

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7951 HOUSE LABOR & COMMERCE

and to work into their piloting rotation novice members could legitimately be seen by the piloting group as being forced to "lower their standards."

In theory, a pilot could operate without being a member of an association. However, the costs of operation -- primarily capital investment (equipment) -- are so great as to make this an unrealistic possibility.

Providing pilot services involves a substantial capital investment necessary to establish an infrastructure through which services are provided. This includes a headquarters from which to dispatch pilots, the pilots boats used to carry the pilots to and from the ships, communication equipment, and a staff. The pilots licensed in each port have formed pilot associations which collectively bear the costs and disburse the funds to the individual members. A system of piloting which involves multiple providers of pilotage services would entail a duplication of these capital expenses that would be economically wasteful. By minimizing the capital investment involved in establishing a piloting system, the pilots are able to charge lower rates for their services.

The cost of a pilot boat is generally in excess of \$250,000, and may go as high as \$500,000. If a new pilot is not accepted into the existing association, how can he afford to make such a purchase on his own? If he is able to make such a purchase, how will a single pilot be able to obtain the volume of work necessary to pay for the boat?

Pilots working within associations which spread the cost of such a purchase among its members could, and almost certainly would, be able to provide the same services at less cost. The single pilot would be quickly driven out of business.

of lack of experience or some other work-related criterion. An assertion that taking an inexperienced pilot could lower the standards of practice they set for their organization would have to be taken seriously. For instance, they could require any applicant to have a level of experience equivalent to that of the least experienced current member. The effect of this would be that no novice pilot could ever get enough experience to qualify.

The only way competition would work on a practical level, and new pilots could survive (short of joining an association), would be if they could obtain the necessities such as dispatch service and boat service from a third party provider. Theoretically, this third party provider could stay in business by contracting with a number of independent pilots.

Again, there are serious problems with this approach. Such a service may not develop, or remain economically feasible, in all ports. Even if it does develop, what if its service becomes unreliable, or even hazardous? Delays of only a few hours can cost a shipping company tens of thousands of dollars.

Will the board discipline pilots who fail to meet a ship they had agreed to meet due to boat problems outside their control? What if it were alleged that this boat contracting service discriminates, or even conspires with some pilots to have problems "develop" when the boat is needed by other pilots? How would the board investigate a business entity it has no power to penalize? Without adding an additional level of bureaucracy by licensing these boat contracting companies, regulatory control would not exist.

2) Who would train the new pilots?

Presently, deputy pilots receive a minimum of two years of on-the-job training from existing pilots in their port. Simply put, pilots are willing to train each other because they are not in competition with one another.

Competition would change all that. How can anyone reasonably expect existing professionals to train new professionals who then plan to compete with the existing professionals, take their customers, and potentially deprive them of a living?

It is true that in other professions, notably doctors, existing professionals train new professionals. But the supply of persons needing a doctor's care appears virtually infinite, and training a new doctor does not endanger the economic survival of the veteran doctor. The demand for pilots is finite, and in some ports is actually in decline.

It would be possible for the board to contract with pilots to train other pilots. Of course the money to pay for this training would have to be raised in the form of higher piloting fees.

Nevertheless, another problem remains. It is not sufficient to train pilots on simulators or in the classroom -- pilots must be trained on ships, while these ships are traversing the harbor. They must be trained on all sizes of ships, day and night, and under all weather conditions.

Would the board hire pilots to train the new pilots, then contract directly with shipping companies to have their instructor pilot and their novice pilot perform the piloting duties aboard the ship? What if the shipping company did not care for this arrangement, and preferred to employ seasoned professionals? It is by no means certain that there would be sufficient pilotage contracts available to the board to undertake the responsibility of seeing that the deputy pilots get enough training.

At any rate, it is certain that a considerable additional bureaucracy would be necessary to administer this responsibility.

- 3) Isn't it reasonable to suppose that new pilots, under immense financial pressures to secure piloting contracts, will be more responsive to pressures from the shipping company they contract with, and perhaps "cut corners" on safety concerns?

No one supposes that the shipping company would ask the pilot to perform or sanction a truly dangerous maneuver. Shippers care about the safety of their ship. But the calculations are different from the perspective of the shipping concern than they are from an independent pilot. The shipper, balancing the utter certainty of saving money against the unlikely event of something going wrong, may urge the pilot to undertake a maneuver marginally more hazardous than the absolutely safest choice. While a maneuver only marginally more hazardous is not likely to result in an accident in any one instance, eventually an accident will occur.

Currently, the pilot exercises independent judgment, uninfluenced by fears of losing h's economic livelihood. Ships'

captains, on the other hand, are under tremendous economic pressures to keep on schedule. It is difficult to see how the welfare of the citizens and the State of Florida would be well served by altering the current system to place pilots under such pressure.

4. How could we be certain that all who need piloting services would be able to obtain it?

Currently, an implicit contract exists to provide piloting services to all ships requesting pilots, regardless of cost or hazard. Each piloting association organizes a pilot rotation system that ensures the availability of a pilot to all ships, at all times. A certain number of piloting personnel is assigned to duty at all times. As piloting requests come in, the dispatcher at the piloting station assigns a pilot to each job on a rotational basis. Without this system, a small ship (which would only provide the pilot with a minimum piloting fee), arriving late at night (and perhaps in foul weather) might find it difficult obtaining a pilot.

Staff has found no instance of this implicit compact being violated by the piloting associations. Currently, all ships who need piloting services are provided a pilot.

There would be no mechanism to assure this sort of reliability under a competitive environment. With small ships, it is actually possible for the costs and hazards of providing the service to outweigh the pilotage fee. While the safety of Florida and its environment demands pilotage in such an instance, no individual pilot or group of pilots would feel responsible (or could be held responsible) for failing to provide the service.

That 1989 report also discusses the various elements which are present in the regulation of a "natural monopoly."

In the case of the regulation of electric and gas utilities provided for in Ch. 366, F.S., competition is virtually eliminated due to the monopoly status of the utilities in particular geographic areas. (The Commission's) authority to approve territorial agreements and settle territorial disputes provides this monopoly control and protection from competition....

In return for the protection from competition offered utilities by Commission regulation, the utilities relinquish control over their rates, and therefore, the profits they may make from providing utility services. They gain from this regulatory control, however, because while the maximum profits utilities may earn may be restricted, they also are assured of an opportunity to earn a minimum of a reasonable return on their investments.... Regulation by the Commission serves to protect the public from a utility's advantage due to its monopoly status.... Electric and gas utilities are presumed to be "natural monopolies". (emphasis added)

The above quote notes that such regulation of a monopolistic industry may restrict the maximum profits which may be earned, but such regulation will also assure a "reasonable" profit sufficient to guarantee the continued existence of the service.

Similar regulatory provisions are found in other "natural monopolies." As stated in the 1989 Senate sunset review of chapter 367, Florida Statutes (Water and Sewer Systems):

The public benefits from state regulation of the water and sewer industry because it prevents utilities from abusing their monopoly position. Water and sewer systems cannot refuse to provide service to new customers or discontinue service to existing customers. Water and sewer systems also cannot discriminate in the rates they charge for service or increase their rates without Commission review and advance notice to customers. In

Considering the high skill necessary for performing piloting duties, the state has a responsibility to see that rates are adequate to assure that qualified personnel will aggressively seek and compete for the piloting position. However, the state has an equal responsibility to see that the rates do not provide pilots an unreasonable level of compensation. Protecting a profession from competition and providing it monopoly status entails added oversight responsibilities and regulatory control.

Conclusion #3

The implicit compact that pilots will provide service to all who need such service should be made explicit.

One of the characteristics of a protected, natural monopoly is that it cannot refuse service to any who need the service. This appears to be the case with pilots and piloting regulation. However, this is currently only an implicit, "unwritten," compact. If this "compact" is an important element, helping to justify the monopoly status of piloting regulation, it would be more proper to explicitly state the intent.

Conclusion #4

During rate hearings, the board should not be authorized to consider any rate in excess of the formal request submitted and publicly noticed.

Interested parties are notified by the board whenever it convenes to consider raising the rates. The board will have a specific rate-hike proposal before them, and it is this specific proposal which is publicly noticed.

A person whose business demands a great deal of his time may agree with the amount of the proposed raise and therefore determine that it is more important for him to attend to his business than attend a meeting where he does not intend to argue against the rate increase. However, in at least one instance in the past, the board has raised the pilotage rate to an even greater degree than that which was proposed and publicly noticed.

However, if the petitioner for a rate decrease should choose to make the economic impact upon his business the issue, it would be reasonable for the board to require some minimum amount of financial information sufficient to evaluate the petitioner's arguments.

In addition, there should be some control which would prevent abuse of the process. Once a hearing has taken place in response to a request to increase or decrease the rate, another request to change the rate in the same direction should not be allowed for a set period of time. Further, each group who proposes a rate hearing could be required to bear some proportion of the expense of the hearing.

Conclusion #7

The consumer price index has no direct relevance to pilotage rates.

The consumer price index (or any index relating to inflation), to the extent it has any relevance at all, has relevance only to pilot income. It has no direct relevance to piloting rates. Income for pilots can substantially increase without any raise in the pilotage rates. To make a rate hike request on the basis that rates should keep pace with inflation, without taking into account the very real possibility that increases in the volume of business and larger ships have already increased pilot income at a pace greater than any inflation increase, is unjustified.

Changes in the consumer price index or inflation statistics may be offered as a justification for a rate increase. But, they must be applied in relation to pilot income.

Conclusions #8

When examining the financial state of a pilot organization, it is necessary that the board have financial information on any pilot-owned business which sells to the pilot association and has that transaction or service charged as a piloting expense.

V. RECOMMENDATIONS:

Recommendation #1

Legislative intent sanctioning the unusual nature of piloting regulation should be placed in statute. This intent should note that, in the case of piloting regulation, the public interest is best served by recognizing the natural monopoly status of piloting.

Recommendation #2

The implicit contract that pilots will provide service to all who need such service should be made explicit.

Recommendation #3

During rate hearings, the board should not be authorized to consider any rate in excess of the formal request made and publicly noticed.

Recommendation #4

Consumers of piloting services should be represented on the board.

Recommendation #5

All parties with a legitimate vested interest in piloting rates should be afforded an opportunity to call for a rate hearing.

Recommendation #6

The consumer price index (or any index relating to inflation), to the extent it has any relevance at all, should have relevance only to pilot income.

ALASKA BOARD OF MARINE PILOTS

NARRATIVE STATEMENT

The Board of Marine Pilots held four regular meetings and three teleconferences during fiscal year 1993. The meetings were held in Juneau (3) and Anchorage (1), while the teleconferences were sited around the State to all groups and individuals expressing an interest in the proceedings.

The Board has been extremely active in its' efforts to implement the Marine Pilot Act of 1991. It has however been thwarted in many of its efforts by incomplete legislation, competition among pilot organizations, and a lack of legal support from Board representation to the Superior court level. The problem of competition was addressed in-depth in the Boards report of last year, while the legal will be addressed later in this report.

The Board currently licenses 85 pilots and registers 25 vessel agents throughout the State. This is a decrease of 20 pilots and 6 vessel agents from last year. Three new pilots have been licensed, while several more are in the process of training and preparing for the examinations. It is anticipated that 2-3 more applications will be acted upon this year.

Throughout this report will be found discussions addressing the role of the Board of Marine Pilots and its concerns with its' ability to implement the Marine Pilot Act of 1991. The legislation as written has diluted the States' capability to regulate an industry, and has placed the interest of others ahead of the desires, needs, and requirements of the State to provide safe pilotage and protection of the marine environment. The State must act to become the most important interest, above the interests of the industry owners, agents, and ships' Masters.

ALASKA BOARD OF MARINE PILOTS

STATEMENT ADDRESSING CONCERN

The Board receives legal advice, both solicited and unsolicited, from the attorney assigned by the Department of Law to the Board of Marine Pilots. This Board is the only board within the Occupational Licensing Division which requires the presence of an Assistant Attorney General at all meetings. His attendance is a requirement due to the constant confrontational attitude that the Board experiences from various legal counsel and others attending meetings. The Assistant Attorney General's advice is generally designed to keep us out of trouble as opposed to get us out of trouble. With only one exception (on a regulation project) the Board follows that advice albeit under protest at times. Attempting to conduct Board business in this environment is extremely difficult, not only for the Board members, but also its Assistant Attorney General. The demands and requirements of the Board for on the spot legal opinion to ward off accusatory statements from the public sector is unprecedented in its volume. Naturally, under this situation where the Assistant Attorney General must constantly address on an immediate and legal basis a myriad of verbal challenges, reversal and rethinking of a previously made opinion by the Assistant Attorney General must be expected.

The background on what led counsel to advise the Board on when a Board member could or could not vote on a given issue, is part of a broad question of ethics. The result of the heeded but not warmly received advice, is that the two pilot members are now precluded from discussion and voting on tariff issues in their region(s); they can no longer participate in license examinations nor are they participating in license upgrade applications. Agents, similarly are not participating in tariff discussion for the region in which they reside and/or work. The expertise of the Board members, except the public members and the Commissioner's designee, has been precluded by the attorney assigned to the Board. This situation is unfathomable to the Board when they view, for example, the Big Game Commercial Services Board which contains members who are licensed as guides, and who directly make inputs affecting fees, and decisions concerning license areas, guiding areas, etc. These actions occur without the outside accusation of conflict of interest. Their decisions are accepted as State of Alaska decisions, made by professionals who are Board members acting in the best interest of the State.

The question then becomes "Why don't all State Boards enjoy the same applicability of the ethics act in an environment of support by the State?"

Where are the differences? Perhaps some of the answers lie in the inadequacy of existing statutes to support the Board, and the States prioritization of competitive interests above State interests.

Worse still, the Ethics Act is clearly being used as a tool of intimidation against some members of the Board. Ethics violations have been alleged in complaints lodged with the Attorney General, complaints which require that individual Board members spend their own money to prepare defense against, without the aid of the Department of Law. As a countermeasure, the Board sought to discover whether or not some sort of Officers Indemnity insurance might be available. Imagine our surprise to hear that the State is "self insured," and that now the Attorney General would defend an individual Board member.

The role of the legal fraternity is in the Board's opinion out of balance. For example, the Board recently passed a set of Regulations. Our attorney passed them along to the regulations attorney with recommendations, including and acknowledging an appeal from counsel representing a pilot association, to reject the regulations. There had been public testimony in the regulation process, so this added level of appeal is not one which the Board could respond to. We believe our attorney would have been correct in reviewing any legal question concerning the proposed regulations, however being presented an appeal after the Board passes the recommendation and before adoption is a questionable action. Our attorney recommended not to reject the Board's set of regulations, but his final recommendation was to disapprove a portion of the regulations when reviewed with the Divisions Regulation Specialist. The third level of review is by the States regulation attorney who now edits the set through her review prior to filing them with the Lt. Governor.

While part of the process is one of check and balances, two unrelated steps are suggested. First, once a regulation has been passed by the Board after public process, any appeal from the participants must be denied. Second, when the attorney assigned to the Board issues an oral opinion, this oral opinion should be followed no later than the next Board meeting with a written opinion. The Board of Marine pilots is becoming less able to accomplish the task assigned despite the legislature's intent that the Board exercise jurisdiction to the maximum extent allowed under Federal and State Law.

ALASKA BOARD OF MARINE PILOTS

PENDING REGULATION PROJECTS

The Board of Marine Pilots continues to attempt to operate within the Marine Pilot Act of 1991, however this Act has continually been a source of frustration to the Board and a dilution of the States regulatory attempts. The Board consists of two highly experienced State licensed Marine pilots, two long time licensed vessel agents, two public members, and a delegate of the Commissioner of Commerce. This group of individuals maintain a high level of professional competence and statewide knowledge in their specific areas of competence, and the States overall Marine Pilot program, which they attempt to combine with the requirements of the State in the support and establishment of its' Pilotage. Regretfully however, almost every decision which is not of a routine nature finds its way into the appeal process and a Hearing Officer judgement. With only one exception in the last six months, has the Hearing Officer supported the Boards decision. There apparently does not exist the "broad discretionary powers" which the Board is alleged to have when the Hearing Officer becomes involved. I would refer to The law of TUG, TOW and PILOTAGE written by Alex L. Parks, which is a compendium of Court decisions throughout the United States and Great Britain, page 1095, "Validity of Actions of Pilot Commissions", quote The authority of pilot commissions to take action, even in the absence of duly adopted rules and regulations covering the subject in dispute, is perfectly clear so long as the commissions act within the parameters of the statutes creating them and defining their powers. page 1093, If the commission's decision is supported by any competent evidence, the courts will sustain it. Only where a decision is unsupported by any evidence or exceeds the statutory authority granted to the commission will the courts invalidate it. Page 1089 So long as the Pilot Board or Commission acts within the scope of its statutory authority, its decisions will be sustained. . . . The Supreme Court also upheld the acts of the Louisiana Board as against attacks based on the due process clause of the Constitution and the anti-trust statutes. As can be seen, the Alaska judicial process has gone against these precepts, and placed the burden of proof upon the Board, its experience, and its intent to provide for the safe pilotage and protection of the environment as charged in statute. The Board, if it is to maintain a credibility and viability, requires that the statutes either define in much greater detail all aspects of the Marine Pilot Act, and therefore remove the requirement of the existence of the Marine Pilot Board, which is not likely, or, empower and support the Board using the legal precedents as indicated above. Impending legislative change must address this issue.

The Board of Marine Pilots strongly support the following aspects of HB 237, which was introduced in the Spring of 1993, and placed into sub-committee for further study awaiting the Fall session:

- a) the limiting of the number of pilots licensed per region
- b) the establishment of fixed tariffs
- c) a limitation on the dollar amount donated for lobbying efforts by both industry and pilot associations

The Board of Marine Pilots will be making more inputs to the impending changes after the September 28-30, 1993 Marine Pilot Board meeting.

ALASKA BOARD OF MARINE PILOTS

WESTERN ALASKA PILOT REGION

On June 25, 1993, the Board of Marine Pilots found that an emergency situation existed in the Western Region, and for the immediate preservation of the public peace, health, safety, or general welfare, issued an emergency regulation. In 1991, the legislature comprehensively amended the Alaska Marine Pilotage Act, and among other things, established mechanisms where competition could occur between various pilot associations serving the same region. In early 1993, a second pilot association was formed in the western region in direct competition with an existing association. Since that time, the Board of Marine Pilots has closely monitored the competition which ensued between the two organizations for control of the pilotage market. The struggle has been both fueled and lamented by various, and at times the same, interests in the region. This competitive struggle had deteriorated to a point where it was no longer reasonable to assume that safe and efficient pilotage in the region would continue. Additionally, it appeared that the Western region was on the verge of losing a number of State licensed pilots due to the associations inability to reach an agreeable solution to the maintenance of both organizations. In fact, on June 7, 1993, a vessel moved in Dutch Harbor without a pilot when a pilot was available, and on June 22-23, 1993 the Marine Pilot Coordinator was informed that unless pilots were available on short notice, vessels involved in the salmon fishery would move without a pilot. It was anticipated that this statement would in fact prove true since the delay of a shipload of salmon was much more costly than the payment of a State fine by the shipper. This situation was unacceptable, and an emergency order and regulation was adopted by the Board and signed June 30, 1993 by the Lieutenant Governor. This action by the State was met by a Temporary Restraining Order being sought by one of the involved pilot associations. The State simultaneously filed for compliance by the same organization to existing statute and the emergency Board order. On July 22, 1993, Judge Rowland, Anchorage Superior Court, ruled against the State, saying that there was not an emergency in the region, and that the association did not have to comply with the Boards order or existing State statute. The Board of Marine Pilots, in a meeting on July 23, 1993, voted unanimously to appeal this decision. A final decision to do so has not been received from the State Attorney Generals Office as this is prepared.

ALASKA BOARD OF MARINE PILOTS

REVIEW OF GOALS AND OBJECTIVES FOR FISCAL YEAR 1993

1. "Complete the regulation process which will enact the Marine Pilot Act of 1991."

a) This is an ongoing project, the end of which is not in sight based upon the current attitudes of the legal system in supporting the Act.

2. "Create a new pilotage region encompassing the Kuskokwim River..."

a) Complete

3. "Establish a Marine Pilot Tariff for 1993."

a) Complete

4. "Establish an equitable process for the continued licensure of Channel pilots, Step One Pilots, and Step Two Pilots as they transition into Deputy Marine Pilots."

a) Partially complete. Regulations have been submitted for signature by the Lt. Governor. From this base, continued implementation efforts will continue.

ALASKA BOARD OF MARINE PILOTS

GOALS AND OBJECTIVES FOR FISCAL YEAR 1993

1. Continue the implementation of the Marine Pilot Act of 1991.
2. Most strongly encourage and support reform of the Marine Pilot Act of 1991 to:
 - a) eliminate competition within regions
 - b) establish fixed tariffs
 - c) more firmly establish the States' interests as the number one priority in the Act.
 - d) investigate greater State involvement and the possibilities of contract pilots and dispatch.
3. Revamp the existing examinations for the Marine Pilots.

ALASKA BOARD OF MARINE PILOTS
BUDGET RECOMMENDATION FOR FY94

A. (SAME RECOMMENDATION AS FOR FY93) Fund a independent study to resolve the tariff establishment process. The required product of this study is a report that describes:

- 1) a process whereby industry and pilot associations are required to provide a specific level of detailed financial application for a tariff increase/decrease,
- 2) a process for an economic analysis as to the effect of this increase/decrease tariff on the region,
- 3) the legislation necessary to put into place the recommended process,
- 4) a sample of the process with actual figures for the current year.

B. (SAME RECOMMENDATION AS FOR FY93) Adequate funding for proper investigation and prosecution of marine incidents. This funding should not be associated with the cost of operating the Board of Marine Pilots inasmuch as the establishing of truth and justice should not be limited by an administration budget that cannot possibly anticipate the frequency and complexity of accidents

C. Staff support for the Marine Pilot Coordinator is basically non-existent at this time. This lack of administrative support dictates that all routine administrative items such as typing, faxing, board packet production, xeroxing, teleconference set-up, meeting minutes, pilot record duplication, legal submissions, application processing, exam construction, preparation and administration, form construction, phone calls, etc., are handled by the MPC personally at the expense of more important issues. The MPC has worked up to 70 hours per week preparing for, conducting and clcsing Marine Pilots Board Meetings. The administrative burden described above is without assuming the responsibility of investigating officer for the Board.

PA Pacific Associates

116 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

September 29, 1993

The Honorable Walter J. Hickel
Governor's Office
Juneau, Alaska 99801

Dear Governor Hickel:

On behalf of the Alaska Steamship Association (membership roster attached), permit me to express disappointment in this year's Alaska Board of Marine Pilots annual performance report. While the board chairman and one other member presumably represent the views of the maritime industry and the state, the Alaska Steamship Association (ASA) finds the report unnecessarily provocative and antagonistic.

Without excessively detailing our concerns, the report infers that because Alaska law permits competition in piloting, the state's ability to provide safe pilotage and protect the marine environment is diluted. No substantiation, reference to marine casualties, or documentation is offered to support this philosophical judgment by the board — one which is totally contrary to ASA's beliefs. Instead, the report is replete with fears of what might be if competition is allowed to continue.

The report advocates the state limit the number of licenses available to become a state pilot. License limitation serves to bar entry, inflate the incomes of those already holding a license, and invariably leads to a government - sanctioned monopoly. License limitation is totally contrary to ASA's viewpoint.

The report calls for fixed tariffs, which effectively eliminates competition, without calling for any of the traditional safeguards for the customers (maritime industry) who must pay these tariffs. These typically include complete financial disclosure by the service provider, the provider relinquishing control over rate setting, and active participation by the customers in rate setting.

The report also states that the board will seek greater state involvement in piloting and will investigate the possibilities of state contract pilots and state control of pilot dispatch. Philosophically, ASA is opposed to greater state involvement in the commercial world, absent a demonstrable need.

The report laments the Department of Law's lack of support for the board's actions. While ASA was not involved in any of those issues, the board's lack of success before Hearing Officers should serve as a wake-up call. The board needs to reassess its procedures and agenda (to remove competition from Alaskan pilotage) . Perhaps it should re-examine its philosophical bent, rather than indict the Department of Law.

Letter to Governor Hickel
September 24, 1993
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The report faults Superior Court Judge Rowland, for overturning the board's action with regard to a declared emergency in the western pilot region this summer. Judge Rowland found the board had not established that an emergency existed. He noted the statement of facts the board used to declare an emergency "was more conclusory than specific". With regard to the means the board chose to address the emergency, Judge Rowland stated, "I find there to be no reasonable or rational basis for the mechanism which was put into effect". The mechanism the board chose to place into effect was one designed to eliminate competition in the western region.

ASA agrees with the annual report insofar as it cites its lack of effectiveness in administering the state's pilot act. We disagree on the cause of this ineffectiveness. We believe the cause to be the natural result of an imbalance in the board's composition. The two pilot members have a great deal of experience in their field. They are articulate, competent, and persuasive. Industry's recent appointee is moving rapidly along a learning curve which will enable her to serve, when appropriate, as an effective counterpoint to the pilots.

We do not believe that the board will be effective until the three public members are able to discern good public policy from quality debate between the philosophically differing perspectives of the pilot and industry members. That vital, quality debate and public process does not currently exist in the Alaska Board of Marine Pilots meetings.

Since ASA formed last November we have attempted to work constructively with our industry representatives. We spent several thousand dollars in travel and expenses flying to Valdez and Ketchikan to meet with them shortly after ASA formed, and we initiated meetings with them prior to the commencement of each pilot board meeting. We will continue to do what we can to ensure our representatives understand and represent our positions on the issues.

We are also most interested in identifying qualified individuals for the next industry opening on the board. We need another industry representative equal to the competent and effective representation the pilots enjoy. We met with Mrs. Kristie Leafs in this regard and intend to supply her with a list of suggested appointees for the vacancy which will occur next spring. Thank you for any consideration in this regard.

Sincerely,



Joe Kyle

cc: Alaska Steamship Association
encl: Alaska Steamship Association Membership Roster

PA Pacific Associates

116 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

September 15, 1993

Sent via fax
1 page total

Mr. Karl Luck
Director, Division of Occupational Licensing
Department of Commerce and Economic Development
P. O. Box 110800
Juneau, Alaska 99811-0800

Dear Captain Luck:

On behalf of the Alaska Steamship Association and under the Freedom of Information Act, we would like copies of the following documents:

- a. Copies of the various pilot/pilot associations quarterly reports [as required in 12 AAC 56.960(i)] for calendar years 1991, 1992, and 1993 to date.
- b. A copy of the Marine Pilot Coordinator's investigative report into the alleged movement of a foreign flag vessel within Dutch Harbor without a pilot on June 7, 1993.
- c. The annual performance report of the Alaska Board of Marine Pilots for fiscal year 1992, as required under AS 08.01.

We appreciate your assistance in this matter, and will pay all copying charges expeditiously.

Sincerely,



Joe Kyle

cc: Alaska Steamship Association

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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

September 17, 1993

Joe Kyle
Pacific Associates
116 Gold Street
Juneau, AK 99801

Dear Commander Kyle:

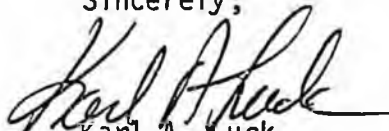
This correspondence is in response to your FOIA request dated September 15, 1993. The enclosed satisfies paragraph "C" of your request.

To satisfy paragraph "A," I anticipate it will take approximately two weeks for one person to go through the files and copy the information you request. As I do not have the staff available to perform that task, I will have to hire a person, at your expense, to accomplish the requirements. As we discussed on the telephone on September 15, 1993, you are welcome to review the files in person and/or have one of your employees accomplish the task. The files, however, may not leave our office spaces and your access to our copying machine must be on a "not to interfere" basis.

As we discussed on the phone, the Marine Pilot Coordinator did not investigate the alleged movement of a vessel in Dutch Harbor. This investigation was conducted by the Attorney General's investigator.

Please remit \$6.75 for the enclosed material.

Sincerely,


Karl A. Luck
Director

KL/bc0084s
091793a

PA Pacific Associates

116 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

October 1, 1993

Mr. Bob Watt
Chairman, Alaska Board of Marine Pilots
6227 S. Tongass
Ketchikan, Alaska 99901

Dear Chairman Watt:

On behalf of the Alaska Steamship Association (ASA) and under the Freedom of Information Act, we recently requested copies of the various pilot/pilot associations quarterly reports for calendar years 1991, 1992, and 1993 to date. These reports are required to be submitted under 12 AAC 56.960(k).

The Director of Occupational Licensing's response to our request was surprising (see attached letter). We erroneously presumed the basic management information contained in these reports was readily available. Since the information is not readily available, we assume it is not being used to manage pilotage today, nor is it being used as a reference point for the significant changes the board apparently believes are necessary for future management (fixed tariffs, license limitation, elimination of competition, and possibly, greater state involvement in piloting through contract pilots and state control of dispatch).

Since we are not aware that another management information system exists, we wonder if the board intends to do anything to ensure this one is available for use? We would like to know the answer to this question before we spend at least two weeks of labor costs on pulling the information from the files ourselves — as suggested by the Director of Occupational Licensing.

Sincerely,



Joe Kyle

cc: Alaska Board of Marine Pilots
Alaska Steamship Association

Representative Hudson

Karl telephoned me before he sent his response to the activity (pilot) reports request. He stated he was unable to aggregate or use the data supplied by the pilots due to staffing limitations.

I should have stated in my letter to Chairman Watt that Karl told me they didn't use the data. Hope my letter does not sound too cheeky as a result. R/Hoe

WALTER J. HICKEL, GOVERNOR

**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110808
JUNEAU, ALASKA 99811-0808
PHONE: (907) 485-2534

June 2, 1993

TO: BOARD OF MARINE PILOTS
MR. GARY AMENDOLA
INFO: MS. CHRISTY LEAF


The attached fax was received this morning from AMP, and is forwarded for your information. I have no additional factual information to add at this time, however unofficial information from the region indicates that the "peak" demand for pilots may be less this year due to the changes in fishing seasons and the lower prices for some species which has resulted in less fishing pressure. Additionally, the trend to use larger trampers has lessened the number of ship movements requiring pilots.

I do not present this to obviate the problem as it currently exists in the Western region. The problem remains, and will probably spread throughout the State in one form or another, as contracts come due for renewal and competition is established in all three of the major regions. Yet even as this competition is created and fostered by law, the Board remains unsupported by Regulation and Statute to intervene in situations such as that existing in the Western region if conditions demand. The trussing of the Board by the anti-anti-competitive and conflict of interest concerns remain. The State mandated piloting system is not the arena for competition when safety of human life and the environment are the concerns and supporting rationale for regulation.

Another fax was received as I was preparing this memo, this one from North Star Maritime Agencies. I have included it in your package. The two fax are dichotomys in that one is from an organization which states that it wants to work and maintain a viable organization, while the second threatens to ask the State to withdraw recognition of the same association for not accepting work.

New subject. Inputs for the yearly report are requested by the Chairman not later than June 10, 1993.

Sincerely,


R.E. Baratko
Marine Pilot Coordinator

**ALASKA MARINE PILOTS
& DISPATCHING SERVICE**P.O. BOX 730 - DUTCH HARBOR, ALASKA 99582 • 907/581-1210
FAX: 907/581-1372

June 1, 1993
VIA FAX # 225-9807

Bob Watt, Chairman
Alaska Board of Marine Pilots
P.O. Box D
Juneau, AK 99811-0800

Re: Marine Piloting in Western Alaska

Dear Chairman Watt:

In the wake of the Board's meeting on May 14, 1993, there has been a great deal of speculation and erroneous information circulating about what has been happening in the Western Region. We are sending you this letter, with copies to all board members, Mr. Baratko, and Commissioner Fuhs, to clarify AMP's present situation as much as possible.

First and foremost, AMP is not "orchestrating" any particular scenario in the Western Region. AMP has been telling the Board and industry for months that it could not continue its former business practices -- and indeed, may not be able to survive at all -- without reasonable commitments from the various vessel agents for future work. As the Board is aware, no such commitments have been forthcoming from any of the principal agents (Alamer, North Star, and ANP).

Anyone who believes AMP is playing some kind of a game in the Western Region is unaware of all the facts. AMP's pilots remained in place until May 14, despite the economic uncertainties facing them, only because of the possibility that the Board would take some action on May 14 to alleviate what is an untenable situation for AMP.

The Board took no action. Consequently, many of AMP's pilots have had to seek other employment and are not available for dispatch on short notice. Their future in marine piloting in Alaska appears to be very much in question. Every member of AMP is actively reviewing other options because there is absolutely no reason to believe that they will be able to make an income this year in the Western Region.

In addition, AMP has had no choice but to cut back drastically on its operating expenses. AMP has relinquished its interest in houses in Anchorage and Sand Point and is in the process of terminating its interest in a house in Cold Bay in an effort to reduce expenses. The elimination of these outport residences affects AMP's ability to efficiently service the region and effectively raises operating expenses to the vessels it services. This in turn makes AMP less attractive to the agents due to increased costs of travel, standby, etc. AMP has cut its office staff to one employee. AMP's reserves are insufficient for further draws to its members.

Disposing of assets and terminating employees is not the conduct of an enterprise that is posturing or playing games. These assets and employees were essential parts of the operation AMP put together in the first place for the purpose of providing first-rate service throughout the region. AMP would not be making such drastic cutbacks unless it were absolutely necessary, and any suggestion to the contrary is unwarranted, insupportable, and most unfair. AMP is fighting for its life. It is a simple truth few seem to be willing to accept.

Certain agency representatives have charged that AMP is refusing to accept assignments to serve outports, implying that AMP is engaged in some kind of boycott. It is true that AMP has been forced to turn down a few isolated requests for outport service. The plain fact of the matter is that AMP cannot economically maintain a full complement of pilots on standby to provide service on an infrequent basis.

Since May 14, Alamar, North Star, and ANP have placed a few requests for AMP to provide outport service, on short notice, while allocating the great bulk of their work to the four pilots in WAPA. The agents are doing this fully aware of the fact that AMP can no longer afford to maintain its prior levels of service and staffing without a reasonable flow of work and without reasonable advance information to permit AMP to schedule its pilots. Then, when AMP cannot provide a pilot for a particular outport move, the agents complain to the State that AMP is boycotting. AMP's members respectfully ask the Board to arrive at its own conclusion about who is manipulating the situation to further their own interests.

Since the May 14 Board meeting, some vessel agents in the Western Region have been contacting individual AMP members to pilot their vessels without going through AMP's dispatch office. This is "divide and conquer" pure and simple. Again, AMP asks the Board to come to its own conclusion about who is orchestrating events in the Western Region.

It comes down to this: No business can or should be expected to operate at a loss. No vessel agency would maintain a full-service presence in Alaska if it only got business from a handful of ships,

without any assurance of work or any way to forecast how much and what kind of work there will be. Ask yourself if Alamar or North Star or ANP would continue to operate in the environment that has been thrust upon ANP.

(Ask yourself another question: State law requires foreign flag vessels to employ local agents. Could the state force Alamar or North Star to provide such services at a loss, or penalize them if they do not, as some suggest the State should force pilots to provide services at a loss?)

ANP has made a firm commitment to continue providing service to all customers that are willing to make a reasonable commitment to ANP. At the present time, ANP is scheduled to take over the container ship work for APL on June 3 and Sealand as soon as possible, tentatively late summer. ANP also stands ready and able to provide service to any customer if it can do so without taking a financial loss. Any suggestion that ANP is engaging in a boycott is pure fiction.

The predicament in which ANP finds itself is not of its making. ANP has a sufficient number of pilots with sufficient training and licensure to move all the ships in the entire region at any time of the year. In other words, ANP has stood ready and able to satisfy the "demand" side of the supply-demand market equation.

The problem is on the "demand" side of the equation. With the exception of APL and Sealand, none of the consumers of marine piloting services in the region have been willing to make any firm commitment to ANP. Alamar and North Star ask ANP (and the Board) to "trust" that they will somehow allocate the work so that both ANP and WAPA will remain financially healthy and viable, but so far they have taken no action to back up their promises. ANP has put forward several different proposals to try to solve the dilemma (even to the point of agreeing to let Capt. Boyd dispatch ANP pilots during the height of the season); the agencies have refused every ANP proposal while offering no alternative that will actually work.

Traditionally ANP has worked with agents to efficiently dispatch pilots and avoid costly duplication of services. Since Alamar is such a strong market force in Region 3 they have undue influence over how the other agencies dispatch pilots. It is very difficult for the smaller agencies to choose the pilot group of their choice because they must take into consideration which pilot group Alamar uses in order to avoid duplicate expenses. (If Alamar dispatches a WAPA pilot to an outport then the other agencies must use the same pilot or pay duplicate airfare, travel, per-diem and standby fees); Thus, North Star and ANP are unwilling to give a firm commitment because they must wait to see how Alamar is going to station the pilots.

AMP is aware that some people still think AMP could somehow solve this problem if it really wanted to. If anyone involved in marine piloting has any suggestion of what AMP could do differently to survive financially, AMP is ready and willing to listen. The plain fact is that AMP cannot unilaterally do anything to fix the problems in the Western Region. AMP and WAPA could not take any action together, even if they were inclined to do so, without running afoul of the antitrust laws. Only the agents can solve this problem, and so far they have chosen not to.

Instead, they have refused to come to the table with any kind of commitment to give substance to their promises to ensure the health of both pilot organizations. The term for this strategy is stonewalling. The vessel agencies, with their overwhelming advantages in financial resources, can afford to hunker down and wait for events to play out to their advantage. Both Alamar and North Star are large enterprises; for them, all of this turmoil is a cost of doing business. If they get what they want in the long run, it is an acceptable cost of doing business -- indeed, it is an investment in consolidating their control of piloting. On the other hand, for AMP's members this is a matter of economic survival, and time is growing very short.

It has always been an implicit duty of a pilot to be available to serve the needs of vessels in the state regardless of the cost or hazard. These independent contractors have worked through various pilot associations. The associations were entrusted by the State to see that these pilots were dispatched in an orderly fashion.

AMP helped to create and has operated under guidelines set by regulations formed within the framework of the Pilotage Act of 1991. AMP had provided the most cost-effective and comprehensive pilotage service to all vessels requesting it on a year round basis. It served as the regional dispatch point, formulated yearly work schedules and equitably distributed revenues for all pilots in the Western Region. With the arrival of competition, however, there is no mechanism to ensure this sort of reliability and furthermore, safety may be compromised.

The State of Alaska has rightly determined that the use of pilots should be mandatory in its waters to protect life, property and the marine environment. However, the new statutes and regulations entrusted this State-mandated and regulated service to the forces of the private sector, with no guarantee that the State's best interest would be served.

The fact of the matter is that state commerce is ill-served by the present system. The present system relies on pilot associations which are at the mercy of forces over which the State has no control. Because of this situation, AMP has had to make decisions in an attempt to ensure its survival. These are decisions that a recognized pilot association should never have to make. AMP has

had to dismantle the very structure that made it valuable in the first place. Members are being forced to seek employment outside of piloting. Pilot associations can be put out of business or altered significantly because of agency control of the Western Region. When commerce suffers because adequate numbers of pilots are suddenly unavailable, the system has failed to meet its responsibility.

Stability would be established by emergency regulations that:

- 1) return to the notion that all pilots in the region are members of one dispatch pool;
- 2) insulate the pilotage system from control by vessel owners and agents;
- 3) provide for a central dispatch authority to:
 - a) create equitable work schedules for all regional pilots;
 - b) efficiently dispatch pilots avoiding costly duplication of services (standby, travel, capital investment, etc.);
 - c) equitably distribute revenues payable to pilots on a per capita basis;
- 4) adopt a fixed regional tariff.

Any short-term remedies implemented for the Western Region should form a constructive base for long-term resolution. Precedents set in this case will have lasting repercussions for pilotage statewide. We hope that the Board weighs its options very carefully and realizes the lasting effects of its decisions.

AMP recommends that the process of resolution should be viewed in stages:

- 1) Emergency action to ensure commerce is protected in the short-term;
- 2) Interim action by the Board in September that will stabilize the situation until statutory changes are implemented;
- 3) legislative action to correct deficiencies in the pilotage system for the long-term.

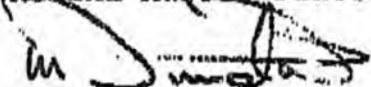
The 1991 amendments compel pilot organizations to compete in a marketplace where no true competition exists. Events of the past few months have made it crystal clear that the current Pilotage Act

confers on the major vessel agency virtually absolute de facto control over piloting in the Western Region. The vessel agents have the power not only to control the revenue that will go to a particular group of pilots, but also to control access to the experience needed under current regulations to meet recency requirements for license renewal. Unless and until the State of Alaska takes that power back, ANP must do whatever it can to stay alive. It remains to be seen whether it can.

ANP appreciates your consideration of this matter.

Sincerely,

Captain Thomas Dundas, President
Alaska Marine Pilots Association



cc: All Board members
Bob Baratko
Commissioner Paul Fuhs
Gary Amendola
Rep. Bill Hudson
Rep. Jerry Mackie
(VIA FAX)



NORTH STAR MARITIME AGENCIES

Vessel Agents

P.O. BOX 102018 ANCHORAGE, ALASKA 99510

TELEPHONE (907) 272-7537
TELEX: 26-471 NORSTEVGO AHG
CABLE ADDRESS: NORSTEVGO AHG
FAX: (907) 272-8758

01 June 1993

Capt. Tom Dundas
Alaska Marine Pilots & Dispatching Service
P. O. Box 730
Dutch Harbor, Alaska 99692

RE: Availability of Marine Pilots

Dear Tom,

I would like to thank you for looking into some previously discussed matters and hope that response may be soon coming.

North Star Maritime Agencies has fully supported the idea of having two pilot dispatches in the Western Region and through our actions during the first 4.5 months of this year, we show that an appropriate division of service requests can be and has been made on our part during this period without signed contracts or any of the other new "agreements" which have been proposed.

Agencies, as with other private enterprise, would like also to be assured of a certain percentage of business, but our clients base their selection of agency by past services rendered and promised future performance. It appears that your group, having a profession which provides state mandated services, has taken an awkward stand as a business who would hold itself available to provide those services in the Western Region as a recognized pilot organization, to promote a safe and reliable system of marine pilotage for the region.

We have requested services from your group outside of Dutch Harbor since May 15th without obtaining a dispatch and thus have referred all our business to the other pilot organization in the region. We would like to know when your 11 current members are planning to come off of vacation, leave or whatever other activities are preventing their being available for dispatched to out-ports in the Western Region. As of this date, your competition has been able to handle the entire region without a problem but we can see the need for more pilots as we draw nearer to the Salmon season which begins later this month.

Page 2

06/01/93

Alaska Marine Pilots

Lack of action and address on your part with respect to making your members available for dispatch may result in our direct request or participation in a request to the state and the Board of Marine Pilots to take actions required to 1) withdraw recognition of your group and 2) declare an emergency in the region so that some form of additional pilotage may be available to prevent disabling U.S. commerce which takes place in the region in the multi-million dollar salmon and bottomfish harvests. If vessels requiring pilots are delayed, this will have a trickle down effect to the fishermen who depend on the migratory fish for a large portion of their cash income for the year.

We would hope that you will be able to address this situation within the next few days and look forward again to requesting dispatch of your pilots for the entire region when they become available.

Thank you.

Sincerely,

North Star Maritime Services

LAW OFFICES

DILLON & FINDLEY

A PROFESSIONAL CORPORATION

Dennis C. Bailey
Ray R. Brown
Caroline Crenna
Paul L. Dillon
Thomas W. Findley
Richard D. Monkman
Arthur H. Peterson

One Sealaska Plaza, Suite 202
Juneau, Alaska 99801
Telephone (907) 586-4000
Facsimile (907) 586-3777

ANCHORAGE:
510 L Street, Suite 601
Anchorage, Alaska 99501
Telephone (907) 277-5400
Facsimile (907) 274-9649

SITKA:
514 Lake Street
Sitka, Alaska 99835
Telephone (907) 747-3900
Facsimile (907) 747-3990

February 16, 1993

Gary I. Amendola
Assistant Attorney General
Supervisor, Commercial Section
Office of the Attorney General
P.O. Box 110300
Juneau, Alaska 99811

Re: 1993 License Renewals
Our file no. 2102.21

BY FAX - ORIGINAL HAND DELIVERED

Dear Gary:

Thank you for your prompt reply to my letter of last week concerning Captain Baken's license.

The problem, as I understand it, will occur only during this particular renewal period and affects primarily those pilots who work for the Alaska Marine Highway System in the winter months. The statute provides, in pertinent part, that any marine pilot seeking to have his license renewed shall:

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

(A) engaged in piloting vessels subject to this chapter [...] during at least 60 days of each calendar year in the licensing period immediately preceding [...]; or

(B) completed the minimum number of familiarization trips required by the board for renewal of a marine pilot license for [the] region [...].

AS 08.62.120(a)(4).

Gary I. Amendola
February 17, 1993
p. 1

As you know, there are a sizable number of Marine Highway System pilots who did not pilot "vessels subject to the Pilot Act" (i.e., foreign flag ships) for 60 days during both calendar years of the latest license period. These are capable pilots who, despite having worked full-time as deck officers on the ferries, must complete "the minimum number of familiarization trips required by the board" to have their licenses renewed. AS 08.62.120(a)(4)(B).

The board did not require any minimum number of trips until late December, 1992 -- too late for these pilots to complete the trips listed in the proposed regulation by the end of the year. If I read your letter correctly, the Division of Occupational Licensing intends to deny renewal of these pilots' renewal applications. To determine if the Division may take this drastic step requires a two part legal analysis.

The first task is to identify the existing state of the law at the time these licenses came up to be renewed. The answer is simple: the board did not require any "minimum number of familiarization trips" in order for pilot licenses to be renewed. The "minimum number" was what it has been since the Pilot Act was first passed in 1975 and what it has remained since the Act was amended in 1991 -- zero.

Even under the new statute, the board has discretion to set the number anywhere from zero to some higher "reasonable and not arbitrary" figure. See, *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971). Silence by the board leaves the minimum number of trips at zero.

Assuming the board wishes to change the number of required trips from zero to another "reasonable and not arbitrary" number, the next task is to identify the process that the board must follow to change the existing state of the law.

The Board of Marine Pilots falls under the Administrative Procedure Act (AS 44.62.330(a)(33)) and must thus follow the APA regulation process to change the minimum number of trips. See generally, AS 44.62.190 - .210; AS 44.62.640(a)(3); *Kelly v. Zamarello*, *supra.*; *Kenai Peninsula Fisherman's Co-op. Ass'n v. State, Board of Fisheries*, 628 P.2d 897, 904 - 906 (Alaska 1981). Until the APA process is complete, the board may not impose the higher number for renewal. See *Wickersham v. State, CFEC*, 680 P.2d 1135, 1140 (Alaska 1984); *Gilbert v. State, Dep't of Fish and Game*, 803 P.2d 391, 396 - 97 (Alaska 1990).

Thus, until the new regulations go into effect, the Division does not have discretion to deny these pilots' licenses on the basis that they did not complete the "minimum number of familiarization trips" required by the board. *Gilbert v. State.*

I spoke with Art Peterson at length about this analysis and he concurs with it. Until a regulation is in place changing the minimum number from zero to a different number of trips, the board does not have a basis to deny the renewal applications, and the Alaska Marine Highway System pilot licenses should be renewed.

My clients fully understand that the 1991 amendments to the Pilot Act have given the board much to do, and that it is perhaps understandable that the board did not get around to this minor point of law until very late in the game. Nonetheless, as I am sure you will understand, the impact on their lives by the Division's decision will be substantial. Thus their great concern, bordering on outrage, expressed in my previous letter to you.

The pilots who are affected by the Division's action are, for the most part, long-time pilots who have held licenses for many years and have had distinguished careers on Alaska waters. I do not know of any circumstances impacting the public safety or welfare that justify the summary denial of their renewal applications.

Your letter does not say precisely what the Division intends to do with Captain Baken's application or those of the similarly situated pilots, although you allude to a letter that may be forthcoming. If a decision has been made, I would appreciate knowing about it as soon as possible so that we can take appropriate steps.

Thank you.

Sincerely yours,

DILLON & FINDLEY



By: Richard D. Monkman

RDM/oth

cy: Captain Spence
Deborah Behr, Regulations Attorney
Bruce Botelho, Deputy Attorney General
Hon. Bill Hudson
AHP

Elements of the 1991 Alaska Marine Pilot Act

Board of MP, Change Recommended	Change Recommended	Element	Problem	Affected Organization
		Strong M.P.B. with broad authority	Non Anti Competitive statute (8.62.040) limits boards ability to control a natural monopoly	all Pilot Organizations Industry
COI changes	✓*	Competition w/i Regions	Tends to make board ineffective - inefficient, Forces contract w/ clients, Tariff secrets,	ACP, WAPA, ALASKAR
Anti competitive changes,	✓*	Competition between Regions	"Cherry Picking"; MPB unable to define criteria because of 8.62.040. Dilutes Pilot knowledge.	ACP, Individual Pilots
COI changes	*	Unlimited Number of Pilots (unlimited # of licenses)	Pilot organizations forced to take all concerns in practice Pilot Organizations are reluctant to dilute their earnings, causes excess pilots. WAPA anti-competitive problem w/ AMP.	ACP, WAPA,
		Training of Pilot applicants accomplished by Pilot Assoc.	No Standardized Training - only common sense of dockings at specific ports arrived at by L.C.D. (Lowest Common Denominator) Contracts limit vessel size available for training - No Toquepucan agents / Pilots / Public	ACP, WAPA - all
		Balanced Board memberships		
		Board disciplines Pilots	Pilot Organization criticized for doing this	all
		Division of Occ Lic investigates accidents	No Change	-
COI w/i Region can discuss issue - purpose in board to provide expertise	✓*	Board set Maximum tariff	Board not staffed or equipped to handle economic analysis, No fiscal expertise, Change can occur yearly - industry want longer view, No control on working tariff - Secret contracts Kick backs are possible,	all

ReChange

Board sets Training Program

Board approves Pilot Organizations

Board licenses Pilots; sets licensing criteria
• Up grade licenses
• Test for upgrades

Board creates Pilotage Regions

Board approves Drug Testing / Alcohol Abuse

Board monitors physical / mental fitness of pilots

* Board required to be non-anti-competitive
exempted from anti-comp. statutes (8.62.040)

Board approves Training Pilots

Statute requires 60 days recency w/i each year

Board approves alternatives to 60 day rule

LCD because of competition

No Problem except approval tends to be hard process for board.

LCD; competition charge Conflict of Interest (COI)
COI charges } Competition not represented on board
COI charges }

No Change or problem - can be used to resolve competition

Potential COI charge because of board membership

No problem - NO cases!

Regulates a natural monopoly like Air Traffic Controllers, Harbor masters, Police Dept.

No Standardization w/i region only w/i Pilot Organization

only full time pilots can comply - Unlimited entry of pilots & ability to accomplish

L.C.D. program

all

ACP, WAPA

all

all

—

—

—

all

all

all

Requires a Natural Monopoly

Board establishes lapsed license reinstatement criteria for DMV

Statute requires testing lapsed MP license

Board establishes DMV license renewal criteria

Statute mandates vessel employ state license Pilot

Board dictates compulsory pilotage waters / Pilot stations

Pilots are independent contractors

Owner/operator of vessel may not employ pilot as employee

\$250,000 - liability for accidents / incident limit for Pilot

Pilot lien for compensation

Pilot organizations are the vehicle state uses to administer Pilot's activities

Statute dictates what vessels must employ pilots

Statute dictates all oil tankers 50K gross tons employ state pilot

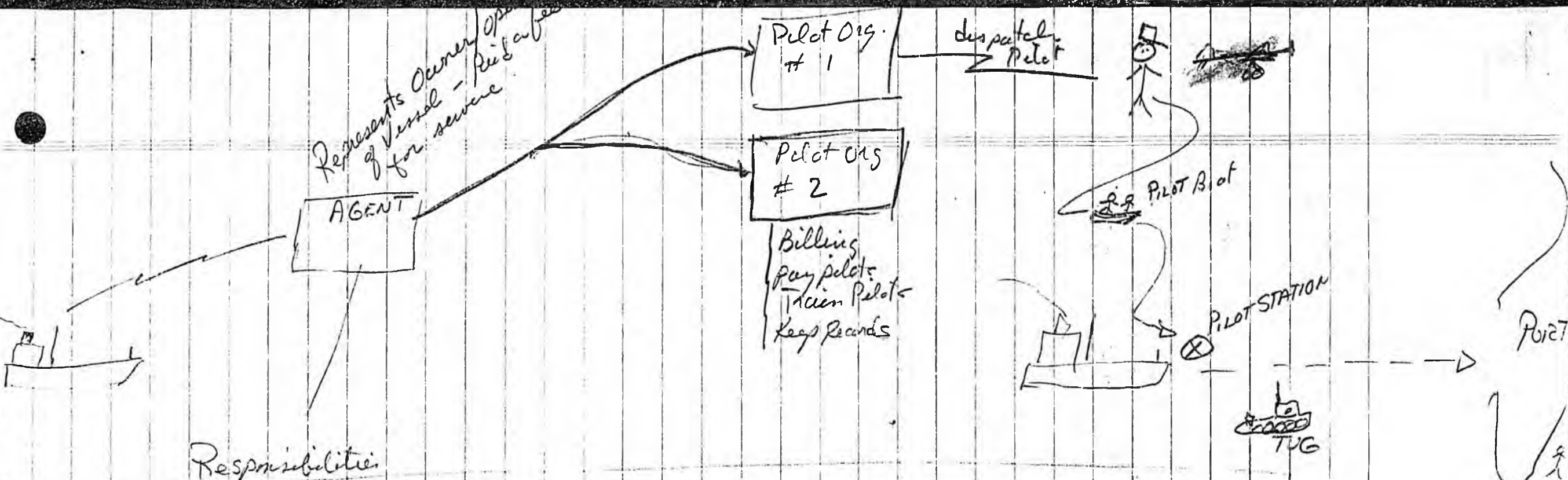
Registers Agents

Statute dictates penalties for Pilot Org. Non compliance

Transportation Permit establishes for continuance of pilotage

COI Charges

- No problem to date
- COI
- No Problem
- Industry reacts to any additional Pilot stations in SE.
- Competition forces some loss of independence. (Contracts, economic survival)
- Contracts w/ Pilot Org and Vessel lines brings this into question
- Gives foreign vessel just \$250,000 of each accident.
- No Problem
- Some Vessel needs to exist
- No Problem - Standard stuff
- No Problem -
- No Problem -
- No Problem -
- No Problem



Responsibilities

Point of Contact

- Before/after Vessel arrives
- Bills
- Crew problems
- Schedules
- places orders for vessel
- Coordinates all activities of Vessel

Schedules/Coordinates for

- Tug boat services
- Pilot boat services
- Longshoremen
- Line handlers
- Cranes/Trucks etc
- Pilots

Notifies Gov Agencies

- INS
- Customs
- NMFS/NOAA
- USCG/COTP

- fuel
- water
- Garbage disposal
- Sewage hook up
- phones
- Transportation
- Crew problems
- Repair if needed

- Tows/Shipping trips
- Other port activities

03-04-91

SECTIONAL ANALYSIS OF
ACT RELATING TO THE BOARD OF MARINE PILOTS

BY
CAPT. DALE O. COLLINS
PRESIDENT
SOUTHEAST ALASKA PILOTS' ASSOC.

Section 1. FINDINGS

COMMENT: Past legislation has suffered from lack of clarity as to the Board's authority. More than once the Attorney General's office has questioned the Board's authority to adopt regulation and exercise its powers and duties. We believe that strong language should be inserted to require the Board to exercise its powers and duties.

Section 2. AS 08.62.010 CREATION AND MEMBERSHIP OF BOARD

COMMENT: To replace the Commissioner of Commerce with the proposed Marine Pilot Coordinator in AS 08.62.050.

Section 3. AS 08.62.020 APPOINTMENT AND TERM OF OFFICE

COMMENT: Conforms to changes made in membership.

Section 4. AS 08.62.030 MEETINGS

COMMENT: Four meetings a year will provide the Board the opportunity to regulate marine pilotage as proposed by this act. Biannual meetings with the current pilotage act have stalled the efforts of the Board to regulate pilotage in Alaska. In general, most pilots are willing to pay higher license renewal fees in order to obtain a better administered pilotage act.

Section 5. AS 08.62.040 POWERS AND DUTIES

COMMENT: In general, the Board's authority is in question more times than not with the present pilotage act. The Board needs mandated authority to regulate marine

pilotage under powers and duties. Pilots, agents, shipowners and state officials have different views on what the present pilotage act authorizes. Clear and precise language would clarify the Board's authority and assist the Attorney General's office in determining legislative intent.

Areas of differences include PILOT QUALIFICATIONS which are among the lowest in the maritime states. The Attorney General's office determined a pilot applicant could qualify for a 20,000 ton docking license in Southeastern Alaska with docking and undocking in Dutch Harbor. This reasoning was used due to the regulation not prohibiting non-area docking and undocking to qualify for a docking license. The Board of Marine Pilots objected, but were advised the Attorney General's office would not support the Board's decision if they rejected the applicant's request for a 20,000 ton docking license. The result of this decision is a pilot obtained a 20,000 ton docking license with less than five dockings in Southeastern Alaska out of the twenty required by regulation.

PILOTAGE TARIFF COMMENT: Pilotage tariff is being circumvented by one cruise ship company at the present time. This alleged tariff violation was reported to the Attorney General's office for investigation in July, 1990. To date, no investigation has been conducted. We are told this is due to weak language in the regulations and the Southeastern Alaska Pilots' Association and the State of Alaska being co-defendants in an anti-trust lawsuit. The Assistant Attorney General is reluctant to investigate due to conspiracy charges being filed in the lawsuit as well.

The Southeastern Alaska Pilots' Association and the Southwest Alaska Pilots' Association have adhered to the state pilotage tariff for the last twenty years as per the regulations. Agents and shipping companies have paid the state tariff as defined in state tariff regulations published by the state.

PILOT REGIONS COMMENT: Pilot regions have been defined in state tariff regulations and in general practice by the two pilot associations over the last twenty years as Southeast Alaska and Southwest Alaska. The pilotage study conducted by the state recommends a third region be added and defined as the Aleutian Island region. Pilots specialize in local knowledge and ship handling alongside docks. Current and frequent recency trips are essential to a pilot's proficiency, and should be demanded by t' state and the marine industry. With increased traffic in the Aleutian Island, a third region is being developed.

MANDATORY RANDOM DRUG AND ALCOHOL TESTING PROGRAM
COMMENT: Mandatory random drug and alcohol testing program would assure the public marine pilots are free from substance abuse.

Section 6. AS 08.62.050 MARINE PILOT COORDINATOR

COMMENT: Marine Pilot Coordinator would assist the Board between meetings by investigating violations of State Statute and Regulations, marine accidents, license examinations, transfer and renewals of licenses, assist in regulating pilot organizations, oversee drug and alcohol testing, assist in establishing pilot training and review training standards, oversee the operation of pilot organizations for compliance with applicable law.

Most pilots within the associations are willing to pay high license renewal fees to pay for a marine pilot coordinator. This coordinator would bring continuity to the Board and vastly improve the state's ability to administer safe and reliable pilotage in the State of Alaska.

Section 7. AS 08.62.080 LICENSE REQUIREMENT

COMMENT: Would require a pilot be licensed by this chapter and a date the license would expire.

Section 8. AS 08.62.090(A)

COMMENT: An applicant would be required to apply sixty days before the examination.

Section 9. AS 08.62.090

COMMENT: Publish dates for future examinations.

Section 10. AS 08.62.100 QUALIFICATIONS FOR A MARINE
PILOTS LICENSE

COMMENT: The State Study of Marine Pilotage in Alaska discovered Alaska had some of the weakest pilot

qualifications for marine pilots. These proposed qualifications allow for increased standards while allowing an applicant to have obtained marine experience from a variety of marine backgrounds.

Section 11. AS 08.62.113 QUALIFICATIONS FOR DEPUTY MARINE PILOT LICENSE

COMMENT: A deputy marine pilot would replace the channel pilots license as defined under present regulations. The public safety is best served with higher qualifications and supervised training. The two associations have higher qualifications for admission to the association than state regulations require to become licensed. The proposed qualifications would increase present requirements and insure a better qualified marine pilot would be licensed by the state. Study of Marine pilotage in the State of Alaska recommended increased qualifications and training.

Section 12. AS 08.62.120 RENEWAL OF LICENSES

COMMENT: Provides for a marine pilot to renew a license, and requires a pilot to have a minimum number of familiarization in the pilotage region.

Section 13. AS 08.62.130 LAPSED LICENSES

COMMENT: Establishes criteria for reinstatement.

Section 14. AS 08.62.150(A)

COMMENT: May impose disciplinary sanction on a person licensed under this chapter.

Section 15. AS 08.62.160 MANDATORY EMPLOYMENT OF LICENSED PILOT

COMMENT: Shall employ a marine pilot holding a valid license under this chapter.

Section 16. AS 08.62.165 LIABILITY

COMMENT: A copy of "WHY LIMIT LIABILITY AS PROPOSED BY AS 08.62.165?" by Association attorney C. L. Cloudy is included.

WHY LIMIT LIABILITY AS PROPOSED BY AS 08.62.165?

A. Alaska Must Implement Tighter Licensing Standards Which Cannot Be Achieved Without Formal Training Programs. Unless pilot organizations directly participate in these programs, the programs would not be cost effective. Although the federal courts have consistently insulated pilot groups from the negligence of pilots dispatched by the group, no reported case to date has addressed the question of group liability for faulty training procedures. Absent any such federal court protection, pilot group participation in formal training programs must be considered to create an unwarranted risk of group liability. The alternative is for the State of Alaska to assume full responsibility for the training programs. If the only acceptable alternative is for the pilot groups in Alaska to assume some measure of responsibility, they must also be insulated from liability.

B. Selective Dispatch. Because, notwithstanding tightening licensing requirements and implementation of pilot training programs, not all Alaska pilots at any given point in time will ever be fully licensed and equal in experience, some measure of what is called "selective dispatch" will necessarily occur within each pilot organization. "Selective dispatch" is nothing more or less than attempting to match license level and experience level with a call for dispatch. Although such dispatch is totally justified in the interest of safe pilotage, it raises a serious question of whether or not the pilot organization is warranting the competency of everyone it dispatches. The federal courts have consistently insulated pilot groups from the errors of an individual pilot under dispatch. However, this question has not yet been directly addressed by the federal courts within the context of selective dispatch, and the question itself must be considered an unacceptable risk to the pilot organizations involved.

C. Neither Damage Claimants nor Safe Pilotage Would be Well Served by Holding Pilot Groups and Individual Pilots Liable for Pilot Error.

1. Individual and collective assets are not sufficient to properly and fairly compensate claimants. In almost all instance, a successful suit against the pilot or the group or both would only serve to bankrupt the pilots without

effective damage relief to the claimants. The cost of liability insurance coverage, if at all available, is well beyond the financial reach of most pilots and pilot groups.

2. As to a pilot group, being held in for claims caused by an individual pilot error, will adversely impact those individuals' concentration levels required for safe pilotage, because of the stress and time demands placed upon them by the litigation. Although the offending pilot will likely be under license suspension and dispatch before and during any such litigation, the pilot group will be required to "carry on as usual".

D. Risk of License. The true incentive for a pilot to perform his pilotage duties in a skilled and professional manner is the risk of having his license limited, suspended, or revoked if he fails to do so. Without regard to his "accumulated wealth", otherwise available for damage claims, upon any such set back of his license, suspension or revocation, he will have been a professional failure in one of the most demanding of all professional callings.

Section 17. AS 08.62.170 PILOT'S LIEN FOR COMPENSATION

COMMENT: Vessels are jointly and severally liable for the compensation of a person licensed under this chapter who is employed by the vessel.

Section 18. AS 08.62.175 REGIONAL ORGANIZATIONS OF MARINE PILOTS

COMMENT: By recognizing one organization of marine pilots within each marine pilotage region, the State of Alaska insures competition among pilots will not occur. Marine pilots licensed by this chapter provide a public service to the state and the marine industry for a published tariff in a noncompetitive atmosphere. History has shown pilots that compete have more accidents. Pilots will take unnecessary or unwise chances to gain an economic advantage over other pilots when competing. By docking ships without tug assist, speeding in foggy conditions, moving ships in and out of ports during marginal tidal conditions, attempting to dock and undock ships in high wind conditions, speeding through fishing fleets to arrive at ports at published times are just a few examples of conditions that occur when pilots compete for work. Competing pilots, agents and ship owners will all state they do not take chances where safety is a "consideration". With this statement in mind, we strongly recommend the legislature consider the problems competition presents to marine pilotage as you review this revised marine pilotage act.

A professional marine pilot cannot serve the state's interest without at times recommending to the agent, master or ship owner that a particular action is not recommended due to safety reasons. The State of Alaska has the sole authority to regulate foreign shipping in state waters, while the U.S. Coast Guard regulates domestic shipping within the United States as related to navigation and manning requirements on board vessels. All U. S. merchant marine officers on board U. S. ships have first class pilot's license endorsements on their Mates or Masters license when navigating the inside or coastal waters of the U. S. A state licensed pilot is the only licensed pilot on a foreign ship while in U. S. waters. Pilots work independently of ship owner and agent world wide, and within the U.S., and usually in associations recognized by their state or countries governments. Rotterdam, Tokyo and New York being prime examples of highly regulated ports of the world where pilots operate within pilot organizations independent of shipping interest, and serve a reliable public function.

To insure nondiscriminatory practices, the present pilot associations are willing to have the state approve our Articles, Bylaws and Operating Rules. We are willing to submit to the State Board's scrutiny as a needed safeguard to insure uniform and nondiscriminatory application of our rules. Again, pilots are willing to pay for additional costs that arise from a better marine pilotage act.

COMMENT: By Association Attorney C. L. Cloudy

Power of State of Alaska to Either Or Both Limit
Marine Pilot Licenses & Franchise Particular Pilot
Groups For Particular Pilotage Regions Within Alaska
2-27-91

The Attorney General's Office for the State of Alaska has opined that the Alaska Constitution prohibits the State of Alaska from acting as above captioned. The only case authority which they have directly referenced are several Alaska Supreme Court decisions dealing with licensed guides and limited entry fishing permits. The referenced cases deal exclusively with Article VIII, Section 3 of the Alaska Constitution, which declares that "wherever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use". Presumably, the Attorney General's reliance upon this case is based upon the fact that marine pilotage is practiced upon "the waters" of the State of Alaska.

It is clear, however, from even a cursory reading of the licensed guide and limited entry cases, that the constitutional proscription stated in Article VIII, Section 3 relates solely to the conservation of natural resources. Marine pilotage, on the other hand, is in no manner related to the harvest of a natural resource and relates solely to the safe navigation of vessels generally within the pilotage waters of the State of Alaska. Our opinion therefore is that Article VIII, Section 3 of the Alaska Constitution does not prohibit the captioned action by the State of Alaska.

Although not directly referenced to us by the Attorney General's Office, we suspect some reliance is also placed upon those Alaska Supreme Court cases dealing with regional preference hire as a violation of Article I, Section 1 of the Constitution which is an expanded version of the Equal Protection Clause of the U. S. Constitution. Section 1 includes within its equal protection mandate "enjoyment of the rewards of their own industry", which mandate is not in the Federal Equal Protection Clause. We also suspect there may be some reliance upon those Alaska Supreme Court cases dealing with such things as attorney applicants having to establish a 30-day residency before taking the Alaska bar

examination, as to which the Alaska Supreme Court has ruled the requirement violated the Federal Equal Protection Clause.

However, in our opinion, Article I, Section 1 of the Alaska Constitution cannot effectively prohibit the captioned action by the State of Alaska. This is so, because regulation of pilotage is vested by the Constitution of the United States in the U. S. Congress under the Commerce Clause, and Congress has by statute placed pilotage control in the hands of the various states with pilotage waters. 46 USCA @ 8501. Consequently, whatever power the State of Alaska has to regulate pilotage, it exercises this power as the alter ego of the federal government. Congress remains free, however, to withdraw this delegation at any time.

Under federal law, as stated by the United States Supreme Court, there is absolutely no prohibition in the federal constitution against a state from either or both limiting marine pilot licenses and franchising particular pilot groups for pilotage in a particular pilotage region. Olson V. Smith, 195 U.S. 332 (1904); Ketch V. Pilot Commissioners, 340 U.S. 552 (1947). This is so, states the court, because federal law recognizes such limitations to be appropriate to safe pilotage. Further, the only manner in which a state may not regulate pilotage is one in which either extends beyond those areas delegated to the state (under 46 USCA @ 8501 and related) or extends into areas which are contrary to federal law.

Insofar as the U. S. Supreme Court is concerned, the limitations on the number of licenses and the franchising of pilot groups which result in a monopoly is a circumstance totally compatible with the power of Congress under the Commerce Clause of the U. S. Constitution, and does not violate the U. S. Constitutional prohibitions with regard to equal protection.

It necessarily follows therefor, that because Congress has the power to limit licenses and to permit franchising if it withdrew pilotage control from the states, and that because the U. S. Supreme Court considers the end result to be a permissible monopoly which appropriately serves the ends of pilotage control under the Commerce Clause, a pilotage state is vested with the same power if it chooses to exercise that power. As stated by the U. S. Supreme Court in the Olson case (id. at pp. 344-45), the power derived from Congress is "plenary", meaning absolute, unless and until Congress otherwise acts. Therefore, notwithstanding any real or perceived prohibitions which may be read in to the Alaska Constitution, the Alaska legislature has the absolute power to limit marine pilotage

licenses and franchise particular pilot groups for particular pilotage areas within the State of Alaska.

Section 19. AS 08.62.180 EXEMPTIONS

COMMENTS: (1) Vessels under enrollment, except as provided in AS 08.62.185 should be changed to read: (1) Vessels excluded from state pilotage control or 46 U.S.C. Section 8501 and except as provided in AS 08.62.185.

Section 20. AS 08.62.184 REGISTRATION OF AGENTS REQUIRED

COMMENT: Register of agents kept by the Board.

Section 21. AS 08.62.190 PENALTY

COMMENT: Fines are being increased to help offset cost of investigation if found guilty by this chapter and deter vessels from considering a fine as an alternative to employing a pilot.

Section 22. AS 08.62.201 SHORT TITLE

COMMENT: None.

Section 23. AS 39.25.120(C) ADDS MARINE COORDINATOR

Section 24. AS 45.50.572(A) IS AMENDED TO READ
A.AS 45.50.562 - 4550.596

COMMENT: None.

Section 25. AS 25, 26, 27, 28, and 29

COMMENT: None.

*Louisiana
Statute re Monroe
Pilot Tariff*

Historical and Statutory Notes

This section was enacted as R.S. 34:1049.1 by Acts 1988, No. 418, § 1, and was redesignated as R.S. 34:1055 on authority of R.S. 24:253.

PART III. PILOTS ON NAVIGABLE STREAMS, CHANNELS AND OTHER WATERS IN GENERAL

§ 1072. Board of commissioners and examiners; members; appointment; duties; enforcement of regulations

Notes of Decisions

1. In general
Pilots association lacked legally recognizable power to control individual pilots in rendition of their professional services and, therefore, would not be accountable for any negligence of pilot of vessel that spilled crude oil as consequence of structural failure. In re Lloyd's Leasing Ltd., S.D.Tex.1990, 764 F.Supp. 1114.

§ 1075. Associations of river port pilots

Notes of Decisions

1. In general
Pilots association and pilot of vessel that spilled crude oil were not liable for damages sustained as result of spill, inasmuch as harm caused was unforeseeable considering interplay of natural forces and likely human intervention, and it was not foreseeable to anyone skilled and trained in naval architecture or maritime navigation that casualty in channel would result in buckling of vessel's deckplate in such manner as to spill crude oil. In re Lloyd's Leasing Ltd., S.D.Tex.1990, 764 F.Supp. 1114.

PART V. PILOTAGE FEE COMMISSIONS

§ 1121. Pilotage fee commissions; composition

A. A separate pilotage fee commission shall exist relative to each pilot association established and operating under state law. Each pilotage fee commission shall be nominally designated by the name of the association to which it relates, followed by "Fee Commission".

B. Except as provided by Subsection C of this Section, each commission shall be composed of eight members, and eight alternates thereof, to represent the respective interests of the association and the steamship industry, appointed as follows:

(1) To represent the interests of the association, the governor shall appoint four members, and four alternates thereof, which members and alternates shall be designated by the board of directors of the association to which the commission relates.

(2) To represent the interest of the steamship industry, the governor shall appoint four members and four alternates thereof, from nominees submitted to him by the New Orleans Steamship Association, the Baton Rouge Steamship Association, the Lake Charles Maritime Association, and the International Freight Forwarders and Customs Brokers Association of New Orleans, Inc. The four members, including the alternate for each, shall include:

(a) A representative of American flag cargo or passenger vessels, operating to and from Louisiana ports.

(b) A representative of foreign flag vessels, operating to and from Louisiana ports.

(c) A representative of tanker or bulk carrier vessels, operating to and from Louisiana ports.

(d) An at large representative who may or may not be directly connected to the ownership or operation of vessels.

(3) The appointees shall be residents of the state of Louisiana.

(4) The alternates shall serve in the event of vacancy, inability, or absence of the member.

(5) The terms of the members, and of the alternates thereto, shall run concurrently with that of the governor appointing them. However, they shall remain in office until their successors have been appointed and duly qualified.

C. As is further referenced in R.S. 34:1122(D), in the event that the members representing the interest of the association and the members representing the interests of the steamship industry are unable to resolve any dispute as to pilotage fees and rates or any other legitimate business of the commission, the Louisiana Public Service Commission shall constitute the commission for the purpose of making a decision relative to the dispute, which decision of the Louisiana Public Service Commission shall constitute the decision of the fee commission.

Amended by Acts 1987, No. 202, § 1, eff. June 29, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote this section (see main volume for prior text).

Sections 2 and 3 of Acts 1987, No. 202 provide:

"Section 2. On the thirtieth day following the effective date of this Act, the terms of office of the members of pilotage fee commissions holding office on the effective date of this Act shall

terminate, and the terms of office of the members to be appointed in accordance with the revised provisions of R.S. 34:1121 shall commence.

"Section 3. Nothing contained in this Act shall be construed to modify or repeal any heretofore existing law relative to pilotage fee commissions which is not specifically addressed by this Act."

§ 1122. Fees and charges; adjudication of disputes

A. (1) Each fee commission shall have exclusive authority to fix and establish reasonable and just fees and rates for:

- (a) Pilotage service to ships and vessels.
- (b) Pilotage service to ships in distress.
- (c) Extraordinary pilotage service.
- (d) A pilot being carried to sea unwillingly, which fee and rate shall include reimbursement for his return to pilot station.
- (e) The detention of a pilot.

(2) Each fee commission shall have authority to hold hearings, subpoena witnesses, administer oaths, take depositions, fix fees and mileage of witnesses, compel the attendance of witnesses, and assess the cost of all hearings and expenses incurred by the commission equally on the pilot association to which it relates and the shipping industry.

(3) The pilotage fees and rates shall bear as a lien and privilege on the ships or vessels for non-payment of same, together with reasonable attorney fees, all of which may be enforced in any court of competent jurisdiction within one year from the date the service was offered or performed.

B. Pilotage fees and rates shall provide for all ordinary and necessary operating and administrative costs and expenses, including, but not limited to, the cost of, replacement of, and reasonable return on investment of pilot stations, administrative offices, furniture and fixtures, communication equipment and facilities, vessels, launches and other required vehicles of transportation and the expenses of maintaining and repairing same, other transportation expenses, the expense of maintaining necessary employees, operating materials, consumables and services, pensions, pension plans, hospitalization, disability compensation, taxes and licenses, life insurance, license insurance, trade promotions, public relations, legal expense, accounting expense, professional dues, administrative and professional publications, state pilot commissions, state and federal requirements, and fair average annual compensation for a state ship pilot, in comparison to regulated state ship pilotage in other United States ports.

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C. (1) In determining such fees and rates, individual pilotage fee commissions may give due regard to, but shall not be limited to:

(a) Consideration of the length, draft, dimensions, and tonnage of the vessels to be piloted.

(b) The difficulty and inconvenience of the particular service and the skill and additional expertise required to render it.

(c) The public interest in maintaining safe, efficient, and reliable pilotage service.

(d) The piloting time required; the distance traveled of the vessels to be serviced; the travel time required and distance traveled to and from vessels; the method of travel and travel cost required to and from vessels; the time devoted by pilots to making themselves available when needed; the time required to be on station or on call while both on and off station; the length of time duty requires the pilot's absence away from home; the difficulty of the particular service including working conditions; risk factors of the route; inconvenience and living conditions; the skill and additional expertise required to render the particular service; the length of the training, experience, or apprenticeship program; and the number of trips the pilot is required to ride light.

(e) Another factor relevant to the determination of reasonable and just fees and rates, including those factors previously considered and determined by the Louisiana Supreme Court, and the national average pilotage cost per mile for state regulated pilots operating in United States ports.

(2) If any standard for establishing pilotage fees and rates set forth herein is not applicable to a particular pilot service, then it shall not be considered in the determination of fees and rates for such service.

D. (1) A decision by a majority of the members of the commission shall constitute the decision of the commission. Whenever negotiation of an issue has been requested, in writing, by any two members and a majority of the commission is unable to decide the issue within ninety days of the request for negotiation, any member may certify and file, in writing, the issue with the Louisiana Public Service Commission for expedited adjudication. Upon such filing, as is provided by R.S. 34:1121(C), the Louisiana Public Service Commission shall constitute the commission.

(2) Within ninety days following the certification of the issue to the Louisiana Public Service Commission, it shall hold hearings where interested members of the fee commission may file and present their evidence and arguments, at the same time, relative to the issue. The Louisiana Public Service Commission shall render a full and final decision relative to the issue prior to the lapse of twelve months from its receipt of certification of the issue.

(3)(a) If the dispute involves a proposed increase in fees and rates, the Louisiana Public Service Commission may permit the proposed increase to be put into effect, in whole or in part, pending its decision, subject to protective bonding and other security requirements set by it.

(b) If the dispute involves a proposed increase in fees and rates and the Louisiana Public Service Commission does not permit the proposed increase to be put into effect prior to its decision, the proposed increase shall nevertheless go into effect, and remain in effect unless and until it reaches a full and final decision disallowing the increase, immediately following the lapse of twelve months following its receipt of certification of the dispute if it has not rendered a decision by such time, subject however, to reasonable protective bonding and other security requirements set by it.

(c) If the dispute involves a proposed increase in fees and rates and such has been put into effect prior to full and final decision of the issue by the Louisiana Public Service Commission, and the full and final decision disallows the increase, in whole or in part, the increase which is disallowed shall be refunded in a manner as prescribed by the Louisiana Public Service Commission.

Amended by Acts 1987, No. 202, § 1, eff. June 29, 1987.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote this section (see main volume for prior text).

Sections 2 and 3 of Acts 1987, No. 202 provide:

"Section 2. On the thirtieth day following the effective date of this Act, the terms of office of the members of pilotage fee commissions holding office on the effective date of this Act shall terminate, and the terms of office of the

members to be appointed in accordance with the revised provisions of R.S. 34:1121 shall commence.

"Section 3. Nothing contained in this Act shall be construed to modify or repeal any heretofore existing law relative to pilotage fee commissions which is not specifically addressed by this Act."

Notes of Decisions

Pilotage rates 3
Validity 1/2

Louisiana Public Service Com'n, Sup.1989, 553 So.2d 435.

1. In general

State Public Service Commission's authority to regulate pilotage fees is "other regulatory authority" given to commission by legislature, not by constitution, and thus legislature is allowed to control form of regulatory authority "as provided by law." Hayden v. Louisiana Public Service Com'n, Sup.1989, 553 So.2d 435.

3. Pilotage rates

Public Service Commission did not act unreasonably or arbitrarily in calculating pilotage rates to be charged by pilot's association to vessels subject to pilotage traversing Mississippi River between New Orleans and Baton Rouge in order to establish parity of annual compensation with rates charged by association for pilots servicing vessels between Pilottown and New Orleans, where pilotage rates charged by latter association were reasonable and fair. Hayden v. Louisiana Public Service Com'n, Sup.1987, 512 So.2d 370.

1/2. Validity

Portions of this section, subsecs. B and D(2) & (3), governing regulatory authority of State Public Service Commission over pilotage fees were valid exercise of legislature's power, and, thus, were not an impermissible restriction on power of State Public Service Commission to adopt own rules, regulations and procedures. Hayden v. Louisiana Public Service Com'n, Sup.1989, 553 So.2d 435.

Subsection D(3) of this section governing pilotage fee which allows automatic implementation of pilotage rate increases 12 months from date of certification does not violate due process rights of vessel owners; State's interest in safe pilotage on its waters is very high, and assuring adequate compensation for pilots is important component of such interest. Hayden v. Louisi-

CHAPTER 7. GREATER BATON ROUGE PORT COMMISSION

§ 1222. Officers of the board; meetings

The commission shall elect from among its own members a president, a vice president, a secretary, and a treasurer, whose respective duties shall be prescribed by the commission. At the option of the commission the offices of the secretary and treasurer may be held by one person. The commission shall meet in regular session as provided in R.S. 34:1221 and shall also meet in special session at the call of the president of the commission, or on the written request of five members of the commission. A majority of the members of the commission shall constitute a quorum and all action or resolutions of the commission must be approved by the affirmative vote of not less than a majority of all members of the commission. The commission shall prescribe rules to govern its meetings and shall fix the place at which meetings shall be held.

Amended by Acts 1985, No. 844, § 1.

Historical and Statutory Notes

1985 Amendment: Substituted "vice president" for "vice-president", and inserted a comma following "secretary", in the first sentence; and in the third sentence, substituted "as provided in R.S. 34:1221" for "once each month," and substituted "five members" for "three members".

In this section as amended in 1985, "offices" was substituted for "office" in the second sentence on authority of R.S. 24:253.

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

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

(2) Docking or undocking mode is when tugboats are assisting the vessel in close proximity to the dock, with the vessel under the direction or control of the master, docking master, state pilot, or certificated deputy pilot. If the vessel that is docking or undocking is under the direction or control of the master or docking master, that direction or control must have been delivered from the pilot, or is in the process of being delivered to the pilot.

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

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

310.151 Rates of pilotage.—

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

(2) The board is granted the power under this chapter to fix, by order, rates of pilotage to be charged by licensed state pilots and certificated deputy pilots after a hearing held pursuant to the Administrative Procedure Act. Such hearing shall be held at the port area affected by a proposed rate change unless all parties to the proposed change consent to the hearing being held at another location. The rates of pilotage in effect in the ports in the state on the effective date of this act shall be collectible and enforceable until the board fixes different rates of pilotage as provided in this chapter. In addition to any other notice requirements imposed by law, the board shall provide notice of a hearing to consider changes in rates of pilotage for a particular port by publishing such notice in a newspaper of general circulation in the affected port area and mailing such notice to each person or organization which has requested advance notice of the proceedings of the board. Such publication and mailing of notice shall occur at least 14 days prior to the hearing.

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

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

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

310.161 Piloting without a license; penalties.—

(1) Any individual who is not a licensed state pilot or a certificated deputy pilot, and who directs the

MARINE DIGEST

News Log

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Alaska pilots wrestle with competition

By Morrison Edwards

Following on the heels of a New Year's threat to boycott pilotage clients who refused to sign exclusive contracts, the Dutch Harbor-based Alaska Marine Pilots Association (AMP) in mid-May began what many industry observers are calling a deliberate and illegal work slowdown.

AMP president Tom Dundas told *Marine Digest* that several of his 11 pilot members were off looking for temporary work. He said he could not field sufficient crew to take on the more time-consuming and less remunerative outport dispatches.

But Northstar Maritime Agencies vice president Tom Reuter has heard a different message as his agents' calls for pilots have been repeatedly denied.

"Guarantee us 11/15 of your work — in writing," AMP has insisted, "and then we'll move your ships." A similar message has registered loud and clear at Alaska Maritime Agency, according to manager Dan Blackmore.

Reuter said about 80 percent of Northstar's work went to AMP before the boycott, based on a verbal understanding. That wasn't good enough.

"They pulled the plug on us anyway," said Reuter. "Even if we do sign, what assurance do we have they won't pull the plug again?"

Alaska law requires that a pilot association accept dispatches anywhere within its region of operation 24 hours a day, 365 days a year, or to an extent commensurate with the size of its membership. The Alaska attorney gen-

APL, Sea-Land file to reflag

After months of warning, Sea-Land Service and American President Lines have filed to reflag a number of their U.S.-flag ships.

Sea-Land is seeking to transfer 13 of its 41 vessels from U.S. to Marshall Islands registry.

APL is applying to operate its six new containerships, due to be delivered in 1995, and seven of its existing 15 U.S.-flag containerships under a foreign-flag registry yet to be determined. The seven ships include five C10 class ships and two J9 vessels.

Both lines have been pressuring the Clinton administration to consider maritime policy reforms and have been frustrated by the administration's indifference.

"We are taking these steps with regret and reluctance," said John Lillie, chairman of American President Com-

panies, APL's parent company. "Unfortunately, the message from the administration that there will not be funding for a comprehensive maritime reform program has made these steps necessary ..."

John Clancey, president and chief executive officer of Sea-Land, echoed Lillie's comments. "We can no longer afford to continue operating these vessels under the U.S. flag, competing against lower-cost, foreign-flag operators or subsidized U.S.-flag operators," he said.

Sea-Land's 16 vessels used in service to Hawaii, Alaska and Puerto Rico are not affected by the reflagging application.

Both lines said they would consider returning the vessels to U.S. registry if legislation for maritime reform is enacted. ■

Washington spill regulations hit Canadian vessels — and vice versa

By Fred McCague

Vessel operators bound for Canada may get a surprise now that the Washington Office of Marine Safety's contingency plan requirements are in effect. The state law applies not only to vessels bound for Washington ports, but also to all Canada-bound vessels which transit the U.S. side of the Strait of Juan de Fuca, says Barbara Herman, OMS administrator.

That means that Canada-bound cargo and passenger vessels of 300 gross tons or more must have an approved contingency plan or face a fine of \$100,000 per day.

Herman says the law will be enforced. Washington's Maritime Commission met early this month to discuss whether or not its coverage will be automatically extended to those ves-

sels. If it is, vessel agents in Vancouver are likely to get a surprise bill from the commission. Even if vessels in transit are covered by the commission, they must still comply with the notice requirements, and tankers need both contingency plans and prevention plans which cannot be provided by the commission.

Canada is not taking this threat to its vessel traffic sitting down. The Canadian oil response bill, passed just last month, requires full compliance with its response requirements by Alaska-bound traffic using the Inside Passage, and the act seems to give Canada full jurisdiction over American traffic using the outbound traffic separation lanes (the Canadian side) of the strait under a provision stating jurisdiction where "Canada has a historic or other title of sovereignty." ■

Alaska pilots CONTINUED ON PAGE 10

Alaska pilots CONTINUED FROM PAGE 9

eral's office has already declared the AMP boycott threat "a blatant violation" of the state's anti-monopoly law. If the state finds AMP to be refusing dispatch without good cause, AMP risks decertification

Meantime, ships are moving and cargo has suffered no serious delays thanks to coverage by AMP's new rival in Dutch Harbor, the Western Alaska Pilot's Association (WAPA). It was

WAPA's appearance on the Dutch Harbor scene this winter that set AMP off in search of work guarantees, and caused them to lower their Dutch Harbor rates.

Why WAPA has posed such a threat to AMP isn't clear. There are at present no more, nor less, pilots in the western region than before WAPA's debut. WAPA founder Bob Boyd came from AMP with three of his AMP confreres. AMP had 15 pilots before the split. Now AMP has 11 and WAPA has 4.

(Boyd broke away from the tanker-focussed Southwest Alaska Pilots Association in 1988 to start up AMP in Dutch Harbor as the fish business boomed.)

Boyd says the income target at AMP when he left last fall was \$150,000. He feels the industry won't support much more than \$100,000, given tough times. AMP. Dundas says it's not just a question of so many dollars.

"We want some predictability," says Dundas. "We're highly regulated by the state on the one hand, but we don't know what to expect for work." Unlike a licensed CPA, for instance, a marine pilot cannot easily transfer his experience and license to another area if business conditions worsen.

Dundas wants to see the entire annual take from the western region divided proportionately between AMP and WAPA according to their present numbers. He insists a fixed tariff and state limits on pilot numbers are fair and justifiable protections. AMP in fact worked hard to obtain legislation to that effect this spring. Its bill, HB237, died in committee.

AMP's effort to secure by fiat what it fears losing to the play of free market forces is mirrored across the Gulf of Alaska in the thorny relationship between the oldtime Southeast Pilots Association (SEPA) and the breakaway Alaska Coastwise Pilots Association (ACP).

Pilots Terry Bennett and Joe Homer started up ACP in 1990 with a single assured customer: the sail-cruise ship *Windstar*. By the following spring, Holland America Lines left SEPA for ACP, and the battle was on. When SEPA joined AMP in pushing for anti-competitive legislative relief this year, WAPA and ACP both worked to oppose it.

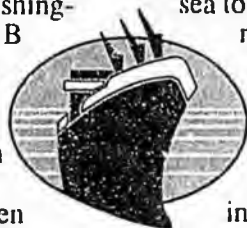
"What other industry guarantees anyone an income?" asks ACP's Bennett. "They're worried about losing pilots? I've got a drawer full of resumes and letters from fully qualified pilots who want to go to work, full time, year-round."

However the current AMP work slowdown is resolved, a pattern of debate is well established toward next year's renewal of the Alaska Pilotage Act. ■

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from the front page of the Tundra Drums, Thursday,
March 18, 1993.

Tariff tugs at shippers' pocketbooks

By Nina Laramore
For the Tundra Drums

Shoppers may need to dig deeper into their pocketbooks to pay for groceries and other goods this summer due to a tariff increase scheduled for deep-water barge and ship owners bringing freight into Bethel.

The Kuskokwim Pilots Association, formerly Sumstad Navigation, will charge a half cent per pound or gallon — double last year's price — to guide barges and ships up and down the river when it opens.

In turn Northland Services Inc. and Crowley Marine Services Inc., the two barge companies delivering goods, plan to increase their price by 50 cents per 100 pounds.

"We will be adding the pilotage fee of 50 cents per 100 pounds to the bottom of freight bills similar to the warpage and handling charges," said Peter Saunders, account manager for Crowley's Western Alaska division. "This is just too great of an expense to absorb."

Crowley, unlike Northland, does not plan to notify its customers in writing of the increase, Saunders said. He said that is the responsibility of Capt. Ron Sumstad, part-owner of the association.

"This is going to affect everyone who brings in freight to the port of Bethel," said Stuart Greydanus, Bethel Port director. Most of the increase will fall on the large barge orders placed by the grocery stores and others, he said.

Last year the pilotage rate was \$7,249 for the river pilots to guide foreign ships and barges, Sumstad said. That cost will nearly double for the upcoming season, said the association's lawyer, Mike Haglund, and Northland sales manager Steve

See Tariff, page 3

Tariff ...

From page 1

Koponen.

The pilots travel nearly 35 miles out Kuskokwim Bay to meet freight haulers at Pilot Bar and then guide them on the 360-mile, 40-hour round-trip journey, Sumstad said.

"In the past we absorbed the pilotage cost, but it is such a large increase," said Judi McQuade, traffic manager for Northland.

The pilotage fee on 1,000 pounds of groceries will be \$5, McQuade said.

"Where this is really going to hurt is on really dense cargo," Koponen said. "A 40,000-pound shipment of soda pop will cost an additional \$200 in freight over last year's prices.

"It's a big increase for the businesses. In the past we were able to absorb the pilotage cost, but because it is almost a doubling in what was previously charged we need to recover the increase."

Local grocers first heard of the increase early this week when they received a letter from Northland informing them of the new fees.

"It is too soon to tell if the increase in freight will affect the prices of groceries for the average Bethel shopper," said Joe Marchetti, ANICA Grocery Store manager. "A lot of increases ANICA just absorbs and does not pass onto the customer."

Swanson's General Manager George Myran said he would rather not comment because he has not yet received confirmation from Crowley, the store's major barge supplier.

Steve Kikendall, the Anchorage-based spokesman for Alaska Commercial Co., could not be reached for comment.

Sumstad said his company was forced to increase fees because of the cost of complying with the overhauled pilotage statute. After the Exxon Valdez ran aground in Prince William Sound, the legis-

lature decided in 1991 to increase their enforcement of regulations, including ensuring pilots were properly trained and certified.

The increase must still be approved by the Alaska Board of Marine Pilots, the licensing and regulatory agency for marine pilots and Attorney General Charlie Cole, Haglund said. He said he expects the board and the state will approve the tariff.

The tariff can be renegotiated with foreign vessels and barge lines once per year, Haglund said.

Sumstad began navigating the Kuskokwim in 1963 and his family has been the only company navigating ships up the Kuskokwim since 1957, he said.

"No one else knows the river," Sumstad said. "The state recognized the channel is always changing and pilots here must have previous season's experience in order to do the job. It is a gray-hair job."

Besides insurance, Sumstad said it costs his company \$2,000 for each of three pilots to become certified and \$30,000 in lawyers fees to restructure the business. In restructuring and renaming his business, Capts. Kim Buckman of Seldovia and Charles Phillip of Kwigillingok became equal owners with Sumstad of Seward.

Sumstad and Buckman have received state certification and Phillip is in the process of getting his Coast Guard license, the first step toward certification.

"They were always well-qualified but not certified," Haglund said. "For over 100 years there were only a few people on the whole river qualified to navigate.

"They used none of the elaborate navigational aids such as Corps of Engineers charts, soundings and navigational buoys used everywhere else," Haglund said. "Sumstad navigated, opened and closed the river, set the navigational buoys and everyone had complete trust in them to navigate the deeper draft traffic. The Kuskokwim Pilots Association will be the first certified pilots in the history of the region."

Testimony of Captain Terry Bennett
to the House Labor and Commerce Committee
of the Alaska Legislature
on HB 237
April 1, 1993

Mr. Chairman, members of the committee, thank you for allowing me the opportunity to speak today. My name is Terry Bennett, and I hold unlimited licenses as master and pilot. I have piloted in southeast Alaska since 1981 and I am co-founder of Alaska Coastwise Pilots Association.

This bill was not asked for by us, the smaller, weaker competitor pilot group, and as far as I know it was not requested by industry. This then raises a question or two as to why is it now being proposed and who asked for it? The bill says, on page 4 line 16, "a tariff...is valid for three years..." It also says it can be amended annually.

The sponsor statement says that setting a fixed tariff will allow "industry...a longer view of the tariff situation, tariffs will be uniform where they are now often dissimilar between pilot organizations,..." In southeast, called by the board, region one, both pilots' organizations have multi-year contracts allowing industry a "longer view" of the tariff. In my group's contracts there is also a clause referring to annual adjustment, patterned after those we have seen in Union collective bargaining agreements.

With respect to "uniformity of tariffs" I would direct your attention to the state's requirement that pilot groups publish

their tariffs and maintain them for at least a year. You will notice that the result of last year's contract negotiations by industry with the pilot organizations in southeast is about a ten percent differential, total, in the tariff collected by one group of pilots versus the tariff collected by the other group.

Mister Chairman, members of the committee, ACPA is doing nothing unfair in its bargaining with industry and they have not complained to us or about us. From what I have been able to gather it appears that SEAPA made bad business decisions last year and they want you to make it up for them. Last year to stay competitive with us they had to lower their fee for services resulting in reduced revenue. They also hired a large number of part-time pilots they say they did not need with a view toward keeping those people from working with ACPA. This further reduced their revenue. Add to this costs they incurred in other overhead and you can see how their bottom line suffered.

If you put in play a mechanism for a fixed tariff you will destabilize a bargaining procedure that all participants have haggled over for almost two years; what we have in place now was acceptable to both groups in southeast until SEAPA thought they saw an opportunity to gain another whopping pay increase.

Captain Luck, understandably, would like to see the tariff issue away from the Board and I think now that we have a year's experience with the procedure the Board should not have to deal with this issue as much.

There is no need for a limitation on the number of licensed pilots. State licensure is already self-limiting due to the great difficulty in gaining entry into the profession brought about by the 1991 legislation. There is an element of unpredictability in the attrition rate of pilots due to age, illness or death. As you know, fog in Sitka or Juneau can result in air traffic delays in the summer when as many as half of southeast's marine pilots may be in transit. This is unavoidable due to our work. I have been on planes with as many as eight or nine other pilots. A crash would make it difficult to sustain compulsory pilotage with today's number of pilots, to say nothing of what it would be like if a regulatory board further limited the number.

In addition, a limit only benefits the larger pilot group and unfairly stifles the smaller group. The sponsor says "...limiting licenses is a common practice in other states and Alaska...has been unique..." I can cite for you a number of examples where other states and local pilotage commissions have changed their minds on this issue. That Alaska has heretofore allowed more open access is very much to Alaska's credit. Limited entry is by definition

Bennett Testimony/HB237
April 1, 1993
Page 5

discriminatory, unfair and unAmerican. Alaska sets a high standard for marine pilots while allowing for aspirants a fair chance to gain access to a proud, unique profession. Please do not close that door.

Finally, cross regional licensing is a complex issue involving myth, monopoly and money. It needs a full, fair and public airing. Limited cross regional licensing would greatly benefit safety of pilotage in Alaska, particularly in Prince William Sound from sea to Valdez.

I urge you to take another more critical look at this legislation, and make some changes. I ask you to reject the attempt by any pilot group or bureaucracy to re-establish pilotage monopolies, which ultimately reward incompetence, give poor service to the consumer, and might incur great cost and damage to the state.

I would be happy to answer any questions you may have. Again, thank you for this opportunity to be heard.

Sincerely,

ALASKA COASTWISE PILOTS ASSOCIATION

Captain Terry Bennett

Legislative Research Agency

Alaska State Legislature



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

September 20, 1993

MEMORANDUM

TO: Representative Bill Hudson

FROM: Marwood D. Harris *MH*
Legislative Analyst

RE: **Marine Pilotage**
Research Request 93.218

You asked the following questions about the regulation of marine pilots in the various coastal states: How are marine pilots examined for competency? How are pilots held accountable for accidents? Which states limit the number of licensed pilots and regulate pilotage rates? Do any states encourage competition among pilots or pilot associations? Are any states currently in the process of amending their pilotage statutes?

To answer these questions we reviewed the statutes of most of the coastal states surveyed in the 1990 report *Improving Alaska's Marine Pilotage System* (see Table 1), and we spoke with representatives from the national marine pilot's organization and several state pilot's organizations.

Examination of Pilots

In all of the states surveyed the principle regulatory authority for marine pilots is given statutory authority for examining pilots. This authority varies from state to state, although a board of pilots similar in composition to Alaska's is most common. California's law (Harbor and Navigation Code 1172) is typical with regard to examinations in being brief: "Pilots licensed by the board shall be carefully examined as to their qualifications." Oregon's statute (Shipping and Navigation 776.115[5]) clarifies the board's responsibility to determine the criteria for examination: "The board is authorized to establish the qualifications of pilots [and] provide for their examination." Representatives of pilots' organizations noted that a subcommittee of the board is delegated the authority to write the exams. Washington's law (Navigation and Harbor Improvements 88.16.090) is probably the most comprehensive explanation of the board's responsibility for examining candidates for pilots licenses:

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. . . .

(5) The board shall develop an examination and grading sheet for each pilotage district. . . . The board may appoint a special independent examination committee or may contract with a firm knowledgeable in the development of professional tests. . . . Active licensed pilots may be consulted to the general development of examinations. . . . The pilot members of the board may participate in the grading of examinations. . . . The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions. . . .

Washington's law (see Attachment A) also details physical examinations for the pilot, number of familiarization and training trips, and vessel simulator training.

Accountability of Pilots

State laws are less clear about pilot liability. Only six states explicitly limit or totally exempt the liability of pilots for accidents which occur when the ship is under their control: Oregon, Washington, South Carolina, Texas, Louisiana, and Alaska. Washington limits pilot liability to \$5,000. Oregon's statute (776.510), the most thorough provision for limiting liability, includes a statement of legislative intent:

The stimulation and preservation of maritime commerce. . . is declared to be affected with the public interest, and the limitation and regulation of liability of pilots. . . is necessary to such stimulation and preservation of maritime commerce and is deemed to be in the public interest.

Under Oregon's law vessel owners have the option of agreeing not to assert any personal liability against a pilot or pilot organization, or to request, "in writing and in sufficient time," that pilots procure insurance on a "trip" basis "insuring such pilots. . . against all claims or demands arising from. . . pilotage of the vessel." In the latter case, the cost of this insurance is included in the charges for pilotage service, a disincentive for vessels to take this option. In both cases pilots and pilot organizations are held harmless. The complete text of this law is included as Attachment B.

While the pilotage laws of most states do not explicitly exempt pilots from liability for damages from accidents they have, the laws often contain a statement as to the "servant status" of pilots that seems to separate the pilot from direct responsibility for damages. California's pilotage statute, for example, states that:

When a pilot goes aboard a vessel, the pilot becomes a servant of the vessel and its owner and operator. Nothing in this division exempts the vessel or its owner or operator from liability to persons or property for damage or loss caused by the vessel or its operation on the ground that (1) the vessel was piloted by a pilot, or (2) the damage or loss was incurred as a result of the error, omission, fault, or neglect of a pilot. (§1134)

The intent of this provision is directed toward third parties; it makes clear that the pilot is a "servant," i.e., an employee of the vessel. Under the common law master-servant principle, the master is held liable for conduct of the servant which occurs while the servant is employed. However, according to Ed Sheperd of Garvey, Schubert and Barre (a law firm for several port authorities), this provision does not immunize the pilot from damage litigation. It has more of a practical intent by underlining the fact that pilots have less financial resources than shipping companies to pay for damage claims. At the same time, the State of Washington uses an identical statement of pilots as "servants" to clarify the intent of its explicit limit of pilot liability ("a . . . pilot. . . shall not be liable for damages in excess of. . . \$5,000;" 88.16.118).

Paul Kirschner of the American Pilot's Association noted that, where shipping companies are able to sue pilots, the practice is very rare, an opinion shared by a representative of the Long Island Pilot's Association of New York (one of the states that does not exempt pilots from liability).

States' pilotage laws make clear provision for license suspension and revocation. In most states the primary regulatory authority takes disciplinary action; in some states disciplinary action must be preceded by a hearing. Many states require pilots to take out bonds, ranging from \$500 to \$5000, when they are issued licenses, but these bonds are used to pay for infractions committed by the pilot.

Limits on the Number of Pilots and on Pilotage Rates

Nearly all states establish a ceiling on the number of valid pilots licenses in circulation at any one time. The regulatory authority is given responsibility to "appoint and license the number of pilots which is sufficient to carry out the purposes of this division" (California

§1170). However, in some state laws the extent of this authority is not clearly defined and appears to be open to interpretation. For example, under Connecticut law the commissioner of transportation "shall license as many residents of this state and any other state as said commissioner deems necessary and finds qualified to act as pilots. . . ." Although this law would seem to give the commissioner discretion in the number of licenses that are issued, it was recently interpreted in Connecticut court to place no barrier on the licensing of a pilot provided the pilot was qualified. This decision has led to a large increase in the number of pilots in Connecticut (see below).

Apparently all states except Alaska fix pilotage rates (Alaska fixes a maximum rate but no minimum). Some states define rate formulas in statute. Most states direct the regulatory authority to "fix, at reasonable and just rates, pilotage fees. . .[etc]." Some states require a public hearing before rates can be changed. For example, Washington law provides that

. . .no rate shall be increased, lowered or altered without a public hearing of which due notice by registered letter, mailed at least fifteen days prior to the date of hearing, shall have been served upon all pilots licensed under this chapter and upon all vessel operators and agents who have registered with the board. (Washington 88.16.030(3))

Washington also prevents rates from being changed "more than once in any twelve months' period."

What States Recognize Competition?

Alaska seems to have the reputation as the only state where the regulatory regime accepts competition among pilots. The basis for this perception would seem to be the existence of competing pilots' organizations in one port. However, competing groups exist or have recently existed in several states. In Hawaii a splinter pilot's organization has an exclusive contract with a group of fishing companies. In Portland, Oregon, two discontented pilots signed an exclusive contract in 1989 with a private wharf to pilot ships using that facility. A representative of the Columbia River Pilots (the original pilot's association) reported that the existence of two organizations "works pretty well;" however, the Oregon Board of Maritime pilots has before it a motion to study the use of exclusive contracts. The pilot's organization in Puget Sound split in 1982 but recombined after a short time. Pilots in Connecticut compete in part by levying different pilot transportation charges.

Most of these examples are similar to Alaska in that they depend on exclusive contracts with a vessel company (Puerto Rico is the only part of the United States which prohibits exclusive contracts). Even where fixed rates prohibit rate competition, these contracts guarantee a

pilot's group a dependable and consistent amount of work. In most of these cases splinter groups formed (as in Alaska) because of "personality clashes" in part based on the perception by the disenchanted pilots that they were not given sufficient work.

The Connecticut example illustrates how competition may arise from historic reasons even when statutes do not openly allow for it. The Connecticut court case mentioned above coincided with a Long Island tugboat strike. Following the decision a large number of striking tugboat captains and mates became Connecticut-licensed pilots, increasing the number from 12 to 60, and began competing for Long Island Sound pilotage. This dramatic increase led to legislation in 1992 creating a pilot's commission to examine how to establish a regulatory system. The commission declared a moratorium on new licenses and recommended a mandatory rotation system either using a statute-defined formula or a state-operated dispatch.¹

Limits on the number of pilots and on pilotage rates may be linked to the more general question of whether or not states accept or recognize competition among pilots or between pilot organizations. No state directly refers to competition in statute (a bill recently introduced in the Florida House of Representatives may make Florida the first exception; see below. However, by not limiting either the number of pilots or pilotage rates, state law may allow competition in practice. Notably, in three of the states in which competition seems to exist, Alaska, Hawaii, and Connecticut, there is no limit on the number of pilots. On the other hand, two pilot's groups compete in Portland, Oregon, where both the number of pilots and rates are fixed. (The Oregon case may be unique, however, because one pilot's group works exclusively with a dock facility and thus competes for vessels *in conjunction* with the dock owners. Where rates are fixed, pilots may compete for business on other grounds--by charging different transportation fees, claiming specialized local knowledge, or asserting a superior reputation.)

While competition among pilots is not explicitly acknowledged in statute, many state pilotage laws usually express the intent that adequate pilotage is related to promoting maritime commerce. One section of Oregon's pilotage law notes that: "The stimulation and preservation of maritime commerce...is declared to be affected with the public interest" (776.510). In the statement of legislative intent in Washington's pilotage statute this is made more clear:

It is the further intent of the legislature not to place in jeopardy Washington's position as an able competitor for waterborne commerce

¹This information was provided by Paul Kirschner of the American Pilot's Association. Mr. Kirschner believes that the commission will recommend a state-operated dispatch.

Representative Hudson
September 20, 1993
Page 6

from other ports and nations of the world, but rather to continue to develop and encourage such commerce.

Thus, in addition to acknowledging that pilotage safety is a primary concern of the state, some states also indicate that pilotage is directly linked to the promotion of maritime commerce and competition. It could be argued that overly restrictive pilotage regulations, either severe limits on the numbers of pilots or fixed, high pilotage fees, could have an adverse impact on the state's "position as an able competitor" and also the "stimulation of maritime commerce."

Recent Pilotage Legislation

Legislation affecting the regulation of pilots has been recently introduced in several states. Bills in Oregon and Washington would make minor revisions to the language of existing laws. Senate Bill 28 introduced (and passed) in Delaware defines six classes of pilot's licenses and an apprenticeship program.

A bill introduced this year in Florida (HB 1957) is notable because it explicitly declares that pilotage "must be secured by the state and not be left open to market forces." The bill further declares that

. . .economic regulation, rather than competition in the marketplace, will better serve to protect the public health, safety, and welfare.
. . .the economic regulation of piloting [is] intended to protect the public from the adverse effects of unrestricted competition which would result from an unlimited number of licensed pilots being allowed to market their services on the basis of lower prices rather than safety concerns.

The bill also prohibits pilots from discriminating "among their customers as to pilotage charges or services, except as might be explicitly established in statute." The complete text of this bill is included as Attachment C.

I hope that you find this memorandum useful. Should you need additional information, please contact this office.

Attachments

TABLE 1
Marine Pilotage Regulation in Selected States

State	Limit on Pilots?	Fixed Pilot Rates?	How Exams Prepared?	Limit on Liability?	Accident Investigation?
California	yes; (§1170)	yes; rates defined in statute from recommendations by pilotage commission (§1190, 1202-1210)	by Board (§1172)	yes; although only for San Pedro Bay (§444) (California pilotage statutes differ between ports) no, generally; pilot required to take out \$5000 insurance bond which covers infractions (§1180)	unclear; revocation or suspension of license by board (§1106, 1180-1183)
Connecticut	yes, ostensibly; number at discretion of the Commissioner of Transportation, advised by pilot's commission (15-13)	yes; set by Commissioner of Transportation (15-14)	by pilot's commission (15-13c.(e))	no	by pilot's commission, which makes recommendations to Commissioner of Transportation about disciplinary action
Florida	yes; board determines based on "supply and demand" (310.061)	yes		no	by Department of Professional Regulation (310.091)
Hawaii	no	yes; Director of Department of Commerce and Consumer Affairs set rates (§462A-11); rate changes subject to public hearing	Director develops exams (§462A-3(3))	no	unclear; Director suspends licenses with public hearing (§462A-20)
Maine	yes; by Maine State Pilotage Commission (§90.1.H)	yes; Commission establishes rates (§90.1.B)	by Commission (§90.1.C)	no; pilot takes out \$1000 bond for infractions (§95)	by Commission (§90.F-G); by Administrative Court (§99-102)

TABLE 1
Marine Pilotage Regulation in Selected States

State	Limit on Pilots?	Fixed Pilot Rates?	How Exams Prepared?	Limit on Liability?	Accident Investigation?
Maryland	yes, ostensibly; "Board shall choose the number of apprentice pilots ...necessary to protect the commercial interests of the state." (§11-305)	yes; Public Service Commission sets fees (§'11-502)	by Board of Pilots	no	unclear; Board suspends licenses (§11-410)
New York	yes; by Board of Commissioners (Art. 6, Sec 90.2)	yes; set in statute (Sec. 96.1.(a)-3.(b))	by Board of Commissioners (Sec 90.1, 90.2)	no; pilot must take out \$500 bond for rule infractions	unclear; Board revokes licenses upon hearing before the Board
Oregon	yes; by Board of Maritime Pilots (776.115(3))	yes; by Board following rate proceedings conducted by a hearing officer from Public Utilities Commission (776.115(6)(a)-(b); 776.129)	by Board (776.115(5))	yes; extensive provision for limiting liability--see text (776.510, 776.520)	unclear; complaints heard and license revoked or suspended by Board
Washington	no	yes; by Board of Pilotage Commissioners with public hearing (88.16.030(3))	by Board (88.16.030)	pilot liability limited to \$5000	unclear; disciplinary action taken by Board (88.16.100)

ATTACHMENT A

West's Revised Code of Washington Annotated
1993 Cumulative Pocket Part

88.16.090

West's
REVISED CODE
OF
WASHINGTON ANNOTATED

*Under Official
Allocation and Numbering*

Titles 87 to 88

1993

Cumulative Annual Pocket Part

For Use In 1992-1993

Replacing 1992 pocket part in back of volume

Includes laws through the 1992
Regular Session

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T. 07 to 08 Wash Code—1
1093 P.P.

of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. The board shall report annually to the legislature on such exemptions. Every vessel not so exempt, shall while navigating, the Puget Sound and Grays Harbor and Willapa Bay pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this chapter; *Provided*, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report.

Amended by Laws 1967, ch. 15, § 3; Laws 1971, Ex.Sess., ch. 297, § 3, eff. May 21, 1971; Laws 1977, Ex.Sess., ch. 337, § 6; Laws 1987, ch. 194, § 2, eff. April 25, 1987.

Historical and Statutory Notes

Intent—Laws 1987, ch. 194: "The legislature intends to provide a limited exemption from the provisions of this chapter for a specified class of small vessels registered as passenger vessels or yachts. It is not the intent of the legislature that such an exemption shall be a

precedent for future exemptions of other classes of vessels from the provisions of this chapter." [Laws 1987, ch. 194, § 1.]

Severability—Laws 1977, Ex.Sess., ch. 337: See Historical Note following § 88.16.005.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

A governmental agency may be vicariously liable for the actions of a compulsory pilot if the agency, in addition to regulating the pilot's profession, is the pilot's employer. *State of Wash. v. M/V Dilkara* (D.C.1979) 470 F.Supp. 437.

Pilots remained licensed independent contractors hired by vessels despite compulsory pilot laws of Washington. *State of Wash. v. M/V Dilkara* (D.C.1979) 470 F.Supp. 437.

Compulsory pilot laws of Washington do not change relationship between the state and the pilot. *State of Wash. v. M/V Dilkara* (D.C.1979) 470 F.Supp. 437. Issue of vicarious liability, was not subject to being pled by defendant vessel as an affirmative defense and counterclaim in action by State of Washington on ground that any negligence of pilot was imputed to State on a respondent superior theory where State only required vessels operating under its jur-

isdiction to have a state licensed pilot on board or control pilot's actions. *State of Wash. v. M/V Dilkara* (D.C.1979) 470 F.Supp. 437.

88.16.080. Repealed by Laws 1967, ch. 15, § 12

88.16.090. Pilots' licenses—Qualifications—Duration—Annual fee—Written and oral examinations—Physical examinations—Familiarization trips—Penalty—Reporting requirements

(1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and pursuant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than one thousand six hundred gross tons or as a master of inland steam or motor vessels of not more than one thousand six hundred gross tons, such license to have been held by the applicant for a period of at least two years prior such license to have been held by the applicant for a period of at least two years prior to taking the Washington state pilotage examination and a first class United States endorsement without restrictions on that license to pilot in the pilotage districts for which the pilot applicant desires to be licensed, and if the pilot applicant meets such other qualifications as may be required by the board. A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee established by the board of pilotage commissioners pursuant to chapter 34.06 RCW, but not to exceed one thousand five hundred dollars, to be placed in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. The board shall hold examinations at such times as will, in the judgment of the board, ensure the maintenance of an efficient and competent pilotage service. An examination shall be scheduled for the Puget Sound pilotage district if there are three or fewer successful candidates from the previous examination who are waiting to become pilots in that district.

(5) The board shall develop an examination and grading sheet for each pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants and shall be updated as required to reflect changes in law, rules, policies, or procedures. The

board may appoint a special independent examination committee or may contract with a firm knowledgeable and experienced in the development of professional tests for development of said examinations. Active licensed state pilots may be consulted for the general development of examinations but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination development committee it is authorized to pay the members of said committee the same compensation and travel expenses as received by members of the board. When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations. Any person who willfully gives advance knowledge of information contained on a pilot examination is guilty of a gross misdemeanor.

(6) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or candidate is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(7) The board shall prescribe, pursuant to chapter 34.05 RCW, a number of familiarization trips, between a minimum number of twenty-five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims, and records of familiarization trips of pilot candidates. Willful misrepresentation of such required information by a pilot candidate shall result in disqualification of the candidate.

(10) The board shall adopt rules to establish time periods and procedures for additional training trips and retesting as necessary for pilots who at the time of their licensing are unable to become active pilots.

Amended by Laws 1967, ch. 15, § 6; Laws 1977, Ex.Sess., ch. 337, § 7; Laws 1979, Ex.Sess., ch. 207, § 3; Laws 1981, ch. 303, § 1; Laws 1986, ch. 122, § 1; Laws 1987, ch. 264, § 2; Laws 1990, ch. 112, § 1; Laws 1990, ch. 116, § 27. Reenacted and amended by Law 1991, ch. 200, § 1002, eff. May 15, 1991.

¹ Repetitious language in original.

² So in original; probably should read "complement".

Historical and Statutory Notes

Effective dates—Severability—Laws 1991, ch. 200; See §§ 90.56.901 and 90.56.904. Severability—Laws 1977, Ex.Sess., ch. 337; See Historical Note following § 88.16.005.

Findings—Severability—Laws 1990, ch. 116; See Historical and Statutory Notes following § 90.48.371.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Attorney General's Opinions

Absence of right of pilots of Canadian citizenship, and not licensed as pilots in this state, to pilot vessels within bound-aries of state. Op.Atty.Gen.1961-62, No. 181.

Notes of Decisions

Suspension of federal pilot's license by Coastguard Commandant, based on condition-of-employment regulation promulgated under 46 U.S.C. § 239 and requirement of this section of a federal license as a prerequisite to issuance of a state license, reversed as the federal statute provides for suspension only for misconduct while acting "under authority of pilot's license." Soriano v. United States (C.A.1974) 494 F.2d 681.

Issue of vicarious liability was not subject to being pled by defendant vessel as an affirmative defense and counterclaim in action by State of Washington on ground that any negligence of pilot was imputed to State on a respondent superior theory where State only required vessels operating under its jurisdiction to have a state licensed pilot on board and did not otherwise benefit from contract between vessel and pilot or control pilot's actions. State of Wash. v. M/V Dilkara (D.C.1979) 470 F.Supp. 437.

Compulsory pilot laws of Washington do not change relationship between the state and the pilot. State of Wash. v. M/V Dilkara (D.C.1979) 470 F.Supp. 437.

Pilots remained licensed independent contractors hired by vessels despite compulsory pilot laws of Washington. State of Wash. v. M/V Dilkara (D.C.1979) 470 F.Supp. 437.

The Washington Pilotage Act of 1967 vests in the State Board of Pilotage Commissioners broad and exclusive powers to regulate and control the professional behavior of Washington Pilots and by virtue of this legislation said Board has been constituted the sole repository of such power; accordingly, pilots' associations lacks legally recognizable power to control its members in the rendition of their professional services and, therefore, is not accountable for the individual negligence of its members. Port of Seattle v. M/V Maria Rubicon (D.C. Wash) 404 F.Supp. 302.

88.16.100. Pilots' licenses—Revocation, suspension, etc., of—Reprimand or fine—Other disciplinary actions—Procedure—Judicial review

(1) The board shall have power on its own motion or, in its discretion, upon the written request of any interested party, to investigate the performance of pilotage services subject to this chapter and to issue a reprimand, impose a fine against a pilot in an amount not to exceed five thousand dollars, suspend, withhold, or revoke the license of any pilot, or any combination of the above, for misconduct, incompetency, inattention to duty, intoxication, or failure to perform his duties under this chapter, or violation of any of the rules or regulations provided by the board for the government of pilots. The board may partially or totally stay any disciplinary action authorized in this subsection and subsection (2) of this section. The board shall have the power to require that a pilot satisfactorily complete a specific course of training or treatment.

ATTACHMENT B

1991 Oregon Revised Statutes, Volume 12
776.405 - 776.991

1991
**OREGON
REVISED
STATUTES**

INCLUDING

All material affected by Acts of the 1990 special session of the Sixty-fifth Legislative Assembly on May 7, 1990; Acts of the 1991 regular session of the Sixty-sixth Legislative Assembly; and Acts approved by the electors at the General Election on November 6, 1990

Volume 12

Containing, with some exceptions, the statute laws of Oregon of a general, public and permanent nature in effect on September 29, 1991, the normal effective date of Acts passed by the regular session of the Sixty-sixth Legislative Assembly, which adjourned June 30, 1991

PUBLISHED PURSUANT TO ORS 171.275
by the
LEGISLATIVE COUNSEL COMMITTEE
of the
LEGISLATIVE ASSEMBLY
of the
STATE OF OREGON

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Reference Library

776.400 [Repealed by 1957 c.448 §27]

776.405 License required; exemptions. (1)(a) Except as set forth in paragraph (b) of this subsection, no person shall pilot any vessel upon any of the pilotage grounds established under ORS 776.025 or 776.115 without being a licensed pilot under this chapter or a pilot trainee under the supervision of a pilot licensed under this chapter.

(b) Paragraph (a) of this subsection does not apply to:

(A) The master of a vessel under fishery, recreational or coastwise indorsement provided under 46 U.S.C. chapter 121;

(B) A vessel registered with the State Marine Board or a similar licensing agency of another state; or

(C) The master of a foreign registered fishing or recreational vessel, exempted by the board, of not more than 100 feet in length or 250 gross tons international.

(2) A pilot licensed under this chapter is at all times the servant of the vessel being piloted and its owners and operators. [1957 c.448 §25(1); 1973 c.650 §1; 1983 c.330 §3; 1985 c.34 §3; 1991 c.234 §3]

776.410 [Amended by 1955 c.558 §1; repealed by 1957 c.448 §27]

776.415 Compensation of pilots determined by law. No pilot shall demand or receive any greater, lesser or different compensation for piloting a vessel upon any of the pilotage grounds than is allowed by law. [1957 c.448 §25(2)]

776.420 [Amended by 1953 c.141 §2; 1953 c.142 §2; 1955 c.698 §1; repealed by 1957 c.448 §27]

776.425 Authority of pilots generally. A pilot may pilot any vessel the pilot is licensed to pilot anywhere upon the pilotage ground for which the pilot is licensed, and demand and receive therefor the compensation allowed by law. [1957 c.448 §20(1); 1973 c.650 §2; 1985 c.32 §3]

776.430 [Repealed by 1957 c.448 §27]

776.435 Refusing services of pilot; liability for pilotage fee. The master or person in charge of any vessel may refuse to accept the services of any particular pilot and shall call for another pilot, in which case the vessel and the owners, operators and agents of the vessel are liable only for the services of the pilot employed. [1957 c.448 §20(2); 1983 c.330 §2; 1991 c.234 §5]

776.440 [Repealed by 1957 c.448 §27]

776.445 Liability of certain persons for pilot's compensation. In addition to the lien of the pilot upon the vessel for any sum due for piloting, the master, owner and consignee or agent are jointly and severally liable to the pilot therefor. [1957 c.448 §21]

776.450 [Repealed by 1957 c.448 §27]

776.455 Exhibition of license on boarding vessel. On boarding a vessel and if required by the master thereof, a pilot shall exhibit the pilot's license before the pilot is authorized to act as a pilot thereon. [1957 c.448 §19]

776.460 [Repealed by 1957 c.448 §27]

776.465 Complaint against pilot; form, verification, service; hearing; application of section. (1) A complaint against a pilot shall not be entertained by the board unless it is reduced to writing, and verified as a complaint in a civil action. When such complaint is filed with the board, the pilot thereby accused shall be forthwith served with a copy thereof, and required to appear and answer the complaint within 10 days after such service, whereupon the matter shall then be heard, or at a future day designated by the board.

(2) This section shall not apply to or control the proceedings in any action taken against a pilot upon motion of the board. [1957 c.448 §18]

776.470 [Repealed by 1957 c.448 §27]

776.480 [Repealed by 1957 c.448 §27]

776.490 [Repealed by 1957 c.448 §27]

776.500 [Repealed by 1957 c.448 §27]

776.510 Declaration of legislative intent relating to liability of licensed pilots.

(1) The stimulation and preservation of maritime commerce on the bar and river pilotage grounds of this state is declared to be affected with the public interest and the limitation and regulation of liability of pilots and organizations of pilots is necessary to such stimulation and preservation of maritime commerce and is deemed to be in the public interest.

(2) To accomplish the stimulation and preservation of maritime commerce it is necessary to establish an optional rate system whereby vessels and persons engaging the services of a pilot have the option of:

(a) Agreeing not to assert any personal liability against any pilot and any organization of pilots to which the pilot belongs, and to defend, indemnify and save harmless the pilot and organization of pilots against all claims and demands arising from acts or omissions of the pilot or organization of pilots which relate, directly or indirectly, to pilotage of the vessel; or

(b) Directing pilots in writing and in sufficient time for insurance to be procured by them, on a "trip" basis, insuring such pilots and organization of pilots to which they belong against all claims or demands arising from or relating to, directly or indirectly, pilotage of the vessel, the premium or cost of such insurance to be included in the

charges for pilotage services and paid on demand by the vessel.

(3) The Legislative Assembly hereby declares that to effect the ends and purposes listed in this section, and to maintain pilotage fees at reasonable levels on the bar and river pilotage grounds of this state, ORS 776.520, 776.530 and 776.540 are adopted. [1959 c.404 §2; 1983 c.330 §4]

776.520 Tariffs limiting liability of licensed pilots or organization of pilots. Pilots are authorized to limit their liability and the liability of any organization of pilots to which they belong by tariffs approved by the board containing substantially the terms and provisions of the following form:

The provisions of ORS 776.510 and 776.540 hereby are incorporated into and made a part of this tariff. By reason of the option granted by ORS 776.510, the rates and charges named in this tariff do not include the cost of marine insurance insuring the pilot and any organization of pilots to which the pilot belongs, the vessel, its owners, agents or operators from the consequences of negligence or errors in judgment of the pilots or organizations of pilots.

However, upon reasonable notice to the pilots in writing from the vessel, its master, owners, agents or operators, the pilots parties hereto will procure such insurance on a "trip" basis in an amount equal to the value of the vessel and its cargo, or such other amount as may be agreed upon between the pilots and the vessel, its master, owners, agents or operators, insuring the pilots and the organization of pilots to which they belong against all claims or demands arising from or based upon, directly or indirectly, pilotage of the vessel. The premium for such insurance shall be assessed in addition to the rates and charges specified herein.

The election of the vessel, its master, owners, agents or operators not to request pilots parties hereto to procure such insurance and thereby to elect to have the pilots parties hereto perform services on the rates and charges specified herein shall constitute a binding and irrevocable agreement on the part of the vessel, its master, owners, agents or operators to the terms and conditions of the following:

It is understood and agreed, and is the essence of the contract under which services of the pilot are tendered to and accepted by the vessel, its master, operators and owners, that:

(1) The services rendered hereunder are rendered by a pilot duly and regularly licensed by the State of Oregon pursuant to

ORS chapter 776, or (with respect to domestic vessels) the holder of a valid license issued by the Federal Government;

(2) The services of any individual pilot (except with respect to domestic vessels) have been voluntarily accepted and are voluntarily rendered pursuant to the election authorized by ORS 776.510;

(3) Such services are advisory in nature only, the master of the vessel remaining at all times in full command of the vessel and empowered to relieve the pilot of duties;

(4) The services of the pilot are accepted on the express understanding that when the pilot goes aboard the vessel the pilot becomes the servant of the vessel and its owners and operators, and the master, owners and operators of the vessel expressly covenant and agree not to assert directly or indirectly, any personal liability against the pilot, any organization of pilots to which the pilot belongs, and against any members of such organization, to respond in damage (including any rights over) arising out of or connected with, directly or indirectly, any damage, loss or expense sustained by the vessel, its master, owners, operators and crew, and any third parties (including cargo), even though resulting from acts or omissions of any organization of pilots to which the pilot belongs, from acts or omissions of its members, or any acts or omissions of the pilot and to defend, indemnify and hold harmless the pilot, any organization of pilots to which the pilot belongs, and any members of such organization, from any claims whatsoever for damages, loss or expense arising out of, or connected with any acts or omissions of the pilot or organization of pilots which relate, directly or indirectly, to pilotage of the vessel except as to such personal liability and rights over as may arise by reason of the willful misconduct or gross negligence of the pilot;

(5) The master, owners and operators of the vessel shall not be liable to indemnify and hold harmless the pilot and any organization of pilots to an extent greater than the amount to which the liability of the vessel, its owners and operators, is limited by reason of contract, bill of lading or statute, including but not limited to, the Limitation of Liability Act (46 U.S.C. §§181-189), the Harter Act (46 U.S.C. §§190-195), the Carriage of Goods by Sea Act (46 U.S.C. §§1300-1315), and the Federal Water Pollution Control Act (33 U.S.C. §1321); and

(6) The fees charged for the services rendered by the pilot have been computed and are assessed in accordance with and based upon the above stipulations. [1959 c.404 §3; 1973 c.650 §3; 1983 c.330 §5]

776.530 Licensed pilots and organization of pilots not liable for certain acts or omissions. An organization of pilots shall not be liable for any claims arising from acts or omissions of a pilot or organization of pilots which relate, directly or indirectly, to pilotage of a vessel. A pilot shall not be liable either directly or as a member or associate of an organization of pilots for any claims arising from acts or omissions of any other pilot or any organization of pilots which relate, directly or indirectly, to pilotage of a vessel. This section does not apply to acts or omissions relating to the ownership and operation of pilot boats or the transportation of pilots to and from the vessel being piloted. [1983 c.330 §8]

776.540 Security required of licensed pilots; conditions of bond; limitation of liability. (1) Each pilot shall procure and furnish to the board a security in the sum of \$250 as a surety bond or an irrevocable letter of credit, in a form approved by the board and underwritten by a surety company authorized to engage in business in the State of Oregon or issued by a commercial bank as defined in ORS 706.005, or as a cash deposit in a form approved by the board. The cash deposit, letter of credit or bond shall be conditioned so as to pay the sum to any person, firm, corporation or other legal entity who or which shall suffer any loss or damage by reason of any negligent act or omission of the pilot which relate, directly or indirectly, to pilotage of the vessel. No pilot shall be liable for any such act or omission beyond the amount of the security. However, this limitation of liability shall not apply:

(a) To willful misconduct on the part of the pilot;

(b) To the extent to which insurance is procured pursuant to the option granted by ORS 776.510 and 776.520; or

(c) To acts or omissions relating to the ownership and operation of pilot boats or the transportation of pilots to and from the vessel being piloted.

(2) When any suit or action is brought in any court against a pilot for any such act or omission in respect of which liability is limited as provided by this section and other claims are made or anticipated in respect of the same act or omission, upon payment by the pilot of the amount of the security into the court in which such suit or action is brought, the court shall distribute that amount rateably among the several claimants and shall dismiss the proceedings as to the pilot. [1983 c.330 §7; 1985 c.29 §1; 1991 c.331 §138]

776.880 Civil penalties. (1) In addition to any other penalty provided by law, any pilot who commits any act for which the board could revoke, suspend or refuse to issue or renew a license is subject to a civil penalty in an amount determined by the board of not more than \$250 for each offense.

(2) Any person who violates the provisions of ORS 776.405 (1)(a) is subject to a civil penalty in an amount as determined by the board of not less than \$5,000 and not more than \$50,000.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(4) All amounts recovered under this section are subject to ORS 776.365. [1981 c.88 §11; 1991 c.234 §6; 1991 c.734 §102]

PENALTIES

776.990 [Repealed by 1957 c.448 §27]

776.991 Penalties. (1) Except as provided in subsection (2) of this section, any person violating any of the provisions of this chapter is punishable, upon conviction, by a fine not to exceed \$500, or by imprisonment in the county jail not to exceed six months, or both.

(2) Any person violating the provisions of ORS 776.405 (1)(a) is punishable, upon conviction, by a fine of not less than \$5,000 nor more than \$50,000, or by imprisonment in the county jail not to exceed six months, or both. [1957 c.448 §26; 1991 c.234 §7]

ATTACHMENT C

**Florida House of Representatives 1993
House Bill 1957**

By the Committee on Business & Professional Regulation and
Representative Tobin

1 A bill to be entitled
2 An act relating to pilots, piloting, and
3 pilotage; creating s. 310.0015, F.S.; providing
4 general provisions with respect to the
5 regulation of pilotage; amending s. 310.002,
6 F.S.; revising the definition of "pilotage";
7 defining "port pilot association"; amending s.
8 310.021, F.S.; revising the composition of the
9 Board of Pilot Commissioners; amending s.
10 310.061, F.S.; providing for the appointment of
11 cross licensed deputy pilots during a state of
12 emergency; providing for the adoption of rules;
13 amending s. 310.071, F.S.; revising
14 requirements for certification as a deputy
15 pilot; authorizing the adoption of rules
16 establishing physical examination requirements;
17 extending the period of validity of such
18 certificates and limiting renewal thereof;
19 amending ss. 310.073 and 310.081, F.S.;
20 authorizing the adoption of rules establishing
21 physical examination requirements for pilots;
22 amending s. 310.101, F.S.; revising grounds for
23 disciplinary action and penalties; amending s.
24 310.121, F.S.; requiring specified application,
25 examination, and registration fees; amending s.
26 310.131, F.S.; requiring submission of
27 financial statements by port pilot
28 associations; amending s. 310.141, F.S.;
29 revising provisions relating to vessels subject
30 to pilotage; amending s. 310.151, F.S.;
31 revising provisions regulating rates of