

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

660 Davis Street, San Francisco, CA 94111
Phone: (415) 397-2253 Fax: (415) 397-9463
E-mail: brian.vu@bopc.ca.gov
Website: www.bopc.ca.gov

**RULES AND REGULATIONS COMMITTEE**

June 8, 2011

MEETING MINUTES**1:00 p.m.**

The Board of Pilot Commissioners Pilot Rules and Regulations Committee met on June 8, 2011 at 1:10 p.m. at the Board of Pilot Commissioners office, 660 Davis Street, San Francisco, California. Commissioner Wainwright presided over the meeting with Committee members Commissioner Johnston and Commissioner Cronin present. Member of the public present included San Francisco Bar Pilot's (SFBP) Business Director John Cinderey, SFBP Counsel Kevin Davis, Former Board Maritime Counsel Raymond Paetzold, Board Counsel Dennis Eagan, PMSA Counsel Conte Cicala, Executive Director Allen Garfinkle, Staff Services Analyst Brian Vu and Office Technician Kelly Dolcini.

Open Meeting:**1. Call to Order and Roll Call.**

Chairman Wainwright called the meeting into order at 1:10 p.m. Commissioner Johnston and Commissioner Cronin were present, constituting a quorum.

2. Approve minutes of March 3, 2011 meeting.

Commissioner Johnston made a motion to approve the March 3, 2011 minutes. Commissioner Cronin seconded the motion, which passed unanimously on a voice vote.

Chairman Wainwright stated that he would defer agenda item 3, and next cover items 4 through 7.

4. Report on status of regulation for cleanup regulatory package implementing statutory changes on the role of the Board in its Incident Review Committee in formal an informal disciplinary actions, section 210.

Chairman Wainwright reported that he received an e-mail from Terri Toohey regarding this agenda item stating that the 15 day public comment period had ended. It will be sent to the Office of Administrative Law (OAL) on Thursday where it will be in a 30 day review period.

5. Discussion of draft amendments to section 211 on Executive Director, or section 215 on Pilot Training, to include procedure to provide Executive Directory authority to extend time for pilots to complete mandated training. Possible Committee action to recommend to Board to approval and direction of staff to begin formal rulemaking.

Chairman Wainwright reported on the history of section 215 and stated his desire to recommend that the Board give the Executive Director latitude to extend time for pilots. A copy of minutes from July 23, 2009 wherein the Board approved draft language was provided to the Committee along with the approved draft language. Commissioner Cronin stated that he would like to review this further. As a result, Chairman Wainwright deferred this item until the next meeting.

6. Discussion of development of a form for staff use for reporting and recording exceptions to pilot use of Personal Piloting Units (PPU) per section 219(z)(A).

Chairman Wainwright stated that the personal piloting unit form should be a regulatory requirement form.

The Committee discussed what should be on the form:

- Pilot name
- Vessel name
- Date of boarding, time and place
- Debarkation time
- circumstances and time of report

Executive Director Garfinkle emphasized that this form is only for non-carriage, not if it was used or not.

7. Report on status of rulemaking on section 218, Duties of Port Agent, including new provisions (d)(1)(A)(3) and (d)(1)(B)(3)

Chairman Wainwright stated that section 218 was in waiting period.

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 March 14, 2011 correspondence from Board staff to counsel for San Francisco Bar Pilots K. Davis and Pacific Merchant**

Shipping Vice-President M. Jacob requesting input on 1190(a)(1)(C) procedural issues.

- b) Discussion of K.Q. Davis' response dated May 2, 2011.**
- c) Discussion and M. Jacob's response dated June 17, 2011.**
- d) Possible motion to recommend to full board to adopt initial draft regulation and direct staff to initiate formal rulemaking procedures.**

Chairman Wainwright gave a brief summary of the events thus far. The pilots petitioned for relief under 1190(a)(1)(c). The Board, after receiving written arguments on both sides, directed this committee to draft regulations for practical operation of 1190(a)(1)(c). At the previous meeting on March 3, 2011, the Committee voted to approve two definitions: "Catastrophic cost increase to the pilots" and "Overall annual cost of providing pilot services."

Chairman Wainwright began today's discussion by referring to a June 8, 2011 Discussion Outline prepared by Board Counsel Dennis Eagan. Item II(A) queried what should be the "base years" for purposes of paragraph 3 in the definition of "catastrophic cost increase to the pilots" Chairman Wainwright discussed the base years with the Committee discussing how to calculate the base years.

Board Counsel Eagan was concerned with the statutory language, "has been" as compared with using projections, as the statute did not offer guidance on how to exactly compute. As a result, Board Counsel Eagan suggested waiting full years so that there could be a sixth year over the five base years.

Conte Cicala voiced his concern that when you are using cost as a basis for determining when you have a catastrophe, you are on a slippery slope. The problem is where do you draw the line. He added that, while he does not condone the using cost as a basis for determining whether you have a catastrophe, the five year period base period should be adjusted for inflation.

After discussion among the Committee members, Commissioner Cronin moved to make the base year a five year average. Commissioner Johnston seconded the motion. Dennis Eagan noted that base years should apply to both the 2% test and the 50% test. The motion was amended to apply to both, which passed unanimously on a voice vote.

Chairman Wainwright turned the discussion to Board Counsels Discussion Outline Item IIB, "What should be the duration of any approved mill-rate increase in response to a catastrophic cost increase to the pilots." After Kevin Davis and Conte Cicala summarized their arguments, Chairman Wainwright stated that periodic review was good public policy.

SFBP's proposal was discussed wherein they maintained that any approved increase would remain in effect until addressed by the legislature and that they statute does not provide for decreasing the mill rate following a catastrophe only increasing it.

PMSA advanced a position wherein they maintain that the most should be fixed by the board, then recovered by a surcharge in the manner of the pilot boat surcharges. PMSA offered up a model used by the Public Utilities Commission (PUC) where in following a disaster the utility immediately begins tracking costs that are directly attributed to the event. If these costs are subsequently approved by the PUC, then these costs can be passed through to the consumer in the form of rate adjustments that extend until all the approved costs are recovered.

Board Counsel Eagan noted that the fuel surcharge recently voted on by the Board contained a mechanism for reevaluation every three months of whether the surcharge should be extended for another three months. Board Counsel Eagan noted this responds to the potential existence for the cost to continue on for some indefinite period, but must be periodically evaluated for need and future amount.

Chairman Wainwright moved that staff draft language with the duration of the approved mill rate subject to quarterly review and have freedom to recommend increase, decrease, or termination by the Board. Commissioner Cronin seconded the motion which passed unanimously on a voice vote.

8. Public Comments on Matters not on the agenda.

There was none.

9. Planning agenda items for next committee meeting.

The next meeting was scheduled for July 6, 2011. Board Counsel Eagan stated that he would be gone from July 10, 2011 to the end of the month.

12. Adjournment.

This committee adjourned at 3:40 p.m.

Respectfully submitted,

Brian Vu
Staff Services Analyst