

<p>Meeting Date:</p> <p>April 8, 2021</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES</p>	<p>Page 1 of 7</p>
---	--	---------------------------

Committee Members Present

Captain Robert Carr, Committee Chair
 Captain Oscar Prada, Commissioner
 Karen Tynan, Commissioner

Committee Members Absent

None.

Board Staff Present

Allen Garfinkle, Executive Director
 Roma Cristia-Plant, Assistant Director
 Dennis Eagan, Board Counsel
 Brenda Pugh, Staff Services Manager I
 Alethea Wong, Administrative Assistant II

Identified Public Present

Jennifer Ferrera Schmid, Board Vice President; Captain John Carlier, San Francisco Bar Pilots (SFBP) President and Port Agent; Captain Anne McIntyre, SFBP Business Director; Captains Einar Nyborg, Raymond Ridens, Cevan LeSieur, Daniel Larwood, and Jesse Pullin, SFBP; and Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; John Schneider, Marathon Petroleum; and Captain Dennis Plant, Chevron and retired BOPC-licensee.

OPEN MEETING AGENDA

1. Call to Order and Roll Call. (Chair Carr)

Chair Captain Carr called the meeting to order at 9:30 a.m. Administrative Assistant II Wong called the roll and confirmed a quorum.

Chair Captain Carr gave an overview of how the Committee was formed:

- At the March 2020 Board meeting, Executive Director Garfinkle reported that Board staff received a report from SFBP Port Agent Long regarding significant decrease in vessel traffic due to COVID-19, which is impacting the pilots’ revenue. The Commissioners discussed possible solutions to address the revenue needed to maintain the pilotage system.
- At the June 2020 Board meeting, the Commissioners were presented with AB 1372-Bonta, a bill that proposes to reform the pilotage rate setting process from a two-step process (Board and Legislature), to a rate setting process at the Board level, which is

<p>Meeting Date:</p> <p>April 8, 2021</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES</p>	<p>Page 2 of 7</p>
---	--	---------------------------

similar to how some other pilotage jurisdictions operate. The Board decided to discuss the bill, and it was added to the next Board agenda. Commissioner Hoppes requested the addition an agenda item to discuss establishing a surcharge related to COVID-19. In the first year of the two-year legislation cycle, AB 1372 did not get out of committee, due to their focus on bills related to COVID-19.

- After much discussion at the July 2020 Board meeting, it became clear that a solution to the pilotage revenue loss issue could not be addressed without the legislature, and that the Board lacked adequate tools to affect a short-term solution.
- The item remained on the agenda for subsequent Board meetings. At the November 2020 Board meeting, Captain Carr and Commissioner Prada volunteered to assist in facilitating meetings between stakeholders outside of the Board. Board Counsel cautioned Board members to be cognizant of Open Meeting Act issues when participating in meetings other than properly noticed public meetings.
- At the December Board meeting, Pilot members of the Board requested that the Board consider establishing a committee to review the rate setting process, as the previous Board rate proposals were not successful, in their view, due to the political process at the legislative level.
- A Committee was formed to review the rate setting process at the February 2021 Board meeting.
- For this Committee meeting, Board staff prepared a Staff Report detailing the history of previous rate change initiatives and a draft of the Committee’s mission statement.

2. Public comment on matters on the agenda or not on the agenda.

Mr. Jacob announced that he had another meeting scheduled, and he may need to leave the Committee meeting early. There were no further comments from the public.

3. Discussion of a committee mission statement. Committee recommendation to the Board of a Committee mission statement. (Chair Carr)

Committee members were presented with the draft of the Committee mission statement: To evaluate the efficiency and effectiveness of the current State legislative pilotage rate setting process by reviewing various pilotage rate setting processes at other pilotage commissions, and to determine whether changes to the current pilotage rate setting process would be beneficial to the State, Board-licensees and the shipping industry. The Committee will present their findings and recommendations to the Board.

Commissioner Tynan suggested that the mission statement include a deadline for action items. Executive Director agreed that establishing deadlines are important but suggested that a mission statement may not be the best place to include them.

<p>Meeting Date:</p> <p>April 8, 2021</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES</p>	<p>Page 3 of 7</p>
---	--	---------------------------

Commissioner Prada agreed with the importance of deadlines, and stated it will be helpful for the Committee to discuss issues related to the pilotage rate setting process to improve progress. Committee Chair Carr expressed hope that some progress could be made by this fall.

4. Discussion of the history of the pilotage rate setting process at the Board and rate setting processes at other pilotage jurisdictions.

Committee members were presented with historical information and notes related to the pilotage rate setting process at the Board, and rate setting processes at other pilotage jurisdictions. Board staff presented a report on historical rate setting initiatives and decisions by an administrative law judge, ending in 2006.

Executive Director Garfinkle clarified that decisions by an administrative law judge were available until 2002; in 2006 and 2007, the Board addressed the adoption of rate hearing procedures. He also added that Board staff has abundant rate hearing materials, but due to limited staff time, he was unable to review them in more detail. Executive Director Garfinkle reported on the following:

- In 1962, the legislature amended the provisions of Division 5 of the Harbors and Navigation Code for a Rate Committee, separate from the Board, to recommend to the Legislature any changes to the statutes pertaining to San Francisco Bay pilotage rates.
- There were 5 members on the Rate Committee who were appointed by the Governor: 2 pilot members, 2 industry members, and 1 public member. The Committee members must reside in one of the seven Bay Area counties, must be at least 35 years old, and cannot serve more than 2 terms.
- The Committee would recommend any rate changes to the Legislature to make the final decision. Any party directly affected by the pilotage rates may petition for Committee for a public hearing on any matters set forth in the law.
- The Legislature made the decision to divest state jurisdiction over most of the pilotage grounds in the state. However, due to the multi-jurisdictional nature of the Bay Area pilotage grounds, the Legislature decided it was appropriate to retain state jurisdiction in the San Francisco Bay region.
- The Legislature never gave up authority over pilotage rates.
- Discussions about the pension was noted throughout until the current pension regime was developed.
- The Committee did not meet in 1977 due to vacancies from the industry members, therefore the pilots brought SB 1223 to the Legislature, which increased the mill rate, and the rate the pensions were calculated on.

<p>Meeting Date:</p> <p>April 8, 2021</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES</p>	<p>Page 4 of 7</p>
---	--	---------------------------

- During the bar and river/docking pilot unification period, there was a decision for widows to receive 75% of the licensee’s pension (up from 50%).
- 1989 was a controversial year as both SFBP and PMSA presented petitions. Hearings were arranged, and at one of the hearings, both pilot members walked out when PMSA proposed to reduce the mill rate by 12%, which prevented the Board from voting due to quorum issues. The industry also proposed that the International Organization of Masters, Mates and Pilots (MMP) dues, lobbying costs, political contributions, and license insurance not be allowed expenses. The pilot members departed the country to tour various manned model sites, allowing the 120-day period to deliver a recommendation to the Legislature to expire without a vote on either petition.
- In December 1990, a Rate Hearing Procedure Hearing Committee was formed in an attempt to resolve some of the animosities which were evident at prior rate hearings. The Committee presented the Board Rate Hearing procedure guidelines and a schedule for holding the anticipated 1991 rate hearings. On January 24, 1991, the Board accepted the Committee’s findings, which led to the enactment of a new section 1201.6, which shifted the responsibility of holding pilotage rate hearings from the Board, to an Administrative Law Judge (ALJ). This is the first time an Administrative Law Judge would oversee the submission of the evidence, determine findings, and make recommendations to the Board. The Board was still charged with making the final recommendation.
- From 1991 – 1995, the Board used an Administrative Law Judge, who reviewed the evidence and made recommendations to the Board. This was helpful since the Board lacked resources to do a thorough analysis when setting pilotage rates.
- The use of an Administrative Law Judge contained a “sunset” provision and lasted only five years. In 1996, rate hearings returned to the Board. The Board reviewed data including the cost of living index and the rate charged by other pilot organizations for comparable services in other ports. The Board reviewed rate information, rather than average income, as the rate information was more accessible. This led to mill rate increases over a span of multiple years.
- The result of the 2002 hearings and the recommendations of the Board, signed jointly by SFBP’s Captain Slough and PMSA, were as follows:
 - Effective January 1, 2003, and then yearly thereafter, increase to the overall pilot rates by 6%, 6%, 4%, and 4%.
 - Distribute these rate increases between the bar rates and inland rates by a ratio of 1 to 10.
 - Increase the inland rates to bring these rates closer to parity with the bar rates by distributing the overall rate increase over this period by 4%, 4%, 3%, and 3% on the bar rate, and by 26%, 26%, 14%, and 14% on the inland rates.
 - In 2006 and 2007, the Rules and Regulation Committee adopted the current regulation 236, Rate Hearing Procedures.

<p>Meeting Date:</p> <p>April 8, 2021</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES</p>	<p>Page 5 of 7</p>
---	--	---------------------------

Committee Chair Carr commented that the events in 1970 were the reasons why the San Francisco Bay Area is still under the State’s control, even though other ports are regulated by local government.

Executive Director Garfinkle reported that early in the history of the past four decades, there was an established target income for the pilots, which was added to the mill rate after examining allowed expenses. At one point, lobbying, health insurance, and MMP dues were allowed expenses, but during later hearings, these expenses were challenged by PMSA. At the 1991-1992 decision, Mr. Cone commented that the Board wasn’t providing adequate oversight of the pilots’ spending.

Commissioner Nyborg thanked Executive Director Garfinkle for compiling the information. Executive Director Garfinkle responded to a question by Commissioner Tynan that the Board has not initiated an audit of the pilots’ finances, and that even though section 1203 still applies, it has not been done at the last two rate hearings. He added that the Board does mandate audits of Board surcharges collected by the SFBP.

Vice President Schmid, who was a Commissioner in 2015, reported that the rate setting process that year seemed fair. The hearing took place offsite at a large space and more members of the public were able to attend. The hearing took at least two days for both SFBP and PMSA to present their evidence, including testimonies from pilots. There was a day or two of deliberations and it was a lengthy process, which took a lot of Board staff time.

Board Counsel Eagan noted that the Board made recommendations to the Legislature based on these rate hearings. Vice President Schmid added that the hearing from 2015 resulted in a navigation technology surcharge to finance the navigational technology upgrades.

Committee Chair Carr requested that Board staff research rate hearing-related activities from 2006 to present for discussion at the next Committee meeting.

Mr. Jacob thanked Executive Director Garfinkle for his detailed report and found the historical information to be helpful. He suggested that information from 2006 to present would be helpful to the Committee and for Board staff to review those records as there have been 8 – 9 bills since 2002. He also suggested that SFBP and PMSA report their individual rate setting-related activities so that the information will be in one central location. Committee Chair Carr agreed with Mr. Jacob’s suggestion but requested that the compiled information be kept to a manageable size.

Board Counsel Eagan suggested including a quarterly rate sheet by SFBP, which will help the Committee see the current surcharges and the previous rates. Executive Director

<p>Meeting Date:</p> <p>April 8, 2021</p>	<p>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111</p> <p>AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES</p>	<p>Page 6 of 7</p>
---	--	---------------------------

Garfinkle noted that the Board website includes the quarterly surcharge rates, mill rate, blue card rates, and that the current letter is for the second quarter of 2021.

Executive Director Garfinkle noted that he will research when a target pilot income was removed from the rate discussion, and noted that during the last two rate hearings, target pilot income was not part of the evidence. He also noted that since there has been no action from legislature after 2002, his historical lookback ended there.

Committee Chair Carr called for a short recess.

RECESS BEGAN: 10:55 a.m.
RETURN TO OPEN SESSION: 11:05 a.m.

Committee Chair Carr requested that Board staff include agenda items 4.1 and 4.2 for the next Committee meeting. He noted that 19 out of the 24 states use an administrative state process, in which the states set the rate. California and four other states have the legislature involved in the rate setting process. He reminded everyone that the current process used is in the minority.

Executive Director Garfinkle stated that it may be helpful to review Puget Sound’s rate hearing, as the outcome was not what Puget Sound pilots had hoped. Committee Chair Carr suggested that this is something the Committee may explore later.

5. Public comment on matters not on the agenda.

There were no public comments.

6. Schedule the next Committee meeting, and proposals for the next Committee meeting agenda.

Committee Chair Carr requested briefs from all affected stakeholders with their concerns and encouraged SFBP and PMSA to work with the Executive Director to finish the timeline of rate setting events.

Executive Director Garfinkle acknowledged that he will research any Legislative actions from 2006 – 2021. Board Counsel Eagan suggested that it may be faster to do a bill history on what SFBP and PMSA have submitted, and that this information should be available. Business Director Captain McIntyre stated that she and Mr. Jacob should be able to find the bill history information.

Meeting Date: April 8, 2021	Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun 660 Davis Street, San Francisco, CA 94111 AD HOC COMMITTEE TO REVIEW THE PILOTAGE RATE SETTING PROCESS MEETING MINUTES	Page 7 of 7
--	---	--------------------

The Committee agreed to meet on Tuesday, May 18, 2021, at 9:30 a.m.

7. Adjournment.

MOTION: Commissioner Tynan moved to adjourn the meeting. Commissioner Prada seconded the motion.

VOTE: YES: Carr, Prada, and Tynan.
NO: None.
ABSTAIN: None.

ACTION: The motion was approved, and the meeting was adjourned at 11:24 a.m.

Submitted by:



Allen Garfinkle
Executive Director