

BOARD-INITIATED PILOTAGE RATE HEARING

BACKGROUND

In 2020, shipping activity in the Board's jurisdiction has been negatively impacted due the COVID-19 pandemic and trade issues. The decreased shipping volume has also negatively impacted pilotage revenue. The San Francisco Bar Pilots' (SFBP) President indicated to the Board that 2020 pilotage revenue decreased to the point that the SFBP has changed its invoice collection policies to more timely receive billing payments, and that the SFBP is considering potential reductions to services in order to reduce operating expenses.

The Board discussed the SFBP's 2020 fiscal issues at two monthly Board meetings at which the Board determined that a reduction in revenue did not meet the catastrophic conditions referenced in Harbors and Navigation Code §1190(a)(1)(C) that would have allowed the Board to conduct a hearing to determine if it should institute a temporary mill rate increase as a result of a catastrophic event. Subsequently, the Board President also moderated discussions this summer between the shipping industry and SFBP's President and Business Director regarding fiscal solutions to the pilots' temporary reduction in revenues, and noted that discussions have stalled.

The Board then requested the opportunity to discuss the option that the Board initiate a pilotage rate hearing in an effort to provide a solution to the pilots' temporary fiscal problem resulting from the pandemic and trade-related fiscal issues.

RATE-SETTING STATUES AND REGULATIONS

Statutory provisions on rate setting are found in the Harbors and Navigation Code, §§1200-1203.

Regulatory provisions on rate hearing procedures are are found in Title 7, California Code of Regulations, §236.

Specifically, §236(a) states:

“(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.***” (emphasis added)

Factors to be considered by the Board for rate hearing as set forth in §236(f):

- (1) Costs of Providing Pilot Services.
- (2) Net Return to Pilots Sufficient to Attract and Hold Qualified Pilots.
- (3) Cost of Living Index.
- (4) Rates Charged for Comparable Services in Other Ports

- (5) Income Paid for Comparable Services.
- (6) Methods of Determining Rates in Other Ports.
- (7) Economic Factors Affecting Local Shipping.
- (8) Volume of Shipping Traffic.
- (9) Number of Pilots Available.
- (10) Risk to Pilots.
- (11) Changes in Navigational and Safety Equipment/Pilot Support Activities.

The full rate-setting statutes and regulations cited above are attached to this staff report.

RELEVANT AVAILABLE SFBP FISCAL DATA

Attached to this staff report is a copy of the audited San Francisco Bar Pilots and San Francisco Bar Pilots Benevolent and Protective Association's Consolidating Statement of Income and Comprehensive Income for the fiscal year ended December 31, 2019, with comparative consolidated amounts for 2018.

Also attached to this staff report is a summary of the SFBP's monthly pilotage billing data as reported to the Board for 2019 through August 2020. The Board does not have any 2020 SFBP expense data.

Staff notes the following from the available SFBP fiscal data:

- Average consolidated annual Total Revenues for 2018 and 2019 was approximately \$44 million.
- Average operating expenses for 2018 and 2019 (net of depreciation) was approximately \$15 million.
- Average pilot net income for 2018 and 2019 was approximately \$510,000.
- Total Revenue in the first 8 months of 2020 totaled \$24.7 million.

RATE HEARING PROCESS

The process for a pilotage rate hearing includes:

1. Within 10 days, 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.
2. 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 there is agreement between the stakeholders on type and amount of data to be submitted to the Board to promote an efficient rate hearing.
3. The Board then deliberates at a public meeting or meetings, and conducts 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.

4. Within 120 days from the filing of the petition, the Board submits to the Legislature its findings and recommendations supported by a transcript of the proceedings.

PROS AND CONS TO THE BOARD INITIATING A PILOTAGE RATE HEARING

Pros:

- A Board-initiated rate hearing could help break the negotiation stalemate between the stakeholders.
- A Board-initiated rate hearing could facilitate a discussion of pilot expenses and pilot net income, including the amount of pilot net income that would be sufficient to attract and hold pilots.
- The Board could decide to hold a hearing limited to evidence that would facilitate a short-term fiscal solution, which would limit efforts by Board staff and stakeholders in the rate hearing process.
- A Board-initiated rate hearing may carry considerable weight with the Legislature as it considers rate-setting legislation.

Cons:

- No stakeholder has felt the need to request a rate hearing. Maybe there isn't a need for one.
- The Board has never initiated a rate hearing before. As such, the Board would be putting itself squarely between the stakeholders rather than letting the stakeholders come to mutual agreement on pilotage rate changes.
- If the Board initiates a rate hearing, the Board has the burden of proving by a preponderance of the evidence that a change in the rates is justified since it called for the hearing.
- A rate hearing process would utilize limited Board resources, and divert Board staff capacity away from other Board mission-critical tasks.
- Legislation is not a quick process that could solve an immediate and temporary pilot fiscal problem.
- A Board-initiated rate hearing with the result being a short-term, temporary pilotage rate increase or temporary surcharge likely will not satisfy the pilots' desire for a long-term rate-setting process solution.