

RATE SETTING STATUES AND REGULATIONS

Harbors and Navigation Code:

1200.

The board shall, from time to time, review pilotage expenses and establish guidelines for the evaluation and application of these expenses regarding its recommendations for adjustments in rates.

(Amended by Stats. 2001, Ch. 745, Sec. 123. Effective October 12, 2001.)

1201.

Any party directly affected by pilotage rates established under this chapter may petition the board for a public hearing on any of the matters set forth in Section 1200. Within 10 days from the filing of the petition the board shall call public hearings to be held not less than 30 nor more than 60 days of the date of call for the purpose of obtaining information and data relating to the issues raised in the petition. The board shall give notice of the hearings to all interested parties who have requested the notification. At the conclusion of the hearing or hearings, the board shall review and evaluate all evidence obtained and, within 120 days from the filing of the petition, shall submit to the Secretary of the Senate and the Chief Clerk of the Assembly a copy of its findings and recommendations for final determination, supported by a transcript of these proceedings of the board.

(Repealed and added by Stats. 1984, Ch. 1653, Sec. 51.)

1201.5.

(a) The board shall not receive written evidence at a public hearing held for the purpose of considering pilotage rates unless 10 or more copies of the evidence have been deposited with the board as public documents by the party proposing a rate adjustment 30 or more days prior to the date set for the commencement of the hearing.

(b) The board shall not receive written evidence at the hearing from any party responding to the request unless the evidence is deposited with the board 10 or more days prior to the date set for the commencement of the hearing.

(Added by Stats. 1988, Ch. 334, Sec. 3. Effective July 14, 1988.)

1202.

Public hearings for the purpose of investigating pilotage rates shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and a full record shall be kept of all evidence offered.

(Amended by Stats. 1986, Ch. 248, Sec. 102.)

1203.

In preparing recommendations to the Legislature with relationship to pilotage rates, the board may require an independent audit or audits by a public accountant selected by the board. The audits required by the board shall cover pilotage operations for those years which the board may specify. In preparing the recommendations, the board shall also give consideration to other relevant factors, including, but not limited to, the following:

(a) The costs to the pilots, individually or jointly, of providing pilot service as required.

- (b) A net return to the pilot sufficient to attract and hold persons capable of performing this service with safety to the public and protection to the property of persons using the service; and the relationship of that income to any changes in cost-of-living indices.
- (c) Pilotage rates charged for comparable services rendered in other ports and harbors in the United States.
- (d) The methods of determining pilotage rates in other ports and harbors in the United States.
- (e) Economic factors affecting the local shipping industry, including prospective increases or decreases in income and labor costs.
- (f) Additional factors affecting income to pilots such as the volume of shipping traffic using pilotage, numbers of pilots available to perform services, income paid for comparable services, and other factors of related nature.
- (g) Changes in, or additions to, navigational and safety equipment necessary to insure protection of persons, ships, and waterways.
(Amended by Stats. 1990, Ch. 1423, Sec. 12.)

Title 7, California Code of Regulations

§ 236. Rate Hearing Procedures.

- (a) Pilotage rates are set by statute codified at Chapter 5 of Division 5 of the Harbors and Navigation Code, beginning with Section 1190. The Board's role in the setting of pilotage rates is to hold public hearings to investigate such rates and make recommendations to the Legislature. Any party directly affected by pilotage rates may petition the Board for such a rate hearing, as set forth in this section; however, nothing contained in this section shall preclude the Board from conducting a duly noticed rate hearing on its own motion.
- (b) Within ten (10) days after receipt by the Board of a petition for a rate hearing from a party directly affected by pilotage rates, the Board shall notice a public hearing to be held not less than thirty (30) nor more than sixty (60) days from the date of the notice. Such notice shall be given to all parties directly affected by pilotage rates and to all other interested parties who have requested such notification. The purpose of the hearing is to obtain information and data relating to the issues raised in the petition or notice.
- (c) The party proposing a rate adjustment shall have the burden of proving by a preponderance of the evidence that a change in the rates is justified. Ten (10) copies of all written evidence submitted in support of the petition shall be deposited with the Board at least thirty (30) days prior to the date set for the hearing. Such written evidence shall be available for public inspection during normal Board hours.
- (d) Any party wishing to respond to a petition for a rate adjustment shall submit ten (10) copies of all written evidence it relies on to support its response, and shall deposit them with the Board at least ten (10) days prior to the date set for the hearing. Such evidence shall be available for public inspection during normal Board hours.
- (e) Upon the filing of a petition for a rate hearing, copies of the most recent annual audited financial statements of the San Francisco Bar Pilots and of the San Francisco Bar Pilots Benevolent and Protective Association shall be deposited with the Board and made available for

public inspection during normal Board hours. The Board may also require an independent audit of pilot operations by a public accountant selected by the Board. The results of any such independent audit shall be made available for public inspection during normal Board hours and shall become a part of the record.

(f) Factors to be considered by the Board in preparing its recommendation to the Legislature on pilotage rates include, but are not limited to, the following:

(1) Costs of Providing Pilot Services. Parties directly affected by pilotage rates are encouraged to use the Board's process for periodic review of pilotage expenses to reach agreement on whether specific expense categories should be considered a "cost of providing pilot services" within the meaning of this section. Absent a showing that there was no reasonable opportunity to do so, the failure to make use of that process may result in the Board's refusal to approve an expense category not previously approved as a cost of providing pilot services or in the Board's refusal to reverse a previous decision to approve such an expense category.

(2) Net Return to Pilots Sufficient to Attract and Hold Qualified Pilots. A party contending that the current rates result in a net return which is insufficient to attract or hold qualified pilots has the burden of persuading the Board of that point of view. In determining the issue, the Board may consider the level of qualifications and number of applicants meeting minimum qualifications for its pilot trainee training program, the number and circumstances of pilots resigning before their eligibility for statutory retirement benefits, and any other evidence relevant to the issue.

(3) Cost of Living Index. In assessing the adequacy of the net return to pilots, the Board will consider, as one factor, the change in the annual average, seasonally unadjusted consumer price indices between the last rate hearing and the most recent 12-month period for which such data is available from the U. S. Department of Commerce, Bureau of Labor Statistics, for the "Western Region" and for "All Urban Consumers, San Francisco-Oakland-San Jose."

(4) Rates Charged for Comparable Services in Other Ports. "Comparable services" means pilotage from sea to dock in ports with generally similar geographic and hydrographic parameters, vessel traffic in density and in size and type of vessels, number of vessel movements, length of transit, number of pilots, pilot workload and relative difficulty of pilotage and hazards encountered. While the Board recognizes that no port will be precisely the same in all these categories as the waters under the Board's jurisdiction, it encourages the parties to agree on a limited number of ports which are sufficiently comparable for this purpose and for which accurate pilotage rate, pilot income and/or pilot expense data is reasonably available in the public record or is otherwise verifiable.

Absent persuasive evidence to the contrary, the Board recognizes the following ports as comparable for purposes of this section: Columbia Bar/River, Houston, Tampa Bay, Sandy Hook (NY/NJ), New Orleans/Baton Rouge, St. Johns Bar (Jacksonville), Maryland (Chesapeake Bay) and Puget Sound (Seattle). Pilotage rate and pilot income and expense data for other ports shall be supported by evidence that the pilotage services for those ports are comparable as defined in this subsection.

(5) Income Paid for Comparable Services. Parties submitting evidence of pilot income and expenses in other ports shall limit such evidence to ports providing comparable services, as defined in subsection (f)(4) above and for which accurate pilotage rate, pilot income and/or pilot expense data is reasonably available in the public record or is otherwise verifiable. Evidence of pilot income and expenses in other ports shall be accompanied by the cost of living differential between those ports and the San Francisco Bay Area for the period for which the pilot income and expense data applies if such differential information is available in the public record.

(6) Methods of Determining Rates in Other Ports. Parties wishing to offer evidence of how pilotage rates are determined in other ports should do so for those ports for which pilotage rate or pilot income and expense data is also provided.

(7) Economic Factors Affecting Local Shipping. The Board will consider such competent evidence as the parties may submit regarding economic factors affecting the local shipping industry, including prospective increases or decreases in income and labor costs. A party wishing to affect a rate change on the basis of such economic factors has the burden of persuading the Board that the evidence supports that party's argument.

(8) Volume of Shipping Traffic. The Board may rely on data of vessels piloted as submitted monthly by the pilots. That data is available as a public record of the Board.

(9) Number of Pilots Available. In preparing its recommendation on pilotage rates, the Board will consider the number of pilots actually licensed at the time of the rate hearing. Any issues regarding the adequacy of that number should be addressed in a duly noticed hearing held pursuant to Harbors and Navigation Code Sections 1170.1 and 1170.2.

(10) Risk to Pilots. The Board recognizes the inherent risk to the personal safety of the pilots in providing pilotage services, including those risks posed by the physical characteristics of the pilotage grounds within the Board's jurisdiction. A party seeking to affect a rate change on the grounds that there have been material changes in those risks has the burden of proving such changes.

(11) Changes in Navigational and Safety Equipment/Pilot Support Activities. The Board recognizes that, in recent years, there have been substantial changes in training requirements placed on pilots, in regulations which pilots must implement, and in the complexity and size of vessels which increases the professional demands on pilots. The Board also recognizes that pilots have provided services beyond the navigation of vessels. Such services are referred to as "pilot support activities." Changes in those pilot support activities that are necessary to providing pilot service may be considered in determining the appropriate pilotage rate. To the extent such changes have increased the costs to the pilots of providing pilot services, these costs should be addressed under subsection (f)(1) above. To the extent such changes have resulted in increased time demands, such demands should be addressed at a duly noticed hearing to determine the number of pilots under Harbors and Navigation Code Sections 1170.1 and 1170.2.

(12) The weight to be given to each of the factors enumerated in this subsection may vary depending on prevailing circumstances and shall be left to the sound discretion of the Board.

(g) At least seven (7) days prior to the hearing, or at such time as the President may direct, the representatives and/or counsel for the parties supporting and responding to the petition for a rate change shall meet with the President or his/her designee at the time and place directed by the President, to determine if the issues raised by the petition can be narrowed or resolved by stipulation, and to address the order of and anticipated length of the presentation of evidence; the number and identity of witnesses and the subject matter and scope of their testimony; identification and possible resolution of any evidentiary issues; and any other matter which promotes efficiency in conducting the rate hearing.

(h) The President, or his/her designee, may issue a pre-hearing order setting forth any stipulations or limitations on the scope of the hearing or the issues to be presented as agreed to by all parties attending the pre-hearing conference. Participation by the President or any other Board member in the pre-hearing conference shall not disqualify him or her from participation in the rate hearing.

(i) The rate hearing shall be conducted at the time and place set forth in the Notice or in any amendment thereto and shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Government Code Sections 11120, et seq.). A full record shall be kept of all evidence offered at the hearing, including a verbatim transcript of all testimony, which shall be given under oath.

(j) Following the presentation of evidence in support of and in response to the petition for a rate hearing, any additional evidence requested by the Board, any evidence submitted in rebuttal, and the closing arguments of the parties, if any, the Board shall proceed with deliberation, including a review and evaluation of all the evidence received at the hearing and a determination of what pilotage rate change, if any, is warranted by the evidence. The Board's deliberation shall be conducted at a duly noticed meeting open to the public and shall be transcribed electronically or by a certified shorthand reporter, as the Board may direct.

(k) Upon completion of its deliberation and within 120 days from the filing of the petition, the Board shall submit its findings and recommendations, supported by a transcript of the proceedings, to the Secretary of the Senate and the Chief Clerk of the Assembly.

Note: Authority cited: Section 1154, Harbors and Navigation Code: Reference: Sections 1190, 1191, 1200, 1201, 1201.5, 1202 and 1203, Harbors and Navigation Code.