

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7557 SENATE LABOR & COMMERCE**

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 AS 08.62.020 is repealed and reenacted to read: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 at least 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 (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 association; and

(7) audit a pilot association or individual as considered necessary to 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, 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 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) A pilot may not be licensed at any one time, in more than one of the pilotage regions established by the board.

(b 1) Those pilots who, on the effective date of this act, have more than one region on their license will be grandfathered, but must meet the requirement for each region at renewal time.

(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 within 60 days.

(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 1,600 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons; or

(5) Three years of experience as a member of an organized professional pilots' association during which period the candidate was actively engaged in piloting while holding a minimum license as a master of freight or towing vessels of not more than 1,600 gross tons.

(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 by an M.D. within 60 days prior of the date of renewal, on a form approved by the board; and

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

(b) to require a pilot to work in the region for which he is licensed for a minimum of 60 days during the two years prior to a request for renewal of the license.

\* 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 complete written and oral examination if the license has been lapsed one year 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 per incident.

(b) Nothing in this section exempts the vessel, cargo, 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, 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 \$5,000 nor more than \$15,000.

(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 \$1,000 nor more than \$5,000.

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;

(5) United States Coast Guard accounting of time;

(6) The definitions under 08.62.200 need to be expanded to include a definition of chemical impairment and the standard for measuring time served.

\* 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 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.

## Pilotage—State or Federal

IN A PREVIOUS COLUMN, the terms 'State' and 'Federal (CG)' pilot were used. Mariners of many other countries embark State pilots in the USA without really knowing the legal basis of the pilot's authority nor without any awareness that an approaching US ship may not have a separate pilot aboard. This column will attempt to explain the differences, provide some background to the present situation and highlight some current problems.

Basically, a Federal pilot is one who is licensed by the US Coast Guard (CG) to pilot US ships in a specific area and who is acting under the authority of that licence. A State pilot, who will, in almost all cases, concurrently hold Federal pilotage, is licensed by a State to pilot foreign ships upon that State's waters.

In many instances, the required Federal pilot is the master or one of the ship's mates who also hold the appropriate pilotage endorsement. The State pilot, however, is not a member of the crew, but a 'servant of the vessel,' engaged to advise the master about the waters to be transited. In actual practice, as most mariners around the world know, the pilot assumes the conn (while legally cloaked as 'adviser'). Occasionally, the term 'docking pilot' will be heard. This does not necessarily mean that person holds any pilotage endorsement, but refers to the master of the assisting tug(s) who comes aboard the ship to control his tug(s) and perform the berthing/unberthing.

The First Congress (1789) recognised that the individual States would be better qualified to know the conditions of their ports and channels. Thus, the authority and basis for State regulation of pilots was established, in the words of the present statute: 'Except as otherwise provided . . . pilots in the bays, rivers, harbors and ports of the United States shall be regulated only in conformity with the laws of the States' [46 USC 8501(a)]. This not only meant that States would license pilots, but that they could determine where and when their pilots were required to be employed. States where a pilot is required are referred to as compulsory pilotage. Some States do not require a pilot to be employed (non-compulsory), but a pilotage fee must still be paid. Most masters, having to pay the pilotage fee anyway, will usually opt for the pilot.

### Federal pilotage

In the mid-1800s, Congress inadvertently threatened the State pilotage system, enacting two separate laws intended to provide greater safety in the operation of steamships by requiring Federal licensing of masters, mates, engineers and pilots. The situation was corrected by further legislation which effectively established the concept of Federal pilotage. The present statute requires that ' . . . a coastwise seagoing vessel shall be under the direction and control of a pilot licensed (by the CG) if the vessel is: not sailing on register (i.e., foreign trade); underway; not on the high seas; and, propelled by machinery and subject to inspection' [46 USC 8502 (a)].

The effect of this law was to allow US-flag ships in

domestic trade to utilise CG-licensed pilots; US-flag ships in foreign trade and all foreign ships continued to be piloted by State-licensed pilots. Even many US mariners do not understand that the law thus *requires* pilots on subject vessels on *all* navigable waters of the US, including territorial seas. Practically speaking, it would be nearly impossible to comply with the law literally—i.e., pilotage endorsements for all waters—and the CG has long recognised that ' . . . there are many large portions of our coastline where there are no navigational risks to vessels proceeding along the coast within territorial seas. In view of this, the CG has a long history of only licensing individuals as pilots for a portion of the navigable waters of the US, primarily harbor areas, high traffic areas, rivers and the Great Lakes.' (FR, V. 53, N.108, p.20655)

It is interesting to note, in view of the brouhaha over pilotage in the *Exxon Valdez* casualty, that Congress intended to exempt parts of Prince William Sound from Federal pilotage requirements. As per 46 USC 3502(g), 'the Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed' by the CG.

### Licensing of State pilots

As one might expect, the various procedures employed by the different States for licensing their pilots are as varied as their waters and conditions are unique. Some States restrict the number of State licences issued. Applicant entry varies from a four year apprenticeship (with no prior seagoing experience) to a competitive examination while holding a second mate's licence (with one year's sea time as second mate) to two years' experience as master on large ships and 50 round trips on the waters applied for.

Some States require a Federal licence as a prerequisite—others only require this licence after completion of training. Virtually all States require State-licensed pilots to progress through 'steps' in tonnage/length/draft of ships handled to ensure adequate experience is gained; often, part of this is under the supervision of a senior, more experienced pilot. Some State pilot associations further require simulator training.

State pilotage laws, including licensing, are administered by a State pilot commission or board. Typically, this body will include one or two serving pilots, thus ensuring that the applicants, examinations and continuing qualifications of State-licensed pilots benefit from the 'real world' experience of State pilots who really know what skills the job requires.

### CG licensing procedures

While the CG is the present government agency charged with the authority to examine for and issue Federal pilotage licences/endorsements, their execution is a mixed bag. Qualification is simpler than for State licences—a specified number of qualifying round-trips (r/t) on certain-size vessels gains entrance to the examination. No actual shiphandling experience need be demonstrated, the CG apparently 'assuming'

that observation of same is adequate. The dichotomy here is that 'pilotage' is composed of 'local knowledge' and 'shiphandling,' yet the CG requirements seemingly confuse the two—local knowledge is generally gained independently of vessel size; shiphandling is a function of ship size, but ability cannot be determined solely in the examination room.

The trip requirements vary with the licence held and position on board. In some CG Districts (CGD), holding an unlimited master's licence gains qualification in six r/t—in other CGDs, one must hold the same licence and be serving as master to qualify in 12 r/t! No prior licence must be held for an original pilot (only) licence, but three years on deck is required and, usually, the initial number of r/t required are much greater (up to 20 or more). Once the original endorsement or original pilot licence is obtained, the r/t requirements for 'extension of route' (additional pilotage) are lessened.

The initial exam is comprehensive (piloting, chart navigation, weather, shiphandling, pollution, etc.)—subsequent exams for extension of route usually only cover local knowledge, chart sketch, aids to navigation and a rules of the road section. The thoroughness and expediency by which r/t are evaluated, the exam graded and the content of the exam, itself, also vary widely, depending on the CG personnel in the Regional Examination Center (REC). As the CG is first a military organisation, the 'generalist' idea prevails, and the service rotates personnel through a variety of billets to diversify their experience.

Applicants for pilotage and other licences are seldom comforted by the thought that their livelihood is merely a step on the promotion ladder for CG personnel, rather than being judged by a professional mariner. Theoretically, one benefit to this scheme is preventing too much familiarity with the maritime community which might lead to less than scrupulous practices in issuance of licences and seamen's papers—it hasn't always prevented abuses, however.

Except as noted above (non-compulsory pilotage), there are few exemptions to pilotage in the USA. Generally, only US ships under 1,600 grt (self-certified) and foreign ships under 300 grt are exempt from pilotage. Recent regulations have added an additional exemption for vessels towing tank barges totalling not more than 10,000 grt. In these vessels, as well as vessels up to 1,600 grt, the master (or mate) is a 'self-certified' pilot. 'Self-certified' pilots must have four r/t (up to 1,600 grt) or 12 r/t (tank barges to 10,000 grt), with a quarter of the required trips made at night. No exam is required.

There are some troubling aspects to the 'self-certified' pilotage. Small vessels *do* get into collisions with much larger vessels and a 10,000 grt barge loaded with toxic chemicals is not something to be 'exempted'! Without a 'recency of service' requirement, the requisite four/12 r/t could have been made at any time in the past. No vessel size is stipulated—it could legally be an outboard-equipped skiff! With the CG trying to justify authority over State pilots, it is interesting to note that these exemptions are granted, apparently without similar concern.

Increasingly, in recent years, a conflict has developed between the CG and State pilots. Basically,

the CG desires to exert direct control over the actions of State pilots (no attempt will be made here to address how CG control of State pilots might contravene the 'sense of Congress' that States should control their own pilots!). The CG may also, rightfully, be concerned about the lack of any pilot aboard a foreign vessel in 'non-compulsory' areas. Although not unlikely, most masters would think twice about the consequences of this act, especially on a first call! In any case, the CG already has authority to require a Federal pilot in any area where a State does not—i.e., non-compulsory areas [46 USC 8503(a)].

The scenario concerning the CG, which is not rare, would see a State pilot, acting on that licence, involved in a casualty. The State could suspend the pilot's licence, but he would still be free to pilot on the authority of his *Federal* licence. The reverse is also true, although in States where a State licence is predicated upon possession of a Federal licence, revocation and/or suspension (R&S) of the latter would automatically result in R&S of the former. The CG has taken action against State pilots by indirect means—i.e., violations of the Federal Boat Safety Act of 1971 (negligence), Ports and Waterways Safety-Act of 1972 (pollution), etc.

Other than the 'normal' bureaucratic urge to expand jurisdiction, the CG seems to feel that State boards and associations may be lax in policing their own ranks. Perhaps, on occasion, this is so—but is CG control the best way to remedy this problem? Like other professional associations (physicians, lawyers, etc.), State pilots may be reluctant in policing their own due to the unspoken fear of being in the same position themselves at a later time (there, but for the grace of God, go!!). It is also very true that State pilots, are fully aware of the difficulties of the job, more so than the CG, and are thus reluctant to respond to well-intentioned, but uninformed pressure.

Some States/associations have apparently been lax in responding to some deficiencies. Certainly, when one pilot has had four or five casualties some action is warranted. This, of course, is where the CG would wish to impose their heavy-handed punishment of R&S, which is somewhat misleadingly referred to as 'remedial.' Is this the proper course? The CG apparently feels that putting a pilot (or other mariner) on the beach is going to improve his or her skills. This is wrong-headed thinking! The State pilots are in a much better position to impose (truly) 'remedial' measures—and many *have* done so—such as simulator courses, renewed supervision or other additional training.

If State pilot boards/associations are reluctant to impose discipline or require additional training, how can the problem be resolved? One proposal is that a separate pilot certification board, perhaps affiliated with the American Pilots Association (APA), could be empowered to review all accidents involving State pilots. This board would have the authority to impose appropriate remedial measures, where necessary, revoking or suspending State licences, when required. Much the same as with medical board certification, such a board could also certify pilots to minimum standards and would go a long way toward removing the only criticism by the CG of the State pilot system. □



CSHB 194, Sec. 2 explicitly states that the governor appoints public members (in addition to pilot and agent members) and retains restrictions on consecutive terms. This provision clears up confusing language in the current statute (AS 08.62.020), which does not mention the appointment of public members. SB 218, Sec. 2 changes the termination date for the Board of Marine Pilots to 1995. Note that another bill introduced in the House, HB 162, would also extend the Board until 1995. SB 218, Sec. 3, APPOINTMENT AND TERM OF OFFICE eliminates terms of office and existing restrictions on the number of consecutive terms that a Board member may serve. We can't tell whether this provision is a drafting oversight or deliberate. However, terms and restrictions of Board members should be included somewhere, preferably referencing AS 08.01.035, which specifies staggered four year terms.

One study finding was that the current practice of two Board meetings per year is not enough to adequately respond to problems encountered in regulating the industry. If either or a combination of these bills is passed, the Board's workload is likely to increase substantially for at least a year after enactment as it considers and adopts supporting regulations. SB 218, Sec. 4 specifies at least three Board meetings per year, while CSHB 194 specifies up to four meetings per year. Both bills provide for more meetings as needed. Over the long-term, three meetings with provision for more if needed is probably sufficient.

#### **Powers and Duties of the Board**

Both bills give the Board the authority to establish pilotage regions and to set regional tariffs and licensing criteria. Both allow the Board to recognize pilot organizations and to review and approve their training programs, articles, bylaws and operating rules. SB 218 states that the Board may require an audit of pilot organizations or individual pilots, while CSHB 194 does not mention audits of the records of individual pilots. In order to maintain an enforceable tariff and to close potential loopholes for independent pilots to charge something other than the tariff set by the Board, provision for audits of individual pilots should be included in the powers and duties of the Board.

Other important provisions contained in both bills allow the Board to impose disciplinary sanctions on pilots and to require mandatory random drug and alcohol testing. Both bills say that the Board may suspend or revoke a pilot's license if the person's U.S. Coast Guard pilot license is revoked but the language in SB 218 appears stronger. This was an important recommendation of the National Transportation Safety Board investigation of the *Exxon Valdez* accident and we recommend it be included in the final legislation.

#### **Marine Pilot Coordinator**

Both bills authorize the Department of Commerce and Economic Development, with Board approval, to hire a marine pilot coordinator to assist in administering the pilotage system, review the operations of pilot organizations and investigate incidents/accidents. SB 218 specifies that the marine pilot coordinator be a partially exempt employee. If this person is to serve at the pleasure of the Board, he/she must be in partially exempt service. The fiscal note to CSHB 194 assumes that the marine pilot coordinator will be hired at Range 18A (\$40,728 annual salary), the same as executive secretaries to other Boards and Commissions. This may be too low of a

salary range to attract a retired ship master or other qualified individual. We suggest a Range 21A (\$49,860) starting salary might be more appropriate.

### **Licensing**

The intent of both bills is to allow the Board to substantially increase qualifications for obtaining a license and to set up a two step licensing procedure, whereby a person must serve as a deputy pilot for an extended period before becoming a fully licensed marine pilot. The provisions of CSHB 194 spell out the restrictions on deputy pilots in detail, while SB 218 is more ambiguous, leaving licensing criteria up to the discretion of the Board. The study found that ambiguity in the existing Marine Pilotage Act allowed professional standards to become eroded over time and invited legal challenge. Therefore we recommend the CSHB 194 approach. Both bills state that a pilot may not be licensed for more than one region at a time. This is an extremely important provision that the Board feels should not be watered down. We concur with the Board. The study found that local knowledge is the essence of mandatory state pilotage and that the coastal waters of Alaska are much too extensive for pilots to have intimate knowledge of more than one region.

### **Training and License Renewal**

Both bills authorize the Board to review and approve the training programs of pilot organizations. Again, CSHB 194 provides detail on standards the Board may require for deputy pilot training and clearly ties training requirements to licensure. Both bills contain a "use it or lose it" provision for renewal of licenses and require a physical exams. CSHB 194 has stronger requirements for reactivating a lapsed license, including familiarization trips. Because local knowledge is a primary criterion for judging the professionalism of pilots, the study found that lapsed license renewal requirements should include familiarization trips. Neither bill authorizes the Board to impose continuing education requirements for license renewal. We think this is an important oversight that needs to be corrected. Both bills have transition language that allows existing pilots to maintain their license status.

### **Pilot Discipline**

The bills have nearly identical provisions for pilot discipline. In fact, the study found that Alaska's existing marine pilot discipline statutes, if enforced, are a model for other states. One important additional provision in both bills allows the Board to discipline pilots who charge something other than the tariff schedule established by the Board. The study found that a fixed enforceable tariff is essential to maintain efficient pilotage service.

### **Limited Liability and Antitrust Protection**

The study found that there is a basic inconsistency in state policy which requires mandatory pilotage on one hand and on the other imposes unlimited liability for persons responsible for an oil spill. Additionally, the study found that marine pilots are increasingly exposed to liability for accidents, even though the pilot is covered under the ship's insurance. Because pilots provide a service to the public by protecting lives, property and the marine environment, the state has an obligation to provide some liability protection so that pilots may obtain insurance. Likewise pilot organizations need protection for their training and dispatch operations. Neither bill specifically mentions liability protection for organizations who train pilots, which

should be clarified if not covered under the broader language of liability protection. The exact amount of protection is relatively unimportant--both bills adopt the \$5,000 convention used by Washington State. Note that neither bill protects pilots from liability for acts of gross negligence.

Pilots have traditionally formed themselves into organizations to provide 24-hour a day, all-weather, year-round dispatch service and pilot organizations provide the core of mandatory pilotage service in Alaska and every other state. The study found that these organizations are increasingly the target of antitrust litigation and that in order to maintain the efficiency of the present system, some type of protection by the state is warranted. Antitrust protection is provided in both bills. While the bills substantially increase the Board's ability to regulate and control the operations of pilot organizations, there is nothing in either bill that gives the existing organizations an exclusive monopoly on pilotage services for a particular region. This is in line with study findings.

### **Funding**

There is no question that the marine pilotage system should pay for the cost of its administration and operation and the study found that pilot license fees could be significantly increased to defray the costs of administering the pilotage system. However, it must be recognized that there is a wide disparity in the incomes of individual pilots and their ability to pay. The biennial license fee of \$2,040 assumed in the fiscal note to CSHB 194 is not unreasonable, but if either or a combination of these bills is passed, administration costs are likely to be substantially higher than the \$96,000 estimate for FY 92 and \$89,000 annually for FY 93-96. Thus license fees are not likely to cover the entire cost of administering the system. The study found that there should be some means for the Board to collect program receipts from the tariff to pay for increased administration costs such as check rides for pilots and investigations of incidents/accidents. The language of SB 218, Sec. 5, POWERS(4)(C), could be amended to include an administration and investigation fee or tariff surcharge instead of a training fee, which is a misnomer. Training expenses are the individual pilot's responsibility.

Please feel free to call if we can be of further assistance.

cc: Shelby Stastny, Director  
Bob Bulmer, Chief of Operations  
Representative Cheri Davis  
Ann Boudreaux, Director, Division of Occupational Licensing

Captain Badron  
United States Coast Guard  
17th Coast Guard District  
P.O. Box 3-5000  
Juneau K 99802

January 21, 1991

Dear Captain Badron:

Commander Edward Page indicated that you would most probably be the spokesperson for the Coast Guard on marine pilotage issues in the State of Alaska. One of the critical issues that will be addressed by the Alaska State Legislature this session will be the sunset of the Board of Marine Pilots. As chair of the Senate Committee on Labor and Commerce, I will be actively involved with this legislation.

The review of this board will include a significant review of the policies and procedures of the board and an evaluation of the status of marine pilotage in Alaska. There is a probability that this process will result in legislation being offered. The Governor's Office, Division of Policy, has recently completed a study of Alaska's Marine Pilotage System. I have enclosed a copy of that report for your review. When draft legislation is available, I will forward a copy also.

I welcome any comments that you might have regarding this report and the subsequent legislation. If you would like to meet and discuss this topic or any others areas of concern that would fall under the committee's responsibilities, let me know. I can be reached at 465-4993.

Sincerely,

Senator Drue Pearce  
Chair

DP:rrm  
Enclosure

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Ellason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

TO: Senator Curt Menard, Chairman  
Senate Transportation Committee

FROM: Senator Drue Pearce 

DATE: April 3, 1991

RE: Senate Bill 218

I respectfully request that Senate Bill 218 be scheduled for a hearing before the Senate Transportation Committee at the committee's earliest convenience after April 11th.

Senate Bill 218 makes the first major changes to the Marine Pilotage statutes in nearly twenty years. This legislation is the result of an intensive study of the state's Marine Pilotage System by the Office of the Governor. It also addresses the concerns that the Alaska Oil Spill Commission had with the trend to relax the qualification standards for pilots in the state.

Senate Bill 218 is important to the safety and health of the people of the State of Alaska and to the protection of their environment. This legislation has received an affirmative vote by the Board of Marine Pilots and addresses all of their major concerns. As a result, some aspects of the Marine Pilotage System study were not included in this bill.

Thank you in advance for the early opportunity to present this important legislation.

DP:rrm

April 7, 1991

To: Geoff

From: Dale

Enclosed is a complete list of ships that have transited S.E. Alaska.

Cruise ships fuel capacities vary from 1.1 million gallons to lesser amounts depending on diesel or steam propulsion systems, and size of ship. Cargo ships fuel capacities vary also with a 500,000 gallon estimate being in the ball park.

The definitions you asked for are as follows:

Channel Pilot: Is defined in 12 AAC56.050. A channel pilot license is a license to pilot vessels of 20,000 gross tons or less in main ship channels only, or to perform docking and undocking only under the supervision of a pilot with an Alaska limited or unlimited license.

Limited Pilot of 20,000 gross tons or a Step 1 license: Is licensed to pilot ships on the waters listed on the license without supervision from another licensed pilot, and dock and undock ships of 20,000 gross tons or less.

Limited Pilot of 40,000 gross tons or a Step 2 license: The same as a Step 1 license except the limit on the gross tonnage is 40,000 gross tons.

Unlimited Pilot: Is licensed to pilot ships on the waters listed on the license without tonnage restrictions.

Note: Once a pilot has a 20,000 gross ton license the pilot can upgrade the license without the assistance of another pilot, as defined in AAC56.045, for increased tonnage.

Main Ship Channel: In S.E. Alaska the term has generally been defined to mean Clarence Strait, Sumner Strait, Chatham Strait, Frederick Sound, Lynn Canal, Icy Strait, Cross Sound, Sitka Sound and Lower Glacier Bay. Waters not considered main ship channels are Snow Pass, Wrangell Narrows, Tongass Narrows, Peril Strait, Olga Strait, Neva Strait, Tlevak Narrows, San Christoval Channel, Bocas de Finas, Tracy Arm, and Upper Glacier Bay. The above are given as examples only. In short, open inside waters that are on the main shipping track lines set out by Hansen's Handbook.

U.S. Department  
of Transportation  
**United States  
Coast Guard**



Commander  
Seventeenth  
Coast Guard District

P O Box 3-5000  
Juneau, AK 99802-1217  
Phone (907) 463-2213  
Stall Symbol mfvs

16637  
April 10, 1991

Representative Cheri L. Davis  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Davis:

Thank you for meeting with us this week and for giving us the opportunity to review your draft of House Bill No. 194. The safety of Marine Pilots and the vessels they serve is very important to the Coast Guard. Uniformity between state and federal pilotage requirements is also desired to promote equal treatment for similar vessel operations.

As Rear Admiral Ciancaglini directed in your meeting with him, I am offering the following comments on the 4/4/91 draft of this bill:

DAVIS

REGS!  
OK!

1. Sec. 08.62.040(a)(6): If a mandatory random drug and alcohol testing program is established for state pilots, I recommend that it agree with the federal testing programs in 46 CFR Part 16. This will avoid duplicate testing requirements and confusion since all state pilots also hold a federal pilot license.

OK

2. Sec. 08.62.040(a)(9): It should be clarified that a regional pilot organization is prohibited from operating before its bylaws etc. are approved if it is the intent of the legislature that only approved organizations are to be allowed the privilege of functioning.

CG MON-R ADMIN THAN PILOTAGE

3. Sec. 08.62.040(a)(12): When marine pilotage regions are established by regulation, it is desirable that the boundaries of the regions be similar, to the extent possible, to those established for federal pilotage waters in 46 USC 8502(a).

OK

DC APPROVED BY  
BOARD

4. Sec. 08.62.050: It is recommended that the duties of the Marine Pilot Coordinator be defined more explicitly; e.g. does he investigate accidents and misconduct of pilots?

5. Sec. 08.62.080(a): Will regulations be issued to clarify a license structure for various types and sizes of vessels? It appears desirable to use the same license structure as now contained in federal regulations for uniformity. This could be accomplished by requiring that the pilot hold a federal license for the service and size of vessels operated.

Board  
(step  
licenses)

DNRS

grossly inadequate

at least 100 hrs per yr for 3 yrs

OK

6 Sec. 08.62.080(b): Would establishing a currency of knowledge provision, similar to the federal requirement in 46 CFR 10.713, achieve the same safety concern that is addressed by restricting pilots to only one pilotage region?

7 OK  
Sec. 08.62.100(3): The words "three years experience" should be clarified to indicate if calendar years or actual time, e.g. 1095 8-hour days, are required.

8 Sec. 08.62.150(a)(3): Possession of narcotic or hallucinogenic drugs should be included with use and selling as prohibited activities. All of these activities, if proved, will be grounds for revocation of the pilot's federal license. ✓

OK

9 Sec. 08.62.150(a)(8): Suspension of the pilot's federal pilot license should be addressed in addition to full revocation of the license. ✓

OK? but definite 3 mile in coastal water

10 Sec. 08.62.160: The terms "inland" and "coastal" have different meanings in many legal applications. Recommend that these terms be changed to read "state waters inside the 3-mile Territorial Sea Line." -def? ✓

LOOK UP

11 Sec. 08.62.180(1): The words "except as provided in AS 08.62.185" should be deleted from this section as it violates 46 USC 8501(d) and 8502(c). (Also, the words "vessels under enrollment" should be changed to read "vessels subject to federal pilot requirements in 46 USC 8502.") ✓

11(a) (streamline this language)

12 Sec. 08.62.180(2): We assume that you are using the term "fishing vessels" in the same context as defined in 46 USC 2101(11a) and are not exempting "fish processing" and "fish tender" vessels, as defined in 2101(b) and 2101(c), from pilotage. Some very large tenders and processors, some over 600 ft and 5,000 gross tons, are now operating in and out of Alaskan ports. When not subject to federal pilotage requirements, such large vessels should be subject to state pilotage.

OK

13 (NO)  
Sec. 08.62.185(a)(2): For the above reason, the words "whose duty station has been on that tanker throughout that specific voyage" should also be deleted from this existing statute.

This would eliminate state pilotage by cert. ✓

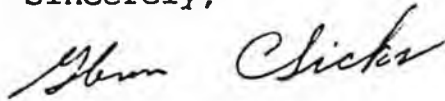
pg 50, #17 in handbook has OK language that would work

14 Sec. 08.62.190(a): The phrase "when a licensed pilot is available" seems too vague as stated. Recommend that some time frame and effort-to-obtain criteria be added to avoid each company making their own decision as to the availability of a licensed pilot.

16637  
April 10, 1991

The above comments are based upon my quick review of this draft bill. I am enclosing copies of federal statutes and regulations cited above for your quick reference. Also enclosed please find a copy of Captain Bodron's letter to Senator Drue Pearce concerning the improvement of Alaska's marine pilotage system. As he states in that letter, we are available to assist you in drafting state standards, participating in Pilot Review Boards, and advising on federal standards. We look forward to working with you and your staff in the development of this bill.

Sincerely,



Glenn C. Sicks  
Lieutenant Commander, U. S. Coast Guard  
Chief, Fishing Vessel Safety Branch  
By direction of the District Commander

Enclosures: As stated above

→ check for  
regulations  
See Florida statute  
→ now complete  
subjective  
can update  
keep people  
informed

Coast Guard Amendments

Working from CSHB 194(L&C) :

1. Pg 3 Ln 9 - Insert following "program" : "consistent with 46 CFR Part 16".
2. Pg 9 Ln 8 - Insert following "approval" : "prior to commencing operations".
3. Pg 3 Ln 25 - Insert following "regions" : "to the extent possible similar with those established for federal pilotage waters in 46 USC 8502(a)."
4. Covered in SB218(Trans) sec 23.
5. Covered in section 9 but : Pg 4 Ln 9 - Insert following "region" : "and possesses a federal license with the same endorsement".
6. Pg 4 Ln 10 - Insert following "time" : unless possessing currency of knowledge provisions consistent with 46 CFR 10.713".
7. Pg 6 Ln 10 - The intent is three calendar years of experience. Not to mean 1095 actual days of active service. *CSHB 218 (114)  
Pg 5 Ln 12*
8. Pg 7 Ln 15 - Insert following "illegally" : "possesses".
9. Pg 7 Ln 22 - Insert following "suffered" : "suspension".
10. The board will determine the proper definition.
11. Pg 9 Ln 22 - delete and insert : "(1) vessels subject to federal pilot requirements in 46 USC 8502;"
12. Pg 9 Ln 23 - Insert following "vessels" : "including fish processing and fish tender vessels"
13. Insert a new section to read : Sec. 08.62.185 (a)(2) "utilize a federally licensed pilot [whose duty station has been on that tanker through out the specific voyage]."
14. Pg 10 Ln 11 - Intent is to limit the definition of "when a licensed pilot is available" to a reasonable and responsible definition. Perhaps insert phraseology from Marine Pilot handbook pg 50 #17 or insert "as defined in regulation"

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

April 18, 1991

Hon. Dave Donley  
Alaska House of Representatives  
Room 122, Capitol Building  
P.O. Box V  
Juneau, Alaska 99811

Re: CS for HB 194 (L&C)

Dear Representative Donley:

On your behalf, Laurie Otto asked this office to review and comment on CS for HB 194 (L&C), a bill currently in the House Judiciary Committee that would amend the laws pertaining to marine pilotage in Alaska. More specifically, we understand that you want to know whether there are any potential legal problems with the bill, including how state and federal antitrust laws may be implicated.

For at least the past couple of years, questions have been raised with increasing frequency about whether certain components of the existing marine pilotage system violate state or federal antitrust laws. The targets of those questions have for the most part been related to (1) the authority of the Board of Marine Pilots (the Board) to establish and enforce mandatory tariffs for pilotage services in particular areas or ports, and (2) the requirements for advancement within the profession being in the control of the currently licensed marine pilots and existing marine pilot associations, the most notable of these requirements being the one that allows a pilot to upgrade an entry level license only after completing a certain number of dockings and undockings under the supervision of a state licensed marine pilot. 1/

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1/ The Board of Marine Pilots, and the individual members of the Board are currently defendants in a lawsuit filed in federal court wherein the Plaintiff, Captain Joseph Homer, has generally accused the Board of allowing the Southeastern Alaska Pilots' Association (SEAPA) to monopolize the profession by, among other  
(continued...)

To the extent that these antitrust concerns arise in the existing statutes, it is our opinion that this legislation addresses those problems. 2/ The public interest of the state, which may at any time be significantly impacted by the quality of marine pilotage, is served only when marine pilotage is safe, efficient, and, except under very unusual circumstances, always available to those who are required to use it. For that reason alone, marine pilotage has been, and should continue to be, a heavily regulated profession. 3/

In CS for HB 194 (L&C), a part of that heavy regulation includes (1) giving the Board broad and express authority (A) to adopt and enforce pilotage tariffs and (B) to approve the by-laws and operating rules of pilot organizations, and (2) establishing statutory standards for licensure and training. In our opinion, those provisions pave the way for the state to avoid antitrust concerns with its marine pilotage system. Why we only say "pave the way" is explained below.

1/ (...continued)

things, establishing a pilotage tariff and allowing SEAPA to control advancement in the profession through the dockings/undockings requirement.

The Plaintiff recently filed a Motion for Partial Summary Judgment against the Board on the basis that the dockings and undockings requirement was beyond the Board's authority to adopt and that the manner in which it is being implemented is a violation of antitrust laws. In the next month or so, this office will respond to that motion. By the middle of June, the Plaintiff's reply, if any, must be filed with the court. If requested, oral argument will be scheduled sometime after that. After oral argument, the court will rule on the motion.

2/ As you are probably well aware, SEAPA also is the defendant in lawsuits alleging that it has monopolized the marine pilotage business in Southeast Alaska. Although we believe that this legislation also addresses some antitrust concerns of SEAPA, in this memorandum we are only discussing the antitrust concerns of the state directly, except to the extent that those issues necessarily overlap.

3/ The amount of regulation and the significance of the public interest in the endeavor makes the regulation of pilotage in some ways analogous to that of a public utility.

In general, antitrust laws prohibit a variety of monopolistic, anti-competitive activities. However, in addition to certain statutory (state and federal) exemptions, under certain circumstances, the courts have recognized a state action exemption to a claim that activities violate antitrust laws. In California Liquor Dealers v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), the United States Supreme Court described the exemption as follows:

These decisions establish two standards for antitrust immunity under Parker v. Brown. First, the challenged restraint must be "one clearly articulated and affirmatively expressed as state policy"; second, the policy must be "actively supervised" by the State itself. City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978) (opinion of Brennan, J.).

Midcal, 495 U.S. at 105. (Footnote omitted.)

In order for the state action exemption to be valid, there must first be a clearly articulated policy and law authorizing what otherwise might be anticompetitive behavior. In this bill, we believe such a clearly articulated policy and law exists. Secondly, for the exemption to be validly invoked, the state must actively supervise the otherwise anticompetitive conduct. This bill certainly contains provisions to effect that active supervision, e.g., employment of marine pilot coordinator and the generally clear and increased regulatory authority of the Board. If those provisions are implemented, we think that the active supervision standard will be met. 4/

Although other legal issues were discussed and considered during the process that began last fall on drafting a bill on this subject, we think that those issues have been dealt with in such a way in this bill so that we find none outstanding. 5/

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4/ It is not perfectly clear to what extent a state must supervise for that supervision to be "active." Recent caselaw indicates that the courts are not making the standard a rigorous or onerous one for a state to meet.

5/ For example, the bill does not contain a provision limiting the number of licenses that would be issued.

Hon. Dave Donley  
Alaska House of Representatives

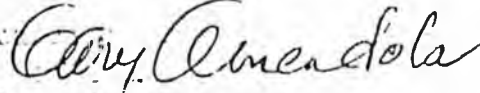
April 18, 1991  
Page 4

Recognizing that this letter is somewhat conclusory, if you have any questions or wish further details, please let me know.

Sincerely yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By:



Gary I. Amendola  
Assistant Attorney General

GIA:jf

cc: Ann P. Boudreaux, Director  
Division of Occupational Licensing, DCED

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

April 22, 1991

**SUBJECT:** Captain Joseph W. Homer v. Southeastern Alaska  
Pilots Association, et al. (Work Order No. 7-LS1220)

**TO:** Senator Drue Pearce, Chair  
Senate Labor and Commerce Committee

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

This memorandum is in response to the request of Rod Mourant of your staff, for an explanation of the meaning and implications of the Complaint filed in a civil action in federal District Court entitled Captain Joseph W. Homer v. Southeastern Alaska Pilots Association, et al.

A complaint merely contains concise statements of the claims made by the person filing the complaint and the demands for relief that the person considers appropriate. A complaint is not a detailed explanation of the law or facts underlying the person's claims or demands for relief. A complaint only serves to give reasonable notice to the opposing parties of the claims being made and the relief being sought.

The Complaint alleges that Captain Joseph W. Homer has been injured by the actions of the Alaska State Board of Marine Pilots, the members of the Alaska State Board of Marine Pilots, the Southeastern Alaska Pilots Association, and other named individuals who are members of the association. The Complaint alleges that the association constitutes a monopoly engaged in an illegal conspiracy and in restraint of trade in interstate marine commerce in order to eliminate competition among marine pilots and to set tariffs for marine pilot services. The Complaint further alleges that the marine pilot licensing regulations of the board furthers the monopoly of the association and that the board lacks authority to set marine pilot tariffs. As the result of the actions of the association, the board, and the members of the association, the Complaint alleges that Captain Homer has been deprived of an unlimited pilot license, has not been allowed to compete with other marine pilots, has been the subject of acts intended to destroy his business and good will, has suffered serious damage and losses in losing lost profits of at least \$200,000, and has been deprived of prospective business opportunities. The Complaint seeks relief for

Senator Drue Pearce

April 22, 1991

Page 2

Captain Homer under provisions of federal and state constitutions and statutes and under state common law.

Captain Homer makes 17 claims for relief. Nine claims for relief are against the association and/or its members. Eight claims for relief are against the board and/or members of the board.

#### CLAIMS AGAINST THE STATE.

Captain Homer seeks the following relief from the State of Alaska for the actions of the Board of Marine Pilots. As part of each specific claim for relief against the board, Captain Homer is also seeking an injunction to prevent further harmful actions by the board, as well as attorneys' fees.

**EIGHTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board further the monopolistic and restraint of trade practices engaged in by the association and its members and as a consequence the regulations and practices are violative of the Sherman Anti-Trust Act<sup>1/</sup> and the Clayton Act<sup>2/</sup>. Captain Homer seeks to have the regulations and practices of the board declared null and void. Captain Homer also seeks an injunction stopping the board from acting in furtherance of the monopoly and restraint of trade in the future and treble damages against the state.

**NINTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board unduly burden interstate and foreign commerce<sup>3/</sup> and thus are null and void. Captain Homer seeks an injunction against the board preventing future undue burdens on interstate commerce. Captain Homer also seeks damages under 42 U.S.C. 1983<sup>4/</sup> for violating his rights under the federal constitution.

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<sup>1/</sup> 15 U.S.C. §§ 1 - 2.

<sup>2/</sup> 15 U.S.C. §§ 12 - 27.

<sup>3/</sup> Constitution of the United States, Art. I, sec. 8.

<sup>4/</sup> 42 U.S.C. 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

**TENTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board violate his federal due process and equal protection rights<sup>5/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his federal due process and equal protection rights by the board. Captain Homer also seeks damages under 42 U.S.C. 1983 for violating his rights under the federal constitution.

**ELEVENTH CLAIM FOR RELIEF.** Captain Homer claims the regulations and practices of the board violate the privileges and immunities clause of the federal constitution<sup>6/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his privileges and immunities rights by the board. Captain Homer also seeks damages under 42 U.S.C. 1983 for violating his rights under the federal constitution.

**TWELFTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board violate his right to equal protection under the state constitution<sup>7/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his equal protection rights under the state constitution. Captain Homer is also seeking unspecified damages.

**THIRTEENTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board violate his right to due process under the state constitution<sup>8/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his due process right under the state constitution. Captain Homer is also seeking unspecified damages.

**FOURTEENTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board are contrary to the public policy generally expressed by the statutes of the state and thus are null and void. Captain Homer seeks an injunction preventing future violations of the public policy expressed in state statutes. Captain Homer is also seeking unspecified damages.

**FIFTEENTH CLAIM FOR RELIEF.** Captain Homer seeks an injunction against the board to prevent the board from violating his rights under the federal and state constitutions. Captain Homer also seeks an injunction to require the board to repeal its regulations requiring that applicants for an unlimited pilot license complete

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<sup>5/</sup> Constitution of the United States, 14th Amendment, sec. 1.

<sup>6/</sup> Constitution of the United States, Article IV, sec. 2, cl. 1.

<sup>7/</sup> Constitution of the State of Alaska, Article I, sec. 1.

<sup>8/</sup> Constitution of the State of Alaska, Article I, sec. 7.

a specified number of supervised dockings and undockings<sup>9/</sup> and to rescind any of its policies that have the effect of suppressing or eliminating competition among marine pilots. Captain Homer also requests the court to require the board to issue an unlimited marine pilot license for Southeastern Alaska to him. Captain Homer is also seeking unspecified damages.

CLAIMS AGAINST THE ASSOCIATION AND OTHER PRIVATE PARTIES.

Captain Homer is seeking the following relief from the actions of the Southeastern Alaska Pilots Association and certain named persons who are members of the association. As part of each specific claim for relief against the association and its members, Captain Homer is also seeking an injunction to prevent further harmful actions by the parties, as well as reasonable attorneys' fees.

**FIRST CLAIM FOR RELIEF.** Captain Homer claims that the association and its members have created a monopoly in restraint of trade and commerce in marine pilot services in violation of sec. 1 of the Sherman Anti-Trust Act.<sup>10/</sup> Captain Homer claims that his damages and lost profits will be at least \$200,000 and seeks treble damages.

**SECOND CLAIM FOR RELIEF.** Captain Homer claims that the association and its members are a monopoly engaged in a contract, combination, or conspiracy in restraint of trade and commerce in marine pilot services in violation of sec 2 of the Sherman Anti-Trust Act<sup>11/</sup>. Captain Homer claims that his damages and lost profits will be at least \$200,000 and seeks treble damages.

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<sup>9/</sup> 12 AAC 56.030.

<sup>10/</sup> 15 U.S.C. § 1.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

<sup>11/</sup> 15 U.S.C. § 2.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

THIRD CLAIM FOR RELIEF. Captain Homer claims that the association and its members entered into a contract, combination, or conspiracy in restraint of trade and commerce in marine pilot services in violation of the Federal Trade Commission Act<sup>12/</sup> and that under the Act he is entitled to recover damages and lost profits in the amount of at least \$200,000.

FOURTH CLAIM FOR RELIEF. Captain Homer claims that the association and its members entered into a contract, combination, or conspiracy in restraint of trade and commerce in marine pilot services in violation of the state monopolies and restraints of trade statutes<sup>13/</sup> and that under state law he is entitled to recover damages and lost profits in the amount of at least \$200,000. Under state law a person injured by a monopoly or restraint of trade may be entitled to treble damages if the court finds that offending conduct was willful.<sup>14/</sup>

FIFTH CLAIM FOR RELIEF. Captain Homer claims that unless the association and its members are prevented from continuing their monopolistic and restraint of trade practices his business and good will will be irreparably damaged. Captain Homer seeks an injunction against the association and its members to prevent them from continuing to violate the Sherman Anti-Trust Act, the Clayton Act, and the state monopolies and restraints of trade statutes and to require the association and its members to supervise the dockings and undockings required for him to obtain a state unlimited marine pilot license.

SIXTH CLAIM FOR RELIEF. Captain Homer claims that the association and its members have engaged in unfair methods of competition and unfair or deceptive acts or practices that are violative of state law relating to unfair trade practices and consumer protection.<sup>15/</sup> Captain Homer claims damages and losses in excess of \$200,000.

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<sup>12/</sup> 15 U.S.C. §§ 41 - 58.

<sup>13/</sup> AS 45.50.562 - 45.50.596.

<sup>14/</sup> AS 45.50.576(a).

(a) A person who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action

(1) for damages sustained by the person, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was willful, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, the plaintiff may be awarded the costs of the suit, including reasonable attorney fees.

<sup>15/</sup> AS 45.50.471 - 45.50.561.

**SEVENTH CLAIM FOR RELIEF.** Captain Homer claims that unless the unfair methods of competition and unfair or deceptive practices of the association and its members are stopped his business and good will will be destroyed or at least seriously damaged. Captain Homer seeks an injunction to stop the association and its members from engaging in these activities.

**SIXTEENTH CLAIM FOR RELIEF.** Captain Homer claims that the association and its members have intentionally interfered with his prospective contractual relationships with ship owners, ship masters, and ship agents by inducing or otherwise causing ship owners, ship masters, and ship agents not to enter into contracts with him. Captain Homer seeks an injunction stopping interference with his prospective contractual relationships and appropriate damages for losses suffered as the result of past interference.

**SEVENTEENTH CLAIM FOR RELIEF.** Captain Homer claims that the association and its members have made false statements to ship owners, ship masters, and ship agents implying that he was not qualified to act as a marine pilot. Captain Homer seeks an injunction stopping these activities and damages for pecuniary harm suffered as the result of these false statements.

#### IMPLICATIONS OF THE COMPLAINT FOR THE REGULATION OF MARINE PILOTS.

Captain Homer alleges that the regulations and practices of the Board of Marine Pilots have violated his rights under the federal and state constitutions. The allegations are, for the most part, stated only in general terms in the Complaint, so it is not possible to identify all the regulations and practices that Captain Homer intends to challenge. If Captain Homer does prevail in any of his constitutional challenges, the affected regulations and/or practices of the board will have to be revised to conform to constitutional requirements.

One regulation which Captain Homer specifically challenges is 12 AAC 56.030(c)(2) relating to the requirement for supervised dockings and undockings as a condition of obtaining a state unlimited marine pilot license. Because all of the licensed marine pilots who are qualified to supervise the required dockings and undockings are members of either the southeast or southwest marine pilot association and because the members of these associations will not supervise his required dockings and undockings, Captain Homer claims that he is unfairly being denied the opportunity to obtain the license. Captain Homer proposes to overcome this obstacle by one of two alternative solutions: either by having the court order the board to repeal the requirement for supervised dockings and undockings and then issue an unlimited license to him; or by having the court order the board and the marine pilots to supervise the required trips so that he can qualify for the unlimited license. The requirement for supervised dockings and undockings seems to be a reasonable

qualification for obtaining a marine pilot license and may well survive the challenge. On the other hand, the manner in which the requirement is implemented by the board or by the other licensed marine pilots may have the effect of denying Captain Homer a reasonable opportunity to obtain an unlimited marine pilot license. If that is the case, the court may require the board to establish a procedure to allow applicants for the unlimited license to satisfy the supervised dockings and undockings requirement that cannot be frustrated by the unwillingness of the other marine pilots to supervise the dockings and undockings. The court could also prohibit the associations and the other marine pilots from conspiring to refuse to supervise the dockings and undockings of qualified applicants for an unlimited marine pilot license.

Other regulations that are specifically challenged by Captain Homer are 12 AAC 56.130 and 12 AAC 56.140 relating to the rates to be charged for piloting services. Captain Homer claims that the board lacks the statutory authorization to adopt regulations setting tariffs for piloting services. If Captain Homer prevails, the board will not be able to set tariffs for piloting services until the legislature authorizes the board to do so by statute.

The concept of regional pilotage is not at issue in the Complaint. The Complaint does not challenge the requirement for regional pilot licenses. The Complaint does not challenge either the authority of the board to license marine pilots for certain regions of the state or the authority of marine pilots to form associations within regions of the state.

What the Complaint does specifically challenge is the monopolistic practices and restraint of trade practices of the Southeastern Alaska Pilots Association. If Captain Homer prevails in his challenge to the practices of the association, the association will have to bring its practices into conformance with the law. The association may have to significantly alter its practices and membership qualifications if Captain Homer can establish that the association is as monopolistic and as violative of free trade as he alleges. On the other hand, if the regional marine pilot associations do not violate federal and state anti-trust and restraint of trade laws, there should be nothing arising from the Complaint that would interfere with the continuance of the regional associations in their present form. It is far too early in the proceeding to determine what will be the effect of the Complaint on the regional marine pilot associations.

#### IMPLICATIONS FOR CURRENT LEGISLATION.

There are currently two bills before the legislature relating to the licensing of marine pilots: SB 218 and HB 194. Both bills incorporate the substance of current regulations into statute and relate to several issues raised by the Complaint. First, both bills authorize the Board of Marine Pilots to establish tariffs for marine pilotage services. This would overcome the claim that the current regulations relating to tariffs are not authorized by statute. Second, both bills authorize the board to

Senator Drue Pearce

April 22, 1991

Page 8

require supervised dockings and undockings as part of the qualification for a marine pilot license. These provisions will clarify the authority of the board to require supervised maneuvers as part of the licensing procedure. Third, both bills authorize the board to establish marine pilotage regions. Fourth, both bills exempt marine pilot organizations from state anti-trust laws (AS 45.50.562 - 45.50.596). These provisions would overcome the claim that the existing marine pilot organizations violate state anti-trust laws. Fifth, both bills provide for a close and continuing relationship between regional marine pilot organizations and the board, and authorizes the board to approve the by-laws and training programs of recognized regional marine pilot organizations. The Senate bill authorizes the board to recognize one marine pilot organization for each pilotage region; the latest version of the House bill (CSHB 194 (Labor & Commerce)) authorizes the board to recognize one or more marine pilot organizations for each pilotage region.

The Complaint generally challenges the regulations and practices of the board on state and federal constitutional grounds. To the extent that one of the current regulations or practices of the board that is incorporated into the bills and is invalidated on constitutional or federal statutory grounds as the result of Captain Homer's complaint that portion of the bills will also be invalidated. However, currently there is nothing contained in either of the bills that is obviously unconstitutional. The challenges to the regulations and practices of the board raised by Captain Homer cannot be addressed in more detail until he sets out his specific claims and legal arguments on why the regulations and practices are invalid.

If I may be of further assistance, please advise.

GU:mi:pl  
91-075.mai

# AK Steamship Operators

SB 218 - NOT TRANS CS

SENATE TRANSPORTATION COMMITTEE

MAY 2, 1991.

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
1/1 One	1	1	7	<p>DELETE: "certain water of and adjacent to"</p> <p>INSERT: <u>"the inland and coastal waters of"</u></p>	<p>This substitute language offers a clearer definition of waters requiring pilotage. The existing language implies pilotage requirements for offshore areas.</p>
✓ Two	1	1	11	(Same as amendment number one.)	Same as amendment number one.
✓ Three	1	1	13	<p>DELETE: "tariffs"</p> <p>INSERT: <u>"rates for basic pilotage services"</u></p>	<p>Reference to establish authority of the Board to establish tariffs at this point should be under powers and duties of the Board.</p>
✓ Four	2	1	1	<p>DELETE: "independently of the shipping industry"</p> <p>INSERT: <u>"as independent contractors"</u></p>	<p>As long as the pilots have the proper license for the geographic area in which a ship is operating, there is no reason why they should not be able to be employed directly by the shipping industry. The issue is one of qualifications, not employer. Provided the Board acts correctly, only qualified people will get licenses.</p>
✓ Five	2	1	5-7	<p>REWRITE IN ENTIRETY AS FOLLOWS:</p> <p><u>"(5) properly run pilot organizations can provide important services on behalf of marine pilots and can further the policy of protecting lives and property and the marine environment in the waters of the state."</u></p>	<p>This language better reflects the responsibility of the marine pilot organizations to the state and shipping industry.</p>

<u>AMEND. NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
✓ Six	2	5	25	<p>DELETE: "all water [WATERS] covered by this chapter"</p> <p>INSERT: "<u>the inland and coastal waters of the state</u>"</p>	Same as amendment number one.
✓ Seven	3	5	3	<p>DELETE: "the criteria by which pilotage tariffs are established"</p> <p>INSERT: "<u>maximum rates for basic pilotage services</u>"</p>	By requiring vessels to use pilots, the State has a duty to insure that pilots do not use this power to exact excessive rates for services. Therefore, it is incumbent upon the State to make sure that rates for pilotage services do not exceed a maximum level authorized by the Board. Below that maximum, pilots and vessel owners should be able to negotiate rates based upon a multitude of factors such as, for example, guaranteeing a minimum number of engagements. To prohibit pilots and vessel owners from negotiating lower rates is really an attempt to protect pilots from competing with each other. That is not a proper matter for the State to involve itself in. This amendment also makes it clear that it is the pilots and applicants for pilot licenses who pay for training and licensing fees.
✓ Eight	3	5	6	<p>DELETE: "pilotage tariffs for each region"</p> <p>INSERT: "<u>rates to be charged by pilots for basic pilotage services within each pilotage region and</u>"</p>	Same as amendment number seven.

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
				<u>charges to be paid for by persons licensed or applying for licenses under this chapter for training, licensing and other purposes"</u>	
✓ Nine	3	5	17	DELETE: "pilot organizations"  INSERT: " <u>pilots licensed under this chapter</u> "	We have no problem with pilot organizations. We do object to the State granting certain organizations special status. All this will do is inhibit the right of free association by discouraging pilots from joining any organization other than recognized ones.
✓ Ten	3	5	20	DELETE: "water [WATERS] covered by this chapter"  INSERT: " <u>inland and coastal waters of the state</u> "	Same as amendment number one.
✓ Eleven	3	5	27	INSERT AT END OF SENTENCE: " <u>and by pilots licensed under this chapter</u> "	Same as amendment number nine.
✓ Twelve	3	5	27	INSERT NEW CLAUSE (4):  " <u>(4) establish standards by which a marine pilot may receive licensing and endorsements to pilot vessels in more than one pilotage region.</u> "	This is compromise language designed to deal with the regionalization concept. Instead of limiting a pilot to one region, it would allow licenses for multiple regions, specify the waterways and ports for which the license is valid.
✓ Thirteen	3	5	27-28	INSERT NEW SUBSECTION (c):  " <u>(c) For purposes of this chapter, the term "basic pilotage services" is intended to refer to the conduct of a vessel over or within a specific waterway or into or out of a specific</u>	The intent of this change is to limit the rate setting authority of the Board to matters directly related to movement of the vessel. All other charges would be left to negotiation between the pilots and vessel owners.

<u>AMEND.</u> <u>NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
OK ✓ Fourteen	4	7	4	port." DELETE: "an active" INSERT: "a"	This language avoids conflict of interest.
✓ Fifteen	4	8	9	DELETE: Line 9 INSERT: " <u>(b) A person may be licensed to pilot vessels in more than one region. A license shall identify the specific waterways and ports in each region within which a person is authorized to pilot vessels based upon the persons compliance with the training and other qualification requirements established by the board.</u> "	Same as amendment number twelve.
✓ Sixteen	6	13	10-11	DELETE: all of (8) on Lines 10 and 11. INSERT: " <u>charges, collects or receives an amount in excess of the maximum rate for past pilotage services established by the board</u> "	Same as amendment number three.
✓ Seventeen	6	15	18	DELETE: "certain water of or adjacent to" INSERT: " <u>inland and coastal waters of the state</u> "	Same as amendment number one.
✓ Eighteen	6	15	21	DELETE: "direction and control"	This language clarifies the relationship between master and

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
✓ Nineteen	6	16	28	INSERT: " <u>conduct</u> "  INSERT AT END OF SENTENCE: " <u>or when the pilot's error, omission, fault or neglect would entitle the board to impose disciplinary action against the pilot under AS 08.62.050(a) (2), (3), (4) or (5).</u> "	pilot. The master is ultimately liable for any movement or control of his vessel.  It is correct that a marine pilot organization should not be liable for errors or omissions of its individual members occurring in the performance of pilotage services. If the organization itself acts improperly, it should be held to the same standard as any other private business. For example: an organization should be held liable if it breaches a contract with another party whether or not that breach was wilful. Furthermore, if the organization itself acts negligently, the organization should be held accountable whether or not that negligence constitutes gross negligence. All this change does is mke sure that pilot organizations, when acting as organizations, are held to the same level of accountability as any person in business is held to.
✓ Twenty	7	16	6	DELETE: "or organization of pilots that relate, directly or indirectly,"  INSERT: " <u>that relate directly</u> "	Same as number nineteen.
✓ Twenty-one	7	16	8	DELETE: "or organization of pilots"	Same as number nineteen.

AMEND.

NO.

PG.

SEC.

LINES

PROPOSED CHANGES

COMMENTS

✓ Twenty-two

8

21

29-31

DELETE Section 21.

Anti-trust implications.

22

1-4

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

May 3, 1991

**BILL NUMBER:** SB 218

**TITLE:** An act relating to the Board of Marine Pilots, marine pilots, and marine pilots organizations.

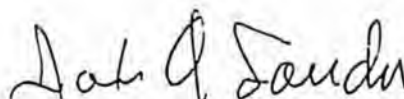
**DEPARTMENT POSITION:** Support

**ANALYSIS:** This bill is intended to clarify and strengthen the authority of the Board of Marine Pilots through an expansion of the Board's duties. This expansion includes establishing qualifications and approval of training programs, and establishing pilot regions to name a few.

The Department of Environmental Conservation believes that the mandatory use of local marine pilots with knowledge of the area in which they operate is an integral part of oil spill prevention. Well qualified, state licensed pilots was a major recommendation of both the Alaska Oil Spill Commission (Recommendation #20) and the States/British Columbia Oil Spill Task Force (Recommendation #15).

**PROPOSED AMENDMENTS:** The Department would propose that the legislation be amended to include the parameters for the training programs. For marine pilots in the crude oil tanker trade, the Board should be required to consult with DEC in establishing the training standards.

In addition, the Department recommends that the word "may" on page 2, line 23 and page 5, line 31 be changed to "shall".



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John A. Sandor, Commissioner  
Alaska Department of Environmental Conservation

May 6, 1991

Senator Fred Zharoff  
Chairman, Senate Rules Committee  
Capitol, Room 121

Dear Senator Zharoff;

I appreciate your letter of support in behalf of my appointment to the Board of Marine Pilots.

I also request your help in getting SB 218 (and HB 194) to the floor this session. The new law regulating marine pilots is important to your district and any help you can give SB 218 will be appreciated.

Thank you for your efforts.

Sincerely,



Captain Bob Boyd  
Alaska Marine Pilots Dispatch Services  
P.O. Box 730  
Dutch Harbor, Alaska 99692

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

May 7, 1991

**SUBJECT:** Relationship of AS 08.62.185(a) to certain provisions of federal law (HB 194)

**TO:** Representative Dave Donley, Chair  
House Judiciary Committee

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

This memorandum is in response to the query by Laurie Otto, of your staff, as to whether AS 08.62.185(a) violates 46 U.S.C. 8501(d) or 46 U.S.C. 8502(c).

AS 08.62.185(a) provides that an oil tanker, whether enrolled (engaged in coastwise trade, i.e. trade between the states) or registered (engaged in trade with foreign countries), of a certain size, must, when navigating in state waters beyond Alaska pilot stations either employ a state licensed marine pilot, or utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.<sup>1/</sup>

Under federal law states are authorized to regulate pilots in bays, rivers, harbors, and ports.<sup>2/</sup> However, the states are prohibited from requiring coastwise (enrolled)

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<sup>1/</sup> AS 08.62.185(a):

(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.

<sup>2/</sup> 46 U.S.C. 8501(a):

(a) Except as otherwise provided in this subtitle [46 U.S.C. 2101-13110], pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States.

vessels, including tankers, to engage state licensed pilots.<sup>3/</sup> Those coastwise vessels that are exempted from state pilot requirements are required to be under the control of a federally licensed pilot when the vessels are in coastal waters and not on the high seas.<sup>4/</sup> A state may not require a federally licensed pilot to obtain a state license or adopt any other requirement that would impede the performance of the duties of a federally licensed pilot.<sup>5/</sup>

Part of a statute enacted by the State of Washington that was similar to AS 08.62.-185(a) was struck down by the United States Supreme Court, because it violated federal pilot laws. In Rav v. Atlantic Richfield Co.<sup>6/</sup>, the Supreme Court struck down a mandatory state pilot requirement for enrolled tankers entering Puget Sound, because federal pilot laws (46 U.S.C. 364 and 46 U.S.C. 215; predecessors to current 46 U.S.C. 8502(a) and (c), respectively) give "the federal government exclusive authority to regulate pilots on enrolled vessels and . . . preclude a State from

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<sup>3/</sup> 46 U.S.C. 8501(d):

(d) A State may not adopt a regulation or provision that requires a coastwise vessel to take a pilot licensed or authorized by the laws of a State if the vessel--

(1) is propelled by machinery and subject to inspection under part B of this subtitle [46 U.S.C. 3101-4504]; or

(2) is subject to inspection under chapter 37 of this title [46 U.S.C. 3701-3718].

46 U.S.C. 3701-3718 applies to tank vessels, which are vessels constructed or adapted to carry, or that carry, oil or hazardous material in bulk as cargo.

<sup>4/</sup> 46 U.S.C. 8502(a):

(a) Except as provided in subsection (g) of this section, a coastwise seagoing vessel shall be under the direction and control of a pilot licensed under section 7101 of this title [46 U.S.C. 7101] if the vessel is--

(1) not sailing on register;

(2) underway;

(3) not on the high seas; and

(4)(A) propelled by machinery and subject to inspection under part B of this subtitle [46 U.S.C. 3101-4504]; or

(B) subject to inspection under chapter 37 of this title [46 U.S.C. 3701-3718].

46 U.S.C. 8502(g):

(g) The Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed under section 7101 of this title [46 U.S.C. 7101].

<sup>5/</sup> 46 U.S.C. 8502(c):

(c) A State or political subdivision of a State may not impose on a pilot licensed under this subtitle [46 U.S.C. 2101-13110] an obligation to procure a State or other license, or adopt any other regulation that will impede the pilot in the performance of the pilot's duties under the laws of the United States.

<sup>6/</sup> 435 US 151, 55 L.Ed.2d 179, 98 S.Ct. 988 (1978).

Representative Dave Donley  
May 9, 1991  
Page 3

imposing its own pilotage requirements on them."<sup>7/</sup> The Supreme Court did uphold the Washington law as it applied to registered tankers, so tankers engaged in foreign commerce are required to engage the services of a state licensed pilot while in Puget Sound.<sup>8/</sup>

Though the federal laws relating to pilots were rewritten in 1984, they are similar in all significant respects to those applied in Ray. Under the federal law applied in Ray and under current federal law, a coastwise seagoing tanker must be under the control of a federally licensed pilot when the vessel is not sailing under register, underway, and not on the high seas. Under the holding of the Ray decision, the State of Alaska is precluded by federal law from requiring enrolled tankers to engage a state licensed pilot. To the extent that AS 08.62.185(a) attempts to impose such a requirement on enrolled tankers, it is invalid.

Likewise the requirement under AS 08.62.185(a)(2) that an enrolled tanker must have a federally licensed pilot on board throughout the voyage if it does not engage the services of a state licensed pilot is probably invalid because the federal government has exclusive jurisdiction to regulate federal pilots on enrolled vessels. If the federal government has exclusive jurisdiction, then the state cannot impose additional requirements on enrolled vessels or additional duties on federal pilots.<sup>9/</sup>

In summary, the state may require that registered tankers engage the services of a state licensed marine pilot while Alaska bays, rivers, harbors, and ports. However, 46 U.S.C. 8501(d) and 46 U.S.C. 8502(c) preclude the state from requiring enrolled tankers to obtain a state licensed marine pilot or to engage a federal pilot throughout its voyage.

If I may be of further assistance, please advise.

GU:mi  
91-090.mai

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<sup>7/</sup> 55 L.Ed.2d at 189.

<sup>8/</sup> 55 L.Ed.2d at 189-190.

<sup>9/</sup> 46 U.S.C. 8502(c). See footnote 5.

**Capt. W.E. Murphy, Inc.**P.O. BOX 597  
HOMER, ALASKA 99803

(907) 235-8271

8 May 1991

Senator Fred Zharoff  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Zharoff;

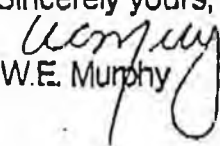
I am writing to you to ask for your assistance in passing some form of state pilot legislation this session.

As I am sure you are aware, last year Governor Cowper ordered his research staff to study all aspects of Alaska's state pilotage system. The result was a remarkably thorough and insightful report entitled Improving Alaska's State Pilotage System. Based on the recommendations in the report, Representative Cheri Davis offered H.B. 194 on the House side, and Senator Drue Pearce offered S.B. 218 on the Senate side. Both of these bills call for higher entry standards to the piloting profession, better pilot training, better local knowledge, and other features in the public interest.

Unfortunately, Rep. Davis bill seems to be stuck in the House Judiciary committee. Senator Pearce's bill, however, is moving through the Senate committee process and should come to your attention soon. When you examine this bill, I am confident you will find it to be legislation you can proudly support because it is a safety bill, based on the recommendations of independent researchers. If you agree this is good legislation for the people of Alaska, I urge you to support S.B. 218.

Thanks for your interest and assistance.

Sincerely yours,

  
W.E. Murphy

Faxed 5/8/91; hard copy to follow

ANTITRUST DISCUSSION

The proposed legislation (SB 218/HB 194) would amend AS 45.50.572 for the purpose of placing pilot organizations into the same status as non-profit labor, agricultural and horticultural organizations for purposes of Alaska's antitrust laws, AS 45.50.562 -- 45.50.596. The inappropriateness of this becomes obvious when one appreciates the fact that a pilot organization is a for-profit enterprise capable of engaging in the types of conduct that Alaska's antitrust laws were specifically designed to prohibit. There is little, if any, similarity between pilot organizations and the other organizations presently exempted by AS 45.50.572.

A pilot organization is effectively a corporation in a different form. The members are the owners. Although the member-owners provide pilotage services, the organization also hires non-members to pilot ships (commonly referred to as "contract pilots"). The organization contracts directly with shippers for the payment of pilotage fees. Accordingly, when a member pilot or a contract pilot is dispatched to a ship, the shipper pays the amount owing directly to the organization rather than to the individual pilot. The receipts are pooled by the organization and expenses paid. The largest expense is the salaries of contract pilots which are always substantially below the amounts paid by the shippers for the services of the contract pilots. As a result, a profit results which is allocated among the member owners on such basis as they have agreed. The net result is that the member pilots receive not only the fees related to the pilotage services they performed but also a share of the revenues realized from the efforts of the contract pilots.

As is readily apparent, this is not even close to the way in which a labor, agricultural or horticultural organization operates. A pilot organization is a business created to make money for its member-owners, plain and simple.

As a business, a pilot organization could enter into an agreement with a shipping company that would be the type of contract prohibited by AS 45.50.566. For example: the agreement could specify that the pilot organization will not service the ships of competing shippers or that the pilot organization will charge competing shippers a higher rate. This type of agreement would clearly be inconsistent with the public interest. For that reason, Alaska has prohibited all for-profit businesses from entering into them. We cannot see why these agreements are any less objectionable when they occur in the pilotage industry.

Under existing Alaska pilotage law, a pilot is only able to upgrade and maintain his or her license by having other pilots give them the opportunity to pilot and dock ships. Effectively, Alaska has an apprenticeship system such that persons desiring to become pilots require the cooperation of existing pilots. The

members of a pilot organization could conspire together to prevent others from becoming pilots and thereby monopolize pilotage work among themselves. In fact, at least one lawsuit is now pending in Alaska alleging just that. By conspiring to prevent others from becoming pilots, the effect is to artificially keep pilotage rates and compensation high by limiting pilot supply. This type of conduct is and should be prohibited by AS 45.50.564. It is not in the public interest to create an exemption that would change this.

Competing pilot organizations serve the public interest by making sure that shippers and others using pilotage services are afforded an opportunity to select who they will deal with. Alaska, in its antitrust laws, recognizes that competition is fundamental to the American economic system. Therefore, if two competing pilot organizations were to merge, the public interest ramifications of that merger are an appropriate consideration. AS 45.50.568 permits the courts to make decisions in this area. The exemption sought in this legislation eliminates this ability on the part of the courts.

For the above reasons, there is no plausible reason to accord pilot organizations a special status not afforded to any other for-profit business.

91-D/PILOT.ANT  
5/8/91



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: JOE MERRILL Fax: 248-2567

Attn: \_\_\_\_\_ Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 5/9/91

Re: SB 218

Comments: JOE - THE TELECONFERENCE ON

FRIDAY IS LISTEN ONLY BUT MONDAY'S

WILL BE A FULL HEARING

*Rod*

Number of Pages: 7 Including Cover Sheet.



# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

TO: George Utermohle, Legal Counsel  
Legal Services Division

FROM: Rod Mourant, Legislative Aide  
Senate Labor & Commerce Committee

DATE: May 10, 1991

RE: SB 218

A handwritten signature in cursive script, appearing to read "Rod", positioned to the right of the "FROM:" line.

Using CSSB 218 (TRANS) work draft 7-LS0923\D as the document, please draft each of the fourteen Coast Guard proposed amendments and each of the twenty-two AK Steamship Operators amendments as individual, stand-alone amendments.

This legislation is on the Labor & Commerce Committee agenda for Monday, May 13th.

Thank you.

Attachment

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

### DIVISION OF OCCUPATIONAL LICENSING

WALTER J. HICKEL, GOVERNOR

P.O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2534

May 10, 1991

Senator Drue Pearce

Dear Senator Pearce:

If the Board of Marine Pilots would advocate an assessment on Marine Pilot licensees sufficient to implement SB218 for FY '92, then the Department of Commerce and Economic Development would have no objection to such an assessment. I understand that this type of assessment has occurred twice within recent years for other boards with sweeping changes. Both times this assessment was done through Statutes and I understand that would be the proper procedure in the case of Marine Pilots.

Sincerely,

*Ann Boudreaux*

Ann Boudreaux  
Director

MAY 13, 1991

DRUE -

RE: SB 218

I SPOKE WITH BILL HUDSON.

HE SUGGESTS A FOUR STEP APPROACH TO TARIFFS:

1. DEFINE WHAT EXPENSE ITEMS ARE INCLUDED IN A TARIFF.  
HE BELIEVES IT SHOULD COVER ACTUAL HOURS ON VESSEL AS WELL AS DIRECT ASSOCIATED COSTS. (DISPATCH AND TRANSPORTATION EXPENSES.)
2. ESTABLISH MAXIMUM ALLOWABLE TARIFFS.
3. ALLOW TARIFFS TO BE MODIFIED NO MORE THAN BIANNUALLY.
4. REQUIRE ADOPTION OF TARIFFS IN A PROCEDURE IN ACCORD WITH REGULATION ADOPTION PROCEDURES IN AS 44.62.

May 14, 1991

Drue -

RE: SB 218 Exxon Comments

Dave Parrish reviewed the bill and have these comments:

Pg 6 Ln 7 may cause problem if its retroactively applied.

pG 6 Ln 20 "certain waters" is too vague.

*copy file to me  
at 2:00 PM*

*T. Rod*

Bob  
bill files  
MAY 14 1991

# SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977  
Homer, Alaska 99603

Tel: (907) 235-8783  
Fax: (907) 235-6119

Senator Drue Pearce,  
Representative Cheri Davis,  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Senator Pierce and Representative Davis,

This is to advise you that the South West Alaska Pilots Association supports a one time assesment of every Alaska state pilot, to fund costs associated with House Bill 194 and Senate Bill 218.

Sincerely yours  
*R.L. Hendricks*  
R.L. Hendricks Pres.

INTERNATIONAL

ORGANIZATION

ROBERT J. LOWEN  
International President  
F. ELWOOD KYSER  
International Secretary/Treasurer  
GEORGE A. QUICK  
Vice President

OF  
**MASTERS  
MATES &  
PILOTS**

J. ALFRED ELLIS JR.  
East Coast Regional Representative  
DAVID C. WHELAN  
Gulf Coast Regional Representative  
REX POLLITT  
West Coast Regional Representative  
EMIL F. BOWERMAN  
Panama Canal Regional Representative

June 28, 1990

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

Dear Mr. Tamashiro:

At a recent hearing on proposed amendments to Hawaii Administrative Rules concerning Port Pilots, a participant, Captain Jean Louis Lependu, submitted a statement that this Organization supported the proposed changes. His statement is erroneous, and we would like to correct the record before any final determination is made by the Department.

We are opposed to a "Statewide Pilotage System" and a "Central Scheduling System" as these terms are used and defined in the proposed amendments.

We are in favor of a unified pilotage system under a single association responsible for all facets of administering and operating the pilotage service.

We have very strenuous objections to a number of features of the proposed amendments.

1) The provision that requests for particular pilots shall be accommodated, or that particular pilots may be refused, gives a shipowner or operator the ability to reward or penalize a pilot on the basis of the decisions he has to make that often involve balancing the needs of public safety against the economic interests of the shipowner. Such a provision would pressure a pilot to put the shipowner's business interests ahead of public safety and the protection of the environment in assessing the level of acceptable risk in any contemplated ship movement. One of the key elements in ensuring the safe movement of ships is insulating the pilot from this type of pressure.

2) Permitting selection of particular pilots by the agents of the shipowner in a system where fees are regulated and





the individual pilot benefits financially by being selected will inevitably lead to solicitation of illegal kick backs by the party responsible for ordering the pilot. In the unregulated federal pilotage sector, such corrupt practices are an everyday fact of life.

3) A Central Scheduling System established by the Director and operated by his designee under work rules imposed upon the pilots with the approval of the Director changes the nature of compulsory pilotage in a very drastic way. The laws governing liability for the acts of compulsory pilots is well established. He is solely responsible for his own actions so long as there is no element of control over his actions by another party. It would seem that the proposed regulations envision a great deal of control over the actions of pilots by the Director through his designee by enforcing work rules that are not the product of mutual agreement between the pilots. With millions of dollars in potential liability at stake, there is little doubt that the issue of control over pilot work rules and assignments by a "deep pocket" state agency will be litigated. Anyone attempting to draft work rules that avoid this potential problem will be walking an exceedingly fine and treacherous line.

4) The requirement that pilots train deputy pilots under compulsion is not practical. The primary means of training any pilot in any port is "hands on" experience gained under the tutelage of an experienced senior pilot who acts as trainer. It requires the trainer to turn the ship over to an inexperienced "pilot in training" and permit him to handle the ship under the senior pilots supervision and responsibility. In every pilotage system there are pilots who feel uncomfortable with this indirect control and responsibility and refuse to act as trainers. In all cases, acceptance of the role of trainer depends upon an assessment of the trainee and the type of ship involved. It is not a relationship that should be imposed by operation of law.

The implementation of the proposed rules would codify and write into the rules a stop-gap solution to a bad situation that has developed in Hawaii. It would accept and establish a precedent for a fragmented pilotage system with needless duplication of services and equipment.

We strongly support action to create a unified pilotage system in a single entity. The problem should be addressed with that goal in mind, rather than cobbling together partial solutions that can create unknown consequences.

Means should be explored to create a single unified pilot association by statute or regulation. Conditions could be



imposed on licensing or service requirements that can be met only through working within the Association. Such laws could vary from an outright requirement that the license is conditional on membership in the recognized Association, to coercive regulations requiring equipment, service requirements, or billing and financial arrangements that can only be met by membership in the Association.

If we can be of any assistance in explaining or clarifying our views in greater detail, please do not hesitate to contact us.

Sincerely,

George A. Quick  
Vice President - Pilotage

GAQ:kae

SECTION ANALYSIS  
SB 218

The following is a section by section analysis of SB 219.

Section 1. Purpose of sections 16, 18, and 19.

Section 2. Changes the period covered by the reemployment benefits report submitted by the administrator. Adds to the administrator's duty to monitor the disclosure of the medical manager created in Section 9.

Section 3. Provides the administrator with the authority to review the file and determine whether an employee is eligible for an eligibility evaluation. The purpose of this amendment is to codify the rehabilitation administrator's current practice.

Section 4. For purposes of vocational rehabilitation benefits eligibility this section adds authority for para-medical personnel to determine physical capacities of employees in the case of muscular, skeletal or neurological injuries.

Section 5. Requires the rehabilitation specialist to certify that the reemployment plan meets the requirements imposed under AS 23.30.041(h). Requires amendment of a plan that does not meet statutory requirements, and prohibits an additional charge by the rehabilitation specialist for amending the plan unless approved by the rehabilitation administrator.

Section 6. This section provides for payment of 60 percent of the employee's spendable weekly wage for the time between reaching medical stability but before receiving an impairment rating. Payments during this time, except for the first 30 days, will be offset against the permanent impairment rating.

In addition, if a controversion or appeal of the employees claim delays completion of rehabilitation, the employer shall pay 60 percent of the spendable weekly wage during this period and the two year limit is tolled. This payment will not be offset against the permanent impairment rating.

Section 7. This section provides that the cost of the reemployment specialist shall be paid by the employer, may not be included in the cost of the reemployment plan, and allows the board to compare fees and determine the reasonableness of changes by the reemployment specialist.

Section 8. This section adds the definition of a medical manager.

Section 9. This section requires the medical manager to send a notice to the employee, employer, and the employee's physician defining the medical managers role.

Section 10. Employers who provide health insurance to employees and covered dependents will reimburse injured employees for replacement coverage or an amount equal to the employer's contribution, whichever amount is less. However, the employee must provide continued proof of coverage.

The employer will start payment when current coverage ceases and cease payments when employee is no longer receiving compensation for the injury or 18 months whichever is shorter. It provides a penalty for failure to make the required payment.

Section 11. This section establishes a civil penalty that the board may impose if the employer fails to obtain the required insurance.

Section 12. This section requires that all attorney fees and costs awarded a prevailing employer disputing compensation with another employer be reasonable.

Section 13. This section corrects conflicting language regarding procedure and clarifies the method of determining employee's minimum weekly compensation rate. The purpose is to codify the board's current practice.

Section 14. This section requires an impairment rating be determined by a licensed physician or in some cases by paramedical personnel.

Section 15. This section clarifies the right to compensation that survives the death of the employee.

Section 16. This section limits the civil liability of an insurer, insurance service agent, or trade association for performing or failing to perform a safety inspection or safety advisory service.

Section 17. This section provides that a person acting as a volunteer emergency medical technician is considered an employee of the state for purposes of workers' compensation and specifies the calculation of gross weekly earnings.

Section 18. This section amends the definition of "gross weekly earnings" to include temporary disability compensation.

Section 19. This section amends the definition of "medical stability" to include lack of deterioration, as well as lack of improvement from the effects of an injury.

Section 20. This section provides definition of volunteer emergency medical technician.

Section 21. This section requires the division of insurance to prepare a report on implementation of a contracting classification premium adjustment program.

Section 22. This section provides a transition section for reporting on reemployment benefits.

Section 23. This section establishes an effective date.

CS FOR SENATE BILL NO. 218 (TRANSPORTATION)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 5/10/91  
Referred: Labor and Commerce

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

5 \* Section 1. POLICY, FINDINGS, AND INTENT. (a) It is the policy of the state to prevent the  
6 loss of lives and property, and to protect the marine environment of the state by requiring compulsory  
7 pilotage in certain water of and adjacent to the state.

8 (b) The legislature finds that

9 (1) in order to assure the protection of lives and property and the marine environment  
10 of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels  
11 in certain water of and adjacent to the state;

12 (2) it is necessary to give the Board of Marine Pilots broad statutory authority, including  
13 the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training  
14 and licensing of marine pilots;

1 (3) marine pilots operating independently of the shipping industry have provided and will  
2 continue to provide essential services to the people of the state;

3 (4) marine pilots further the public interest by providing safe pilotage in the water of the  
4 state;

5 (5) in the past, pilot organizations have provided, and in the future will continue to  
6 provide, important services on behalf of marine pilots; these pilot organizations have furthered the policy  
7 of protecting lives and property and the marine environment in the water of the state.

8 (c) It is the intent of the legislature that the Board of Marine Pilots work with

9 (1) marine pilots to ensure that safe pilotage is maintained in the state;

10 (2) pilot organizations in a cooperative effort to enhance the policy of protecting lives  
11 and property and the marine environment in the water of the state.

12 \* Sec. 2. AS 08.03.010(c)(12) is amended to read:

13 (12) Board of Marine Pilots (AS 08.62.010) -- June 30, 1995 [1991];

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

15 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint  
16 the members of the board under AS 08.01.020.

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

18 Sec. 08.62.030. MEETINGS. The board shall hold at least three regularly scheduled  
19 meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special  
20 meetings at the call of the chair or at the request of a majority of the members of the board  
21 [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

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

23 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

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

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

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

1 (4) adopt regulations establishing  
2 (A) pilotage regions in the state;  
3 (B) the criteria related to a training and investigation fee to be  
4 remitted to the board;  
5 (C) the criteria by which pilotage tariffs are established; and  
6 (D) pilotage tariffs for each pilotage region [UNDER THE  
7 ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS  
8 BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS  
9 WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED  
10 TO APPLY THE STANDARDS IN THE REGULATIONS];

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

13 (6) review and approve the bvlaws and the operating rules of pilot  
14 organizations;

15 (7) audit a pilot organization or an individual pilot as considered necessary  
16 by the board; and

17 (8) review and approve training programs conducted by pilot organizations  
18 [IT].

19 (b) The board may, by regulation, make any other provision for proper and safe pilotage  
20 upon the water [WATERS] covered by this chapter and for the efficient administration of this  
21 chapter, including establishing

22 (1) different licensing criteria in pilotage regions if justified by regional  
23 differences in piloting;

24 (2) a mandatory random drug and alcohol testing program for pilots licensed  
25 under this chapter; and

26 (3) criteria for trainee selection and for training programs conducted by pilot  
27 organizations.

28 \* Sec. 6. AS 08.62.040 is amended by adding a new subsection to read:

29 (c) For good cause, the board may require a pilot licensed under this chapter to submit  
30 to a physical or mental examination to determine the pilot's fitness to perform the duties of a  
31 pilot.

1 \* Sec. 7. AS 08.62 is amended by adding a new section to article 1 to read:

2 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department, with the approval  
3 of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and  
4 enforce the provisions of this chapter. The coordinator may not be an active member of a pilot  
5 organization in the state and may not work as a pilot while employed as the coordinator, except  
6 to the extent required by official duties. The coordinator is in the partially exempt service under  
7 AS 39.25.120.

8 \* Sec. 8. AS 08.62.080 is amended by adding new subsections to read:

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

12 (c) The board shall establish dates for license examinations and shall provide public  
13 notice of the dates for license examinations.

14 \* Sec. 9. AS 08.62.090 is amended by adding a new subsection to read:

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

17 \* Sec. 10. AS 08.62.100 is repealed and reenacted to read:

18 Sec. 08.62.100. QUALIFICATIONS FOR LICENSE. (a) The board shall issue a pilot  
19 license to a person if the person is a citizen of the United States, passes the examinations given  
20 by the board, qualifies under regulations adopted by the board, and meets the qualifications in  
21 (b) - (d) of this section.

22 (b) In addition to the qualifications in (a) of this section, an applicant may not receive  
23 a license under this section unless the applicant provides documentation to the board of the  
24 following service:

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

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

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

1 (4) two years of service as commanding officer of United States government  
2 vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam  
3 or motor vessels of any gross tons; or

4 (5) three years of experience as a member of an organized professional pilots  
5 association during which the candidate was actively engaged in piloting while holding a  
6 minimum license as a master of freight or towing vessels of not more than 1,600 gross tons.

7 (c) An applicant for a license under this section shall possess an endorsement of first  
8 class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions  
9 for the pilotage region for which the applicant seeks to be licensed.

10 (d) The board may impose other entry level qualifications for a license for a particular  
11 pilotage region.

12 (e) In this section, "years of service" is determined in a manner consistent with the  
13 regulatory standards of the United States Coast Guard relating to years of service.

14 \* Sec. 11. AS 08.62.120 is repealed and reenacted to read:

15 Sec. 08.62.120. RENEWAL. (a) Licenses issued under this chapter expire on  
16 December 31 of each even-numbered year. In addition to complying with the requirements of  
17 AS 08.01.100, in order to renew a license a pilot shall

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

19 (2) meet the minimum qualifications set out in AS 08.62.100 and the regulations  
20 adopted by the board under AS 08.62.100;

21 (3) on a form approved by the board, provide evidence of a satisfactory physical  
22 examination by a licensed physician within 60 days before the date of renewal; and

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

24 (b) A licensed pilot who has not piloted in the region for which the pilot is licensed for  
25 at least 60 days during the two years before applying for renewal may not have the license  
26 renewed until the pilot completes the number of familiarization trips required by the board in the  
27 pilotage region for which the license will be renewed.

28 \* Sec. 12. AS 08.62.130 is repealed and reenacted to read:

29 Sec. 08.62.130. LAPSED LICENSE. The board shall reinstate a lapsed license if, in  
30 addition to complying with the requirements of AS 08.01.100(a) - (c) and AS 08.62.120, the pilot  
31 takes and passes a written and oral examination if the license has been lapsed one year or more.

1 \* Sec. 13. AS 08.62.150(a) is amended to read:

2 (a) The board shall [MAY] impose a disciplinary sanction on a person licensed under  
3 this chapter when the board finds that the person

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

5 (2) is chemically impaired [HABITUALLY INTOXICATED];

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

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

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

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

10 (7) has had the person's United States Coast Guard pilot license conditioned.

11 suspended, or revoked; or

12 (8) charges, collects, or receives an amount for pilotage services that is  
13 different from the pilotage tariff established by the board [SUFFERED REVOCATION OF  
14 FEDERAL LICENSURE AS A PILOT].

15 \* Sec. 14. AS 08.62.155 is repealed and reenacted to read:

16 Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action  
17 under AS 08.01.075.

18 \* Sec. 15. AS 08.62.160 is amended to read:

19 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel  
20 subject to this chapter navigating certain water of or adjacent to the state [THE INSIDE  
21 COASTAL WATERS OF ALASKA] as determined by the board in regulation shall employ a  
22 pilot holding a valid license under this chapter. A vessel in the mandatory pilotage water of  
23 the state shall be under the direction and control of a pilot licensed under this chapter  
24 during movement of the vessel, unless the pilot is removed by the master for cause.

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

26 Sec. 08.62.165. LIMITATION OF LIABILITY. (a) A pilot licensed under this chapter  
27 is not liable for damages in excess of \$5,000 per incident for damages or loss occurring as a  
28 result of the error, omission, fault, or neglect of the pilot in performing pilotage services, except  
29 that the limitation does not apply in a case where the pilot is either grossly negligent or guilty  
30 of wilful misconduct.

31 (b) Nothing in this section exempts a vessel, a vessel's cargo, or the owner or operator

1 of a vessel or cargo from liability for damage or loss caused by the vessel, the vessel's cargo,  
2 or the owner or operator of the vessel or cargo to the vessel, the vessel's cargo, another person,  
3 or other property on the ground that

4 (1) the vessel was piloted by a pilot licensed under this chapter, or

5 (2) the damage or loss occurred as a result of the error, omission, fault, or neglect  
6 of a pilot licensed under this chapter.

7 (c) An organization of pilots is not liable for claims arising from acts or omissions of a  
8 pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot  
9 is not liable, directly or as a member of an organization of pilots, for claims arising from acts  
10 or omissions of another pilot or organization of pilots that relate, directly or indirectly, to pilotage  
11 of a vessel. This subsection does not apply to acts or omissions relating to the ownership or  
12 operation of pilot boats or the transportation of pilots to and from a vessel to be piloted.

13 \* Sec. 17. AS 08.62 is amended by adding a new section to read:

14 Sec. 08.62.175. PILOT ORGANIZATIONS. Marine pilots may organize themselves into  
15 organizations, to the extent that the organizations are permitted under state and federal law.

16 \* Sec. 18. AS 08.62.190 is amended to read:

17 Sec. 08.62.190. PENALTIES [PENALTY]. (a) A master or owner of a vessel required  
18 by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available,  
19 unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a  
20 misdemeanor and, upon conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor  
21 more than \$15,000 for the first offense and not less than \$10,000 nor more than \$30,000 for  
22 the second offense [\$5,000].

23 (b) A person who violates any other provision of this chapter or a regulation adopted  
24 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine  
25 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

26 \* Sec. 19. AS 08.62 is amended by adding a new section to read:

27 Sec. 08.62.990. SHORT TITLE. This chapter may be cited as the Alaska Marine  
28 Pilotage Act.

29 \* Sec. 20. AS 39.25.120(c) is amended by adding a new paragraph to read:

30 (22) marine pilot coordinator of the Board of Marine Pilots.

31 \* Sec. 21. AS 45.50.572(a) is amended to read:

1 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,  
2 agricultural, [OR] horticultural, or marine pilot organizations created for the purpose of mutual  
3 help, and not conducted for profit, or forbid or restrain members of those organizations from  
4 lawfully carrying out the legitimate objectives of them; nor are these organizations or members  
5 illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 -  
6 45.50.596.

7 \* Sec. 22. TRANSITION; MARINE PILOT LICENSE. (a) A marine pilot license issued under  
8 AS 08.62.100 before the effective date of this Act shall be valid for the period for which the license was  
9 issued and may be renewed until December 31, 1994, without examination upon payment of the marine  
10 pilot license fee.

11 (b) A person may not hold a marine pilot license after December 31, 1994, without satisfying  
12 the requirements of AS 08.62.100, as amended by sec. 10 of this Act.

13 (c) Notwithstanding AS 08.62.080(b), added by sec. 8 of this Act, a marine pilot license issued  
14 under AS 08.62.100 before the effective date of this Act, and for subsequent renewals of the license,  
15 entitles the licensee to pilot vessels in any marine pilotage region in the state until December 31, 1994.

16 (d) Notwithstanding (a) - (c) of this section, a person licensed under this chapter who applies  
17 for a change, amendment, or an endorsement for the person's license must qualify for the change,  
18 amendment, or endorsement under AS 08.62 as amended by this Act and implementing regulations  
19 adopted by the Board of Marine Pilots.

20 \* Sec. 23. INVESTIGATION OF MARINE ACCIDENTS. The marine pilot coordinator of the Board  
21 of Marine Pilots shall cooperate with federal and state agencies responsible for regulation of marine  
22 pilots and the investigation of marine accidents to develop guidelines for, and a system of timely,  
23 thorough, and fair investigations of, marine accidents involving death or injury to a person or damage  
24 to property. The marine pilot coordinator shall submit a report on the guidelines and system developed  
25 to investigate marine accidents and on recommendations for legislation necessary to provide for the  
26 investigation of marine accidents to the legislature on the first legislative day of the Second Regular  
27 Session of the Seventeenth Alaska State legislature.

28 \* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

7-LS0923D

Utter-ohle

5/8/91

**CS FOR SENATE BILL NO. 218 (TRANSPORTATION)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

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

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7 pilotage in certain water of and adjacent to the state.

8 (b) The legislature finds that

9 (1) in order to assure the protection of lives and property and the marine environment  
10 of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels  
11 in certain water of and adjacent to the state;

12 (2) it is necessary to give the Board of Marine Pilots broad statutory authority, including  
13 the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training  
14 and licensing of marine pilots;

1 (3) marine pilots operating independently of the shipping industry have provided and will  
2 continue to provide essential services to the people of the state;

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7 of protecting lives and property and the marine environment in the water of the state.

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20 meetings at the call of the chair or at the request of a majority of the members of the board  
21 [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

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

23 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

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

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

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

1 (4) adopt regulations establishing  
2 (A) pilotage regions in the state;  
3 (B) the criteria related to a training and investigation fee to be  
4 remitted to the board;  
5 (C) the criteria by which pilotage tariffs are established; and  
6 (D) pilotage tariffs for each pilotage region [UNDER THE  
7 ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS  
8 BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS  
9 WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED  
10 TO APPLY THE STANDARDS IN THE REGULATIONS];

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

13 (6) review and approve the bylaws and the operating rules of pilot  
14 organizations;

15 (7) audit a pilot organization or an individual pilot as considered necessary  
16 by the board; and

17 (8) review and approve training programs conducted by pilot organizations  
18 [IT].

19 (b) The board may, by regulation, make any other provision for proper and safe pilotage  
20 upon the water [WATERS] covered by this chapter and for the efficient administration of this  
21 chapter, including establishing

22 (1) different licensing criteria in pilotage regions if justified by regional  
23 differences in piloting;

24 (2) a mandatory random drug and alcohol testing program for pilots licensed  
25 under this chapter; and

26 (3) criteria for trainee selection and for training programs conducted by pilot  
27 organizations.

28 \* Sec. 6. AS 08.62.040 is amended by adding a new subsection to read:

29 (c) For good cause, the board may require a pilot licensed under this chapter to submit  
30 to a physical or mental examination to determine the pilot's fitness to perform the duties of a  
31 pilot.

1 \* Sec. 7. AS 08.62 is amended by adding a new section to article 1 to read:

2 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department, with the approval  
3 of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and  
4 enforce the provisions of this chapter. The coordinator may not be an active member of a pilot  
5 organization in the state and may not work as a pilot while employed as the coordinator, except  
6 to the extent required by official duties. The coordinator is in the partially exempt service under  
7 AS 39.25.120.

8 \* Sec. 8. AS 08.62.080 is amended by adding new subsections to read:

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

12 (c) The board shall establish dates for license examinations and shall provide public  
13 notice of the dates for license examinations.

14 \* Sec. 9. AS 08.62.090 is amended by adding a new subsection to read:

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

17 \* Sec. 10. AS 08.62.100 is repealed and reenacted to read:

18 Sec. 08.62.100. QUALIFICATIONS FOR LICENSE. (a) The board shall issue a pilot  
19 license to a person if the person is a citizen of the United States, passes the examinations given  
20 by the board, qualifies under regulations adopted by the board, and meets the qualifications in  
21 (b) - (d) of this section.

22 (b) In addition to the qualifications in (a) of this section, an applicant may not receive  
23 a license under this section unless the applicant provides documentation to the board of the  
24 following service:

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

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

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

1 (4) two years of service as commanding officer of United States government  
2 vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam  
3 or motor vessels of any gross tons; or

4 (5) three years of experience as a member of an organized professional pilots  
5 association during which the candidate was actively engaged in piloting while holding a  
6 minimum license as a master of freight or towing vessels of not more than 1,600 gross tons.

7 (c) An applicant for a license under this section shall possess an endorsement of first  
8 class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions  
9 for the pilotage region for which the applicant seeks to be licensed.

10 (d) The board may impose other entry level qualifications for a license for a particular  
11 pilotage region.

12 (e) In this section, "years of service" is determined in a manner consistent with the  
13 regulatory standards of the United States Coast Guard relating to years of service.

14 \* Sec. 11. AS 08.62.120 is repealed and reenacted to read:

15 Sec. 08.62.120. RENEWAL. (a) Licenses issued under this chapter expire on  
16 December 31 of each even-numbered year. In addition to complying with the requirements of  
17 AS 08.01.100, in order to renew a license a pilot shall

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

19 (2) meet the minimum qualifications set out in AS 08.62.100 and the regulations  
20 adopted by the board under AS 08.62.100;

21 (3) on a form approved by the board, provide evidence of a satisfactory physical  
22 examination by a licensed physician within 60 days before the date of renewal; and

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

24 (b) A licensed pilot who has not piloted in the region for which the pilot is licensed for  
25 at least 60 days during the two years before applying for renewal may not have the license  
26 renewed until the pilot completes the number of familiarization trips required by the board in the  
27 pilotage region for which the license will be renewed.

28 \* Sec. 12. AS 08.62.130 is repealed and reenacted to read:

29 Sec. 08.62.130. LAPSED LICENSE. The board shall reinstate a lapsed license if, in  
30 addition to complying with the requirements of AS 08.01.100(a) - (c) and AS 08.62.120, the pilot  
31 takes and passes a written and oral examination if the license has been lapsed one year or more.

1 \* Sec. 13. AS 08.62.150(a) is amended to read:

2 (a) The board shall [MAY] impose a disciplinary sanction on a person licensed under  
3 this chapter when the board finds that the person

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

5 (2) is chemically impaired [HABITUALLY INTOXICATED];

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

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

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

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

10 (7) has had the person's United States Coast Guard pilot license conditioned.

11 suspended. or revoked; or

12 (8) charges, collects, or receives an amount for pilotage services that is  
13 different from the pilotage tariff established by the board [SUFFERED REVOCATION OF  
14 FEDERAL LICENSURE AS A PILOT].

15 \* Sec. 14. AS 08.62.155 is repealed and reenacted to read:

16 Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action  
17 under AS 08.01.075.

18 \* Sec. 15. AS 08.62.160 is amended to read:

19 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel  
20 subject to this chapter navigating certain water of or adjacent to the state [THE INSIDE  
21 COASTAL WATERS OF ALASKA] as determined by the board in regulation shall employ a  
22 pilot holding a valid license under this chapter. A vessel in the mandatory pilotage water of  
23 the state shall be under the direction and control of a pilot licensed under this chapter  
24 during movement of the vessel, unless the pilot is removed by the master for cause.

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

26 Sec. 08.62.165. LIMITATION OF LIABILITY. (a) A pilot licensed under this chapter  
27 is not liable for damages in excess of \$5,000 per incident for damages or loss occurring as a  
28 result of the error, omission, fault, or neglect of the pilot in performing pilotage services, <sup>4</sup>except  
29 that the limitation does not apply in a case where the pilot is either grossly negligent or guilty  
30 of wilful misconduct.

31 (b) Nothing in this section exempts a vessel, a vessel's cargo, or the owner or operator

1 of a vessel or cargo from liability for damage or loss caused by the vessel, the vessel's cargo,  
2 or the owner or operator of the vessel or cargo to the vessel, the vessel's cargo, another person,  
3 or other property on the ground that

4 (1) the vessel was piloted by a pilot licensed under this chapter; or

5 (2) the damage or loss occurred as a result of the error, omission, fault, or neglect  
6 of a pilot licensed under this chapter.

7 (c) An organization of pilots is not liable for claims arising from acts or omissions of a  
8 pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot  
9 is not liable, directly or as a member of an organization of pilots, for claims arising from acts  
10 or omissions of another pilot or organization of pilots that relate, directly or indirectly, to pilotage  
11 of a vessel. This subsection does not apply to acts or omissions relating to the ownership or  
12 operation of pilot boats or the transportation of pilots to and from a vessel to be piloted.

13 \* Sec. 17. AS 08.62 is amended by adding a new section to read:

14 Sec. 08.62.175. PILOT ORGANIZATIONS. Marine pilots may organize themselves into  
15 organizations, to the extent that the organizations are permitted under state and federal law.

16 \* Sec. 18. AS 08.62.190 is amended to read:

17 Sec. 08.62.190. PENALTIES [PENALTY]. (a) A master or owner of a vessel required  
18 by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available,  
19 unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a  
20 misdemeanor and, upon conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor  
21 more than \$15,000 for the first offense and not less than \$10,000 nor more than \$30,000 for  
22 the second offense [\$5,000].

23 (b) A person who violates any other provision of this chapter or a regulation adopted  
24 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine  
25 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

26 \* Sec. 19. AS 08.62 is amended by adding a new section to read:

27 Sec. 08.62.990. SHORT TITLE. This chapter may be cited as the Alaska Marine  
28 Pilotage Act.

29 \* Sec. 20. AS 39.25.120(c) is amended by adding a new paragraph to read:

30 (22) marine pilot coordinator of the Board of Marine Pilots.

31 \* Sec. 21. AS 45.50.572(a) is amended to read:

1 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,  
2 agricultural, [OR] horticultural, or marine pilot organizations created for the purpose of mutual  
3 help, and not conducted for profit, or forbid or restrain members of those organizations from  
4 lawfully carrying out the legitimate objectives of them; nor are these organizations or members  
5 illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 -  
6 45.50.596.

7 \* Sec. 22. TRANSITION; MARINE PILOT LICENSE. (a) A marine pilot license issued under  
8 AS 08.62.100 before the effective date of this Act shall be valid for the period for which the license was  
9 issued and may be renewed until December 31, 1994, without examination upon payment of the marine  
10 pilot license fee.

11 (b) A person may not hold a marine pilot license after December 31, 1994, without satisfying  
12 the requirements of AS 08.62.100, as amended by sec. 10 of this Act.

13 (c) Notwithstanding AS 08.62.080(b), added by sec. 8 of this Act, a marine pilot license issued  
14 under AS 08.62.100 before the effective date of this Act, and for subsequent renewals of the license,  
15 entitles the licensee to pilot vessels in any marine pilotage region in the state until December 31, 1994.

16 (d) Notwithstanding (a) - (c) of this section, a person licensed under this chapter who applies  
17 for a change, amendment, or an endorsement for the person's license must qualify for the change,  
18 amendment, or endorsement under AS 08.62 as amended by this Act and implementing regulations  
19 adopted by the Board of Marine Pilots.

20 \* Sec. 23. INVESTIGATION OF MARINE ACCIDENTS. The marine pilot coordinator of the Board  
21 of Marine Pilots shall cooperate with federal and state agencies responsible for regulation of marine  
22 pilots and the investigation of marine accidents to develop guidelines for, and a system of timely,  
23 thorough, and fair investigations of, marine accidents involving death or injury to a person or damage  
24 to property. The marine pilot coordinator shall submit a report on the guidelines and system developed  
25 to investigate marine accidents and on recommendations for legislation necessary to provide for the  
26 investigation of marine accidents to the legislature on the first legislative day of the Second Regular  
27 Session of the Seventeenth Alaska State legislature.

28 \* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

7-LS0923D  
Utermohle  
5/8/91

**CS FOR SENATE BILL NO. 218 (TRANSPORTATION)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the Board of Marine Pilots, marine pilots, marine pilot organizations,  
2 and investigations of marine accidents; extenuing the termination date of the Board of  
3 Marine Pilots; and providing for an effective date."

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

5 \* **Section 1. POLICY, FINDINGS, AND INTENT.** (a) It is the policy of the state to prevent the  
6 loss of lives and property, and to protect the marine environment of the state by requiring compulsory  
7 pilotage in certain water of and adjacent to the state.

8 (b) The legislature finds that

9 (1) in order to assure the protection of lives and property and the marine environment  
10 of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels  
11 in certain water of and adjacent to the state;

12 (2) it is necessary to give the Board of Marine Pilots broad statutory authority, including  
13 the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training  
14 and licensing of marine pilots;

1 (3) marine pilots operating independently of the shipping industry have provided and will  
2 continue to provide essential services to the people of the state;

3 (4) marine pilots further the public interest by providing safe pilotage in the water of the  
4 state;

5 (5) in the past, pilot organizations have provided, and in the future will continue to  
6 provide, important services on behalf of marine pilots; these pilot organizations have furthered the policy  
7 of protecting lives and property and the marine environment in the water of the state.

8 (c) It is the intent of the legislature that the Board of Marine Pilots work with

9 (1) marine pilots to ensure that safe pilotage is maintained in the state;

10 (2) pilot organizations in a cooperative effort to enhance the policy of protecting lives  
11 and property and the marine environment in the water of the state.

12 \* Sec. 2. AS 08.03.010(c)(12) is amended to read:

13 (12) Board of Marine Pilots (AS 08.62.010) -- June 30, 1995 [1991];

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

15 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint  
16 the members of the board under AS 08.01.020.

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

18 Sec. 08.62.030. MEETINGS. The board shall hold at least three regularly scheduled  
19 meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special  
20 meetings at the call of the chair or at the request of a majority of the members of the board  
21 [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

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

23 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

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

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

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

- 1 (4) adopt regulations establishing  
2 (A) pilotage regions in the state;  
3 (B) the criteria related to a training and investigation fee to be  
4 remitted to the board;  
5 (C) the criteria by which pilotage tariffs are established; and  
6 (D) pilotage tariffs for each pilotage region [UNDER THE  
7 ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS
- 8 BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS
- 9 WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED
- 10 TO APPLY THE STANDARDS IN THE REGULATIONS];
- 11 (5) make available, upon request, copies of this chapter and the regulations
- 12 adopted under this chapter;
- 13 (6) review and approve the bylaws and the operating rules of pilot  
14 organizations;
- 15 (7) audit a pilot organization or an individual pilot as considered necessary  
16 by the board; and
- 17 (8) review and approve training programs conducted by pilot organizations  
18 [IT].

19 (b) The board may, by regulation, make any other provision for proper and safe pilotage  
20 upon the water [WATERS] covered by this chapter and for the efficient administration of this  
21 chapter, including establishing

22 (1) different licensing criteria in pilotage regions if justified by regional  
23 differences in piloting;

24 (2) a mandatory random drug and alcohol testing program for pilots licensed  
25 under this chapter; and

26 (3) criteria for trainee selection and for training programs conducted by pilot  
27 organizations.

28 \* Sec. 6. AS 08.62.040 is amended by adding a new subsection to read:

29 (c) For good cause, the board may require a pilot licensed under this chapter to submit  
30 to a physical or mental examination to determine the pilot's fitness to perform the duties of a  
31 pilot.

1 \* Sec. 7. AS 08.62.080 is amended by adding a new section to article 1 to read:

2 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department, with the approval  
3 of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and  
4 enforce the provisions of this chapter. The coordinator may not be an active member of a pilot  
5 organization in the state and may not work as a pilot while employed as the coordinator, except  
6 to the extent required by official duties. The coordinator is in the partially exempt service under  
7 AS 39.25.120.

8 \* Sec. 8. AS 08.62.080 is amended by adding new subsections to read:

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

12 (c) The board shall establish dates for license examinations and shall provide public  
13 notice of the dates for license examinations.

14 \* Sec. 9. AS 08.62.090 is amended by adding a new subsection to read:

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

17 \* Sec. 10. AS 08.62.100 is repealed and reenacted to read:

18 Sec. 08.62.100. QUALIFICATIONS FOR LICENSE. (a) The board shall issue a pilot  
19 license to a person if the person is a citizen of the United States, passes the examinations given  
20 by the board, qualifies under regulations adopted by the board, and meets the qualifications in  
21 (b) - (d) of this section.

22 (b) In addition to the qualifications in (a) of this section, an applicant may not receive  
23 a license under this section unless the applicant provides documentation to the board of the  
24 following service:

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

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

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

1 (4) two years of service as commanding officer of United States government  
2 vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam  
3 or motor vessels of any gross tons; or

4 (5) three years of experience as a member of an organized professional pilots  
5 association during which the candidate was actively engaged in piloting while holding a  
6 minimum license as a master of freight or towing vessels of not more than 1,600 gross tons.

7 (c) An applicant for a license under this section shall possess an endorsement of first  
8 class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions  
9 for the pilotage region for which the applicant seeks to be licensed.

10 (d) The board may impose other entry level qualifications for a license for a particular  
11 pilotage region.

12 (e) In this section, "years of service" is determined in a manner consistent with the  
13 regulatory standards of the United States Coast Guard relating to years of service.

14 \* Sec. 11. AS 08.62.120 is repealed and reenacted to read:

15 Sec. 08.62.120. RENEWAL. (a) Licenses issued under this chapter expire on  
16 December 31 of each even-numbered year. In addition to complying with the requirements of  
17 AS 08.01.100, in order to renew a license a pilot shall

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

19 (2) meet the minimum qualifications set out in AS 08.62.100 and the regulations  
20 adopted by the board under AS 08.62.100;

21 (3) on a form approved by the board, provide evidence of a satisfactory physical  
22 examination by a licensed physician within 60 days before the date of renewal; and

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

24 (b) A licensed pilot who has not piloted in the region for which the pilot is licensed for  
25 at least 60 days during the two years before applying for renewal may not have the license  
26 renewed until the pilot completes the number of familiarization trips required by the board in the  
27 pilotage region for which the license will be renewed.

28 \* Sec. 12. AS 08.62.130 is repealed and reenacted to read:

29 Sec. 08.62.130. LAPSED LICENSE. The board shall reinstate a lapsed license if, in  
30 addition to complying with the requirements of AS 08.01.100(a) - (c) and AS 08.62.120, the pilot  
31 takes and passes a written and oral examination if the license has been lapsed one year or more.

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2 (a) The board shall [MAY] impose a disciplinary sanction on a person licensed under  
3 this chapter when the board finds that the person

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

5 (2) is chemically impaired [HABITUALLY INTOXICATED];

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

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

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

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

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

12 (8) charges, collects, or receives an amount for pilotage services that is  
13 different from the pilotage tariff established by the board [SUFFERED REVOCATION OF  
14 FEDERAL LICENSURE AS A PILOT].

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19 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel  
20 subject to this chapter navigating certain water of or adjacent to the state [THE INSIDE  
21 COASTAL WATERS OF ALASKA] as determined by the board in regulation shall employ a  
22 pilot holding a valid license under this chapter. A vessel in the mandatory pilotage water of  
23 the state shall be under the direction and control of a pilot licensed under this chapter  
24 during movement of the vessel, unless the pilot is removed by the master for cause.

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

26 Sec. 08.62.165. LIMITATION OF LIABILITY. (a) A pilot licensed under this chapter  
27 is not liable for damages in excess of \$5,000 per incident for damages or loss occurring as a  
28 result of the error, omission, fault, or neglect of the pilot in performing pilotage services, except  
29 that the limitation does not apply in a case where the pilot is either grossly negligent or guilty  
30 of wilful misconduct.

31 (b) Nothing in this section exempts a vessel, a vessel's cargo, or the owner or operator

1 of a vessel or cargo from liability for damage or loss caused by the vessel, the vessel's cargo,  
2 or the owner or operator of the vessel or cargo to the vessel, the vessel's cargo, another person,  
3 or other property on the ground that

4 (1) the vessel was piloted by a pilot licensed under this chapter; or

5 (2) the damage or loss occurred as a result of the error, omission, fault, or neglect  
6 of a pilot licensed under this chapter.

7 (c) An organization of pilots is not liable for claims arising from acts or omissions of a  
8 pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot  
9 is not liable, directly or as a member of an organization of pilots, for claims arising from acts  
10 or omissions of another pilot or organization of pilots that relate, directly or indirectly, to pilotage  
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16 \* Sec. 18. AS 08.62.190 is amended to read:

17 Sec. 08.62.190. PENALTIES [PENALTY]. (a) A master or owner of a vessel required  
18 by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available,  
19 unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a  
20 misdemeanor and, upon conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor  
21 more than \$15,000 for the first offense and not less than \$10,000 nor more than \$30,000 for  
22 the second offense [\$5,000].

23 (b) A person who violates any other provision of this chapter or a regulation adopted  
24 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine  
25 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

26 \* Sec. 19. AS 08.62 is amended by adding a new section to read:

27 Sec. 08.62.990. SHORT TITLE. This chapter may be cited as the Alaska Marine  
28 Pilotage Act.

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3 help, and not conducted for profit, or forbid or restrain members of those organizations from  
4 lawfully carrying out the legitimate objectives of them; nor are these organizations or members  
5 illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 -  
6 45.50.596.

7 \* Sec. 22. TRANSITION; MARINE PILOT LICENSE. (a) A marine pilot license issued under  
8 AS 08.62.100 before the effective date of this Act shall be valid for the period for which the license was  
9 issued and may be renewed until December 31, 1994, without examination upon payment of the marine  
10 pilot license fee.

11 (b) A person may not hold a marine pilot license after December 31, 1994, without satisfying  
12 the requirements of AS 08.62.100, as amended by sec. 10 of this Act.

13 (c) Notwithstanding AS 08.62.080(b), added by sec. 8 of this Act, a marine pilot license issued  
14 under AS 08.62.100 before the effective date of this Act, and for subsequent renewals of the license,  
15 entitles the licensee to pilot vessels in any marine pilotage region in the state until December 31, 1994.

16 (d) Notwithstanding (a) - (c) of this section, a person licensed under this chapter who applies  
17 for a change, amendment, or an endorsement for the person's license must qualify for the change,  
18 amendment, or endorsement under AS 08.62 as amended by this Act and implementing regulations  
19 adopted by the Board of Marine Pilots.

20 \* Sec. 23. INVESTIGATION OF MARINE ACCIDENTS. The marine pilot coordinator of the Board  
21 of Marine Pilots shall cooperate with federal and state agencies responsible for regulation of marine  
22 pilots and the investigation of marine accidents to develop guidelines for, and a system of timely,  
23 thorough, and fair investigations of, marine accidents involving death or injury to a person or damage  
24 to property. The marine pilot coordinator shall submit a report on the guidelines and system developed  
25 to investigate marine accidents and on recommendations for legislation necessary to provide for the  
26 investigation of marine accidents to the legislature on the first legislative day of the Second Regular  
27 Session of the Seventeenth Alaska State legislature.

28 \* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).