

TITLE 7, Calif. Code of Regulations, Division 2

BOARD OF PILOT COMMISSIONERS

NOTICE OF PROPOSED CHANGES

§215 Pilot and Inland Pilot Training
§236.1 (new) Pilot Boat Surcharge
§238 (new) Pilot Pension Benefit Calculations
§239 (new) Pilot Disability Retirements

NOTICE

NOTICE IS HEREBY GIVEN that the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (the "Board") is proposing to take the action described in the Informative Digest below. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Port of San Francisco, Pier 1, Bayside Room, San Francisco, California beginning immediately following the regular scheduled Board meeting **Tuesday, July 24, 2007 (approximately 10:30 a.m.)**. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under CONTACT PERSON at the end of this Notice, must be received by the Board at its office no later than noon, Monday, July 23, 2007, or must be received by the Board at the hearing.

**NOTE: Location is subject to change. Check the Board's web-site at www.pilotcommission.org or call the contact person at the end of this Notice to confirm location.*

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 1154 of the Harbors and Navigation Code, and to implement, interpret or make specific Sections 1163, 1164, 1171.5 and 1190 of said Code, the Board is considering changes to Division 2 of Title 7 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

The Board licenses and regulates maritime pilots for Monterey Bay and the Bays of San Francisco, San Pablo and Suisun and their tributaries. The Board also administers a pilot and inland pilot training program; determines the surcharge rate that pilots may charge to recover their costs of obtaining new pilot boats and of modifying existing pilot boats to extend their service life; and oversees a pilot pension plan.

The Board is considering the following rulemaking relative to the above functions:

(1) **Pilot and Inland Pilot Training:**

Training requirements for serving pilots and inland pilots are set forth in Section 215 of Title 7, California Code of Regulations.

Those requirements include attendance at a combination course of at least five days in length covering bridge resource management, shiphandling on simulators, emergency medical response, advanced electronic navigation systems and regulatory review.

Currently, pilots and inland pilots must complete this course at least once every **three years**. The proposed amendment would change this requirement to once every **five years**.

(2) **Pilot Boat Surcharges**

Harbors and Navigations Code Section 1190 provides for various pilotage fees and rates. Subsection 1190(a)(1)(B) provides for a pilot boat surcharge to recover the pilots' costs of obtaining new pilot boats and of funding design and engineering modifications to extend the service life of existing pilot boats.

The rate for the pilot boat surcharge is set and periodically adjusted by the Board.

The Board has not previously adopted regulations relative to the pilot boat surcharge. It now proposes to adopt a new regulation, Section 236.1, which would set forth procedures for obtaining the Board's authorization to recover the costs authorized by Subsection 1190(a)(1)(B) and to set and periodically adjust the pilot boat surcharge.

(3) **San Francisco Pilot Pension Plan**

Harbors and Navigation Code Sections 1160 - 1168 provide for a San Francisco Pilot Pension Plan ("the Plan"). The Plan is administered by one or more fiduciaries appointed by the Board.

The Board has not previously adopted regulations relative to the Plan. It now proposes to adopt regulations to address benefit calculations (new Section 238) and disability retirement procedures (new Section 239).

The proposed rulemaking is based on the Board's experience, the recommendations of its various committees and participants in the various public workshops.

POLICY STATEMENT OVERVIEW

The **broad objectives** of these amendments are (1) to align the frequency of pilot training with national standards, (2) to adopt procedures for the use of the pilot boat surcharge in keeping with the purpose of the surcharge and the Board's fiscal responsibility; and (3) to adopt guidelines for pension benefit calculations and disability retirement procedures to ensure conformance to code provisions, consistency and clarity.

The **specific objectives** of this proposed rulemaking are as follows:

- (A) For amendments to Section 215 (**Pilot and Inland Pilot Training**) - to adjust the frequency of the training cycle required by Subsection 215(b)(2) from once every three years to once every five years to align it with the frequency for most other professional continuing education requirements for mariners.
- (B) For adoption of new Section 236.1 (**Pilot Boat Surcharge**):
 - (1) to provide for a three-step process before a surcharge is authorized:
 - (a) a necessity determination - requiring the party requesting the surcharge to establish that expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are necessary;
 - (b) a preliminary authorization to provide an opportunity for meaningful and early communication among affected parties (including rate payers and pilots) and the Board on issues relevant to the costs of obtaining new pilot boats or of funding life extension modifications to existing pilot boats (including a review of basic design and performance specifications, cost estimates, milestones for delivery/completion and long term financing); and
 - (c) a final authorization setting forth the costs to be recovered, the reasons therefor, the initial surcharge rate and the date that rate is to go into effect.
 - (2) Provisions are made:
 - (a) for requests to be submitted in writing;
 - (b) for documentation to support each stage of the request;
 - (c) for notice to parties directly effected by pilotage rates (or to a trade organization representing such parties) and to all other parties who have requested such notice, of each Board meeting at which any of the above determinations are to be considered;

(d) for determining, quantifying, and periodically reviewing anticipated and actual operational savings (including reduced repair and maintenance expenses) expected to result from service life extension modifications to existing pilot boats;

(e) for debt reduction from the sale or other disposition of existing pilot boats;

(f) for a Pilot Vessel Advisory Committee to review and assess the documentation provided in support of the various requests, to conduct independent investigation of the issues or request additional documentation and to develop recommendations to the Board;

(g) for the Board's Finance Committee to review the costs authorized for recovery through the Pilot Boat Surcharge, to review current and projected income from the surcharge and to develop recommendations to the Board for periodic adjustments to maintain a commercially reasonable reserve until all costs authorized have been recovered; and

(h) to address the terms "new pilot boat," "sale of existing pilot boats" and "net proceeds" as used in this regulation.

(C) For adoption of new Section 238 (**Pilot Pension Benefit Calculations**):

- (1) to provide for a definition of pilot "service" that is consistent with past practice (generally including all time the pilot held a pilot license issued by the Board and was authorized to pilot thereunder but excluding periods during which the pilot's license was suspended, the pilot was on a leave of absence greater than 30 days, or the pilot failed to perform his or her full share of the assignments as required by Section 219(b));
- (2) to interpret the code provision "six months or more of service by a pilot or inland pilot shall be considered a full year" in Harbors and Navigation Code Section 1163(c) in a way that is consistent with past practice (by treating it as a rounding rule);
- (3) to require the Port Agent to verify annually for each pilot whether he or she performed his or her full share of assignments as required by Section 219(b), and for those who did not, the number of days that the pilot was unavailable for service;
- (4) to provide reporting and appeal procedures relative to the above certification;
- (5) to provide for the maintenance of the reports required by this section and the results of any appeals;

- (6) to provide for the calculation of pilot “service,” the written report thereof, and its availability as a public record.
- (D) for adoption of new Section 239 (**Disability Retirements**):
- (1) to provide definitions of “disability”, “disabled”, “date on which the pilot became disabled”, and “last year prior to the pilot’s disability” as those terms are used in Harbors and Navigation Code Sections 1163 and 1164;
 - (2) to provide that requests for a disability determination be in writing and specify documentation to support the request in sufficient detail to permit the Board to determine whether the pilot is disabled;
 - (3) to provide for procedures for a determination by a Board physician whether the pilot is disabled;
 - (4) to provide procedures for the Board’s Pension Committee to review the request, supporting documentation and the Board physician’s opinions and to develop recommendations to the Board relative to the disability determination, years of service, and issues related to the calculation of the disabled pilot’s pension benefits.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Pilot and Inland Pilot Training:

Training of serving pilots and inland pilots is provided through contracts administered by the Board and is funded through a separate surcharge (currently \$20 per vessel movement). Changing the frequency of pilot training from once every three years to once every five years is expected to reduce the costs associated with such training.

Costs associated with the training affected by the proposed amendment are currently about \$4,600 per pilot.

There are currently 60 pilots and one inland pilot. Sending all 61, assuming no turnover, costs approximately \$282,000 for one complete training cycle. That cost equates to approximately \$94,000 a year if the training is required every three years, and \$56,000 a year if required every five years.

Thus a savings of about **\$38,000 a year** may be realized from the proposed amendment. (Actual savings will depend on the number of retirements, the number of new pilots, when the retired pilot had been last sent for training, the timing of training new pilots and any changes in the actual costs associated with the training.)

Pilot Boat Surcharge

Agency costs associated with the proposed rulemaking relative to the pilot boat surcharge are expected to be minimal, are primarily administrative in nature, and are expected to be absorbed by the Board's current budget. Furthermore, pilot boats have a life expectancy of 15 to 30 years depending on usage (run boats vs. station boats.) Thus requests to build or acquire a new boat or to make service life extension modifications to existing boats are anticipated to be infrequent.

San Francisco Pilot Pension Plan

Agency costs associated with the proposed rulemaking relative to the pension plan are also expected to be minimal, are primarily administrative in nature, and are expected to be absorbed by the Board's current budget.

Benefit calculations would be done by Board staff and/or fiduciaries appointed by the Board. The fiduciaries' expenses are paid by the Plan through the pension surcharge.

Costs associated with the review of medical reports by a Board physician in conjunction with the Board's disability determination would be borne under current contracts with Board physicians. Disability retirements have been relatively infrequent (four in the last ten years.)

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Other than the Board's determination, no studies or data were relied upon in making the above determination.

Impact on Jobs/New Businesses: The Board has made an initial determination that this proposed regulatory action will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Persons or Business: The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action beyond those inherent in the underlying statutes.

These statutes provide separate surcharges for training serving pilots and inland pilots, to recover the costs for new pilot boats or service life extension modifications to existing pilot boats and to fund the pilot pension plan. These surcharges are paid by vessels using pilot services while entering, transiting or leaving the Bays of San Francisco, San Pablo and Suisun. A brief discussion of each, and the relationship of the proposed rulemaking to those surcharges follows:

Pilot and Inland Pilot Training

As noted above, the proposed amendment to the pilot and inland pilot training program is likely to see a reduction in the costs associated with the program over time. Current surcharge rates are well below training expenses as the Board still has a reserve in excess of three months' expenditures. The other training requirements remain unaffected by the proposed amendment, and some increase in training costs due to an increase in the number of anticipated retirements and consequent licensing of new pilots could offset the savings to some extent.

The surcharge revenues vary with the number of ship moves and are reviewed quarterly by the Board's Finance Committee, which also reviews the Board's training program expenses and makes recommendations to the Board for periodic adjustments in the surcharge rate to cover the Board's actual training expenses and to maintain an adequate reserve. (At the current rate of about 780 ship moves a month the projected savings from the proposed rulemaking taken in isolation would equate to about \$4.00 per move.)

Pilot Boat Surcharge

The proposed regulation provides a process for obtaining Board authorization for the use of the pilot boat surcharge to recover the pilots' costs of obtaining new pilot boats or of making service life extension modifications to existing pilot boats, as authorized by Harbors and Navigation Code Section 1190(a)(1)(B). That process allows for participation by representatives of those directly affected - the pilots and vessel interests who are the ratepayers that pay that surcharge. The process itself and this proposed regulatory action are not expected to have a substantial cost impact on a representative private person or business.

San Francisco Pilot Pension Plan

The legislature has provided a pension plan for retired and disabled pilots and inland pilots and their surviving spouses in 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.) 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 plan's inception in 1974, pilot service calculations for retiring pilots had been made by the fiduciary appointed by the Board.

This proposed rulemaking would put in regulation, with minor modification, existing practice. In essence, the term "full years of pilot service" for purposes of calculating pension benefits would include all time that the pilot was licensed and 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.

Periods during which the pilot's license was suspended are excluded, as are periods during which the pilot was on extended leave of absence or failed to comply with the Board's requirements relative to performing his or her full share of assignments.

The proposed regulatory action does include a reporting procedure not previously specified in regulation. The Port Agent would be required to certify annually that each pilot performed his or her full share of assignments, and for a pilot who did not, provide the number of days that that pilot was unavailable for service.

This reporting requirement is not anticipated to be burdensome as most of the information is already being tracked by the Port Agent; nor is it expected to result in significant costs to the San Francisco Bar Pilots. (The Port Agent has advised that the number of pilots who did not perform their full share of assignments has typically been five or less in any one year and that the total number of days that those pilots were unavailable for service, collectively, was in the range of 30 days or less.)

Disability Retirements

The procedures for obtaining a disability determination under the San Francisco Pilot Pension Plan incorporate the procedures that have been followed in the few instances that a pilot has retired due to a disability (four in the past ten years.) The cost impact on the affected pilot is considered to be insubstantial. (A written request supported by medical reports, typically a letter from the treating physician along with existing medical records will usually suffice.)

Effect on Housing Costs: The Board has made an initial determination that the proposed regulatory action will not affect housing costs.

EFFECT ON SMALL BUSINESSES

The Board has made an initial determination that the proposed regulatory action would not affect small businesses since the parties involved do not fall within the definition of "small business" per Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative to the proposed regulatory action would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments relevant to the above determinations orally at the above-mentioned hearing or in writing during the public comment period set forth in this Notice.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed regulatory action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board's Executive Director, Captain Patrick A. Moloney, at Pier 9, Suite 102, San Francisco, California 94111.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection at the Board office at Pier 9, Suite 102, San Francisco, CA.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Captain Patrick A. Moloney
Addr: Pier 9, Suite 102
San Francisco, CA 94111
Tele: (415) 397-2253
Fax: (415) 397-9463
e-mail: pilots@earthlink.net

The backup contact person is:

Name: Alice Evans
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Tele: (415) 397-2253
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WEBSITE POSTING

Additional information about this proposed rulemaking may be found at the Board's website at:

<http://www.pilotcommission.org>

go to "Notices of Proposed Rulemaking"

or: <http://www.pilotcommission.org/rules.shtml>