

**BOARD OF PILOT COMMISSIONERS
FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN**

INITIAL STATEMENT OF REASONS

Hearing Date: July 24, 2007

Subject Matter of Proposed Regulation: **Pension Plan Benefit Calculations**

Section(s) Affected: Title 7, California Code of Regulations, Division 2,
Section 238 (new)

Specific Purpose of each adoption, amendment, or repeal:

The Board licenses and regulates maritime pilots for Monterey Bay and the Bays of San Francisco, San Pablo and Suisun and their tributaries.

Governing legislation has provided a pension plan for retired and disabled pilots and inland pilots and their surviving spouses. (Harbors and Navigation Code Sections 1160 - 1168.) Benefits under the plan are paid through a separate surcharge. The surcharge is in the form of mils per gross registered ton and is adjusted quarterly based on current data from vessels using services of pilots licensed by the Board. (There is no fund to be invested. Benefits are paid directly out of surcharge receipts.) The rate provided by statute is that rate necessary to pay the benefits to be paid out pursuant to the plan and to pay the plan's expenses.

Benefits under the plan are calculated based on full years of pilot service. Since the current plan's inception in 1974, pilot service calculations for retiring pilots had been made by the fiduciary appointed by the Board.

The purpose of the proposed rulemaking is to put in regulation, with minor modifications, existing practice. Specifically the purpose is:

- (1) to define the term "full years of pilot service" for purposes of calculating pension benefits to include all time that the pilot was licensed and authorized to pilot thereunder.
- (2) to exclude from "pilot service" periods during which the pilot's federal or state license was suspended, periods during which the pilot was on extended leave of absence, as specified, and periods during which the pilot failed to comply with the Board's requirements relative to performing his or her full share of assignments. (Under existing regulation, a pilot is obligated to perform his or her full share of assignments as a pilot unless prevented by illness or other cause satisfactory to the Port Agent and the Board. See Section 219(b), Title 7. CCR);

- (3) to interpret the term in Harbors and Navigation Code Section 1163(c) “six months or more of service by a pilot or inland pilot shall be considered a full year” as a rounding rule, and to clarify that if the total years of service for a pilot results in number that includes a fraction of a year and that fraction represents 181 days or more of service, it shall be rounded up to the next full year, and if the fraction represents less than 181 days, it shall be rounded down to the last full year of service. (The purpose of this latter provision is to avoid uncertainty in the event of a service period that ends six months beyond a full year);
- (4) to provide for a requirement that the Port Agent certify annually that each pilot performed his or her full share of assignments (in conformance with Section 219(b)), and for a pilot who did not, to provide the number of days that that pilot was unavailable for service. The purpose of this provision is to ensure that periods during which a pilot failed to comply with existing requirements to perform his or her full share of assignments are documented and subtracted from the service computations (and thereby addressing one of industry’s concerns);
- (5) to provide for the timing of the Port Agent’s certification, both annually, and when a pilot resigns or retires;
- (6) to provide pilots who are reported as having failed to comply with the Board’s requirements to perform their full share of assignments an opportunity to correct any errors in the report and for an opportunity to appeal the report;
- (7) to provide an appeal process, including a committee to hear such appeals, the purpose of which is to ensure that a pilot whose service computation may be affected by the Port Agent’s report has an opportunity to have any issues relative to such report heard in a timely manner;
- (8) to provide for the maintenance of the reports and results of appeal; and
- (9) to provide for a process of calculating and documenting total service time when a pilot retires.

Factual Basis/Rationale:

Since inception of the current San Francisco Pilot Pension Plan in 1974, the fiduciary appointed by the Board has calculated each retiring pilot’s pension benefit using the terms of the statute for computing service time.

In 2004 - 2005 the Board’s Pension Committee held a series of public workshops to propose regulations to interpret various provisions of the statutory pension plan. Before completing that work, the terms of two of its members ended and the committee’s work did not resume until mid-2006.

During the Pension Committee meetings and public rulemaking workshops in 2006, industry representatives proposed a different method of computing pilot service than the one historically followed by the Board's fiduciary, one that would involve a more restricted view of what constitutes "service" for purposes of computing a pilot's pension benefits. After considering those proposals, the committee ultimately recommended the proposed rulemaking.

Underlying Data:

Minutes of committee and Board meetings and correspondence from the Pacific Merchant Shipping Association, San Francisco Bar Pilots and their respective counsel addressing these issues and legislative history for the current pension plan are included in the Board's rulemaking file and available for public inspection.

Business Impact:

The Board has made an initial determination that the proposed rulemaking will not have a significant economic impact on business beyond that inherent in funding the statutory pension plan.

Specific Technologies and Equipment:

The proposed rulemaking does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

The Board, through its committees, held various public workshops to develop the recommendations included in the proposed rulemaking, some of which necessarily involved a balance between differing perspectives and required the building of a consensus, where that was possible.

During the Pension Committee meetings and public rulemaking workshops in 2006, industry representatives proposed a different method of computing pilot service than the one historically followed by the Board's fiduciary. After considering those proposals, the committee ultimately recommended the proposed rulemaking which included variations of the proposal (in the form of an annual certification of whether each pilot performed his full share of assignments) but did not include the more restrictive definition of what constituted "pilot service" proposed by industry.

The Board has not acted on the proposed alternative pending further development of the rulemaking file, an opportunity for public comment and discussion at the hearing on the proposed rulemaking.