

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
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June 24, 2009

**MINUTES
April 23, 2009
Board Meeting**

OPEN MEETING

A. Call to Order and Roll Call

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Board) regular meeting was held in the Board office, Pier 9, Suite 102, San Francisco, CA, on April 23, 2009, at 10:11 a.m., Commissioner Miller presiding. A quorum was present including Commissioners Johnston, Osen, Roberts, Tate, and Wainwright. Also present were Executive Director Moloney, Acting Port Agent Captain Hurt, Department of Consumer Affairs Supervising Legal Counsel Anita Scuri, Maritime Counsel Paetzold, Deputy General Counsel Morocz Business, Transportation and Housing Agency (BTH), and Associate Governmental Program Analyst Jacobsen, as well as various members of the public.

B. Request Approval of Minutes of the March 26, 2009, Regular Board Meeting

A motion was made and seconded to approve the minutes. There being no further discussion, the motion was adopted unanimously.

C. President's Report – Commissioner Miller

Commissioner Miller welcomed Gabor Morocz, who was attending the meeting as Deputy Secretary Bonner's delegate. Mr. Miller also welcomed Dennis Egan and Katharine Weir who were present in the audience. Mr. Miller noted that Mr. Egan is a candidate for the government attorney position and Katharine Weir is a candidate for the Staff Services Analyst position.

Commissioner Miller discussed the Commissioner vacancy (dry cargo seat) on the Board, which became open when Commissioner Soares resigned. He stated that the Governor's Office is presently interviewing to fill both the Board vacancy as well as the Assistant Director position.

Commissioner Miller stated that he testified before the Assembly Committee relating to the 2009/2010 Spring Finance Letter (SFL) and that the Senate Committee hearing relating to the SFL is scheduled for April 30, 2009. Commissioner Miller read the draft report and noted that once the report has been approved by the Governor's Office, it will be posted on the Board's website.

Commissioner Miller announced that effective July 1, 2009, the Board will be receiving its administrative support from the California Highway Patrol.

D. Correspondence/Activities since the March 2009 Meeting - Executive Director Moloney

Rec'd April 2nd letter from sections 214-217; letter from Dale Bonner re: Mr. Morocz being rep; letter from Katharine Weir re: SSA; letter from Capt. McIsaac requesting increasing recreational vessel tonnage requirements; GOAR; letter former inland pilot re retirement benefits will go to pension committee

**E. Other Pilot Matters – Executive Director Moloney
No report.**

F. Port Agent's Report – Acting Port Agent Hurt

Acting Port Agent Captain Hurt provided the following report:

Not Fit for Duty (NFFD):

Captain Welch has been unavailable for assignment since Nov 12th as per BOPC physician; Captain Gans has been NFFD since September; Captain Larwood had arm surgery on April 1st and is expected to be NFFD for 3 months; and Captain Haggerty has been NFFD since April 4th while dealing with a pinched nerve.

Captain Hurt reported that on April 1, 2009, Tobias Proffen, a SFBP dispatcher passed away unexpectedly. He stated that Tobias was a respected co-worker who will be missed.

Captain Hurt informed the Board about a sailboat crew rescue during April and that the SFBP conducted a “lessons learned” review and will incorporate any recommendations into its procedures.

Recommended Minimum Rest Period Exceptions:

There were 13 MRP exceptions in March 2009. The shortest rest period was 9.7 hours.

Billed Vessel Moves in March 2009 (Compared to a 3-Year Average).

Bar Crossings: -1.9%
Bay Moves: -29.5%
River Moves: -2.0%
Total Moves: -6.0%
GRT: 24.845M -2.6%

Compared to the first three months of 2008, the total moves were down 4.3% and the GRT was down 4.2%.

Pilot Vessel Report

The *P/V GOLDEN GATE* was hauled at Andersons Shipyard and weld repairs were made to a crack in the hull. The boat was out of service for one day.

The *P/V CALIFORNIA* experienced a steering rod failure. The spare was installed. The boat was out of service for one day.

The *P/V SAN FRANCISCO* went to Bay Ship and Yacht to have a Lo Rez Coupling changed

out. A technician was called in from Lo Rez to assist with the repairs. The boat was out of service for two days. The boat will need to return to the yard to complete the repairs this week. It will be out of service for two days.

The new build is progressing well. The hull is still upside down and is being welded out. An ABS inspection will be accomplished in April, 2009. The vessel is scheduled to be put onto the ways on May 4, 2009. The house is being outfitted with ladders, rails, MOB boom etc. The house deck soundproofing has been installed and the subfloor has been installed.

The method that was originally planned to launch the boat has changed. Mason's big crane has become unavailable and the backup plan that the yard had will not work due to soils and point loading concerns. The new plan is to lift the boat onto house moving dollies and then travel the boat down the road, through town for about one mile. Cranes will be used to flip and then launch the boat.

The apron repairs have been completed. Captain Hurt stated that he is now in the process of gathering invoices and filing a report to the POSF asking that a Certificate of Final Completion (CFC) be issued. Once the CFC has been issued, the SFBP can begin taking the rent credits for the Port's portion of the costs. It is anticipated that the first credit will be taken in June 2009.

G. Unfinished Business.

1. Board Office Lease – Executive Director Moloney

No Report.

2. Open Incidents – Executive Director Moloney

***M/V CAPE BRASILIA* - Executive Director Moloney**

Executive Director Moloney explained that legal counsel for Pilot Ed Melvin has requested a postponement of this matter since he had to be at a hearing in Southern California.

A motion was made and seconded to postpone the hearing in this matter until May 2009. There was no comment or discussion. The motion was adopted unanimously.

3. Vessel Interactions – Executive Director Moloney

***XIN NING BO* – Executive Director Moloney**

Executive Director Moloney explained that this matter has now expanded based on new information received. There is a potential excessive speed issue that needs to be addressed and asked the Board for a postponement of this matter to allow him time to speak with the pilot.

A motion was made and seconded to postpone the hearing in this matter. The motion was adopted unanimously.

4. Pilot Ladder Reportable Incidents - Executive Director Moloney

No incidents.

5. Non-Incidents – Executive Director Moloney

Status of Coast Guard investigation into sea buoy allision in December 2008.

No Report.

Commissioner Tate asked for clarification of a "Non-Incident." Ms. Scuri explained the

sections in the Board regulations defining this term.

6. **Rules and Regulation Committee** – Commissioner Wainwright
Commissioner Wainwright explained that the Committee is waiting for the Governor to appoint a new Board member. He also stated that the Committee has drafted the language for the Personal Pilot Units regulation.
7. **Finance Committee** – Commissioner Osen
Commissioner Osen reviewed the issues discussed at the Finance Committee meeting held earlier this same date. He stated that the audit is available; surcharges and fund conditions were reviewed, and that the Committee is beginning to increase revenue. He also noted that legal fees are stabilized at the moment and recommend that Board operation and training/trainee and trainee/trainee surcharges remain as is. For estimating projected surcharge revenues, the committee recommends the use of \$2.8M vs. \$2.9M to reflect reduced income from all pilot fees, and the use of 700 moves per month vs. 735 to reflect reduced traffic.

PMSA Vice-President Mike Jacob suggested that the Board accept the Finance Committee's report and its recommendations.

A motion was made and seconded to accept the Finance Committee's report. There being no further discussion, the report was adopted unanimously.

8. **Pilot Training Curriculum Committee** – Commissioner Roberts
Commissioner Roberts stated that he will be providing a full report when he returns from MITAGS.
9. **Pilot Evaluation Committee** – Commissioner Roberts
After providing background information on SFPB pilots Captains Bruce Alden and Einar Nyborg, the process for the PEC's recommendations, Commissioner Roberts reported that he was stepping down as the PEC's chair and member and that the PEC unanimously recommended Captain Alden as a member of the Pilot Evaluation Committee, to fill the current vacancy, and currently PEC member Captain Nyborg as chair of the PEC. It was moved and seconded that Captain Alden be appointed as member of the PEC and, in a separate motion that Captain Nyborg be appointed to the Chair of the PEC. There being no further comment or discussion, each motion was unanimously adopted.

Commissioner Roberts next discussed the following issues and raised several questions regarding the standards that the Board should consider regarding the pilot examination process:

1. Whether two years' command time in Section 213(e)(3) should continue to be required in order to be eligible to sit for the examination;
2. Whether piloting experience elsewhere should be credited as a substitute for command time, and if so, whether experience as mooring master, route piloting and other types of piloting should be differentiated;
3. Whether the recency requirements in Section 213(e)(4) should be revised (for example, to give credit for periods during which a candidate was in a training program involving ship-handling or to increase the length of time in light of the changing industry);

4. Whether the experience points awarded pursuant to Section 213(f) for tug experience, deep draft experience and piloting experience should be re-evaluated to better reflect the quality and quantity of experience afforded by each;

5. Whether the qualifications for evaluators for the simulator exercise in Section 213(i)(2) should be changed to include a pilot from another jurisdiction (vs. "a state licensed pilot from another jurisdiction") - so that, for example, pilots from Los Angeles or Long Beach could serve as evaluators;

6. Whether the physical fitness requirements in Section 213(d) and (e)(2) should be clarified in light of the newly-enacted requirements in SB 1217 (Yee);

7. Whether the costs associated with the trainee selection process should be passed on to the applicants; and

8. Whether credit should be given for local pilotage (applicants who already have endorsements on their Coast Guard license for pilotage on the waters under the Board's jurisdiction).

Commissioner Roberts noted that any changes to the above items may require rulemaking to amend the Board's regulations. He also noted that the PEC recognizes that several of these issues (in particular, the command time and distribution of experience points) have been the subject of considerable debate and numerous workshops in the past and were handled by a separate ad hoc committee.

Commissioner Roberts asked the Board to guide the PEC as to whether and when such a review should take place, and who should conduct that review and stated that in the meantime, the PEC is proceeding with the current trainee selection process under the existing law.

Ms. Scuri suggested that the Committee consider scheduling rulemaking workshops to assist it with some of its concerns.

Commissioner Wainwright suggested that an ad hoc process be used and that it be used as a workshop. He also recognized that the PEC is burdened and would suggest that a new ad hoc committee be created to work on this task.

Acting Port Agent Captain Hurt concurred with Commissioner Wainwright's comments.

Commissioner Tate stated that he does not want to lose all of the work that that PEC has already done.

Commissioner Roberts stated that it would be the second quarter of 2010 before the PEC would be able to spend the time to address this issue.

Commissioner Miller suggested that the issue be placed on the May 2009 Agenda.

10. **Pilot Power Committee** – Commissioner Roberts
No Report.

11. **Pension Committee** – Commissioner Miller
Commissioner Miller stated that he has been in contact with Mr. Schmidt and all of the data for the report on review of annual audit of Pilot Pension Plan Receipts and

Disbursements has been entered. He noted that the report will be ready to discuss with stakeholders on May 26, 2009 at 10:00 a.m. at the Board office and that this will not be a final report.

Commissioner Tate stated that the Committee met on April 23, 2009 and considered Captain Gans' disability retirement application. After review of the medical evidence, the Committee concluded that Captain Gans is unable to work due to a permanent medical condition and that his disability met the criteria in Harbors & Navigation Code Section 1164. The Committee recommends that the date of disability be determined as March 27, 2009, which is the date of the Board physician's report supporting the finding of the disability.

Captain Gans addressed the Board and thanked each of the Board members for his opportunity to serve long and rewarding career as a marine pilot.

Gans' disability retirement, with date of disability of March 27, 2009. There being no further comments or discussion, the motion was adopted unanimously.

Commissioner Miller, on behalf of the entire Board, thanked Captain Gans for his years of service.

12. **Ad Hoc Committee on Pilot Safety** – Commissioner Miller
No Report.
13. **Pilot Vessel Advisory Committee** – Commissioner Johnston/Port Agent
Commissioner Johnston stated that the Committee did not meet on April 20, 2009, due to a noticing issue but that the Committee is scheduled to meet on April 27, 2009 at 10:00 a.m. at the Board office.
14. **UPRR Bridge** – Executive Director Moloney
No Report.
15. **Ad Hoc Advisory Committee on Pilot Selection** – Commissioner Tate
Commissioner Tate stated that he contacted BTH regarding utilizing its resources on developing a recruiting process. He also noted that the Board's administrative functions will be handled by the Department of California Highway Patrol (CHP - an agency under BHT), effective July 1, 2009. He also stated that CHP's resources will be available to the Board and he plans to meet with CHP and will report back to the Board after that meeting. He also discussed a potential pilot recruitment program from Texas and noted that the Port Agent intends to find out more information about this possible recruitment program and will report back to the Board.
16. **Navigation Technology** – Commissioner Johnston
No Report.
17. **Pilot Identification Cards** – Commissioner Osen
No Report.
18. **Ad Hoc Committee to Review Investigation Procedures** – Commissioner Osen
No Report.
19. **Pilot Trainee Selection Process** – Commissioner Roberts

Commissioner Roberts stated that the Pilot Evaluation Committee held a public workshop on April 1, 2009 to explore lessons learned from the 2007 pilot trainee selection process. Copies of the agenda and Section 213 of the Board's regulations dealing with that subject are available at the Board office.

Commissioner Roberts reported on the status of the current selection process. He also stated that Dr. Hertz attended the workshop and that Dr. Hertz has overseen job analyses, test development, and test administration for the past ten years. Commissioner Roberts noted that Dr. Hertz participated in the workshop without charge.

Commissioner Roberts stated that the Committee received recommendations to review several items of the minimum qualifications and experience evaluation process currently set forth in the Board's regulations. Commissioner Roberts requested the Board to review the following issues:

1. Consistent with past practice, an update of the occupational analysis should be performed to ensure that the knowledge and skills being tested in the written examination and simulator exercise adequately reflect the qualifications needed to succeed in the pilot training program. Dr. Hertz believes that a tabletop job analysis should suffice for this selection process, but that a more comprehensive occupational analysis should be planned prior to any subsequent selections.
2. A proposal for the tabletop job analysis is included in the examination contract proposal which is on the Board's agenda to be voted on today. A separate proposal for the occupational analysis has also been received but action on that proposal can wait until it can go through the normal contracting process.
3. The Committee is updating the list of textbooks and authoritative reading materials from which the examination questions are taken. It plans to post the list on the Board's website along with the application form and instructions and an explanation of the trainee selection process.
4. The Committee is reviewing the application form to ensure that it provides sufficient information. In the past, demographic information (such as gender and race) had not been requested. Thus demographic data for unsuccessful applicants has not been available. The Board may wish to address whether such data is desirable and whether requesting such data is permissible under state and federal laws.
5. The Committee is reviewing and updating the applicant handbook, which provides information on the examinations.
6. Advertising. The Committee is continuing to evaluate possible expansion of the means by which openings in the program are advertised. In the past, the Board provided information on the opening of the training program, including the application cut-off date, the examination dates and information on minimum qualifications and the trainee selection process, to each American maritime academy and to each sailor's union which included deck officers among its membership. It also purchased advertising in the *Professional Mariner* magazine for the two to four months prior to the cut-off date.

The Committee recommended that potential applicants be informed early in the process of the demands placed on the trainee, that it takes an average trainee at least two years to complete the program, the amount of the stipend, that there is no guarantee of placement, and that a trainee must show adequate progress in the program to be permitted

to continue.

Commissioner Roberts stated that the Committee is requesting guidance from the Board about the possibility of using professional recruiting services as well as other means to increase its outreach to a diverse pool of qualified applicants.

7. The Committee is continuing to review the appeals process set forth in Section 213(m). To date, it has not received any recommendations to change that process.

8. It was recommended that the written examination be increased from 100 questions to 150 questions and from 3 to 4.5 hours. The Committee is continuing to evaluate the recommendation as well as exploring alternatives for preparing and administering the examination than the methods used in the past.

Commissioner Roberts stated that no Board action is required at this time.

Commissioner Roberts noted that Board staff is working on the CMA contract renewal to ensure access to an appropriate space on campus in which to administer the written examination. No date for the examination has been selected. Absent other considerations or directions, the Committee is working on a date in the first quarter of 2010.

9. The Committee is continuing to work on the simulator exercise portion of the examination and is considering whether to further lengthen the time of each candidate in the simulator, and to increase the number of scoring opportunities. The new simulator at CMA appears to provide substantial improvements to the older simulator used in past selections in the way of graphics and technology. The Committee is continuing to evaluate the limited space for evaluators and how the layout will effect the administration of this portion of the examination. The Committee is also considering means to improve the testing of a candidate's ability to see set and drift.

10. Commissioner Roberts stated that the Committee is requesting guidance from the Board on the selection and the contracting with the evaluators for the simulator exercise required by Section 213(i)(2). He noted that no Board action is required at this time, but preparation for such selection will need to be commenced sufficiently in advance to meet any applicable contracting requirements and ensure their presence for training and the administration of the examination.

11. Demands on SFBP. Commissioner Roberts stated that the process for the tabletop job analysis is expected to require a minimum of six pilots for one day. This should take place as soon as the contract for psychometric services is in place.

The process that includes the preparation and selection of the written examination questions and the determination of the cut score is expected to take a total of six days (over a period of months) with six pilots participating in the preparation of an adequate pool of exam questions, a different group in the selection of the questions to be used for the exam and a still different group in the development of the cut score.

The process for developing and administering the simulator exercise requires a similar dedication of pilots' time to test and re-test the simulator examination, although most of that is expected to be handled by the PEC members. Individual pilots will be needed to test and re-test the exercise at the CMA simulator (typically a half day at a time). In addition, six pilots will be needed to help in the "Angoff session" to set the cut score.

Commissioner Roberts explained that this is essentially the process used in past examinations. The use of retired pilots to participate in portions of this process in 2007 had mixed results. The Committee is exploring other ways of developing this examination which may be less demanding on the time of pilots without reducing the quality of the examination, its defensibility or its security. Easy answers have not been forthcoming.

12. Once the Committee has the services of a qualified psychometric expert, it will be able to further assess how much time will be needed to prepare the examinations and make recommendations for a feasible exam dates and, based on those dates, a workable application cut-off date. Once those dates have been set, the Board can commence advertising the opening of the trainee selection process.

13. Contract with COMIRA for psychometric services. Commissioner Roberts provided the Board with the contract proposal for psychometric services for the tabletop job analysis, and the development and administration of the written examination and simulator exercise portions of the trainee selection process. A copy of this document is available at the Board office.

After discussion, a motion was made and seconded that the Executive Director and/or Board President be authorized to execute all necessary documents to contract with COMIRA to provide psychometric services for the upcoming trainee selection process as set forth in the proposal in an amount not to exceed \$28,750.

There being no further discussion, the motion was adopted unanimously.

14. Contract with CMA. The contract with CMA for the use of its simulator and staff for the development and administration of the simulator exercise portion of the trainee selection process, and for suitable space to administer the written examination, is currently being reviewed to ensure that it remains adequate to cover all the anticipated services required for the current selection process through the next fiscal year.

Ms. Scuri recommended that the Committee refer to the Employment and Housing website and review the information it may have available on the subject of what demographic questions are permissible to ask of potential candidates.

Commissioner Tate recommended exploring the possibility of advertising for military retirees.

Commissioner Roberts said that an increase of questions from 100 to 150 will have huge impact on pilots' time. He anticipates that it will take 60 man days to fulfill the experts' suggested tasks.

The Board discussed the tabletop analysis versus a full-blown occupational analyses.

H. New Business

Acting Port Agent Hurt discussed the minimum recreational vessel tonnage requirement and the possibility of a need to amend Section 1127(e) of the Harbors & Navigation Code.

I. Public Comment on Matters on the Agenda

No public comments were received.

J. Proposals for Additions to Next Month's Agenda

PEC's request for Board guidance regarding pilot examination and if a review should take place and, if so, who should conduct that review.

CLOSED SESSION

Prior to commencing the closed session, Board President Miller announced the purposes and legal authority for the closed session as noted in the agenda:

1. Recommendation to extend an offer of part time, limited term employment as Board's government counsel; possible Board action; Commissioners Miller and Tate as authorized by Government Code Section 1126(a)(1);
2. Recommendation to extend an offer of full time employment as Board's Staff Services Analyst; **possible Board action**; Commissioners Miller and Tate as authorized by Government Code Section 1126(a)(1);
3. Confer with the Board's legal counsel regarding pending litigation in *United States of America vs. M/V COSCO BUSAN*, et al., Case No. C0706045 (SC) and in the *People of the State of California (CalTrans) vs. Regal Stone, Ltd, et al.*, filed in Admiralty, Case No. 2268 EMC, pending in the United States District Court for the Northern District of California; in *Anderson, et al. v. Cota, et al.*, Case number CGC-08-483409 pending in San Francisco Superior Court; and in *Regal Stone v. People of the State of California*, pending in the Superior Court for Sacramento, including cross-actions, counter-claims and related actions pending in federal and state court arising out of the same incident, as authorized by Government Code Section 11126(e)(1); and
4. Executive Director Interim Performance Evaluation: Discussion as authorized by Government Code Section 1126(a)(1).

RESUME OF OPEN MEETING

Commissioner Miller announced that the Board extended offers of employment to Dennis Egan and Katharine Weir.

Commissioner Miller stated that the next Board meeting is scheduled for May 28, 2009 at 9:30 a.m.

K. Adjournment

The meeting adjourned at 2:45 p.m.