

STAFF REPORT TEMPORARY SURCHARGE OR MILL RATE

SUMMARY

At the June 25, 2020, Board meeting, the Board requested staff to determine if the Board could approve a temporary surcharge or increase the mill rate to provide additional funds to pilots due to an emergency or catastrophic event. Staff determined that there is a mechanism in the Harbors and Navigation Code for the Board to approve an increase in the pilotage mill rate subject to certain conditions.

RELEVANT HARBORS AND NAVIGATION CODE STATUTES AND REGULATIONS

Harbors and Navigation Code (HNC) § 1190. (a)(1)(C):

In addition to the incremental rate specified in subparagraph (B), the mill rate established by this subdivision may be adjusted at the direction of the board if, after a hearing conducted pursuant to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, the board determines that there has been a catastrophic cost increase to the pilots that would result in at least a 2-percent increase in the overall annual cost of providing pilot services.

DISCUSSION

Due to the COVID-19 pandemic and international trade issues, shipping activity in the Board's jurisdiction has significantly decreased in 2020 over prior years, causing fiscal issues for BOPC-licensees operating a round-the-clock, on-demand pilotage business. At the June 2020 Board meeting, The Port Agent reported that due to the reduction in revenues, the pilots were experiencing increasing financial pressures to operate a 24/7 on-demand pilotage business. The Board subsequently requested that staff research the possibility of the Board approving a temporary surcharge or other charge to provide fiscal relief to BOPC-licensees.

BOPC staff have determined that there is no authorization in the HNC for the Board or the Legislature to approve a temporary surcharge to meet an emergent or temporary need to increase pilotage revenues. However, HNC §1190(a)(1)(C) does authorize the Board to increase the pilotage rate established in HNC §1190(a) after a public hearing if the Board determines that there has been a catastrophic cost increase to the pilots that would result in at least a 2% increase in the overall annual cost of providing pilotage services.

Board Counsel has reviewed the above-referenced section of the HNC, and has determined that it only addresses pilot fiscal issues related to a "catastrophic cost increase to the pilots" of a certain magnitude, and does not allow the Board to temporarily raise the mill rate to address a revenue reduction resulting from lower demand for pilotage services.

Staff also notes that there are no regulations interpreting this section of the §1190(a)(1)(C). As such, in addition to its review of pilotage business operating costs, the Board would need to determine that a pandemic and/or international trade issues are a "catastrophic" event as mentioned in the HNC.