

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

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RULES AND REGULATIONS COMMITTEE
December 14, 2010
MEETING MINUTES
9:30 a.m.

The Board of Pilot Commissioners Rules and Regulations Committee met on December 14, 2010 at 9:30 a.m. at the Board of Pilot Commissioners office, Pier 9, Suite 102, San Francisco, California.

Commissioner Wainwright presided over the meeting with committee member Commissioner Sullivan present. Commissioner Johnston was absent. Members of the public present included San Francisco Bar Pilot's (SFBP) Business Director John Cinderey, Pacific Merchant Shipping Association (PMSA) Vice President Michael Jacob, PMSA Counsel Conti Cicala, SFBP Counsel Kevin Davis, Board President Knute Mike Miller, Board Counsel Dennis Eagan, Board Counsel Joe Rusconi, Port Agent Bruce Horton, SFBP members Captains Bill Gregg and Greg Tylawski, Executive Director Allen Garfinkle, and Staff Services Analyst Brian Vu. Business, Transportation and Housing (BTH) Secretary Bonner was represented by BTH Deputy General Counsel Morocz telephonically from Sacramento.

Open Meeting

1. Call to Order and Roll Call.

Chairman Wainwright called the meeting into order at 9:38 a.m. Commissioner Sullivan was present, constituting a quorum. Commissioner Johnston was absent.

2. Approve minutes of November 22, 2010 meeting.

Commissioner Sullivan was absent at the November 22 meeting and Commissioner Johnston absent for today's meeting, therefore approval of November 22, 2010's minutes were tabled until a quorum of members present at the November 22, 2010 meeting are present.

Committee Chairman Wainwright then departed from the agenda order and addressed items 5 through 13.

5. Report on status of formal rulemaking regarding draft regulations on Portable Pilot Units.

Regulation section 219 dealing with Portable Pilot Units was adopted by the Board on August 26, 2010 and approved by the Office of Administrative Law on October 4, 2010; this will be effective on December 9, 2010.

6. Report on status of formal rulemaking regarding the election and term of office for commission president and vice president.

Regulations section 206 and 207 concerning term of office for President and Vice-President were adopted by the Board on September 23, 2010 and approved by OAL on November 23, 2010; this will be effective on December 23, 2010.

7. Report on status of formal rulemaking regarding the frequency of pilot continuing education training.

Regulation section 215 concerning the frequency of pilot continuing education was adopted by the Board on November 10, 2010 and will be submitted to OAL on December 13, 2010. OAL will have 30 working days to review.

8. Report on status of regulation changing length of manned model training from six to five days Section 215(b)(1).

Regulation section 215 regarding length of manned model training is part of the same rulemaking package as Frequency of Pilot Continuing Education, section 215. The file will be submitted to OAL this week.

9. Report on status of regulations for cleanup regulatory package implementing the statutory changes on the roles of the Board and its Incident Review Committee in informal and formal license disciplinary actions (sec. 210).

Regulation section 210 regarding the incident review process was sent to OAL and published with a 45-day public comment period on December 10, 2010. The Public Comment period ends on January 21, 2010.

10. Report on the status of draft regulation regarding the manner and content of a notice provided by the Port Agent to the Executive Director of a suspected violation, navigational accident, misconduct, or other rules violation in conformity with Harbors and Navigation Code sec. 1130(c).

Regulation 218 concerning Port Agent reporting is still in draft format but has been approved to move to formal rulemaking.

11. Report on the status of regulations concerning impairment by alcohol consumption and discuss possible modifications and possibly commence drafting of alternative language.

Chairman Wainwright reported that this agenda item is a broad comprehensive subject and may require substantial input from other committees prior to being considered for rulemaking. He will report to full Board for further development.

12. Report on the status of staff progress drafting alternative legislative language concerning pilot boarding ladder deficiencies to address Pilot safety Committee recommendations.

Executive Director reported that staff has commenced work on legislation language. Gabor Morocz noted that legislation is not under the purview of the Rules and Regulations Committee.

13. Report on status of Commission Investigator Minimum Standards which were revised to address Office of Administrative Law concerns.

Regulation 211.5 regarding Commission Investigator Minimum Standards was approved by the Board on August 26, 2010 and sent to OAL on October 4, 2010. It was withdrawn from OAL review for amendments on November 12, 2010 and a notice of modifications to the proposed regulations and a 5 day public comment period sent to all interested parties on November 22, 2010.

Chairman Wainwright then returned to agenda item #4.

4. Review proposed draft of 2011 Rulemaking calendar. Possible motion to recommend to Board to adopt draft.

Chairman Wainwright presented to the committee a draft of the rulemaking calendar. Following discussion and review, a motion was made to recommend to full Board for approval the list as read/amended. It was seconded and passed unanimously on a voice vote.

Chairman Wainwright then returned to agenda item #3.

3. Discussion of potential draft regulations to implement and interpret the provisions of Harbors and Navigation Code Section 1190(a)(1)(c):

- a) Discussion of threshold questions related to 1190(a)(1)(c) and identified in Staff letters of October 20, 2010 and November 12, 2010.**
- b) Discussion of K.Q. Davis' December 1, 2010 letter to Committee Chairman.**
- c) Discussion and drafting of initial regulation language to interpret the provisions of 1190(a)(1)(c).**
- d) Possible motion to recommend to full board to adopt initial draft regulation and direct staff to initiate formal rulemaking procedures.**

Commissioner Wainwright gave a brief summary of the events leading up to this meeting, beginning with SFBP petitioning for relief under HNC 1190(a)(1)(c). Following receipt of written comment on the petition from Pacific Merchant Shipping Association and Board staff, the SFBP withdrew their petition with the request that the Board draft regulations to clarify the relevant sections of 1190(a)(1)(c). The President of the Commission directed this committee to draft regulation for practical application of 1190(a)(1)(c).

In order to better organize the discussion, Chairman Wainwright posed several threshold questions that have been drawn from staff letters of October 20, 2010 and November 12, 2010, with the first one being "Should the draft regulation borrow from commission regulation section 236"?

BTH Deputy General Counsel Morocz commented that section 236 was built on extensive codes, whereas 1190(a)(1)(c) is not extensive, but one line of legislation to interpret. Board Counsel Eagan interjected that if the Committee can decide what the key language in 1190(a)(1)(c) means, that will drive the procedural questions.

Based on these comments, the Chairman moved straight into the substance of the issue and posed the question whether "catastrophic cost increase" be given its own definition separate from the 2% increase? Board Counsel Eagan made the point that the word "catastrophic" would not be there is the legislature did not want it to be an issue.

Commissioner Sullivan said the fundamental question was "what was legislation trying to tell the Board when it enacted 1190(a)(1)(c)?" He stated his belief that there has to be an event that is catastrophic, and to him that means a natural disaster such as an earthquake or tsunami, not just cost increases. He added he felt there should be public hearings (on rates) and did not think this legislation was meant to circumvent public input in rate changes.

General Counsel Morocz stated the legislature provided for a rate hearing process that took place at regular intervals. This process then should be to deal with something unexpected, beyond control. Then there would be a mechanism in place to deal with it. Counsel Morocz

stated that if there is a cost increase rather than something out of control or out of the ordinary, that doesn't call for an adjustment, it calls for a rate hearing.

Conti Cicala, representing PMSA, responded by saying that while this issue was appropriate for rule making, he would like to see the process begin in a workshop setting. He is concerned that the Committee's actions are being forced by the SFBP application and as the results of this Committee's work are likely to be with us for decades to come, he proposed that the Committee desist from making any rushed decision and step back, set up workshops and get feedback instead of acting on a specific request. He also requested that pension rulemaking be given priority or at least equal weight.

Chairman Wainwright commented that his committee was doing legitimate work directed by the Commission and extended an invitation to Conti to sit in and discuss. Chairman Wainwright stressed that this would be a drawn out process and that everybody would have an opportunity to comment.

Kevin Davis, representing SFBP, stated that he had only received Conte Cicala's letter the previous evening and that it did not respond to any of the items on this agenda. He made the point that all the information on this subject has been gathered up and put on the table. The SFBP petition was withdrawn to provide for an orderly process when interpreting 1190(a)(1)(c) rather than ad hoc. He submitted a proposal he feels is responsive to both PMSA and Board staff recommendations. He stated that the hovering issue is a catastrophic cost increase which is a huge increase in rent. Alternative sites were investigated but found that the current one is the best deal available. The pilots are looking for an orderly process but not one that will drag on for months. Mr. Davis said they hope to have this issue addressed with a set of regulations in hand rather than re-submit their petition without regulations.

Chairman Wainwright emphasized that this Committee was not concerned with petitions but rather would interpret law that begs for interpretation. The fundamental question was separation. Do we separate "catastrophe" from cost increase of 2%.

Commissioner Sullivan recommended a full commission be present to consider any of these issues. He also stated his preference for a workshop with a broader group of individuals. Chairman Wainwright responded that his preference is to not make a subcommittee of a committee. Board Counsel Eagan queried how would a workshop differ from what was taking place today? Mike Jacob's response was that it would be less formal, more of a discussion. Chairman Wainwright responded that his understanding is that this committee had no authority to build a workshop.

Board Counsel Eagan stated that the committee has to consider the framework for proceeding and asked PMSA if they knew of others that needed notice. If so, committee would notice them. Mike Jacob stated his willingness to participate on behalf of PMSA and voiced support for the rulemaking process. His concerns were generated by the agenda giving the impression that today's meeting would generate a recommendation to the Board.

The discussion under this item was tabled until the next meeting of the Rules and Regulations Committee.

4. Public Comment on matters not on the agenda.

There were none.

5. Planning agenda items for next committee meeting.

All items on today's agenda will be placed on the next agenda.

6. Adjournment.

This committee adjourned at 11:07.

Respectfully submitted,

Brian Vu
Staff Services Analyst