suits filed against the associations alleging restraint of trade and violations of anti-trust statutes. The associations are not currently regulated by Occupational Licensing.

While the basic purpose of the associations, i.e., to dispatch pilots, will doubtless remain, they may well be reluctant to assist in training or any other area of pilotage which might extend their liability.

It would appear that a more direct and specific role for the state in training and examining pilots may be necessary and appropriate. Statutory or regulatory changes may be required, perhaps with a knowledgeable state employee dedicated to these tasks.

The Division of Management, Office of the Governor is preparing an in-depth study of marine piloting. The study may serve as the basis for legislative changes.

If you have any questions regarding this letter please contact me at 465-3795.

Sincerely,

Mike Greany, Director
Legislative Finance Division

ALASKA MARINE PILOTS
& DISPATCHING SERVICE
P.O. BOX 730 • DUTCH HARBOR, ALASKA 99692 • 907/581-1240
FAX: 907/581-1372

October 1, 1990

TO: The Pilots of Alaska Marine Pilots
FROM: Joe Merrill

RE: September 13-14 meeting in Juneau called by Governor's Office to revise piloting statute.

As you are no doubt aware the Governor's Office, Division of Planning, invited non-pilot representatives of each pilot group, the Attorney General's Office and the President of the American Pilots Association to a work session in order to rewrite the law that makes pilotage compulsatory and establishes the Board and specifies its authority. The meeting resulted from Mary Lou Madden's follow-up of Captain Murphy's letter to the governor regarding aspects of piloting that were felt to be in need of change. SWAPA and Southeast were represented by their attorneys and I held down the fort for your group.

The output of the meeting will be a draft of proposed changes to the Alaska Statute. We did not deal with the regulations of the Board because changes will be proposed to the authority and make-up of the Board. When and if it changes and has a new law then the regulations will be addressed. The Attorney General's Office is writing up the proposed changes and will distribute them by about October 15th. At that time we can make additional comments in preparation for a public comment meeting in November. The expectation is that from the November meeting will come final language for statutory changes to be pre-filed prior to the legislature meeting in January.

The substance of the group agreed upon aspects of changes is given below. We did not vote but had a concensus that the Attorney General's Office will put into formal language. The items agreed upon were:

1) The Statute must give the Board clear authority to set rates for pilotage. Presently the regulatory language is challengable.

2) The Dept. of Commerce will lose its seat on the Board to be replaced by a pilot from AMP.

3) Annual pilot license fee should be increased to $1,500 per year and the fee can be recovered through the tariff. The purpose of the fee increase is to generate funds so the state can hire a coordinator. (More about that later.)

4) Increase requirements for license renewal to incorporate the idea of "use it or lose it".

5) Divide the state pilotage waters into three regions to reflect the general unique shipping characteristics of each region and to get manageable areas in order in increase the "local knowledge" aspect of piloting. No specific boundaries of the region were discussed but in general would be based upon the areas serviced by the three pilot organizations.

Regionalizing the areas would allow:

A - Regional licensing requirements upon the nature of the shipping business.

B - Regional tariff structures.

C - Identifying regional pilot organizations for the purpose of the State regulating the group. Regulating the group would include the Board's approving the training program and the operating rules of the group. Additionally, from each group the Board would select a "designated pilot" whose functions would include giving check rides to pilots to their license being renewed. This would allow some form of "peer review".

6) The licensing requirements and process would be changed to some form with the following characteristics:

A - Regional requirements for entry to training would be established. It seems that a Coast Guard pilot's license based upon sea and deck officer criteria and local knowledge would be required prior to taking the State exam.

B - After consultation with the pilot organization agents the number of required pilots for an area would be established. When the number had to be increased those individuals taking the State exam would be ranked by score and other qualifications. The highest ranking would then be allowed to train in the region.

C - The regulated pilot organization would do the training. In exchange for this service the state would limit the liability of the pilot doing the training.

D - The training program would consist essentially of ship handling - i.e. docking and undocking throughout the region. During the training progress reports would be filed with the Board who would have the authority, and based upon the pilots who act as trainers, to terminate a trainee who is not making it. In short, someone in training can flunk out. Additionally, it appears that the training period must extend over a fixed time period. For instance a year even if all the reguired dockings had been accomplished in two weeks.

E - At the end of the successful training period the person would then get their license.

F - After getting the license the person would automatically be eligible to be dispatched through the pilot organization. However, the pilot organization could require an "affiliation fee" so that the organization can cover the costs of property and operations. In short, this is like the $10,000 AMP now requires.

In addition the pilot organization can have operating rules to allow income sharing based in varying percents that take into consideration coverage and tonnage.

One last point on the training is that the organization does not have to pay for it. That is, the trainee still has to pick up the living and travel costs involved in getting the license.

G - A person getting a license does not have to join the organization. That is they can pilot on their own. However, they can not be kept out of the organization if they pay the affiliation fee.

The above are the main features that it was felt must somehow get into the law if the state is to continue to have compulsatory pilotage and implement it without just having state employees.

The Pilot Coordinator would be a qualified pilot working as an employee of the state to oversee the organizations, licensing and complaint aspects.

After the meetings I spent a long time visiting with Captain Ed Murphy of SWAPA. The state is well aware of past conflicts between SWAPA and AMP. I've always had respect for Ed's interest in keeping high standards for the piloting profession and we get along well as friends.

The purpose of the meeting was to find a way to work together towards the goals of building AMP, protecting SWAPA's interest in Dutch Harbor and at the same time insure high professional standards. After we get the report from the Attorney General's Office I will meet with SWAPA to try to insure that we are harmonious at the November meeting. I think that will be the case. If the pilots are not united then the State may discount our input and do what they want.

When I get the material from the Attorney General I'll distribute it to you so we can discuss it.

Sincerely,

Joe Merrill

JM:as

cc: Mary Lou Madden
Brad Pierce
Captain Ed Murphy

MEMORANDUM

State of Alaska
Department of Law

TO: Marine Pilot Working Group, Interested Parties

DATE: October 8, 1990

FILE NO.:

TEL. NO.: 465-3600

SUBJECT: Draft legislation amending the Marine Pilots Act

FROM: Gary I. Amendola
Assistant Attorney General

On September 13--14, 1990 individuals representing the State of Alaska and varying interests related to marine pilotage met in Juneau to discuss possible changes to AS 08.62, the Marine Pilots Act. During that meeting the state agreed to take the first cut at drafting those changes. Attached is a first draft of that legislation. We have attempted to incorporate in this draft those ideas and concepts that were discussed and were at least generally acknowledged to warrant further consideration. I will leave it to you to decide how close to doing so we came.

All of the interested parties to this project are well aware that there are a number of legal and policy choices that must be made. Those choices will certainly affect the substance of legislation that may be proposed or enacted. Although to some extent this draft may reflect the legal and policy choices that will ultimately be made by the State, the draft should not be taken, and may not be taken as doing so already. We are simply acting as the recording secretary of this group's efforts. The document is intended only to stimulate the processes by which those choices will be made. We expect that it will.

If you have any questions, please contact me at your convenience.

GIA/prm

Attachment

cc: Douglas B. Baily
Ron Lorensen
Jeff Bush
Ron Clarke

03-002

CHAPTER 62.
MARINE PILOTS.

Article
1. Board of Marine Pilots (08.62.005--08.62.045)
2. Licensing (08.62.080 -- 08.62.155)
3. General Provisions (08.62.160 -- 08.62.210)

ARTICLE 1.
BOARD OF MARINE PILOTS.

Section
05. Intent
10. Creation and membership of the board
20. Appointment and term of office
30. Meetings
40. Powers and duties
45. Marine pilot coordinator

ARTICLE 2.
LICENSING.

Section
80. License requirements
90. Application
100. Qualifications
120. Renewal
130. Lapsed license
140. Fees
150. Enforcement authority
155. Disciplinary sanctions

ARTICLE 3.
GENERAL PROVISIONS.

Section
160. Mandatory employment of licensed pilots
165. Allocation of liability
170. Pilot's lien
175. Pilot organizations
180. Exemptions
185. Certain licensed pilots required for oil tankers
187. Registration of agents required
190. Penalty
200. Definitions
210. Short title

"An Act relating to Marine Pilots . . ."

* **Section 1.** AS 08.62 is amended by adding a new section to read:

Sec. 08.62.005. INTENT. (a) The legislature declares that it is the policy of the State of Alaska to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage in certain waters in, around, and adjacent to the State of Alaska. The legislature finds that in order to assure the protection of lives and property and the marine environment of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels in certain waters in, around, and adjacent to the State of Alaska. The legislature also finds that to carry out this policy, it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training and licensing of marine pilots.

(b) The legislature recognizes that marine pilots operating independently of the shipping industry have provided and will continue to provide essential services to the people of the State of Alaska. Marine pilots further the public interest by providing safe pilotage in the pilotage waters of the State of Alaska. It is the intention of the legislature that the board work with marine pilots to ensure that safe pilotage is maintained in the State of Alaska.

three regularly scheduled meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special meetings at the call of the chair or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

* Sec. 5. AS 08.62.040 is amended to read:

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall have the authority to

(1) provide for the maintenance of efficient and competent pilotage [PILOT] service on all waters covered by this chapter in order to assure the protection of shipping, [AND] the safety of human life and property, and the protection of the marine environment;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of and required training for pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots[,] and agents;

(4) adopt regulations establishing pilotage regions in the state, establishing the criteria by which to set pilotage tariffs, including criteria related to a training and investigation fee to be remitted to the board, and setting pilotage tariffs for each region, provided that the board may adopt different tariffs within a region if justified [ADOPT REGULATIONS UNDER THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS BY

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02-576(2/77)

"An Act relating to Marine Pilots . . ."

* **Section 1.** AS 08.62 is amended by adding a new section to read:

Sec. 08.62.005. INTENT. (a) The legislature declares that it is the policy of the State of Alaska to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage in certain waters in, around, and adjacent to the State of Alaska. The legislature finds that in order to assure the protection of lives and property and the marine environment of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels in certain waters in, around, and adjacent to the State of Alaska. The legislature also finds that to carry out this policy, it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training and licensing of marine pilots.

(b) The legislature recognizes that marine pilots operating independently of the shipping industry have provided and will continue to provide essential services to the people of the State of Alaska. Marine pilots further the public interest by providing safe pilotage in the pilotage waters of the State of Alaska. It is the intention of the legislature that the board work with marine pilots to ensure that safe pilotage is maintained in the State of Alaska.

(c) The legislature also recognizes that in the past pilot organizations have provided, and in the future will continue to provide important services on behalf of marine pilots. By doing so, these pilot organizations have furthered the policy of protecting lives and property and the marine environment in the pilotage waters of the State of Alaska. It is the intention of the legislature that the board work with pilot organizations in a cooperative effort to enhance that policy.

* Sec. 2. AS 08.62.010 is repealed and reenacted to read:

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. The board shall consist of one state licensed marine pilot from each pilotage region who is actively engaged in, and for at least the past 5 years was actively engaged in, piloting vessels subject to this chapter, two agents or managers of vessels subject to this chapter, each being from a different pilotage region, and two public members from different pilotage regions who qualify under AS 08.01.025. All members of the board must be residents of the state.

* Sec. 3. AS 08.62.020 is repealed and reenacted to read:

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the members of the board in accordance with AS 08.01.020. No member may be appointed to the board for more than two consecutive terms.

* Sec. 4. AS 08.62.030 is amended to read:

Sec. 08.62.030. MEETINGS. The board shall hold <u>at least</u>

three regularly scheduled meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special meetings at the call of the chair or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

* Sec. 5. AS 08.62.040 is amended to read:

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall have the authority to

(1) provide for the maintenance of efficient and competent pilotage [PILOT] service on all waters covered by this chapter in order to assure the protection of shipping, [AND] the safety of human life and property, and the protection of the marine environment;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of and required training for pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots[,] and agents;

(4) adopt regulations establishing pilotage regions in the state, establishing the criteria by which to set pilotage tariffs, including criteria related to a training and investigation fee to be remitted to the board, and setting pilotage tariffs for each region, provided that the board may adopt different tariffs within a region if justified [ADOPT REGULATIONS UNDER THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS BY

WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED TO APPLY THE STANDARDS IN THE REGULATIONS];

(5) make available, upon request, copies of this chapter and the regulations adopted under it;

(6) review and approve the bylaws and the operating rules of pilot associations; and

(7) audit a pilot association as considered necessary by the board;

(8) review and approve training programs conducted by pilot organizations.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter, including establishing different licensing criteria in pilotage regions if justified by regional differences in piloting, establishing a mandatory random drug and alcohol testing program for marine pilots, and adopting criteria for trainee selection and for training programs conducted by pilot organizations.

(c) For good cause, the board may require a marine pilot to submit to a physical or mental examination to determine the pilot's fitness to perform the duties of a marine pilot.

* Sec. 6. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.045. MARINE PILOT COORDINATOR. The

department, with the approval of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and enforce the provisions of this chapter. The coordinator may not be an active member of an Alaska pilot organization and may not work as a pilot while employed as the coordinator, except to the extent required by official duties. The coordinator is a member of the partially exempt service under AS 39.25.120 (If this provision is accepted, AS 39.25.120 will also have to be amended).

* Sec. 7. AS 08.62.080 is amended to read:

Sec. 08.62.080. LICENSE REQUIREMENTS. (a) A person may not pilot a vessel subject to this chapter unless the person is licensed under this chapter.

(b) Except as provided in (c) of this section, a pilot may not be licensed at any one time, in more than one of the pilotage regions established by the board.

(c) The board may issue an endorsement to a licensed pilot for specific ports outside of the pilotage region for which the pilot is licensed. The board shall establish criteria upon which to determine whether to issue or renew an endorsement. Among other factors, the board must consider local knowledge and recency of service in determining whether to issue or renew an endorsement.

(d) The board shall establish dates for license examinations and shall provide public notice of such dates.

* Sec. 8. AS 08.62.090 is amended to read:

Sec. 08.62.090. APPLICATION. (a) A person who desires

to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board.

(c) In order to be eligible to take the next scheduled examination, a person must file the application with the board at least 60 days before the date of the examination.

* Sec. 9. AS 08.62.100 is repealed and reenacted to read:

Sec. 08.62.100. ENTRY LEVEL QUALIFICATIONS. (a) The board will issue a license to a person if he or she is a citizen of the United States, passes the examinations given by the board, qualifies in accordance with regulations adopted by the board, and meets the qualifications in (b) - (d) of this section.

(b) In addition to the qualifications in (a) of this section, an applicant must provide documentation to the board of the following service:

(1) One year of service as a master of ocean or coastwise vessels while holding a license as the master of ocean steam or motor vessels any gross tons; or

(2) Two years of service as a master of freight on a towing vessel while holding a license as the master of freight and towing vessels not less than 1,600 gross tons; or

(3) Two years service as a chief officer on ocean or coastwise vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam or motor vessels

any gross tons; or

(4) Two years service as commanding officer of United States government vessels of not less than 1,000 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons; or

(5) Two years of service as the master of local vessels appropriate to the pilotage region in which the applicant seeks to be licensed.

(c) An applicant must also possess an endorsement of first class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions for the pilotage region for which the applicant seeks to be licensed.

(d) In accordance with its authority under AS 08.62.040, the board may impose other entry level qualifications for a particular pilotage region.

* **Sec. 10.** AS 08.62.120 is repealed and reenacted to read:

Sec. 08.62.120. RENEWAL. (a) All licenses expire on December 31 of each even-numbered year. In order to renew a license, a pilot must

(1) submit a renewal application on a form provided by the board;

(2) meet the minimum qualifications set out in AS 08.62.100 and the board's implementing regulations;

(3) provide evidence of a satisfactory physical examination within 90 days of the date of renewal; and

(4) comply with (b) of this section.

(b) A licensed marine pilot who has not piloted in Alaska during the two years prior to a request for renewal may not have the license renewed until the pilot takes the number of familiarization trips required by the board in the pilotage region for which the license will be renewed.

*** Sec. 11.** AS 08.62.130 is repealed and reenacted to read:

Sec. 08.62.130. LAPSED LICENSE. The board will reinstate a lapsed license if, in addition to complying with the requirements of AS 08.01.100 (a)-(c), the pilot

(1) makes at least two trips for each year that the license has been lapsed to each major port and waterway in the pilotage region covered by the license;

(2) takes and passes a written and oral examination if the license has been lapsed five years or more; and

(3) complies with all other criteria established by the board.

AS 08.62.140 is unchanged.

Sec. 08.62.140. FEES. The department shall set fees under AS 08.01.065 for applications, licenses, and agent registrations.

***Sec. 12.** AS 08.62.150 is amended to read:

Sec. 08.62.150. **ENFORCEMENT AUTHORITY** [DENIAL, REVOCATION OR SUSPENSION]. (a) The board may impose a disciplinary sanction on a person licensed under this chapter when

the board finds that the person

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

(2) is chemically impaired [HABITUALLY INTOXICATED];

(3) illegally uses or sells narcotic or hallucinogenic drugs;

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

(5) violates a provision of this chapter or a regulation adopted under it;

(6) is guilty of misconduct during the course of employment; [OR]

(7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked [SUFFERED REVOCATION OF FEDERAL LICENSURE AS A PILOT] ;or

(8) charges, collects, or receives an amount for pilotage services that is different than the pilotage tariff established by the board.

(b) [Repealed, sec. 4, ch. 60, SLA 1987.]

* Sec. 13. AS 08.62.155 is repealed and reenacted to read:

Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action in accordance with AS 08.01.075.

* Sec. 14. AS 08.62.160 is amended to read:

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating certain [THE INSIDE COASTAL] waters in, around, and adjacent to the State of Alaska as

determined by the board in regulation shall employ a pilot holding a valid license under this chapter.

* **Sec. 15.** AS 08.62 is amended by adding a new section to read:

Sec. 08.62.165. ALLOCATION OF LIABILITY. (a) A pilot licensed by the State of Alaska is not liable for damages in excess of $5,000.00 for damages or loss occurring as a result of the pilot's error, omission, fault, or neglect in performing pilotage services, except that such limitation does not apply in cases where the pilot is either grossly negligent or guilty of wilful misconduct.

(b) Nothing in this section exempts the vessel, its owner or its operator from liability for damage or loss occasioned by that vessel to another person or other property on the ground that (1) the vessel was piloted by a pilot licensed by the State of Alaska, or (2) the damage or loss occurred as a result of that pilot's error, omission, fault, or neglect.

(c) An organization of pilots is not liable for any claims arising from acts or omissions of a pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. The limitation in this subsection does not apply to acts or omissions relating to

the ownership or operation of pilot boats or the transportation of pilots to and from the vessel to be piloted.

AS 08.62.170 is unchanged.

Sec. 08.62.170. PILOT'S LIEN [FOR COMPENSATION]. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, the vessel's tackle, apparel and furniture for the pilot's compensation.

*** Sec. 16.** AS 08.62 is amended by adding a new section to read:

Sec. 08.62.175. PILOT ORGANIZATIONS. Marine pilots may form themselves into associations, provided they are not in conflict with the laws of the State of Alaska or of the United States.

AS 08.62.180 is unchanged.

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

(1) vessels under enrollment, except as provided in AS 08.62.185;

(2) fishing 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 the United States registry of less than 300 gross tons and tow boats 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, 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 is unchanged.

Sec. 08.62.185. CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS. (a) Any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state waters beyond Alaska pilot stations either

(1) employ a pilot licensed by the state under this chapter; or

(2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.

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

AS 08.62.187 is unchanged.

Sec. 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).

* **Sec. 17.** AS 08.62.190 is amended to read:

Sec. 08.62.190. PENALTIES. (a) A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $1,000 nor more than $5,000.

(b) A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $500 nor more than $1,000.

AS 08.62.200 is unchanged.

Sec. 08.62.200. DEFINITIONS. In this chapter

(1) "board" means the Board of Marine Pilots;

(2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;

(3) "department" means the Department of Commerce and Economic Development;

(4) "vessel" means all vessels not exempt under AS 08.62.180.

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

AS. 08.62.210. SHORT TITLE. This Act may be cited as the Alaska Marine Pilotage Act.

*** Sec. 19.** TRANSITION.

Sec. 1. The membership of the board as it is exists on the effective date of this Act shall continue to conduct the affairs of the board in accordance with this Act until such time as the membership of the board is appointed in accordance with sections 2 and 3 of this Act, provided that the membership of the board is appointed in accordance with sections 2 and 3 of this Act on or before _____, 1991.

Sec. 2. A pilot licensed under AS 08.62 on the effective date of this Act will remain licensed under this chapter until required for the second time to renew his or her license in accordance with section 9 of this Act. Upon renewal, each pilot must then qualify for the license in accordance with the criteria in this Act and any implementing regulations. In addition, after the effective date of this Act, any pilot applying for a change in, an amendment to, or an endorsement for his or her license must qualify in accordance with the criteria in this Act and any implementing regulations.

*** Sec. 20.** EFFECTIVE DATE. This Act takes effect _____, 1991.

October 25, 1990

OFFICE OF
MANAGEMENT & BUDGET
OCT 29 1990
STRATEGIC PLANNING

Mr. Brad Pierce
Ms. Marilou Madden
State of Alaska
Office of Management and Budget
Division of Policy
P. O. Box AD
Juneau, AK 99811-0199

Dear Mr. Pierce and Ms. Madden:

I am a member of the Southeastern Alaska Pilots' Association and recently had the opportunity to review the Office of Management and Budget's Alaska Marine Pilotage Study.

You are to be highly commended on the thorough, methodical and impartial approach employed in this study. Your hard work and dedication has resulted in a study that provides a solid cornerstone from which to strengthen the Alaska State Pilotage Act.

I strongly concur with most of the conclusions and recommendations in the study. However, there are certain aspects of some of the recommendations that I believe warrant further discussion.

The following comments reflect my concerns, in this regard, and are submitted for consideration during the final review.

PILOT QUALIFICATIONS

Marine Experience

Marine experience is widely recognized as the paramount requirement for any pilot. Other states ensure their pilots possess this important ingredient by making extensive seagoing experience a prerequisite, and/or through long term pilot apprentice programs. It is my opinion that Alaska's Pilotage Act should have strong and firm experience requirements. Accordingly, it is suggested that a minimum of 8 years of licensed seagoing experience be specified as a basic entrance requirement for Alaska pilotage.

Docking/Undocking Requirements

Alaska's current piloting Statutes and Regulations requires entry level dockings and undockings for limited and unlimited licenses. I view this requirement, as it now stands, to have little or no value. My experience has been that many of the people doing dockings/undockings are not ready for this level of training. This is not the fault of

the pilot trainee. Afterall, he is just trying to satisfy the Statute requirements.

I strongly suggest that the requirement for dockings and undockings be relegated to the final stages of the pilot qualification process. At this point, it would be more beneficial to the pilot trainee, and it would allow his proficiency to be more accurately and fairly evaluated. A requirement along the lines of the following sequence is recommended for insertion in the pilot qualification process:

- A minimum of 5 observed dockings and 5 undockings in every port (where there is a dock).
- Trainee is required to pass a comprehensive written examination.
- Trainees' progress is evaluated by the pilot board.
- Pilot board designate those trainees found ready to undergo ship docking/undocking training.

Even a requirement such as this would be conservative compared to corresponding requirements in other states' pilot statutes.

PILOT EVALUATION AND RELICENSING.

Renewal Check-Ride Requirement

I am unaware of any established precedence, or justified necessity, for check-ride proficiency testing of fully licensed marine pilots. By its nature, piloting does not lend itself to check-list evaluation or airline industry check-ride requirements. Changing factors make each docking or undocking different. Even among pilot peers, a variety of procedures and techniques are used in shiphandling. Thus, the only right way to dock or undock a ship is to do it as safely and expeditiously as possible. No check-off list will guarantee this result.

The expertise for any given piloting area is best represented by the fully licensed working pilot, who has a good record. A pilot's expertise is reproven everyday he does another successful job. To subject a working licensed pilot to a proficiency test, of kibitzing from a peer, is clearly unproductive. In those cases where a pilot has a record of incidents/accidents, then some recertification requirement may indeed be appropriate. Such cases should be handled on an individual basis in accordance with procedures established by the pilot board.

LIMITING THE NUMBER OF PILOTS

The only rationale evidenced in the study for not limiting the number of pilots is that "-------- the state's interest is served by ensuring that there is an adequate number of pilots in all regions to provide pilotage service". This reasoning seems more applicable to the regulation of businesses than it does for sustaining a public service. Further, it undermines what is perceived to be one of the primary responsibilities of the pilot board; that being, to ensure all ports and waters of the state are provided adequate pilot services. Maintaining pilot services on around the clock basis is a crucial part of any pilotage act, and should not be left to the choice of competition. Accordingly, it is believed that the pilot board should continually monitor and review pilot requirements for Alaska's ports and waters. Recruitment and licensing of pilots would then be authorized to meet defined requirements.

Not limiting the number of licenses in no way assures that the states new or unique pilot needs will be satisfied. Rather, it is more likely to promote unwarranted competition for the easier and more lucrative piloting work. This carries with it all the unsafe and unsavory acts that are contrary to safe piloting practices. Pilot regulations would be routinely violated in the heat of competition and collusion with shipping company interests. I strongly suggest that any new Alaska pilotage legislation have provisions for closely monitoring pilot requirements, and for only issuing licenses to satisfy defined requirements.

PILOT DISCIPLINE

Pilot Coordinator.

The study offers no justification for why the pilot board should be staffed with a person with this sort of centralized authority. The coordinator could easily become a dominant individual acting in the name of the pilot board rather than at its pleasure. If the coordinator position is filled by a person with a marine background, then the position would undoubtedly usurp the roles of the marine pilots on the pilot board. Furthermore, I believe it would be very unproductive to fill this position with anyone who may have preconcieved ideas and prejudices obtained from previous Alaska piloting experience.

I fully support a strong pilot board that has specific responsibilities, duties and functions, and the authority to carry them out. Accordingly, such a board would require permanent administration and investigative support. The marine pilots on the board would be available to assist with any marine expertise or interpretation. Injecting a Pilot

Coordinator position into this organization, and having him function as a "Piloting Czar", seems to subvert the entire board/commission concept.

Thank you for your outstanding study and for being given the opportunity to comment on it. You have my continuing support.

Sincerely,

William R. Swan

William R. Swan

CAPTAIN EDWARD H. CREASEY

Post Office Box 6583
Ketchikan, Alaska 99901

October 29, 1990

Office of Management and Budget
Division of Policy
State of Alaska
Box AD
Juneau, Alaska 99811-0199

Attention: Ms Marilou Madden
Mr. Brad Pierce

I applaud your efforts on "The Alaska Marine Pilotage Study".

This is the most comprehensive study of its type that I have ever read. Keep up the good work.

Thank you,

Captain E. H. Creasey

EHC:bjj

CAPTAIN JAMES A. HODGMAN

415A Front Street
Ketchikan, Alaska 99901

October 29, 1990

Ms. Marilou Madden
Mr. Brad Pierce
State of Alaska
Office of Management and Budget
Division of Policy
Box AD
Juneau, Alaska 99811-0199

Dear Ms. Madden and Mr. Pierce:

Captain Elsensohn has given me a copy of the Alaska Marine Pilotage Study and proposed legislation flowing therefrom and requested that I submit comments to you. I share his admiration for the work you have done.

My comments are based on thirty years experience as a Coast Guard officer and seventeen years as an Alaskan pilot, including four years on the State Board of Marine Pilots.

There is no question that the enactment of the draft legislation will result in major improvements in pilotage. I disagree with your study in that you conclude that by not limiting the number of pilots you ensure that there will be an adequate number of pilots available. In the past pilot organizations have ensured that pilots were available to meet all of the requirements of industry. These requirements change materially from year to year and day to day. It takes considerable time, effort, judgment and money to ensure that qualified pilots are always available. The benefits to the associations compensate for this in a non-competitive system.

This year for the first time there was competition in Southeast Alaska. Two (or three?) pilots obtained the business on one cruise ship. These pilots essentially remained on board and were one-company pilots subject to the pressures you mentioned in the study. They provided "competition", but was it fair? The company actually went to our pilot association to ensure that we would provide backup pilots if they so requested. The Southeastern Pilots' Association maintains a year-round office staff; keeps up-to-date information on charts, waterways, routes, ports; provides pilots to work with industry on local conditions; provides pilot board members and representatives to work with the pilot board; supervises dockings; assists pilots in training; provides extra pilots to meet peak work loads; provides pilots to handle extremely demanding assignments during slow winter months; etc. Will it be in our interests to continue this overhead that is essential to the state if

competition spreads and splinter pilots pick off vital cruise ship company business? Can the state expect us to perform these services when company pilots on the same pay scale operate with no overhead?

While we disagree on pilot competition, to be meaningful I have developed specific comments on the draft legislation that are based on your decision not to limit the number of pilots in a region.

COMMENTS ON DRAFT LEGISLATION BY SECTION:

Sec. 08.62.040 Powers and Duties

(a)(4) Delete "provided that the board may adopt different tariffs within a region if justified."

Tariffs are different for different ports within a region. The above phrase seems redundant and confusing.

(a)(6) Change to include pilot groups and independent pilots. All pilots should be subject to review equally.

(a)(7) Same as (a)(6) above.

(a)(8) Same as (a)(6) above.

(b) Delete "conducted by pilot organizations." All pilots in a region should have equal training programs.

Sec. 08.62.045 Marine Pilot Coordinator.

I agree that such a position is needed, but believe that the position should be subject to guidance by the pilot board and that this should be stated in the law. Otherwise, the board's functions are liable to be usurped. One additional thought--I believe it will be extremely difficult to find a qualified candidate who would take the job.

Sec. 08.62.080 License Requirements.

(b) & (c) Paragraph (c) makes paragraph (b) meaningless. Alaskan pilotage regions are probably as large as any in the world and the goal should be for a pilot to operate in only one region. Yet abrupt implementation of paragraph (b) probably would create hardships and shortages. It is common maritime practice in such instances to grandfather existing licenses.

Sec. 08.62.100 Entry Level Qualifications

(a)(1) Revise to require services as a master of ocean or coastwise vessels of not less than 1600 gross tons as in (3). I'm sure this was intended.

(a)(5) This section could negate the four prior sections and tie the board up in endless applications, arguments or legal actions.

(b) The preceding requirements could be thwarted by giving time for shipyard overhauls, layups, vacations, etc. I suggest an additional section stating that all services will be calculated using Coast Guard methods.

Sec. 08.62.120 Renewal

(b) One day's piloting would meet the requirement as written. I suggest a minimum of sixty (60) days service as a federal or state pilot.

Sec. 08.62.150 Enforcement Authority

(2) I'm not sure what is meant by "chemically impaired". Does it mean an alcoholic who uses alcohol and a drug addict? Or does it mean a pilot that is under the influence of drugs including alcohol while on duty. I believe it should cover both cases.

Sec. 08.62.160 Mandatory Employment of Licensed Pilots

I suggest further clarification by adding "who will be on duty at all times when the vessel is underway.

Sec. 08.62.190 Penalties

(a) & (b) In the past vessels have delayed their requests for pilots sufficiently that a pilot was not available when desired. I suggest deletion of "when a licensed pilot is available". Further, penalties in both (a) and (b) are grossly inadequate; particularly when compared with the pilotage fees the vessel is avoiding. In the past the Attorney General's office has been unwilling to prosecute fully documented cases, presumably because they weren't worth the effort.

Sincerely,

James A. Hodgman

JAH:bjj

STRATEGIC PLANNING

1610 Water Street,
Ketchikan,
Alaska 99901.

October 29th 1990.

Mr.Brad Pierce
Ms.Marilou Madden
State of Alaska
Office of Management & Budget
Division of Policy
P.O. Box AD
Juneau, AK 99811-0199

Dear Mr.Pierce and Ms.Madden

As a member of the Southeastern Pilots' Association, I would like to highly commend you on the outstanding and impartial methods you took to make a study of "Alaskan Marine Pilotage", and the eventual results will surely help to make our state waters a better and safer place for all.

I agree with most of the conclusions of the study, but I beleive there are certain aspects which need to be studied further.

Entry Level Qualifications:

In the State of Alaska the existing state entry levels are woefully inadequate and low, especially when compared to other states, or any other maritime country. If the state is not prepared to make the minimum license "Ocean Masters-Unlimited Tonnage", then it is suggested that entry level qualifications be set at a minimum of 6 years licensed seagoing experience. This would be fair to persons with local experience and those with offshore experience, and would help to ensure we get applicants with a good maritime background, which is not happening to-day.

Docking Requirements:

The existing regulation requirements for Limited and Unlimited Licenses require both dockings and undockings with no requirement for observations of dockings and undockings, which is like putting the " Cart before the horse ".

I would kindly suggest that applicants should have a minimum of 75 observed dockings and 75 observed undockings.

Pilot Performance:

I think that the idea of establishing a check-ride system for fully licensed pilots is completely unnecessary, every time a pilot performs a docking or undocking successfully his ability and expertise is proven especially in Southeastern waters with the strong winds and currents, many low horse-power tugs, and old and fragile piers. The only time a check-ride system should be necessary is when a pilot has a record of accidents.

I appreciate being able to comment on your study , and thanks for a job well done.

Sincerely,

Colin E. Jones

Colin E. Jones

ALASKA MARITIME AGENCIES, INC.

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October 31, 1990

OFFICE OF THE GOVERNOR
Division of Policy
P.O. Box AD
Juneau, Alaska 99811

ATTN: Marilou Madden
Brad Pierce

Dear Marilou and Brad,

We are in receipt of the draft of proposed changes to the Alaska Marine Pilots Act and would like to submit some general comments. For your guidance ALASKA MARITIME AGENCIES has been handling ocean going vessels throughout Alaska since 1956, prior to Alaska's statehood. We currently represent hundreds of vessel owners in the tanker, fisheries, cruise, log and bulk trades and we are in the process of contacting them all for their insights and concerns in regard to the proposed amendments and will forward this information as the proposal winds its' way through the legislative process. For the time being please find the following input and give it your kind consideration for inclusion into the final draft:

We feel that the designation of three zones, Southeast, Central and Westward is a good idea in terms of dispatching pilots as well as developing working rules. The needs of the areas are seperate and distinct in many ways. However we insist on reserving the right to employ any qualified pilot in any region regardless of what group they may be currently affiliated. Furthermore, any person or group that has served a particular area in the past should be allowed to continue to do so regardless of affiliation. These proposals should in no way attempt to grant monopoly franchises to anybody.

The concept of a Pilot Coordinator is good provided this individual will perform investigative and clerical support work at the direction of the Board of Pilots. In no way should this position assume operational or administrative control of policy.

The makeup of the Board must remain equally balanced amongst the public, the pilots and industry. Therefore we must strongly dispute the contention in the draft that the State will best be served by keeping Board membership at seven persons with the pilots holding three of these seats. This would easily develop into a situation whereby the Board would become controlled by the very group it is empowered to regulate. The Board should be expanded to nine members; one pilot, one public and one industry from each of the three regions.

We heartily support recommendation #5 in Section 9 wherein two years of service as Master in a local region will satisfy entry level requirements. Our reasons for this are to keep the experiance level high for pilots in the Westward area where deep draft vessels are uncommon and the vast majority of pilots come from the pool of fisheries vessels, tugs and the mosquito fleet. Most of these highly experienced individuals would never have the tonnage requirements called for in other areas of the State and without this important recommendation would therefore be precluded from gaining pilotage ratings.

We are strongly supportive of increasing the authority of the Board and would insist on their being given statutory authority to conduct audits of financial records of pilot groups for the purposes of tariff adjustment, approve of all dispatching and working rules employed by pilot associations (another function to which the proposed pilot coordinator can contribute) and approval or rejection of expense items claimed by pilot associations that will impact the tariff.

Lastly, a related matter to the preceeding paragraph, is the formula by which tariffs will be created. We strongly feel that the expenses of the Board in conducting the States business should be part of the tariff. This should relieve any concerns the State might have about a financial burden in increasing the size of the Board. Secondly, any expenses not directly related to shipboard operations should not be recovered through the tariff. An example of this are the legal costs and travel etc. that will be incurred during the restraint of trade cases pending against a pilotage group in Alaska. It has been our experience that pilots often choose to be "independant contractors" when appropriate for them but become "custodians of the States' environment" when expedient and thereby try to recover expenditures that rightfully belong to them as businessmen. There is ample precedent for this kind of activity along the West Coast and should be clearly discouraged in Alaska.

In closing we would like to note that we appreciate the chance to comment at this time and will continue to offer our extensive experience, where appropriate, throughout the coming process. We feel an issue with such wide ranging implications as this, and its' impact on Alaska's competitiveness in world trade, deserves no less.

Kindest Regards,
Alaska Maritime Agencies

Scott Jones
Vice President

cc: Pilot Board

U.S. Department of Transportation
United States Coast Guard

Commander
Seventeenth
Coast Guard District

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16711
October 31, 1990

Office of Management and Budget
Division of Policy
P. O. Box AD
Juneau, Alaska 99811-0199

STRATEGIC PLANNING

Dear Mr. Pierce and Ms Madden:

This is in response to your letter of 12 October 1990. in which you requested our comments on "The Alaska Marine Pilotage Study" and your proposed legislation to modify the Marine Pilots Act. Comments from the three Coast Guard Marine Safety Offices have been edited and included in this letter.

The following comments concern issues discussed in "The Alaska Marine Pilotage Study" and are submitted for consideration:

BOARD OF MARINE PILOTS-We agreed that "accord with the Coast Guard" should be established. It is felt that dialog between the state and the Coast Guard should be established and maintained on all pilotage issues. Recommend the Board of Marine Pilots meet annually with each of the Officers in Charge of the three Marine Safety Zones and pilot associations. The benefit of these meetings would be joint evaluation of training, examinations and qualifications requirements and review of all state waters usage to determine pilotage needs.

TRAINING-The provision allowing the Pilot Board to require certain training is an important issue. There was a situation last year where the MOBIL ARCTIC experienced a gyro casualty immediately after getting underway from the berth. The pilot (and the master) interpreted it as a steering casualty. The resulting confusion let the MOBIL ARCTIC drift almost the entire width of Port Valdez (in zero viz fog) while things were sorted out. Such confusion in restricted waters could have disastrous consequences. This was not an isolated situation. The dependence on the gyro and the radar has resulted in conning officers that often don't (or can't) keep track of things without them. Pilots need frequent recurring training on emergency situations. The very things that don't happen too often - but create catastrophes when they do. The type of recurrent training airline pilots undergo every six months on simulators is what should be considered (on an annual or biennial schedule) for pilots and all conning officers. This is not an onerous or unreasonable burden. The size of the cargo vessels, the increased automation on bridges and the nature of cargoes carried make mistakes too costly to accept as part of doing business. All conning officers, and pilots in particular, need safe (i.e. simulator), effective training targeting emergency situations.

PERFORMANCE EVALUATIONS-The report commented that doctors don't have to be evaluated to renew a license, why should pilots? The issue is not whether another profession does things a certain way, but if there is value in pilots doing things a certain way. It has been suggested that the state should conduct periodic review of pilot performances (annual). One suggestion was to have the master fill out a one page form and mail it directly to the Board. It should ask about near collisions/collisions, damage to vessel or dock, groundings/near groundings, and docking skills with information on the weather conditions prevailing. To hold that a professional, especially one in a monopoly business, not be subject to performance review flies in the face of everything we know of sound management practice.

Another suggestion was for the state consider developing "trip report forms". These forms should include a section to document a master/pilot conference establishing the condition of the vessel's systems and its maneuvering characteristics before beginning of a transit. It could include information to document service, training, report problems, and accidents and also provide the board area usage data to allow evaluation for fee and tariff changes. Recommend requiring form submissions for each trip signed by the pilot and certified by vessel masters, senior pilots if the individual is obtaining observer time, association presidents and/or company port captains.

SAFETY OF PILOTS-Apropos competition, but more importantly safety, there should be enough pilots so the work load does not lead to fatigue. The Board should spell out hours of continuous service at which time mandatory rest begins, much as an aircraft pilot may not be overworked.

It is recommended that the state consider establishing workhour standards for pilots similar to the federal standards for tankers in the 1990 Oil Pollution Act. It would also be appropriate to define work to include all activities relating to pilotage including transits to and from vessels. If a vessel exceeds the period allowed then vessel should be provided with two qualified pilots for the transit. The 1990 Oil Pollution Act, for tankers, limits the number of hours to not more than 15 in any 24-hour period, or not more than 36 in any 72 hour period.

COMPETITION-It is felt that competition among pilots for jobs could reduce public safety. However, it would be more a case of an honest disagreement between 2 persons of experience and not gross negligence. Nonetheless, a pilot would take a risk in a competitive situation he would not without competition. It is considered that an unnecessarily cautious pilot could adversely affect the ship. If the master thinks a situation is safe, his judgement should carry weight, but the pilot should prevail. Better to hold up a number of ships than have one grounding or collision.

LICENSE-There is a marked difference between adequate experience and a requirement that becomes unnecessarily burdensome. It may be better to stay with a standard similar to

the Coast Guard regulations. The suggested requirement that a Master, Oceans, Any Gross Tons should be a minimum for a state license significantly exceeds federal requirements and those of other states. It would be more appropriate for the Pilot Association to keep an otherwise licensed, qualified trainee with a more experienced pilot until they felt he was qualified enough to be on his/her own.

The study refers to Coast Guard master's license for vessels of 10,000 gross tons under the entry level requirements. This is an unlikely license as current federal regulations allow service over 1,600 gross tons to be sufficient for the removal of all tonnage restrictions. Some have considered this cut-off as patently inadequate for the size of freighters, tankers and passenger vessels coming to Alaskan waters. Presently the Marine Safety Office in Anchorage is conducting a study to determine the feasibility of establishing a tonnage-step program. Once they receive input from the other two zones they plan to present a consolidated document to the program managers is Washington for consideration. It would be in the best interest for the industry if the state and Coast Guard had a uniform system.

DOCKING PILOTS-In many states docking pilots are separate and usually assume the direction and control of a vessel either at the end of the arrival transit or in the beginning of a departure transit. In some areas they have also assumed control and navigation of the vessel during short shifts between berths within harbors. The expertise required to conduct docking evolutions are different then what is required of a individual piloting a vessel underway in restricted waters. Local knowledge is valuable but not sacrosanct, especially in docking. Since the training needed to become competent are different the state may want to consider creating a separate license and/or endorsement for docking pilots. The prerequisites and training requirements can be developed which are more appropriate to the duties of a docking evolution rather than a navigating evolution. It is suggested that the state develop a formula allowing certain docking experience from anywhere be combined with a Alaskan docking in the area pilotage is requested, e.g. 50% in Alaskan waters desired, 50% anywhere else on appropriate sized vessels.

The following comments concerning the draft legislation amending the Marine Pilots Act are submitted for your consideration:

Sec. 08.62.040. POWERS AND DUTIES-You may want to consider adding periodic audits of training programs in paragraph (8). This would allow the state periodic opportunity to evaluate the programs effectiveness and provide recommendations for improvement.

Sec. 08.62.090. APPLICATION-Suggest including an additional paragraph (c) to provide language requiring pre-employment physical examinations including a chemical test for dangerous drugs as part of the physical exam. Current Coast Guard regulations require physicals for all originals, upgrades and renewals of federal pilot licenses. These physicals must now

include results of chemical testing. It is recommended that the state adopt legislation similar to Coast Guard regulations and require physicals possibly on an annual basis which will include a chemical drug testing provision. You may want to consider having state appointed physicians to establish minimum physical standards relating to vision, hearing and general physical condition and possibly review and/or administer physicals.

Sec. 08.62.100. ENTRY LEVEL QUALIFICATIONS-It is recommended in paragraph (b)(2) the phrase "not less than 1,600 gross tons," be changed to reflect existing Coast Guard license nomenclature to avoid confusion. "Any gross tons" should be used for a license to operate on vessels over 1,600 gross tons, and "not more than 1,600 gross tons" should be used for a license to operate on vessels less than 1,600 gross tons.

It is recommended to substitute in paragraph (b)(3) One year service instead of 2 years service as a chief officer on ocean or coastwise vessels of more than 1,600 gross tons while holding a license as the master of ocean or near coastal steam or motor vessels of any gross tons. Once a person has achieved the level of chief officer, he or she would have six years of sea time experience. By sailing as a chief officer for one year, this person should have sufficient seamanship skills and the maturity to become a respectable candidate.

It is recommend that (b)(4) to read "Two years service as a qualified officer in charge of a navigation watch on board a United States government vessel more than 1,600 gross tons and holding a license as master of ocean or near coastal steam or motor vessel of any gross tons." The reasons for these recommendations are twofold. First, a qualified officer in charge of a navigation watch has the same responsibility as a chief mate standing a navigation watch on board a merchant vessel. In (b)(4) it requires a person in this category to have "a master of ocean steam or motor vessels of any gross tons." Therefore, it is a mute point to lower the requirement tonnage to 1000 gross tons.

It is recommended that you clarify the wording in paragraph (b)(5) "appropriate to the pilotage region." Without definition, this could lead to wide interpretation. Furthermore, this part doesn't require an applicant to hold any specific type of marine license.

It is recommended the state consider the following as part of the entry level qualifications: 2 years service as a chief officer on board an inspected vessel over 1,600 gross tons while navigating in the pilotage waters which the applicant seeks to be licensed. There are many talented deck officers employed on board the Alaskan Marine Highway vessels, and these officers have superior local knowledge over many nonresident candidates.

Sec. 08.62.120. RENEWAL-It is recommended in subparagraph (1) to provide language requiring the physical examinations to include a chemical test for dangerous drugs as part of the physical exam.

Sec. 08.62.130. LAPSED LICENSE-It is recommended in subparagraph (1) that the requirement be revised to read, "Two round trips on vessels over 1,600 gross tons for each years that